

Protecting Children from Cybercrime

Legislative Responses in Asia to Fight Child Pornography,
Online Grooming, and Cyberbullying

2015

A joint report



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A joint report of the World Bank and the International Centre for Missing & Exploited Children

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❖ Legal Interns and Research Interns

- Nan Chen, *Legal Intern*, International Centre for Missing & Exploited Children (Online Grooming)
- Christine Erickson, *Research Intern*, International Centre for Missing & Exploited Children (Online Grooming)
- Jeesun Hong, *Legal Intern*, International Centre for Missing & Exploited Children (Republic of Korea)
- Rachel Johnson, *Legal Intern*, International Centre for Missing & Exploited Children (Child Pornography)
- Tra Mi Phan, *Legal Intern*, International Centre for Missing & Exploited Children (Vietnam)
- Gary Zottoli, *Research Intern*, International Centre for Missing & Exploited Children (Philippines)
- Shota Toda, *Former Intern*, Legal Vice Presidency, World Bank (Japan)

❖ Peer Reviewers

- Nick Crabb, LLB (hons), *Development Officer*, Action Pour Les Enfants (APLE), Cambodia (Cambodia)
- Jeongmin Hong, *Chief of the International Relations Unit*, Korean National Police University (Republic of Korea)
- Santi Kusumaningrum, *Co-Director*, Pusat Kajian Perlindungan Anak (Center on Child Protection), University of Indonesia (Indonesia)
- Pol. Maj. Premsak Lertsuriyakul, *International Affairs Officer*, Royal Police Cadet Academy, Royal Thai Police (Thailand)
- Dr. Kevin McGahan, *Lecturer*, National University of Singapore (Cambodia, Malaysia, Singapore, and Timor-Leste)
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Information and communication technologies (ICTs) have developed at an increasingly fast rate over the last two decades. Recent rapid advances in ICTs have provided both children and adults with benefits and opportunities in terms of socialization, education, and entertainment. In particular, the development of ICTs has provided children and adolescents using the Internet and associated technologies with new spaces to interact and form social relationships with others, such as chatrooms, peer-to-peer (P2P) websites, and social networking sites.

Such technological innovations simultaneously have allowed violence to be committed by, with, and through the use of ICTs, including violence against children. Accordingly, children using the Internet and associated technologies become vulnerable to ICT-facilitated child abuse and exploitation and such child abuse and exploitation are often difficult to detect and address.

In the framework of the Global Forum on Law, Justice and Development (GFLJD), the World Bank and the International Centre for Missing & Exploited Children have undertaken an Asian Regional Study on Legislative Responses for the Protection of Children from Violence through Information and Communication Technologies (hereafter referred to as “this Regional Study”) in response to a growing concern over the use of ICTs to commit violence against children.

This Regional Study provides an overview of 17 targeted Asian countries’ legislative responses to online child abuse and exploitation, with a particular focus on activities related to child pornography (also known as “child abuse images”), online grooming, and cyberbullying. This Regional Study pays special attention to: 1) analyzing legislative measures to address violence against children committed by, with, and through the use of ICTs in alignment with relevant international instruments; 2) presenting examples of good practice in a legal enabling environment for child online protection at a national level in compliance with relevant international standards; and 3) highlighting recommendations for strengthening the national legal framework to handle ICT-facilitated child abuse and exploitation amongst the 17 Asian countries analyzed.

ABBREVIATIONS AND ACRONYMS

CIA	Central Intelligence Agency
CRC	Convention on the Rights of the Child
ECOSOC	Economic and Social Council
ECPAT	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes
Est.	Estimated
FTP	File Transfer Protocol
GNI	Gross National Income
ICMEC	International Centre for Missing & Exploited Children
ICTs	Information and Communication Technologies
ILO	International Labour Organization
IP	Internet Protocol
IT	Information Technology
ISPs	Internet Service Providers
ITU	International Telecommunication Union
Lao PDR	Lao People's Democratic Republic
OHCHR	Office of the High Commissioner for Human Rights
OPSC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
SRS	Special Representative of the Secretary-General on Violence Against Children
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
UNICEF	United Nations Children's Fund
URLs	Uniform Resource Locators

DISCLAIMERS AND LIMITATIONS

Disclaimers

This Regional Study is based on information on domestic law, regulation, and policy available in English online, offline, or both based on information collected from research conducted, verified, and updated between April 2013 and January 2015.

Because this Regional Study is carried out primarily based on information publicly available online, it has more than several hundred URLs and links to publicly available laws, regulations, and electronically published documents. All referenced URLs and links were checked at the time when they were inserted into the footnotes. There is no guarantee as to their continued accessibility. When possible, footnotes may include mention of “last visited month, date, and year”. In addition, in case of citing a published document in a footnote, the footnote may include information on an author (or an authoring institution), a year of publication, title, page range, and URL or a link where the referenced publication was uploaded.

After conducting initial research on national laws, regulations, and policies available online, offline, or both in English and completing the first draft of individual country reports for the 17 Asian countries analyzed for a one-year period (April 2013 to April 2014), the initial research was confirmed and/or updated through a peer review process over a two-month period (August 2014 to October 2014) and/or internal research verification process for a nine-month period (April 2014 to January 2015) in order to ensure the accuracy of the initial research results and to reflect the progress of national laws and regulations made during the period of time ranging from April 2014 to January 2015 due to the ongoing amendment of existing laws, planned/pending legislation submitted to the Congress, or enactment of new law/regulation during the above-mentioned period. The information on legislative and regulatory status of the 17 Asian countries analyzed is the most up-to-date available at the time of final verification (January 30, 2015). There is no guarantee as to the continued accuracy of this information after the last date on which it was verified.

Limitations

This Regional Study is limited to 17 countries in Asia including Brunei Darussalam, Cambodia, China, Democratic People’s Republic of Korea, India, Indonesia, Japan, Lao People’s Democratic Republic, Malaysia, Mongolia, Myanmar, Philippines, Republic of Korea, Singapore, Thailand, Timor-Leste, and Vietnam.

I. INTRODUCTION

Information and communication technologies (ICTs) have rapidly developed over the last two decades. Recent rapid advances in ICTs have allowed adults, as well as children, to enjoy unprecedented opportunities and benefits in terms of socialization, education, and entertainment. In particular, the development of ICTs has provided children and adolescents using the Internet and associated technologies¹ with new spaces to interact and form social relationships with others, such as chatrooms, peer-to-peer (P2P) websites, and social networking sites.

At the same time, technological innovation has enabled crimes, including crimes against children, to be committed by the use of ICTs. Children and adolescents using the Internet and associated technologies are more vulnerable to online abuse and exploitation than adults. To begin with, children and adolescents using the Internet and associated technologies are often poorly equipped to fully understand the potential risk of being exposed to illegal activities committed through the use of ICTs. In addition, because technological development is fast-paced and due to the fact that children are usually faster adopters of new technologies than adults, it may be difficult for parents, guardians, and caregivers to monitor their children's online activities.

Furthermore, violence against children committed through the use of ICTs is more difficult to detect and address than traditional forms of violence against children. For example, there was a recent case in the United States involving a child perpetrator who is convicted of engaging in a child exploitation enterprise, conspiracy to advertise and distribute child pornography and accessing a computer with intent to view child pornography by using Tor-network-based child pornography website. The website used by the above-mentioned child perpetrator was accessible only through Tor, an Internet application specifically designed to facilitate anonymous communication.² Virtual currencies (i.e., bitcoin) have become popular payment methods for those who participate in transactions to purchase child pornography or intend to earn a profit by committing crimes against children in the Internet environment. One reason criminals have begun to use virtual currencies is that most countries do not yet apply existing law and regulation, which govern traditional currencies backed by central banks, to virtual currencies, which are decentralized. The technological innovations that allow Internet users to anonymously surf Tor-network-based websites and engage in electronic transactions by using virtual currencies, which are not easily governed with existing laws and regulations, make it harder for law enforcement agencies to detect suspicious activities, identify perpetrators, and investigate and prosecute illegal activities against children when such activities are committed by the use of ICTs.³

A holistic approach to fight cybercrime against children, including adopting policies and legislation, raising awareness, building capacity, and providing technical assistance, is required to address the multi-dimensional threat that cybercrime poses. Furthermore, such an approach must involve various stakeholders, including children, families, communities, governments, members of civil society, and the private sector, in order to

¹ Consistent with footnote 1 of the Rio de Janeiro Pact to Prevent and Stop Sexual Exploitation of Children and Adolescents (hereafter also referred to as "Pact of Rio de Janeiro"), 'child' and 'children and adolescents' are used to denote all human beings below the age of 18 years and everyone under the age of 18 needs protection from sexual exploitation. Article 1 of the Convention on the Rights of the Child (hereafter also referred to as "CRC") states that "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".

² *Former Acting HHS Cyber Security Director Sentenced to 25 Years in Prison for Engaging in Child Pornography Enterprise*, DEPARTMENT OF JUSTICE OF THE UNITED STATES, (Jan. 5, 2015), available at <http://www.justice.gov/opa/pr/former-acting-hhs-cyber-security-director-sentenced-25-years-prison-engaging-child> (last visited Jan. 21, 2015).

³ Ernie Allen, former President and CEO, Int'l Ctr. for Missing & Exploited Children, Testimony for the United States Senate Committee on Homeland Security and Governmental Affairs: Beyond Silk Road: Potential Risks, Threats and Promises of Virtual Currencies, (Nov. 18, 2013), available at http://www.icmec.org/missingkids/servlet/NewsEventServlet?LanguageCountry=en_X1&PageId=5062 (last visited Jan. 19, 2015).

comprehensively and effectively fight ICT-facilitated child abuse and exploitation.⁴ Among various approaches to dealing with violence against children using ICTs, this Regional Study will primarily focus on legislative responses for child online protection. First, the adoption of appropriate domestic law for child online protection is important because the absence of adequate laws addressing online child abuse and exploitation can create loopholes in the law and such a legal vacuum may increase the chances of children falling victim to such exploitation and abuse. Further, a review of the existing legal framework addressing ICT-facilitated crimes against children is crucial considering that in order to tackle crime with a transnational nature international cooperation must be enhanced through a globally harmonized legal framework to address the underlying activities that should be criminalized and subject to punishment. An analysis of domestic law in alignment with relevant international practice may help to identify the areas to be progressed by individual countries, with a view to allowing for consistency of domestic law and enhancing international cooperation related to the prevention and combating of ICT-facilitated crimes against children.

While responding to the growing need for globally harmonized domestic legislation to fight violence against children committed with the use of ICTs, it is important to note that international instruments that are directly or indirectly relevant to online child abuse and exploitation have been developed. Such international tools can provide individual countries with guidance regarding international standards, and accordingly, can help individual countries enact new laws or amend existing laws, in order to curb violence against children committed by the use of ICTs in compliance with relevant international good practices. However, in order for such international instruments to be more effective, it will be vital to raise awareness of existing international tools related to ICT-facilitated child abuse and exploitation with a view to improving the ratification status of such international tools. Furthermore, after individual countries' adoption of relevant international instruments, strengthening the monitoring mechanisms focused on the implementation of international tools will also be necessary to ensure fulfillment of specific countries' commitments to comply with international standards.

⁴ UNODC, UN Commission on Crime Prevention and Criminal Justice, *Study facilitating the identification, description and evaluating of the effects of new information technologies on the abuse and exploitation of children*, U.N. Doc. E/CN.15/2014/CRP.1 (May 7, 2014), at vii, available at http://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_23/E-CN15-2014-CRP1_E.pdf (last visited Jan. 19, 2015).

II. OBJECTIVES AND METHODOLOGY

A. Objectives

The purpose of this Regional Study is to enhance the protection of children by supporting legislative responses to deal with ICT-facilitated child abuse and exploitation in 17 targeted Asian countries. As such, it aims to: 1) provide an analysis of domestic law in alignment with relevant international instruments; 2) present examples of good legal practices for child online protection at a national level that comply with related international standards; and 3) strengthen national legal frameworks to deal with issues of online child abuse and exploitation amongst the 17 Asian countries analyzed.

B. Methodology

This Regional Study examines legislative responses that address ICT-facilitated child abuse and exploitation with a primary focus on: 1) activities related to child pornography⁵ (also known as “child abuse images”⁶); 2) online grooming⁷; and 3) cyberbullying⁸, the most common forms of violence against children committed by, with, and through the use of ICTs.

All of the international instruments that are directly or indirectly related to the areas discussed by this Regional Study are considered. Specifically, international instruments that address child pornography offenses and online grooming offenses are used to analyze the provisions of domestic law, especially when such instruments contain specific definitions of these offenses, as well as provisions requiring punishment for criminalized actions. An analysis of conduct like cyberbullying, advertising child sex tourism⁹ online, and sexting¹⁰ covered by this Regional Study primarily focuses on domestic law due to the lack of relevant international instruments providing definitions.

Regulation, national action plans, and policy relevant to issues covered by this Regional Study are also considered in addition to the review of domestic law based on its texts, directly or indirectly pertaining to child pornography, online grooming, cyberbullying, advertising child sex tourism online, and sexting.

⁵ For the purposes of this Regional Study, unless provided otherwise, the term “child pornography” refers to 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 in accordance with 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, (hereafter also referred to as “OPSC”).

⁶ Footnote 3 of the Pact of Rio de Janeiro provides that “Increasingly the term ‘child abuse images’ is being used to refer to the sexual exploitation of children and adolescents in pornography. This is to reflect the seriousness of the phenomenon and to emphasize that pornographic images of children are in fact records of a crime being committed. However, many laws use the term ‘child pornography’ and it is therefore used in this document”.

⁷ For the purposes of this Regional Study, the term “online grooming” is the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age of sexual consent, for the purpose of engaging in sexual activities or producing child pornography, when this proposal has been followed by material acts leading to such a meeting in accordance with Article 23 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (hereafter also referred to as “Lanzarote Convention”).

⁸ For the purposes of this Regional Study the term “cyberbullying” is the use of information and communication technologies to support deliberate, repeated and hostile behavior by an individual or group that is intended to harm others. Bill Belsey, *Cyberbullying Information*, What Is Cyberbullying?, http://www.cyberbullying.org/pdf/Cyberbullying_Information.pdf (last visited Oct. 24, 2014).

⁹ For the purposes of this Regional Study, the term “child sex tourism” is the sexual exploitation of children by a person or persons who travel from their home district, home geographical region, or home country in order to have sexual contact with children. Child sex tourists can be domestic travelers as well as international tourists. ECPAT, *COMBATING CHILD SEX TOURISM: QUESTIONS AND ANSWERS* (2008), at 6, available at http://www.ecpat.net/sites/default/files/cst_faq_eng.pdf (last visited Jan. 19, 2015).

¹⁰ For the purposes of this Regional Study, the term “sexting” is the exchange of sexually explicit text messages, including photographs or images, via cell phones, or other mobile devices. *Sexting Law & Legal Definitions*, US LEGAL, <http://definitions.uslegal.com/s/sexting/> (last visited Oct. 24, 2014).

This Regional Study takes stock of existing sources including, but not limited to: 1) country reports presented to the UN Committee on the Rights of the Child regarding the implementation of the Convention on the Rights of the Child (CRC) and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC); 2) reports of the UN Special Representatives on the Sale of Children, Child Prostitution and Child Pornography presented to the UN General Assembly; 3) individual countries' statistics indicating the use of ICTs presented by the International Telecommunication Union (ITU); 4) country profiles of cybercrime legislation and discussion papers produced by the Council of Europe; 5) reports on child pornography/child abuse images and child sex tourism prepared by End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT); 6) Handbook on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography published by the United Nations Children's Fund (UNICEF); and 7) research and studies conducted by the International Centre for Missing and Exploited Children (ICMEC).

Peer Review Process

The information on each individual country's legislative, regulatory, and policy responses to violence against children committed by, with, and through the use of ICTs, contained in Appendix B (Table 2 – Individual Country Information), was subject to a peer review process from August 20, 2014 to October 27, 2014. The information for **8** countries out of the 17 targeted Asian countries (Cambodia, India, Indonesia, Malaysia, Republic of Korea, Singapore, Thailand, and Timor-Leste) was confirmed, verified, and updated based on the valuable input from six peer reviewers who partner with ICMEC.

III. RELEVANT INTERNATIONAL INSTRUMENTS

The international and regional instruments, directly or indirectly pertaining to issues covered by this Regional Study, serve as guidelines for: 1) drawing up outlines of key topics to be addressed; 2) designing and developing Appendix B (Table 2 – Individual Country Information) to be used for analyzing domestic law, regulation, and policy; and 3) capturing good in-country practices in alignment with international or regional good practices in the areas of child online protection. International and regional tools related to areas reviewed for this Regional Study are considered baselines for: 4) identifying gaps in domestic law compared to good practice at the international and regional levels, especially when making recommendations, with a view to helping subject countries strengthen legislative responses to violence against children committed by the use of the Internet and associated technologies.

1. Convention on the Rights of the Child

The Convention on the Rights of the Child¹¹ (hereafter also referred to as “CRC”) aims to ensure a wide range of human rights for children – including civil, cultural, economic, political, and social rights.

Article 1 of the CRC provides that “For the purposes of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”.

Article 34 of the CRC requires States Parties to take all appropriate measures to address the sexual exploitation and sexual abuse of children, including measures to prevent the exploitative use of children in pornographic performances and materials.

All of the **17** Asian countries analyzed (Brunei Darussalam, 1995; Cambodia, 1992; China, 1992; Democratic People’s Republic of Korea, 1990; India, 1992; Indonesia, 1990; Japan, 1994; Lao People’s Democratic Republic, 1991; Malaysia, 1995; Mongolia, 1990; Myanmar, 1991; Philippines, 1990; Republic of Korea, 1991; Singapore, 1995; Thailand, 1992; Timor-Leste, 2003; and Vietnam, 1990) have ratified or acceded to the CRC as of October 24, 2014.¹² Accession has the same legal effect as ratification by the terms of the Convention according to Article 49 of the CRC.

2. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

The primary international tool serving as guidance for this Regional Study is the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography¹³ (hereafter also referred to as “OPSC”).¹⁴

Among the countries analyzed, **15** have ratified or acceded to the OPSC (Brunei Darussalam, 2006; Cambodia, 2002; China, 2002; India, 2005; Indonesia, 2012; Japan, 2005; Lao People’s Democratic Republic,

¹¹ Convention on the Rights of the Child, G.A. Res. 44/25, 61st plen. mtg., U.N. Doc. A/RES/44/25 (Nov. 20, 1989), entered into force 2 Sep. 1992. See the full text of the Convention on the Rights of the Child (CRC) at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (last visited Jan. 19, 2015).

¹² See the ratification status of the CRC at *Status of Ratification and Accession of the CRC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en (last visited Jan. 5, 2015).

¹³ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. A/RES/54/263 (May 25, 2000), entered into force 18 Jan. 2002. See the full text of the OPSC at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx> (last visited Jan. 19, 2015).

¹⁴ State Parties to the OPSC were concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet, held in Vienna in 1999, in particular its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between governments and the Internet industry.

2006; Malaysia, 2012; Mongolia, 2003; Myanmar, 2012; Philippines, 2002; Republic of Korea, 2004; Thailand, 2006; Timor-Leste, 2003; and Vietnam, 2001). However, 2 countries (Democratic People's Republic of Korea and Singapore) have not ratified the OPSC as of October 24, 2014.¹⁵ Accession has the same legal effect as ratification by the terms of the Convention according to Article 14 of the OPSC.

The OPSC may be deemed as one of the most important international legally binding instruments that can be used to analyze the legislative and regulatory approaches of Asian countries to address child pornography offenses in alignment with relevant international standards. The OPSC contains provisions mandating State Parties to criminalize illicit conduct in relation to child pornography, in addition to providing a definition of child pornography under its Article 2 (c) as stated below.

- ❖ Article 3 (1) (c) of the OPSC requires State Parties to create offenses covering the acts of **producing, distributing, disseminating, importing, exporting, offering, selling child pornography or possessing it for the purpose of production, distribution, dissemination, importation, exportation, offer, or sale.**
- ❖ Article 3 (3) of the OPSC obliges State Parties to make such offenses **punishable by appropriate penalties** that take into account their grave nature.
- ❖ Article 3 (4) of the OPSC mandates State Parties to take measures, whether appropriate, to establish **liability of legal persons** for offenses established in its Article 3 (1), subject to the provisions of their national laws and such liability may be **criminal**, civil, or administrative.
- ❖ Article 4 (2) of the OPSC stipulates that a State Party may take such measures as may be necessary to establish **extraterritorial jurisdiction** over the offenses referred to in Article 3 (1) in one of the following cases: (a) when the alleged offender is a national of that State or a person who has habitual residence in its territory; or (b) when the victim is a national of that State.
- ❖ Article 7 (a) of the OPSC states that State Parties shall, subject to the provisions of their national law, take measures to provide for: (i) the **confiscation of assets used to commit or facilitate offenses** under the present protocol; and (ii) the **confiscation of proceeds derived from such offenses.**

Article 3 (1) (a) of the OPSC states that each State Party shall ensure that, as a minimum, the acts of producing, distributing, disseminating, importing, exporting, offering, selling, or possessing for the above purposes child pornography as defined in its Article 2 are fully covered under “its criminal or penal law”, whether such offenses are committed domestically or transnationally or on an individual or organized basis. However, amongst the 17 Asian countries analyzed, only 9 (Brunei Darussalam, Cambodia, India, Indonesia, Japan, Lao People's Democratic Republic, Philippines, Republic of Korea, and Timor-Leste) have provisions under their domestic law that criminalize all or part of the illicit acts related to child pornography described in Article 3 (1) (c) of the OPSC as stated below (V. Analysis of the legislative responses to crimes against children in alignment with relevant international instruments, B. Punishment of conducts related to child pornography, B.1. Production, distribution, dissemination, importation, exportation, offer, sale, and possession of child pornography). Amongst these 9 countries, only 2 countries (Brunei Darussalam and Timor-Leste) govern child pornography offenses under their Penal Code, while the other 7 countries criminalize acts related to child pornography under special laws.

Article 3 (2) of the OPSC stipulates that subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts, and to complicity or participation in any of

¹⁵ *Status of Ratification and Accession of the OPSC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11-c&chapter=4&lang=en (last visited Oct. 24, 2014).

the said acts. The legal systems of the countries analyzed are diverse, including civil law systems, common law systems, or mixed legal systems combining both civil law and common law aspects.¹⁶ Irrespective of their legal systems, among the 17 Asian countries analyzed, 16 countries (with the exception of Cambodia) have provisions under their Criminal Codes (also known as “Penal Codes”) addressing criminal liability for complicity of a crime, participation in a crime, or attempt to commit a crime. In addition, the Criminal Codes of these 16 countries contain provisions criminalizing activities related to child pornography, pornography, or obscenity. Further, in the case of Cambodia, Article 4 of the Law on Suppression of Human Trafficking and Sexual Exploitation contains provisions establishing criminal liability for an attempted crime or participation in a crime. Articles 38, 39, 40, and 41 of the Law on Suppression of Human Trafficking and Sexual Exploitation specify punishment for child pornography and pornography offenses. No special attention was given to the targeted Asian countries’ compliance with Article 3 (2) of the OPSC, which is usually present in their legislation. However, the importance of adopting legislative measures to punish any person who attempts to commit child pornography offenses or aids/abets to commit acts related to child pornography mentioned in Article 3 (1) (c) of the OPSC is discussed below (VIII. Conclusion and Recommendations, B. Recommendations).

3. Convention concerning the prohibition and immediate action for the elimination of the worst forms of child labor, 1999 (No. 182)

The International Labour Organization (ILO) adopted the Convention concerning the prohibition and immediate action for the elimination of the worst forms of child labor, 1999 (No. 182)¹⁷ in 1999 (hereafter referred to as “the Worst Forms of Child Labour Convention, 1999”), obliging each member that ratifies this Convention to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor as a matter of urgency under its Article 1. The definition of the term “the worst forms of child labor”, for the purposes of this Convention, comprises the use, procuring, or offering of a child for the production of pornography or for pornographic performance according to its Article 3 (b).

Among the 17 targeted countries included in this Regional Study, 15 countries (Brunei Darussalam, 2008; Cambodia, 2006; China, 2002; Indonesia, 2000; Japan, 2001; Lao People’s Democratic Republic, 2005; Malaysia, 2000; Mongolia, 2001; Myanmar, 2013; Philippines, 2000; Republic of Korea, 2001; Singapore, 2001; Thailand, 2001; Timor-Leste, 2009; and Vietnam, 2000) have ratified the Worst Forms of Child Labour Convention, 1999. However, 2 countries (Democratic People’s Republic of Korea and India) have not ratified the Worst Forms of Child Labour Convention as of October 24, 2014.¹⁸

4. Convention on Cybercrime

The Convention on Cybercrime¹⁹ (also called the “Budapest Convention”) is the first binding inter-governmental instrument that deals with computer-facilitated child pornography offenses.²⁰ Article 9 of the

¹⁶ *Field Listing: Legal System, The World Factbook*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/fields/2100.html> (last visited Oct. 24, 2014).

¹⁷ ILO, Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (1999). See full text of Convention No. 182 at <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chic.htm> (last visited Jan. 19, 2015).

¹⁸ See the ratification status of Convention No. 182 at *Status of the Ratification of the ILO Convention (1999) (No. 182)*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited Oct. 24, 2014).

¹⁹ See the full text of the Budapest Convention at *Convention on Cybercrime*, COUNCIL OF EUROPE, <http://conventions.coe.int/Treaty/en/Treaties/Html/185.htm> (last visited Aug. 19, 2014).

²⁰ The preamble of the Convention on Cybercrime states that the Member States of the Council of Europe and the other States signatory were convinced of the need to pursue, as a matter of priority, a common criminal policy aimed at the protection of society against cybercrime, *inter alia*, by adopting appropriate legislation and fostering international cooperation.

Convention on Cybercrime has provisions criminalizing child pornography offenses committed by the use of a computer system, provided that such commission is intentional and without right.

The Convention on Cybercrime is open for signature by the Member States of the Council of Europe and by non-Member States of the Council of Europe, which have participated in its elaboration and subject to ratification pursuant to its Article 36. In addition, the Convention on Cybercrime is open for accession by other non-Member States according to its Article 37. Amongst the 17 targeted Asian countries, only Japan has signed and ratified the Convention on Cybercrime.

Accession has the same legal effect as ratification by the terms of the Convention on Cybercrime provided under Articles 36 and 37 of the Convention on Cybercrime.

5. Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse²¹ (also called the “Lanzarote Convention”) contains provisions addressing child pornography offenses (its Article 20) and online grooming offenses (its Article 23). The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse is open for ratification by the Member States of the Council of Europe. In addition, this Convention is open for accession by non-Member States of the Council of Europe. However, none of the 17 targeted Asian countries have signed or acceded to it as of October 27, 2014.²²

6. Economic and Social Council Resolution 2011/33 on Prevention, Protection and International Cooperation against the Use of New Information Technologies to Abuse and/or Exploit Children

The UN Economic and Social Council issued a Resolution entitled “Economic and Social Council Resolution 2011/33 on Prevention, protection and international cooperation against the use of new information technologies to abuse and/or exploit children”²³ (hereafter also referred to as “ECOSOC Resolution 2011/33”).

ECOSOC Resolution 2011/33 stresses that new information and communication technologies and applications are being misused to commit child sexual exploitation crimes. In addition, the ECOSOC Resolution highlights that technical developments have permitted the emergence of crimes such as the production, distribution, or possession of child sexual abuse images, audio or video, the exposure of children to harmful content, the grooming, harassment, and sexual abuse of children, and cyberbullying.

7. Rio de Janeiro Pact to Prevent and Stop Sexual Exploitation of Children and Adolescents

The World Congress III against the Sexual Exploitation of Children and Adolescents was hosted in Rio de Janeiro, Brazil (November 25-28, 2008) to review the development and action taken in follow up to the Stockholm Declaration and Agenda for Action (1996)²⁴ and the Yokohama Global Commitment (2001).²⁵

²¹ See the full text of the Lanzarote Convention at *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*, COUNCIL OF EUROPE, <http://conventions.coe.int/Treaty/EN/treaties/Html/201.htm> (last visited Oct. 27, 2014).

²² See the ratification status of the Lanzarote Convention at *Chart of Signatures and Ratifications of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*, COUNCIL OF EUROPE, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=201&CM=&DF=&CL=ENG> (last visited Oct. 27, 2014).

²³ UN ECONOMIC AND SOCIAL COUNCIL, *Economic and Social Council Resolution 2011/33 on Prevention, protection and international cooperation against the use of new information technologies to abuse and/or exploit children*, available at <http://www.un.org/en/ecosoc/docs/2011/res%202011.33.pdf> (last visited Jan. 19, 2015).

²⁴ The Stockholm Declaration and Agenda for Action (1996), although it is not an international legally binding instrument, was adopted at the First World Congress against Commercial Sexual Exploitation of Children in Stockholm, Sweden on August 27-31, 1996. See the full text of the Stockholm Declaration and Agenda for Action at *Stockholm Declaration and Agenda for Action*, CHILD CENTRE: EXPERT GROUP FOR COOPERATION ON CHILDREN AT RISK, http://www.childcentre.info/public/stockholm_declaration_on_action.pdf (last visited Jan. 19, 2015).

After the World Congress III, a document entitled “Rio de Janeiro Pact to Prevent and Stop Sexual Exploitation of Children and Adolescents”²⁶ (hereafter also referred to as “Pact of Rio de Janeiro”) was produced. Although this document is not an international legally binding instrument, it deals with measures to be taken at a national level in order to prevent, prohibit, and criminalize certain forms of sexual exploitation of children and adolescents²⁷ with a particular focus on abuse of children and adolescents through the Internet and associated technologies, including activities related to child pornography and grooming of children committed by the use of the Internet and new technologies.

²⁵ The Yokohama Global Commitment (2001), although it is not an international legally binding instrument, was adopted at the Second World Congress against Commercial Sexual Exploitation of Children in Yokohama, Japan on December 17-20, 2001. See the full text of the Yokohama Global Commitment at *Yokohama Global Commitment*, CHILD CENTRE: EXPERT GROUP FOR COOPERATION ON CHILDREN AT RISK, http://www.childcentre.info/public/yokohama_commitment_2001.pdf (last visited Jan. 19, 2015).

²⁶ See the full text of the Rio de Janeiro Pact at *Rio de Janeiro Pact to Prevent and Stop Sexual Exploitation of Children and Adolescents*, UNICEF, http://www.unicef.org/protection/Rio_Declaration_and_Call_for_Action.pdf (last visited Jan. 19, 2015).

²⁷ Footnote 2 of the Rio de Janeiro Pact to Prevent and Stop Sexual Exploitation of Children and Adolescents provides that “sexual exploitation of children and adolescents’ is used to denote all forms of sexual abuse and exploitation of people under the age of 18 in all settings: in the home and family, in schools and educational settings, in care and justice institutions, in the community and in the workplace”.

IV. ASIAN COUNTRIES – STATISTICAL INDICATORS, AS WELL AS THE SIMILARITIES OF THE LEGAL AND REGULATORY FRAMEWORK

A. STATISTICAL INDICATORS

Statistical indicators discussed in this Regional Study include: a) the total population and the population’s age structure; and b) the level of ICT usage.²⁸ Before addressing this statistical information, it is necessary to address the meanings of “developing country” and “developed country”, which indicate the level of economic development and affect the above-mentioned data.

There are currently no standardized definitions of the terms “developing country” and “developed country” that are commonly accepted by the international community. However, according to the World Bank, the term “developing”, in the context of “developing countries” for lending purposes, is used to denote low- and middle-income countries, while the term “high income country” refers to a “developed country” for the same purposes. The World Bank states that these terms do not imply that all economies in the group are experiencing similar levels of development or that other economies have reached a preferred or final stage of development.²⁹

For the purposes of this Regional Study, the criteria used by the World Bank to classify a specific country as either a “developing country” or a “developed country” based on its Gross National Income (GNI) per capita per year are utilized. It should be noted that the term “high-income country” does not necessarily equate to the term “developed country”, and the same is true for the interchangeability of the terms “middle and low income country” and “developing country”.

The terms “developing country” and “developed country” can be defined according to each country’s GNI per capita per year. For the current 2015 fiscal year of the World Bank (from July 1, 2014 to June 30, 2015), a country with a GNI per capita per year of \$12,746 or more is defined as a “developed country” (or high-income country), whereas a country with a GNI per capita per year less than \$12,746 is defined as a “developing country” (or low- and middle-income country).

For the purposes of this Regional Study:

- **4** countries (Brunei Darussalam, Japan, Republic of Korea, and Singapore) are considered as “developed countries”; and
- **13** countries (Cambodia, China, Democratic People’s Republic of Korea, India, Indonesia, Lao People’s Democratic Republic, Malaysia, Mongolia, Myanmar, Philippines, Thailand, Timor-Leste, and Vietnam) are deemed to be “developing countries”.

A.1. Data concerning population

Data concerning the populations of the countries analyzed indicates that the level of economic development in each country may affect the age structure of the population.

²⁸ Appendix A (Table 1 – Population data and ICT statistics) provides information on the total population, the population’s age structure, and the level of ICT usage in the 17 targeted Asian countries.

²⁹ *Data, Country and Lending Groups*, WORLD BANK, http://data.worldbank.org/about/country-and-lending-groups#High_income (last visited Jan. 19, 2015).

The 17 Asian countries analyzed have a combined total population of 3,433,699,663 inhabitants (July 2014 est.).³⁰ Two countries (China and India) have approximately 75% of the population among the countries reviewed (China – 1,355,692,576, 39% of the total population of the 17 Asian countries analyzed; India – 1,236,344,631, 36% of the total population of the 17 targeted Asian countries). There are also **3** countries (Indonesia, Japan, and Philippines) whose estimated populations are more than 100,000,000 inhabitants each (Indonesia – 253,609,643; Japan – 127,103,388; and Philippines – 107,668,231).

Among the 17 Asian countries analyzed, it is estimated that the average of the age group from 0 through 14 years of age represents 25% of the entire population. In addition, the average of the age group from 15 through 24 years of age represents 17.2% of the total population as of July 2014.

Generally, the population of the 17 targeted Asian countries is very young. However, in **3** developed countries, there is a smaller average percentage of young people between 15 and 24 years of age (Japan – 13.2%; Republic of Korea – 14.1%; and Singapore – 13.4%).

A.2. Data related to the use of ICTs

Data related to the use of ICTs by the 17 Asian countries analyzed indicates that the level of economic development in each country may affect the availability of ICTs.

Four developed countries (Brunei Darussalam, Japan, Republic of Korea, and Singapore), in general, enjoy higher levels of Internet access at home and as individual Internet users than developing countries. Overall, mobile-broadband subscriptions are more affordable in developed countries than in developing countries – with the exception of Brunei Darussalam. Accordingly, the legal framework to deal with offenses against children through the use of ICTs in these **4** developed countries show favorable or moderate alignment with relevant international standards, as compared to other developing countries in the Asian region, as discussed below (VIII. Conclusion and Recommendations, A. Conclusion).

A.2.a. Individuals using the Internet

Among **16** of the Asian countries analyzed (excluding the Democratic People’s Republic of Korea³¹), it is estimated that the average percentage of individuals using the Internet represents 37.5% of the total population. In addition, it is estimated that among the **4** developed countries, the average percentage of individual Internet users is 77.1%. The average percentage of individual Internet users for the **12** developing countries is 24.3%.

A.2.b. Mobile-broadband subscriptions per 100 inhabitants

The average of the mobile-broadband subscriptions per 100 inhabitants for **16** Asian countries analyzed (excluding the Democratic People’s Republic of Korea³²) is 34.9.

³⁰ *East & Southeast Asia, The World Factbook*, CIA, https://www.cia.gov/library/publications/the-world-factbook/wfbExt/region_eas.html (last visited Aug. 7, 2014).

³¹ The percentage of individuals using the Internet in the Democratic People’s Republic of Korea is 0.0% according to the latest data available from the ITU as of 2013. See *Country Profile, D.P.R. Korea*, ITU, <http://www.itu.int/net4/itu-d/icteye/CountryProfile.aspx#AsiaPacific> (last visited Jan. 19, 2015).

³² The ITU has not published data concerning mobile-broadband subscriptions per 100 inhabitants in the Democratic People’s Republic of Korea as of February 2013. See *Country Profile, D.P.R. Korea*, ITU, <http://www.itu.int/net4/itu-d/icteye/CountryProfile.aspx#AsiaPacific> (last visited Jan. 19, 2015).

The average of the mobile-broadband subscriptions per 100 inhabitants for the **3** developed countries (Japan, Republic of Korea, and Singapore) is 120.3. The average of the mobile-broadband subscriptions per 100 inhabitants for **12** developing countries is 16.0. Although Brunei Darussalam, for the purposes of this Regional Study, can be classified as a developed country due to its high income based on the GNI per capita per year, the mobile-broadband subscriptions per 100 inhabitants of Brunei Darussalam is 6.5, which is lower than the average of mobile-broadband subscriptions per 100 inhabitants for the 12 developing countries, as well as that for all of the 16 Asian countries analyzed (excluding the Democratic People's Republic of Korea).

A.2.c. Households with Internet access at home

The average percentage of households with Internet access at home for **15** Asian countries analyzed (with the exception of the Democratic People's Republic of Korea and Timor-Leste³³) is 37.8%. It is estimated that the average percentage of households with Internet access at home for **4** developed countries is 86.5%. However, the average percentage of households with Internet access at home for **11** developing countries is 20.1%.

B. SIMILARITIES OF THE LEGAL AND REGULATORY FRAMEWORK

Similarities in the legislative and regulatory responses to violence against children using ICTs, among the 17 Asian countries analyzed, may provide opportunities for the adoption of harmonized legal and regulatory tools to address such violence in the region. Accordingly, similarities between the legal and regulatory measures adopted by these countries in terms of prevention and combat of crimes against children using ICTs may also facilitate broader international cooperation.

B.1. Obscenity Regimes

All of the **17** Asian countries analyzed criminalize the production and distribution of child pornography or obscene materials (or pornography) in general under their domestic law. With the exception of Timor Leste, the other **16** countries have enacted obscenity regimes that may also be applicable to child pornography offenses, regardless of the enactment of legislation specific to child pornography as stated below (V. Analysis of the legislative responses to crimes against children in alignment with relevant international instruments, A. Legislation regarding child pornography, A.1. Legislation specific to child pornography). The Penal Code of Timor-Leste addresses only child pornography offenses.

B.2. Internet Content Control

Among the countries analyzed, in **12** (Brunei Darussalam, China, India, Indonesia, Japan, Lao People's Democratic Republic, Malaysia, Philippines, Republic of Korea, Singapore, Thailand, and Vietnam), primary responsibility for controlling online content is vested with ISPs and/or Internet Content Providers in accordance with domestic law and/or regulation. Furthermore, in the case of Cambodia, cybercafés have a duty to prohibit their users from accessing any websites with pornographic or obscene materials pursuant to the provisions of the Circular on Preventive Measures related to Internet Café Service issued by the

³³ There are no reliable data issued by the ITU concerning Internet access at home in the Democratic People's Republic of Korea and Timor-Leste as of 2013. See *Country Profile, D.P.R. Korea*, <http://www.itu.int/net4/itu-d/icteye/CountryProfile.aspx#AsiaPacific>; *Country Profile, Timor-Leste*, ITU, <http://www.itu.int/net4/itu-d/icteye/CountryProfile.aspx#AsiaPacific> (last visited Jan. 19, 2015).

Cambodian Government. In those **13** countries, information containing content which is obscene, pornographic, or harmful to a child or a juvenile (such as child pornography, sexual exploitation of a child) is classified as “prohibited online contents” under their domestic law, regulation, notification, or Codes of Practice.

Under domestic law or regulation adopted by **13** countries, Internet Content Providers or owners/operators of cybercafés must take necessary measures to prohibit their users from engaging in activities involving information with harmful content (i.e., through installing filtering systems, reporting suspected or discovered incidents to relevant authorities, adopting technical measures to prevent further transmission of illegal content, and blocking websites that host such illegal content). Additionally, ISPs, Internet Content Providers, or cybercafé owners/operators may be held liable if prohibited content is made available using their services or is made available to children using a public computer at their business establishment, unless it is proven that they have exercised due diligence or there are significant technical difficulties in detecting suspected cases in advance and/or preventing the further transmission of prohibited contents on their own networks or facilities.

In cases where countries do not have legislation and/or regulations that specifically address ICT-facilitated offenses against children, legal and/or regulatory approaches that require ISPs and other relevant actors to control content harmful to children on the Internet do not eliminate the need for adoption of specific legislative and regulatory measures to deal with offenses against children committed through the use of ICTs. These approaches may, however, reduce the availability of materials with content that is harmful to children including, but not limited to child pornography.

In addition, if countries have legislation and/or regulation that specifically deals with crimes against children committed with the use of ICTs, the role of ISPs and relevant actors to control harmful content on the Internet contributes to preventing the occurrence of such crimes in advance (i.e., filtering) and/or facilitating the investigation and prosecution of ICT-facilitated crimes against children by enabling relevant law enforcement agencies or officers to be informed of the occurrence of such crime (i.e., reporting).³⁴

The role of ISPs and other relevant actors in relation to the control of Internet content is further discussed in Appendix B (Table 2 – Individual Country Information).

³⁴ MICROSOFT, ASIA-PACIFIC LEGISLATIVE ANALYSIS: CURRENT AND PENDING ONLINE SAFETY AND CYBERCRIME LAWS (2007), at 8-9, available at <http://www.microsoft.com/australia/about/resources.aspx> (last visited Jan. 19, 2015).

V. ANALYSIS OF THE LEGISLATIVE RESPONSES TO CRIMES AGAINST CHILDREN IN ALIGNMENT WITH RELEVANT INTERNATIONAL INSTRUMENTS

A. LEGISLATION REGARDING CHILD PORNOGRAPHY

A.1. Legislation specific to child pornography

Article 34 of the CRC requires States Parties to take all appropriate measures to protect children from all forms of sexual exploitation and sexual abuse, including measures to prevent the exploitative use of children in pornographic performances and materials.

In addition, Article 3 (1) (c) of the OPSC mandates States Parties to criminalize acts related to child pornography, whether committed domestically or transnationally, on an individual or organized basis.

Furthermore, Articles 1 and 3 (b) of the Worst Forms of Child Labour Convention, 1999 (No. 182) require States Parties to take immediate and effective measures to secure the prohibition and elimination of the use, procuring, or offering of a child for the production of pornography or for pornographic performance.

Moreover, the Plan of Action of the Pact of Rio de Janeiro calls on States to criminalize the production, distribution, receipt, and possession of child pornography.

This part of the Regional Study (V. Analysis of the legislative responses to crimes against children in alignment with relevant international instruments, A. Legislation regarding child pornography, A.1. Legislation specific to child pornography) reviews domestic law that specifically criminalizes activities related to child pornography. Labor legislation that simply bans the “worst forms of child labor”, among which is child pornography, without specifying criminal offenses and criminal penalties, is not considered as “legislation specific to child pornography.” The same is true for national legislation that defines “sexual exploitation” or “sexual abuse” to include child pornography (usually in the child protection law) but, once again, does not enumerate criminal offenses and criminal penalties.³⁵

Moreover, a country in which there is a general ban on pornography, regardless of whether the individuals being depicted are adults or children, is not considered to have “legislation specific to child pornography”, unless there is also a sentencing enhancement provided for pornography offenses committed against children.³⁶

For the purposes of addressing this part of the Regional Study (V. Analysis of the legislative responses to crimes against children in alignment with relevant international instruments, A. Legislation regarding child pornography, A.1. Legislation specific to child pornography), the term “child pornography” includes, but is not limited to, 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 (Article 2 (c) of the OPSC), as well as the use of a child to create such a representation.³⁷

³⁵ INT’L CTR. FOR MISSING & EXPLOITED CHILDREN, CHILD PORNOGRAPHY: MODEL LEGISLATION & GLOBAL REVIEW, 7TH ED. (2012), at 4-5, available at http://www.icmec.org/en_X1/pdf/Child_Pornography_Model_Law_English_7th_Edition_2012.pdf (last visited Jan. 19, 2015).

³⁶ *Id.* at 15 n. 43.

³⁷ *Id.* at iv.

Among the 17 Asian countries analyzed:

- **16** countries (Brunei Darussalam, Cambodia, China, India, Indonesia, Japan, Lao People’s Democratic Republic, Malaysia, Mongolia, Myanmar, Philippines, Republic of Korea, Singapore, Thailand, Timor-Leste, and Vietnam) are considered to have legislation specific to child pornography; and
- **1** country (Democratic People’s Republic of Korea) has not yet enacted legislation with specific regard to child pornography as of November 22, 2014, although its Criminal Law 2012 criminalizes activities involving objects that reflect decadent, carnal, or foul content.

❖ **Brunei Darussalam**

The principal legislation specific to child pornography is the Penal Code (amended by the Penal Code Amendment Order 2012).

The Penal Code also contains provisions punishing any person who commits obscenity offenses, which may also govern child pornography related crimes.

❖ **Cambodia**

The primary law that criminalizes child pornography offenses, as well as pornography offenses, is the Law on Suppression of Human Trafficking and Sexual Exploitation (also referred to as “LSHTSE”) (passed by the National Assembly on December 20, 2007 and approved in its entirety by the Senate on January 18, 2008).

❖ **China**

The Criminal Law (adopted on July 1, 1979 and last amended on February 25, 2011) provides a general prohibition on the production, duplication, publication, sale, or dissemination of pornographic material for profit and dissemination of pornography without the aim of profit, regardless of whether the individuals being depicted in pornography are adults or children. Dissemination of pornographic material to a minor under the age of 18 years attracts more severe punishment.

Furthermore, the production, duplication, publication, sale, or dissemination of pornographic material for profit and the dissemination of pornographic materials as stipulated in Article 363, paragraph 1 and Article 364, paragraph 1 of the Criminal Law, encompasses such activities as the production, duplication, publication, sale, or dissemination of child pornography pursuant to Judicial Interpretations 2004 and 2010.^{38, 39}

Article 6 of Judicial Interpretation 2004 criminalizes the use of the Internet or mobile communication terminals and voicemail platforms to produce, reproduce, publish, sell, or disseminate obscene electronic information concretely depicting sexual acts by minors not having reached 18 years of age with a severe penalty in accordance with the provisions of Article 363,

³⁸ The Supreme People’s Court (SPC) and Supreme People’s Procuratorate (SPP) rendered the Interpretation of Some Questions on Concretely Applicable Law in the Handling of Criminal Cases of Using the Internet or Mobile Communication Terminals and Voicemail Platforms to Produce, Reproduce, Publish, Sell, or Disseminate Obscene Electronic Information (also referred to as “Judicial Interpretation 2004”) (September 2004) and Interpretation of Some Questions on Concretely Applicable Law in Handling Criminal Cases of Using the Internet or Mobile Communication Terminals and Voicemail Platforms to Produce, Reproduce, Publish, Sell or Disseminate Obscene Electronic Information (II) (also referred to as “Judicial Interpretation 2010”) (February 2010).

³⁹ UN COMM. ON THE RIGHTS OF THE CHILD, *Consideration of Reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Initial reports of States parties due in 2005: China*, at 12-13, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/438/15/PDF/G0543815.pdf?OpenElement> (last visited Jan. 19, 2015).

paragraph 1 or Article 364, paragraph 1 of the Criminal Law, with or without the aim of profit, as the case may be.

❖ **India**

The primary law that addresses acts related to child pornography in electronic form is the Information Technology Act (enacted in 2000 and amended by the Information Technology (Amendment) Act, 2008) (hereafter also referred to as “IT Act”). The Protection of Children from Sexual Offences Act (enacted in 2012) also contains provisions criminalizing: a) using a child for pornographic purposes; and b) storing any pornographic material in any form involving a child for commercial purposes.

Furthermore, the Penal Code (enacted in 1860 and last amended by the Criminal Law (Amendment) Act, 2013) has several provisions addressing various obscenity offenses, which may also be applicable to offenses involving child pornography.

❖ **Indonesia**

The Law No. 44 of 2008 concerning pornography (also known as “Law No. 44 of 2008 on pornography”) (hereafter also referred to as “Anti-Pornography Law”) criminalizes activities involving pornography, including pornography that explicitly contains child pornography.

The Act No. 13 concerning Manpower (hereafter referred to as “Manpower Act”) makes it an offense to make use of, procure, or offer children for prostitution, the production of pornography, or pornographic performance with a penalty of two to five years imprisonment, or a fine of 200 million to 500 million rupiah, or both.

In addition, the Criminal Code punishes any person who engages in activities related to a writing of which the person knows the content, or a portrait or object known to the person to be offensive against decency.⁴⁰

❖ **Japan**

The Act on Regulation and Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children (enacted in 1999, last amended in 2014, and effective as of July 15, 2014) (hereafter referred to as “Child Pornography Prohibiting Act”) criminalizes activities involving child pornography.

Moreover, the Penal Code also criminalizes conducts related to obscene objects, which may also be applicable to activities involving child pornography.

❖ **Lao People’s Democratic Republic**

The Law on the Protection of Rights and Interests of Children (enacted in 2006) criminalizes activities involving child pornography.

Furthermore, the Penal Law (enacted in 1990, last amended in 2005 and effective in 2006) specifies criminal penalties for those who engage in activities related to pornography.

⁴⁰ Indonesian Criminal Code (also known as “Penal Code”), Article 282, available at http://www.unodc.org/res/cld/document/idn/indonesian_penal_code_html/I.1_Criminal_Code.pdf (last visited Jan. 16, 2015).

❖ **Malaysia**

According to the Child Act 2001 (Act 611), a child is “sexually abused” if he has taken part, whether as a participant or an observer, in any activity which is sexual in nature for the purposes of (i) any pornographic, obscene or indecent material, photograph, recording, film, videotape or performance; or (ii) sexual exploitation by any person for that person’s or another person’s sexual gratification.

The Child Act 2001 also makes it an offense for any person, who is in charge of taking care of a child, to sexually abuse the child or cause or permit the child to be sexually abused and such offense is punishable by criminal penalty as stipulated in this Act.

Furthermore, the Penal Code criminalizes activities related to obscene objects in general, which may be also applicable to child pornography.

❖ **Mongolia**

The Criminal Code (enacted in 2002) generally prohibits any person from engaging in prescribed activities involving items advertising pornography, regardless of whether the individuals being depicted are adults or children. The Criminal Code further articulates that when any person commits such pornography offense by the use of violence against a minor, that person shall be subject to a heightened penalty.

Moreover, the Law Combating Pornography and Prostitution (enacted in 1998 and last amended in 2012) (also known as “Law against Pornography and Prostitution”) (hereafter also referred to as “Law Combating Pornography and Prostitution”) enumerates criminal offenses or specifies administrative sanctions, as the case may be, with respect to activities involving pornography, which might also encompass conduct related to child pornography.

❖ **Myanmar**

The Child Law (enacted in 1993) makes it an offense to use a child in pornographic cinema, video, television, and photography with a penalty of up to two years imprisonment, a fine of up to 1,000 kyats, or both.⁴¹

In addition, the Penal Code creates various offenses related to obscenity in general, which may also govern offenses related to child pornography.

❖ **Philippines**

The principal law addressing child pornography is Republic Act No. 9775, an act defining the crime of child pornography, prescribing penalties therefor and for other purposes (also known as “Anti-Child Pornography Act of 2009”) (hereafter also referred to as “Republic Act No. 9775”). In addition, the Republic Act No. 10175, an act defining cybercrime, providing for the prevention, investigation, suppression and the imposition of penalties therefor and for other purposes (also known as “Cybercrime Prevention Act of 2012”) (hereafter also referred to as “Republic Act No. 10175”)

⁴¹ COUNCIL OF EUROPE, CYBERCRIME LEGISLATION – COUNTRY PROFILE, UNION OF MYANMAR (2007), at 5-6, available at http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/documents/countryprofiles/cyber_cp_Union_of_Myanmar_2007_May.pdf (last visited Jan. 19, 2015).

criminalizes child pornography offenses defined and punishable by Republic Act No. 9775 if such offenses are committed by the use of a computer system.

Act No. 3815, Revised Penal Code (hereafter referred to as “Revised Penal Code”) also criminalizes activities involving immoral doctrines, obscene publications, and exhibitions and indecent shows.

❖ **Republic of Korea**

The principal law that addresses child pornography offenses is the Act on the Protection of Children and Juveniles from Sexual Abuse (enacted by Act No. 9765 on June 9, 2009; last emended on January 28, 2014; and effective as of September 29, 2014).

The Criminal Act (enacted by Act No. 293, September 18, 1953; last amended on December 30, 2014; and effective as of December 30, 2014) also contains provisions that criminalize obscenity offenses.

❖ **Singapore**

The Films Act (Chapter 107) makes it an offense for a person, who is in charge of taking care of a child or young person, to cause, procure, or allow such child or young person to commit or abet in the commission of any offense related to the production, distribution, advertisement or possession of obscene films.

Furthermore, the Penal Code (Chapter 224), the Undesirable Publications Act (Chapter 338), and the Films Act (Chapter 107) provide several provisions criminalizing obscenity offenses, which may also be applicable to child pornography crimes.

❖ **Thailand**

The Child Protection Act (enacted in 2003) forbids anyone to force, threaten, use, induce, instigate, encourage, or allow a child to perform or act in a pornographic manner regardless of whether the intention is to obtain remuneration or anything else and regardless of a child’s consent. Any person who violates Section 26 of the Child Protection Act shall be subject to criminal penalty as set forth by this Act.

In addition, the Penal Code (enacted in 1956 as amended until the Criminal Code No. 17 of 2003) and the Computer Crime Act (enacted in 2007) criminalize activities related to obscenity or pornography, which may also be applicable to activities involving child pornography.

❖ **Timor-Leste**

The Penal Code (enacted in 2009) punishes any person who, for predominantly sexual purposes, uses, exposes or represents a minor aged less than 17 years of age performing any sexual activity, whether real or simulated, or by any other means, exhibits the sexual activity or sexual organs of a minor. Furthermore, the Penal Code makes it illegal to engage in activities related to child pornography prescribed by this Code.

❖ **Vietnam**

The Penal Code (enacted in 1999) stipulates a general ban on debauched cultural products, regardless of whether the individuals being depicted are adults or children. In addition, the Penal Code provides a sentencing enhancement when offenses involving debauched cultural products are committed against juveniles.

A.2. Existence of a clear definition of child pornography

Article 2 (c) of the OPSC defines the term “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.

Furthermore, Article 9 (2) (a) of the Convention on Cybercrime stipulates that the term “child pornography” shall include pornographic material that visually depicts a minor engaged in sexually explicit conduct.

In addition, the Plan of Action of the Pact of Rio de Janeiro calls on States to adopt a clear definition of child pornography in accordance with international standards.

To be considered a country with a clear definition of child pornography, such country shall have a provision under domestic legislation that provides a definition of child pornography in accordance with international instruments as discussed above. The definition should include, at a minimum, the visual representation or depiction of a child engaged in a (real or simulated) sexual display, act, or performance.⁴²

Additionally, there may be words or phrases within a definition of “child pornography” that require further explanation. For example, terms such as “simulated sexual conduct,” “sexually explicit conduct,” “lewd, obscene and lascivious exhibition of the genitals”, and “sexual display, act, or performance” are all deserving of definitions. Moreover, it is imperative that, with the advent of the Internet and associated technology, mention be made of all the forms child pornography can take including, but not limited to, film, DVD, CD-ROM, diskette, CD-R, and other electronic media.⁴³

Among the 17 Asian countries analyzed:

- **5** countries (Brunei Darussalam, Cambodia, Japan, Philippines, and Republic of Korea) provide a clear definition of “child pornography” under their legal systems;
- **2** countries (India and Timor-Leste) have domestic laws that can possibly be deemed to provide a definition of “child pornography” in any form;
- **1** country (Indonesia) provides a definition of “child pornography” in the elucidation of the law, in addition to defining “pornography” by law;
- **3** countries (China, Myanmar, and Singapore) provide a definition of “pornographic materials” or “obscene objects” under their domestic laws; and
- **6** countries (Democratic People’s Republic of Korea, Lao People’s Democratic Republic, Malaysia, Mongolia, Thailand, and Vietnam) provide neither a definition of “child pornography” nor “pornographic/obscene objects” under their domestic legislation.

In the case of Indonesia, the term “pornography” is defined as “any sexual material that is made by humans in the form of a picture, sketch, illustration, photo, text, sounds, moving picture, animations, cartoon, conversation, gestures, or other forms of messages through various forms of communication media and/or public performance, which contain obscenity or exploitation and violates sexual morality in society” pursuant to Article 1, point 1 of the Anti-Pornography Law.⁴⁴ Furthermore, the elucidation of Article 4,

⁴² INT’L CTR. FOR MISSING & EXPLOITED CHILDREN, *supra* note 35, at 1.

⁴³ *Id.* at 35.

⁴⁴ Law No. 44 of 2008 concerning pornography (also known as “Law No. 44 of 2008 on pornography”) (hereinafter referred to as “Anti-Pornography Law”), Article 1, point 1, available at <http://www.bpkp.go.id/uu/filedownload/2/33/151.bpkp> (in Indonesian).

paragraph (1), letter f of the Anti-Pornography Law defines the term “child pornography” as any form of pornography that involves children or involves adults performing or acting as children.

In respect of Lao People’s Democratic Republic, Laotian law does not provide a clear definition of child pornography. However, child pornographic materials include films, magazines, photographs, videos, VCDs, DVDs, and other items depicting child pornography pursuant to Article 86 of the Law on the Protection of Rights and Interests of Children.

A.2.a. Country that provides a clear definition of child pornography

❖ **Brunei Darussalam**

Section 293C of the Penal Code, in relation to interpreting Sections 293A and 293B of this Code, provides the interpretation of an indecent/obscene photograph/pseudo-photograph of a child and such interpretation includes child pornography made by electronic means.⁴⁵

❖ **Cambodia**

Article 40 of the Law on Suppression of Human Trafficking and Sexual Exploitation defines “child pornography” as a visible material, such as a photograph or videotape, including a material in electronic form, depicting a minor’s naked figure, which excites or stimulates sexual desire.

❖ **Japan**

Pursuant to Article 2 (3) of the Child Pornography Prohibiting Act (last amended in 2014 and effective as of July 15, 2014), the term “child pornography” is defined as “photographs, recording media containing electromagnetic records or any other medium which depicts the pose of a child, which falls under any of the following items, in a visible way: (i) any pose of a child engaged in sexual intercourse or any conduct similar to sexual intercourse; (ii) any pose of a child having his or her genital organs touched by another person or of a child touching another person’s genital organs, which arouses or stimulates the viewer’s sexual desire; (iii) any pose of a child wholly or partially naked, which deliberately exposes or emphasizes sexual parts (genital organs, parts around genital organs, buttocks, or chest), and arouses or stimulates the viewer’s sexual desire”.

In addition, Article 2 (3) of this Act stipulates that an “electromagnetic record” is any record that is produced by electronic, magnetic, or any other means unrecognizable by natural perceptive functions and used for data-processing by a computer.

❖ **Philippines**

According to Section 3 (b) of the Anti-Child Pornography Act of 2009, the term “child pornography” refers to any representation, whether visual, audio, or written combination thereof, by electronic, mechanical, digital, optical, magnetic or any other means, of a child engaged or involved in real or simulated explicit sexual activities.

⁴⁵ Section 293C of the Penal Code stipulates that an indecent or obscene “photograph or pseudo-photograph” of a child shall include: 1) an image (whether made by computer graphics or otherwise, howsoever, which appears to be a photograph); 2) a film; 3) a photograph; 4) a copy of a film or photograph; 5) data stored on a computer disc; or 6) data stored by any other electronic means which is capable of conversion into a photograph; and 7) any form of video-recording.

Further, Section 293C of the Penal Code also states that for the purposes of Sections 293A and 293B, a photograph and pseudo-photograph shall be deemed to be “obscene” if its effect is, if taken as a whole, such as to tend to deprave and corrupt persons who, having regard to all relevant circumstances, are likely (or would have been likely but for the lawful seizure of the article) to read, see or hear the matter contained or embodied in it.

In addition, pursuant to Section 3 (c) of the Anti-Child Pornography Act of 2009, the term “explicit sexual activity” includes actual or simulated: 1) sexual intercourse or lascivious acts including, but not limited to, contact involving genital to genital, oral to genital, anal to genital, or oral to anal, whether between persons of the same or opposite sex; 2) bestiality; 3) masturbation; 4) sadistic or masochistic abuse; 5) lascivious exhibition of genitals, buttocks, breasts, pubic area and/or anus; or 6) use of any object or instrument for lascivious acts.

❖ **Republic of Korea**

Article 2, subparagraph 5 of the Act on the Protection of Children and Juveniles from Sexual Abuse stipulates that the term “child or juvenile pornography” means the depiction of children or juveniles, or persons or representations that can be perceived evidently as children or juveniles, doing any act defined in subparagraph 4 (purchasing child or juvenile sex)⁴⁶ or engaging in any other sexual act in the form of a film, video, game software, or picture or image, etc. displayed on computers or other communication media.

A.2.b. Country that is possibly considered to provide a definition of child pornography

❖ **India**

Indian law possibly provides a definition of child pornography as elaborated below.

Section 13 of the Protection of Children from Sexual Offenses Act indicates that “child pornography in any form” is “any form of media” that “uses a child” for the purposes of sexual gratification, as well as includes: (a) any representation of the sexual organs of a child; (b) any representation of a child engaged in real or simulated sexual acts (with or without penetration); (c) any indecent or obscene representation of a child. The term “child pornography in any form” is also referred to as “pornographic material in any form involving a child” under Section 15 of this Act that punishes any person who stores such material for commercial purposes.

The phrase “any form of media” mentioned in Section 13 of the Protection of Children from Sexual Offenses Act includes programs or advertisements telecast by television channels or on the Internet or any electronic form or printed form. The Explanation to Section 13 of this Act further articulates that the expression “use a child” means involving a child through any medium like print, electronic, computer, or any other technology for preparation, production, offering, transmitting, publishing, facilitation, and distribution of the pornographic material.

Pursuant to Section 67B of the IT Act, “child pornography in electronic form” includes any material in any electronic form⁴⁷ that: (a) depicts children engaged in a sexually explicit act or conduct; or (b) depicts children in an obscene or indecent or sexually explicit manner. Section 67B of the IT Act criminalizes prescribed activities related to such materials.

⁴⁶ According to Article 2, subparagraph 4 of the Act on the Protection of Children and Juveniles from Sexual Abuse, the term “purchasing child or juvenile sex” refers to doing any of the following acts to a child or juvenile or compelling them to do such an act, in return for offering or promising to offer money and valuables or other property gains, services or convenience to those who arrange the purchase of child or juvenile sex, or those who actually protect and supervise the child or juvenile, or any other person: (a) sexual intercourse; (b) pseudo-sexual intercourse using parts of the body, such as the mouth and anus, or implements; (c) touching or exposing the whole or part of the body, which causes sexual humiliation or repugnance of ordinary people; (d) masturbation.

⁴⁷ The IT Act provides a definition of “electronic form” referred to in Section 67B of this Act. According to Section 2 (1) (r) of the IT Act, the term “electronic form”, with reference to the term “information”, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated microfiche or similar device. Pursuant to Section 2 (1) (v) of the IT Act, the term “information” includes data, message, text, images, sound, voice, codes, computer programs, software and databases, or micro film or computer generated microfiche.

With respect to defining the term “obscenity” referred to in Section 67B of the IT Act, Section 67 of the IT Act provides which materials may be deemed “obscene” as stated below. Material in any electronic form may be considered obscene if it is lascivious or appeals to the prurient interest or if its effect is, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see, or hear the matter contained or embodied in it.

❖ **Timor-Leste**

The Penal Code possibly provides a definition of child pornography as stated below.

Article 176 (1) of the Penal Code indicates that “child pornography” in this Code refers to any material which uses, exposes, or represents a minor aged less than 17 years of age performing real or simulated sexual activity or, by any other means, exhibits the sexual activity or sexual organs of a minor for predominantly sexual purposes. Article 176 (2) of the Penal Code criminalizes prescribed activities related to child pornography.

A.3. Age of a potential victim of activities related to child pornography

The OPSC does not provide a definition of a “child”, although its Article 2 (c) provides a definition of “child pornography”.

However, Article 1 of the CRC states that a “child”, for the purposes of the present Convention, is every human being below the age of 18 years, unless under the law applicable to the child, majority is attained earlier. Furthermore, States Parties are required to take all appropriate measures to address the sexual exploitation and sexual abuse of children, including measures to prevent the exploitative use of children in pornographic performances and materials, pursuant to Article 34 of the CRC.

In addition, Footnote 1 of the Pact of Rio de Janeiro articulates that throughout the document, the terms “child” and “children and adolescents” are used to denote all human beings below the age of 18 years. Moreover, the Plan of Action of the Pact of Rio de Janeiro calls on States to criminalize the production, distribution, receipt, and possession of child pornography.

Accordingly, children under the age of 18 are required to receive protection from offenses related to child pornography, regardless of the age of consent to sexual activity, which is normally lower, in accordance with Article 1 of the CRC and Footnote 1 of the Pact of Rio de Janeiro.

For the purposes of addressing this part of the Regional Study (V. Analysis of the legislative responses to crimes against children in alignment with relevant international instruments, A. Legislation regarding child pornography, A.3. Age of a potential victim of activities related to child pornography), the term “child pornography” includes, but is not limited to, 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 (Article 2 (c) of the OPSC), as well as the use of a child to create such a representation.⁴⁸

⁴⁸ INT’L CTR. FOR MISSING & EXPLOITED CHILDREN, *supra* note 35, at iv.

Among the **16** Asian countries analyzed – all except the Democratic People’s Republic of Korea, the legal system of which is not considered to have legislation specific to child pornography:

- **11** countries (Brunei Darussalam, Cambodia, China, India, Indonesia, Japan, Lao People’s Democratic Republic, Malaysia, Philippines, Republic of Korea, and Thailand) consider everyone under the age of 18 years as a potential victim of activities related to child pornography under their legal systems; and
- **5** countries (Mongolia, Myanmar, Singapore, Timor-Leste, and Vietnam) consider everyone under the age of 16 to 17 years as a potential victim of activities related to child pornography under their domestic law (Myanmar, Singapore, and Timor-Leste) or there are disparities amongst the provisions of their domestic law in terms of a definition of “child” (Mongolia and Vietnam).

❖ **Brunei Darussalam**

Bruneian law considers everyone under 18 years of age as a potential victim of child pornography offenses as stipulated in Sections 293A and 293B of the Penal Code, regardless of the age of sexual consent pursuant to Section 293C (1) (f) of this Code, which states that “child” means a person under the age of 18 years.

In Brunei Darussalam, the age of consent to sexual intercourse is 14 years for a female, although sexual intercourse between a man with his own wife who are not under 13 years of age, is not considered rape pursuant to Section 375 of the Penal Code. However, it is a crime for any person to have or attempt to have carnal knowledge of a girl under the age of 16 years, except by way of marriage, according to Section 2 of the Unlawful Carnal Knowledge Act.

❖ **Cambodia**

Article 7 of the Law on Suppression of Human Trafficking and Sexual Exploitation considers everyone under the age of 18 years as a potential victim of child pornography as provided in Articles 40 and 41 of this Law.

In Cambodia, the age of consent to sexual intercourse or an indecent act is 15 years for both men and women pursuant to Articles 42 and 43 of the Law on Suppression of Human Trafficking and Sexual Exploitation.

❖ **China**

Chinese law, along with Judicial Interpretation 2004, considers everyone under the age of 18 years as a potential victim of activities related to child pornography.

Article 364, paragraph 4 of the Criminal Law severely punishes anyone who disseminates pornographic materials to a minor under the age of 18 years as compared to dissemination of such materials to a non-minor stipulated in Article 364, paragraph 1 of this Law. In addition, pursuant to Article 6 of the Judicial Interpretation 2004, those who, with or without the aim of profit, use the Internet or mobile telecommunications terminals to produce, reproduce, sell, publish, or disseminate obscene electronic information concretely depicting sexual acts by minors who have not reached 18 years of age shall be punished severely according to Article 363, paragraph 1 and Article 364, paragraph 1 of the Criminal Law.⁴⁹

⁴⁹ UN COMM. ON THE RIGHTS OF THE CHILD, *supra* note 39, at 12-13.

In China, the age of consent to sexual intercourse is 14 years for women pursuant to Article 236 of the Criminal Law.

❖ **India**

Indian law considers everyone under 18 years of age as a potential victim of child pornography offenses, regardless of the age of sexual consent.

With regard to child pornography in electronic form, the Explanation to Section 67B of the IT Act states that for the purpose of this section, “children” refers to persons who have not completed the age of 18 years.

With respect to child pornography in any form, Section 2 (1) (d) of the Protection of Children from Sexual Offences Act states that in this Act, unless the context otherwise requires, “child” means any person below the age of 18 years.

In India, the age of consent to sexual intercourse is 18 years for women pursuant to Section 375 of the Penal Code (amended by the Criminal Law (Amendment) Act, 2013).

❖ **Indonesia**

Indonesian law considers everyone under 18 years of age as a potential victim of activities related to pornography that explicitly contains child pornography prohibited and punishable by the Anti-Pornography Law. Article 1, point 4 of the Anti-Pornography Law defines “children” herein as those below 18 years of age.

❖ **Japan**

Japanese law considers everyone under the age of 18 years as a potential victim of child pornography and related offenses defined and punishable by Articles 2, 7, and 8 of the Child Pornography Prohibiting Act. Article 2 (1) of this Act defines the term “child” as a person under 18 years old.

In Japan, the age of consent to sexual intercourse is 13 years for women pursuant to Article 177 of the Penal Code. Furthermore, the age of consent to indecent acts is 13 years for women and men according to Article 176 of the Penal Code. However, having sexual intercourse with a child (under 18 years of age) in return for giving or promising remuneration to the child constitutes a criminal offense according to Articles 2 (2) and 4 of the Child Pornography Prohibiting Act.

❖ **Lao People’s Democratic Republic**

Article 2, paragraph 1 of the Law on the Protection of the Rights and Interests of Children considers everyone under 18 years of age as a child for the purpose of this Law. Article 86 of this Law punishes any person who engages in prescribed child pornography activities.

In Lao People’s Democratic Republic, the age of consent to sexual activity is 15 years for boys and girls pursuant to Article 129 of the Penal Law.

❖ **Malaysia**

Section 2 (1) of the Child Act 2001 states that “child” means a person under the age of 18 years. Further, this Act criminalizes the use of a child in any activity that is sexual in nature for the purpose

of pornographic, obscene, or indecent material or sexual exploitation by any person for that person's or another's sexual gratification.

In Malaysia, the age of consent to sexual intercourse is 16 years for women pursuant to Section 375 (f) of the Penal Code.

❖ **Philippines**

Section 3 (a) of the Anti-Child Pornography Act of 2009 considers everyone under the age of 18 years as a potential victim of child pornography offenses.

In the Philippines, the age of consent to sexual intercourse is 12 years for females pursuant to Article 335 of the Revised Penal Code. However, having sexual contact with a minor, whether a female or a male (under age 18), is an offense if the minor consents to the act for money, etc. according to Section 5 of Republic Act No. 7610, an act providing for stronger deterrence and special protection against child abuse, exploitation, and discrimination and for other purposes (also known as "Special Protection of Children against Abuse, Exploitation and Discrimination Act").

❖ **Republic of Korea**

Article 2, subparagraph 1 of the Act on the Protection of Children and Juveniles from Sexual Abuse states that the term "children or juveniles" in this Act means persons under 19 years of age, provided that persons for whom the first day of January of the year in which they reach 19 years of age has arrived, shall be excluded.

In the Republic of Korea, the age of consent to sexual intercourse or indecent act is 13 years for females pursuant to Article 305 of the Criminal Act. However, purchasing child or juvenile sex is a crime according to Article 13 (1) of the Act on the Protection of Children and Juveniles from Sexual Abuse, provided that such child or juvenile is under 19 years of age as specified by Article 2 (1) of this Act.

❖ **Thailand**

Section 4 of the Child Protection Act considers everyone under 18 years old as a child in Thailand. However, this Section does not include minors who have attained majority through marriage according to Section 20 of the Civil and Commercial Code.

In Thailand, the age of consent to indecent act is 15 years pursuant to Section 279 of the Penal Code. In addition, Section 283bis of the Penal Code stipulates that taking away a person over 15 years of age, but not yet over 18 years of age, for an indecent act, even with the consent of such person, shall constitute a compoundable offense.

A.4. Criminal liability of children involved in pornography

The Plan of Action of the Pact of Rio de Janeiro calls on all States to ensure that child victims of sexual exploitation are not criminalized or punished for crimes committed in the course of their exploitation, but to give them the status of victims in law.

Moreover, criminal liability must focus on an adult offender, who is responsible for the exploitation of a child and on the crimes he/she committed against that child. Accordingly, it is important to analyze the

minimum age for criminal responsibility under domestic law as countries may punish child offenders involved in pornography because they are criminally liable.

16 targeted Asian countries – all except Timor-Leste whose Penal Code only deals with child pornography offenses – govern crimes involving pornography or obscenity under their domestic law (whether Criminal Codes/Penal Codes or special laws) as stated above (V. Analysis of the legislative responses to crimes against children in alignment with relevant international instruments, A. Legislation regarding child pornography, A.1. Legislation specific to child pornography). All of these **16** countries also address the minimum age for criminal responsibility under their domestic law (whether Criminal Codes/Penal Codes or special laws).

Among the **16** Asian countries that criminalize obscenity or pornography offenses under their legal systems:

- **1** country (Cambodia) has a law that does not address the criminal responsibility of children under 18 years old for all crimes in cases of both child offenders and child victims;
- **1** country (Philippines) has enacted legislation that does not punish child offenders under the age of 18 years under prescribed circumstances and does not punish child victims involved in all crimes under its law; and
- **14** countries (Brunei Darussalam, China, Democratic People’s Republic of Korea, India, Indonesia, Japan, Lao People’s Democratic Republic, Malaysia, Mongolia, Myanmar, Republic of Korea, Singapore, Thailand, and Vietnam) do not address the criminal liability of children involved in pornography in cases of child victims, not child offenders.

❖ **Cambodia**

Cambodian law does not address the criminal liability of children involved in pornography for their participation in the case of child victims as well as child offenders. Although pornography offenses are specified by Articles 38 and 39 of the Law on Suppression of Human Trafficking and Sexual Exploitation, the legal age for criminal responsibility in Cambodia starts at 18 years of age pursuant to Article 38 of the Criminal Code.

❖ **Philippines**

Philippine law does not address the criminal liability of children involved in pornography as victims. Sections 18 and 19 of the Anti-Child Pornography Act of 2009, however, address mandatory services and programs for victims of child pornography.

In the case of child offenders, the minimum age of criminal liability in the Philippines shall be addressed by Republic Act 9344, an Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council under the Department of Justice, Appropriating Funds Therefor and For Other Purposes (also known as “Juvenile Justice and Welfare Act of 2006”), as amended by Republic Act No. 10630, An Act Strengthening the Juvenile Justice System in the Philippines, amending for the purpose of Republic Act No. 9344, otherwise known as “Juvenile Justice and Welfare Act of 2006” and Appropriating Funds Therefor (also known as the “Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile justice and Welfare Council under the Department of Social Welfare and Development, Appropriating Funds Therefor, and for Other Purposes”) (hereafter referred to as “Republic Act No. 9344, as amended by Republic Act No. 10630”).

According to Section 6 of the Republic Act No. 9344, as amended by Republic Act No. 10630, a child 15 years of age or under at the time of the commission of the offense shall be exempt from criminal liability. Section 6 of the Republic Act No. 9344, as amended by Republic Act No. 10630, further

articulates that a child over 15 years of age, but below 18 years of age, shall be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

B. PUNISHMENT OF CONDUCTS RELATED TO CHILD PORNOGRAPHY

B.1. Production, distribution, dissemination, importation, exportation, offer, sale, and possession of child pornography

In respect of illicit acts related to child pornography, Article 3 (1) (c) of the OPSC lists “producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography for the purpose of production, distribution, dissemination, import, export, offer, or sale”.

Furthermore, Article 9 of the Convention on Cybercrime requires each party to adopt legislative and other measures to criminalize the following acts under its domestic law, when committed intentionally and without right: a) producing child pornography for the purpose of its distribution through a computer system; b) offering, making available, distributing, or transmitting child pornography through a computer system; and c) possessing child pornography in a computer system or on a computer-data storage medium.

16 countries out of the 17 countries reviewed (excluding Timor-Leste which has a Penal Code that only addresses child pornography offenses) have enacted obscenity regimes that may also be applicable to child pornography offenses, regardless of the enactment of legislation specific to child pornography, as stated above (V. Analysis of the legislative responses to crimes against children in alignment with relevant international instruments, A. Legislation regarding child pornography, A.1. Legislation specific to child pornography). In addition, **17** Asian countries criminalize the production and distribution of materials with child pornography or obscenity/pornography in general under their domestic law as enumerated below.

For the purposes of addressing this part (V. Analysis of the legislative responses to crimes against children in alignment with relevant international instruments, B. Punishment of conducts related to child pornography, B.1. Production, distribution, dissemination, importation, exportation, offer, sale, and possession of child pornography), in cases where a country has provisions criminalizing child pornography and pornography offenses respectively under its domestic law (whether the same law or different laws), provisions that specifically apply to child pornography activities shall prevail over provisions that address activities related to pornographic or obscene materials. However, if countries do not have provisions under their domestic law that explicitly cover all or some of the illicit activities related to child pornography mentioned in Article 3 (1) (c) of the OPSC, provisions that address pornography or obscenity offenses shall be considered.

In general, among the 17 Asian countries analyzed:

- **9** countries (Brunei Darussalam, Cambodia, India, Indonesia, Japan, Lao People’s Democratic Republic, Philippines, Republic of Korea, and Timor-Leste) have provisions under their domestic law that criminalize all or part of the illicit activities in relation to child pornography mentioned in Article 3 (1) (c) of the OPSC; and
- **8** countries (China, Democratic People’s Republic of Korea, Malaysia, Mongolia, Myanmar, Singapore, Thailand, and Vietnam) have provisions under their domestic legislation that punish any person who engages in offenses related to obscene objects and/or pornographic materials in general, which may also be applicable to child pornography.

B.1.a. Producing child pornography

Article 3 (1) (c) of the OPSC obliges States Parties to criminalize production of child pornography. In addition, Article 9 (1) (a) of the Convention on Cybercrime requires each party to adopt legislative measures to make it a criminal offense to produce child pornography for the purpose of its distribution through a computer system under its domestic law, when committed intentionally and without right.

Concerning the production of child pornography, among the 17 Asian countries analyzed:

- **6** countries (Cambodia, Indonesia, Lao People’s Democratic Republic, Philippines, Republic of Korea, and Timor-Leste) have explicit provisions under their domestic law that criminalize the mere production of child pornography;
- **2** countries (Brunei Darussalam and India) have provisions under their domestic legislation that possibly outlaw producing child pornography, in addition to provisions that explicitly create offenses relating to the production of obscene objects for the purposes of the distribution, etc.;
- **1** country (Japan) has a law that addresses criminal offenses and penalties for the production of child pornography for the purposes of providing it to others or for the purposes of distribution, etc.;
- **3** countries (China, Democratic People’s Republic of Korea, and Mongolia) have legislative measures that make it illegal to produce obscene objects, pornography, or decadent objects in general; and
- **5** countries (Malaysia, Myanmar, Singapore, Thailand, and Vietnam) criminalize the production of obscene objects in general for the purposes of distribution, etc., under their domestic legislation.

There are countries that criminalize acts related to the production of child pornography. In Brunei Darussalam, according to Section 293B (1) (a) of the Penal Code, any person who “takes” an indecent or obscene photograph or pseudo-photograph of a child shall be guilty of an offense. In India, Section 67B (b) of the IT Act makes it illegal to “create” text or digital images depicting children in an obscene or indecent or sexually explicit manner.

B.1.b. Distributing or disseminating child pornography

Article 3 (1) (c) of the OPSC requires State Parties to criminalize distributing or disseminating child pornography.

Likewise, according to Article 9 (1) (c) of the Convention on Cybercrime, each party shall adopt such legislative measures as may be necessary to establish an act of distributing and transmitting child pornography through a computer system as criminal offenses under its domestic law, when committed intentionally and without right.

In light of the distribution or dissemination of child pornography, among the 17 Asian countries analyzed:

- In **9** countries (Brunei Darussalam, Cambodia, India, Indonesia, Japan, Lao People’s Democratic Republic, Philippines, Republic of Korea, and Timor-Leste), their domestic laws explicitly prescribe penalties for offenses involving the distribution or dissemination of child pornography; and
- **8** countries (China, Democratic People’s Republic of Korea, Malaysia, Mongolia, Myanmar, Singapore, Thailand, and Vietnam) criminalize the distribution or dissemination of pornography in general under their domestic law.

Furthermore, regarding the transmission of child pornography, among the 17 Asian countries analyzed:

- **2** countries (India and Philippines) provide for the punishment of transmitting child pornography; and
- **1** country (Singapore) criminalizes the transmission of obscene objects in general, which may also encompass child pornography.

B.1.c. Offering child pornography

Article 3 (1) (c) of the OPSC obliges States Parties to address an act of offering child pornography.

In addition, Article 9 (1) (b) of the Convention on Cybercrime requires Each Party to establish a criminal offense involving offering or making available child pornography through a computer system under its domestic law, when committed without right and intentionally.

Although the OPSC does not provide which acts can be deemed as “offering child pornography”, for the purposes of this Regional Study, the term “offering child pornography” referred to in Article 3 (1) (c) of the OPSC will be considered as the proposition, proposal, suggestion, or presentation of child pornography, with commercial or non-commercial intent, making it available to others.⁵⁰

However, because the OPSC does not provide an official interpretation of the term “offer” in relation to child pornography, it is acknowledged that there may be differences between countries with domestic law that explicitly uses the terms “offer”, “provision” or “make available” in relation to child pornography, and countries with domestic law that does not use such terms explicitly.

Article 9 (1) (b) of the Convention on Cybercrime criminalizes “offering” child pornography through a computer system, when committed intentionally and without right. Furthermore, Explanatory Report 95 to the Convention on Cybercrime provides that “offering” child pornography through a computer system is intended to cover soliciting others to obtain child pornography and implies that the person offering the material can actually provide it. Moreover, Explanatory Report 95 to the Convention on Cybercrime articulates that “making available” is intended to cover the placing of child pornography online for the use of others, e.g., by means of creating child pornography sites. It also encompasses the creation or compilation of hyperlinks to child pornography sites in order to facilitate access to child pornography.⁵¹

In relation to offering child pornography, among the 17 Asian countries analyzed:

- **6** countries (Brunei Darussalam⁵², Indonesia, Japan, Philippines, Republic of Korea, and Timor-Leste) explicitly enumerate criminal offenses and penalties for offering or providing child pornography under their domestic law;
- **4** countries (India, Malaysia, Myanmar, and Singapore) explicitly make it an offense to offer to do activities related to obscene objects under their Penal Codes, which may also cover an act of offering to commit conducts involving child pornography;⁵³

⁵⁰ *Offer*, OXFORD DICTIONARIES, <http://www.oxforddictionaries.com/definition/english/offer> (last visited Nov. 19, 2014).

⁵¹ See the full text of the Explanatory Report at *Explanatory Report 95 to the Convention on Cybercrime*, COUNCIL OF EUROPE, <http://conventions.coe.int/Treaty/EN/Reports/Html/185.htm> (last visited Jan. 19, 2015).

⁵² In Brunei Darussalam, in the context of criminalizing acts related to obscene articles in general, Section 292 of the Penal Code has the same language as the Penal Codes of India, Malaysia, Myanmar, and Singapore. However, Section 293B of the Bruneian Penal Code explicitly criminalizes offering an indecent or obscene photograph of a child for acquisition by another person. Thus, Brunei Darussalam is classified within the group of countries that explicitly criminalize offering child pornography.

- **2** countries (Cambodia and Lao People’s Democratic Republic) criminalize other acts constituting making available child pornography, although the provisions under their domestic laws do not use explicit terms, such as offering, providing, or making available;
- **3** countries (China, Thailand, and Vietnam) criminalize other acts constituting making available pornographic, obscene, or decadent objects in general, although the provisions under their domestic law do not use explicit terms, such as offering, providing, or making available; and
- **2** countries (Democratic People’s Republic of Korea and Mongolia) do not have explicit or relevant provisions addressing the acts of offering, providing, or making available child pornography, or pornography in general, under their legal systems.

The form of “making available” child pornography can include, but is not limited to, the following act based on synonyms of “making available”: a) display or publicly display; b) publish; c) circulate; or d) spread. Among the countries that do not have explicit terms, such as “offer”, “provide”, or “make available” in relation to the criminalization of child pornography or pornography in general, Cambodia and Lao People’s Democratic Republic explicitly criminalize the display or public display of child pornography under their domestic law. Furthermore, China outlaws the publication of pornographic material for the purposes of profit under its Criminal Law. Moreover, Thailand’s Penal Code makes it illegal, in order to assist trading of obscene materials, etc. to propagate or spread the news that such obscene materials may be obtained from any person or by any means. In Vietnam, the Penal Code covers acts of circulating decadent objects or debauched cultural products, for the purposes of dissemination, etc.

It is also important to note that in **5** countries (Brunei Darussalam, India, Malaysia, Myanmar, and Singapore), Section 292 of their Penal Codes explicitly makes it illegal to “in any manner” put into circulation obscene objects or articles.

B.1.d. Importing, exporting, or selling child pornography

Article 3 (1) (c) of the OPSC stipulates that the act of importing, exporting, or selling child pornography shall constitute a criminal offense. It is important to note that, amongst the chain of action to commercialize child pornography, Article 3 (1) (c) of the OPSC does not require States Parties to criminalize the conduct of buying child pornography from domestic individuals or legal persons, as long as such act is committed for personal use (without taking any further actions constituting selling, exporting, offering, disseminating, or distributing the purchased child pornography). However, Article 3 (1) (c) of the OPSC does oblige State Parties to criminalize the conducts of buying child pornography from foreign persons or legal entities (importing it) and selling child pornography domestically (selling it) or internationally (exporting it).

In respect of the importation and exportation of child pornography, among the 17 Asian countries analyzed:

- **5** countries (Indonesia, Lao People’s Democratic Republic, Philippines, Republic of Korea, and Timor-Leste) criminalize the importation and exportation of child pornography without the intent to distribute, etc. pursuant to their domestic legislation;

⁵³ In four countries (India, Malaysia, Myanmar, and Singapore), while not specific to child pornography, Section 292 of their respective Penal Codes criminalize offering to do any of the following: a) sell, let to hire, distribute, publicly exhibit, or in any manner put into circulation obscene objects; b) for purposes of sale, hire, distribution, public exhibition or circulation, make, produce, possess, import, export etc. the obscene objects; or c) advertise or make known where to procure the obscene objects.

- **2** countries (Cambodia and Japan) punish those who import and export child pornography for the purposes of distribution, etc. under their domestic law; and
- **8** countries (Brunei Darussalam, China, India, Malaysia, Mongolia, Myanmar, Singapore, and Thailand) have provisions that penalize any person who commits the offenses involving importing and/or exporting obscene objects in general for profit or for the purposes of distribution, etc. or regardless of such purposes as mentioned above.

However, unlike the countries discussed above, in the Democratic People’s Republic of Korea, Article 183 of Criminal Law 2012 only criminalizes importing decadent objects, etc.

In addition, the Penal Code of Vietnam does not specify criminal penalties for importing and exporting debauched cultural products. However, Pursuant to Article 12, Clause 3, Point c of Decree No.91/2011/ND-CP, a fine of between VND 15,000,000 and 20,000,000, as a form of administrative sanction, shall be imposed for importing toys or games that promote pornography.

Additionally, with respect to the sale of child pornography, among the 17 Asian countries analyzed:

- **6** countries (Cambodia, Indonesia, Lao People’s Democratic Republic, Philippines, Republic of Korea, and Timor-Leste) create offenses relating to the sale of child pornography under their domestic law;
- **8** countries (Brunei Darussalam, India, Japan, Malaysia, Mongolia, Myanmar, Singapore, and Thailand) prescribe the offense of the sale of obscene objects or pornography in general under their domestic law; and
- **2** countries (China and Vietnam) have provisions under their domestic laws criminalizing the sale of pornographic material or debauched cultural products for the purposes of profit or dissemination, etc.

The Democratic People’s Republic of Korea does not address the sale of decadent objects under its Criminal Law 2012.

In the respect of Thailand, Section 287 (2) of the Penal Code punishes any person who carries on the “trade” of or participates in the “trade” of obscene materials or things outlined in Section 287 (1) of this Code. Also, as regards Indonesia, Article 29 of the Anti-Pornography Law punishes any person who “trades” pornography that explicitly contains child pornography as referred to in Article 4, paragraph (1), letter f of this Law. Considering that the term “trade” can be defined as the action of buying and selling goods and services,⁵⁴ the Thai and Indonesian legal systems can be deemed to criminalize the sale of obscene or pornographic materials in general, which may also govern the sale of child pornographic items.

B.1.e. Possession of child pornography

Interpreted strictly, Article 3 (1) (c) of the OPSC obliges States Parties to criminalize the possession of child pornography only when this possession is “for the above purposes” of producing, distributing, disseminating, importing, exporting, offering, or selling. The United Nations Committee on the Rights of the Child has nevertheless encouraged countries to prohibit the simple possession of child

⁵⁴ *Trade*, OXFORD DICTIONARIES, <http://www.oxforddictionaries.com/definition/english/trade> (last visited Nov. 19, 2014).

pornography.⁵⁵ Accordingly, special attention is given to the countries that criminalize mere possession of child pornography without the intent to distribute.

Based on the text of Article 3 (1) (c) of the OPSC as stated above, countries which criminalize possession with intent to distribute, etc. as well as countries that criminalize mere possession (possession without the intent to distribute), are considered to comply with the OPSC.

With respect to the possession of child pornography, among the 17 Asian countries analyzed:

- **7** countries (Brunei Darussalam, Cambodia, Indonesia, Japan, Philippines, Republic of Korea, and Timor-Leste) criminalize the possession of child pornography without the intent to distribute, etc. or possession of child pornography for the purposes of distribution, etc., or both,⁵⁶
- **1** country (India) specifies punishment for storing pornographic material in any form involving a child for commercial purposes and possessing any obscene objects for the purposes of distribution, etc.;⁵⁷
- **4** countries (Malaysia, Myanmar, Singapore⁵⁸, and Thailand) make it an offense to possess obscene objects in general with the intent to distribute under their Penal Code;
- **1** country (Democratic People's Republic of Korea) punishes any person who illegally keeps decadent objects under its domestic law; and
- **4** countries (China, Lao People's Democratic Republic, Mongolia, and Vietnam) do not criminalize the possession of child pornography or pornography in general, regardless of the intent to distribute, under their domestic law.

Regarding Mongolia, the Criminal Code does not criminalize possession of child pornography or pornography in general. However, according to Article 5.2 of the Law Combating Pornography and Prostitution Act, storing items advertising pornography for the purposes of distribution, etc. shall be prohibited. A first-time breach referred to in Article 5.2 of this Law shall be subject to a fine and confiscation of articles related to pornography as forms of administrative sanctions pursuant to Article 13.2.4 of this Law. If a breach referred to in Article 5.2 of this Law has been repeated within a year, it constitutes a criminal offense pursuant to Article 13.1 of the same Law.

Concerning Vietnam, the Penal Code explicitly punishes any person who stockpiles debauched cultural products for the purposes of dissemination. However, considering that the term "stockpile" can be defined as acts of accumulating a large stock of (goods or materials),⁵⁹ it evokes an image of a larger quantity of material than the term "possession". Thus, the term "stockpile" has a different meaning than

⁵⁵ UNICEF, HANDBOOK ON THE OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY (2009), at 12, available at http://www.unicef-irc.org/publications/pdf/optional_protocol_eng.pdf.

⁵⁶ Amongst these seven countries, one country (Indonesia) only criminalizes possession of child pornography unless authorized by the law; one country (Cambodia) only punishes any person who possesses child pornography for the purposes of distribution, etc.; four countries (Brunei Darussalam, Japan, Philippines, and the Republic of Korea) criminalize both simple possession of child pornography (A) and possession of child pornography for the purposes of distribution, etc. (B) while the penalty for B shall be higher than that for A; and one country (Timor-Leste) provides the same punishment for possessing child pornography for predominantly sexual purposes and possessing child pornography with the aim of dissemination.

⁵⁷ Section 15 of the Protection of Children from Sexual Offenses Act punishes any person who stores any pornographic material in any form involving a child for commercial purposes. Furthermore, while not specific to child pornography, Section 292 (2) (a) of the Penal Code criminalizes "possession" of any obscene objects for the purpose of hire, sale, distribution, or public exhibition/public circulation, etc.

⁵⁸ In Singapore, Section 30 of the Films Act punishes any person who has in his possession any obscene film knowing or having reasonable cause to believe the film to be obscene shall be guilty of an offense and, on conviction, shall be liable to a fine of \$1,000 for each such film in his possession (but not to exceed in the aggregate \$40,000) or to imprisonment for a term not exceeding 12 months or to both. However, Section 292 (1) (a) of the Penal Code makes it an offense to possess obscene objects with the intent to distribute with the punishment of an imprisonment for a term which may extend to 3 months, or with a fine, or with both.

⁵⁹ *Stockpile*, OXFORD DICTIONARIES, <http://www.oxforddictionaries.com/definition/english/stockpile> (last visited Nov. 19, 2014).

the word “possession”. Furthermore, a fine between VND 15,000,000 and 20,000,000, as an administrative sanction, shall be imposed for storing products, culture, information, media, toys, games, or gadgets with child pornography pursuant to Article 12, Clause 3, point b of Decree No.91/2011/ND-CP.

❖ Japan

Possession of child pornography without the intent to distribute is a crime in Japan following the recent amendment of the Child Pornography Prohibiting Act (last amended in June 2014 and effective as of July 15, 2014). In the case of possessing child pornography for the purposes of providing it to others or distribution, etc., the offender will be subject to heavier punishment than for the mere possession of it.

Prior to this amendment, only the possession of child pornography for the purposes of providing it to others or for distribution constituted a criminal offense under the Japanese legal framework.

Under the Child Pornography Prohibiting Act (last amended in June 2014 and effective as of July 15, 2014), there is a one-year moratorium on punishment for possessing child pornography prescribed in Article 7 (1) of this Act in order to give possessors the time to discard of it.⁶⁰

B.2. Production, distribution, and possession of child pornography, including virtual images and the sexually exploitative representation of children, as well as the commercialization

The Plan of Action of the Pact of Rio de Janeiro calls on States to criminalize the production, distribution, possession, and commercialization of child pornography including virtual images and sexually exploitative representations of children that do not necessarily use real children in their production (also referred to as “virtual child pornography”).

The Special Rapporteur encourages the Committee on the Rights of the Child to reaffirm that the scope of Article 34 of the CRC should be interpreted to include an absolute prohibition on “pseudo-child pornography” including “morphing” of child and adult bodies to create virtual child pornographic images, after arguing that the Internet renders the traditional legal definition of child pornography, namely the visual depiction or use of a child for pornographic purposes, outdated.⁶¹

Virtual child pornography can be divided into two types including: a) wholly computer-generated child pornography; and b) morphed child pornography. In a broad sense, c) child pornography made by using youthful-looking adults can be also added as a kind of virtual child pornography.⁶²

Wholly computer-generated child pornography refers to visual depictions of child abuse that can be found in certain comics, animations, video games, cartoons, etc. and is made with computer-generated images, without using any actual children or photos of actual children. Morphed child pornography refers to

⁶⁰ *Japan Possession of Child Pornography Finally Punishable*, LIBRARY OF CONGRESS, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205404088_text (last visited Nov. 19, 2014).

⁶¹ Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, *Report of the Special Rapporteur on the sale of children, child prostitution and child pornography*, at 9, U.N. Doc. E/CN.4/1998/101 (Jan. 13, 1998) (by Ofelia Calcetas-Santos), available at <http://www.ohchr.org/EN/issues/Children/Pages/AnnualReports.aspx> (last visited Jan. 19, 2015).

⁶² Shepard Liu, *Ashcroft, Virtual Child Pornography and First Amendment Jurisprudence*, 11 UC DAVIS J. OF JUVENILE L. & POL’Y 1, 2-3 (2007), available at <http://jilp.law.ucdavis.edu/archives/vol-11-no-1/07%20Liu%2011.1.pdf> (last visited Jan. 19, 2015).

morphed images where the image of a real child is superimposed on the image of an adult to portray child sexual abuse. Morphed child pornography is made with photos of actual children manipulated into an unidentifiable minor. Child pornography made by using youthful-looking adults refers to pornographic images which depict a person appearing to be a minor engaged in sexually explicit conduct.⁶³

Among the 17 Asian countries analyzed:

- **1** country (Philippines) has legislation that explicitly criminalizes illicit activities related to child pornography including virtual images of children and sexually exploitative representations of children;
- **3** countries (Brunei Darussalam, India, and Republic of Korea) possibly criminalize the production, distribution, commercialization, and possession of child pornography including virtual images and sexually exploitative representations of children under their domestic legislation;
- **1** country (Indonesia⁶⁴) possibly criminalizes activities related to child pornography, including virtual images and sexually exploitative representations of children, by the law, in combination with the elucidation of the law;
- **1** country (Singapore) has law that possibly criminalizes obscenity offenses including virtual images and sexually exploitative representations of persons;
- In **4** countries (Democratic People’s Republic of Korea, Malaysia, Myanmar, and Thailand), their domestic law (Penal Code) has provisions criminalizing offenses involving obscene objects or decadent objects embracing sexually exploitative representations (i.e., drawings) of persons; and
- **7** countries (Cambodia, China, Japan, Lao People’s Democratic Republic, Mongolia, Timor-Leste, and Vietnam) do not have relevant provisions, which explicitly and/or possibly criminalize the production, distribution, commercialization, or possession of child pornography or obscene objects including virtual images of children and sexually exploitative representations of children.

In Japan, there were concerns about the infringement of the freedom of expression in the case of including cartoons, animations, and games that involve virtual images and sexually exploitative representations of children in the definition of child pornography provided under the Child Pornography Prohibiting Act. The amendment to revise the Child Pornography Prohibiting Act (approved by both the Lower and Upper Houses of Parliament of Japan in June 2014 and effective as of July 15, 2014) excluded mention of sexually explicit manga comics, anime video, and computer-generated graphics, which was part of a draft amendment bill to revise the Child Pornography Prohibiting Act. Thus, the current Child Pornography Prohibiting Act regulates child pornographic images depicting real children.⁶⁵

⁶³ ECPAT, CHILD PORNOGRAPHY/CHILD ABUSE IMAGES (2010), at 1, available at http://www.ecpat.net/sites/default/files/Child_abuse_image.pdf (last visited Jan. 19, 2015).

⁶⁴ In Indonesia, pursuant to Article 1, paragraph 1 of the Anti-Pornography Law, “pornography” is defined as any sexual material that is made by humans in the form of a picture, sketch, illustration, photograph, text, voice, sound, moving picture, animation, cartoon, conversation, lewd sexual gesture, or other forms of messages through various forms of communication media and/or performing in public, which can generate sexual desire and/or violate ethics/decency/morality in society. In addition, Article 4, paragraph 1, letter f of this Law prohibits the prescribed activities in relation to pornography, which explicitly contains child pornography.

Furthermore, the elucidation of the Anti-Pornography Law stipulates that “child pornography”, referred to in Article 4, paragraph 1, letter f of this Law, refers to any form of pornography involving children or involving adults who act or behave like a child.

⁶⁵ *Japan outlaws child porn possession, but explicit manga, anime get green light: Law won’t apply to sexually explicit manga, anime*, THE JAPAN TIMES (Jun. 18, 2014), <http://www.japantimes.co.jp/news/2014/06/18/national/crime-legal/diet-passes-bill-to-ban-possession-of-child-porn-images/>.

B.2.a. Country that explicitly includes virtual images and sexually exploitative representations of children related to child pornography crimes under its domestic legislation

❖ Philippines

A definition of the term “child” under Section 3 (a) of the Anti-Child Pornography Act of 2009, for the purposes of this Act, explicitly extends to: 1) a person below 18 years of age; 2) a person regardless of age who is presented, depicted, or portrayed as a child as defined herein; and 3) computer-generated digitally or manually crafted images, or graphics of a person who is represented or who is made to appear to be a child as defined herein.

Furthermore, concerning sexually exploitative representations of children, Section 3 (b) of the Anti-Child Pornography Act of 2009 defines “child pornography” as “any representation” of a child engaged or involved in real or simulated explicit sexual activities provided that the meaning of explicit sexual activity is defined under Section 3 (c) of this Act.

B.2.b. Country that possibly embraces virtual images and sexually exploitative representations of children related to child pornography offenses under its domestic law

❖ Brunei Darussalam

Section 293C (1) (g) of the Penal Code states that the term “pseudo-photograph” in relation to an indecent or obscene photograph or pseudo-photograph of a child as mentioned in Sections 293A and 293B of this Code shall mean an image, whether made by computer graphics or otherwise, howsoever, which appears to be a photograph.

Furthermore, Section 293C (1) (h) of the Penal Code articulates that if the impression conveyed by a photograph or pseudo-photograph is that the person shown is a child, the photograph or pseudo-photograph shall be treated for all purposes as showing a child and so shall a photograph or pseudo-photograph where the predominant impression conveyed is that the person shown is a child, notwithstanding that some of the physical characteristics shown are those of an adult.

Moreover, Section 293C (2) of the Penal Code stipulates that in the proceedings under Sections 293A and 293B, a person is to be taken as having been a child at any material time if it appears from evidence as a whole that he was then under the age of 18 years.

❖ India

Section 67B (b) of the IT Act specifically punishes anyone who creates text or digital “images” or collects, browses, downloads, seeks, advertises, promotes, exchanges, or distributes material in any electronic form depicting children in an obscene or indecent or sexually explicit manner. In addition, Section 67B of the IT Act applies to sexually exploitative representations of children including any book, pamphlet, paper, writing, drawing, painting, “representation” or figure in electronic form.

❖ Republic of Korea

Pursuant to Article 2, subparagraph 5 of the Act on the Protection of Children and Juveniles from Sexual Abuse, the term “child or juvenile pornography” means the depiction of children or juveniles, or persons or “representations” that can be perceived evidently as children or juveniles, doing any act defined in Article 2, subparagraph 4 of this Act (purchasing child or juvenile sex) or engaging in any other sexual act in the form of film, video, game software or picture or image, etc. displayed on computers or other communication media.

B.3. Accessing and viewing of child pornography

Although the OPSC does not explicitly cover the acts of accessing and viewing of child pornography, the Plan of Action of the Pact of Rio de Janeiro calls on States to criminalize accessing and viewing child pornography.

Additionally, the ECOSOC Resolution 2011/33 urges Member States to specify the deliberate and repeated access to websites containing child sexual abuse and exploitation images and viewing this type of content stored online as a criminal offense in their legal system.

Furthermore, Article 20 of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse provides that Each Party shall take the necessary legislative or other measures to criminalize knowingly and intentionally obtaining access, through information and communication technologies, to child pornography, when committed without right.

Among the 17 Asian countries analyzed:

- **3** countries (Brunei Darussalam, India, and Philippines) have explicit provisions that criminalize accessing or viewing child pornography under their domestic legislation; and
- **14** countries (Cambodia, China, Democratic People's Republic of Korea, Indonesia, Japan, Lao People's Democratic Republic, Malaysia, Mongolia, Myanmar, Republic of Korea, Singapore, Thailand, Timor-Leste, and Vietnam) do not have domestic laws that specify punishment for accessing and/or viewing child pornography under their laws.

❖ **Brunei Darussalam**

Section 293B (1) (e) of the Penal Code makes it an offense for any person to access an indecent/obscene photograph/pseudo-photograph of a child. Pursuant to Section 293B (3) of this Code, for the purposes of Section 293B (1) (e) of this Code, a person shall be deemed to have access to an indecent or obscene photograph or pseudo-photograph of a child if he knowingly causes himself to view or transmit the indecent or obscene photograph or pseudo-photograph of a child.

❖ **India**

Section 67B (b) of the IT Act explicitly criminalizes browsing any material in any electronic form, which depicts children in an obscene or indecent or sexually explicit manner.

❖ **Indonesia**

Article 6 of the Anti-Pornography Law prohibits any person from viewing pornography that explicitly contains child pornography unless authorized by the Law. Anyone who violates Article 6 of this Law shall be punishable with the penalty set forth by Article 32 of the same Law.

❖ **Philippines**

Sections 4 (j) of the Anti-Child Pornography Act of 2009 makes it illegal for any person to willfully access any form of child pornography. Any person who contravenes Section 4 (j) of this Act shall be subject to criminal liability prescribed by Section 15 (g) of the same Act.

C. OBLIGATION TO MAKE CHILD PORNOGRAPHY OFFENSES PUNISHABLE BY APPROPRIATE PENALTIES

Article 3 (1) (c) of the OPSC requires States Parties to create offenses covering acts of producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes, child pornography as

defined in its Article 2 (c), whether committed domestically or transnationally, on an individual or organized basis.

Furthermore, Article 3 (3) of the OPSC stipulates that each State Party shall make such offenses punishable by appropriate penalties taking into account their grave nature. The range of criminal penalties for committing child pornography offenses prescribed under the domestic laws of the 17 Asian countries analyzed is broad. Criminal penalties for committing child pornography offenses involving production, distribution/dissemination, sale, importation, exportation, offer, or possession of child pornography stipulated in the domestic legislation among the 17 targeted Asian countries range from three months up to life imprisonment depending on the country in which such offense took place.⁶⁶

In addition, although Article 3 (3) of the OPSC does not provide a basis on which to determine the appropriateness of criminal penalties for committing child pornography offenses, the Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA⁶⁷ (hereafter also referred to as “Directive 2011/92/EU”) provides recommendations for maximum terms of imprisonment for certain offenses including, but not limited to: a) production; b) distribution/dissemination; c) offer; and d) possession of child pornography mentioned in Article 3 (1) (c) of the OPSC.⁶⁸

For the purposes of addressing this part (V. Analysis of the legislative responses to crimes against children in alignment with relevant international instruments, C. Obligation to make child pornography offenses punishable by appropriate penalties), in the event that a country establishes punishment for child pornography and pornography offenses respectively under its domestic law (whether the same law or different laws), provisions that specifically address child pornography offenses shall prevail over provisions that apply to pornography or obscenity offenses. However, if countries do not have provisions under their domestic law that explicitly cover all or some of the illicit activities in relation to child pornography mentioned in Article 3 (1) (c) of the OPSC, provisions that are applicable to pornography or obscenity offenses shall be reviewed.

C.1. Production of child pornography

All 17 Asian countries analyzed criminalize the production of child pornography or obscene objects (or pornography) with or without the intent to distribute, under their domestic law, which may also be applicable to child pornography as stated above.

Article 5, paragraph 6 of the Directive 2011/92/EU stipulates that production of child pornography shall be punishable by a maximum term of imprisonment of at least three years. Article 5, paragraph 8 of this Directive enables Member States to have discretion to choose whether to punish a producer of child pornography with or without the intent to disseminate.

⁶⁶ Appendix C (Table 3 – Offenses and Penalties) shall provide a summary of provisions under national laws of the 17 Asian countries analyzed enumerating offenses and specifying penalties/sanctions with respect to the production, distribution/dissemination, importation/exportation, offer, sale, and possession of child pornography.

⁶⁷ See the full text of the Directive 2011/92/EU of the European Parliament and of the Council of Europe on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography at http://srsg.violenceagainstchildren.org/sites/default/files/documents/political_declarations/europe/directive_european_parliament_on_combating_sexual_abuse_and_sexual_exploitation_of_children.pdf (last visited Jan. 19, 2015).

⁶⁸ INT’L CTR. FOR MISSING & EXPLOITED CHILDREN, *supra* note 35, at 9 -13.

Without further consideration of the circumstances to aggravate penalties, among the **17** Asian countries analyzed:

- **13** countries (Brunei Darussalam⁶⁹, Cambodia, China, India⁷⁰, Indonesia, Japan, Lao People’s Democratic Republic, Malaysia, Philippines, Republic of Korea, Thailand, Timor-Leste, and Vietnam) criminalize production of child pornography or obscene objects in general with imprisonment for maximum terms of three years (China, Lao People’s Democratic Republic, Malaysia, Thailand, and Vietnam) to life imprisonment (Republic of Korea) in domestic legislation; and
- **3** countries (Mongolia, Myanmar, and Singapore) provide for a maximum period of imprisonment of three months in relation to production of pornography or obscene objects in general under their domestic laws, while **1** country (Democratic People’s Republic of Korea) specifies punishment by short-term labor for a term of not more than one year for making, without authorization, decadent objects, etc.

C.2. Distribution or dissemination of child pornography

All **17** Asian countries analyzed criminalize the distribution or dissemination of child pornography or obscene objects (or pornography) in general, which may also cover child pornography, under their domestic laws as discussed above.

Article 5, paragraph 4 of the Directive 2011/92/EU stipulates that distribution or dissemination of child pornography shall be punishable by a maximum term of imprisonment of at least two years.

Unless there are circumstances to enhance punishment, among the 17 Asian countries analyzed:

- **13** countries (Brunei Darussalam, Cambodia, China, India, Indonesia, Japan, Lao People’s Democratic Republic, Malaysia, Philippines, Republic of Korea, Thailand, Timor-Leste, and Vietnam) criminalize distribution or dissemination of child pornography or obscene objects in general with imprisonment for maximum terms ranging from three years (China, Lao People’s Democratic Republic, Malaysia, Thailand, and Vietnam) to 20 years (Philippines); and
- **3** countries (Mongolia, Myanmar, and Singapore) provide maximum terms of imprisonment up to at least three months for distribution or dissemination of pornography or obscene objects in general under the domestic law, while **1** country (Democratic People’s Republic of Korea) prescribes punishment of short-term labor of not more than one year for distributing, without authorization, decadent objects, etc.

C.3. Offering child pornography

Among the 17 Asian countries analyzed, **15** countries (Brunei Darussalam, Cambodia, China, India, Indonesia, Japan, Lao People’s Democratic Republic, Malaysia, Myanmar, Philippines, Republic of Korea, Singapore, Thailand, Timor-Leste, and Vietnam) – with the exception of **2** countries (Democratic People’s Republic of

⁶⁹ In Brunei Darussalam, Section 293B of the Penal Code criminalizes taking any indecent or obscene photograph or pseudo-photograph of a child with a penalty of imprisonment of up to 10 years, or with fine, or both. Also, Section 292 of the Penal Code makes it an offense to produce any obscene articles punishable by a fine of not less than \$500 and not more than \$5,000 and imprisonment which may extend to 2 years.

⁷⁰ In India, Section 67B (b) of the IT Act stipulates that any person who creates any text or digital images depicting children in obscene or indecent or sexually explicit manner shall be subject to punishment with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees. In addition, Section 292 of the Penal Code prescribes that any person who, for purposes of distribution, etc., produces any obscene objects shall be punishable by imprisonment of either description for a term which may extend to 2 years, and with fine which may extend to two thousand rupees.

Korea and Mongolia) – criminalize offering, providing, or making available child pornography, pornography, or obscene objects in general, which may also apply to child pornography, under their domestic laws as discussed above.

Article 5, paragraph 5 of the Directive 2011/92/EU prescribes that offering or making available child pornography shall be punishable by a maximum term of imprisonment of at least two years.

Unless there are circumstances to increase penalties, amongst these **15** countries:

- **13** countries (Brunei Darussalam, Cambodia, China, India, Indonesia, Japan, Lao People’s Democratic Republic, Malaysia, Philippines, Republic of Korea, Thailand, Timor-Leste, and Vietnam) criminalize offering, providing, or making available child pornography or obscene objects in general with imprisonment for maximum terms ranging from two years (India⁷¹) to 20 years (Philippines⁷²); and
- **2** countries (Singapore and Myanmar) punish any person who offers to commit acts related to obscene objects in general with imprisonment for a maximum term up to three months under their Penal Codes.

C.4. Possession of child pornography

12 countries out of the 17 Asian countries analyzed (Brunei Darussalam, Cambodia, India, Indonesia, Japan, Malaysia, Myanmar, Philippines, Republic of Korea, Singapore, Timor-Leste, and Thailand) – with the exception of **5** countries (China, Democratic People’s Republic of Korea, Lao People’s Democratic Republic, Mongolia, and Vietnam) – have provisions under their domestic laws that explicitly criminalize “possession” of child pornography or pornographic/obscene objects with and/or without intent to distribute, which may cover possession of child pornography as well, as provided above.

Article 5, paragraph 2 of the Directive 2011/92/EU stipulates that possession of child pornography shall be punishable by a maximum term of imprisonment of at least one year. Article 5, paragraph 8 of this Directive allows Member States to use discretion to decide whether to criminalize possession of child pornography with or without intent to disseminate.

Among these **12** countries that explicitly specify criminal penalties for possessing child pornography or obscene objects in general:

- **10** countries (Brunei Darussalam, Cambodia, India, Indonesia, Japan, Malaysia, Philippines, Republic of Korea, Thailand, and Timor-Leste) criminalize the simple possession of child pornography or possession of child pornography, for the purposes of distribution, etc., or both, with imprisonment for maximum terms ranging from at least one year (Japan and Republic of Korea) to 17 years and four months (Philippines⁷³); and

⁷¹ In India, Section 67B (a) of the IT Act punishes any person who publishes a material in any electronic form which depicts children engaged in sexually explicit act or conduct with a penalty of an imprisonment up to 5 years and a fine. However, Section 292 of the Penal Code makes it illegal to offer to do any act which is offense under this Section with a penalty of imprisonment up to 2 years and a fine.

⁷² In the Philippines, any person who offers any form of child pornography in violation of Section 4 (c) of the Anti-Child Pornography Act of 2009 shall punishable by an imprisonment of *reclusion temporal* in its maximum period and a fine according to Section 15 (b) of this Act. The maximum period of the penalty of reclusion temporal shall be from 17 years, 4 months and 1 day to 20 years pursuant to Article 76 of the Revised Penal Code.

⁷³ In the Philippines, Sections 4 (d) and 15 (c) of the Anti-Child Pornography Act of 2009 criminalize possession of child pornography for the purposes of distribute, with a penalty of reclusion temporal in its medium period (ranging from 14 years, 8 months and 1 day to 17 years and 4 months) and a fine. Sections 4 (l) and 15 (i) of the Anti-Child Pornography Act of 2009 also criminalize simple possession of child pornography with a penalty of *arresto mayor* in its minimum period (ranging from 1 to 2 months) and a fine.

- **2** countries (Myanmar and Singapore⁷⁴) punish any person who, for the purposes of distribution, etc., has in his possession obscene objects, with a penalty of imprisonment up to three months under their Penal Codes.

Furthermore, Article 9 of the 2011/92/EU recommends that circumstances that aggravate penalties should be established in the relevant provisions of national law, when: a) the offense was committed by a member of the child’s family, a person cohabiting with the child, or a person who has abused a recognized position of trust or authority; b) the offense was committed by several persons acting together; c) the offense was committed within the framework of a criminal organization; d) the offender has previously been convicted of offenses of the same nature; e) the offender has deliberately or recklessly endangered the life of the child; or f) the offense involved serious violence or caused serious harm to the child.

D. COMMITMENT TO ESTABLISH EXTRATERRITORIAL JURISDICTION OVER CHILD PORNOGRAPHY OFFENSES

Article 4 (2) of the OPSC states that each State Party may take such measures as may be necessary to establish its extraterritorial jurisdiction over the offenses referred to in Article 3 (1) in one of the following cases: (a) when the alleged offender is a national of that State or a person who has his habitual residence in its territory; or (b) when the victim is a national of that State.

As stated earlier, Article 3 (1) (c) of the OPSC obliges States Parties to address acts of producing, distributing, disseminating, importing, exporting, offering, selling, or possessing for the above purposes child pornography as defined in its Article 2, whether committed domestically or “transnationally”, on an individual or organized basis.

Among the 17 Asian countries analyzed, **15** countries – with the exception of the Philippines⁷⁵ and Singapore⁷⁶ – establish extraterritorial jurisdiction of the State over child pornography offenses, pornography/obscenity offenses, or both, on the basis of the nationality of the alleged offender or nationality of the victim:

- **3** countries (Cambodia, Republic of Korea, and Timor-Leste) establish extraterritorial jurisdiction over child pornography offenses based on the nationality of the alleged offender or the nationality of the victim;
- **3** countries (Brunei Darussalam, Japan, and Lao People’s Democratic Republic) establish extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State;

⁷⁴ In Singapore, the simple possession of obscene films shall constitute a criminal offense pursuant to Section 30 of the Films Act. However, Section 292 of the Penal Code only punishes any person who, for the purpose of distribution, etc. has in his possession any obscene object, etc.

⁷⁵ The Anti-Child Pornography Act of 2009 does not contain explicit provisions establishing the extraterritorial jurisdiction of the Philippines over child pornography offenses stipulated in this Act when the alleged offender is a national of the Philippines or when the victim is a national of the Philippines.

However, Section 22 of the Anti-Child Pornography Act of 2009 describes the transnational nature of child pornography offenses. Furthermore, Section 23 of this Act prescribes that the Department of Justice (DOJ), in consultation with the Department of Foreign Affairs (DFA), shall endeavor to include child pornography among the extraditable offenses in future treaties. Further, Section 16 (c) of the same Act articulates that if the offender is a foreigner, he/she shall be immediately deported after the complete service of his/her sentence and shall forever be barred from entering the country.

⁷⁶ Singapore does not establish its extraterritorial jurisdiction over obscenity offenses stipulated in its domestic legislation. However, Singaporean law has provisions that establish extraterritorial jurisdiction of Singapore over an offense mentioned in Section 376C of the Penal Code (Commercial sex with minor under 18 outside Singapore) when the alleged offender is a citizen of a permanent resident of Singapore as stated below.

Section 376C (1) of the Penal Code states that “Any person, being a citizen or a permanent resident of Singapore, who does, outside Singapore, any act that would, if done in Singapore, constitute an offence under section 376B (Commercial sex with minor under 18), shall be guilty of an offence”.

Furthermore, Section 376C (2) of the Penal Code provides that “A person who is guilty of an offence under this section shall be liable to the same punishment to which he would have been liable had he been convicted of an offence under section 376B”.

- **3** countries (China, Democratic People’s Republic of Korea, and Thailand) address extraterritorial jurisdiction over pornography offenses or obscenity offenses under their domestic laws, which might also cover child pornography offenses, based on the nationality of the alleged offender or the nationality of the victim; and
- **6** countries (India⁷⁷, Indonesia⁷⁸, Malaysia, Mongolia, Myanmar, and Vietnam) allow the application of the provisions of the Penal Codes or Criminal Codes governing offenses involving debauched cultural products or obscene/indecent objects, which might be also applicable to child pornography offenses, in cases where the alleged offender is a national of the State.

D.1. Country that establishes its extraterritorial jurisdiction over child pornography offenses based on the nationality of the alleged offender or the nationality of the victim

❖ **Cambodia**

Cambodia establishes its extraterritorial jurisdiction over child pornography offenses: 1) when the alleged offender is its citizen; or 2) when a victim is its citizen, upon the commission of the offense pursuant to Article 3 of the Law on Suppression of Human Trafficking and Sexual Exploitation. Articles 40 and 41 of this Law include provisions addressing child pornography offenses.

❖ **Republic of Korea**

The Republic of Korea establishes its extraterritorial jurisdiction over child or juvenile pornography offenses prescribed in the Act on the Protection of Children and Juveniles from Sexual Abuse when: 1) the alleged offender is its national; or 2) a victim is its national subject to Articles 3, 6, and 8 of the Criminal Act.

Article 3 of the Criminal Act provides that this Act shall apply to all Korean nationals who commit crimes outside of the territory of the Republic of Korea. In addition, Article 33 of the Act on the Protection of Children and Juveniles from Sexual Abuse states that where criminally prosecuting a Korean citizen who commits a sex offense against a child or juvenile outside of the territory of the Republic of Korea, pursuant to Article 3 of the Criminal Act, the State shall endeavor to obtain criminal information swiftly from the relevant foreign country and punish such offender.

Moreover, Article 6 of the Criminal Act stipulates that this Act shall apply to aliens who commit crimes, other than those specified in the preceding Article, against the Republic of Korea or her nationals outside of the territory of the Republic of Korea. Article 6 of the Criminal Act further articulates that this shall not apply in cases where such acts under this Act are in effect at the time of the act do not constitute a crime, or the prosecution thereof or the execution of the punishment therefor is remitted.

Furthermore, pursuant to Article 8 of the Criminal Act, the general provisions of this Act (Articles 1-86) shall also apply to such crimes as are provided by other Acts and subordinate statutes unless provided otherwise by such Acts and subordinate statutes.

⁷⁷ In India, regarding offenses involving child pornography in electronic form, Section 75 of the IT Act (Act to apply for offense or contravention committed outside India) stipulates that the provisions of this Act shall apply to any offense or contravention committed outside India by any person irrespective of his nationality if the act or conduct constituting the offense or contravention involves a computer, computer system or computer network located in India.

⁷⁸ In Indonesia, concerning online sexual exploitation of children, Article 2 of the Electronic Information and Transactions Law articulates that this Law shall apply to any person who commits legal acts as governed by this Law, both within jurisdiction of Indonesia and outside jurisdiction of Indonesia, having legal effect within jurisdiction of Indonesia and/or outside jurisdiction of Indonesia and detrimental to the interest of Indonesia. The term “person” in this Law refers to an individual, whether an Indonesian citizen, foreign citizen, or legal entity pursuant to Article 1 of the same Law.

❖ **Timor-Leste**

Pursuant to Article 8 of the Penal Code, except as otherwise provided in treaties and conventions, Timorese criminal law is applicable to acts prescribed by its Article 176 (Child Pornography) and as long as: (a) the perpetrator is found in Timor-Leste and cannot be extradited or a decision has been made not to do so; (b) the acts are committed against Timorese nationals, so long as the perpetrator normally lives and is found in Timor-Leste; and (c) the acts are committed by a Timorese national or a foreigner against Timorese nationals, so long as the perpetrator is found in Timor-Leste, the acts are equally punishable by the legislation of the place in which the acts were committed, and they constitute a crime that allows for extradition and it cannot, in the particular case, be granted.

Application of Timorese law shall be subject to the restrictions set forth by Article 9 of the Penal Code.

D.2. Country that establishes its extraterritorial jurisdiction over child pornography offenses only when the alleged offender is a national of the State

❖ **Brunei Darussalam**

Section 3 of the Penal Code states that any person liable to be tried for an offense committed beyond the limits of Brunei Darussalam shall be dealt with according to the provisions of this Code for any act committed beyond Brunei Darussalam in the same manner as if such act had been committed within Brunei Darussalam. The Court of a Magistrate has jurisdiction over the offense stipulated in Section 293A of the Penal Code (Possession of indecent photograph of a child) pursuant to the First Schedule to the Criminal Procedure Code (Chapter 7) as amended by the Penal Code (Amendment) Order 2012. In addition, the High Court has jurisdiction over the offense prescribed in Section 293B of the Penal Code (Taking, distribution, showing, advertisement, or access of indecent photograph of a child) according to the First Schedule to the Criminal Procedure Code as amended by the Penal Code (Amendment) Order 2012.

In addition, Section 7 (f) of the Criminal Procedure Code provides that subject to the provisions of this Code, the jurisdiction of the High Court and the Court of a Magistrate in criminal matters shall extend to any offense committed by a subject of His Majesty whether the offense was committed within or outside of Brunei Darussalam. Also, Section 3 of the Brunei Nationality Act (Chapter 15) further articulates that a subject of His Majesty the Sultan and Yang Di-Pertuan shall have the status of a national of Brunei Darussalam.

❖ **Japan**

Article 10 of the Child Pornography Prohibiting Act (Crimes Committed by Japanese Nationals outside Japan) states that the crimes prescribed in paragraphs 1 to 7 of Article 7 of this Act (Provision of Child Pornography and Other Related Activities) shall be governed by Article 3 of the Penal Code (Crimes Committed by Japanese Nationals outside Japan), when such crimes are committed by Japanese nationals outside of its own territory.

❖ **Lao People's Democratic Republic**

Article 4 of the Penal Law stipulates that Lao citizens who commit offenses outside of the territory of the Lao People's Democratic Republic shall be charged with and punished for such offenses if they are defined as offenses under the Penal Law of the Lao People's Democratic Republic.

Moreover, the Penal Law provides a definition of the term "offenses" mentioned in Article 4 of this Law. Article 6 of the same Law states that all acts and abstentions deemed dangerous to the political,

economic, or social system of the Lao People's Democratic Republic, to the property of the State, collectives or individuals, to the lives, health, integrity, rights or freedom of the people, or to national security or public order as provided in the Penal Law or in "other laws" of the Lao People's Democratic Republic that define criminal penalties shall be considered offenses.

Accordingly, Lao People's Democratic Republic establishes its extraterritorial jurisdiction over child pornography offenses prescribed in the Law on the Protection of Rights and Interests of Children subject to Article 4 of the Penal Law when the alleged offender is its national.

E. LEGISLATION CRIMINALIZING ONLINE GROOMING OF CHILDREN

The Plan of Action of the Pact of Rio de Janeiro calls on States to undertake specific and targeted actions to prevent and stop the use of the Internet and new technologies for the grooming of children for online and offline abuse and for the production and dissemination of child pornography and other materials.

Article 23 of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse introduced the offense of grooming, which is referred to as the "solicitation of children for sexual purposes". Article 23 of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse requires each party to criminalize the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age below which it is prohibited to engage in sexual activities with a child for the purposes of engaging in sexual activities or producing child pornography and where this proposal has been followed by material acts leading to such a meeting. Other forms of grooming through real contacts or non-electronic communications are outside the scope of this provision because information and communication technologies are stated as means for committing the offenses specified by the provision. Accordingly, Article 23 of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse is considered to cover offenses concerning the online grooming of a child (also known as "online solicitation of a child for sexual purposes" or "online enticement of a child for sexual purposes").^{79, 80, 81}

The grooming of a child represents the initial actions taken by a sex offender to "socialize" or "prepare" the child for a sexual relationship. Child grooming is a process that may take place online, or offline, or a combination of the two.

Online enticement (or solicitation) of a child for sexual acts occurs when a sex offender uses the Internet to induce, lure, invite, or persuade the child to meet for sexual acts or commit acts of a sexual nature online (sending sexually explicit images or videos of themselves to the offender). Sex offenders employ a variety of means such as email, social networking sites, instant messaging, bulletin boards, and chat rooms to gain a child's trust and then arrange a face-to-face meeting. However, recent reports have shown that in some cases meeting offline is not the primary motivation of the sex offender as the Internet, "... enables offenders

⁷⁹ See the full text of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse at <http://conventions.coe.int/Treaty/EN/treaties/Html/201.htm> (last visited Oct. 27, 2014).

⁸⁰ See Explanatory Reports 155-159 to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse at <http://conventions.coe.int/Treaty/EN/Reports/Html/201.htm> (last visited July 24, 2014).

⁸¹ COUNCIL OF EUROPE, DISCUSSION PAPER, PROTECTION CHILDREN AGAINST SEXUAL VIOLENCE: THE CRIMINAL LAW BENCHMARKS OF THE BUDAPEST CONVENTION AND LANZAROTE CONVENTIONS (2012), at 40, available at http://www.coe.int/t/DGHL/cooperation/economiccrime/cybercrime/Documents/Reports-Presentations/2571_Child_benchmark_study_V32_pub_4_Dec12.pdf (last visited Jan. 19, 2015).

to limit sexual contact in an online-only environment. In this way they fulfil their sexual motivations without the added risk of meeting a child in person.”⁸²

Once the relationship with the child is established through online contact, sex offenders may meet with the child for sexual activities or show pornography (adult or child) to the child in order to lower his/her inhibitions, in an effort to “normalize” what is not normal and to instruct the child in sexual activities.

The enactment of online grooming or online enticement legislation, with or without the intent to meet offline, may help to identify latent sex offenders and preclude later victimization and exploitation of children.⁸³

In this part (V. Analysis of the legislative responses to crimes against children in alignment with relevant international instruments, E. Legislation criminalizing online grooming of children), an overview of the legislative responses of the 17 targeted Asian countries to online grooming will be provided. In addition, a review of provisions under domestic law that criminalize showing (or distributing) pornography to a child as a standalone offense among the 17 Asian countries analyzed shall be addressed separately from online grooming in Appendix B (Table 2 – Individual Country Information) and Appendix C (Table 3 – Offenses and Penalties).

Among the 17 Asian countries analyzed:

- **1** country (Philippines), under its domestic law, has explicit provisions criminalizing grooming, the definition of which shall extend to online grooming;
- **1** country (India) possibly criminalizes acts constituting online grooming, although its domestic legislation does not use the explicit terms “grooming” or “online grooming”;
- **2** countries (Brunei Darussalam and Singapore) have laws that explicitly address sexual grooming;
- **2** countries (Japan and Republic of Korea) may punish any person who commits acts related to online grooming, although their domestic laws do not use the explicit term “grooming” or the term “online grooming”; and
- **11** countries (Cambodia, China, Democratic People’s Republic of Korea, Indonesia, Lao People’s Democratic Republic, Malaysia, Mongolia, Myanmar, Thailand, Timor-Leste, and Vietnam) do not explicitly address online grooming or other acts relevant to online grooming under their domestic legislation.

E.1. Country that explicitly criminalizes acts constituting online grooming

❖ **Philippines**

Section 4 (h) of the Anti-Child Pornography Act of 2009 prohibits any person from engaging in grooming a child. In addition, Section 15 (e) of this Act sets out a criminal penalty for any person who is found guilty of violating Section 4 (h) of the same Act.

Section 3 (h) of the Anti-Child Pornography Act of 2009 defines “grooming” as the act of preparing a child or someone who the offender believes to be a child for sexual activity or a sexual relationship

⁸² Dr. Mike McGuire and Samantha Dowling, 2013, Home Office, *Cyber crime: A review of the evidence, Research Report 75*, at 4, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/246754/horr75-chap3.pdf (last visited Nov. 18, 2014).

⁸³ INT’L CTR. FOR MISSING & EXPLOITED CHILDREN, *supra* note 35, at 4.

by communicating any form of child pornography, including online enticement or enticement through other means.

Anyone under 18 years of age is considered a potential victim of grooming pursuant to Section 3 (a) of the Anti-Child Pornography Act of 2009, which defines a “child” as a person below 18 years of age.

E.2. Country that possibly criminalizes acts constituting online grooming

❖ India

Although Indian law does not use the explicit term “online grooming”, Section 12 of the Protection of Children from Sexual Offenses Act punishes any person who commits sexual harassment upon a child by repeatedly or constantly following or watching or contacting a child either directly or through electronic, digital, or any other means with sexual intent as mentioned in Section 11 of this Act.

Moreover, Section 67B (c) of the IT Act makes it an offense to induce, cultivate, or entice children into an online relationship with one or more children for sexually explicit acts. In addition, Section 67B (d) of the IT Act criminalizes facilitating online child abuse. However, the term “facilitate abusing children online” is neither specified nor explained in the IT Act. The general wording “facilitates abusing children online” under Section 67B (d) of the IT Act may cover online grooming unless there is an impediment to the punishment of a preparatory act and with some concerns in respect of over-criminalization.⁸⁴

Indian law considers everyone under age 18 as a potential victim of online grooming and related activities. Section 2 (1) (d) of the Protection of Children from Sexual Offenses Act states that “child” means any person below the age of 18 years. In addition, the Explanation to Section 67B of the IT Act states that for the purposes of this Section, the term “children” refers to persons who have not yet completed 18 years of age.

E.3. Country that explicitly criminalizes sexual grooming

❖ Brunei Darussalam and Singapore

Both Bruneian law and Singaporean law do not have explicit provisions criminalizing online grooming. However, Section 377G of the Bruneian Penal Code (introduced by Penal Code Amendment Order 2012 of the Brunei Darussalam) and Section 376E of the Singaporean Penal Code (introduced by the Penal Code Amendment Act 2007 of Singapore) criminalize sexual grooming committed by a person of or above the age of 21 years against a child under the age of 16 years.

Although both the Bruneian Penal Code and Singaporean Penal Code do not provide a clear definition of “online grooming” or “sexual grooming”, they do address punishable acts that shall constitute sexual grooming offenses. Pursuant to Section 377G (1) of the Bruneian Penal Code and Section 376E (1) of the Singaporean Penal Code, if any person of or above the age of 21 years (**A**) has met or communicated with another person (**B**) on two or more occasions, that person shall be guilty of an offense of sexual grooming provided that the following conditions are met:

⁸⁴ *Id.* at 42.

- (a) **A** intentionally meets **B** or travels with the intention of meeting **B**; and
- (b) at the time of the acts referred to in paragraph (a)
 - (i) **A** intends to do anything to or in respect of **B**, during or after the meeting, which if done will involve the commission by **A** of a relevant offense;
 - (ii) **B** is under 16 years of age; and
 - (iii) **A** does not reasonably believe that **B** is of or above the age of 16 years.

In order to be criminalized for sexual grooming as provided under Section 377G of the Bruneian Penal Code and Section 376E of the Singaporean Penal Code, the offender must possess the intention to meet a child to commit prescribed sexual offenses against such child at the time of meeting the child or at the time of traveling to meet the child.

VI. ADEQUACY OF THE LEGAL AND REGULATORY FRAMEWORK TO DEAL WITH OFFENSES AGAINST CHILDREN COMMITTED BY THE USE OF INFORMATION AND COMMUNICATION TECHNOLOGIES

A. REQUIREMENT FOR PROFESSIONALS WHO WORK WITH CHILDREN AND INTERNET SERVICE PROVIDERS TO REPORT CHILD PORNOGRAPHY OFFENSES

A.1. Mandatory reporting requirement for professionals who work with children

Individuals who, in their everyday, professional capacity, come into contact with children and owe a certain duty of care to those children shall be required to report suspected child pornography activities and/or child pornography offenses to law enforcement or another agency. This is due to the fact that professionals who work with children (i.e., health care and social service professionals, teachers, or school counselors) may develop well-founded suspicions about potential child victims of child pornography activities and/or child pornography offenses based on their daily interaction with children.⁸⁵

For the purposes of this Regional Study, while some countries (i.e., India) may have laws or regulations that require anyone with knowledge of an incident involving child pornography activities and/or child pornography offenses to report it to the appropriate authorities, only those countries with laws or regulations that specifically require professionals who work with children to report cases involving child pornography activities and/or child pornography offenses to law enforcement or another mandated agency when they learn of such cases are considered to create mandatory reporting requirements for professionals who work with children.

Furthermore, for the purposes of this Regional Study, countries that have laws or regulations that require professionals working with children to report circumstances involving child sexual abuse or child abuse upon the discover of such circumstances might also be deemed to establish mandatory reporting requirements for professionals working with children if the said countries' laws or regulations define the term "child sexual abuse" or the term "child abuse" to include children's participation or the use of children in pornography. However, if a country (i.e., Singapore) has a law or regulation that requires professionals working with children to report child abuse incidents upon the finding of such incidents without defining the term "child abuse" to include the use or involvement of a child in pornographic materials, such country shall not be considered to have legislation or regulation that requires professionals working with children to report child pornography activities or child pornography offenses.

Among the 17 Asian countries analyzed:

- **1** country (Republic of Korea) has provisions under domestic law that explicitly requires professionals who work with children to report child pornography offenses to a law enforcement agency upon learning of the occurrence of such offenses;
- **3** countries (Brunei Darussalam, Malaysia, and Philippines) have explicit provisions under their domestic law or order, which oblige professionals who work with children to report suspected incidents involving child abuse or child sexual abuse when they learn of the circumstances in addition to defining the terms "child abuse" or "child sexual abuse" to include children's involvement or participation in pornographic or obscene materials under the same law or order; and

⁸⁵ INT'L CTR. FOR MISSING & EXPLOITED CHILDREN, *supra* note 35, at 4-5.

- **13** countries (Cambodia, China, Democratic People’s Republic of Korea, India, Indonesia, Japan, Lao People’s Democratic Republic, Mongolia, Myanmar, Singapore, Thailand, Timor-Leste, and Vietnam) do not have explicit provisions requiring professionals working with children to report cases involving activities related to child pornography under their domestic law or regulation.

❖ **Republic of Korea**

Article 34 (2) of the Act on the Protection of Children and Juveniles from Sexual Abuse requires the head of prescribed institutions, facilities, or organizations or any employee thereof to immediately report a sex offense against a child or juvenile to an investigative agency when he/she becomes aware of the occurrence of such offense in the course of performing his/her duties.

The organizations, facilities, and institutions prescribed by Article 34 (2) of the Act on the Protection of Children and Juveniles from Sexual Abuse include, but are not limited to: a) schools defined in Article 2 of the Elementary and Secondary Education Act; b) child welfare facilities defined in Article 3, subparagraph 10 of the Child Welfare Act; c) medical institutions defined in Article 3 of the Medical Service Act; and d) youth counseling and welfare centers under Article 29 (1) of the Juvenile Welfare Support Act and youth shelters under Article 31, subparagraph 1 of the same Act.

Furthermore, the definition of a “sex offense against a child or juvenile” as provided in Article 2, subparagraph 2 of the Act on the Protection of Children and Juveniles from Sexual Abuse includes child or juvenile pornography offenses punishable by Article 11 of this Act. Moreover, the definition of “child or juvenile pornography” as specified by Article 2, subparagraph 5 of the same Act includes child or juvenile pornography in the form of a film, video, game software, or picture, image, etc., displayed on computers or other communications media.

A.2. Mandatory reporting requirement for Internet Service Providers

The Plan of Action of the Pact of Rio de Janeiro calls on States to take the necessary legislative measures to require Internet Service Providers (ISPs) to report and remove child pornography websites and child sexual abuse images from their networks.

For the purposes of this Regional Study, while some countries may have general reporting law or regulation (i.e., anyone with knowledge of any crime must report the crime to the appropriate authorities), only those countries that have provisions under their domestic law or regulation that specifically require ISPs to report child pornography (including the occurrence of child pornography activities and/or child pornography offenses) to law enforcement or another designated agency when they are aware of it are considered to establish a mandatory reporting requirement for ISPs.

There are countries that have provisions under their domestic law or regulation that limit the liability of ISPs, as long as they remove child pornography and take measures to prevent the further transmission of such content when they learn of its presence on their own networks (i.e., Republic of Korea⁸⁶). However, such

⁸⁶ The Republic of Korea does not have provisions that require ISPs to report child or juvenile pornography to relevant authorities after learning of they are aware of suspected child pornography materials it on their networks. However, the Act on the Protection of Children and Juveniles from Sexual Abuse have provisions that oblige online service providers (whose definition includes ISPs) to remove the discovered child or juvenile pornography under their own networks once they learn of it as stated below.

countries are not deemed to have legislation or regulation that establishes a mandatory reporting requirement for ISPs.⁸⁷

Among the 17 Asian countries analyzed:

- **1** country (Philippines) has legislation that provides explicit provisions requiring ISPs to report child pornography offenses and/or child pornography activities to law enforcement agencies when they become aware of cases involving commission of such offenses;
- **1** country (China) has regulatory measures that mandate ISPs to report information with obscene or pornographic content to relevant authorities when they become aware of it; and
- **15** countries (Brunei Darussalam, Cambodia, Democratic People’s Republic of Korea, India,⁸⁸ Indonesia, Japan, Lao People’s Democratic Republic, Malaysia, Mongolia, Myanmar, Republic of Korea, Singapore, Thailand, Timor-Leste, and Vietnam) do not have explicit provisions under their domestic law or regulation establishing a mandatory reporting requirement for ISPs when they learn of circumstances involving child pornography.

❖ **Philippines**

Section 9 of the Anti-Child Pornography Act of 2009 articulates that, “All Internet Service Providers (ISPs) shall notify the Philippine National Police (PNP) or the National Bureau of Investigation (NBI) within seven (7) days from obtaining facts and circumstances that any form of child pornography is being committed using its server or facility.”

B. DATA RETENTION OR DATA PRESERVATION PROVISIONS

Non-content based data includes subscriber information (i.e., data that helps identify the subscriber), as well as traffic data (i.e., information on the route, time, date, duration, destination, and source of a communication). Insufficient provision for the retention of non-content based data under domestic law or regulation is a significant barrier to identifying and locating suspects in ICT-facilitated offenses against children. Additionally, the inadequate provision for preservation of non-content based data under domestic legislation or regulation has become a substantial hindrance and obstacle in criminal prosecutions against a potential suspect of offenses against children committed with the use of ICTs and identified during the investigation.

This Regional Study will examine data retention or data preservation under domestic legislation or regulation relating to the use of ICTs to commit offenses against children. For the purposes of this Regional Study, the term “data retention” refers to retaining (i.e., keeping) non-content based data for a set period of time.

Article 17 (1) of the Act on the Protection of Children and Juveniles from Sexual Abuse mandates any online service provider to take measures to a) detect child or juvenile pornography in the information and communication network managed by himself/herself or b) immediately delete the detected (child or juvenile) pornography and take technical measures to prevent or block transmission. Any online service provider who fails to comply with either of those two obligations mentioned in a) and b) shall be punished pursuant to Article 17 (1) of this Act.

Article 17 (1) of the Act on the Protection of Children and Juveniles from Sexual Abuse allows an online service provider to be exempted from the obligation stipulated in one of the following cases where: a) the online service provider has not been negligent in paying due attention to detect the child or juvenile pornography in the information and communications network or b) where substantial technical difficulty exists even though he/she has tried to prevent or block the transmission of the detected child or juvenile pornography.

⁸⁷ INT’L CTR. FOR MISSING & EXPLOITED CHILDREN, *supra* note 35, at 4-5 and 15 n. 46.

⁸⁸ Indian law does not provide explicit provisions that require Internet Service Providers (ISPs) to report child pornography when they discover it on their own networks. However, Section 20 of the Protection of Children from Sexual Offenses Act mandates any personnel of the media, hotel, lodge, hospital, club, studio, or photographic facilities, upon being aware of any material or object which is sexually exploitative of a child (including pornographic, sexually related, or making obscene representations of a child or children) through the use of any medium, to provide such information to the Special Juvenile Police Unit or to the local police, as the case may be. In addition, Section 21 of the Protection of Children from Sexual Offenses Act punishes anyone who violates Section 20 of this Act by failing to report a case involving a sexual offense against a child prescribed in the same Act.

In addition, for the purposes of this Regional Study, the term “data preservation” refers to preserving the non-content based data of an identified user for a specific period of time in order to prevent loss or modification of the data.⁸⁹

Data preservation is a common alternative to data retention because data preservation provisions permit law enforcement officers to require service providers to immediately begin retaining (keeping) data relevant to criminal investigation proceedings.⁹⁰

Among the 17 Asian countries analyzed:

- **5** countries (China, India, Republic of Korea, Thailand, and Vietnam) have domestic laws, regulations, or rules that provide data retention provisions with a specified data retention period;
- **2** countries (Japan and Philippines) have data preservation provisions under their domestic legislation;
- **2** countries (Brunei Darussalam and Indonesia) have data retention provisions under their domestic law, although, 1) the applicability of current data retention provisions to child pornography offenses is unclear under the existing laws (Brunei Darussalam); or 2) the rules concerning the specific data retention period have yet to be promulgated (Indonesia);
- **2** countries (Malaysia and Singapore) only have provisions under their domestic laws that specifically address personal data retention principles; and
- **6** countries (Cambodia, Democratic People’s Republic of Korea, Lao People’s Democratic Republic, Mongolia, Myanmar, and Timor-Leste) do not have data retention or data preservation provisions under their domestic laws or regulations.

B.1. Country that has data retention provisions with a specified data retention period

❖ **China**

Pursuant to Article 14 of the Administrative Measures on Internet Information Services and Article 15 of the Administrative Provisions for Electronic Bulletin Services on the Internet, Internet access providers shall record user online time, user account numbers, Internet addresses or domain names, and the principal telephone numbers of Internet users. According to Article 14 of the Administrative Measures on Internet Information Services and Article 15 of the Administrative Provisions for Electronic Bulletin Services on the Internet, such records shall be kept for 60 days and shall be made available when relevant State authorities make inquiries in accordance with the law.

❖ **India**

Section 79 (2) (c) of the IT Act provides that intermediaries are exempted from liability for third party content provided that they observe due diligence while discharging their duties under this Act and also observe such other guidelines as the Central Government may prescribe. The Information Technology (Guidelines for Cyber Café) Rules were issued in exercise of powers conferred by Section 79 (2) of the IT Act in order to establish the Government’s standard for what constitutes “due diligence” by intermediaries. These Rules contain provisions addressing the duties of cybercafé

⁸⁹ INT’L CTR. FOR MISSING & EXPLOITED CHILDREN, *supra* note 35, at 5-7.

⁹⁰ CTR. FOR DEMOCRACY AND TECH., DATA RETENTION MANDATES: A THREAT TO PRIVACY, FREE EXPRESSION AND BUSINESS DEVELOPMENT (2011), at 17, available at https://www.cdt.org/files/pdfs/CDT_Data_Retention_Paper.pdf.

owners, as one of the intermediaries⁹¹, to retain prescribed information⁹² as part of their duty to observe due diligence under Section 79 (2) of the IT Act as stated below.

In addition, cybercafé owners shall be responsible for storing and maintaining: a) a history of websites accessed using the computer resources at the cybercafé; and b) logs of proxy servers installed at the cybercafé for each user or for each access for a period of at least one year pursuant to Section 5 of the Information Technology (Guidelines for Cyber Café) Rules.

❖ **Republic of Korea**

The operators of telecommunications businesses shall keep the communication confirmation data for a period of 3 months, 6 months, or 12 months depending on the types of data prescribed by the Act pursuant to Articles 2, subparagraph 11 and 15-2 of the Protection of Communications Secrets Act, as well as Article 41 (2) of the Enforcement Decree of the Protection of Communications Secrets Act.⁹³

❖ **Thailand**

Pursuant to Section 26 of the Computer Crime Act of Thailand, service providers⁹⁴ are required to store computer traffic data⁹⁵ for at least 90 days from the date on which the data is put into the computer system. However, if necessary, a relevant competent official may instruct a service provider to store data for a longer period, not to exceed one year, on a special case or temporary basis. In addition, according to Section 26 of the Computer Crime Act, service providers must keep the necessary information of the service user⁹⁶ in order to be able to identify the service user from the beginning of the service provision, and such information must be kept for a further period not to exceed 90 days after the service agreement has been terminated.

❖ **Vietnam**

Section 3 of the Joint Circular on Management of Internet Agent states that all Internet agents, in the course of conducting business, shall fully exercise the rights and obligations to use program management software already set up for the agent to store information about users services including access address, time of access, and type of service (email, chat, FTP, Telnet, etc.) for 30

⁹¹ The definition of the term "intermediary" shall include ISPs and cybercafé operators according to Section 2 (1) (i) of the Information Technology (Intermediaries Guidelines) Rules, Section 2 (1) (g) of the Information Technology (Guidelines for Cyber Café) Rules, and Section 2 (1) (w) of the IT Act.

⁹² The definition of the term "information" includes "data" pursuant to Section 2 (1) (f) of the Information Technology (Guidelines for Cyber Café) Rules, Section 2 (1) (h) of the Information Technology (Intermediaries Guidelines) Rules, and Section 2 (1) (v) of the IT Act.

⁹³ The communication confirmation data involving: a) the date of telecommunications by subscribers, b) the time that telecommunications commence and end; c) the communications number of outgoing and incoming call, etc. and the subscriber's number of the other party; and d) the frequency of use shall be kept by the operator of the telecommunications business for 12 months, provided, that the six month retention period shall be applicable in terms of inner city and/or suburb calls. Other types of communication confirmation data consisting of: a) the computer communications or Internet log-records relating to the facts of using the telecommunications services by the users of computer communications or Internet; b) the data on tracing a location of information communications apparatus connecting to information communications networks; and c) the data on tracing a location of connectors capable of confirming the location of information communications apparatus to be used by the users of computer communications or the Internet for connecting with information communications networks shall be kept by the operator of the telecommunications business for three months.

⁹⁴ Section 3 of the Computer Crime Act articulates that the term "service provider" in this Act shall mean (1) a person who provides service to the public with respect to access to the Internet or other mutual communication via a computer system, whether on their own behalf, or in the name of, or for the benefit of another person or (2) a person who provides services with respect to the storage of computer data for the benefit of the other person.

⁹⁵ Section 3 of the Computer Crime Act states that the term "computer traffic data" in this Act shall mean data related to computer system-based communications showing sources of origin, starting points, destinations, routes, time, dates, volumes, time periods, types of services or others related to that computer system's communications.

⁹⁶ Section 3 of the Computer Crime Act stipulates that the term "service user" in this Act means a person who uses the services provided by a service provider, with or without fee.

days. The storage duration is counted from the time when information is transmitted from/to servers in the service of information security work of functional agencies.

B.2. Country that has data preservation provisions

❖ Japan

The Criminal Procedure Code (amended by Amendment of Criminal Procedure Code (enacted in June 2011) provides data preservation provisions.⁹⁷ Article 197 of the Criminal Procedure Code allows a public prosecutor, public prosecutor's assistant officer, or judicial police official to ask telecommunication business operators, etc. not to erase the source of communication, destination, communication date and time, and other communication record for a fixed period ranging from 30 to 60 days, when it is necessary or particularly necessary.

❖ Philippines

According to Section 13 of the Cybercrime Prevention Act of 2012, the integrity of traffic data⁹⁸ and subscriber information relating to communication services provided by a service provider shall be preserved for a minimum period of six months from the date of the transaction.

Moreover, law enforcement authorities may order a one-time extension for another six months provided that once computer data that is preserved, transmitted, or stored by a service provider is used as evidence in a case, the mere furnishing to such service provider of the transmittal document by the office of the prosecutor shall be deemed a notification to preserve the computer data until the termination of the case provided under Section 13 of the Cybercrime Prevention Act of 2012.

C. REQUIREMENT TO IDENTIFY USERS OF PUBLIC COMPUTERS IN CYBERCAFÉS

The Plan of Action of the Pact of Rio de Janeiro calls on States to encourage and support Internet cafés to develop and implement, with the meaningful participation of parents, children, and adolescents, voluntary Codes of Conduct and other corporate social responsibility mechanisms and to develop legal tools for enabling the adoption of child protection measures in these businesses. Many Internet cafés (also known as “cybercafés”) afford anonymity, without requiring the identification of their users to log on to computers. To prevent the use of public computers in cybercafés for criminal purposes utilizing the anonymity offered by public computers in cybercafés and facilitate the enforcement of legal tools and/or Codes of Conduct for child protection, the adoption of legislative or regulatory measures that require cybercafés to identify their users shall be needed.

Among the 17 Asian countries analyzed:

- **4** countries (China, India, Malaysia, and Myanmar) have regulations or rules that explicitly require the identification of users of public computers in cybercafés; and
- **13** countries (Brunei Darussalam, Cambodia, Democratic People’s Republic of Korea, Indonesia, Japan, Lao People’s Democratic Republic, Mongolia, Philippines, Republic of Korea,⁹⁹ Singapore, Thailand,¹⁰⁰

⁹⁷ CTR. FOR DEMOCRACY AND TECH., *supra* note 90, at 17 n. 92.

⁹⁸ Pursuant to Section 12 of the Cybercrime Prevention Act of 2012, the term “traffic data” refers only to the communication’s origin, destination, route, time, date, size, duration, or type of underlying service, but not content, nor identities.

⁹⁹ In the Republic of Korea, there is no legislation or regulation that requires the identification of users of public computers in cybercafés. However, an owner or an employee of a cybercafé may demand users to produce valid identification in order to verify their ages if any juveniles under the age of 18 (including students in high school pursuant to Article 2 of the Elementary and Secondary Education Act) enter into their business establishments to use the public computers at night (from 10:00pm to 9:00am) in accordance with the relevant provisions of the Game Industry Promotion Act, the Enforcement Decree of the Game Industry Promotion Act, and the Juvenile Protection Act.

Timor-Leste, and Vietnam¹⁰¹) do not have explicit provisions under their domestic laws, regulations, or rules that require cybercafés to identify their users.

❖ **China**

Pursuant to Article 23 of the Regulations on Administration of Business Premises for Internet Access Services, a unit operating business premises for Internet access services¹⁰² shall check and register the identity cards or other valid credentials of consumers of Internet access services, and make a record of relevant log-on information. According to the same Article, the registered contents and copies of the record shall be kept for a period of not less than 60 days.

❖ **India**

Cybercafés shall not allow any user to use its computer resource without the identity of the user being established pursuant to Section 4(1) of the Information Technology (Guidelines for Cyber Café) Rules. The intending user may establish his identify by producing a document which shall identify the user to the satisfaction of the cybercafé. Such document may include any of the following: 1) identity card issued by any school or college; 2) photo credit card or debit card issued by a bank or post office; 3) passport; 4) voter identity card; 5) permanent account number (PAN) card issued by income-tax authority; 6) photo identity card issued by the employer or any government agency; 7) driver's license issued by the appropriate government; or 8) unique identification (UID) number issued by the unique identification authority of India (UIDAI).

A cybercafé must keep a record of the user identification document by storing either a photocopy or a scanned copy of the document duly authenticated by the user and an authorized representative of the cybercafé. Such record shall be securely maintained for a period of at least one year according to Section 4 (2) of the Information Technology (Guidelines for Cyber Café) Rules.

❖ **Malaysia**

According to Section 3 of the Cyber Centre and Cyber Café (Federal Territory of Kuala Lumpur) Rules 2012, no person shall use any place or premises as a center or cybercafé unless a license for that purpose has been issued under these Rules by the Commissioner.

Moreover, Section 12 (1) of the Cyber Centre and Cyber Café (Federal Territory of Kuala Lumpur) Rules 2012 requires the licensee to provide and maintain a record of computer usage for each

¹⁰⁰ Thailand does not have legislation or regulation that requires the identification of users of public computers in cybercafés. However, the Computer Crime Act enables the identification of the service users through the information kept by the service providers.

Pursuant to Section 26 of the Computer Crime Act, service providers must keep the necessary information of the service user in order to be able to identify the service user from the beginning of the service provision, and such information must be kept for a further period not exceeding 90 days after the service agreement has been terminated.

¹⁰¹ Although Vietnam does not have legislation or regulation that requires cybercafé owners or operators to verify the identification of their customers using public computers in cybercafés, the Decision promulgating the regulation on ensuring safety and security in activities of managing, providing, and using Internet services in Vietnam (No. 71/2004/QĐ-BCA (A11) dated January 29, 2004) has provisions that require Internet agents to keep information on the identification of service users as stated below.

Article 8 of the Decision promulgating the regulation on ensuring safety and security in activities of managing, providing and using Internet services in Vietnam stipulates that Internet agents shall keep service use registration books for recording full and detailed information about their customers, including full names, addresses, serial numbers of identity cards or passports, and the date and time the service was used. Article 1 of this Decision provides that "Internet agents" includes agents that provide Internet service and/or online service.

¹⁰² Article 2 of the Regulations on Administration of Business Premises for Internet Access Services defines the term "business premises for Internet access services" as a business premises, such as Internet bars or computer lounges, where Internet access services are provided to the general public by means of computers or other devices. Thus, the definition of business premises for Internet access services includes cybercafés.

computer determined under paragraph 4 (4) (b) of these Rules in his licensed premises. Pursuant to Section 12 (1) of these Rules, the record of computer usage in the licensed areas for cybercafés and cyber centres shall consist of the following items: (a) name and identity card number of the user or passport number for non-citizens; (b) telephone number of the user; (c) identification number of the computer used; (d) date, time, and period of use of such computer; and (e) any other additional information which the licensee thinks necessary.

❖ **Myanmar**

Section 1 of the Public Access Center Regulations by Myanmar Info-Tech stipulates that, “All cyber café users must supply his/her name, identity card (or passport number), address, and phone number to the cyber center and cybercafé owners who must record the users’ identities.”

D. LEGISLATION THAT SPECIFICALLY ADDRESSES THE USE OF ICTS TO COMMIT CRIMES AGAINST CHILDREN

The Plan of Action of the Pact of Rio de Janeiro calls on States to undertake specific and targeted actions to prevent and stop child pornography and the use of the Internet and new technologies for the grooming of children for online and offline abuse and for the production and dissemination of child pornography and other materials.

For the purposes of this Regional Study, provisions under the law that specifically criminalize the following acts were taken into account: (1) the use of a computer, computer system, ICTs to: a) make (produce), watch, possess, distribute, disseminate, or sell child pornography; or b) to commit other crimes against children; or (2) browsing, viewing, accessing, or downloading child pornography.

Among the 17 Asian countries analyzed:

- **8** countries (Brunei Darussalam, India, Indonesia, Japan, Philippines, Republic of Korea, Singapore, and Thailand) have legislation that explicitly addresses the use of ICTs to commit crimes against children;
- **2** countries (Cambodia and Timor-Leste) have legislation that uses the term such as “electronic form” or “any medium of communication” when specifying punishment for acts related to child pornography;
- **1** country (China) is possibly considered to have a law that addresses the use of ICTs to commit child pornography offenses in combination with judicial interpretations; and
- **6** countries (Democratic People’s Republic of Korea, Lao People’s Democratic Republic, Malaysia, Mongolia, Myanmar, and Vietnam) do not have legislation that specifically addresses the use of ICTs to commit crimes against children.

❖ **Brunei Darussalam**

The Penal Code (amended by the Penal Code Amendment Order 2012) contains provisions addressing the use of ICTs to commit crimes against children. Specifically, Section 293B (1) (e) of the Penal Code punishes any person who accesses an indecent or obscene photograph or pseudo-photograph of a child.

❖ **India**

The principal law that governs crimes against children committed by the use of ICTs in India is the Information Technology Act (amended by the Information Technology (Amendment) Act, 2008) (also known as “IT Act”).

Section 67B (b) of the IT Act criminalizes downloading or browsing of material in electronic form depicting children in an obscene or indecent or sexually explicit manner.

❖ **Indonesia**

The primary legislation that specifically addresses the use of ICTs to commit crimes against children in Indonesia is the Anti-Pornography Law (Law No. 44 of 2008 concerning pornography). Any person who downloads pornography that explicitly contains child pornography shall be punished with imprisonment for a maximum of four years and/or a fine not exceeding Rp2,000,000,000.00 (two billion rupiah) pursuant to Articles 4, 5, and 31 of the Anti-Pornography Law.

❖ **Japan**

The principal law that specifically addresses crimes against children with the use of ICTs in Japan is the Child Pornography Prohibiting Act.

With regard to child pornography offenses, any person who provides electromagnetic records or any other record which depicts the pose of a child, which falls under any of the items of Article 2 (3) of the Child Pornography Prohibiting Act, in a visible way through electric telecommunication lines shall be sentenced to imprisonment with labor for not more than three years, or a fine of not more than three million yen pursuant to Article 7 (2) of this Act.

❖ **Philippines**

The principal laws that specifically address crimes against children with the use of ICTs in the Philippines are the Anti-Child Pornography Act of 2009 and the Cybercrime Prevention Act of 2012. With regard to child pornography offenses, any person who transmits or willfully accesses any form of child pornography in violation of Section 4 of the Anti-Child Pornography Act of 2009 shall be subject to the penalties described in Section 15 of this Act.

❖ **Republic of Korea**

The principal law in the Republic of Korea that deals with crimes against children committed by the use of ICTs is the Act on the Protection of Children and Juveniles from Sexual Abuse.

With respect to online sexual exploitation of children, a person who arranges the purchase of child or juvenile sex or a person who provides information that assists in the purchase thereof through an information and communications network as a profession, shall be punished by imprisonment for a fixed term of at least seven years pursuant to Article 15 (1), subparagraph 2 of the Act on the Protection of Children and Juveniles from Sexual Abuse.

❖ **Singapore**

The principal law in Singapore that specifically addresses the use of ICTs to commit crimes against children is the Penal Code. Pertaining to online sexual exploitation of children, Section 376D of the Penal Code criminalizes advertising child sex tourism online as stated below.

Section 376D of the Penal Code (Tour outside Singapore for commercial sex with minor under 18) punishes any person who publishes information by any means, whether by written, electronic, or other form of communication, that intended to promote conduct that would constitute an offense under Section 376C of this Code (Commercial sex with minor under 18 outside Singapore), or to assist any other to engage in such conduct.

❖ **Thailand**

The Child Protection Act contains provisions addressing the use of ICTs to commit crimes against children. According to Section 27 of the Child Protection Act, advertising or disseminating any information on a child, by means of the media or any other kind of information technology, with the intention of causing damage to the mind, reputation, prestige, or any other interests of the child, or seeking benefit for oneself or others in an unlawful manner, is prohibited. Furthermore, any person who violates Section 27 of this Act shall be liable to a term of imprisonment not exceeding six months, or a fine not exceeding 60,000 Baht, or both pursuant to Section 79 of the same Act.

E. AGGRAVATION OF PENALTIES FOR USING ICTS TO COMMIT CRIMES AGAINST CHILDREN

Damages resulting from distribution, transmission, or dissemination of information that can cause harm to children (i.e., information containing child pornography or child sexual exploitation) to unspecified persons through ICTs can easily be scaled up. In addition, it will be difficult to restore children's rights once information harmful to the interests of children circulates on the Internet. Accordingly, the enhancement of the punishment for using ICTs to commit crimes against children shall be appropriate.

Among the 17 Asian countries analyzed:

- **2** countries (Indonesia and Philippines) have explicit provisions under their domestic laws that aggravate penalties for using ICTs to commit crimes against children; and
- **15** countries (Brunei Darussalam, Cambodia, China, Democratic People's Republic of Korea, India, Japan, Lao People's Democratic Republic, Malaysia, Mongolia, Myanmar, Republic of Korea, Singapore, Thailand, Timor-Leste, and Vietnam) do not have provisions under their domestic legislation that explicitly enhance punishment for using ICTs to commit crimes against children.

❖ **Indonesia**

Article 27, paragraph (1) of Law No. 11 of 2008 concerning the Electronic Information and Transactions (also known as "Electronic Information and Transactions Law") prohibits any person from knowingly and without authority distributing and/or transmitting and/or causing to be accessible electronic information and/or electronic records with contents against propriety. Any person who violates Article 27, paragraph (1) of the Electronic Information and Transactions Law shall be sentenced to a penalty of up to six years of imprisonment and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah) according to Article 45, paragraph (1) of this Law.

In case of the commission of criminal acts as stipulated in Article 27, paragraph (1) of the Electronic Information and Transactions Law relating to propriety or the sexual exploitation of children, such person shall be subject to an increase in the sentence by one third of the basic sentence pursuant to Article 52, paragraph (1) of this Law.

❖ **Philippines**

Section 6 of the Cybercrime Prevention Act of 2012 (also known as the "Republic Act No. 10175") stipulates that all crimes defined and penalized by the Revised Penal Code, as amended, and special laws, if committed by, with, and through the use of information and communications technologies, shall be covered by the relevant provisions of this Act, provided that the penalty to be imposed shall be one degree higher than that provided for by the Revised Penal Code, as amended, and special laws, as the case may be.

Furthermore, in respect of child pornography offenses, Section 8 of the Cybercrime Prevention Act of 2012 provides that any person found guilty of the punishable acts enumerated in Section 4 (c) (2) of this Act shall be punished with the penalties as enumerated in the “Anti-Child Pornography Act of 2009” or “Republic Act No. 9775”, provided that the penalty to be imposed shall be one degree higher than that provided for in Republic Act No. 9775, if committed through a computer system. Section 4 (c) (2) of the same Act classifies child pornography offenses as one of the content-related cybercrime offenses.

F. LEGISLATION CRIMINALIZING ADVERTISING CHILD SEX TOURISM ONLINE

Sexual exploitation of children and adolescents in travel and tourism under the Plan of Action of the Pact of Rio de Janeiro calls on States to prohibit the production and dissemination of material advertising the sexual exploitation of children in tourism, and to alert travelers to criminal sanctions that will apply in cases of sexual exploitation of children.

Furthermore, the Plan of Action of the Pact of Rio de Janeiro calls on States to undertake specific and targeted actions to prevent and stop child pornography and the use of the Internet and new technologies for the grooming of children for online and offline abuse and for the production and dissemination of child pornography and other materials.

For the purposes of this Regional Study, the term “child sex tourism” is the sexual exploitation of children by a person or persons who travel from their home district, home geographical region, or home country in order to have sexual contact with children. Child sex tourists can be domestic travelers, as well as international tourists.¹⁰³

Among the 17 Asian countries analyzed:

- **2** countries (Brunei Darussalam and Singapore) have explicit provisions criminalizing advertising child sex tourism online under their domestic law;
- **1** country (Philippines) has legislation that explicitly criminalizes sex tourism; and
- **14** countries (Cambodia, China, Democratic People’s Republic of Korea, India, Indonesia, Japan, Lao People’s Democratic Republic, Malaysia, Mongolia, Myanmar, Republic of Korea, Thailand, Timor-Leste, and Vietnam) do not have legislation that explicitly criminalizes advertising child sex tourism online.

In the case of India, the Code of Conduct for Safe & Honorable Tourism was adopted on July 1, 2010. This is not a legally binding instrument, but a set of guidelines for the travel and tour sector. The travel and tour sector, which is under the scope of the application of this guidance, includes: 1) the owners, suppliers, contractors, employees of hotels, restaurants, lodges, guest houses, tour agents, entertainment establishments, etc.; and 2) service providers such as event management organizations, entertainment providers, transport operators like taxis, buses, tour guides, and other services or agencies associated with the tourism industry.

¹⁰³ ECPAT, COMBATING CHILD SEX TOURISM: QUESTIONS & ANSWERS, *supra* note 9, at 6.

F.1. Country that explicitly criminalizes advertising child sex tourism online

❖ Brunei Darussalam

Section 377F of the Penal Code (Tour outside Brunei Darussalam for commercial sex with person under 18) criminalizes advertising child sex tourism online. Section 377F (1) (c) of the Penal Code makes it an offense to print, publish, or distribute any information that is designed to promote conduct that would constitute an offense under Section 377D (Commercial sex with person under 18 outside Brunei Darussalam) of this Code.

Furthermore, Section 377F (2) of the Penal Code prescribes that for the purposes of subsection (1) (c), the “publication of information” means the publication of information by any means, whether by written, electronic, or any other form of communication.

❖ Singapore

Section 376D of the Penal Code (Tour outside Singapore for commercial sex with minor under 18) criminalizes advertising child sex tourism online. Section 376D (1) (c) punishes any person who prints, publishes, or distributes any information that is intended to promote conduct that would constitute an offense under Section 376C (Commercial sex with minor under 18 outside Singapore) or assist any other person to engage in such conduct.

Further, Section 376D (2) of this Code stipulates that for the purposes of subsection (1) (c), the publication of information refers to the publication of information by any means, whether by written or any other form of communication.

F.2. Country that explicitly criminalizes sex tourism

❖ Philippines

Philippine law does not have explicit provisions that criminalize advertising child sex tourism online. However, Republic Act 9208, an act to institute policies to eliminate trafficking in persons especially women and children, establishing the necessary institutional mechanisms for the protection and support of trafficked persons, providing penalties for its violation, and for other purposes, as amended by Republic Act No. 10364, an act expanding Republic Act No. 9208, entitled an act to institute policies to eliminate trafficking in persons especially women and children, establishing the necessary institutional mechanisms for the protection and support of trafficked persons, providing penalties for its violations and for other purposes (hereafter referred to as “Republic Act No. 9208, as amended by Republic Act No. 10364”) contains provisions criminalizing sex tourism.

Section 4 (d) of the Republic Act No. 9208, as amended by Republic Act No. 10364, explicitly includes “sex tourism” as an offense of trafficking in persons. The term “sex tourism” refers to a program organized by travel and tourism-related establishments and individuals consisting of tourism packages or activities, utilizing and offering escort and sexual services as enticement for tourists, which includes sexual services and practices offered during rest and recreation periods for members of the military according to Section 3 (g) of the Republic Act No. 9208, as amended by Republic Act No. 10364.

Section 10 of the Republic Act No. 9208, as amended by Republic Act No. 10364, specifies punishment for committing offenses of trafficking in persons mentioned in Section 4 (d) of the Republic Act No. 9208, as amended by Republic Act No. 10364, by undertaking or organizing tours

and travel plans that consist of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography, or sexual exploitation.

G. LEGISLATION TO PREVENT AND COMBAT CYBERBULLYING

The UN Resolution 2011/33 highlights that technical developments have permitted the appearance of crimes including cyberbullying.¹⁰⁴

For the purposes of this Regional Study, the term “cyberbullying” refers to the use of ICTs to support deliberate, repeated, and hostile behavior by an individual or group that is intended to harm others.¹⁰⁵

Among the 17 Asian countries analyzed:

- **3** countries (Japan, Philippines, and Republic of Korea) have domestic laws regarding cyberbullying;
- **1** country (Singapore) is considered to have legislation concerning cyberbullying although Singaporean law does not use the explicit terms of “cyberbullying” or “bullying”; and
- **13** countries (Brunei Darussalam, Cambodia, China, Democratic People’s Republic of Korea, India, Indonesia, Lao People’s Democratic Republic, Malaysia, Mongolia, Myanmar, Thailand, Timor-Leste, and Vietnam) do not have domestic laws concerning cyberbullying.

G.1. Country that has legislation concerning cyberbullying

❖ Japan

The Act on the Promotion of Preventive Measures for Bullying (enacted in 2013) (also known as “Anti-Bullying Law”) contains provisions addressing bullying committed via the Internet as stated below.

i. Definition

Article 2 (1) of the Act on the Promotion of Preventive Measures for Bullying provides that the term “bullying” as used in this Act means an act which has a mental or physical influence against a child by children who are in the same school as the child or in a certain personal relationship with the child (including that which is conducted through the Internet) which makes the child who is the subject of the act to feel mental or physical pain.

ii. Measures to prevent and combat cyberbullying

Article 19 of the Act on the Promotion of Preventive Measures for Bullying deals with the promotion of measures against bullying carried out through the Internet as stated below.

Article 19 (1) of the Act on the Promotion of Preventive Measures for Bullying states that an establisher of a school, as well as the school, are required to conduct the necessary awareness activities for children enrolled in the school and their custodians (or parents) for the prevention and effective handling of bullying committed through the Internet, based on the high degree of distribution of information, the anonymity of the sender, and other characteristics of information sent through the Internet. Article 19 (2) of this Act further articulates that the State and local governments shall endeavor to develop a system that handles cases related to bullying, as well as

¹⁰⁴ UN ECONOMIC AND SOCIAL COUNCIL, *Economic and Social Council Resolution 2011/33*, *supra* note 23.

¹⁰⁵ Belsey, *supra* note 8.

supports the efforts of affiliates or other relevant organizations, to monitor whether or not they are involved in bullying children committed through the Internet. Moreover, Article 19 (3) of the same Act provides that in cases where bullying is committed through the Internet, a bullied child and the child's custodians (or parents) may request, as needed, that the Legal Affairs Bureau and the District Legal Affairs Bureau cooperate when a request is received for the deletion of information pertaining to bullying or the disclosure of the sender's identification information as prescribed in Article 4 (1) of the Act of Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Senders.

❖ **Philippines**

The Republic Act No. 10627, an act requiring all elementary and secondary schools to adopt policies to prevent and address the acts of bullying in their institutions (enacted in 2013) (hereafter referred to as "Anti-Bullying Act of 2013") contains provisions addressing cyberbullying as discussed below.

i. Definition

Section 2 of the Anti-Bullying Act of 2013 explicitly includes cyberbullying, or any bullying done through the use of technology or any electronic means, in the definition of the term "bullying" used in this Act. Pursuant to Section 3 (b) (4) of the Implementing Rules and Regulations of the Anti-Bullying Act of 2013 and Section 3 (M) (2) of the DepED Order No. 40, s. 2012, the term "cyberbullying" or "any bullying done through the use of technology or any electronic means" refers to any conduct resulting in harassment, intimidation, or humiliation, through the use of electronic means or other forms of technology, such as, but not limited to texting, email, instant messaging, chatting, Internet, social media, social networking websites, online games, or other platforms or formats.

ii. Measures to combat and prevent cyberbullying

Section 3 of the Anti-Bullying Act of 2013 and Section 5 (2) of the Implementing Rules and Regulations of the Anti-Bullying Act of 2013 direct all elementary and secondary schools to adopt anti-bullying policies that shall include provisions that prohibit cyberbullying or any bullying done through the use of technology or any electronic means.

❖ **Republic of Korea**

The Act on the Prevention of and Countermeasures Against Violence in Schools (enacted in 2004 and last amended in 2013) contains provisions addressing cyberbullying as stated below.

i. Definition

Article 2, subparagraph 1-3 of the Act on the Prevention of and Countermeasures Against Violence in Schools states that the term "cyberbullying" in this Act, means any form of constant or repeated actions whereby students inflict emotional harm on other students by using the Internet, cell phones, or other information and communications devices to reveal personal information about a specific student or to spread lies or rumors about a specific student, and then inflict pain thereon.

ii. Measures to combat and prevent cyberbullying

Article 20-4 (1) of the Act on the Prevention of and Countermeasures Against Violence in Schools stipulates that if necessary, the State, a local government, or the superintendent of an office of education may use information and communications networks to efficiently perform duties concerning the protection from school violence.

Furthermore, Article 20-4 (2) of the Act on the Prevention of and Countermeasures Against Violence in Schools specifies that if a school or student (including his/her parents) does an act concerning the prevention of school violence via information and communications networks pursuant to paragraph (1), the State, the competent local government, or the superintendent of the competent office of education may fully or partially subsidize them in relation to any of the following expenses: a) expenses incurred by the school or student (including his/her parents) in purchasing or using telecommunications facilities and equipment; or b) telecommunications service fees charged to a school or student (including his/her parents).

G.2. Country that is considered to have legislation concerning cyberbullying

❖ Singapore

Singapore has legislation regarding cyberbullying, although the terms “cyberbullying” and “bullying” are not explicitly used by Singaporean law. The Protection from Harassment Act (Act No. 17 of 2014) has provisions criminalizing harassment, unlawful stalking, and related anti-social behaviors, such as bullying in work places or cyber-bullying in schools, whether committed in the physical world or online.

Any person who by any means uses any threatening, abusive, or insulting words or behavior or makes any threatening, abusive, or insulting communication, which is heard, seen, or otherwise perceived by any person likely to be caused harassment, alarm, or distress, shall be guilty of an offense of harassment, alarm, or distress pursuant to Section 4 of the Protection from Harassment Act. In addition, an illustration to Section 4 of this Act provides an example of cyber-bullying in schools by stating that “X and Y are classmates. X posts a vulgar tirade against Y on a website accessible to all of their classmates. One of Y’s classmates shows the message on the website to Y, and Y is distressed. X is guilty of an offence under this section.”

Accordingly, it is evident that the Singaporean legislative intent is to cover cyber-bullying in schools under Section 4 of the Protection from Harassment Act, although there is no explicit usage of the terms “bullying”, “bullying through information and communication technologies”, or “cyber-bullying” under this Act.¹⁰⁶

¹⁰⁶ *Second Reading Speech by Minister for Law, K Shanmugam, on the Protection from Harassment Bill (2014)*, MINISTRY OF LAW, SINGAPORE, <https://www.mlaw.gov.sg/news/parliamentary-speeches-and-responses/2R-by-minister-on-protection-from-harassment-act.html> (last visited Jan. 16, 2015).

VII. INTERESTING LEGISLATIVE INITIATIVES FOR PREVENTING AND COMBATING VIOLENCE AGAINST CHILDREN THROUGH INFORMATION AND COMMUNICATION TECHNOLOGIES

A. REQUIREMENT FOR PHOTO DEVELOPERS, INFORMATION TECHNOLOGY PROFESSIONALS, CREDIT CARD COMPANIES, AND BANKS TO REPORT CHILD PORNOGRAPHY ACTIVITIES

The legislative measures that require photo developers and information technology (IT) professionals to report child pornography activities to law enforcement or another mandated agency, when they learn of such incidents, play important roles in detecting child pornography activities or offenses. While such individuals do not come into contact with children on a daily basis, they may potentially be exposed to child pornography as result of their job responsibilities.

Furthermore, the legislative approaches that mandate financial institutions (i.e., credit card companies, banks) to report activities related to child pornography to a law enforcement officer or another competent government official, once they become aware of such circumstances, have crucial roles in combating and preventing child pornography considering that payment services rendered by such organizations or corporations are being used to proliferate child pornography.¹⁰⁷

❖ Philippines

Section 10 of the Anti-Child Pornography Act of 2009 states that photo developers, information technology professionals, credit card companies, and banks, and any person who has direct knowledge of any form of child pornography activities shall have a duty to report any suspected child pornography materials or transactions to the proper authorities within seven days from discovery thereof. Any willful and intentional violation of this provision shall be subject to the penalty provided under Section 15 (I) of this Act.

B. PROHIBITION OF THE PROVISION OF CONTENTS HARMFUL TO A JUVENILE WITH THE USE OF ICTS

Children need to be protected from the harmful influences of the content circulated via the Internet or other forms of media for two reasons. First, exposure to harmful online content may cause direct harm to the child as viewer of the material. In addition to this potential direct harm to children, the circulation of harmful content by the use of the Internet and associated technologies may also cause indirect harm to children because sex offenders can use the Internet and associated technologies to expose a juvenile to sexually exploitative materials, which might normalize such juvenile sexual activities.¹⁰⁸

There are two types of legal and regulatory measures that can be taken to reduce the chances of young people viewing sexually exploitative materials or other types of harmful materials on the Internet. Indirect legal and regulatory measures to tackle children's exposure to harmful online content shall include the creation of liabilities of ISPs or other related parties to control Internet content. As stated earlier (IV. Asian countries – Statistical Indicators, as well as Similarities of the Legal and Regulatory Framework, B. Similarities of the Legal and Regulatory Framework, B.2. Internet Content Control), in 13 out of the 17 Asian countries analyzed (Brunei Darussalam, Cambodia, China, India, Indonesia, Japan, Lao People's Democratic Republic, Malaysia, Philippines,

¹⁰⁷ INT'L CTR. FOR MISSING & EXPLOITED CHILDREN, *supra* note 35, at 4-5.

¹⁰⁸ Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, *Report of the Special Rapporteur on the sale of children, child prostitution and child pornography*, at 11, paragraph 51, U.N. Doc. E/CN.4/1998/101 (Jan. 13, 1998) (by Ofelia Calcetas-Santos), available at http://ap.ohchr.org/documents/alldocs.aspx?doc_id=980 (last visited Jan. 21, 2015).

Republic of Korea, Singapore, Thailand, and Vietnam), the provisions of their domestic laws and/or regulations stipulate that it is the role of ISPs, cybercafé owners (or operators), and other relevant actors (i.e., Internet Content Providers) to control Internet content, including content harmful to children on the Internet (i.e., child pornography), regardless of whether or not such countries have legislation that specifically addresses the use of ICTs to commit crimes against children. In addition to the above-mentioned indirect legal and/or regulatory approach, there are direct legislative responses to online content harmful to juveniles that include the prohibition of providing materials harmful to them by the use of ICTs.

❖ **China**

Article 31, paragraph 1 of the Law on Prevention of Juvenile Delinquency states that no unit or individual may sell or loan to juveniles publications, audio-video products, or electronic publications, which contain such content as may induce juveniles to violate laws or commit criminal offenses, and such contents as may impair the physical and mental health of juveniles, contents that exaggerate violence, pornography, gambling, terror, etc. Article 31, paragraph 2 of this Law further articulates that no unit or individual may, “by means of telecommunications, computer network, etc.”, provide such contents and information about such contents that may impair the physical and mental health of juveniles as prescribed by the preceding paragraph.

If anyone or any unit provides publications, audio-video products, or electronic publications with contents that may impair the physical or mental health of juveniles “by means of telecommunications, computer network, etc.” in violation of Article 31 of the Law on Prevention of Juvenile Delinquency, the said publications, audio-video products, electronic publications, and his/its illegal gains shall be confiscated and he/it shall be fined by the competent government department in accordance with Article 53 of this Law.

❖ **Republic of Korea**

The Republic of Korea enacted the Act on Promotion of Information and Communication Network Utilization and Information Protection, etc. (enacted by Act No. 6360, January 16, 2001; last amended on May 28, 2014; and effective as of November 29, 2014).

Article 44-7 (1), subparagraph 5 of the Act on Promotion of Information and Communication Network Utilization and Information Protection, etc. prohibits providing any “media products harmful to juveniles” as defined in the Juvenile Protection Act, for profit and through an information and communications network, without confirming the receiver’s age and complying with the relevant regulations as defined under the Juvenile Protection Act. If a media product is lewd or obscene to arouse a juvenile sexual desire, it can be determined to be a media product harmful to juveniles under the Juvenile Protection Act.

C. PROTECTION FOR CHILD INTERNET USERS

A child’s right to access information available on the Internet should be respected in such a way as to ensure the prevention of the exploitation of child Internet users. There are legislative regimes that aim to protect the rights of children on the Internet by providing them with safe and secure Internet use through prescribing necessary measures to be formulated and implemented by the State, local public entities, ISPs, and private sectors.

❖ **Japan**

Japan enacted the Act on Development of an Environment that Provides Safe and Secure Internet Use for Young People (enacted by Act No. 79 of 2008 and amended by Act No. 71 of 2009).

Chapter III of the Act on Development of an Environment that Provides Safe and Secure Internet Use for Young People (Articles 13-16) enumerates the duties of the State and local public entities to promote education and awareness-raising activities on appropriate Internet use by young people.

In addition, Chapter IV of the Act on Development of an Environment that Provides Safe and Secure Internet Use for Young People (Articles 17-23) envisages the obligations of ISPs and other service providers to provide services or software to filter content harmful to young people, etc. to reduce the chances of young people viewing content harmful to them via the Internet. Content harmful to young people shall include obscene depictions of sexual conduct or genitals of humans, or any other information that considerably excites or stimulates sexual desire pursuant to Article 2 (4) (ii) of this Act.

Further, Chapter V of the Act on Development of an Environment that Provides Safe and Secure Internet Use for Young People (Articles 24-30) addresses the voluntary efforts to be made in the private sector to promote the dissemination and use of software for filtering content harmful to young people.

VIII. CONCLUSION AND RECOMMENDATIONS

A. CONCLUSION

1. Information and Communication Technologies (ICTs) have developed rapidly over the last two decades. The development of ICTs have enabled both adults and children using the Internet and associated technologies to enjoy benefits and opportunities in regard to socialization, education, and entertainment. Especially, the development of ICTs has provided children and adolescents using the Internet and associated technologies with new spaces to interact and form social relationships with others, such as chat rooms, peer to peer (P2P) websites, or social network sites. On the other hand, recent rapid advances in ICTs have simultaneously allowed violence to be committed with the use of the Internet and associated technologies, including violence against children. Accordingly, children may be vulnerable to ICT-facilitated child abuse and exploitation and this child abuse and exploitation are often difficult to detect and to address.

2. There are international legally binding instruments that are directly or indirectly related to online child abuse and exploitation and are used to analyze national legislative and regulatory responses to violence against children committed by, with, and through the use of ICTs. These international legally binding tools include the: 1) Convention on the Rights of the Child; 2) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; 3) Convention concerning the prohibition and immediate action for the elimination of the worst forms of child labor, 1999; 4) Convention on Cybercrime; and 5) Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. All **17** analyzed Asian countries are obliged to align their legislative, regulatory, or policy responses to violence against children in accordance with the relevant international tools as they have acceded to or ratified the Convention on the Rights of the Child, one of the above-mentioned international legally binding instruments. Furthermore, international non-legally binding instruments pertinent to ICT-facilitated child abuse and exploitation include: 6) Economic and Social Council Resolution 2011/33 on Prevention, protection and international cooperation against the use of new information technologies to abuse and/or exploit children; and 7) Rio de Janeiro Pact to Prevent and Stop Sexual Exploitation of Children and Adolescents. These international non-legally binding instruments should also be considered to verify the progress made by individual countries' law, regulation, or policy to comply with relevant international standards.

3. In summary, among the 17 analyzed Asian countries the areas of law related to three major forms of online abuse and exploitation of children (a. activities related to child pornography; b. online grooming; and c. cyberbullying) still need to be developed in alignment with the international instruments. However, it is noted that among the 17 Asian countries analyzed, the legal systems of **5** countries (Brunei Darussalam, Japan, Philippines, Republic of Korea, and Singapore) to deal with violence against children through ICTs show favorable or moderate alignment with relevant international standards. **4** countries (Brunei Darussalam, Japan, Republic of Korea, and Singapore) out of these 5 countries are classified as developed countries based on their GNIs per capita per year. The high level of economic development of these 4 countries is tied to the increased affordability and use of ICTs in those countries. The findings indicated that although countries with higher availability and accessibility of ICTs may suffer a greater risk associated with ICT-facilitated child abuse and exploitation, it may also lead to such countries adopting or amending legal measures to combat and prevent the use of the Internet and associated technologies to commit violence against children.

B. RECOMMENDATIONS

The adoption of appropriate laws to address the use of ICTs to commit violence against children shall be necessary for tackling online child abuse and exploitation.

Based on research and analysis to date (as of January 30, 2015), the following recommendations, in a broad sense, will be offered to help the targeted group of Asian countries to improve legislative and regulatory responses to violence against children committed by, with, and through the use of ICTs:

- Provide a definition of child pornography in accordance with Article 2 (c) of the OPSC;
- Enact new law and/or amend existing law to criminalize activities with specific regard to child pornography (including possession of child pornography without the intent to distribute), in compliance with Article 3 (1) (c) of the OPSC, and ensure the implementation of new and/or amended law;
- Criminalize an act that aids or abets the commission of child pornography offenses, as well as an attempt to commit such offenses, in alignment with Article 3 (2) of the OPSC;
- Fully comply with Article 3 (3) of the OPSC by providing appropriate penalties for child pornography offenses;
- Take necessary measures to establish extraterritorial jurisdiction over child pornography offenses: 1) when the alleged offender is a national of the State; or 2) when the victim is a national of the State, in line with Article 4 (2) of the OPSC considering the transnational nature of ICT-facilitated child pornography offenses;
- Require ISPs to: 1) report child pornography to law enforcement agencies or other relevant authorities upon obtaining knowledge of it on their own networks; and 2) take measures to prevent further transmission of the discovered child pornography;
- Criminalize the use of ICTs to commit illicit activities related to child pornography, including downloading, viewing, and accessing child pornography;
- Criminalize advertising child sex tourism through the Internet and associated technologies;
- Adopt legislation to criminalize online grooming;
- Introduce legislation regarding cyberbullying; and
- Raise awareness around the issue of sexting and develop legislation to combat and prevent sexting.^{109, 110, 111}

¹⁰⁹ CHILDWISE AND AUSTRALIAN GOVERNMENT, MIND THE GAPS: A COMPARATIVE ANALYSIS OF ASEAN RESPONSES TO CHILD SEX TOURISM (2009), at 5, available at https://www.ecoi.net/file_upload/1002_1248205476_crin.pdf (last visited Jan. 19, 2015).

¹¹⁰ Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, *Report on Child Pornography and the Internet*, Comm'n on Human Rights, U.N. Doc. E/CN.4/2005/78 (Dec. 23, 2004) (by Juan Miguel Petit), available <http://www.refworld.org/pdfid/42d66e480.pdf> (last visited Jan. 19, 2015).

¹¹¹ Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development: Report of the Special Rapporteur on the sale of children, child prostitution and child pornography*, Human Rights Council, U.N. Doc. A/HRC/12/23 (July 13, 2009) (by Najat M'jid Maalla), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A.HRC.12.23.pdf> (last visited Jan. 19, 2015).

IX. APPENDICES

A. TABLE 1 – POPULATION DATA AND ICT STATISTICS

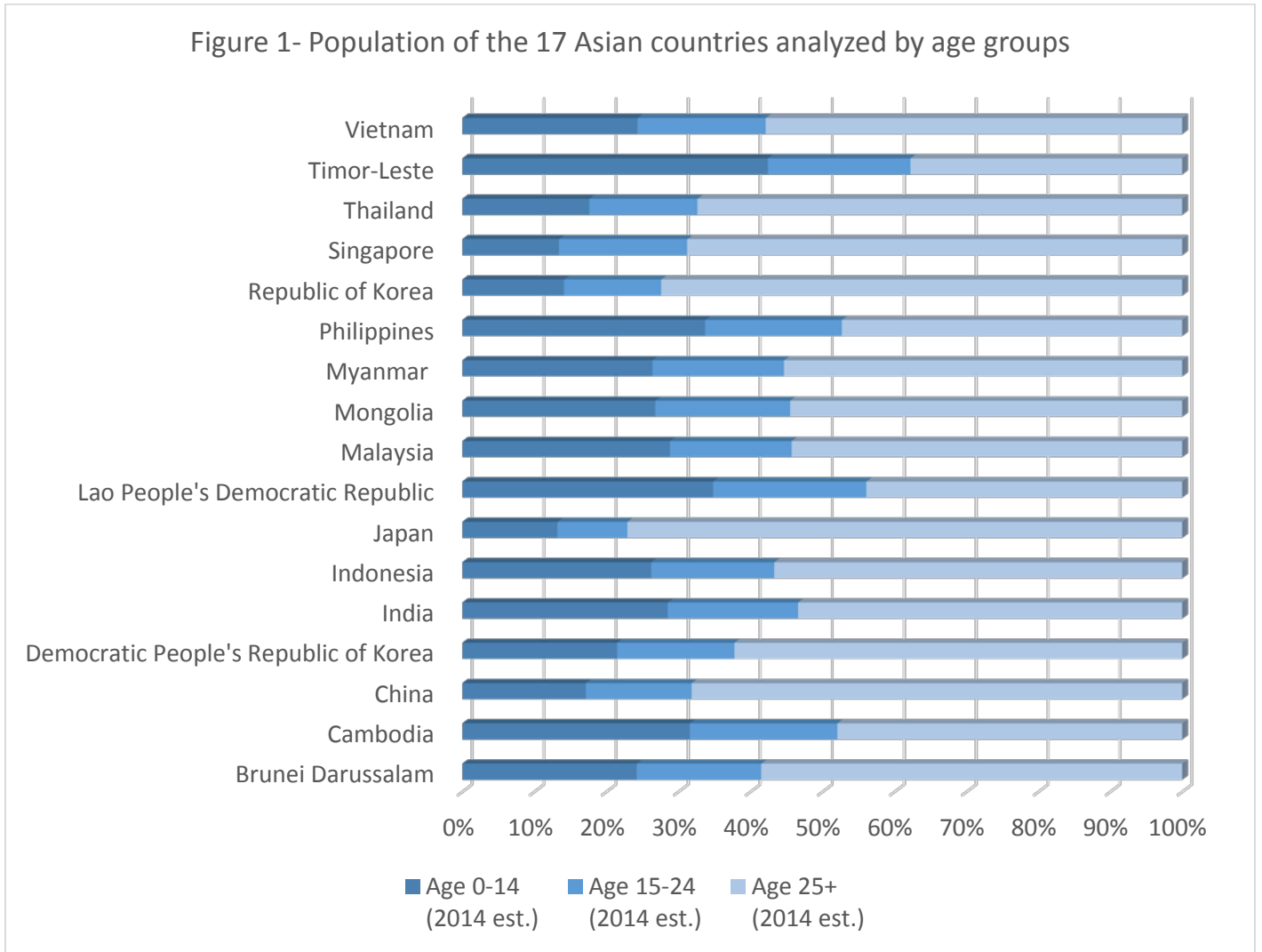
Table 1 – Population data and ICT statistics

Country	Population (July 2014 est.) ¹	Age 0-14 (2014 est.) ²	Age 15-24 (2014 est.) ²	Age 25+ (2014 est.) ²	Individuals using the Internet (2013) ³	Mobile-broadband subscriptions per 100 inhabitants (2013) ³	Households with Internet Access at Home (2013) ³	Internet Hosts (2012) ⁴	Facebook Subscribers (December 31, 2012) ⁵
Brunei Darussalam	422,675	24.2%	17.3%	58.5%	64.5%	6.5	75.8%	49,457	254,760
Cambodia	15,458,332	31.6%	20.5%	48.0%	6.0%	9.6	5.5%	13,784	742,220
China	1,355,692,576	17.1%	14.7%	68.1%	45.8%	21.4	43.9%	20,602,000	633,300
Democratic People's Republic of Korea	24,851,627	21.5%	16.3%	62.3%	0.0%	—	—	8	—
India	1,236,344,631	28.5%	18.2%	53.4%	15.1%	3.2	13%	6,746,000	62,713,680
Indonesia	253,609,643	26.2%	17.1%	56.7%	15.8%	31.6	5.7%	1,344,000	51,096,860
Japan	127,103,388	13.2%	9.7%	77.1%	86.2%	120.5	86.2%	64,453,000	17,196,080
Lao PDR	6,803,699	34.8%	21.3%	43.9%	12.5%	2.1	5.1%	1,532	255,880
Malaysia	30,073,353	28.8%	16.9%	54.3%	67.0%	12.5	64.7%	422,470	13,589,520
Mongolia	2,953,190	26.8%	18.7%	54.5%	17.7%	18.2	14.0%	20,084	515,080
Myanmar	55,746,253	26.4%	18.3%	55.4%	1.2%	1	2.2%	1,055	—
Philippines	107,668,231	33.7%	19.0%	47.3%	37.0%	20.3	22.9%	425,812	29,890,900
Republic of Korea	49,039,986	14.1%	13.5%	72.4%	84.8%	105.3	98.1%	315,697	10,012,400
Singapore	5,567,301	13.4%	17.8%	68.8%	73.0%	135.1	86.0%	1,960,000	2,915,640
Thailand	67,741,401	17.6%	15.0%	67.3%	28.9%	52.3	22.7%	3,399,000	17,721,480
Timor-Leste	1,201,542	42.4%	19.8%	37.8%	1.1%	0.4	—	252	—
Vietnam	93,421,835	24.3%	17.8%	57.9%	43.9%	8.8	17.1%	189,553	10,669,880

Not Available = —

Sources: [1] Country Comparison: Population, The World Factbook, CIA, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2119rank.html> (last visited Aug. 7, 2014); [2] Field Listing: Age Structure, The World Factbook, CIA, <https://www.cia.gov/library/publications/the-world-factbook/fields/2010.html> (last visited Aug. 7, 2014); [3] Country Profile, ITU, <http://www.itu.int/net4/itu-d/icteye/CountryProfile.aspx#AsiaPacific> (last visited Aug. 7, 2014); [4] Country Comparison: Internet Hosts, The World Factbook, CIA, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2184rank.html> (last visited Aug. 7, 2014); [5] Internet Usage in Asia, Facebook Subscribers, INTERNET WORLD STATS, <http://www.internetworldstats.com/stats3.htm> (last visited Nov. 19, 2014).

Figure 1 – Population by age groups



Source: Field Listing: Age Structure, *The World Factbook*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/fields/2010.html> (last visited Aug. 7, 2014).

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Table 2.1 – Country: Brunei Darussalam

1 – Has legislation specific to child pornography	Yes
2 – Has a clear definition of child pornography	Yes
3 – Considers everyone under 18 as a potential victim of activities related to child pornography	Yes
4 – Criminalizes accessing or downloading child pornography images	Yes (accessing)
5 – Criminalizes possession of child pornography	Yes
6 – Criminalizes virtual images and sexually exploitative representations of children	Possibly Yes
7 – Addresses the criminal liability of children involved in pornography	No (if children are victims, not offenders)
8 – Establishes criminal liability of legal persons for production or commercialization of child pornography	Yes
9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State	Yes
10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State	No
11 – Establishes confiscation of assets used to commit or facilitate child pornography offenses	No
12 – Establishes confiscation of proceeds derived from child pornography offenses	No
13 – Requires professionals working with children to report child pornography activities	Yes
14 – Requires Internet Service Providers to report child pornography	No
15 – Has telephone or online hotlines to enable the public to report child abuse	Yes
16 – Creates data retention or data preservation provisions	Yes (but data retention provisions do not seem to apply to child pornography offenses)
17 – Requires the identification of users of public computers in cybercafés	No
18 – Has a national plan to combat violence against children	Yes
19 – Has ratified the CRC and the OPSC	Yes
20 – Age of criminal liability	7-12
21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children	Yes
22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online	1) Yes (not explicitly, but all forms of sexual exploitation); 2) Yes
23 – Has legislation that criminalizes online grooming as a standalone offense	No (sexual grooming)
24 – Has a clear definition of online grooming	No
25 – Considers everyone under 18 as a potential victim of online grooming	No (16)
26 – 1) Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child; or 2) criminalizes grooming regardless of the intent	1) Yes; 2) No
27 – Criminalizes showing pornography to a child as a standalone offense	Yes
28 – Has legislation regarding cyberbullying	No
29 – Has legislation concerning sexting	No

Brunei Darussalam

In Brunei Darussalam, a wide range of children’s rights are protected through adopting domestic legislation and by joining relevant international treaties including the Convention on the Rights of the Child (CRC) and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC).

Laws, notifications, and order which protect children’s rights and/or govern violence against children are as follows:

- Penal Code (Chapter 22)¹¹² (amended by the Penal Code Amendment Order 2012¹¹³) (hereafter also referred to as “Penal Code”)
- Broadcasting (Class License) Notification 2001¹¹⁴
- Internet Code of Practice Notification¹¹⁵
- Unlawful Carnal Knowledge Act (Chapter 29) (enacted in 1984)¹¹⁶ (hereafter referred to as “Unlawful Carnal Knowledge Act”)
- Children and Young Persons Order, 2006¹¹⁷ (hereafter referred to as “Children and Young Persons Order”)
- Undesirable Publications Act (Chapter 25)¹¹⁸ (hereafter referred to as “Undesirable Publications Act”)
- Trafficking and Smuggling of Persons Order, 2004¹¹⁹ (hereafter referred to as “Trafficking and Smuggling of Persons Order”)

The Syariah Penal Code Order 2013 came into force, along with the existing civil penal code, on May 1, 2014.¹²⁰ However, for the purposes of this Regional Study, the civil penal code (also referred to as “Penal Code amended by the Penal Code Amendment Order 2012”) was used because offenses involving child pornography, sexual grooming against a child, and advertising child sex tourism online are governed by sections of the civil penal code.

EXTRACTS OF LEGISLATION RELATED TO THE TABLE:

1 – Has legislation specific to child pornography

Brunei Darussalam has legislation specific to child pornography as stated below.

¹¹² Penal Code (Chapter 22), Revised Ed. 2001, available at https://www.unodc.org/tldb/pdf/Brunei_Penal_Code_1951_Full_text.pdf (last visited Jan. 16, 2015).

¹¹³ The Penal Code (Chapter 22) was amended by the insertion of new sections 293A, 293B, 293C, and 293D of the Penal Code Amendment Order 2012 immediately after Section 293 of the Penal Code and the insertion of new sections 377B to 377K of the Penal Code Amendment Order 2012 immediately after 377A of the Penal Code.

¹¹⁴ Broadcasting (Class License) Notification 2001, available at <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan006032.pdf> (last visited Jan. 16, 2015).

¹¹⁵ Internet Code of Practice Notification, available at <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan006033.pdf> (last visited Jan. 16, 2015).

¹¹⁶ Unlawful Carnal Knowledge Act (Chapter 29), available at http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap029.pdf (last visited Jan. 21, 2015).

¹¹⁷ Children and Young Persons Order, 2006, available at http://www.bruneiresources.com/pdf/gazette_06_2006.pdf (last visited Jan. 16, 2015).

¹¹⁸ Undesirable Publications Act (Chapter 25), available at http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap025.pdf (last visited Jan. 21, 2015).

¹¹⁹ Trafficking and Smuggling of Persons Order, 2004, available at <http://www.ilo.org/dyn/natlex/docs/SERIAL/71607/72206/F791000901/Trafficking.pdf>.

¹²⁰ *Brunei: Islamic Law Adopted*, LIBRARY OF CONGRESS, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403965_text (last visited Nov. 19, 2014).

The Penal Code contains provisions which punish a person who engages in activities involving indecent or obscene photography or pseudo-photography of a child.

Section 293A of the Penal Code makes it an offense to possess an indecent or obscene photograph or pseudo-photograph of a child with a penalty of imprisonment of a maximum of five years, or a fine, or both. Section 293B of the Penal Code also criminalizes taking, distributing, showing, advertising, accessing, etc. indecent/obscene photographs or pseudo-photographs of a child with imprisonment of up to ten years, or with fine, or both.

In addition, Section 292 (3) of the Penal Code makes it an offense to: 1) sell, distribute, publicly exhibit, or in any manner put into circulation any obscene article; or 2) for the purposes of distribution, etc., make, produce, or possess any obscene article.

Furthermore, the importation, sale, publication, offer for sale, distribution, reproduction, or possession (without a reasonable cause) of any prohibited publication or any extract therefrom shall constitute a criminal offense pursuant to Section 4 of the Undesirable Publications Act.¹²¹

Section 2 (3) (c) of the Children and Young Persons Order¹²² states that for the purposes of this Order, a child or young person is “sexually abused” if he has taken part, whether as a participant or an observer, in any activity which is sexual in nature for the purposes of any pornographic, obscene, or indecent material, photograph, recording, film, videotape, or performance, or for the purpose of sexual exploitation by any person for that person’s or another person’s sexual gratification.

Any person who, being a person having the care of a child or young person, sexually abuses the child or young person or causes him to be so abused is guilty of an offense and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding ten years with or without whipping not to exceed ten strokes, or both pursuant to Section 28 (1) (b) of the Children and Young Persons Order.¹²³

¹²¹ Section 4 of the Undesirable Publications Act (Offenses)

(1) Any person who imports, publishes, sells, offers for sale, distributes or reproduces any prohibited publication or any extract therefrom shall be guilty of an offense.

Penalty, for a first offense imprisonment for 3 years and a fine of \$ 3,000, and for a subsequent offense imprisonment for 4 years and a fine of \$ 5,000.

(2) Any person who without reasonable excuse has in his possession any prohibited publication or any extract therefrom shall be guilty of an offense.

Penalty, for a first offense imprisonment for one year and a fine of \$ 2,000, and for a subsequent offense imprisonment for 2 years and a fine of \$ 3,000.

(3) In any proceedings against any person for an offense under subsection (2) such person shall be presumed, until the contrary is proved, to have known the contents and the nature of the contents of any publication immediately after such publication came into possession.

¹²² Section 2 (3) (c) of the Children and Young Persons Order (Interpretation)

(3) For the purposes of this Order

(c) a child or young person is sexually abused if he has taken part, whether as a participant or an observer, in any activity which is sexual in nature for the purposes of any pornographic, obscene or indecent material, photograph, recording, film, videotape or performance or for the purpose of sexual exploitation by any person for that person's or another person's sexual gratification.

¹²³ Section 28 (1) (b) of the Children and Young Persons Order (Ill-treatment etc. of children and young persons)

(1) Any person who, being a person having the care of a child or young person –

(b) sexually abuses the child or young person or causes him to be so abused,

2 – Has a clear definition of child pornography

Section 293C of the Penal Code,¹²⁴ provides an interpretation of an indecent/obscene photograph/pseudo-photograph of a child mentioned in Section 293A and 293B of the Penal Code. Furthermore, Section 292 of the Penal Code provides a meaning of “obscene” in relation to obscenity offense enumerated in this Section as stated below.

Section 293C of the Penal Code stipulates that an indecent or obscene “photograph or pseudo-photograph” of a child shall include: 1) an image (whether made by computer graphics or otherwise, howsoever, which appears to be a photograph); 2) a film; 3) a photograph; 4) a copy of a film or photograph; 5) data stored on a computer disc; or 5) data stored by any other electronic means which is capable of conversion into a photograph and any form of video-recording.

Further, Section 293C of the Penal Code also states that for the purposes of Sections 293A and 293B of, a photograph and pseudo-photograph shall be deemed to be “obscene” if its effect is, if taken as a whole, such as to tend to deprave and corrupt persons who, having regard to all relevant circumstances, are likely (or would have been likely but for the lawful seizure of the article) to read, see, or hear the matter contained or embodied in it.

is guilty of an offense and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 10 years with or without whipping not exceeding 10 strokes, or both.

¹²⁴ Section 293C of the Penal Code (Interpretation of sections 293A and 293B)

(1) In sections 293A and 293B -

- (a) references to an indecent or obscene photograph include an indecent or obscene film, a copy of an indecent or obscene photograph or film, and an indecent or obscene photograph comprised in a film;
- (b) photographs and pseudo-photographs (including those comprised in a film) shall, if they show children and are indecent or obscene, be treated for all purposes of this Code as an indecent or obscene photographs of children;
- (c) references to a photograph include-
 - (i) the negative as well as the positive version; and
 - (ii) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph;
- (d) for the purposes of sections 293A and 293B, a photograph or pseudo-photograph shall be deemed to be obscene if its effect is, if taken as a whole, such as tend to deprave and corrupt persons, who having regard to all relevant circumstances are likely (or would have been likely but for lawful seizure of the article) to read, see or hear the matter contained or embodied in it;
- (e) “film” includes any form of video-recording;
- (f) “child” means a person under the age of 18 years;
- (g) “pseudo-photograph” means an image, whether made by computer graphics or otherwise howsoever, which appears to be a photograph;
- (h) if the impression conveyed by a photograph or pseudo-photograph is that the person shown is a child, the photograph or pseudo-photograph shall be treated for all purposes as showing a child and so shall a photograph or pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult;
- (i) references to an indecent or obscene photograph or pseudo-photograph include-
 - (i) a copy of an indecent or obscene photograph or pseudo-photograph; and
 - (ii) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph or pseudo-photograph.

(2) In the proceedings under sections 293A and 293B, a person is to be taken as having been a child at any material time if it appears from the evidence as a while that he was then under the age of 18 years.

Moreover, Section 292 of the Penal Code¹²⁵ provides the meaning of “obscene article” as stated below. Section 292 (1) of the Penal Code states that for the purpose of Sections 292 and 293 of the Penal Code, the articles shall be deemed to be “obscene” if its effect is, if taken as a whole, such as to tend to deprave or corrupt persons, who, are likely to read, see or hear the matter contained or embodied in it. In addition, Section 292 (2) of the Penal Code states that in Section 292 of this Penal Code, the obscene “article” includes any description of the article containing or embodying matter to be read or looked at both, any sound record and any film, video cassette, photographic negative, or other record of a picture.

The exception to Section 292 of the Penal Code states that this section does not extend to any book, pamphlet, writing, drawing or painting kept or used for a *bona fide* religious purposes or any representation sculptured, engraved, painted or otherwise represented on or in any temple.

3 – Considers everyone under 18 as a potential victim of activities related to child pornography

Bruneian law considers everyone under the age of 18 years as a potential victim of activities related to child pornography, as stipulated in Section 293A and 293B of the Penal Code, regardless of the age of sexual consent pursuant to Section 293C (1) (f) of this Code.¹²⁶

In addition, “child” means a person who has not yet attained the age of 14 years, and “young person” means a person who has attained the age of 14 years of age, but who has not yet attained the age of 18 years, according to Section 2 (1) of the Children and Young Persons Order.¹²⁷

¹²⁵ Section 292 of the Penal Code (Sale etc. of obscene articles)

(1) For the purposes of this section and section 293 an article shall be deemed to be obscene if its effect or (where the article comprises 2 or more distinct items) the effect of any one of its items is, if taken as a whole, such as to tend to deprave and corrupt persons who, having regard to all relevant circumstances, are likely (or would have been likely but for the lawful seizure of the article) to read, see or hear the matter contained or embodied in it.

(2) In this section, “article” means any description of article containing or embodying matter to be read or looked at or both, any sound record, and any film, video cassette, photographic negative or other record of a picture.

(3) Whoever —

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire distribution, public exhibition or circulation makes, produces or has in his possession any obscene article; or

(b) imports, exports or conveys any obscene article for any of the purposes aforesaid, or knowing or having reason to believe that such article will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation; or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene articles are, for any of the purposes aforesaid, made produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation; or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offense under this section or that any such obscene article can be produced from or through any person; or

(e) offers or attempts to do any act which is an offense under this section,

shall be guilty of an offense and shall be punished with a fine of not less than \$500 and not more than \$5,000 and imprisonment which may extend to 2 years; and in the case of a second or subsequent conviction, a fine of not less than \$1,000 and not more than \$30,000 and imprisonment which may extend to 5 years.

Exception — This section does not extend to any book, pamphlet, writing, drawing or painting kept or used for a *bona fide* religious purposes or any representation sculptured, engraved, painted or otherwise represented on or in any temple.

¹²⁶ Section 293C (1) (f) of the Penal Code (Interpretation of sections 293A and 293B)

(1) In sections 293A and 293B -

(f) “child” means a person under the age of 18 years.

¹²⁷ Extract of Section 2 (1) of the Children and Young Persons Order (Interpretation)

(1) In this Order unless the context otherwise requires –

In Brunei Darussalam, the age of consent to sexual intercourse is 14 years for a female although having sexual intercourse by a man with his own wife who are not under 13 years of age is not rape pursuant to Section 375 of the Penal Code.¹²⁸ However, it is a crime for any person to have or attempt to have carnal knowledge of a girl under the age of 16 years, except by way of marriage, according to Section 2 of the Unlawful Carnal Knowledge Act.¹²⁹

4 – Criminalizes accessing or downloading child pornography images

Section 293B of the Penal Code¹³⁰ makes it an offense for anyone to access an indecent/obscene photograph/pseudo-photograph of a child with a penalty of imprisonment of maximum of ten years or a fine or

“child” means a person who has not attained the age of 14 years;

“young person” means a person who has attained the age of 14 years of age but who has not attained the age of 18 years.

¹²⁸ Section 375 of the Penal Code (Rape)

A man is said to commit “rape”, who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the 5 following descriptions —

- (a) against her will;
- (b) without her consent;
- (c) with her consent, when her consent has been obtained by putting her in fear of death or of hurt;
- (d) with her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is, or believes herself to be, lawfully married;
- (e) with or without her consent when she is under 14 years of age.

Explanation — Penetration is sufficient to constitute the sexual intercourse necessary to the offense of rape.

Exception — Sexual intercourse by a man with his own wife, the wife not being under 13 years of age, is not rape.

¹²⁹ Section 2 of the Unlawful Carnal Knowledge Act (Prohibition of carnal knowledge of girl under 16 years)

Any person who has or attempts to have carnal knowledge of a girl under the age of sixteen (16) years except by way of marriage shall be guilty of an offense: Penalty, imprisonment for a term which shall not be less than 2 years and not more than 7 years and to whipping not exceeding 24 strokes of the rattan in the case of an adult or 12 strokes of the rattan in the case of a youthful offender.

¹³⁰ Section 293B of Penal Code (Taking, distribution, showing, advertisement and access of indecent photograph of child)

(1) Whoever-

- (a) takes or permits to be taken or abets the taking of any indecent or obscene photograph or pseudo-photograph of a child;
- (b) distributes or shows such indecent or obscene photographs or pseudo-photographs;
- (c) has in his possession such indecent or obscene photographs or pseudo-photographs with a view to their being distributed or shown by himself or to others;
- (d) publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs, or intends to do so; or
- (e) accesses any indecent or obscene photograph or pseudo-photograph of a child,

Shall be guilty of an offense and shall be punished with imprisonment which may extend to 10 years, or with fine or with both.

(2) In this section, a person is to be regarded as distributing an indecent photograph or pseudo-photograph if he parts with possession of it to, or exposes or offers it for acquisition by another person.

(3) For the purposes of subsection (1) (3), a person accesses an indecent or obscene photograph or pseudo-photograph of a child if he knowingly causes the indecent or obscene photograph or pseudo photograph to be viewed by, or transmitted to, himself.

(4) Where a person is charged with an offense under subsection (1) (b) or (c), it shall be a defense for him to prove that-

- (a) he had a legitimate reason for distributing or showing the photographs or pseudo-photographs or having them in his possession; or
- (b) he had not himself seen the photographs or pseudo-photographs and did not know, nor had any cause to suspect, them to be indecent.

both. Pursuant to this Section, a person shall be deemed to have access to an indecent or obscene photograph or pseudo-photograph of a child if he knowingly causes himself to view or transmit the indecent or obscene photograph or pseudo-photograph of a child.

5 – Criminalizes possession of child pornography

Section 293A of Penal Code¹³¹ makes it an offense to possess an indecent or obscene photograph or pseudo-photograph of a child with a punishment of imprisonment up to five years or a fine or both.

Furthermore, Section 293B (1) (c) of this Code punishes a person who possesses indecent or obscene photographs or pseudo-photographs of a child with a view to their being distributed or shown by himself or to others.

6 – Criminalizes virtual images and sexually exploitative representations of children

The Penal Code possibly criminalizes the production, distribution, possession and commercialization of child pornography including virtual images and sexually exploitative representations of children.

Section 293C (1) (g) of the Penal Code states that the term “pseudo-photograph” in relation to an indecent or obscene photograph or pseudo-photograph of a child as provided in Sections 293A and 293B of this Code shall mean an image, whether made by computer graphics or otherwise, howsoever, which appears to be a photograph.

Furthermore, Section 293C (1) (h) of the same Code articulates that if the impression conveyed by a photograph or pseudo-photograph is that the person shown is a child, the photograph or pseudo-photograph shall be treated for all purposes as showing a child and so shall a photograph or pseudo-photograph where the predominant impression conveyed is that the person shown is a child, notwithstanding that some of the physical characteristics shown are those of an adult.

Moreover, Section 293C (2) of the Penal Code stipulates that in the proceedings under Sections 293A and 293B, a person is to be taken as having been a child at any material time if it appears from evidence as a whole that he was then under the age of 18 years.

7 – Addresses the criminal liability of children involved in pornography

Bruneian law does not address the criminal liability of children involved in pornography for their participation so long as the children are victims and not the offenders.

In case of a child offender, nothing is an offense which is done by a child under seven years of age pursuant to Section 82 of the Penal Code. Section 83 of this Code further articulates that nothing is an offense which is done

¹³¹ Section 293A of the Penal Code (Possession of indecent photograph of a child)

(1) Whoever has in his possession an indecent or obscene photograph or pseudo-photograph of a child shall be guilty of an offense and shall be punished with imprisonment which may extend to 5 years, or with fine or with both.

(2) Where a person is charged with an offense under subsection (1), it shall be a defense for him to prove that-

(a) he had legitimate reason for having the photograph or pseudo-photograph in his possession;

(b) he had not himself seen the photograph or pseudo-photograph and did not know, nor had any cause to suspect, it to be indecent or obscene; or

(c) the photograph or pseudo-photograph was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.

by a child above seven years of age and under 12 years, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion.

8 – Establishes criminal liability of legal persons for production or commercialization of child pornography

The Penal Code establishes criminal liability of legal persons for the production or commercialization of an obscene/indecent photograph/pseudo-photograph of a child as specified by Sections 293A, 293B, and 293C of this Code. Section 11 of the same Code prescribes that the word “person” includes any company or association, or body of persons, whether incorporated or not.

9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State

Brunei Darussalam establishes its extraterritorial jurisdiction over child pornography offenses stipulated in the Penal Code if the alleged offender is a national of Brunei Darussalam as elaborated below.

Section 3 of the Penal Code states that any person liable to be tried for an offense committed beyond the limits of Brunei Darussalam, shall be dealt with according to the provisions of this Code for any act committed beyond the limits of Brunei Darussalam in the same manner as if such act had been committed with Brunei Darussalam. The Court of Magistrate has jurisdiction over the offense as stipulated in Section 293A of the Penal Code (Possession of indecent photograph of a child) according to the First Schedule of the Criminal Procedure Code (Chapter 7)¹³². In addition, the High Court has jurisdiction over the offense as prescribed by Section 293B of the Penal Code (Taking, distribution, showing, advertisement, or access of indecent photograph of a child) pursuant to the First Schedule of the Criminal Procedure Code as amended by the Penal Code (Amendment) Order 2012.

Section 9 (1) of the Criminal Procedure Code states that “Subject to the other provisions of the Criminal Procedure Code, any offense under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court”. In addition, Section 7 of the Criminal Procedure Code¹³³ recognizes the jurisdiction of the High Court and the Court of Magistrate in criminal matters for any offense committed by a subject of His Majesty whether the offense was committed within or outside of Brunei Darussalam. According to Section 3 of the Brunei Nationality Act (Chapter 15),^{134, 135} a subject of His Majesty shall have the status of a national of Brunei Darussalam.

¹³² Criminal Procedure Code (Chapter 7), available at https://www.unodc.org/tldb/pdf/Brunei_Criminal_Proced_Code.pdf (last visited Jan. 16, 2015).

¹³³ Section 7 of the Criminal Procedure Code (Jurisdiction)

Subject to the provisions of this Code, the jurisdiction of the High Court and the Court of a Magistrate in criminal matters shall extend to any offense committed —

- (a) wholly or partly within Brunei Darussalam; or
- (b) on board any ship registered in Brunei Darussalam; or
- (c) on board any aircraft registered in Brunei Darussalam; or
- (d) on the high seas if the offense is piracy by the law of nations; or
- (e) by any person outside Brunei Darussalam who abets, or enters a conspiracy to commit, an offense within Brunei Darussalam, whether or not any overt act in furtherance of such conspiracy takes place within Brunei Darussalam; or
- (f) by a subject of His Majesty whether the offense was committed within or outside Brunei Darussalam.

¹³⁴ Brunei Nationality Act (Chapter 15), available at http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap015.pdf (last visited Jan. 21, 2015).

¹³⁵ Section 3 of the Brunei Nationality Act (National status)

A subject of His Majesty the Sultan and Yang Di-Pertuan shall have the status of a national of Brunei Darussalam.

10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State

Brunei Darussalam does not establish its extraterritorial jurisdiction over child pornography offenses stipulated in the Penal Code when the victim is a national of Brunei Darussalam.

11 – Establishes the confiscation of assets used to commit or facilitate child pornography offenses; and 12 – Establishes the confiscation of proceeds derived from child pornography offenses

The Penal Code does not have provisions for: 1) the confiscation of assets used to commit or facilitate child pornography offenses prescribed in this Code; and 2) the confiscation of proceeds derived from such offenses.

However, Section 7 of the Undesirable Publications Act¹³⁶ allows the court to issue an order for the forfeiture of the document or extract produced in the proceeding if it is a prohibited publication connected therewith. This forfeiture provision under Section 7 of the Undesirable Publications Act could also be applicable to the published documents or extract therefore depicting child pornography if said document or the extract is qualified as the prohibited publication under this Act and the document or extract is produced before the court's proceedings.

13 – Requires professionals working with children to report child pornography activities

Section 26 of the Children and Young Persons Order¹³⁷ requires professionals who work with children to report incidents involving child sexual abuse to a competent authority. In addition, this Order defines child sexual abuse to include children's participation in pornographic materials as stated below.

Section 26 (1) of the Children and Young Persons Order requires a child care provider to immediately inform a Protector if he or she believes on reasonable grounds that a child is physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or has been "sexually abused". Section 26 (2) of this Order further articulates that any child care provider who fails to comply with subsection (1) is guilty of an offense and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding two years, or both.

Specifically, Section 2 (3) (c) of the Children and Young Persons Order states that for the purposes of this Order, a child or young person is "sexually abused" if he has taken part, whether as a participant or an observer, in any activity which is sexual in nature for the purposes of any pornographic, obscene, or indecent material, photograph, recording, film, videotape, or performance, or for the purpose of sexual exploitation by any person for that person's or another person's sexual gratification.

14 – Requires Internet Service Providers to report child pornography

There are no mandatory reporting requirements for Internet Service Providers (ISPs) when they learn child pornographic materials on their networks in Brunei Darussalam. However, the Internet Code of Practice

¹³⁶ Section 7 of the Undesirable Publications Act (Forfeiture)

A court before which any proceedings, are taken under this Act, if satisfied that any document produced in the proceedings is a prohibited publication or an extract therefore, shall whether the alleged offender is convicted or not, order such publication or extract therefore to be forfeited to the Commissioner of Police, who shall order the same to be destroyed or otherwise disposed of in such manner as he thinks fit.

¹³⁷ Section 26 of the Children and Young Persons Order (Duty of child care provider)

(1) If a child care provider believes on reasonable grounds that a child is physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he shall immediately inform a Protector.

(2) Any child care provider who fails to comply with subsection (1) is guilty of an offense and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 2 years, or both.

Notification 2001 and the Broadcasting (Class License) Notification 2001 address duties of ISPs, as well as Internet Content Providers (ICPs) with respect to obscene or pornographic content.

However, pursuant to Section 1 (b) of the Internet Code of Practice Notification 2001, all ISPs and ICPs licensed under the Broadcasting (Class License) Notification 2001 are required to comply with the Code of Practice and satisfy the Minister responsible for broadcasting matters, that they have taken responsible steps to fulfill this requirement. Section 1 (b) of the Internet Code of Practice Notification 2001 further articulates that, under the Broadcasting Act, that the Minister responsible for broadcasting matters has the power to impose sanctions including fines, on licensees who contravene this Code of Practice.

In addition, Section 2 of the Internet Code of Practice Notification 2001¹³⁸ and Paragraph 11 (b) of the Schedule to the Broadcasting (Class License) Notification 2001 require the ISPs and ICPs to use their best efforts in order to ensure that no content which offends against good taste or decency is included in any program on the Internet. According to Section 2 (c) of the Internet Code of Practice Notification 2001, content that is not allowed on the Internet specifically includes pornographic or otherwise obscene content and materials.

Moreover, pursuant to Paragraph 14 of the Schedule to the Broadcasting (Class License) Notification 2001¹³⁹, the licensee must remove or prohibit the broadcast of the whole or any part of a program included in its service

¹³⁸ Section 2 of the Internet Code of Practice Notification 2001

Licensees must use their best efforts to ensure that nothing is included in any programme on Internet which is against the public interest or national harmony or which offends against good taste or decency, and in particular the following Internet content should not be allowed:

- (a) Public security and national defense
 - (i) Contents which bring into hatred or contempt or incite disaffection against His Majesty the Sultan and Yang Di-Pertuan or the Government; or
 - (ii) Contents which incite the inhabitants of Brunei Darussalam to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Brunei Darussalam as by law established; or
 - (iii) Contents which bring into hatred or contempt or incite disaffection against the administration of justice in Brunei Darussalam; or
 - (iv) Contents which raise discontent or disaffection amongst the inhabitants of Brunei Darussalam; or
 - (v) Contents which promote feelings of ill-will and hostility between different classes of the population of Brunei Darussalam.
- (b) Racial and Religious Harmony
 - (i) Contents which denigrate or ridicule any race or the religion of Islam; or
 - (ii) Contents which bring any race or the religion of Islam into hatred, resentment or ridicule; or
 - (iii) Contents which are against and outside the practices of Islam according to the Shafeite sect; or
 - (iv) Contents which are intended for preaching other religions other than the religion of Islam.
- (c) Public and Social Morals
 - (i) Contents which are pornographic or otherwise obscene; or
 - (ii) Contents which propagate permissive or promiscuous behavior; or
 - (iii) Contents which depict or propagate gross exploitation of violence, nudity, sex or horror; or
 - (iv) Contents which depict or propagate sexual perversions such as homosexuality, lesbianism and paedophilia.

¹³⁹ Paragraph 14 of the Schedule to the Broadcasting (Class License) Notification 2001

A licensee shall remove, or prohibit the broadcast of, the whole or any part of a programme included in its service if the Minister informs the licensee that the broadcast of:

- (a) the whole or part of the programme is contrary to a Code of Practice applicable to the licensee; or
- (b) the programme:
 - (i) is against the public interest, public order or national harmony; or

if the Minister informs the licensee that the broadcast of: 1) the whole or part of the program is contrary to a Code of Practice applicable to the licensee; 2) if the program is against the public's interest, public order or national harmony; or 3) offends against good taste or decency.

According to Paragraph 8 of the Schedule to the Broadcasting (Class License) Notification 2001¹⁴⁰, the licensee must assist the Minister responsible for broadcasting matters in the investigation into any breach of its license or any alleged violation of any law committed by the licensee or another person.

15 – Has telephone or online hotlines to enable the public to report child abuse

The Department of Community Development of the Ministry of Culture, Youth, and Sport in Brunei Darussalam operates a 24-hour helpline service and subsequently introduced the 141 helpline targeted at handling reports involving women and children.¹⁴¹

16 – Creates data retention or data preservation provisions

The Electronic Transactions Act 2001 (Chapter 196)¹⁴² contains data retention provisions as stated below.

Section 9 (1) of the Electronic Transactions Act 2001¹⁴³ contains provisions establishing the requirements to be met in the event that any rule of law requires certain documents, records, or information to be retained in the form of electronic records.

However, Sections under the Penal Code (amended by Penal Code Amendment Order 2012) that directly pertain to child pornography offenses do not explicitly call for records or information to be retained. Thus, it is unclear whether or not data retention provisions under the Electronic Transactions Act 2001 are applicable to child pornography offenses stipulated in the Penal Code (amended by the Penal Code Amendment Order 2012).

(ii) offends against good taste or decency.

¹⁴⁰ Paragraph 8 of the Schedule to the Broadcasting (Class License) Notification 2001

A licensee shall -

(a) assist the Minister in the investigation into:

(i) any breach of its license; or

(ii) any alleged violation of any law committed by the licensee or any other person; and

(b) produce such information, records, documents, data or other materials as may be required by the Minister for the purpose of the investigation.

¹⁴¹ Wardi Buntar & Bandar Seri Begawan, *Japem's 141 helpline now a 24-hour hotline*, THE BRUNEI TIMES, (Jan. 3, 2011), <http://www.bt.com.bn/news-national/2011/01/03/japems-141-helpline-now-24-hour-hotline> (last visited Jan. 16, 2015).

¹⁴² Electronic Transactions Act 2001 (Chapter 196), available at <http://www.track.unodc.org/LegalLibrary/LegalResources/Brunei/Laws/Brunei%20Electronic%20Transactions%20Act%202001.pdf> (last visited Jan. 16, 2015).

¹⁴³ Section 9 (1) of the Electronic Transactions Act 2001 (Retention of electronic records)

Where any rule of law requires that certain documents, records or information be retained, that requirement is satisfied by retaining them in the form of electronic records if the following conditions are satisfied —

(a) the information contained therein remains accessible so as to be usable for subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received, or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) such information, if any, as enables the identification of the origin and destination of an electronic record and the date and time when it was sent or received, is retained; and

(d) the consent of the department or ministry of the Government, organ of State, or the statutory corporation which has supervision over the requirement for the retention of such records has been obtained.

17 – Requires the identification of users of public computers in cybercafés

Brunei Darussalam does not have legislation or regulations that require the identification of users of public computers in cybercafés.

18 – Has a national plan to combat violence against children

In 2014, Brunei Darussalam introduced the “Child Online Protection Framework” to boost children’s online safety and to combat crimes against children using ICTs.¹⁴⁴

The Bruneian Penal Code was recently amended by the Penal Code Amendment Order 2012 to criminalize sexual grooming against a child and child pornography by online predators.

The Community Development Department of the Ministry of Culture, Youth, and Sport in Brunei Darussalam is in charge of the protection of children’s rights.¹⁴⁵ This Ministry works closely with all other relevant government agencies and non-governmental bodies towards the implementation of the protection of children’s rights.

To ensure the rights of children in Brunei Darussalam, several laws including the Children and Young Persons Order have been introduced. The Children and Young Persons Order aims to provide protection of children’s rights, as well as support the rehabilitation of victimized children.

19 – Has ratified the CRC and the OPSC

- Brunei Darussalam acceded to the Convention on the Rights of the Child on December 27, 1995.¹⁴⁶
- Brunei Darussalam acceded to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on November 21, 2006.¹⁴⁷
- Brunei Darussalam ratified the Worst Forms of Child Labour Convention, 1999 (No. 182) on June 9, 2008.¹⁴⁸

20 – Age of criminal liability

The minimum age of criminal liability is 7 years according to Section 82 of the Penal Code. Further, if a child who is above 7 and under 12 years of age and of immature understanding to judge the nature and consequences of his conduct on that occasion commits an act constituting an offense, such child is also exempted from criminal liability pursuant to Section 83 of the Penal Code.

21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children

The principal law that governs offenses against children committed with the use of ICTs in Brunei Darussalam is the Penal Code (amended by the Penal Code Amendment Order 2012).

¹⁴⁴ Quratul-Ain Bandial & Bandar Seri Begawan, *Brunei introduces framework on child online protection*, THE BRUNEI TIMES, (Mar. 6, 2014), <http://www.bt.com.bn/frontpage-news-national/2014/03/06/brunei-introducesframework-childonline-protection> (last visited Jan. 16, 2015).

¹⁴⁵ COUNTRY REPORT ON SOCIAL WELFARE POLICY AND PROTECTION OF CHILDREN IN BRUNEI DARUSSALAM, available at <http://www.aipasecretariat.org/wp-content/uploads/2011/07/Welfare-and-Protection-of-Children.pdf> (last visited Jan. 16, 2015).

¹⁴⁶ *Status of Ratification and Accession of the CRC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en (last visited Oct. 24, 2014).

¹⁴⁷ *Status of Ratification and Accession of the OPSC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last visited Oct. 24, 2014).

¹⁴⁸ *Status of the Ratification of the Worst Forms of Child Labour Convention, 1999*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited Oct. 24, 2014).

With regard to ICT-facilitated child pornography offenses, Section 293C of the Penal Code provides an interpretation of indecent or obscene photography or pseudo-photography of a child for the purposes of Sections 293A (Possession of indecent photography of a child) and 293B (Taking, distribution, showing, advertisement, and access of indecent photography of a child) of this Code. References to an indecent or obscene photograph or pseudo-photograph include, but are not limited to, data stored on a computer disc or by other electronic means which is capable of conversion into a photograph or pseudo-photograph pursuant to Section 293C (1) (c) of the Penal Code.

General cybercrime is covered by the Computer Misuse Act 2007 (Chapter 194).¹⁴⁹ This Act contains provisions securing computer material against unauthorized access or modification, unauthorized use or interception of computer services, unauthorized disclosure of passwords, and access with intent to facilitate an offense stipulated under this Act.

22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online

Bruneian law does not have explicit provisions criminalizing child trafficking with the intent of producing pornography. However, Bruneian law contains provisions that punish anyone who traffics children for the purposes of exploitation including “all forms of sexual exploitation”.

Section 5 of the Trafficking and Smuggling of Persons Order¹⁵⁰ punishes any person who commits a child trafficking offense for the purposes of “exploitation”. According to Section 2 of the Trafficking and Smuggling of Persons Order, “exploitation” includes all forms of sexual exploitation (including sexual servitude and exploitation of another person's prostitution), forced labor or services, slavery or practices similar to slavery, servitude and the removal of organs; “child” means a person who is under 18 years of age.

In addition, Sections 372¹⁵¹ and 373 of the Penal Code¹⁵² prohibits any person from buying and selling a minor under 18 years of age for the purpose of prostitution, illicit intercourse with any other person, or any other unlawful purpose.

¹⁴⁹ Computer Misuse Act 2007 (Chapter 194), available at <http://www.agc.gov.bn/AGC%20Images/LOB/PDF/Computer%20Misuse.pdf> (last visited Jan. 9, 2015).

¹⁵⁰ Section 5 of the Trafficking and Smuggling of Persons Order (Offense of children trafficking)

Any person who recruits, transports, transfers, harbours or receives a child by any means for the purposes of exploitation shall be guilty of an offense and liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term of not less than 4 years but not exceeding 30 years and not less than 5 strokes of whipping.

¹⁵¹ Section 372 of the Penal Code (Selling minor for purposes of prostitution etc.)

Whoever sells, lets to hire, or otherwise disposes of any person under the age of 18 years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for LAWS OF BRUNEI any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for such purpose, shall be punished with imprisonment for a term which may extend to 30 years and with whipping with not less than 12 strokes.

Explanation 1 — When a female under the age of 18 years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation 2 — For the purpose of this section “illicit intercourse” means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognized by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.

¹⁵² Section 373 of the Penal Code (Buying minor for purposes of prostitution, etc.)

Whoever buys, hires or otherwise obtains possession of any person under the age of 18 years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawfully and immoral purpose, or knowing it to be likely that such

Moreover, the Penal Code (as amended by the Penal Code Amendment Order 2012) criminalizes advertising child sex tourism online. Section 377F of the Penal Code¹⁵³ makes it an offense to print, publish, or distribute any information that is designed to promote conduct that would constitute an offense under Section 377D (Commercial sex with person under 18 outside Brunei Darussalam). Furthermore, Section 377F (2) of the Penal Code prescribes that for the purposes of subsection (1) (c), “publication of information” means the publication of information by any means, whether by written, electronic, or other form of communication. Any person who is guilty of an offense under Section 377F of the Penal Code shall be punished with imprisonment for a term which may extend to ten years, or with a fine, or both.

Also, Section 292 of the Penal Code punishes anyone who advertises an obscene article prescribed under this Section to another person. In addition, Section 293B prohibits the advertisement of an indecent or obscene photograph or pseudo-photograph of a child.

23 – Has legislation that criminalizes online grooming as a standalone offense

Brunei Darussalam does not have legislation that criminalizes online grooming as a standalone offense. However, Section 377G of the Penal Code makes it an offense to commit sexual grooming against a victim who is under 16 years old with a penalty of imprisonment for a term which may extend to three years, or a fine, or both.

24 – Has a clear definition of online grooming

Although the Penal Code does not provide definitions of “online grooming” or “sexual grooming”, it does address punishable acts which shall constitute an offense of sexual grooming.

Section 377G (1) of the Penal Code states that if the offender who is of or above the age of 21 years (A) has met or communicated with another person under the age of 16 years (B) on 2 or more previous occasions, such offender shall be guilty of the offense of sexual grooming under the Penal Code provided that the following requirements are met:

person will at any age be employed or used for any such purpose, shall be punished with imprisonment for a term which may extend to 30 years and with whipping with not less than 12 strokes.

Explanation 1 — Any prostitute, or any person keeping or managing a brothel, who buys, hires, or otherwise obtains possession of a female under the age of 18 years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation 2 — “Illicit intercourse” has the same meaning as in section 372.

¹⁵³ Section 377F of the Penal Code (Tour outside Brunei Darussalam for commercial sex with person under 18)

(1) Whoever-

(a) makes or organizes any travel arrangements for or on behalf of any other person with the intention of facilitating the commission by that other person of an offense under section 377D, whether or not such an offense is actually committed by that other person;

(b) transports any other person to a place outside Brunei Darussalam with the intention of facilitating the commission by that other person of an offense under section 377D, whether or not such an offense is actually committed by that other person; or

(c) prints, publishes or distributes any information that is intended to promote conduct that would constitute an offense under section 377D, or to assist any other person to engage in such conduct,

shall be guilty of an offense.

(2) For the purposes of subsection (1) (c), the publication of information means publication of information by any means, whether by written, electronic, or other form of communication.

(3) A person who is guilty of an offense under this section shall be punished with imprisonment for a term which may extend to 10 years, or with fine, or with both.

- (a) A intentionally meets or travels with the intention of meeting B; and
- (b) At the time of acts referred to in paragraph (a) –
 - (i) A intends to do anything to or in respect of B, during or after the meeting, which if done will involve the commission by A of a relevant offense;
 - (ii) B is under 16 years of age; and
 - (iii) A does not reasonably believe that B is of or above the age of 16 years.

“Relevant offenses” referred to in Section 377G (1) of the Penal Code and enumerated in Section 377 (2) of this Code are as follows: (a) Section 354 (Assault or criminal force to person with intent to outrage modesty), Section 354A (Aggravated outraging modesty)¹⁵⁴, Section 354B (Outraging modesty by a person in position of trust or authority)¹⁵⁵, Section 375 (Rape), Section 377 (Unnatural offenses), Section 377B (Engaging in sexual activity in presence of person under 16)¹⁵⁶, Section 377C (Causing person under 16 to watch sexual act)¹⁵⁷, or Section 377D (Commercial sex with person under 18 outside Brunei Darussalam) of the Penal Code; (b) Section 2 of the Unlawful Carnal Knowledge Act (Prohibition of carnal knowledge of girl under 16 years); or (c) Section 3 (1) of the Women and Girls Protection Act (Selling, buying or hiring any woman or girl for purposes of prostitution).

Section 377G (3) of the Penal Code further articulates that for the purposes of this Section, it is immaterial whether the two or more previous occasions of A having met or communicated with B referred to in Section 377G (1) of this Code took place inside or outside of Brunei Darussalam.

¹⁵⁴ Section 354A of the Penal Code (Aggravated outraging modesty)

- (1) Whoever, in order to commit or facilitate the commission of an offense against any person under 354-
 - (a) Voluntarily causes or attempts to cause to that person death, hurt, or wrongful restraint; or
 - (b) Puts that person in fear of death, hurt or wrongful restraint,
 shall be punished with imprisonment for a term of not less than 2 years and not more than 7 years and whipping.
- (2) Whoever commits an offense under subsection (1) against any person under 14 years of age, shall be punished with imprisonment for a term of not less than 3 years and not more than 7 years and whipping.

¹⁵⁵ Section 354B of the Penal Code (Outraging modesty by person in position of trust or authority)

Whoever being in a position of trust or authority towards a person under 18 years of age (A) or is a person with whom A is in a relationship of dependency assaults or uses criminal force to A, intending thereby to outrage, or knowing it likely that he will thereby outrage the modesty of A, shall be punished with imprisonment for a term not less than 3 years and not more than 10 years and with whipping.

¹⁵⁶ Section 377B of the Penal Code (Engaging in sexual activity in presence of person under 16)

- (1) Whoever (A) –
 - (a) intentionally engages in an activity;
 - (b) the activity is sexual;
 - (c) for the purpose of obtaining sexual gratification, he engages it - (i) in the presence of a person under 16 years of age (B) or is in a place from which A can be observed; and (ii) knowing or believing that B is aware or intending that B should be aware, that he is engaging in it, shall be guilty of an offense.
- (2) A person who is guilty of an offense under this section shall be punished with imprisonment for a term which may extend to 5 years, or with fine, or with both.

¹⁵⁷ Section 377C of the Penal Code (Causing person under 16 to watch sexual act)

- (1) Whoever (A) –
 - (a) for the purpose of obtaining sexual gratification intentionally causes a person under 16 years of age (B) to watch a third person engaging in an activity or to look at an image of any person engaging in an activity; and
 - (b) the activity is sexual, shall be guilty of an offense.
- (2) A person who is guilty of an offense under this section shall be punished with imprisonment for a term which may extend to 5 years, or with fine or with both.

25 – Considers everyone under 18 as a potential victim of online grooming

The Penal Code does not consider everyone under age 18 as a potential victim of sexual grooming. Pursuant to Section 377G of Penal Code, sexual grooming is illegal when it is committed by a person of or above the age of 21 years (A) against another person under the age of 16 (B).

26 – Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child, or criminalizes grooming regardless of the intent

Section 377G of the Penal Code criminalizes sexual grooming when the offender (A) engages in the activities prescribed under this Section with the specific intent to have sexual contact with a child under the age of 16 (B) for the commission of sexual offenses against B.

However, Section 377G of the Penal Code does not criminalize sexual grooming if the offender does not perform the intentional activities stipulated in this Section.

27 – Criminalizes showing pornography to a child as a standalone offense

Section 293 of the Penal Code¹⁵⁸ makes it an offense to sell, let to hire, distribute, exhibit, or circulate to any person under the age of 20 years any obscene article with a penalty of imprisonment that may extend to three years, and in case of a second or subsequent conviction, a fine within the prescribed ranges and imprisonment which may be up to five years.

28 – Has legislation regarding cyberbullying

There is no legislation regarding cyberbullying in Brunei Darussalam. However, the Authority for Information Technology Industry of Brunei Darussalam (AITI) has produced information for parents in the form of a booklet, which covers topics from simple computer protection to cyberbullying and safeguarding personal data.¹⁵⁹

29 – Has legislation concerning sexting

There is no legislation concerning sexting in Brunei Darussalam.

¹⁵⁸ Section 293 of the Penal Code (Sale etc. of obscene articles to person under the age of 20 years)

Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of 20 years any obscene articles, or offers or attempts so to do, shall be guilty of an offense: Penalty, a fine of not less than \$1,000 and not more than \$10,000 and imprisonment which may extend to 3 years and in the case of a second or subsequent conviction, a fine of not less than \$3,000 and not more than \$50,000 and imprisonment which may extend to 5 years.

¹⁵⁹ Bandial & Begawan, *supra* note 144.

Table 2.2 – Country: Cambodia

1 – Has legislation specific to child pornography	Yes
2 – Has a clear definition of child pornography	Yes
3 – Considers everyone under 18 as a potential victim of activities related to child pornography	Yes
4 – Criminalizes accessing or downloading child pornography images	No
5 – Criminalizes possession of child pornography	Yes (but only criminalizes possession of child pornography with the intent to distribute)
6 – Criminalizes virtual images and sexually exploitative representations of children	No
7 – Addresses the criminal liability of children involved in pornography	No (both child victims and offenders)
8 – Establishes criminal liability of legal persons for production or commercialization of child pornography	Yes
9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State	Yes
10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State	Yes
11 – Establishes confiscation of assets used to commit or facilitate child pornography offenses	Yes
12 – Establishes confiscation of proceeds derived from child pornography offenses	Yes
13 – Requires professionals working with children to report child pornography activities	No
14 – Requires Internet Service Providers to report child pornography	No
15 – Has telephone or online hotlines to enable the public to report child abuse	Yes
16 – Creates data retention or data preservation provisions	No
17 – Requires the identification of users of public computers in cybercafés	No
18 – Has a national plan to combat violence against children	Yes
19 – Has ratified the CRC and the OPSC	Yes
20 – Age of criminal liability	18
21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children	No
22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online	1) Yes; 2) No
23 – Has legislation that criminalizes online grooming as a standalone offense	No
24 – Has a clear definition of online grooming	No
25 – Considers everyone under 18 as a potential victim of online grooming	No
26 – 1) Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child; or 2) criminalizes grooming regardless of the intent	No
27 – Criminalizes showing pornography to a child as a standalone offense	No
28 – Has legislation regarding cyberbullying	No
29 – Has legislation concerning sexting	No

Cambodia

In Cambodia, the Constitution of Cambodia (adopted on September 21, 1993)¹⁶⁰ (hereafter referred to as the “Constitution”) has provisions for the protection of children’s rights. Specifically, Article 31 of the Constitution requires that the Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights. Article 48 of the Constitution¹⁶¹ requires the State to protect the rights of children as stipulated in the “Convention on Children”¹⁶², in particular the right to life, education, protection during wartime, and from economic or sexual exploitation.

Laws which protect children’s rights and criminalize violence against children are as follows:

- Criminal Code¹⁶³
- Law on Suppression of Human Trafficking and Sexual Exploitation (passed by the National Assembly on December 20, 2007 and approved in its entirety by the Senate on January 18, 2008)¹⁶⁴ (hereafter also referred to as “LSHTSE”)

EXTRACTS OF LEGISLATION RELATED TO THE TABLE:

1 – Has legislation specific to child pornography

The Law on Suppression of Human Trafficking and Sexual Exploitation (LSHTSE) criminalizes child pornography offenses and pornography offenses as stated below.

Article 39 of the LSHTSE¹⁶⁵ enumerates criminal offenses and penalties for: 1) the distribution, sale, lease, display of pornography in a public place (Paragraph 1); 2) the possession, transportation, importation, or

¹⁶⁰ Constitution of Cambodia, available at <http://www.ccc.gov.kh/english/CONSTITUTIONEng.pdf> (last visited Jan. 16, 2015).

¹⁶¹ Article 48 of the Constitution

The State shall protect the rights of children as stipulated in the Convention on Children, in particular, the right to life, education, protection during wartime, and from economic or sexual exploitation.

The State shall protect children from acts that are injurious to their educational opportunities, health and welfare.

¹⁶² The term “Convention on Children” provided under Article 48 of the Constitution refers to the UN Convention on the Rights of Child. After acceding to the Convention on the Rights of the Child in 1992, Cambodia adopted its Constitution (adopted in 1993) and laws, whose provisions are fully in line with those contained in the Convention and one of these provisions is Article 48 of the Constitution.

UN Comm. on the Rights of the Child, *Consideration of Reports submitted by the States parties under Article 44 of the Convention on the Rights of the Child, Initial reports of States parties due in 1994: Cambodia*, U.N. Doc. CRC/C/11/Add.16 (June 24, 1998), at 3, paragraph 6, available at http://cambodia.ohchr.org/WebDOCS/DocTreatyBodies/CRC/IniRpt_24061998E.pdf.

¹⁶³ Criminal Code, available at http://www.unodc.org/res/cid/document/khm/criminal_code_of_the_kingdom_of_cambodia_html/Cambodia_Criminal-Code-of-the-Kingdom-of-Cambodia-30-Nov-2009-Eng.pdf (last visited Jan. 16, 2015).

¹⁶⁴ Law on Suppression of Human Trafficking and Sexual Exploitation, available at http://www.no-trafficking.org/content/Laws_Agreement/cambodia%20new%20law%20on%20trafficking%20&%20sexual%20exploitation%20-%20english.pdf (last visited Jan. 16, 2015).

¹⁶⁵ Article 39 of the LSHTSE (Pornography)

A person who distributes, sells, leases, displays, projects or presents in public place, pornography shall be punished with imprisonment for 7 days to 1 month and a fine of 100,000 to 200,000 riels.

A person who possesses, transports, imports, or exports pornography for the purpose of use in commission of the above offense shall be punished the same as in the above-stated paragraph 1.

A person who produces pornography for the purpose of use in commission of any offense stipulated in the first and second paragraphs of this article shall be punished with imprisonment for 1 month to 1 year and a fine of 200,000 to 2,000,000 riels.

exportation of pornography for the purposes of distribution, sale, lease, or public display of pornography (Paragraph 2); or 3) the production of pornography for the purposes of distribution, sale, lease, or public display of pornography (Paragraph 3).

Article 41 of the LSHTSE¹⁶⁶ has provisions criminalizing activities related to child pornography. Article 41, Paragraph 1 of the LSHTSE makes it an offense for any person to distribute, sell, lease, display, project, present in a public place child pornography, with imprisonment for two to five years and a fine of 4,000,000 to 10,000,000 riels. In addition, pursuant to Article 41, Paragraph 2 of LSHTSE, anyone who possesses, transports, imports, or exports child pornography for the purpose of use in distribution, sale, lease, display, public projection, or public presentation of child pornography shall be subject to imprisonment for two to five years and a fine of 4,000,000 to 10,000,000 riels. Article 41, Paragraph 3 of LSHTSE criminalizes production of child pornography with imprisonment for five to ten years. Furthermore, according to Article 41, Paragraph 4 of the LSHTSE, the penalty will be increased to imprisonment of 10 to 20 years if a person produces child pornography for the purposes of distribution, sale, lease, display, etc.

2 – Has a clear definition of child pornography

The LSHTSE provides definitions of both pornography and child pornography as elaborated below.

According to Article 38 of the LSHTSE, pornography under this Law means a visible material, such as a photograph or videotape, including a material in electronic form, depicting the genitals or other similar pornography which excites or stimulates sexual desire.

In addition, Article 40 of the LSHTSE defines child pornography as a visible material, such as a photograph or videotape including a material in electronic form, depicting a minor's naked figure which excites or stimulates sexual desire.

3 – Considers everyone under 18 as a potential victim of activities related to child pornography

Article 7 of the LSHTSE considers everyone under 18 years of age as potential victims of activities related to child pornography as provided in Articles 40 and 41 of this Law.

In Cambodia, the age of consent to sexual intercourse or indecent act is 15 years for men and women pursuant to Articles 42 and 43 of the LSHTSE as stated below. Articles 42¹⁶⁷ and 43 of the LSHTSE¹⁶⁸ punish a person who

¹⁶⁶ Article 41 of the LSHTSE (Child Pornography)

A person who distributes, sells, leases, displays, projects or presents in public place, child pornography shall be punished with imprisonment for 2 to 5 years and a fine of 4,000,000 to 10,000,000 riels.

A person who possesses, transports, imports, or exports child pornography for the purpose of use in commission of the offense stipulated in the above paragraph 1 shall be punished the same.

A person who produces child pornography shall be punished with imprisonment for 5 to 10 years.

A person who produces child pornography for the purpose of use in commission of any offense stipulated in the above-stated first and second paragraphs shall be punished with imprisonment for 10 to 20 years.

¹⁶⁷ Article 42 of the LSHTSE (Sexual Intercourse with Minors under Fifteen Years)

A person who has sexual intercourse with another person of the age of less than fifteen years shall be punished with imprisonment for 5 to 10 years.

¹⁶⁸ Article 43 of the LSHTSE (Indecent Act against Minors under Fifteen Years)

'Indecent act' in this Law shall mean an act of touching or exposing a genital or other sexual part of another, or of having another touch the actor's or a third person's genital or other sexual part, with the intent to stimulate or satisfy the actor's sexual desire.

A person who commits an indecent act against another person of the age of less than 15 years shall be punished with imprisonment for 1 to 3 years and a fine of 2,000,000 to 6,000,000 riels.

has sexual intercourse with or commits an indecent act against another person of the age of less than 15 years. “Indecent act” in this Law shall mean an act of touching or exposing the genitals or other sexual part of another, or of having another touch the actor’s or a third person’s genitals or other sexual part, with the intent to stimulate or satisfy the actor’s sexual desire according to Article 43 of the LSHTSE.

4 – Criminalizes accessing or downloading child pornography images

Cambodian law does not have explicit provisions that criminalize accessing or downloading child pornography images.

However, Article 41 of the LSHTSE makes it an offense to distribute, sell, display, project, or present in public place, possess, transport, or export child pornography. Also, Article 40 of the LSHTSE defines child pornography as a visible material, such as a photograph or videotape including a material in “electronic form”, depicting a minor’s naked figure which excites or stimulates sexual desire.

5 – Criminalizes possession of child pornography

Cambodian law does not criminalize possession of child pornography without the intent to distribute.

However, Article 41 of the LSHTSE punishes a person who possesses child pornography for the purpose of use in the commission of an offense involving the distribution, sale, lease, public display, or presentation of child pornography.

6 – Criminalizes virtual images and sexually exploitative representations of children

Cambodian law does not have explicit provisions that criminalize the production, distribution, possession, and commercialization of child pornography, including virtual images and sexually exploitative representations of children that do not necessarily use real children in their production. However, Article 40 of the LSHTSE defines child pornography as a visible material, such as a photograph or videotape including a material in electronic form, depicting a minor’s naked figure which excites or stimulates sexual desire.

7 – Addresses the criminal liability of children involved in pornography

Cambodian law does not address the criminal liability of children involved in pornography for their participation in cases of child victims, as well as child offenders. Although Articles 38 and 39 of the LSHTSE specify pornography offenses, the legal age for criminal responsibility in Cambodia starts at 18 years of age pursuant to Article 38 of the Criminal Code.

8 – Establishes criminal liability of legal persons for production or commercialization of child pornography

Article 4 of the LSHTSE¹⁶⁹ establishes the criminal liability of a legal entity or a principal when a representative, agent, or employee of the legal entity or the principal commits child pornography offenses stipulated in this Law within the scope of its business or in the interest of the legal entity or the principal.

A person who repeatedly commits any offense stipulated in Article 42 or this article shall be punished with double the prison punishment.

¹⁶⁹ Article 4 of the LSHTSE (Criminal Responsibility)

An attempt to commit the felonies or misdemeanors stipulated in this Law shall be punished and liable to the same punishment as if the offense has been committed. An accomplice and instigator of the felonies or misdemeanors stipulated in this Law shall be punished and liable to the same punishment as a principal who commits it.

An accomplice and instigator shall include, but not be limited to, the form of organizing or directing another to commit any of the felonies or misdemeanors stipulated in this Law.

When a representative, agent, or employee for a legal entity or a principal commits any offense stipulated in this Law in the scope of its business, or in the interest of the legal entity or the principal, the legal entity or the principal shall be punished with fine and additional penalties in accordance with the punishment stipulated in the relevant article.

Moreover, Article 42 of the Criminal Code provides that in case it is precisely provided for by a law and legal instrument, the legal entities, to the exclusion of the State, may be declared as being criminally responsible for the offenses committed, for their interests, by their organs or their representatives. Article 42 of this Code further articulates that the criminal responsibility of the legal entity does not exclude the criminal responsibility of the natural person for the same acts.

9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State

Cambodia establishes its extraterritorial jurisdiction over any felonies or misdemeanors if the alleged offender is a national of Cambodia pursuant to Article 3 of the LSHTSE. As stated above, Article 41 of this Law creates offenses involving child pornography as defined by Article 40 of the same Law.

Moreover, Article 19 of the Criminal Code allows Cambodian law to be applicable to any felony committed by a Cambodian citizen outside of its own territory in a criminal case. Article 19 of the Criminal Code further articulates that Cambodian law is applicable to misdemeanors committed by Cambodian citizens in a foreign country if the acts are shared to be punishable by the law of such foreign country. In addition, Article 19 of the Criminal Code states that “These provisions are also applicable even though the accused has obtained Cambodian nationality subsequently to the acts which had been charged.”

10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State

Cambodia establishes its extraterritorial jurisdiction over child pornography offenses as defined and punishable by Articles 40 and 41 of the LSHTSE if the victim is its citizen at the time of the commission of the offense according to Article 3 of the LSHTSE.

Furthermore, Article 20 of Criminal Code provides that in a criminal case, Cambodian law is applicable to any felony committed outside of its own territory by a Cambodian citizen, or by a foreigner when the victim is of Cambodian nationality at the time of the offense committed.

11 – Establishes the confiscation of assets used to commit or facilitate child pornography offenses; and 12 – Establishes the confiscation of proceeds derived from child pornography offenses

Article 48 of the LSHTSE¹⁷⁰ provides for the confiscation of property used for the commission of the criminal offenses stipulated in this Law. The same Article also allows the confiscation of the proceeds or the properties earned from or resulted from the offenses in this Law.

¹⁷⁰ Article 48 of the LSHTSE (Additional Penalties)

For the offenses stipulated in this Law, the following additional penalties may be imposed:

- 1- the confiscation of any equipment, materials or objects which have served, or been intended to serve, to commit the offense;
- 2- the confiscation of any materials which are constituent objects of the offenses;
- 3- the confiscation of the proceeds or the properties earned by or which resulted from the offense;
- 4- the closure of business which has served to commit the offense;
- 5- the restriction of civil rights; and
- 6- the ban on stay.

As stated above, Article 41 of the LSHTSE makes it an offense to engage in a prescribed activity related to child pornography as defined in Article 40 of this Law.

13 – Requires professionals working with children to report child pornography activities; and

14 – Requires Internet Service Providers to report child pornography

Cambodian law does not have provisions that require professionals who work with children to report child pornography activities to relevant authorities when they learn of incidents involving children’s participation in pornographic materials. In addition, Cambodian law does not have provisions that require Internet Service Providers (ISPs) to report child pornography when they learn of it on their own networks.

However, according to the 1st and 2nd National Report on the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2002-2010) prepared by the Cambodia National Council for Children (CNCC),¹⁷¹ the Cambodian Government issued guidelines and measures to suppress and prevent the dissemination of child and women pornography, which include the following: 1) blocking Internet IP addresses that can transfer obscene images; and 2) creating an Inter-Ministerial Committee to monitor and suppress all means of transmission of obscene images, the sale or rent of obscene film or video.

15 – Has telephone or online hotlines to enable the public to report child abuse

Cambodia has telephone hotlines to enable the public to report child abuse.

According to the 1st and 2nd National Report on the Implementation of the Optional Protocol to the Convention on the Rights of Child on the Sale of Children, Child Prostitution and Child Pornography prepared by the Cambodia National Council for Children (CNCC),¹⁷² the Ministry of Interior (MoI) established the Department of Anti-Trafficking and Juvenile Protection. This Department has set up a 24-hour hotline for receiving complaints from victims in order to fulfill a duty to suppress offenses and protect victims of human trafficking and sexual exploitation.

There are NGOs in Cambodia that have worked indirectly with the Cambodian Government to establish hotline numbers to protect children (and women). For example, Friends International manages a program called ChildSafe¹⁷³, which provides a 24-hour hotline operating in Phnom Penh with the hotline number 012-311-112.¹⁷⁴

In addition, Child Helpline Cambodia¹⁷⁵ provides free, 24 hour phone counseling, information, referral, and follow-up services for children and youth up to 25 years old in Cambodia. If it is known that a child is being abused or exploited, the public may call the free helpline (1280) or send a text message to 1293.

16 – Creates data retention and data preservation provisions

Cambodian law does not have data retention or data preservation provisions.

¹⁷¹ CAMBODIA NAT’L COUNCIL FOR CHILDREN (CNCC), 1ST AND 2ND NATIONAL REPORT ON THE IMPLEMENTATION OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY (2002-2010), at 25, available at <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.OPSC.KHM.1.pdf> (last visited Jan. 16, 2015).

¹⁷² *Id.* at 10.

¹⁷³ CHILDSAFE, <http://www.thinkchildsafe.org/> (last visited Nov. 19, 2014).

¹⁷⁴ Information provided by peer reviewer, Dr. Kevin McGahan, on Sept. 29, 2014.

¹⁷⁵ CHILD HELPLINE CAMBODIA, <http://childhelpline.org.kh/en/home/about/organisational-overview/> (last visited Nov. 19, 2014).

17 – Requires the identification of the user of public computers in cybercafés

Cambodia does not have legislation or regulation that requires the identification of users of public computers in cybercafés.

However, the Cambodian Government (Ministry of Posts and Telecommunications, MOPT) issued Circular No. 1815 on Preventive Measures on Certain Illegal Activities in the Businesses of Internet Café Service (dated November 12, 2012) (also known as “Circular on Preventive Measures related to Internet Café Service”) (hereafter referred to as “Circular on Preventive Measures related to Internet Café Service”).¹⁷⁶

The Cambodian Government stipulates that one of the purposes of issuing the Circular on Preventive Measures related to Internet Café Service is to eliminate the use of telecommunication and information technologies by criminals to commit offenses such as pornography or other immoral acts, which have affected national tradition and social morality.

Article 3 of the Circular on Preventive Measures related to Internet Café Service prescribes that all Internet cafés are not allowed to be used by guests to check any pornography websites, which lead to crimes such as rape, domestic violence, etc. Article 4 of this Circular further articulates that Internet cafés are not allowed to be used for committing crimes such as illegal drug trafficking, human trafficking, money laundering, inter-border sexual exploitation, which has a negative effect on the nation’s dignity and prestige. In addition, Article 1 of the same Circular provides that an Internet café which was opened and planned to open its service near an educational institution or school must relocate to a distance of 500 meters from the educational institution or school to avoid disturbing students.

18 – Has a national plan to combat violence against children

The Cambodian Government adopted a National Plan of Action on the Suppression of Human Trafficking, Smuggling, Labor and Sexual Exploitation (S.T.S.L.S.) (2011-2013)¹⁷⁷ to combat violence against children. It is also noted that the “National Plan of Action on the Suppression of Human Trafficking, Smuggling, Labor and Sexual Exploitation (S.T.S.L.S.) (2011-2013)” was recently referred to the National Committee to Counter Trafficking (N.C.C.T) as a consequence of a review of the strategy and its implementation.¹⁷⁸

19 – Has ratified the CRC and the OPSC

- Cambodia acceded to the Convention on the Rights of the Child on October 15, 1992.¹⁷⁹
- Cambodia ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography in May 2002.¹⁸⁰
- Cambodia ratified the Worst Forms of Child Labour Convention, 1999 (No. 182) in March 2006.¹⁸¹

¹⁷⁶ *Some Internet Cafés Ordered To Close*, CAMBODIAN CENTER FOR INDEPENDENT MEDIA (Dec. 14, 2012), <http://www.ccimcambodia.org/press-release/28-some-internet-cafes-ordered-to-close> (last visited Jan. 16, 2015).

¹⁷⁷ NAT’L COMM. TO LEAD THE SUPPRESSION OF HUMAN TRAFFICKING, SMUGGLING, LABOR AND SEXUAL EXPLOITATION (S.T.S.L.S.), NATIONAL PLAN OF ACTION ON THE SUPPRESSION OF HUMAN TRAFFICKING, SMUGGLING, LABOR AND SEXUAL EXPLOITATION (S.T.S.L.S.) (2011-2013), available at <http://www.no-trafficking.org/content/pdf/CMB-National%20Plan%20of%20Action%20English2.pdf> (last visited Jan. 16, 2015).

¹⁷⁸ Information provided by peer reviewer, Nick Crabb, on October 12, 2014.

¹⁷⁹ *Status of Ratification and Accession of the CRC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en (last visited Oct. 24, 2014).

¹⁸⁰ *Status of Ratification and Accession of the OPSC*, UN Treaty Collection, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last visited Oct. 24, 2014).

¹⁸¹ *Status of the Ratification of the Worst Forms of Child Labour Convention, 1999*, ILO,

20 – Age of criminal liability

The minimum age of criminal responsibility in Cambodia is 18 years of age under Article 38 of the Criminal Code.

21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children

Cambodia does not have legislation that specifically addresses the use of ICTs to commit crimes against children.

However, Article 41 of the LSHTSE criminalizes: 1) the distribution, sale, lease, display, public projection, or public presentation of child pornography, as well as, 2) the possession, transportation, importation, or exportation of child pornography for said purpose. Furthermore, pursuant to Article 40 of the LSHTSE, the term “child pornography” shall mean a visible material, depicting a minor’s naked figure which excites or stimulates sexual desire and the visual material includes a photograph, a videotape, or “a material in electronic form”.

22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online

Cambodian law has provisions that explicitly criminalize child trafficking with the intent of producing pornography as elaborated below.

Article 10 of the LSHTSE¹⁸² criminalizes the unlawful removal of another for exploitation for the purpose of any form of exploitation including “the purpose of the production of the pornography” with a penalty of imprisonment for 7 years to 15 years. The offense stipulated in this Article shall be punished with imprisonment for 15 to 20 years upon falling under one of following circumstances: 1) the victim is a minor; 2) the offense is committed by a public official who abuses his or her authority over the victim; or 3) the offense is committed by an organized group.

Concerning unlawful recruitment, Article 12 of the LSHTSE¹⁸³ punishes anyone who induces, hires, or employs a person to engage in any form of exploitation with the use of deception, abuse of power, confinement, force,

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited Oct. 24, 2014).

¹⁸² Article 10 of the LSHTSE (Unlawful Removal with Purpose)

A person who unlawfully removes another for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation shall be punished with imprisonment for 7 years to 15 years.

The offense stipulated in this article shall be punished with imprisonment for 15 to 20 years when :

- the victim is a minor
- the offense is committed by a public official who abuses his/her authority over the victim,
- the offense is committed by an organized group.

The terms “any form of exploitation” in this Article and Article 12, 15, 17, and 19 of this Law shall include the exploitation of the prostitution of others, pornography, commercial sex act, forced labor or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labor or the removal of organs.

The consent of the victim to any of the intended purpose set forth in paragraph 1 of this article shall be irrelevant where any of the means set forth in subparagraph 1 of Article 8 of this Law is used. This shall apply to the offenses stipulated in Article 15, 17, and 19 of this Law as well.

¹⁸³ Article 12 of the LSHTSE (Unlawful Recruitment for Exploitation)

The act of unlawful recruitment in this law shall mean to induce, hire or employ a person to engage in any form of exploitation with the use of deception, abuse of power, confinement, force, threat or any coercive means.

A person who unlawfully recruits another shall be punished with imprisonment for 7 to 15 years.

The offense stipulated in this article shall be punished with imprisonment for 15 to 20 years when:

- the victim is a minor

threat, or any coercive means. The offense as provided in this Article shall be punished with imprisonment for 15 to 20 years when: 1) the victim is a minor; 2) the offense is committed by a public official who abuses his/her authority over the victim; or 3) the offense is committed by an organized group. The term “any form of exploitation” in this Article of this Law shall include the exploitation of the prostitution of others, pornography, commercial sex act, forced labor or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labor or the removal of organs pursuant to Article 10 of this Law.

In addition, Article 15 of the LSHTSE¹⁸⁴ makes it an offense to sell, buy, or exchange a human being with the purpose of the production of pornography and any form of exploitation by punishment with imprisonment for 7 years to 15 years. The increased punishment for an offense prescribed by this Article shall be imposed in one of the following cases: 1) the victim is a minor; 2) the offense is committed by a public official who abuses his or her authority over the victim; or 3) the offense is committed by an organized group.

Furthermore, Article 19 of the LSHTSE¹⁸⁵ criminalizes the receipt of another person who has been unlawfully removed, recruited, sold, bought, exchanged, or transported for the purpose of production of pornography with a punishment of imprisonment for 7 to 15 years. The heightened punishment shall be imposed for an offense referred to in this Article provided that one of following conditions is met: 1) if the victim is a minor; 2) if the offense is committed by a public official who abuses his/her authority over the victim; or 3) if the offense is committed by an organized group.

Cambodian law does not provide explicit provisions criminalizing advertising child sex tourism online.

23, 24, 25, and 26 – Existence of legislation criminalizing online grooming, a clear definition of online grooming, the age of a potential victim, and related crimes

Cambodian law does not have provisions criminalizing online grooming as a standalone offense. Cambodian law also does not provide a clear definition of online grooming. In addition, there is no provision that considers everyone under the age of 18 years as a potential victim of online grooming in Cambodia.

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- the offense is committed by a public official who abuses his/her authority over the victim,
 - the offense is committed by an organized group.

¹⁸⁴ Article 15 of the LSHTSE (The Act of Selling, Buying or Exchanging of Human Being with Purpose)

A person who sells, buys or exchanges another person for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation shall be punished with imprisonment for 7 years to 15 years.

The offense stipulated in this article shall be punished with imprisonment for 15 to 20 years when:

- the victim is a minor
- the offense is committed by a public official who abuses his/her authority over the victim,
- the offense is committed by an organized group.

¹⁸⁵ Article 19 of the LSHTSE (Receipt of Person with Purpose)

A person who receives, harbors, or conceals another person who has been unlawfully removed, recruited, sold, bought, exchanged, or transported for the purpose of profit-making, sexual aggression, production of pornography, marriage against the will of the victim, adoption or any form of exploitation shall be punished with imprisonment for 7 to 15 years.

The offence stipulated in this article shall be punished with imprisonment for more than 15 to 20 years when:

- the victim is a minor
- the offence is committed by a public official who abuses his/her authority over the victim,
- the offence is committed by an organized group.

27 – Criminalizes showing pornography to a child as a standalone offense

There is no specific provision that criminalizes showing pornography to a child as a standalone offense under Cambodian law.

28 – Has legislation regarding cyberbullying

Cambodia does not have legislation regarding cyberbullying.

29 – Has legislation concerning sexting

There is no legislation concerning sexting in Cambodia.

Table 2.3 – Country: China

1 – Has legislation specific to child pornography	Yes
2 – Has a clear definition of child pornography	No (pornography)
3 – Considers everyone under 18 as a potential victim of activities related to child pornography	Yes
4 – Criminalizes accessing or downloading child pornography images	No
5 – Criminalizes possession of child pornography	No
6 – Criminalizes virtual images and sexually exploitative representations of children	No
7 – Addresses the criminal liability of children involved in pornography	No (if children are victims, not offenders)
8 – Establishes criminal liability of legal persons for production or commercialization of child pornography	Yes (not specifically, but pornography)
9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State	Partially Yes (not specifically, but pornography offenses)
10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State	Partially Yes (not specifically, but pornography offenses)
11 – Establishes confiscation of assets used to commit or facilitate child pornography offenses	Yes (not specifically, but pornography offenses)
12 – Establishes confiscation of proceeds derived from child pornography offenses	Yes (not specifically, but pornography offenses)
13 – Requires professionals working with children to report child pornography activities	No
14 – Requires Internet Service Providers to report child pornography	Yes (not specifically, but pornography)
15 – Has telephone or online hotlines to enable the public to report child abuse	Yes
16 – Creates data retention or data preservation provisions	1) Yes; 2) Yes
17 – Requires the identification of users of public computers in cybercafés	Yes (not legislation, but regulations)
18 – Has a national plan to combat violence against children	Yes
19 – Has ratified the CRC and the OPSC	Yes
20 – Age of criminal liability	14 – 16
21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children	Possibly Yes (along with judicial interpretations)
22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online	1) No (child trafficking in general); 2) No
23 – Has legislation that criminalizes online grooming as a standalone offense	No
24 – Has a clear definition of online grooming	No
25 – Considers everyone under 18 as a potential victim of online grooming	No
26 – 1) Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child; or 2) criminalizes grooming regardless of the intent	No
27 – Criminalizes showing pornography to a child as a standalone offense	Yes
28 – Has legislation regarding cyberbullying	No
29 – Has legislation concerning sexting	Possibly Yes (along with judicial interpretations)

China

In China, the Constitution of China (adopted on December 4, 1982 and last amended on March 14, 2004)¹⁸⁶ (hereafter referred to as the “Constitution”) has provisions that protect children’s rights. Specifically, Article 49 of the Constitution¹⁸⁷ specifies that maltreatment of children is prohibited.

Laws which protect children’s rights and/or govern violence against children are as follows:

- Criminal Law (adopted on July 1, 1979 and last amended by the 8th Amendment to the Criminal Law on February 25, 2011)^{188, 189}
- Law on Protection of Minors (adopted in 1991 and amended in 2006)¹⁹⁰ (also known as “Minors Protection Law”)
- Law on Prevention of Juvenile Delinquency (adopted in 1999)¹⁹¹

The Law on Protection of Minors is the primary law providing children’s rights protection. This Law articulates the responsibilities of families, schools, and the government with regard to the protection of children’s rights and judicial protection.

In addition, judicial interpretations and regulatory measures addressing obscene electronic information depicting a child under the age of 18 years or obscene/pornographic information in general, which might also encompass information involving child pornography, are as follows:

- Decision of the Standing Committee of the National People's Congress on Preserving Computer Network Security (December 2000)¹⁹²
- Interpretation of Some Questions on Concretely Applicable Law in the Handling of Criminal Cases of Using the Internet or Mobile Communication Terminals and Voicemail Platforms to Produce, Reproduce, Publish, Sell or Disseminate Obscene Electronic Information (September 2004) (hereafter referred to as “Judicial Interpretation 2004”)¹⁹³

¹⁸⁶ Constitution of China, available at http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm (last visited Jan. 16, 2015).

¹⁸⁷ Article 49 of the Constitution

Marriage, the family and mother and child are protected by the state. Both husband and wife have the duty to practice family planning. Parents have the duty to rear and educate their children who are minors, and children who have come of age have the duty to support and assist their parents. Violation of the freedom of marriage is prohibited. Maltreatment of old people, women and children is prohibited.

¹⁸⁸ Criminal Law (adopted in 1979 and amended in 1997), available at http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/11/content_21899017.htm (in English) (last visited Jan. 16, 2015).

8th Amendment to the Criminal Law (adopted on February 25, 2011), available at http://www.npc.gov.cn/npc/xinwen/2011-02/25/content_1625679.htm (in Chinese) (last visited Jan. 29, 2015).

¹⁸⁹ The provisions under the Criminal Law other than those for pornography offenses and other related crimes were affected by the 2011 amendment according to the information on the Library of Congress available at http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402612_text (last visited Jan. 16, 2015).

¹⁹⁰ Law on Protection of Minors, available at <http://www.china.org.cn/english/government/207410.htm> (last visited Jan. 16, 2015).

¹⁹¹ Law on Prevention of Juvenile Delinquency, available at http://www.npc.gov.cn/englishnpc/Law/2007-12/11/content_1383561.htm (last visited Jan. 16, 2015).

¹⁹² Decision of the Standing Committee of the National People's Congress on Preserving Computer Network Security, available at <http://www.hrichina.org/sites/default/files/pdfs/law/Decision-of-the-Standing-Committee-of-the-National-Peoples-Congress-on-Safeguarding-Internet-Security-en.pdf> (last visited Jan. 21, 2015).

¹⁹³ Interpretation of Some Questions on Concretely Applicable Law in the Handling of Criminal Cases of Using the Internet or Mobile Communication Terminals and Voicemail Platforms to Produce, Reproduce, Publish, Sell or Disseminate Obscene Electronic Information (hereafter referred to as “Judicial Interpretation 2004”), available at <https://chinacopyrightandmedia.wordpress.com/2004/09/09/interpretation-of-some-questions-on-concretely-applicable-law-in-handling-criminal-cases-of-using-the-internet-or-mobile-communication-terminals-and-voicemail-platforms-to-produce-reproduce-publish-2/#more-1700> (last visited Jan. 16, 2015).

- Implementation Measures Relating to the Temporary Provisions for the Management of Computer Information Networks in China that Take Part In International Internetworks (March 1998)¹⁹⁴
- Measures for Security Protection Administration of the International Networking of Computer Information Networks (December 1997)¹⁹⁵
- Interpretation of Some Questions on Concretely Applicable Law in Handling Criminal Cases of Using the Internet or Mobile Communication Terminals and Voicemail Platforms to Produce, Reproduce, Publish, Sell or Disseminate Obscene Electronic Information (II) (February 2010) (hereafter referred to as "Judicial Interpretation 2010")¹⁹⁶
- Regulations on Administration of Business Premises for Internet Access Services¹⁹⁷

EXTRACTS OF LEGISLATION RELATED TO THE TABLE:

1 – Has legislation specific to child pornography

The Criminal Law generally prohibits any person from engaging in prescribed activities involving pornographic material, regardless of whether the individuals being depicted are adults or children. In addition, the Criminal Law specifies a more severe penalty for any person who disseminates pornographic material to a minor victim under the age of 18, as compared to an adult victim as stated below.

Furthermore, the production, duplication, publication, sale, or dissemination of pornographic material for profit and dissemination of pornographic materials stipulated in Article 363, paragraph 1 and Article 363, paragraph 4 of the Criminal Law, shall encompass such activities as the production, duplication, publication, sale, or dissemination of child pornography pursuant to Judicial Interpretations 2004 and 2010 as elaborated below.¹⁹⁸

Article 363 of the Criminal Law¹⁹⁹ criminalizes producing, selling, duplicating, publishing, or disseminating pornographic materials for the purpose of profit (Paragraph 1). This Article also punishes any person who

For the purposes of this Regional Study, the unofficial English translation of the Judicial Interpretation 2004 based on the information available on the above-mentioned website.

¹⁹⁴ See the full text of Implementation Measures Relating to the Temporary Provisions for the Management of Computer Information Networks in China that Take Part In International Internetworks at <http://www.fas.org/irp/world/china/docs/980306-Internet.htm> (last visited Jan. 16, 2015).

¹⁹⁵ See the full text of Measures for Security Protection Administration of the International Networking of Computer Information Networks at http://www.wipo.int/wipolex/en/text.jsp?file_id=182465 (last visited Jan. 16, 2015).

¹⁹⁶ See the full text of the Interpretation of Some Questions on Concretely Applicable Law in Handling Criminal Cases of Using the Internet or Mobile Communication Terminals and Voicemail Platforms to Produce, Reproduce, Publish, Sell or Disseminate Obscene Electronic Information (II) (hereafter referred to as "Judicial Interpretation 2010") at <http://chinacopyrightandmedia.wordpress.com/2010/02/02/interpretation-of-some-questions-on-concretely-applicable-law-in-handling-criminal-cases-of-using-the-internet-or-mobile-communication-terminals-and-voicemail-platforms-to-produce-reproduce-publish/#more-1672> (last visited Jan. 16, 2015).

For the purposes of this Regional Study, the unofficial English translation of the judicial interpretation 2010 was conducted based on the information available on above-mentioned website.

¹⁹⁷ Regulations on Administration of Business Premises for Internet Access Services, available at <http://www.wipo.int/edocs/lexdocs/laws/en/cn/cn072en.pdf> (last visited Jan. 21, 2015).

¹⁹⁸ UN COMM. ON THE RIGHTS OF THE CHILD, *Consideration of Reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Initial reports of States Parties: China due in 2005*, at 12 to 13, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/438/15/PDF/G0543815.pdf?OpenElement> (last visited Jan. 16, 2015).

¹⁹⁹ Article 363 of the Criminal Law

Whoever, for the purpose of profit, produces, duplicates, publishes, sells or disseminates pornographic materials shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment, and shall also be fined or be sentenced to confiscation of property.

provides book numbers to another person to publish pornographic books or periodicals (Paragraph 2). In addition, the same Article punishes any person who knowingly provides book numbers to another person who will use them for publishing pornographic books or periodicals (Paragraph 3).

Article 364 of the Criminal Law²⁰⁰ outlaws dissemination of pornographic materials (Paragraph 1). Article also stipulates that any person who disseminates pornographic materials to a minor under the age of 18 will be given a heavier punishment than the preceding paragraph (Paragraph 4). In addition, the same Article punishes anyone who: a) arranges for shows of pornographic audio-video products including movies and video-tapes; and b) produces/duplicates pornographic audio-video products and then arranges for their shows (Paragraphs 2 and 3).

Pursuant to Article 6 of the Judicial Interpretation 2004,²⁰¹ those who, with or without the aim of profit, use the Internet or mobile telecommunications terminals to produce, reproduce, sell, publish, or disseminate obscene electronic information, concretely depicting sexual acts by minors who have not reached 18 years of age, shall be punished severely according to Article 363, paragraph 1 and Article 364, paragraph 1 of the Criminal Law.

Furthermore, Article 365 of the Criminal Law²⁰² makes it illegal to arrange for pornographic performances. Article 152 of the Criminal Law²⁰³ also prohibits any person from smuggling pornographic movies, videotapes,

Whoever provides book numbers for another person to publish pornographic books or periodicals shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; whoever knowingly provides books numbers to another person who will use them for publishing pornographic books or periodicals shall be punished in accordance with the provisions of the preceding paragraph.

²⁰⁰ Article 364 of the Criminal Law

Whoever disseminates pornographic materials including books, periodicals, movies, video-audio tapes and pictures, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than two years, criminal detention or public surveillance.

Whoever arranges for shows of pornographic audio-video products including movies and video-tapes shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.

Whoever produces or duplicates pornographic audio-video products including movies and video-tapes and arranges for their show shall be given a heavier punishment in accordance with the provisions of the second paragraph of this Article.

Whoever disseminates the pornographic materials to a minor under the age of 18 shall be given a heavier punishment.

²⁰¹ Article 6 of the Judicial Interpretation 2004

Those carrying out the crimes provided in the previous five Articles of this Interpretation, where one of the following conditions, are punished severely according to the provisions of Article 363, Paragraph 1 or Article 364, Paragraph 1 of the Criminal Law:

- (1) producing, reproducing, publishing, selling or disseminating obscene electronic information concretely depicting sexual acts by minors who have not reached 18 years of age;
- (2) clearly knowing about obscene electronic information concretely depicting sexual acts by minors who have not reached 18 years of age and providing direct links on websites or webpages owned, managed or used by oneself;
- (3) selling or disseminating obscene electronic information and voice information to minors not having reached 18 years of age;
- (4) forcing users to access or download obscene electronic information through destructive software or malicious code, changing users' computer installations and other methods.

²⁰² Article 365 of the Criminal Law

Whoever arranges for pornographic performances shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.

²⁰³ Article 152 of the Criminal Law

Whoever, for the purpose of making profits or dissemination, smuggles pornographic movies, videotapes, magnetic tapes, pictures, books or periodicals or other pornographic materials shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be

magnetic tapes, pictures, books, or periodicals or other pornographic materials for the purpose of making profits or dissemination.

2 – Has a clear definition of child pornography

Chinese law does not provide a clear definition of child pornography. However, Article 6 of the Judicial Interpretation 2004 criminalizes prescribed activities related to obscene electronic information concretely depicting sexual acts by a minor below 18 years of age as elaborated below.

In addition, Article 367 of the Criminal Law²⁰⁴ provides a clear definition of pornographic materials. Under Article 367, paragraph 1 of the Criminal Law, pornographic materials refer to obscene books, periodicals, movies, video- and audio-tapes, pictures, and other obscene materials that explicitly portray sexual behavior or undisguisedly publicize pornography. However, (a) scientific works on human physiology or medical knowledge, or (b) literary and art works of artistic value which contain erotic contents shall not be considered as pornographic materials.

Moreover, pursuant to Article 9 of the Judicial Interpretation 2004²⁰⁵, “other obscene materials” as provided in Article 367, paragraph 1 of the Criminal Law includes: audiovisual files, audio files, electronic periodicals, images, articles, short messages, and other Internet and mobile telecommunications terminal electronic information and voicemail information concretely describing sexual acts or undisguised propagation of sexual degeneracy. However, (a) electronic information and voicemail platform information related to human physiological and medical knowledge, or (b) electronic literature or art works containing sexual content and having artistic value are not deemed to be obscene materials.

3 – Considers everyone under 18 as a potential victim of activities related to child pornography

Chinese law, along with Judicial Interpretation 2004, considers everyone under the age of 18 years as a potential victim of offenses related to child pornography.

Article 364, paragraph 4 of the Criminal Law severely punishes anyone who disseminates pornographic materials to a minor under the age of 18 compared to dissemination of such materials to a non-minor, stipulated in Article 364, paragraph 1 of this Law. In addition, pursuant to Article 6 of the Judicial Interpretation 2004, those who, with or without the aim of profit, use the Internet or mobile telecommunications terminals to produce, reproduce, sell, publish, or disseminate obscene electronic information concretely depicting sexual acts by minors who have not reached 18 years of age shall be punished severely according to Article 363, paragraph 1 and Article 364, paragraph 1 of the Criminal Law.

fined or be sentenced to confiscation of property; if the circumstances are minor, he shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance, and shall also be fined.

²⁰⁴ Article 367 of the Criminal Law

For the purpose of this Law, pornographic materials refer to obscene books, periodicals, movies, video- and audio-tapes, pictures, and other obscene materials that explicitly portray sexual behavior or undisguisedly publicize pornography.

Scientific works on human physiology or medical knowledge are not pornographic materials.

Literary and art works of artistic value which contain erotic contents shall not be regarded as pornographic materials.

²⁰⁵ Article 9 of the Judicial Interpretation 2004

“Other obscene materials” as provided in Article 367 Paragraph 1 of the Criminal Law, includes audiovisual files, audio files, electronic periodicals, images, articles, short messages and other Internet and mobile telecommunications terminal electronic information and voicemail information concretely describing sexual acts or undisguised propagation of sexual degeneracy.

Electronic information and voicemail platform information related to human physiological and medical knowledge is not an obscene material.

Electronic literature or art works containing sexual content and having artistic value are not considered to be obscene materials.

Furthermore, Article 2 of the Law on the Protection of Minors stipulates that “minors” as used in this Law refer to citizens under the age of 18 years.

In China, the age of consent to sexual intercourse is 14 years for women pursuant to Article 236 of the Criminal Law.²⁰⁶

4 – Criminalizes accessing or downloading child pornography images

Chinese law does not contain provisions that criminalize accessing (viewing) or downloading child pornography and pornography using the Internet or a computer device. However, Criminal Law, along with the Judicial Interpretations 2004 and 2010, may address ICT-facilitated offenses involving obscene electronic information concretely depicting sexual acts by minors.

Pursuant to Article 6 (1) of the Judicial Interpretation 2004, those who use the Internet or mobile telecommunications terminals to produce, reproduce, sell, publish, or disseminate obscene electronic information concretely depicting sexual acts by a minor below 18 years of age, with or without the aim of profit, shall be punished severely according to Article 363, paragraph 1 and Article 364, paragraph 1 of the Criminal Law. In addition, according to Article 6 (4) of the Judicial Interpretation 2004, anyone who forces users to access or download obscene electronic information through destructive software or malicious code, changing users’ computer installations, and other methods shall be punished.

Articles 1 and 3 of the Judicial Interpretation 2004 apply to ICT-facilitated obscenity offenses as stated below.

Article 1 of the Judicial Interpretation 2004²⁰⁷ specifically provides that those who use the Internet or mobile telecommunications terminals to produce, reproduce, publish, sell, and disseminate obscene electronic

²⁰⁶ Extract of Article 236 of the Criminal Law

Whoever has sexual intercourse with a girl under the age of 14 shall be deemed to have committed rape and shall be given a heavier punishment.

²⁰⁷ Article 1 of the Judicial Interpretation 2004

Those using the Internet or mobile telecommunications terminals to produce, reproduce, sell, publish or disseminate obscene electronic information in order to gain a profit and where one of the following circumstances is present, are convicted and punished for committing the crime of producing, reproducing, publishing, selling or disseminating obscene electronic information with the aim of profit, according to the provisions of Article 363, Paragraph 1 of the Criminal Law:

- (1) producing, reproducing, publishing, selling or disseminating 20 or more obscene films, performances, cartoons and other audiovisual files;
- (2) producing, reproducing, publishing, selling or disseminating 100 or more obscene audio files;
- (3) producing, reproducing, publishing, selling or disseminating more than 200 obscene electronic publications, images, articles, short messages, etc.;
- (4) producing, reproducing, publishing, selling or disseminating obscene electronic information, that is clicked 10.000 times or more in reality;
- (5) publishing, selling or disseminating obscene electronic information using a membership method, and having 200 registered members or more;
- (6) using obscene electronic information to collect advertising fees, member registration fees or other fees, and the unlawful income is 10.000 Yuan or more;
- (7) where quantities or values do not reach the standards provided in Clause (1) to Clause (6), but respectively reach half or more of two or more standards;
- (8) where grave consequences result.

Those using chat rooms, fora, instant messaging systems, e-mail boxes and other methods to conduct the acts provided in Paragraph 1, are punished for committing the crime of producing, reproducing, publishing, selling or disseminating obscene electronic information with the aim of profit, according to the provisions of Article 363, Paragraph 1 of the Criminal Law.

information in order to gain a profit, and fall into one of the specified categories under this Judicial Interpretation, are subject to punishment according to Article 363, paragraph 1 of the Criminal Law.

Furthermore, Article 3 of the Judicial Interpretation 2004²⁰⁸ states that anyone who uses the Internet or mobile telecommunications not for profit in order to disseminate obscene electronic information, and who falls into one of the specified cases under this Judicial Interpretation, shall be punished in accordance with Article 364, paragraph 1 of the Criminal Law.

5 – Criminalizes possession of child pornography

Possession of child pornography and pornography without engaging in any further activities such as reproduction, dissemination, publication, or sale is not a crime in China.

6 – Criminalizes virtual images and sexually exploitative representations of children

Chinese law does not provide explicit provisions that criminalize the production, distribution, possession, and commercialization of child pornography including virtual images and sexually exploitative representations of children that do not necessarily use real children in their production.

However, according to Article 6 (1) of the Judicial Interpretation 2004, those who use the Internet or mobile telecommunications terminals to produce, reproduce, publish, sell, or disseminate obscene electronic information concretely depicting sexual acts by minors who have not reached 18 years of age shall be severely punishable in accordance with Article 363, paragraph 1 and Article 364, paragraph 1 of the Criminal Law, with or without the aim of profit, as the case may be.

Also, pursuant to Article 9 of the Judicial Interpretation 2004, “other obscene materials” as provided in Article 367, paragraph 1 of the Criminal Law includes audiovisual files, audio files, electronic periodicals, images, articles, short messages, and other Internet and mobile telecommunications terminal electronic information and voicemail information concretely describing sexual acts or undisguised propagation of sexual degeneracy.

7 – Addresses the criminal liability of children involved in pornography

Chinese law does not address the criminal liability of children involved in pornography defined and punishable by Articles 363 to 367 of the Criminal Law for their participation, if such children are victims.

However, in respect of child offenders, the minimum age of criminal responsibility in China is 14 to 16 years old, depending on the seriousness of the crime committed, pursuant to Article 17 of the Criminal Law.

²⁰⁸ Article 3 of the Judicial Interpretation 2004

Those using Internet or mobile telecommunications terminals to disseminate obscene electronic information, without the aim of profit, and where one of the following circumstances is present, are convicted and punished for the crime of disseminating obscene goods according to the provisions of Article 364, Paragraph 1 of the Criminal Law:

- (1) quantities reaching double or more the standards provided in Article 1, Paragraph 1, Clauses (1) to (5);
- (2) quantities respectively reaching two or more of the standards provided in Article 1, Paragraph 1, Clauses (1) to (5);
- (3) where grave consequences result.

Those using chat rooms, forums, instant messaging software, e-mail boxes and other methods to carry out one of the acts provided in Paragraph 1, is convicted and punished for the crime of disseminating obscene goods, according to the provisions of Article 364, Paragraph 1 of the Criminal Law.

8 – Establishes criminal liability of legal persons for production or commercialization of child pornography

The Criminal Law establishes criminal liability of legal persons for production or commercialization of pornography, which may also cover activities related to child pornography in accordance with Judicial Interpretations 2004 and 2010, as stated below.

Article 30 of the Criminal Law specifies that any company, enterprise, institution, State organ, or organization that commits an act that endangers society, which is prescribed by law as a crime committed by a unit, shall bear criminal responsibility.

In addition, Article 31 of the Criminal Law stipulates that if a unit commits an offense, it shall be fined, and the persons who are directly in charge and the persons who are responsible for the crime shall be given criminal punishment. However, this Article also prescribes that where it is otherwise provided for in the specific provisions of this Law or in other laws, those provisions shall prevail.

Moreover, with respect to pornography offenses, which might also cover child pornography, Article 366 of the Criminal Law provides that where a unit commits any of the crimes mentioned in Articles 363, 364, and 365 of this Section, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offense shall be punished in accordance with the provisions of the Articles respectively.²⁰⁹

9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State

China, subject to Article 7 of the Criminal Law, establishes its extraterritorial jurisdiction over pornography offenses as provided in Article 363 of the Criminal Law, which may be applicable to child pornography offenses in accordance with Judicial Interpretations 2004 and 2010, when the alleged offender is a national of China.

According to Article 7 of the Criminal Law, this Law shall be applicable to any citizen of China who commits a crime prescribed in this Law outside of the territory and territorial waters and space of China.²¹⁰ However, pursuant to Article 7 of the Criminal Law, if the maximum punishment to be imposed for that crime is fixed-term imprisonment of not more than three years as stipulated in this Law, he may be exempted from the investigation for his criminal responsibility.

Considering the requisite length of the maximum punishment of fixed-term imprisonment as stipulated in Article 7 the Criminal Law, China establishes its extraterritorial jurisdiction over pornography offenses as provided in Article 363, Paragraph 1 of the Criminal Law when the alleged offender is its citizen, provided that the circumstances are serious or if the circumstances are especially serious. Article 363, paragraph 1 of the Criminal Law criminalizes production, duplication, publication, sale, or dissemination of pornographic materials for the purposes of profit.

²⁰⁹ Criminal Law, Part 2 (Specific Provisions), Chapter VI (Crimes of Obstructing the Administration of Public Order), Section 9 (Crimes of Producing, Selling, Disseminating Pornographic Materials), Articles 363 to 367 address offenses involving pornography in China.

²¹⁰ Article 7 of the Criminal Law

This Law shall be applicable to any citizen of the People's Republic of China who commits a crime prescribed in this Law outside the territory and territorial waters and space of the People's Republic of China; however, if the maximum punishment to be imposed is fixed-term imprisonment of not more than three years as stipulated in this Law, he may be exempted from the investigation for his criminal responsibility.

This Law shall be applicable to any State functionary or serviceman who commits a crime prescribed in this Law outside the territory and territorial waters and space of the People's Republic of China.

10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State

China, subject to Article 8 of the Criminal Law, establishes its extraterritorial jurisdiction over pornography offenses as provided in Article 363 of the Criminal Law, which may be applicable to child pornography offenses in accordance with Judicial Interpretations 2004 and 2010, when the victim is a national of China.

Pursuant to Article 8 of the Criminal Law, this Law may be applicable to any foreigner who commits a crime outside of the territory and territorial waters and space of China against any citizen of China.²¹¹ However, according to Article 8 of the Criminal Law, if the minimum punishment for that crime to be imposed is fixed-term of imprisonment of not less than three years as prescribed in this Law, this does not apply to a crime that is not punishable according to the laws of the place where it is committed.

Considering the requisite length of the minimum punishment of fixed-term imprisonment as stipulated in Article 8 of the Criminal Law, China establishes its extraterritorial jurisdiction over pornography offenses mentioned in Article 363, paragraph 1 of the Criminal Law when the victim is its citizen, provided that the circumstances are especially serious. Article 363, paragraph 1 of the Criminal Law punishes any person who produces, duplicates, publishes, sells, or disseminates pornographic materials for the purposes of profit.

11 – Establishes the confiscation of assets used to commit or facilitate child pornography offenses; and 12 – Establishes the confiscation of proceeds derived from child pornography offenses

Article 64 of the Criminal Law²¹² provides for the confiscation of property. Part 1, General Provisions (Articles 1-101) of the Criminal Law shall be applicable to a crime as defined in Article 13 of the Criminal Law,²¹³ unless provided otherwise by the law, pursuant to Article 6 of the Criminal Law.²¹⁴

Properties that are subject to confiscation are as follows: a) possessions of the criminal that are used in the commission of the crime; b) all money and property illegally obtained by the criminal provided under this Criminal Law; and c) contraband.

²¹¹ Article 8 of the Criminal Law

This Law may be applicable to any foreigner who commits a crime outside the territory and territorial waters and space of the People's Republic of China against the State of the People's Republic of China or against any of its citizens, if for that crime this Law prescribes a minimum punishment of fixed-term imprisonment of not less than three years; however, this does not apply to a crime that is not punishable according to the laws of the place where it is committed.

²¹² Article 64 of the Criminal Law

All money and property illegally obtained by a criminal shall be recovered, or compensation shall be ordered; the lawful property of the victim shall be returned without delay; and contrabands and possessions of the criminal that are used in the commission of the crime shall be confiscated. All the confiscated money and property and fines shall be turned over to the State treasury, and no one may misappropriate or privately dispose of them.

²¹³ Article 13 of the Criminal Law

A crime refers to an act that endangers the sovereignty and territorial integrity and security of the State; splits the State and subverts the State power of the people's dictatorship and overthrows the socialist system; undermines social order and economic order; violates State-owned property or property collectively owned by the working people; or property privately owned by citizens, infringes upon the citizens' rights of the person and their democratic and other rights; and any other act that endangers society and is punishable according to law. However, if the circumstances are obviously minor and the harm done is not serious, the act shall not be considered a crime.

²¹⁴ Article 6 of the Criminal Law

This Law shall be applicable to anyone who commits a crime within the territory and territorial waters and space of the People's Republic of China, except as otherwise specially stipulated by law.

This Law shall also be applicable to anyone who commits a crime on board a ship or aircraft of the People's Republic of China.

If a criminal act or its consequence takes place within the territory or territorial waters and space of the People's Republic of China, the crime shall be deemed to have been committed within the territory or territorial waters and space of the People's Republic of China.

In addition, with regard to crimes involving pornographic materials, Article 363 of the Criminal Law enables the confiscation of property upon the commission of the crimes of producing, selling, or disseminating pornographic materials for the purpose of profit, if the circumstances are especially serious. Pursuant to Article 6 (1) of the Judicial Interpretation 2004, those using the Internet or mobile telecommunications terminals to produce, reproduce, sell, publish or disseminate obscene electronic information concretely depicting sexual acts by minors who have not reached 18 years of age in order to gain a profit are punished severely according to the provisions of Article 363, Paragraph 1 of the Criminal Law.

Moreover, Article 11 of the Judicial Interpretation 2010²¹⁵ allows the court to order the confiscation of assets in addition to imposing a fine in accordance with the Law, after comprehensively considering unlawful income, social harm, and other circumstances of those producing, reproducing, publishing, selling, or disseminating obscene electronic information with the aim of profit.

Article 361 of the Criminal Law²¹⁶ allows the confiscation of property held by any employee of a unit in the trade of hotels, catering services, or entertainment services or in the taxi services if such employee takes advantage of his or her work unit and arranges for, forces, or lures another person to engage in prostitution or provides shelter for prostitution or procures other persons to engage in prostitution.

13 – Requires professionals working with children to report child pornography activities

Chinese law does not have provisions that require professionals who work with children to report child pornography activities to relevant authorities when they learn of incidents involving children's participation in pornographic materials.

According to the Concluding Observations on the combined 3rd and 4th Periodic Reports of China, adopted by the UN Committee on the Rights of the Child in 2013, with regard to sexual exploitation and abuse of children, the Committee urges China to: a) establish effective and child-friendly procedures and mechanisms, including free helplines accessible to children; b) receive, monitor, and investigate complaints; c) undertake awareness-raising activities among children, including among boys; and d) encourage the reporting of sexual violence and abuse in schools and communities.²¹⁷ In addition, according to the Concluding Observations as stated above, regarding combating all forms of violence against children, the Committee encourages China to: a) adopt mandatory reporting of all cases and b) take the follow-up measures necessary to address all forms of violence against children.

²¹⁵ Article 11 of the Judicial Interpretation 2010

The People's Courts shall comprehensively consider unlawful income, social harm, and other circumstances of those producing, reproducing, publishing, selling, or disseminating obscene electronic information with the aim of profit, and punish them with a fine or confiscation of assets according to the law. Fine amounts generally are more than one time but less than five times the unlawful income.

²¹⁶ Article 361 of the Criminal Law

Any employee of a unit in the trade of hotels, in the catering or entertainment services, or in the taxi services who, by taking advantage of his or her work unit, arranges for, forces or lures another person to engage in prostitution or provides shelter for prostitution or procures other persons to engage in prostitution, shall be convicted and punished in accordance with the provisions of Articles 358 and 359 of this Law.

²¹⁷ UN COMM. ON THE RIGHTS OF CHILD, *Concluding observations on the combined third and fourth periodic reports of China (including Hong Kong and Macau Special Administrative Regions)*, adopted by the Committee at its sixty-fourth session (16 September – 4 October 2013), U.N. Doc. CRC/C/CHN/CO/3-4 (Oct. 4, 2013), at 11, paragraphs 45 to 46, available at <http://www.refworld.org/docid/5263de9d4.html> (last visited Jan. 16, 2015).

14 – Requires Internet Service Providers to report child pornography

While not specific to child pornography, China has regulatory measures that require Internet Service Providers (ISPs) to report obscene, pornographic, and other harmful information to relevant authorities when they learn of it on their own networks as stated below.

Article 7 of the Decision of the Standing Committee of the National People's Congress on Preserving Computer Network Security²¹⁸ requires any unit that engages in computer network business to report the matter to relevant authorities without delay and take measures to suspend transmission of harmful information, upon the discovery of illegal or criminal acts or harmful information on the computer network.

In addition, Article 20 of the Implementation Measures Relating to the Temporary Provisions for the Management of Computer Information Networks in China that Take Part In International Internetworks²¹⁹ prohibits Internetwork work units, access network work units and subscribers from producing, consulting, reproducing or disseminating pernicious information such as information that is harmful to public security or pornographic materials. Furthermore, Article 21 of these Implementation Measures provides that when pernicious information is discovered, it should promptly be reported to the pertinent responsible department, and effective measures should be taken to prevent proliferation of the information.

Moreover, Article 5 (6) of the Measures for Security Protection Administration of the International Networking of Computer Information Networks²²⁰ articulates that no unit or individual shall be allowed to use the international network to produce, duplicate, search, and disseminate any information that propagates obscenity, pornography, violence, and instigates crimes. In addition, Article 10 (6) of these Measures²²¹ requires Internetworking units, receiving units, legal persons and other organizations that use the international network of computer information networks to report to the local public security organ within 24 hours upon the discovery of any of the circumstances listed in Article 5 of the same Measures.

²¹⁸ Extract of Article 7 of the Decision of the Standing Committee of the National People's Congress on Preserving Computer Network Security

Any unit that engages in the computer network business shall carry out activities in accordance with law and, when it discovers illegal or criminal acts or harmful information on the computer network, shall take measures to suspend transmission of harmful information and report the matter to the relevant authority without delay. All units or individuals shall, when using the computer network, observe disciplines and laws and resist all illegal and criminal acts and harmful information.

²¹⁹ Article 20 of the Implementation Measures Relating to the Temporary Provisions for the Management of Computer Information Networks in China that Take Part In International Internetworks

Chinese Internetwork work units, access network work units and subscribers should observe the pertinent state laws and administrative regulations, strictly implementing the national security and secrecy system. Chinese Internetwork work units, access network work units and subscribers are not permitted to use international Internetworks to engage in illegal criminal activities such as damaging national security and disclosing national secrets. Nor are they permitted to produce, consult, reproduce or disseminate pernicious information such as information that is harmful to public security or pornographic materials. When pernicious information is discovered, it should promptly be reported to the pertinent responsible department, and effective measures should be taken to prevent proliferation of the information.

²²⁰ Article 5 (6) of the Measures for Security Protection Administration of the International Networking of Computer Information Networks

No unit or individual shall use the international networking to produce, duplicate, search and disseminate the following information:

(6) information that propagates feudalistic superstitions, obscenity, pornography, gambling, violence, murder and terror and instigates crimes

²²¹ Article 10 (6) of the Measures for Security Protection Administration of the International Networking of Computer Information Networks

Internetworking units, receiving units and legal persons and other organizations that use the international networking of computer information networks should fulfill the following security protection responsibilities:

(6) To preserve the relevant original records upon discovery of any of the circumstances listed in Articles 4, 5, 6 and 7 of these Measures and report to the local public security organ within 24 hours.

In addition, Article 3 (5) of the Decision of the Standing Committee of the National People's Congress on Preserving Computer Network Security²²² explicitly states that anyone who commits any of following acts, which constitutes a crime by either: 1) establishing pornographic websites, webpages; or 2) providing links to pornographic sites on the Internet in order to spread such material, including material from books and magazines, motion pictures, video and audio products, shall be investigated for criminal responsibility in accordance with the relevant provisions in the Criminal Law.

15 – Has telephone or online hotlines to enable the public to report child abuse

According to the UNICEF in China,²²³ China has telephone or online hotlines to enable the public to report child abuse and child sexual exploitation as stated below.

The public may contact local officials and report suspected child trafficking or other types of child abuse and exploitation cases through telephone hotlines, such as the police emergency services telephone number 110 and the All China Women's Federation hotline number 12338.

16 – Creates data retention or data preservation provisions

The Administrative Measures on Internet Information Services²²⁴ and the Administrative Provisions for Electronic Bulletin Services on the Internet²²⁵ provide data retention provisions as stated below.

Pursuant to Article 14 of the Administrative Measures on Internet Information Services and Article 15 of the Administrative Provisions for Electronic Bulletin Services on the Internet, Internet access service providers shall record user online times, user account numbers, Internet addresses or domain names, and the principal telephone numbers of Internet users. According to Article 14 of the Administrative Measures on Internet Information Services and Article 15 of the Administrative Provisions for Electronic Bulletin Services on the Internet, such records shall be kept for 60 days and shall be made available when relevant State authorities make inquiries in accordance with the law.

In addition, Article 19 of the Implementation Measures Relating to the Temporary Provisions for the Management of Computer Information Networks in China that Take Part In International Internetworks²²⁶

²²² Article 3 (5) of the Decision of the Standing Committee of the National People's Congress on Preserving Computer Network Security

For the purpose of maintaining order of the socialist market economy and ensuring the administration of public order, anyone who commits any of the following acts, which constitutes a crime, shall be investigated for criminal responsibility in accordance with the relevant provisions in the Criminal Law:

(5) Establishing pornographic Web sites, Web pages, or providing links to pornographic sites on the Internet in order to spread such material, including material from books and magazines, motion pictures, video and audio products, and still images.

²²³ *Child Abuse and Exploitation*, UNICEF CHINA, <http://www.unicefchina.org/en/index.php?m=content&c=index&a=show&catid=183&id=16> (last visited Nov. 19, 2014).

²²⁴ Administrative Measures on Internet Information Services, available at http://www.china.org.cn/business/2010-01/20/content_19274704_3.htm (last visited Jan. 29, 2015).

²²⁵ Administrative Provisions for Electronic Bulletin Services on the Internet, available at http://www.china.org.cn/business/2010-01/20/content_19274960.htm (last visited Jan. 30, 2015).

²²⁶ Article 19 of the Implementation Measures Relating to the Temporary Provisions for the Management of Computer Information Networks in China that Take Part In International Internetworks

Work units that provide international exit/entry channel(s), Chinese internetwork work units and access network work units should save all information and data relating to the respective services that they perform. When the LGI Office and the pertinent responsible departments carry out an inspection, the relevant data and information should be provided in a timely manner by the work unit that offers services.

Work units that provide international exit/entry channel(s) and Chinese internetwork work units should submit reports in February of each year to the LGI Office regarding the operation of their respective networks, expansion of services provided, and the management of their respective organizations during the previous year.

prescribes that Chinese international work units and access network work units should: a) save all information and data relating to the respective services that they perform; and b) if they are required by the authorities, provide the relevant data and information in a timely manner to such authorities.

17 – Requires the identification of users of public computers in cybercafés

China has regulations that require the identification of the users of public computers in cybercafés.

Pursuant to Article 23 of the Regulations on Administration of Business Premises for Internet Access Services,²²⁷ a unit operating business premises for Internet access services shall check and register the identity cards or other valid credentials of consumers of Internet access services, and make a record of relevant log-on information. According to the same Article, the registered contents and copies of the record shall be kept for a period not less than 60 days, and shall be provided to the Culture Administration Department and the Public Security Organ when they conduct an inquiry according to law.

Article 2 of the Regulations on Administration of Business Premises for Internet Access Services²²⁸ defines the term “business premises for Internet access services” as business premises such as Internet bars or computer lounges where Internet access services are provided to the general public by means of computers or other devices. Thus, the definition of business premises for Internet access services includes cybercafés.

Additionally, Article 14 of the Regulations on Administration of Business Premises for Internet Access Services provides that all unit operating business premises for Internet access services and consumers of Internet access services shall not make use of the business premises for Internet access services to create, download, reproduce, search, release, spread, or employ in other means information involving contents advocating obscenity.

Moreover, Article 29 of the Regulations on Administration of Business Premises for Internet Access Services also stipulates that where a unit operating business premises for Internet access services, in violation of the provisions of these Regulations, takes advantage of its premises to create, download, reproduce, search, release, spread, or use in any other form any information involving the contents prohibited by the provisions of Article 14 of these Regulations, thereby violating the criminal law, it shall be investigated for criminal liability according to the Law. In addition, Article 29 of the same Regulations prescribes that if its acts are not serious enough for criminal punishment, the public security organ shall give it a warning and confiscate the illegal income.

18 – Has a national plan to combat violence against children

China has a national plan to combat trafficking in children. China adopted a “National Plan of Action (NPA) on Combating Trafficking in Women and Children (2008-2012)” issued by the State Council of China on December

²²⁷ Article 23 of the Regulations on Administration of Business Premises for Internet Access Services

A unit operating business premises for Internet access services shall check and register the identity cards or other valid credentials of consumers of Internet access services, and make a record on relevant log-on information. The registered contents and copies of the record shall be kept for a period not less than 60 days, and shall be provided to the culture administration department and the public security organ when they conduct inquiry according to law. All the registered contents and copies of the record shall not be modified or deleted within the save period.

²²⁸ Article 2 of the Regulations on Administration of Business Premises for Internet Access Services

As used in these Regulations, the term "business premises for Internet access services" refers to business premises such as Internet bars or computer lounges where Internet access services are provided to the general public by means of computers or other devices.

Premises affiliated to schools, libraries or other units where Internet access services are provided to particular persons for acquiring information and data shall comply with the relevant laws and regulations, and these Regulations are not applicable thereto.

13, 2007.²²⁹ China has recently adopted a “Second National Plan of Action on Combating Trafficking in Human Beings (2013-2020)”, which emphasized the need to strengthen training of police who work in key border regions with Lao People’s Democratic Republic, Myanmar, and Vietnam.²³⁰

In addition, China released a “National Plan of Action for Children (2011-2020)” outlining the Government’s main policy framework for implementing the CRC in 2010.²³¹

19 – Has ratified the CRC and the OPSC

- China ratified the Convention on the Rights of the Child in March 1992.²³²
- China ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography in December 2002.²³³
- China ratified the Worst Forms of Child Labour Convention, 1999 (No. 182) in August 2002.²³⁴

20 – Age of criminal liability

The minimum age of criminal liability in China starts at 14 to 16 years old, depending on the seriousness of the crime committed, provided under Article 17 of the Criminal Law.²³⁵ According to Article 17 of this Law, if a person who has reached the age of 14 but not the age of 16 commits intentional homicide, intentionally hurts another person so as to cause serious injury or death of the person, or commits rape, robbery, drug- trafficking, arson, explosion or poisoning, he shall bear criminal responsibility. Pursuant to Article 17 of the same Law, persons aged 16 or older must bear criminal responsibility for all crimes they committed.

21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children

China is possibly considered as having a law that addresses the use of ICTs to commit crimes against children in combination with Judicial Interpretations 2004 and 2010 as stated below.

Specifically, Article 6 of the Judicial Interpretation 2004 provides that those using the Internet or mobile telecommunications terminals to produce, reproduce, sell, publish, or disseminate obscene electronic

²²⁹ STATE COUNCIL OF CHINA, NATIONAL PLAN OF ACTION (NPA) ON COMBATING TRAFFICKING IN WOMEN AND CHILDREN (2008-2012), available at http://www.humantrafficking.org/uploads/publications/China_National_Plan_of_Action_on_Combating_Trafficking_in_Women_and_Children_December_2007.pdf (last visited Jan. 16, 2015).

²³⁰ IOM, *China seek to protect trafficking victims on Northern Mekong border*, INT’L ORG. FOR MIGRATION, <https://www.iom.int/cms/en/sites/iom/home/news-and-views/press-briefing-notes/pbn-2013/pbn-listing/iom-china-seek-to-protect-traffi.html> (last visited Nov. 19, 2014).

²³¹ UNICEF *Annual Report for China*, UNICEF, http://www.unicef.org/about/annualreport/files/China_COAR_2010.pdf (last visited Nov. 19, 2014).

²³² *Status of Ratification and Accession of the CRC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en (last visited Oct. 24, 2014).

²³³ *Status of Ratification and Accession of the OPSC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last visited Oct. 24, 2014).

²³⁴ *Status of the Ratification of the Worst Forms of Child Labour Convention, 1999*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited Oct. 24, 2014).

²³⁵ Article 17 of the Criminal Law

If a person who has reached the age of 16 commits a crime, he shall bear criminal responsibility.

If a person who has reached the age of 14 but not the age of 16 commits intentional homicide, intentionally hurts another person so as to cause serious injury or death of the person, or commits rape, robbery, drug- trafficking, arson, explosion or poisoning, he shall bear criminal responsibility.

If a person who has reached the age of 14 but not the age of 18 commits a crime, he shall be given a lighter or mitigated punishment.

If a person is not given criminal punishment because he has not reached the age of 16, the head of his family or his guardian shall be ordered to discipline him. When necessary, he may be taken in by the government for rehabilitation.

information concretely depicting sexual acts by minors who have not reached 18 years of age with or without the aim of profit under the prescribed circumstances, are punished severely in accordance to the provisions of Article 363, Paragraph 1 or Article 364, Paragraph 1 of the Criminal Law, as the case may be.

22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online

Chinese law does not provide explicit provisions criminalizing child trafficking with the intent of producing pornography. However, Article 240 of the Criminal Law²³⁶ punishes anyone who abducts or traffics a woman or child. The punishment for abducting and trafficking a woman or child shall be increased in cases where an offender engages in enticing or forcing the woman who is abducted and trafficked to engage in prostitution, or selling such woman to any other person who would force her to engage in prostitution.

Article 241 of the Criminal Law²³⁷ also punishes anyone who buys a woman or a child who is abducted and trafficked.

²³⁶ Article 240 of the Criminal Law

Whoever abducts and traffics in a woman or child shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined; if he falls under any of the following categories, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined or sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to death and also to confiscation of property:

- (1) being a ringleader of a gang engaged in abducting and trafficking in women and children;
- (2) abducting and trafficking in three or more women and/or children;
- (3) raping the woman who is abducted and trafficked in;
- (4) enticing or forcing the woman who is abducted and trafficked in to engage in prostitution, or selling such woman to any other person who would force her to engage in prostitution;
- (5) kidnapping a woman or child by means of violence, coercion or anesthesia for the purpose of selling the victim;
- (6) stealing a baby or an infant for the purpose of selling the victim;
- (7) causing serious injury or death to the woman or child who is abducted and trafficked in or to her or his relatives or any other serious consequences; or
- (8) Selling a woman or a child out of the territory of China.

By abducting and trafficking in a woman or child is meant any of the following acts: abducting, kidnapping, buying, trafficking in, fetching, sending, or transferring a woman or child, for the purpose of selling the victim.

²³⁷ Article 241 of the Criminal Law

Whoever buys an abducted woman or child shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance.

Whoever buys an abducted woman and forces her to have sexual intercourse with him shall be convicted and punished in accordance with the provisions of Article 236 of this Law.

Whoever buys an abducted woman or child and illegally deprives the victim of his or her personal freedom or restricts his or her personal freedom, or commits any criminal acts such as harming and humiliating the victim, shall be convicted and punished in accordance with the relevant provisions of this Law.

Whoever buys an abducted woman or child and commits the criminal act as specified in the second or third paragraph of this Article shall be punished in accordance with the provisions on combined punishment for several crimes.

Whoever buys an abducted woman or child and sells the victim afterwards shall be convicted and punished in accordance with the provisions of Article 240 of this Law.

Whoever buys an abducted woman or child but does not obstruct the woman from returning to her original place of residence as she wishes or does not maltreat the child nor obstruct his or her rescue may be exempted from being investigated for criminal responsibility.

Chinese law does not provide explicit provisions that criminalize advertising child sex tourism online. However, pursuant to Article 7 (6) of the Advertisement Law, advertisement shall not involve information suggesting pornography.

23, 24, 25, and 26 – Existence of legislation criminalizing online grooming, a clear definition of online grooming, the age of a potential victim, and related crimes

Chinese law provides neither provisions criminalizing online grooming nor a clear definition of online grooming.

Even though there are no specific provisions that address the age of a potential victim of online grooming in China, the age of majority in China is 18 years, unless otherwise indicated.

Anyone who lures others into or shelters prostitution or procures others to engage in prostitution shall be subject to the punishment under Article 359 of the Criminal Law.²³⁸ A person who lures a girl under the age of 14 to engage in prostitution shall be subject to a higher sentence stipulated under Article 359 of the Criminal Law.

In addition, Article 237 of the Criminal Law²³⁹ criminalizes acting indecently against a child.

27 – Criminalizes showing pornography to a child as a standalone offense

Disseminating pornography to a minor under the age of 18 is punishable under Article 364, paragraph 4 of the Criminal Law which reads as “Whoever disseminates the pornographic materials to a minor under the age of 18 shall be given a heavier punishment.” Considering that Article 364, paragraph 1 of the Criminal Law punishes anyone who disseminates pornography in general with the imprisonment not more than two years, criminal detention or public surveillance, anyone who disseminates pornographic materials to a minor shall be subject to an increased punishment compared to the one as stated above.

In addition, according to Article 6 (3) of the Judicial Interpretation 2004, those using the Internet or mobile telecommunications terminals to sell or disseminate obscene electronic information and voice information to minors not having reached 18 years of age are punished severely according to the provisions of Article 363, Paragraph 1 or Article 364, Paragraph 1 of the Criminal Law, with or without the aim of the profit, as the case may be.

Moreover, Article 25 of the Law on Protection of Minors²⁴⁰ prohibits any organization or individual from selling, renting, or disseminating by any other means to minors pornographic books, newspapers, magazines, or audio-

²³⁸ Article 359 of the Criminal Law

Whoever lures other persons into or shelters prostitution or procures other persons to engage in prostitution shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years and shall also be fined.

Whoever lures a girl under the age of 14 to engage in prostitution shall be sentenced to fixed-term imprisonment of not less than five years and shall also be fined.

²³⁹ Article 237 of the Criminal Law

Whoever acts indecently against or insults a woman by violence, coercion or any other forcible means shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Whoever gathers a number of people to commit the crime mentioned in the preceding paragraph or commits the crime before the public in a public place shall be sentenced to fixed-term imprisonment of not less than five years.

Whoever acts indecently against a child shall be given a heavier punishment in accordance with the provisions of the preceding two paragraphs.

²⁴⁰ Article 25 of Law on Protection of Minors

visual products while defining a minor as a citizen under the age of 18 years. Article 51 of the Law on Protection of Minors²⁴¹ states that anyone who sells, rents, or disseminates by any other means to minors pornographic books, newspapers, magazines, or audio-visual products shall be given heavier punishment according to the Law.

Furthermore, Article 31, paragraph 1 of the Law on Prevention of Juvenile Delinquency states that no unit or individual may sell or loan to juveniles publications, audio-video products, or electronic publications that contain such contents as may induce juveniles to violate laws or commit criminal offenses, and such contents as may impair the physical and mental health of juveniles, contents that exaggerate violence, pornography, gambling, terror, etc. Article 31, paragraph 2 of this Law further articulates that no unit or individual may, by means of telecommunications, computer network, etc., provide such contents and information about such contents that may impair the physical and mental health of juveniles as prescribed by the preceding paragraph.

Anyone or any unit who violates Article 31 of the Law on Prevention of Juvenile Delinquency shall be subject to fine and confiscation of the illegal gains by the competent government department pursuant to Article 53 of this Law.

28 – Has legislation regarding cyberbullying

China does not have legislation regarding cyberbullying.

According to a survey conducted by Microsoft in 2012, 70% of Chinese children reported experiencing cyberbullying. Accordingly, China ranked the first amongst the seven Asia Pacific countries covered by the survey, including Australia, China, India, Japan, Malaysia, Pakistan, and Singapore.²⁴²

29 – Has legislation concerning sexting

Sexting is possibly criminalized in China as stated below.

Articles 363 and 364 of the Criminal Law, along with the Judicial Interpretation 2004 and Judicial Interpretation 2010, can be used for criminalizing sexting in China. Specifically, Articles 1 and 3 of the Judicial Interpretation 2004 state that those using the Internet or mobile telecommunications terminals to disseminate obscene electronic information, with or without the aim of profit, shall be punished in accordance with Article 363, paragraph 1 and Article 364, paragraph 1 of the Criminal Law, as the case may be.

However, the Chinese Government only punishes those who spread obscene electronic information or pornography “in public” and “in serious circumstances”.²⁴³ Thus, sexting between acquaintances using mobile phones is not generally punished. The term “serious circumstances” refers to sending a large quantity of texts containing or depicting lewd messages to a large quantity of recipients pursuant to Articles 1 to 5 of the Judicial Interpretation 2004.

It shall be strictly prohibited for any organization or individual to sell, rent, or disseminate by any other means to minors, books, newspapers, magazines or audio-visual products of pornography, violence, wanton killing and terror that are pernicious to minors.

²⁴¹ Article 51 of Law on Protection of Minors

Whoever sells, rents or disseminates by any other means to minors pornographic books, newspapers, magazines or audio-visual products shall be given heavier punishment according to law.

²⁴² MICROSOFT, WORLDWIDE (WW), ONLINE BULLYING SURVEY –EXECUTIVE SUMMARY – CHINA, 2012, available at http://download.microsoft.com/download/E/8/4/E84BEEAB-7B92-4CF8-B5C7-7CC20D92B4F9/WW%20Online%20Bullying%20Survey%20-%20Executive%20Summary%20-%20China_Final.pdf (last visited Jan. 16, 2015).

²⁴³ Guan Xiaomeng, *Judicial officials: ‘Sexting’ among acquaintances not targeted*, CHINA DAILY, http://www.chinadaily.com.cn/china/2010-02/06/content_9439222.htm (last visited Oct. 8, 2014).

Table 2.4 – Country: Democratic People’s Republic of Korea

1 – Has legislation specific to child pornography	No (decadent objects)
2 – Has a clear definition of child pornography	No
3 – Considers everyone under 18 as a potential victim of activities related to child pornography	No
4 – Criminalizes accessing or downloading child pornography images	No
5 – Criminalizes possession of child pornography	No (but criminalizes illegally keeping decadent objects)
6 – Criminalizes virtual images and sexually exploitative representations of children	1) No; 2) Yes (not specifically, but decadent objects)
7 – Addresses the criminal liability of children involved in pornography	No (if children are victims, not offenders)
8 – Establishes criminal liability of legal persons for production or commercialization of child pornography	No
9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State	Yes (not specifically, but offenses involving decadent objects)
10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State	Yes (not specifically, but offenses involving decadent objects)
11 – Establishes confiscation of assets used to commit or facilitate child pornography offenses	No
12 – Establishes confiscation of proceeds derived from child pornography offenses	No
13 – Requires professionals working with children to report child pornography activities	No
14 – Requires Internet Service Providers to report child pornography	No
15 – Has telephone or online hotlines to enable the public to report child abuse	No
16 – Creates data retention or data preservation provisions	No
17 – Requires the identification of users of public computers in cybercafés	No
18 – Has a national plan to combat violence against children	No
19 – Has ratified the CRC and the OPSC	1) Yes; 2) No
20 – Age of criminal liability	14
21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children	No
22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online	1) Yes (not explicitly, but abducting a child for personal gain, etc.); 2) No
23 – Has legislation that criminalizes online grooming as a standalone offense	No
24 – Has a clear definition of online grooming	No
25 – Considers everyone under 18 as a potential victim of online grooming	No
26 – 1) Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child; or 2) criminalizes grooming regardless of the intent	No
27 – Criminalizes showing pornography to a child as a standalone offense	No (no explicit provision)
28 – Has legislation regarding cyberbullying	No
29 – Has legislation concerning sexting	No

Democratic People's Republic of Korea

The Constitution of the Democratic People's Republic of Korea (adopted on December 27, 1972, last amended and supplemented on April 13, 2012)²⁴⁴ (hereafter referred to as "Constitution") contains provisions for the protection of children's rights. Specifically, Article 31 of the Constitution articulates that "In the Democratic People's Republic of Korea, the minimum working age is 16 years old. The State shall prohibit child labor under the stipulated working age."

Furthermore, the laws which protect children's rights and/or govern violence against children are as follows:

- Child Rights Protection Act (adopted on December 22, 2010)²⁴⁵
- Family Law (adopted on October 24, 1990, last amended and supplemented on December 15, 2009)²⁴⁶
- Criminal Law (adopted on March 3, 1950, last amended and supplemented on May 14, 2012)²⁴⁷ (hereafter referred to as "Criminal Law 2012")

Criminal Law 2012 has several provisions which criminalize acts that infringe on the rights of children or acts committed against children. Article 181 of Criminal Law 2012 specifies that a person who assigns work to a minor under the working age shall be punished by short-term labor for not more than one year. In addition, Article 248 of Criminal Law 2012 makes it illegal to encourage a minor under the age of 17 years to commit or take part in a crime, and thus to become delinquent, and provides for punishment by reform through labor for not more than three years. In cases where the person commits a grave offense, he or she shall be punishable by reform through labor for at least three years up to five years.

In addition, the Family Law contains several provisions which protect children's rights as elaborated below. Article 6 of the Family Law declares that it is the State's policy to specifically protect the interests of children and mothers. Article 37 of the Family Law discusses the duties of family members with the ability to support minors and incompetents. In the case that there are no family members with the ability to support minors and incompetents, the State shall support such citizens pursuant to Article 38 of the Family Law. Any citizen who violates the Family Law shall be punished by administrative or criminal penalties in accordance with the court's decisions or rulings based upon Article 54 of the Family Law.

Moreover, Article 4 of the Child Rights Protection Law articulates that, "It is the State's policy to guarantee children's rights and interests on a priority basis." Moreover, Article 19 of the Child Rights Protection Law forbids an institution, corporate association, organization, or individual to procure a child for labor, while defining the child as anyone under 17 years old for the purposes of this Law. Pursuant to Article 62 of the Child Rights Protection Law, the Law imposes criminal responsibilities or administrative liabilities on any staff member at any

²⁴⁴ Constitution of the Democratic People's Republic of Korea (adopted on December 27, 1972, last amended and supplemented on April 13, 2012), available at <http://world.moleg.go.kr/KP/law/23273?astSeq=582> (in Korean) (last visited Jan. 16, 2015).

Constitution of the Democratic People's Republic of Korea (adopted on December 27, 1972, amended and supplemented on September 5, 1998), available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/56761/95661/F1832741191/PRK56761.pdf> (in English) (last visited Jan. 16, 2015).

²⁴⁵ Child Rights Protection Act, available at <http://world.moleg.go.kr/KP/law/22449?astSeq=597> (in Korean) (last visited Jan. 16, 2015).

²⁴⁶ Family Law, available at <http://world.moleg.go.kr/KP/law/23442?astSeq=586> (in Korean) (last visited Jan. 16, 2015).

²⁴⁷ For the purposes of this Regional Study, the unofficial English translation of the law of the Democratic People's Republic of Korea was conducted. Specifically, the unofficial English translation of Criminal Law 2012 was conducted primarily based on the original text of Criminal Law 2012 available at <http://world.moleg.go.kr/KP/law/21240?astSeq=585> (in Korean) with a secondary reference to the unofficial English translation of the Criminal Law 2009 (amended in 2009), available at http://eng.nkhumanrights.or.kr/board/download.php?fileno=1103&no=4&board_table=bbs_literature (last visited Jan. 16, 2015).

institution, corporate association, or organization, and any individuals who are responsible for hindering the Child Rights Protection Law by violating this Law accordingly.

EXTRACTS OF LEGISLATION RELATED TO THE TABLE:

1 – Has legislation specific to child pornography

The Democratic People’s Republic of Korea does not have legislation specific to child pornography. Although Articles 183²⁴⁸ and Article 184 of Criminal Law 2012²⁴⁹ address offenses involving music, dance, drawings, photographs, books, video recordings, or electronic media that reflect decadent, carnal, or foul contents (hereafter also referred to as “decadent objects”), there are no provisions that increase penalties against those who commit such offenses against children under Criminal Law 2012.

Article 183, paragraph 1 of Criminal Law 2012 makes it an offense to, without authorization, import, make, distribute, or illegally keep decadent objects punishable by short-term labor for not more than one year. When a person commits a grave offense with respect to offenses stipulated in Article 183, paragraph 1 of Criminal Law 2012, said offender shall be punished with reform through labor for not more than five years pursuant to Article 183, paragraph 2 of Criminal Law 2012.

In addition, Article 184, paragraph 1 of Criminal Law 2012 prescribes that if a person watches or listens to decadent objects, or if a person performs decent acts by himself or herself, such person shall be subject to short-term labor for not more than one year. In cases where a person commits a grave offense in regard to offenses as provided in Article 184, paragraph 1 of Criminal Law 2012, such person shall be liable to reform through labor for not more than two years according to Article 184, paragraph 2 of Criminal Law 2012.

Article 250 of Criminal Law 2012 stipulates that in cases where many men and women gather and engage in obscene activities, such people shall be liable to punishment by short-term labor for not more than one year. In cases where the foregoing act is grave, such person shall be punished by reform through labor for not more than five years according to Article 250 of Criminal Law 2012.

2 – Has a clear definition of child pornography

The law of the Democratic People’s Republic of Korea does not provide a clear definition of child pornography. Criminal Law 2012 also does not define “decadent objects” punishable by Article 183 of this Law.

However, “decadent objects” as specified in Article 183 of Criminal Law 2012 shall include music, dance, drawings, photographs, books, video recordings, or electronic media that reflects decadent, carnal, or foul contents.

²⁴⁸ Article 183 of Criminal Law 2012 (Import, Keeping and Distribution of Decadent Culture)

A person who, without authorization, imports, makes, distributes or illegally keeps music, dance, drawings, photographs, books, video recordings or electronic media that reflects decadent, carnal or foul contents shall be punished by short-term labor for not more than one year.

In cases where the foregoing act is grave, the punishment shall be reform through labor for not more than five years.

²⁴⁹ Article 184 of Criminal Law 2012 (Conduct of Decadent Acts)

A person who watches or listens to music, dance, drawings, photographs, books, video recordings or electronic media that reflects decadent, carnal or foul contents or who performs such acts by himself or herself shall be punished by short-term labor for not more than one year.

In cases where the foregoing act is grave, the punishment shall be reform through labor for not more than two years.

3 – Considers everyone under 18 as a potential victim of activities related to child pornography

The law of the Democratic People’s Republic of Korea does not provide explicit provisions which consider everyone under 18 years of age as a potential victim of activities related to child pornography, regardless of the age of sexual consent.

With regard to the definition of a “child”, there are disparities in the national laws of the Democratic People’s Republic of Korea.

Article 2 of the Child Rights Protection Law defines a “child” as a person under the age of 16 years. However, Article 248 of Criminal Law 2012, which criminalizes encouraging a minor to commit a crime, indicates that a “minor” for the purpose of this Article is anyone below 17 years of age.

In the Democratic People’s Republic of Korea, the age of consent to sexual activity is 15 years for women and men pursuant to Article 281 of Criminal Law 2012 that reads, “A person who has sexual intercourse with a minor under the age of fifteen shall be punished by short-term labor for not more than one year. In cases where the foregoing act is committed multiple times, he or she shall be punished by reform through labor for more than five years.”

4 – Criminalizes accessing or downloading child pornography images

The law of the Democratic People’s Republic of Korea does not have provisions that explicitly criminalize accessing or downloading child pornography images.

However, Article 183 of Criminal Law 2012 punishes any person who, without authorization, imports, makes, distributes, or illegally keeps music, dance, drawings, photographs, books, video recordings, or “electronic media” that reflects decadent, carnal, or foul contents.

Furthermore, Article 184 of Criminal Law 2012 makes it an offense to watch or listen to music, dance, drawings, photographs, books, video recordings, or “electronic media” that reflect decadent, carnal, or foul contents or to perform decadent acts by himself or herself.

5 – Criminalizes possession of child pornography

The law of the Democratic People’s Republic of Korea does not have explicit provisions that criminalize possession of child pornography, with or without the intent to distribute. However, while not specific to child pornography, Article 183 of Criminal Law 2012 punishes any person who illegally keeps music, dance, drawings, photographs, books, video recordings, or electronic media that reflects decadent, carnal, or foul contents.

6 – Criminalizes virtual images and sexually exploitative representations of children

While not specific to child pornography, the law of the Democratic People’s Republic of Korea criminalizes illicit activities involving decadent objects, which may include sexually exploitative representations of persons. Specifically, Article 183 of Criminal Law 2012 criminalizes activities involving “drawings” that reflect decadent, carnal, or foul contents.

7 – Addresses the criminal liability of children involved in pornography

The law of the Democratic People’s Republic of Korea does not address the criminal liability of children involved in pornography as long as they are victims and not offenders.

In cases of child offenders, the minimum age for criminal responsibility in the Democratic People's Republic of Korea is 14 years of age pursuant to Article 11 of Criminal Law 2012 and Article 48 of the Child Rights Protection Law.

Moreover, Article 41, item 4 of Criminal Law 2012 states that penalties shall be mitigated in cases where the offender is a juvenile.

8 – Establishes criminal liability of legal persons for production or commercialization of child pornography

The law of the Democratic People's Republic of Korea does not establish criminal liability of legal persons for production or commercialization of "decadent objects" as referred to in Criminal Law 2012. However, Article 21 of Criminal Law 2012 stipulates that, "Regarding the mastermind and his followers (or assistants) in a criminal group (or criminal organization), they shall be punished in accordance with the provisions concerning the crime aimed to be committed by such criminal group (or criminal organization) and the mastermind shall be punished more severely."

9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State

The Democratic People's Republic of Korea establishes its extraterritorial jurisdiction over offenses involving decadent objects as provided in Articles 183 and 184 of Criminal Law 2012, which might also cover child pornography offenses, when the alleged offender is its national. Article 8 of Criminal Law 2012 states that, "This law applies to citizens of the Democratic People's Republic of Korea who commit offenses. This law also applies to citizens of the Democratic People's Republic of Korea who commit offenses outside its territory."

10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State

The Democratic People's Republic of Korea establishes its extraterritorial jurisdiction over offenses involving decadent objects prescribed in Criminal Law 2012, which might encompass child pornography offenses as well, if the victim is its national. Article 8 of Criminal Law 2012 provides that "This law also applies to foreigners who commit offenses against the Democratic People's Republic of Korea or against Korean citizens in another country."

11 – Establishes the confiscation of assets used to commit or facilitate child pornography offenses; and 12 – Establishes the confiscation of proceeds derived from child pornography offenses

The law of the Democratic People's Republic of Korea does not provide for: 1) the confiscation of assets used to commit or facilitate offenses prescribed in Criminal Law 2012; or 2) the confiscation of proceeds derived from such offenses.

However, the law of the Democratic People's Republic of Korea provides for the confiscation of the criminal's property, regardless of whether such property is used to commit or facilitate the crimes or constitutes proceeds derived from such crimes, as one of the types of punishment pursuant to Articles 27²⁵⁰ and 34 of Criminal Law

²⁵⁰ Article 27 of Criminal Law 2012 (Types of Punishments)

Punishments are:

1. Death
2. Lifetime term of reform through labor
3. Limited term of reform through labor
4. Short-term labor

2012.²⁵¹ Confiscation of property, as the punishment supplementary to the principal punishment, can be imposed on the offender if the provisions under Criminal Law 2012 provide so according to Article 28 of Criminal Law 2012.²⁵²

13 – Requires professionals working with children to report child pornography activities

The law of the Democratic People’s Republic of Korea does not have provisions that require professionals working with children to report incidents involving children’s participation in pornography to relevant authorities when they learn of such incidents.

However, Article 197 of Criminal Law 2012 prescribes that a worker serving at a nursery or a kindergarten who violates the regulations for child protection and care, thereby causing a serious (severe) injury or death to a child, shall be punished by short-term labor for not more than one year, and if such person commits a grave offense, he/shall be punished by reform through labor for not more than three years.

14 – Requires Internet Service Providers to report child pornography

The law of the Democratic People’s Republic of Korea does not provide provisions that require Internet Service Providers (ISPs) to report child pornography to law enforcement agencies or other relevant authorities when they discover it on their networks.

15 – Has telephone or online hotlines to enable the public to report child abuse

The Democratic People’s Republic of Korea does not have telephone or online hotlines to enable the public to report child abuse.

16 – Creates data retention or data preservation provisions

The law of the Democratic People’s Republic of Korea does not provide data retention or data preservation provisions.

17 – Requires the identification of users of public computers in cybercafés

The Democratic People’s Republic of Korea does not have legislation or regulations that require the identification of users of public computers in cybercafés.

18 – Has a national plan to combat violence against children

The Democratic People’s Republic of Korea does not have a national plan to combat violence against children.

5. Deprivation of the right to vote

6. Confiscation of property

7. Fine

8. Removal of qualifications

9. Suspension of qualifications

²⁵¹ Article 34 of Criminal Law 2012 (Confiscation of Property)

The penalty of the confiscation of property is executed by handing the property of the convicted criminal to the state. In such cases, food, the daily necessities and money for the family of the convicted criminal to maintain a basic standard of living shall not be confiscated.

²⁵² Article 28 of Criminal Law 2012 (Principal Punishments and Supplementary Punishments)

The death penalty, lifetime term of reform through labor, limited term of reform through labor, and short-term labor are the principal punishments imposed on offenders. Deprivation of the right to vote, confiscation of property, fine, deprivation of qualifications, and suspension of qualifications are supplementary punishments.

19 – Has ratified the CRC and the OPSC

The Democratic People’s Republic of Korea ratified the Convention on the Rights of the Child (CRC) in September 1990.²⁵³

However, the Democratic People’s Republic of Korea has not ratified the Optional Protocol to the Convention on Rights of Child on the Sale of Children, Child Prostitution, and Child Pornography (OPSC)²⁵⁴ or the Worst Forms of Child Labour Convention, 1999 (No. 182)²⁵⁵ as of October 24, 2014.

20 – Age of criminal liability

The minimum age for criminal responsibility in the Democratic People’s Republic of Korea is 14 years old pursuant to Article 11 of Criminal Law 2012, which states, “Criminal responsibility shall be imposed only on offenders who are of or over 14 years of age when they commit an offense.” In addition, pursuant to Article 48 of the Child Rights Protection Law, a child under 14 years shall not be subject to criminal liability and the death penalty shall not be applied to a child who is of or over 14 years at the time of commission of the crime.

Moreover, Article 41, item 4 of Criminal Law 2012 states that penalties shall be mitigated in cases where the offender is a juvenile.

21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children

The law of the Democratic People’s Republic of Korea does not have legislation that specifically addresses the use of ICTs to commit crimes against children.

However, while not specific to child pornography, Article 183 of Criminal Law 2012 punishes any person who, without authorization, imports, makes, distributes, or illegally keeps music, dance, drawings, photographs, books, video recordings, or “electronic media” that reflects decadent, carnal, or foul contents.

Furthermore, while not specific to child pornography, Article 184 of Criminal Law 2012 makes it an offense to watch or listen to music, dance, drawings, photographs, books, video recordings, or “electronic media” that reflect decadent, carnal, or foul contents or to perform decadent acts by himself or herself.

22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online

The law of the Democratic People’s Republic of Korea does not contain provisions that criminalize child trafficking with the intent of producing pornography or advertising child sex tourism online.

However, Article 277 of Criminal Law 2012 prescribes that, “A person who abducts or conceals a child for personal gain or from the motive of revenge shall be punished by short-term labor for not more than one year.”

Article 278 of Criminal Law 2012²⁵⁶ punishes anyone who kidnaps another for personal gain.

²⁵³ *Status of Ratification and Accession of the CRC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en (last visited Oct. 24, 2014).

²⁵⁴ *Status of Ratification and Accession of the OPSC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last visited Oct. 24, 2014).

²⁵⁵ *Status of the Ratification of the Worst Forms of Child Labour Convention, 1999*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited Oct. 24, 2014).

²⁵⁶ Article 278 of Criminal Law 2012 (Kidnapping)

In addition, Article 18 of the Child Rights Protection Law requires an institution, corporate association, or organization to prevent acts of child trafficking and kidnapping. Moreover, Article 62 of the Child Rights Protection Law articulates that any staff member at any institution, corporate association, or organization and any individuals who are responsible for hindering the Child Rights Protection Law by violating this Law shall have administrative or criminal liabilities imposed accordingly.

23, 24, 25, and 26 – Existence of specific legislation criminalizing online grooming, a clear definition of online grooming, the age of a potential victim, and related crimes

The law of the Democratic People’s Republic of Korea does not contain provisions criminalizing online grooming, and does not provide a clear definition of online grooming.

In addition, the law of the Democratic People’s Republic of Korea does not have a provision that considers everyone under the age of 18 years as a potential victim of online grooming. However, “child” refers to any person who is of or under 16 years old pursuant to Article 2 of the Child Rights Protection Law.

27 – Criminalizes showing pornography to a child as a standalone offense

The law of the Democratic People’s Republic of Korea does not provide explicit provisions which criminalize showing pornography to a child as a standalone offense.

However, Article 184 of Criminal Law 2012 punishes a person who watches or listens to music, dance, drawings, photographs, books, video recordings, or electronic media that reflects decadent, carnal, or foul contents, or who performs such acts himself/herself with punishment by short-term labor for not more than one year, and if serious, punishment by reform through labor for not more than two years.

Moreover, Article 248, paragraph 1 of Criminal Law 2012 punishes a person who encourages a minor below 17 years of age to commit or take part in a crime thus becoming delinquent with punishment by reform through labor for not more than three years. In cases where the person commits a grave offense in relation to Article 248, paragraph 1 of Criminal Law 2012, he or she shall be punishable by reform through labor for not less than three years, but not more than five years, according to Article 248, paragraph 2 of Criminal Law 2012.

28 – Has legislation regarding cyberbullying

The Democratic People’s Republic of Korea does not have legislation regarding cyberbullying.

29 – Has legislation concerning sexting

The Democratic People’s Republic of Korea does not have legislation concerning sexting.

A person who kidnaps another for personal gain shall be punished by reform through labor for not more than five years. In cases where the foregoing act is grave, the punishment shall be reform through labor for not less than five years but not more than ten years.

In cases where multiple persons are kidnapped, the punishment shall be reform through labor for not less than ten years.

Table 2.5 – Country: India

1 – Has legislation specific to child pornography	Yes
2 – Has a clear definition of child pornography	Possibly Yes (not specifically, but many allusions)
3 – Considers everyone under 18 as a potential victim of activities related to child pornography	Yes
4 – Criminalizes accessing or downloading child pornography images	Yes (browsing, downloading)
5 – Criminalizes possession of child pornography	Possibly Yes (criminalizes storing child pornography for commercial purposes)
6 – Criminalizes virtual images and sexually exploitative representations of children	Possibly Yes
7 – Addresses the criminal liability of children involved in pornography	No (if children are victims, not offenders)
8 – Establishes criminal liability of legal persons for production or commercialization of child pornography	Yes
9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State	Yes (not specifically, but obscenity offenses)
10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State	No
11 – Establishes confiscation of assets used to commit or facilitate child pornography offenses	Yes
12 – Establishes confiscation of proceeds derived from child pornography offenses	No
13 – Requires professionals working with children to report child pornography activities	No
14 – Requires Internet Service Providers to report child pornography	No
15 – Has telephone or online hotlines to enable the public to report child abuse	Yes
16 – Creates data retention or data preservation provisions	Yes
17 – Requires the identification of users of public computers in cybercafés	Yes
18 – Has a national plan to combat violence against children	Yes
19 – Has ratified the CRC and the OPSC	Yes
20 – Age of criminal liability	7-12
21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children	Yes
22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online	1) Yes (not explicitly, but any form of sexual exploitation); 2) No
23 – Has legislation that criminalizes online grooming as a standalone offense	Possibly Yes (but does not use the term “online grooming”)
24 – Has a clear definition of online grooming	No
25 – Considers everyone under 18 as a potential victim of online grooming	Yes
26 – 1) Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child; or 2) criminalizes grooming regardless of the intent	1) Yes; 2) No
27 – Criminalizes showing pornography to a child as a standalone offense	Yes
28 – Has legislation regarding cyberbullying	No
29 – Has legislation concerning sexting	Possibly Yes (but does not use the term “sexting”)

India

The Constitution of India (enacted in 1949 as amended until the Constitution (Ninety-second) Amendment Act, 2003)²⁵⁷ (hereafter referred to as “Constitution”) has provisions for the protection of children’s rights. Specifically, Article 21A of the Constitution articulates that the State shall provide free and compulsory education to all children within the ages of 6 to 14 years, in such a manner as the State may by law determine. Moreover, Article 45 of the Constitution specifies that the State shall endeavor to provide early childhood care and education for all children until they complete the age of 14 years. In addition, according to Article 51 (k) of the Constitution, it shall be the duty of every citizen of India, who is a parent or guardian, to provide opportunities for education to his child, or as the case may be, ward between the ages of 6 and 14 years.

In addition, the laws and notifications which protect children’s rights and/or govern violence against children are as follows:

- Penal Code (enacted in 1860²⁵⁸ and last amended by the Criminal Law (Amendment) Act, 2013²⁵⁹)
- Information Technology Act (enacted by the Information Technology Act, 2000²⁶⁰) and amended by the Information Technology (Amendment) Act, 2008²⁶¹) (hereafter referred to as the “IT Act”)
- Notifications
 - GSR 314(E) Dated 11 April 2011: Information Technology (Intermediaries Guidelines) Rules, 2011 (hereafter referred to as “Information Technology (Intermediaries Guidelines) Rules”)²⁶²
 - GSR315(E) Dated 11 April 2011: Information Technology (Guidelines for Cyber Café) Rules, 2011 (hereafter referred to as “Information Technology (Guidelines for Cyber Café) Rules”)²⁶³
- Juvenile Justice (Care and Protection of Children) Act (enacted by Juvenile Justice (Care and Protection of Children) Act, 2000²⁶⁴; amended by Juvenile Justice (Care and Protection of Children) Amendment Act, 2006²⁶⁵; and last amended by Juvenile Justice (Care and Protection of Children) Amendment Act, 2011²⁶⁶) (hereafter referred to as “Juvenile Justice (Care and Protection of Children) Act”)
- Protection of Children from Sexual Offenses Act, 2012²⁶⁷ (hereafter referred to as “Protection of Children from Sexual Offenses Act”)

²⁵⁷ Constitution of India, available at http://india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf (last visited Jan. 16, 2015).

²⁵⁸ Penal Code, available at <http://www.wipo.int/wipolex/en/details.jsp?id=7668> (last visited Jan. 16, 2015).

²⁵⁹ Criminal Law (Amendment) Act 2013, available at <http://indiacode.nic.in/acts-in-pdf/132013.pdf> (last visited Jan. 16, 2015).

²⁶⁰ Information Technology Act, 2000, available at http://deity.gov.in/sites/upload_files/dit/files/downloads/itact2000/itbill2000.pdf (last visited Jan. 16, 2015).

²⁶¹ Information Technology (Amendment) Act, 2008 available at http://deity.gov.in/sites/upload_files/dit/files/downloads/itact2000/it_amendment_act2008.pdf (last visited Jan. 16, 2015).

²⁶² Information Technology (Intermediaries Guidelines) Rules, available at [http://deity.gov.in/sites/upload_files/dit/files/GSR314E_10511\(1\).pdf](http://deity.gov.in/sites/upload_files/dit/files/GSR314E_10511(1).pdf) (last visited Jan. 16, 2015).

²⁶³ Information Technology (Guidelines for Cyber Café) Rules, available at [http://deity.gov.in/sites/upload_files/dit/files/GSR315E_10511\(1\).pdf](http://deity.gov.in/sites/upload_files/dit/files/GSR315E_10511(1).pdf) (last visited Jan. 16, 2015).

²⁶⁴ Juvenile Justice (Care and Protection of Children) Act, 2000 available at http://www.law.yale.edu/rcw/rcw/jurisdictions/assc/india/india_juv_just.pdf (last visited Jan. 16, 2015).

²⁶⁵ Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, available at <http://wcd.nic.in/childprot/ijactamedment.pdf> (last visited Jan. 16, 2015).

²⁶⁶ Juvenile Justice (Care and Protection of Children) Amendment Act, 2011, available at http://meghpolic.nic.in/acts/central/juvenile_justice_care-protection_children_amendment_act_2011.pdf (last visited Jan. 16, 2015).

²⁶⁷ Protection of Children from Sexual Offenses Act, 2012, available at <http://wcd.nic.in/childact/childprotection31072012.pdf> (last visited Jan. 19, 2015).

EXTRACTS OF LEGISLATION RELATED TO THE TABLE:

1 – Has legislation specific to child pornography

The IT Act, the Penal Code, and the Protection of Children from Sexual Offences Act criminalize activities related to child pornography as elaborated below.

Section 67B of the IT Act²⁶⁸ has provisions which criminalize activities involving a material in electronic form that depicts children engaged in sexually explicit acts or conduct depicting children in an obscene or indecent or sexually explicit manner.

Specifically, Section 67B (a) of the IT Act prohibits any person from publishing or transmitting or causing to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit acts or conduct. Furthermore, Section 67B (b) of the IT Act specifically punishes anyone who creates text or digital images or collects, browses, downloads, seeks, advertises, promotes, exchanges, or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner.

Moreover, Section 67B (c) of the IT Act also makes it illegal for anyone to cultivate, entice, and induce children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource. In addition, anyone who facilitates abusing children online shall be subject to penalty pursuant to Section 67B (d) of the IT Act. Furthermore, recording in any electronic form one's own abuse or that of others pertaining to sexually explicit act with children also shall be a crime pursuant to Section 67B (e) of the IT Act.

Section 67 of the IT Act also specifies punishment for publishing or transmitting obscene materials in electronic form. Section 67A of the IT Act criminalizes publishing or transmitting of materials containing sexually explicit acts, etc.

²⁶⁸ Section 67B of the IT Act (Punishment for publishing or transmitting of materials depicting children in sexually explicit act, etc. in electronic form)

Whoever shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

- (a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or
- (b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or
- (c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or
- (d) facilitates abusing children online, or
- (e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children

Provided that provisions of section 67, section 67A and 67B this section does not extend to any book, pamphlet, paper, writing, drawing, painting representation or figure in electronic form—

- (i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing drawing, painting representation or figure is the interest of science, literature, art or learning or other objects of general concern; or
- (ii) which is kept or used for bona fide heritage or religious purposes.

Explanation— For the purposes of this section “children” means a person who has not completed the age of 18 years.

In addition, Section 292 (2) of the Penal Code²⁶⁹ makes it an offense to: 1) sell, distribute, publicly exhibit, or in any manner put into circulation any obscene object; or 2) for the purposes of distribution, etc., make, produce, or possess any obscene object.

Furthermore, Section 292A of the Penal Code²⁷⁰ criminalizes printing, selling, or putting into circulation in any manner, etc. of grossly indecent printed or written documents or pictures in any newspaper, periodical, or

²⁶⁹ Section 292 (2) of the Penal Code (Sale, etc., of obscene books, etc.)

(2) Whoever—

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offense under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offense under this section,

shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees.

²⁷⁰ Section 292A of the Penal Code (Printing, etc., of grossly indecent or scurrilous matter or matter intended for blackmail)

Whoever, —

(a) prints or causes to be printed in any newspaper, periodical or circular, or exhibits or causes to be exhibited, to public view or distributes or causes to be distributed or in any manner puts into circulation any picture or any printed or written document which is grossly indecent, or in scurrilous or intended for blackmail; or

(b) sells or lets for hire, or for purposes of sale or hire makes, produces or has in his possession, any picture or any printed or written document which is grossly indecent or is scurrilous or intended for blackmail; or

(c) conveys any picture or any printed or written document which is grossly indecent or is scurrilous or intended for blackmail knowing or having reason to believe that such picture or document will be printed,

sold, let for hire distributed or publicly exhibited or in any manner put into circulation; or

(d) takes part in, or receives profits from, any business in the course of which he knows or has reason to believe that any such newspaper, periodical, circular, picture or other printed or written document is

printed, exhibited, distributed, circulated, sold, let for hire, made, produced, kept, conveyed or purchased; or

(e) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any Act which is an offense under this section, or that any such newspaper, periodical, circular,

picture or other printed or written document which is grossly indecent or is scurrilous or intended for blackmail, can be procured from or through any person; or

(f) offers or attempts to do any act which is an offense under this section

shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both:

Provided that for a second or any subsequent offense under this section, he shall be punished with imprisonment of either description for a term which shall not be less than six months and not more than two years.

Explanation 1 — For the purposes of this section, the word scurrilous shall be deemed to include any matter which is likely to be injurious to morality or is calculated to injure any person:

Provided that it is not scurrilous to express in good faith anything whatever respecting the conduct of—

circular. Section 293 of the Penal Code also specifically criminalizes the sale, distribution, exhibition, or circulation etc., of obscene objects to a young person under the age of 20 years.

Moreover, Section 13 of the Protection of Children from Sexual Offenses Act enumerates as an offense using a child for pornographic purposes. Section 14 of this Act²⁷¹ also specifies punishment for using a child for pornographic purposes. In addition, Section 15 of the same Act also criminalizes storage of any pornographic material in any form involving a child for commercial purposes.

2 – Has a clear definition of child pornography

Indian law possibly provides a definition of child pornography as elaborated below.

(1) Definition of obscenity

Section 67 of the IT Act²⁷² and Section 292 (1) of the Penal Code²⁷³ provide which materials may be deemed to be “obscene” as stated below. Material, in any electronic or printed form, can be considered obscene if it is lascivious or appeals to the prurient interest or if its effect is, or (where it comprises two or more distinct

(i) a public servant in the discharge of his public functions or respecting his character so far as his character appears in that conduct and no further; or

(ii) any person touching any public question, and respecting his character, so far as his character appears in that conduct and no further.

Explanation II—In deciding whether any person has committed an offense under this section, the court shall have regard, *inter alia*, to the following considerations—

(a) The general character of the person charged, and where relevant the nature of his business;

(b) the general character and dominant effect of the matter alleged to be grossly indecent or scurrilous or intended for blackmail;

(c) any evidence offered or called by or on behalf of the accused person as to his intention in committing any of the acts specified in this section.

²⁷¹ Section 14 of the Protection of Children from Sexual Offenses Act (Punishment for using child for pornographic purposes)

- (1) Whoever, uses a child or children for pornographic purposes shall be punished with imprisonment of either description which may extend to five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also be liable to a fine.
- (2) If the person using the child for pornographic purposes commits an offense referred to in section 3, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.
- (3) If the person using the child for pornographic purposes commits an offense referred to in section 5, by directly participating in pornographic acts, he shall be punished with rigorous imprisonment for life and shall also be liable to fine.
- (4) If the person using the child for pornographic purposes commits an offense referred to in section 7, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than six years but which may extend to either years, and shall also be liable to fine.
- (5) If the person using the child for pornographic purposes commits an offense referred to in section 9, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than eight years but which may extend to ten years, and shall also be liable to fine.

²⁷² Section 67 of the IT Act (Punishment for publishing or transmitting obscene materials in electronic form)

Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

²⁷³ Section 292 (1) of the Penal Code (Sale, etc., of obscene books, etc.)

- (1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure, or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see, or hear the matter contained or embodied in it.

However, Section 67B of the IT Act²⁷⁴ and the Exception to Section 292 of the Penal Code²⁷⁵ explicitly exclude any book, pamphlet, paper, writing, drawing, painting, representation, or figure in electronic or printed form if: (i) the publication of which is proved to be justified as being for the public good on the grounds that such book, pamphlet, paper, writing, drawing, painting, representation, or figure is in the interest of science, literature, art, or learning or other objects of general concern; or (ii) which is kept or used for *bona fide* heritage or religious purposes.

(2) Child pornography in any form

According to Section 13 of the Protection of Children from Sexual Offences Act²⁷⁶, “child pornography in any form” includes ‘any form of media’ that ‘use a child’ for the purposes of sexual gratification, as well as includes: (a) any representation of the sexual organs of a child; (b) any representation of a child engaged in real or simulated sexual acts (with or without penetration); and (c) any indecent or obscene representation of a child. The term “child pornography in any form” is also referred to as “pornographic material in any

²⁷⁴ Extract of Section 67B of the IT Act (Punishment for publishing or transmitting of materials depicting children in sexually explicit act. etc. in electronic form)

Provided that provisions of section 67, section 67A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting, representation, or figure in electronic form—

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation, or figure is the interest of science, literature, art or learning or other objects of general concern; or

(ii) which is kept or used for bona fide heritage or religious purposes.

²⁷⁵ Exception to Section 292 of the Penal Code (Sale, etc., of obscene books, etc.)

Exception —This section does not extend to -

(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure-

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or

(ii) which is kept or used bona fide for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in-

(i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or

(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

²⁷⁶ Section 13 of the Protection of Children from Sexual Offences Act (Use of child for pornographic purposes)

Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or Internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes,—

(a) representation of sexual organs of a child;

(b) usage of a child engaged in real or simulated sexual acts (with or without penetration);

(c) the indecent or obscene representation of a child;

shall be guilty of offense of using a child for pornographic purposes.

Explanation – For the purposes of this section, the expression “use a child” shall include involving a child through any medium, like print, electronic, computer or any other technology for penetration, production, offering, transmitting, publishing, facilitating and distribution of the pornographic materials.

form involving a child” under Section 15 of this Act that punishes any person who stores such material for commercial purposes.

The word “any form of media” mentioned in Section 13 of the Protection of Children from Sexual Offences Act includes a program or advertisement telecast by television channels or on the Internet or in any electronic or printed form. The Explanation to Section 13 of the Protection of Children from Sexual Offences Act further articulates that the expression “use a child”, for the purposes of this Section, shall include involving a child through any medium like print, electronic, computer, or any other technology for preparation, production, offering, transmitting, publishing, facilitating, and distribution of the pornographic materials for the purposes of this Section.

(3) Child pornography in electronic form

Pursuant to Section 67B of the IT Act, “child pornography in any electronic form” shall include any materials in any electronic form which (a) depict children engaged in sexually explicit acts or conduct; or (b) depict children in an obscene or indecent or sexually explicit manner.

Moreover, according to Section 2 (1) (r) of the IT Act, the term “electronic form”, with reference to the term “information”, means any information generated, sent, received, or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche, or similar device. Pursuant to Section 2 (1) (v) of the IT Act, the term “information” includes data, message, text, images, sound, voice, codes, computer programs, software and databases, or micro film or computer-generated microfiche.

3 – Considers everyone under 18 as a potential victim of activities related to child pornography

Indian law considers everyone under 18 years of age as a potential victim of activities related to child pornography, regardless of the age of sexual consent.

Section 2 (1) (d) of the Protection of Children from Sexual Offences Act states that the term “child” means any person below the age of 18 years.

In addition, the Explanation to Section 67B of the IT Act states that for the purpose of this Section, “children” refers to persons who have not completed the age of 18 years old.

In India, the age of consent to sexual intercourse is 18 years for women pursuant to Section 375 of the Penal Code (amended by the Criminal Law (Amendment) Act, 2013).

4 – Criminalizes accessing or downloading child pornography images

Section 67B (b) of the IT Act criminalizes browsing and downloading any material in any electronic form which depicts children in an obscene or indecent or sexually explicit manner.

5 – Criminalizes possession of child pornography

Indian law possibly criminalizes possession of child pornography without the intent to distribute, although the law uses the term “storage” rather than “possession” of child pornography as elaborated below.

Section 15 of the Protection of Children from Sexual Offences Act²⁷⁷ criminalizes storage of any pornographic material in any form involving a child for commercial purposes.

²⁷⁷ Section 15 of the Protection of Children from Sexual Offences Act (Punishment for storage of pornographic material involving a child)

Furthermore, while not specific to child pornography, Indian law also criminalizes “possession” of any obscene objects for the purpose of hire, sale, distribution, or public exhibition/public circulation, etc. pursuant to Section 292 (2) (a) of the Penal Code which reads: “(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever”.

6 – Criminalizes virtual images and sexually exploitative representations of children

Indian law possibly criminalizes illicit acts related to materials depicting children in sexually explicit act, etc. in electronic form, including virtual images and sexually exploitative representations of children, which do not necessarily use real children in their production.

In terms of virtual images of children, Section 67B (b) of the IT Act specifically punishes anyone who creates text or digital images or collects, browses, downloads, seeks, advertises, promotes, exchanges, or distributes material in any electronic form depicting children in an obscene or indecent or sexually explicit manner.

Regarding sexually exploitative representations of children, Section 67B of the IT Act applies to sexually exploitative representations of children including any book, pamphlet, paper, writing, drawing, painting, “representation”, or figure in electronic form.

7 – Addresses the criminal liability of children involved in pornography

Indian law does not address the criminal liability of children involved in pornography for their participation as long as they are victims and not the offenders.

In the case of a child offender, Section 82 of the Penal Code states that nothing is an offense which is done by a child under seven years of age. Section 83 of this Code further articulates that nothing is an offense which is done by a child above seven years of age and under 12 years, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Section 34 (1) of the Protection of Children from Sexual Offenses Act²⁷⁸ stipulates that a child who commits an offense under this Act shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act.

8 – Establishes criminal liability of legal persons for production or commercialization of child pornography

The Penal Code establishes the criminal liability of legal persons for production or commercialization of obscene objects stipulated in this Code, which might also cover activities related to child pornography. Specifically, Section 11 of the same Code states that the word “person” includes any Company or Association or body of persons whether incorporated or not.

Any person, who stores, for commercial purposes, any pornographic material in any form involving a child, shall be punished with imprisonment of either description which may extend to three years, or a fine, or both.

²⁷⁸ Section 34 (1) of the Protection of Children From Sexual Offenses Act (Procedure in case of commission of offense by child and determination of age by Special Court)

Where any offense under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children Act, 2000.

In addition, regarding offenses involving materials depicting children in a sexually explicit act, etc. in electronic form, Section 85 of the IT Act²⁷⁹ has provisions establishing penalties for offenses committed by companies. According to Section 85 (1) of the IT Act, in the event that a person committing contravention of any of the provisions of the IT Act or of any rule, direction, or order made thereunder is a company, every person who was in charge of, and responsible to, the company for the conduct of the company's business, as well as "the company" itself, shall be responsible for the contravention and punished. However, any individual shall be exempted from such liability if he proves that contravention has occurred without his knowledge or that he exercised all due diligence to prevent such contravention.

In cases where it is proved that contravention has taken place with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary, or other officer of the company such director, manager, secretary, or other officer shall be held liable for the contravention and punished accordingly as provided in Section 85 (2) of the IT Act.

9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State

India establishes its extraterritorial jurisdiction over obscenity offenses stipulated in the Penal Code, which can be applicable to child pornography offenses as well, if the alleged offender is a national of India as elaborated below.

Section 4 of the Penal Code provides that, "The provisions of this Code apply also to any offense committed by any citizen of India in any place without and beyond India." The Explanation to Section 4 of the Penal Code states that the word "offence" in this Section includes every act committed outside of India, which, if committed in India, would be punishable under this Code.

In addition, the Supreme Court of India has ruled that Indian citizens who commit crimes while abroad can in some cases be tried in India by stating that the provisions of the Penal Code have been extended to offenses committed by any citizen of India in any place within and beyond India by virtue of Section 4 of the Penal Code thereof.²⁸⁰

²⁷⁹ Section 85 of the IT Act (Offenses by companies)

(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(i) "company" means anybody corporate and includes a firm or other association of individuals; and

(ii) "director", in relation to a firm, means a partner in the firm.

²⁸⁰ *India: Jurisdiction to Try Crimes Committed Abroad*, LIBRARY OF CONGRESS, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402805_text (last visited Nov. 19. 2014).

Section 4 of the Penal Code states that its provisions also cover offenses committed by any citizen of India in any place without and beyond India and by any person on any ship or aircraft registered in India wherever it may be.

10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State

The Penal Code does not provide an explicit provision that establishes extraterritorial jurisdiction of the Indian Courts over obscenity offenses specified in this Code, which might cover child pornography offenses, when the victim is a national of India.

However, Section 75 (1) of the IT Act states that, “Subject to the provisions of sub-section (2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality.” Section 75 (2) of the IT Act further articulates that, “For the purposes of sub-section (1), this Act shall apply to an offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India.”

11 – Establishes the confiscation of assets used to commit or facilitate child pornography offenses

Indian law provides for the confiscation of assets used to commit or facilitate offenses involving materials depicting children in a sexually explicit act, etc. in electronic form.

Section 76 of the IT Act²⁸¹ states that any computer, computer system, floppies, compact disks, tape drives, or any other accessories related thereto, in respect of which any provision of this Act, rules, orders, or regulations made thereunder has been or is being contravened, shall be liable to confiscation. However, Section 76 of this Act further articulates that in cases where it is established to the satisfaction of the court adjudicating the confiscation that the person in whose possession, power, or control of any such computer, computer system, floppies, compact disks, tape drives, or any other accessories relating thereto, is found not responsible for the contravention of the provisions of this Act, rules, orders, or regulations made thereunder, the court may, instead of making an order for confiscation of such computer, computer system, floppies, compact disks, tape drives, or any other accessories related thereto, make such other order authorized by this Act against the person contravening of the provisions of this Act, rules, orders, or regulations made thereunder as it may think fit.

12 – Establishes the confiscation of proceeds derived from child pornography offenses

Indian law does not contain provisions which allow for the confiscation of proceeds derived from child pornography offenses.

²⁸¹ Section 76 of the IT Act (Confiscation)

Any computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, in respect of which any provision of this Act, rules, orders or regulations made thereunder has been or is being contravened, shall be liable to confiscation:

Provided that where it is established to the satisfaction of the court adjudicating the confiscation that the person in whose possession, power or control of any such computer, computer system, floppies, compact disks, tape drives or any other accessories relating thereto is found is not responsible for the contravention of the provisions of this Act, rules, orders or regulations made thereunder, the court may, instead of making an order for confiscation of such computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, make such other order authorised by this Act against the person contravening of the provisions of this Act, rules, orders or regulations made thereunder as it may think fit.

13 – Requires professionals working with children to report child pornography activities

Indian law does not have provisions that require professionals who work with children to report child pornography activities to relevant authorities when they learn of incidents involving the use of a child in pornographic materials.²⁸²

However, Section 19 (1) of the Protection of Children from Sexual Offences Act requires any person (including the child) who has apprehension that an offense under this Act is likely to be committed or has knowledge that such an offense has already been committed, to provide such information to the Special Juvenile Police Unit; or the local police. As stated above, Section 13 of the Protection of Children from Sexual Offences Act explicitly prescribes that activities using children for pornographic purposes shall be an offense. Moreover, Section 14 (1) of this Act punishes any person who contravenes Section 13 of the same Act.

In addition, according to Section 32 of the Juvenile Justice (Care and Protection of Children) Act (amended by Juvenile Justice (Care and Protection of Children) Amendment Act, 2006),²⁸³ any child in need of care and protection may be produced before the Child Welfare Committee by one of the following persons: (1) childline or a registered voluntary organization or any other voluntary organization or agency as may be recognized by the State Government; (2) any social worker or a public spirited citizen; (3) any public servant; (4) any police officer or special juvenile police unit or designated police officer; or (4) the child himself.

14 – Requires Internet Service Providers to report child pornography

Indian law does not provide explicit provisions that require Internet Service Providers (ISPs) to report child pornography when they discover it on their own networks.²⁸⁴

However, Section 20 of the Protection of Children from Sexual Offences Act²⁸⁵ mandates any personnel of the media, hotel, lodge, hospital, club, studio, or photographic facilities, upon being aware of any material or object

²⁸² Himanshi Dhawan, *Reporting of child abuse to be mandatory?*, THE TIMES OF INDIA, (July 28, 2009), <http://timesofindia.indiatimes.com/india/Reporting-of-child-abuse-to-be-mandatory/articleshow/4827754.cms?referral=PM> (last visited Jan. 16, 2015).

²⁸³ Section 32 of the Juvenile Justice (Care and Protection of Children) Act (Production before Committee) (amended by Juvenile Justice (Care and Protection of Children) Amendment Act, 2006)

(1) Any child in need of care and protection may be produced before the Committee by one of the following persons -

(i) any police officer or special juvenile police unit or a designated police officer;

(ii) any public servant;

(iii) childline, a registered voluntary organization or by such other voluntary organisation or an agency as may be recognized by the State Government.

(iv) any social worker or a public spirited citizen; or

(v) by the child himself.

Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey.

(2) The State Government may make rules consistent with this Act to provide for the manner of making the report to the Committee and the manner of sending and entrusting the child to children's home pending the inquiry.

²⁸⁴ Lina Acca Mathew, *Online Child Safety from Sexual Abuse in India*, J. OF INFO., L. & TECH., at 12, available at http://www2.warwick.ac.uk/fac/soc/law/eli/jilt/2009_1/mathew/mathew.pdf (last visited Jan. 16, 2015).

²⁸⁵ Section 20 of the Protection of Children from Sexual Offences Act (Obligation of media, studio and photographic facilities to report cases)

Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of persons employed therein, shall, on coming across any material or object which is sexually exploitative of the child (including pornographic, sexually-related or making obscene representation of a child or children) through the use of any medium, shall provide such information to the Special Juvenile Police Unit, or to the local police, as the case may be.

which is sexually exploitative of a child (including pornographic, sexually related, or making obscene representations of a child or children) through the use of any medium, to provide such information to the Special Juvenile Police Unit or to the local police, as the case may be.

Also, Section 21 of the Protection of Children from Sexual Offenses Act²⁸⁶ punishes anyone who violates Section 20 of this Act by failing to report a case involving a sexual offense against a child provided under this Act.

Furthermore, although Indian law does not have explicit provisions that require ISPs to report child pornography when they are aware of it, Section 79 of the IT Act and Information Technology (Intermediaries Guidelines) Rules address intermediaries' liabilities for making available third party content as stated below.

Section 79 (1) of the IT Act generally protects intermediaries from being liable for transmitting or hosting third-party information, data, or communication links made available by them, so long as they exercise due diligence under Section 79 (2) of the IT Act and observe the Information Technology (Intermediaries Guidelines) Rules.

However, Section 79 (3) of the IT Act provides that an intermediary shall be liable for the acts performed by the third party if: (a) the intermediary has conspired or abetted or aided or induced the commission of the unlawful act provided under the IT Act; or (b) the intermediary receives actual knowledge or is notified by the appropriate Government or its agency that any information, data, or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit unlawful acts, but fails to immediately remove or disable access to the materials in any manner.

In addition, the Information Technology (Intermediaries Guidelines) Rules provides details on intermediaries' duties with respect to due diligence of intermediaries mentioned in Section 79 (2) of the IT Act as stated below.

Section 3 (4) of Information Technology (Intermediaries Guidelines) Rules requires intermediaries, on whose computer system the information is stored or hosted or published, upon obtaining knowledge by itself or having been informed by an affected person in writing or through email and signed with an electronic signature, about any such information mentioned in Section 3 (2) of these Rules, to: 1) disable such information within 36 hours; and 2) preserve such information and associated records for at least 90 days for investigation purposes. The prescribed information shall include information that: 1) is obscene or pornographic; 2) harms minors in any way; or 3) violates any law for the time being in force according to Section 3 (2) (b), (c), and (e) of the same Rules.

15 – Has telephone or online hotlines to enable the public to report child abuse

Childline India Foundation (Helpline phone number – 1098)²⁸⁷ works for the protection of the rights of all children in general, with a particular focus on all children in need of care and protection, especially the more

²⁸⁶ Section 21 of the Protection of Children from Sexual Offenses Act (Punishment for failure to report or record a case)

(1) Any person, who fails to report the commission of an offense under sub-section (1) of section 19 of section 20 or who fails to record such offense under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Any person, being in charge of any company or an institution (by whatever name called) who fails to report the commission of an offense under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

(3) The provisions of sub-section (1) shall not apply to a child under this Act.

²⁸⁷ *Childline 1098 Service*, CHILDLINE INDIA FOUNDATION, <http://www.childlineindia.org.in/1098/b1a-telehelpline.htm> (last visited Nov. 19, 2014).

vulnerable sections, which include children affected by physical/ sexual/ emotional abuse in family, schools, or institutions.

16 – Creates data retention or data preservation provisions

The Information Technology Act contains two Sections that establish data retention and preservation requirements for intermediaries, although the Indian legal system currently only provides specific rules on data retention related to the identification of users of public computers in cybercafés and their history of website access as stated below.

Section 67C of the IT Act²⁸⁸ articulates that intermediaries²⁸⁹ shall preserve and retain such information²⁹⁰ as may be specified for such duration and in such manner and format as the Central Government may prescribe. These Rules under Section 67C of the IT Act have yet to be promulgated by the Indian Government as of January 29, 2015.

Section 79 (2) (c) of the IT Act further provides that intermediaries are exempted from liability for third party content provided that they observe due diligence while discharging their duties under this Act and also observe such other guidelines as the Central Government may prescribe. The Information Technology (Guidelines for Cyber Café) Rules were issued in exercise of powers conferred by Section 79 (2) of the IT Act in order to establish the Government’s standard for what constitutes “due diligence” by an intermediary. These Rules contain provisions addressing the duties of cybercafé owners, as one of the intermediaries, to retain data as part of their duty to observe due diligence under Section 79 (2) of the IT Act as stated below.

Cybercafé owners shall be responsible for storing and maintaining: a) the history of websites accessed using the computer resources at the cybercafé; and b) logs of proxy servers installed at the cybercafé for each user or for each access for at least one year pursuant to Section 5 of the Information Technology (Guidelines for Cyber Café) Rules.²⁹¹

²⁸⁸ Section 67C of the IT Act (Preservation and retention of information by intermediaries)

- (1) Intermediary shall preserve and retain such information as may be specified for such duration and in such manner and format as the Central Government may prescribe.
- (2) Any intermediary who intentionally or knowingly contravenes the provisions of sub-section (1) shall be punished with an imprisonment for a term which may extend to three years and also be liable to fine.

²⁸⁹ The definition of the term “intermediary” shall include ISPs and cybercafé operators according to Section 2(1)(i) of the Information Technology (Intermediaries Guidelines) Rules, Section 2(1)(g) of the Information Technology (Guidelines for Cyber Café) Rules, and Section 2(1)(w) of the IT Act.

²⁹⁰ The definition of the term “information” includes “data” pursuant to Section 2(1)(f) of the Information Technology (Guidelines for Cyber Café) Rules, Section 2 (1) (h) of the Information Technology (Intermediaries Guidelines) Rules, and Section 2(1)(v) of the IT Act.

²⁹¹ Section 5 of the Information Technology (Guidelines for Cyber Café) Rules (Log Register)

(1) After the identity of the user and any person accompanied with him has been established as per sub-rule (1) of rule 4, the Cyber Café shall record and maintain the required information of each user as well as accompanying person, if any, in the log register for a minimum period of one year.

(2) The Cyber Café may maintain an online version of the log register. Such online version of log register shall be authenticated by using digital or electronic signature. The log register shall contain at least the following details of the user,

namely : —

- (i) Name
- (ii) Address
- (iii) Gender
- (iv) Contact Number
- (v) Type and detail of identification document

17 – Requires the identification of users of public computers in cybercafés

India has rules that require the identification of users of public computers in cybercafés as stated below.

Pursuant to Section 4 of the Information Technology (Guidelines for Cyber Café) Rules²⁹², cybercafés shall not allow any user to use its computer resource without the identity of the user being established. The intending user may establish his identify by producing a document which shall identify the user to the satisfaction of the cybercafé. Such document may include any of the following: 1) identity card issued by any school or college; 2) photo credit card or debit card issued by a bank or post office; 3) passport; 4) voter identity card; 5) permanent account number (PAN) card issued by income-tax authority; 6) photo identity card issued by the employer or any

(vi) Date

(vii) Computer terminal identification

(viii) Log in Time

(ix) Log out Time

(3) Cyber Café shall prepare a monthly report of the log register showing date- wise details on the usage of the computer resource and submit a hard and soft copy of the same to the person or agency as directed by the registration agency by the 5th day of next month.

(4) The cyber café owner shall be responsible for storing and maintaining backups of following log records for each access or login by any user of its computer resource for at least one year:—

(i) History of websites accessed using computer resource al cyber café;

(ii) Logs of proxy server installed at cyber café.

Cyber Café may refer to "Guidelines for auditing and logging - CISG-2008-01" prepared and updated from time to time by Indian Computer Emergency Response Team (CERT-In) for any assistance related to logs. This document is available at www.cert-in.org.in (last visited Jan. 16, 2015).

(5) Cyber café shall ensure that log register is not altered and maintained in a secure manner for a period of at least one year.

²⁹² Section 4 of the Information Technology (Guidelines for Cyber Café) Rules (Identification of User)

(1) The Cyber Café shall not allow any user to use its computer resource without the identity of the user being established. The intending user may establish his identify by producing a document which shall identify the users to the satisfaction of the Cyber Café. Such document may include any of the following :—

(i) Identity card issued by any School or College; or

(ii) Photo Credit Card or debit card issued by a Bank or Post Office; or

(iii) Passport; or

(iv) Voter Identity Card; or

(v) Permanent Account Number (PAN) card issued by Income-Tax Authority; or

(vi) Photo Identity Card issued by the employer or any Government Agency; or

(vii) Driving License issued by the Appropriate Government; or

(viii) Unique Identification (UID) Number issued by the Unique Identification Authority of India (UIDAI).

(2) The Cyber Café shall keep a record of the user identification document by either storing a photocopy or a scanned copy of the document duly authenticated by the user and authorised representative of cyber café. Such record shall be securely maintained for a period of at least one year.

(3) In addition to the identity established by a user under sub-rule (1), he may be photographed by the Cyber Café using a web camera installed on one of the computers in the Cyber Café for establishing the identity of the user. Such web camera photographs, duly authenticated by the user and authorised representative of cyber café, shall be part of the log register which may be maintained in physical or electronic form.

(4) A minor without photo Identity card shall be accompanied by an adult with any of the documents as required under sub-rule (1).

(5) A person accompanying a user shall be allowed to enter cyber café after he has established his identity by producing a document listed in sub-rule (1) and record of same shall be kept in accordance with sub-rule (2).

(6) The Cyber café shall immediately report to the concerned police, if they have reasonable doubt or suspicion regarding any user.

government agency; 7) driving license issued by the appropriate government; or 8) unique identification (UID) number issued by the Unique Identification Authority of India (UIDAI).

Section 4 (2) of the Information Technology (Guidelines for Cyber Café) Rules further articulates that the cybercafé shall keep a record of users identification documents by either storing a photocopy or a scanned copy of the document duly authenticated by the user and authorized representative of the cybercafé. Furthermore, the record of a user's identification shall be securely maintained for a period of at least one year by cybercafés pursuant to Section 4 (2) of these Rules. Moreover, a cybercafé may photograph the user using a web camera installed on one of the computers in the cybercafé in order to establish the identity of the user according to Section 4 (3) of the same Rules.

In addition, all computers in the cybercafé may be equipped with commercially available safety or filtering software so as to avoid as much as possible, access to websites pertaining to pornography, including child pornography or obscene information, according to Section 6 (5) of the same Rules.²⁹³ Cybercafés are also mandated to display a board, clearly visible to users, disallowing them from viewing pornographic sites, as well as copying or downloading information which is prohibited under the law according to Section 6 (7) of the same Rules.²⁹⁴

18 – Has a national plan to combat violence against children

The Government of India has adopted a National Policy for Children, 2013 on April 26, 2013. The National Policy for Children, 2013 states that the State shall protect all children from all forms of violence and abuse, harm, neglect, stigma, discrimination, deprivation, exploitation including economic exploitation and sexual exploitation, abandonment, separation, abduction, sale or trafficking for any purpose or in any form, pornography, alcohol and substance abuse, or any other activity that takes undue advantage of them, or harms their personhood or affects their development.²⁹⁵

19 – Has ratified the CRC and the OPSC

- India acceded to the Convention on the Rights of the Child on December 11, 1992.²⁹⁶
- India ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on August 16, 2005.²⁹⁷
- India has not ratified the Worst Forms of Child Labour Convention, 1999 (No. 182) as of October 24, 2014.²⁹⁸

²⁹³ Section 6 (5) of the Information Technology (Guidelines for Cyber Café) Rules (Management of Physical Layout and computer resource)

(5) All the computers in the cyber café may be equipped with the commercially available safety or filtering software so as to avoid as far as possible, access to the websites relating to pornography including child pornography or obscene information.

²⁹⁴ Section 6 (7) of the Information Technology (Guidelines for Cyber Café) Rules (Management of Physical Layout and computer resource)

(7) Cyber Café shall display a board, clearly visible to the users, prohibiting them from viewing pornographic sites as well as copying or downloading information which is prohibited under the law.

²⁹⁵ GOV'T OF INDIA, MINISTRY OF WOMEN AND CHILD DEV., THE NATIONAL POLICY FOR CHILDREN (2013), available at <http://wcd.nic.in/icpsmon/pdf/npc2013dtd29042013.pdf> (last visited Nov. 19, 2014).

²⁹⁶ *Status of Ratification and Accession of the CRC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en (last visited Oct. 24, 2014).

²⁹⁷ *Status of Ratification and Accession of the OPSC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last visited Oct. 24, 2014).

²⁹⁸ *Status of the Ratification of the ILO Convention (1999) (No. 182)*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited Oct. 24, 2014).

20 – Age of criminal liability

In India, criminal responsibility starts at the age of seven years pursuant to Section 82 of the Penal Code. In addition, Section 83 of this Code stipulates that nothing is an offense which is done by a child older than seven years of age and under 12 years of age, who has not yet attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion.

21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children

The principal law governing crimes against children committed by the use of ICTs in India is the Information Technology Act (amended by the Information Technology (Amendment) Act, 2008) (also known as “IT Act”).

Section 67B (b) of the IT Act criminalizes downloading or browsing of material in electronic form depicting children in an obscene or indecent or sexually explicit manner.

22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online

Indian law does not have provisions that explicitly criminalize child trafficking with the intent of producing pornography.

However, Section 370 of the Penal Code (last amended by the Criminal Law (Amendment) Act, 2013) criminalizes child trafficking for the purposes of “any form of sexual exploitation” as stated below. Section 370 (1) of the Penal Code makes it an offense to traffic a person for the purpose of exploitation. Furthermore, Explanation 1 to Section 370 (1) of this Code states that the expression “exploitation” shall include any form of sexual exploitation. Moreover, Section 370 (4) of the same Code stipulates that where the offense involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to a fine.

In addition, the provisions under the Penal Code which criminalize child trafficking and related crimes are as follows: (a) procurement of a minor girl below 18 years of age (366A); (b) importation of girls less than 21 years of age from the state of Jammu and Kashmir to any other state, or from a foreign country to anywhere in India (Section 366B); and (c) selling or buying of a minor girl below 18 years of age for the purposes of prostitution, etc. (Sections 372²⁹⁹ and 373³⁰⁰) of the Penal Code.

Indian law does not contain provisions that specifically criminalize advertising child sex tourism online. However, Section 67B (b) of the IT Act criminalizes advertising or promoting materials in any electronic form depicting children in obscene or indecent or sexually explicit manner.

²⁹⁹ Section 372 of the Penal Code (Selling minor for purposes of prostitution, etc.)

Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.

³⁰⁰ Section 373 of the Penal Code (Buying minor for purposes of prostitution, etc.)

Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Furthermore, the Code of Conduct for Safe & Honorable Tourism was adopted by the Indian Government, Ministry of Tourism in 2010. This is not a legally binding instrument, but a guideline of conduct to enable the Indian travel and tourism industry to aid in the prevention of sex tourism and forms of sexual exploitation, particularly of women and children.

The Code of Conduct for Safe & Honorable Tourism prohibits Internet usage that promotes or seeks any contacts for sex tourism or for the search of pornographic material. It is also forbidden to use sexually explicit images or concepts/images that may compromise the safety of individuals for marketing purposes stipulated in this Code of Conduct. The same Code of Conduct further articulates that an unambiguous company policy shall be set up to ensure that marketing and advertising does not support the promotion of sexual exploitation or promotion of sexually explicit images.³⁰¹

23 – Has legislation that criminalizes online grooming as a standalone offense

Although Indian law does not use the explicit term “online grooming”, acts constituting the online grooming of a child shall be criminalized according to Sections 11 and 12 of the Protection of Children from Sexual Offenses Act.³⁰² Any person is deemed to commit sexual harassment upon a child if he, with sexual intent, repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital, or any other means, pursuant to Section 11 (iv) of the Protection of Children from Sexual Offenses Act. Section 12 of this Act³⁰³ provides punishment for committing sexual harassment upon a child as specified by Section 11 of the same Act.³⁰⁴

In addition, the IT Act contains provisions that possibly address online grooming of a child and related crime as stated below. Section 67B (c) of the IT Act punishes anyone who induces, cultivates, or entices children into an online relationship with one or more children for sexually explicit acts.

Section 67B (d) of the IT Act also makes it an offense to facilitate abusing children online. However, the term “facilitate abusing children online” is neither specified nor explained in the IT Act. The general wording “facilitate abusing children online” under Section 67B (d) of the IT Act may cover online grooming unless there is

³⁰¹ GOV'T OF INDIA, PRESS INFO. BUREAU, MINISTRY OF TOURISM, FULL TEXT OF CODE OF CONDUCT FOR SAFE AND HONORABLE TOURISM, available at <http://pib.nic.in/newsite/erelease.aspx?relid=62956> (last visited Jan. 16, 2015).

³⁰² Information verified by peer reviewer, Vidya Reddy, on October 3, 2014.

³⁰³ Section 12 of the Protection of Children from Sexual Offenses Act (Punishment for sexual harassment)

Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

³⁰⁴ Section 11 of the Protection of Children from Sexual Offenses Act (Sexual harassment)

A person is said to commit sexual harassment upon a child when such person with sexual intent,

- (i) utters any word or makes any sound, or makes any gesture or exhibits any object of part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or
- (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
- (iii) shows any object to a child in any form or media for pornographic purposes; or
- (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
- (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or
- (vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation.—Any question which involves “sexual intent” shall be a question of fact.

an impediment to the punishment of a preparatory act and with some concerns in respect of over-criminalization.³⁰⁵

24 – Has a clear definition of online grooming

Although Indian law does not provide a definition of “online grooming”, it does address punishable acts which shall constitute the offense of online grooming of children as stated above.

25 – Considers everyone under 18 as a potential victim of online grooming

Indian law considers everyone under age 18 as a potential victim of online grooming and related activities.

Section 2 (1) (d) of the Protection of Children from Sexual Offenses Act states that “child” means any person below the age of 18 years.

In addition, the Explanation to Section 67B of the IT Act states that for the purposes of this Section, the term “children” refers to persons who have not yet completed 18 years of age.

26 – Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child, or criminalizes grooming regardless of the intent

Indian law criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child.

Section 11 (iv) of the Protection of Children from Sexual Offenses Act explicitly stipulates that when a person, “with sexual intent”, repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital, or any other means, such person is said to have committed sexual harassment upon a child.

27 – Criminalizes showing pornography to a child as a standalone offense

Indian law criminalizes showing pornography to a child as a standalone offense.

Section 293 of the Penal Code³⁰⁶ makes it an offense to sell, let to hire, distribute, exhibit, or circulate to any person under the age of 20 years any obscene objects referred to in Section 292 of this Penal Code with a penalty of imprisonment which may extend up to three years, and in the event of a second or subsequent conviction, a fine and an imprisonment which may be up to seven years.

Moreover, Section 11 (iii) of the Protection of Children from Sexual Offenses Act stipulates that a person is said to commit sexual harassment upon a child when such person, with sexual intent, shows any object to a child in any form or media for pornographic purposes. Section 12 of this Act enumerates a punishment for committing sexual harassment upon a child as provided in Section 11 of this Act.

28 – Has legislation regarding cyberbullying

India does not have legislation regarding cyberbullying.

³⁰⁵ COUNCIL OF EUROPE, *supra* note 81, at 42.

³⁰⁶ Section 293 of the Penal Code (Sale, etc., of obscene objects to young person)

Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees.

According to a survey conducted by Microsoft in 2012, 53% of Indian children reported experiencing cyberbullying, with India ranking third behind China (first) and Singapore (second) amongst the seven targeted Asia Pacific countries, including Australia, China, India, Japan, Malaysia, Pakistan, and Singapore.³⁰⁷

29 – Has legislation concerning sexting

Indian law possibly addresses sexting although there is no explicit term “sexting” used in Indian legislation as provided below.

Section 67 of the IT Act³⁰⁸ punishes those who engage in publishing or transmitting obscene materials in electronic form. In addition, Section 67A of the IT Act³⁰⁹ criminalizes publishing or transmitting of materials containing sexually explicit acts, etc. Further, according to Section 2 (1) (r) of the IT Act, “electronic form” with reference to information means any information generated, sent, received, or stored in media, magnetic, optical, computer memory, micro-film, computer-generated microfiche, or similar device. Moreover, pursuant to Section 2 (1) (v) of the IT Act, “information” includes data, message, text, images, sound, voice, codes, computer programs, software, and databases or micro-film or computer-generated microfiche.

³⁰⁷ MICROSOFT, WORLDWIDE (WW), ONLINE BULLYING SURVEY –EXECUTIVE SUMMARY – INDIA, 2012, available at http://download.microsoft.com/download/E/8/4/E84BEEAB-7B92-4CF8-B5C7-7CC20D92B4F9/WW%20Online%20Bullying%20Survey%20-%20Executive%20Summary%20-%20India_Final.pdf (last visited Jan. 16, 2015).

³⁰⁸ Section 67 of the IT Act (Punishment for publishing or transmitting obscene materials in electronic form)

Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

³⁰⁹ Section 67A of the IT Act (Punishment for publishing or transmitting of materials containing sexually explicit act, etc. in electronic form)

Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

Table 2.6 – Country: Indonesia

1 – Has legislation specific to child pornography	Yes
2 – Has a clear definition of child pornography	No (elucidation of the law defines child pornography while the law defines pornography)
3 – Considers everyone under 18 as a potential victim of activities related to child pornography	Yes
4 – Criminalizes accessing or downloading child pornography images	Yes (downloading)
5 – Criminalizes possession of child pornography	Yes
6 – Criminalizes virtual images and sexually exploitative representations of children	Possibly Yes (along with elucidation of the law)
7 – Addresses the criminal liability of children involved in pornography	No (if the offenders are victims, not offenders)
8 – Establishes criminal liability of legal persons for production or commercialization of child pornography	Yes
9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State	Yes (not specifically, but indecency offenses)
10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State	No
11 – Establishes confiscation of assets used to commit or facilitate child pornography offenses	No
12 – Establishes confiscation of proceeds derived from child pornography offenses	Yes
13 – Requires professionals working with children to report child pornography activities	No
14 – Requires Internet Service Providers to report child pornography	No
15 – Has telephone or online hotlines to enable the public to report child abuse	Yes
16 – Creates data retention or data preservation provisions	Yes (but do not specify data retention period)
17 – Requires the identification of users of public computers in cybercafés	No
18 – Has a national plan to combat violence against children	Yes
19 – Has ratified the CRC and the OPSC	Yes
20 – Age of criminal liability	12
21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children	Yes
22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online	1) Yes (not explicitly, but all forms of sexual exploitation); 2) No
23 – Has legislation that criminalizes online grooming as a standalone offense	No
24 – Has a clear definition of online grooming	No
25 – Considers everyone under 18 as a potential victim of online grooming	No
26 – 1) Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child; or 2) criminalizes grooming regardless of the intent	No
27 – Criminalizes showing pornography to a child as a standalone offense	Yes
28 – Has legislation regarding cyberbullying	No
29 – Has legislation concerning sexting	No

Indonesia

In Indonesia, the Constitution of Indonesia³¹⁰ (hereafter referred to as “Constitution”) contains provisions for the protection of children’s rights. Specifically, Article 34 (1) of the Constitution³¹¹ provides the State’s duty to take care of abandoned children. Furthermore, Article 28B (2) of the Constitution states that “Every child has a right to live, grow and develop and to be protected from violence and discrimination”.³¹²

Moreover, the laws which protect children’s rights and/or address violence against children are as follows:

- Criminal Code (also known as “Penal Code”)³¹³ (hereafter referred to as “Criminal Code”)
- Law No. 44 of 2008 concerning pornography (also known as “Law No. 44 of 2008 on pornography”)³¹⁴ (hereafter referred to as “Anti-Pornography Law”)
- Act No. 13 of 2003 concerning Manpower³¹⁵ (hereafter referred to as “Manpower Act”)
- Law No. 23 of 2002 on Child Protection (hereafter referred to as “Law on Child Protection”)³¹⁶

Pursuant to Article 287 (1) of the Criminal Code,³¹⁷ it is a crime to engage in sexual intercourse with a female outside of marriage when the offender knows or has cause to know that such victim is under the age of 15 years.

³¹⁰ Constitution of Indonesia, available at http://www.ilo.org/wcmsp5/groups/public/--ed_protect/--protrav/--ilo_aids/documents/legaldocument/wcms_174556.pdf (last visited Jan. 16, 2015).

³¹¹ Article 34 (1) of the Constitution

(1) Impoverished persons and abandoned children shall be taken care of by the State.

³¹² Information provided by peer reviewer, Santi Kusumaningrum, on October 2, 2014.

³¹³ Indonesian Criminal Code (also known as “Penal Code”) available at http://www.unodc.org/res/cld/document/idn/indonesian_penal_code_html/l.1_Criminal_Code.pdf (last visited Jan. 16, 2015).

³¹⁴ Law No. 44 of 2008 concerning pornography (also known as “Law No. 44 of 2008 on pornography”) (hereafter referred to as “Anti-Pornography Law”), available at <http://www.bpkp.go.id/uu/filedownload/2/33/151.bpkp> (in Indonesian).

For the purposes of this Regional Study, the unofficial English translation of the Anti-Pornography Law was conducted based on the unofficial English translation of the Anti-Pornography Law provided by the following sources: 1) *Porn Laws in English*, INDONESIA MATTERS, <http://www.indonesiamatters.com/2474/porn-laws/> (last visited Nov. 20, 2014); 2) *Country Profile: Indonesia*, FAMILY ONLINE SAFETY INSTITUTE’S GLOBAL RESOURCE AND INFORMATION DIRECTORY, <http://www.fosgrid.org/asia/indonesia> (last visited Nov. 20, 2014); and 3) ALLEN & OVERY, PREPARED FOR THE INT’L CTR. FOR MISSING & EXPLOITED CHILDREN, COALITION OF STAKE HOLDERS AGAINST COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN ON THE INTERNET, LEGAL FRAMEWORK AND OBSTACLES IN THE ASIA-PACIFIC REGION-PHASE 1, Dec. 12, at 12-13, 50-64, available at http://www.icmec.org/en_X1/pdf/FCACP_APAC-AOReport_January_2013_.pdf (last visited Jan. 16, 2015).

³¹⁵ Act No. 13 of 2003 concerning Manpower, available at <http://www.ilo.org/dyn/natlex/docs/SERIAL/64764/56412/F861503702/idn64764.PDF> (last visited Jan. 16, 2015).

³¹⁶ Law No. 23 of 2002 on Child Protection, available at http://www.internationalresourcecentre.org/en_X2/Indonesia_Law_on_Child_Protection.pdf (last visited Jan. 16, 2015).

³¹⁷ Article 287 (1) of the Criminal Code

(1) Any person who out of marriage has carnal knowledge of a woman whom he knows or reasonably should presume that she has not yet reached the age of 15 years or, if it is not obvious from her age, that she is not yet marriageable, shall be punished by a maximum imprisonment of nine years.

EXTRACTS OF LEGISLATION RELATED TO THE TABLE:

1 – Has legislation specific to child pornography

Law No. 44 of 2008 concerning pornography (also known as “Law No. 44 of 2008 on pornography”) (hereafter referred to as the “Anti-Pornography Law”) criminalizes activities related to pornography, including pornography that explicitly contains child pornography, in Indonesia.

Pursuant to Article 4, paragraph (1) of the Anti-Pornography Law,³¹⁸ it is forbidden to produce, create, reproduce, copy, distribute, broadcast, import, export, offer, trade, lease, or provide pornography, including pornography that explicitly contains child pornography. Any person who violates Article 4, paragraph (1) of this Law shall be punished with imprisonment for a minimum of six months and a maximum of 12 years and/or a fine of a minimum of Rp250,000,000.00 (two hundred and fifty million rupiah) and a maximum of Rp6,000,000,000.00 (six billion rupiah) pursuant to Article 29 of the same Law.³¹⁹

In addition, according to Article 4, paragraph (2) of the Anti-Pornography Law, it is forbidden to provide a pornography service that: a) explicitly depicts nudity or illusions of nudity; b) explicitly describes genitalia; c) exploits or displays sexual activity; or d) offers or advertises, either directly or indirectly, sexual services. Those who violate Article 4, paragraph (2) of this Law shall be punished with imprisonment for a term of six months to six years and/or a fine of between Rp250,000,000.00 (two hundred and fifty million rupiah) and Rp3,000,000,000.00 (three billion rupiah) according to Article 30 of the same Law.

Furthermore, Article 8 of the Anti-Pornography Law prohibits any person from knowingly acting as or consenting to act as an object of pornographic content. Article 34 of this Law also provides that any person who violates Article 8 of the same Law shall be punished with imprisonment for a maximum of 10 years or a fine not exceeding Rp5,000,000,000.00 (five billion rupiah).

Moreover, Article 9 of the Anti-Pornography Law prohibits any person from causing another person to be an object of pornographic content. Any person who violates Article 9 of this Law shall be punished with imprisonment for a minimum of one year and a maximum of 12 years and/or a fine of a minimum of Rp500,000,000.00 (five hundred million rupiah) and a maximum of Rp6,000,000,000.00 (six billion rupiah) according to Article 35 of the same Law.

³¹⁸ Article 4, paragraph (1) of the Anti-Pornography Law

(1) It is forbidden to produce, create, reproduce, copy, distribute, broadcast, import, export, offer, trade, lease, or otherwise provide pornography that explicitly contains:

- a. sexual intercourse, including deviated sexual intercourse;
- b. sexual violence;
- c. masturbation or organism;
- d. nudity or illusions to nudity;
- e. genitals; or
- f. child pornography.

³¹⁹ Article 29 of the Anti-Pornography Law

Any person who produces, creates, reproduces, copies, distributes, broadcasts, imports, exports, offers, trades, leases, or otherwise provides pornography as referred to in Article 4, paragraph (1) shall be punished with imprisonment for a minimum of 6 months and a maximum of 12 years and/or a fine of a minimum of Rp250,000,000.00 (two hundred and fifty million rupiah) and a maximum of Rp6,000,000,000.00 (six billion rupiah).

Additionally, Article 10 of the Anti-Pornography Law prohibits any person from exhibiting himself/herself or another person in a public performance that depicts nudity, sexual exploitation, sexual intercourse, or other pornographic content. Any person who violates Article 10 of this Law shall be punished with imprisonment for a maximum of 10 years and/or a fine not exceeding Rp5,000,000,000.00 (five billion rupiah) pursuant to Article 36 of the same Law.

Furthermore, Article 282 of the Criminal Code³²⁰ criminalizes producing, disseminating, importing, exporting, conveying in transit, having in storage or openly demonstrating, etc. a writing if: 1) the offender knows that the content, portrait, or object of such writing known to him is offensive against decency; or 2) he has serious reason for suspecting that the content, portrait, or object is offensive to decency.

Article 74 of the Manpower Act³²¹ prohibits any person from making use of, procuring, or offering children for prostitution, the production of pornography, or pornographic performance. Any person who violates Article 74 of this Act shall be subject to a penalty of two to five years imprisonment, or a fine of Rp200,000,000 (two hundred million rupiah) to Rp500,000,000 (five hundred million rupiah), or both pursuant to Article 183 of the same Act.³²²

2 – Has a clear definition of child pornography

The term “pornography” is defined as any sexual material that is made by humans in the form of picture, sketch, illustration, photo, text, sounds, moving picture, animations, cartoon, conversation, gestures, or other forms of

³²⁰ Article 282 of the Criminal Code

(1) Any person who either disseminates, openly demonstrates or puts up a writing of which he knows the content or portrait or object known to him to be offensive against decency, or produces, imports, conveys in transit, exports or has in store, or openly or by dissemination of a writing, unrequestedly offers or indicates that said writing, portrait or object is procurable, in order that it be disseminated, openly demonstrated or put up, shall be punished by a maximum imprisonment of one year and four months or a maximum fine of three thousand rupiahs.

(2) Any person who disseminates, openly demonstrates or puts up a writing, a portrait or an object offensive to decency, or produces, imports, conveys in transit, exports or has in store, or openly or by dissemination of a writing unrequestedly offers or indicates that said writing, portrait or object is procurable, in order that it be disseminated, openly demonstrated or put up, shall, if he has serious reasons for suspecting that the writing, portrait or object is offensive to decency, shall be punished by a maximum imprisonment of nine months or a maximum fine of three thousand rupiahs.

(3) If the offender makes an occupation or a habit of the commission of the crime described in the first paragraph, a maximum imprisonment of two years and eight months or a maximum fine of five thousand rupiahs may be imposed.

³²¹ Article 74 of the Manpower Act

(1) Everybody shall be prohibited from employing and involving children in the worst forms of child labor (literal: in the worst jobs).

(2) The worst forms of child labor (literal: the worst jobs) as referred under subsection (1) include:

- a. All kinds of job in the form of slavery or practices similar to slavery;
- b. All kinds of job that make use of, procure, or offer children for prostitution, the production of pornography, pornographic performances, or gambling;
- c. All kinds of job that make use of, procure, or involve children for the production and trade of alcoholic beverages, narcotics, psychotropic substances, and other addictive substances; and/or
- d. All kinds of job harmful to the health, safety and moral of the child.

(3) The types of jobs that damage the health, safety or moral of the child as referred to under point d of subsection (2) shall be determined and specified with a Ministerial Decision.

³²² Article 183 of the Manpower Act

(1) Whoever violates what is stipulated under Article 74 shall be subject to a criminal sanction in jail for a minimum of two years and a maximum of five years and/or a fine of a minimum of Rp200,000,000 and a maximum of Rp500,000,000.

(2) The crime (criminal action) referred to under subsection (1) is (shall be legally categorized as) a felony.

messages through various forms of communication media and/or public performance, which contain obscenity or exploitation and violates sexual morality in society pursuant to Article 1, point 1 of the Anti-Pornography Law.

Furthermore, the elucidation of Article 4, paragraph (1), letter f of the Anti-Pornography Law defines the term “child pornography” as any form of pornography that involves children or involves adults performing or acting as children.³²³

Relevantly, Article 1, point 2 of the Anti-Pornography Law defines “pornography services” as any kind of pornography services provided by an individual or a corporation through the live performance, cable television, terrestrial television, radio, telephone, internet, and other electronic communication, as well as newspaper, magazines, and other printed materials.

3 – Considers everyone under 18 as a potential victim of activities related to child pornography

Indonesian Law considers everyone under 18 years of age as a potential victim of activities related to pornography that explicitly contains child pornography prohibited and punishable by the Anti-Pornography Law. Article 1, point 4 of the Anti-Pornography Law defines “children” herein as those below 18 years of age.

Relevantly, Article 1, point 26 of the Manpower Act defines the term “child” in this Law as every person under 18 years old.

4 – Criminalizes accessing or downloading child pornography images

Indonesian law criminalizes downloading child pornography images as stated below.

Pursuant to Article 5 of the Anti-Pornography Law, it is forbidden to download pornography that explicitly contains child pornography, as referred to in Article 4, paragraph 1 of this Law. Any person who violates Article 5 of this Law shall be punished with imprisonment for a maximum of four years and/or a maximum fine not exceeding Rp2,000,000,000.00 (two billion rupiah) according to Article 31 of the same Law.

Furthermore, the Law No. 11 of 2008 concerning the Electronic Information and Transactions³²⁴ (hereafter referred to as “Electronic Information and Transactions Law”) has provisions addressing online sexual exploitation of children. Article 27, paragraph (1) of the Electronic Information and Transactions Law³²⁵ prohibits any person from knowingly and without authority distributing and/or transmitting and/or causing to be accessible electronic information and/or electronic records with contents against propriety. Any person who violates Article 27, paragraph (1) of the Electronic Information and Transactions Law shall be sentenced to a penalty of up to six years of imprisonment and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah) according to Article 45, paragraph (1) of this Law.³²⁶

³²³ ALLEN & OVERY, *supra* note 314, at 55.

³²⁴ Law No. 11 of 2008 concerning the Electronic Information and Transactions, available at http://www.flevin.com/id/lgs0/translations/JICA%20Mirror/english/4846_UU_11_2008_e.html (last visited Jan. 16, 2015).

³²⁵ Article 27, paragraph (1) of the Electronic Information and Transactions Law

(1) Any Person who knowingly and without authority distributes and/or transmits and/or causes to be accessible Electronic Information and/or Electronic Records with contents against propriety.

³²⁶ Article 45, paragraph (1) of the Electronic Information and Transactions Law

(1) Any Person who satisfies the elements as intended by Article 27 paragraphs (1), (2), (3), or (4) shall be sentenced to imprisonment not exceeding 6 (six) years and/or a fine not exceeding Rp1,000,000,000 (one billion rupiah).

In case of the commission of criminal acts as stipulated in Article 27, paragraph (1) of the Electronic Information and Transactions Law relating to propriety or the sexual exploitation of children, such person shall be subject to an increase in the sentence by one third of the basic sentence pursuant to Article 52, paragraph (1) of this Law.³²⁷

5 – Criminalize possession of child pornography

Article 6 of the Anti-Pornography Law prohibits any person from possessing or having storage of pornography that explicitly contains child pornography as referred to in Article 4, paragraph (1) of this Law unless authorized by the law. Any person who violates Article 6 of this Law shall be punished with imprisonment for a maximum of four years and/or a fine of up to Rp2,000,000,000.00 (two billion rupiah) pursuant to Article 32 of the Anti-Pornography Law.

6 – Criminalizes virtual images and sexually exploitative representations of children

Indonesian law possibly criminalizes the production, distribution, possession, and commercialization of child pornography including virtual images and sexually exploitative representations of children that do not necessarily use real children in their production.

Article 1, point 1 of the Anti-Pornography Law defines “pornography” as any sexual material that is made by humans in the form of a picture, sketch, illustration, photograph, text, voice, sound, moving picture, animation, cartoon, conversation, lewd sexual gestures, or other forms of messages through various forms of communication media and/or performing in public, which can generate sexual desire and/or violate ethics/decency/morality in society. In addition, Article 4, paragraph (1), letter f of this Law prohibits activities related to pornography, which explicitly contains child pornography.

Furthermore, the elucidation of Article 4, paragraph (1), letter f of the Anti-Pornography Law defines the term “child pornography” as any form of pornography that involves children or involves adults performing or acting as children.³²⁸

7 – Addresses the criminal liability of children involved in pornography

The law does not address the criminal liability of children involved in pornography for their participation as long as they are victims, and not offenders.

Article 11 of the Anti-Pornography Law prohibits any person from involving children in activities as objects described in Articles 4, 5, 6, 8, 9, and 10 of this Law. Article 37 of the Anti-Pornography Law provides that any person who involves children in activities as objects described in Article 11 shall be punished with the same punishments as stipulated in Articles 29, 30, 31, 32, 34, 35, and 36 of this Law, plus one third of the maximum criminal penalties.

In addition, in case of child offenders, the minimum age of criminal liability in Indonesia is 12 years pursuant to the Law on Juvenile Criminal Justice System (No. 11 of 2012, also referred to as “Law on the Child Criminal Justice System”, promulgated on July 15, 2012 and effective as of July 15, 2014).

³²⁷ Article 52, paragraph (1) of the Electronic Information and Transactions Law

(1) Criminal acts as intended by Article 27 paragraph (1) involving propriety or sexual exploitation of children shall be subject to an increase in the sentence by one third of the basic sentence.

³²⁸ ALLEN & OVERY, *supra* note 314, at 55.

8 – Establishes criminal liability of legal persons for production or commercialization of child pornography

The Anti-Pornography Law establishes the criminal liability of a legal person for production or commercialization of pornography that explicitly contains child pornography as provided in Articles 4-7 and Articles 29-33 of this Law. Article 1, point 3 of the Anti-Pornography Law states that the term "every person" in this Law is defined as an individual or a corporation, whether incorporated or non-incorporated.

Moreover, Article 40 of the Anti-Pornography Law³²⁹ specifically addresses criminal penalties that can be imposed on a corporation in cases where pornography offenses are committed by the corporation. Article 40, paragraph (1) of the Anti-Pornography Law allows criminal charges to be imposed against a corporation and/or its managers for pornography offenses committed by or on behalf of the corporation under this Law. Pornography offenses shall be deemed to be committed by a corporation if the criminal act was done by a person, either within the employment or other relationship, acting in the corporate environment according to Article 40, paragraph (2) of the Anti-Pornography Law. In cases where pornography offenses are committed by a corporation, in addition to imposing imprisonment and fines on its officials, the corporation shall be punished by a fine of a maximum amount equal to three times the maximum amount of the fine specified in each article in this Chapter (Chapter 7: Punishment for Offenses comprising of Articles 29-41) pursuant to Article 40, paragraph (7) of the Anti-Pornography Law.

Furthermore, Article 41 of the Anti-Pornography Law states that a corporation may be subject to an additional penalty in case of pornography offenses committed by a corporation as follows: 1) suspension of business license; 2) revocation of business license; 3) confiscation of the proceeds/incomes of crime; or 4) revocation of status of a legal entity.³³⁰

Furthermore, Article 1, point 21 of the Electronic Information and Transactions Law specifies that "person" in this Law means an individual, whether an Indonesian citizen, foreign citizen, or legal entity. The Electronic Information and Transactions Law shall be applicable to any "person" who commits legal acts as governed by this Law under the circumstances prescribed by Article 2 of the same Law.

9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State

Indonesia establishes its extraterritorial jurisdiction over offenses involving indecent objects as provided Article 282 of the Criminal Code, which might also cover child pornography offenses, under the prescribed circumstance if the alleged offender is a national of Indonesia.

³²⁹ Article 40 of the Anti-Pornography Law

- (1) In case of pornography offenses committed by or on behalf of a corporation, the imposition of criminal charges can be made against the corporation and/or its managers.
- (2) Pornography offenses shall be deemed to be committed by a corporation if the criminal act was done by the people either within the employment or other relationships acting in the corporate environment, either by individually or jointly.
- (3) In case of criminal charges made against a corporation, the corporation is represented by the board.
- (4) The officials who represent the corporation referred to in paragraph (3) may be represented by another person.
- (5) The judge may order the corporation management that corporate officials shall represent them in court and may also order the corporation management to be appeared to trial.
- (6) In the event that criminal charges are made against the corporation, the call shall be made and summons shall be delivered to the place of the board's residence or its management office.
- (7) In cases where pornography offenses are committed by a corporation, in addition to imposing imprisonment and fines against its officials, the corporation shall be punished by a fine of a maximum amount equal to three times the fine specified in each article in this Chapter.

³³⁰ ALLEN & OVERY, *supra* note 314, at 58-59.

Indonesian statutory penal provisions are applicable to an Indonesian national who outside Indonesia commits an act deemed by the Indonesian statutory penal provisions to be a crime and on which punishment is imposed by the law of the country where it has been committed pursuant to Article 5 of the Criminal Code.³³¹ The applicability of Article 5 of the Criminal Code is restricted by the exceptions recognized in international law pursuant to Article 9 of the Criminal Code.³³²

Regarding offenses involving online sexual exploitation of children, Article 2 of the Electronic Information and Transactions Law further articulates that “This Law shall apply to any person to take legal acts as governed by this Law, both within jurisdiction of Indonesia and outside jurisdiction of Indonesia, which has legal effect within jurisdiction of Indonesia and/or outside jurisdiction of Indonesia and detrimental to the interest of Indonesia.” The term “person” in this Law refers to an individual, whether an Indonesian citizen, foreign citizen, or legal entity pursuant to Article 1, point 21 of the same Law.

10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State

Indonesia does not establish its extraterritorial jurisdiction over offenses involving pornography, child pornography, or indecency described in Criminal Code or Anti-Pornography Law when the victim is a national of Indonesia.

11 – Establishes the confiscation of assets used to commit or facilitate child pornography offenses

Indonesian law does not explicitly provide for the confiscation of assets used to commit or facilitate child pornography offenses.

However, Article 39, paragraph (1) of the Criminal Procedure Law provides for the seizure of prescribed goods including, but not limited to: 1) goods which have been directly used to commit an offense or in preparation therefore; 2) goods specially made and intended for the commission of an offense; and 3) other goods which have a direct connection with the offense committed.

12 – Establishes the confiscation of proceeds derived from child pornography offenses

Indonesian law provides for the confiscation of proceeds derived from child pornography offenses.

Article 41 of the Anti-Pornography Law enables the confiscation of proceeds (or all income) related to offenses (or crimes), in addition to the principal penalty, in case of pornography offenses committed by a corporation as stipulated in this Law.³³³ The pornography offenses prescribed in this Law shall include child pornography offenses as prohibited by Articles 4-7 and punishable by Articles 29-33 of this Law.

³³¹ Article 5 of the Criminal Code

(1) The Indonesian statutory penal provisions are applicable to an Indonesian National who outside Indonesia commits:

First, one of the crimes described in Chapters I and II of the second Book, and in Articles 160, 161, 240, 279, 450 and 451;

Secondly, an act deemed by the Indonesian statutory penal provisions to be a crime and on which punishment is imposed by the law of the country where it has been committed.

(2) The prosecution of the crime referred to under secondly may also be instituted if the accused becomes a subject after the commission of the act.

³³² Article 9 of the Criminal Code

The applicability of Articles 2-5, 7, and 8 are restricted by the exceptions recognized in international law.

³³³ ALLEN & OVERY, *supra* note 314, at 58-59.

In addition, Article 39, paragraph (1) of the Criminal Procedure Law states that: 1) goods or claims of the suspect or the accused of which all or part are presumed to have been obtained from an offense or as the result of an offense; and 2) other goods which have a direct connection with the offense committed may be subject to seizure.

13 – Requires professionals working with children to report child pornography activities

Indonesian law does not have provisions that require professionals who work with children to report child pornography activities to relevant authorities when they learn of incidents involving the use of a child in pornographic materials.

However, Articles 20³³⁴, 21³³⁵, and 22 of the Anti-Pornography Law³³⁶ encourage the community to report acts which violate the provisions of this legislation.

14 – Requires Internet Service Providers to report child pornography

Indonesian law does not have provisions that explicitly require Internet Service Providers (ISPs) to report child pornography to law enforcement agencies or other relevant authorities when they learn of it on their own networks.

However, Article 17 of the Anti-Pornography Law requires the Government and regional government to take precautions against the production of, distribution of, and use of pornography. Articles 18 and 19 of the Anti-Pornography Law authorize the Government and regional government to terminate the network that produces and disseminates pornography or pornography services, including blocking access to the pornography via the Internet; monitoring the production, distribution, and use of pornography; and cooperating and coordinating with all relevant parties, including both those within the nation as well as those from outside of the nation, in the prevention of the production, distribution, and use of pornography.

15 – Has telephone or online hotlines to enable the public to report child abuse

The Indonesian Government has a national child helpline TeSA 129 to address violence against children.³³⁷

³³⁴ Article 20 of the Anti-Pornography Law

The Community has a role to play within the scope of the precautionary measures concerning production of, distribution of, and use of pornography.

³³⁵ Article 21 of the Anti-Pornography Law

(1) The Actions concerning the community as referred to in Article 20 can be done by:

- a. Reporting the violation of this Law;
- b. Executing the class action lawsuit to the court;
- c. Disseminating laws governing the pornography; and
- d. Providing guidance to the public on the dangers and impact of pornography

(2) The provision as referred to in paragraph (1) letter a. and b. is implemented in accordance with the provisions of the legislation.

³³⁶ Article 22 of the Anti-Pornography Law

The community which reports violation as referred to in Article 21, paragraph (1) has the right to receive protection on the legislation.

³³⁷ Michael Klaus, *Indonesia launches #ENDviolence against children*, UNICEF INDONESIA, (Nov. 22, 2013), <http://unicefindonesia.blogspot.com/2013/11/indonesia-launches-endviolence-against.html> (last visited Jan. 16, 2015).

16 – Creates data retention or data preservation provisions

The Electronic Information and Transactions Law provides for data retention, although the rules addressing the data retention period have not yet been promulgated. Regulation No. 82 of 2012 concerning Electronic System and Transaction Operation³³⁸ (hereafter referred to as “Regulation concerning Electronic System and Transaction Operation”) also contains data retention provisions.

Article 16, paragraph (1) of the Electronic Information and Transaction Law and Article 21 of the Regulation concerning Electronic System and Transaction Operation stipulate that electronic system operators shall redisplay electronic information³³⁹ and/or electronic documents³⁴⁰ completely in accordance with the retention period determined based on the Regulation, to the extent not provided otherwise by separate laws.

Article 24 of the Anti-Pornography Law³⁴¹ implies data storage policies by stipulating that data stored in the Internet networks or other communication conduits (channels) could be used as evidence in a criminal case, in addition to other tools of evidence as allowed by the Criminal Procedure Law. Article 25 of the Anti-Pornography Law³⁴² mandates the owner of data/data storage or electronic service providers to submit electronic data and/or open electronic data requested by the investigator.

17 – Requires the identification of users of public computers in cybercafés

Indonesia does not have legislation or regulation that requires the identification of users of public computers in cybercafés.

18 – Has a national plan to combat violence against children

The Ministry of Women’s Empowerment has developed a five year National Plan of Action on the Eradication of the Criminal Act of Trafficking in Persons and Sexual Exploitation of Children (2009-2014).³⁴³

³³⁸ Regulation No. 82 of 2012 concerning Electronic System and Transaction Operation, available at http://www.flevin.com/id/lgsso/translations/JICA%20Mirror/english/4902_PP_82_2012_e.html (last visited Jan. 16, 2015).

³³⁹ Pursuant to Article 1, point 6 of the Regulation concerning Electronic System and Transaction Operation, electronic information is one or a set of electronic data, including but not limited to text, sound, images, maps, plans, photographs, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy or the like, letters, marks, numbers, access codes, symbols, or perforations treated with sense or be understood by people who are able to understand them.

³⁴⁰ According to Article 1, point 7 of the Regulation concerning Electronic System and Transaction Operation, electronic document is any electronic information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical form, or the like, visible, displayable and/or audible via computers or electronic systems, including but not limited to writings, sounds, images, maps, drafts, photographs or the like, letters, signs, figures, access codes, symbols or perforations having certain meaning or definition or understandable to persons qualified to understand them.

³⁴¹ Article 24 of the Anti-Pornography Law

In addition to the tools of evidence as prescribed by the Law of Criminal Procedure, the entrance of other tools of used in criminal cases includes, but not limited to:

- a. objects containing the writings or pictures, published or unpublished, electronic or optical or other forms of data storage; and
- b. data stored in the Internet networks or other communication conduits (channels).

³⁴² Article 25 of the Anti-pornography Law

(1) For the purpose of investigation, investigator has the power to access, inspect and make copies of electronic data stored in computer files, Internet networks, electronic or optical or other forms of data storage.

(2) For the purpose of investigation, the owner of data/data storage or electronic service providers is required to submit and/or open electronic data requested by the investigator.

(3) The owner of the data/data storage or electronic service provider after submitting or opening electronic data referred in (2) has the right to receive the receipt of submission or the official report of opening the electronic data from investigator.

³⁴³ ECPAT, EXECUTIVE SUMMARY, INDONESIA (2011), at 1, available at http://resources.ecpat.net/Ei/pdf/A4A_II/EXSUM_A4A_EAP_INDONESIA.pdf (last visited Jan. 16, 2015).

With respect to a national plan to combat pornography against children, the Anti-Pornography Law has two provisions which explicitly outline child protection concepts. Article 15 of the Anti-Pornography Law provides for the protection of children from the influence of pornography, as well as for the prevention of children from accessing pornographic materials.

Article 16 of the Anti-Pornography Law³⁴⁴ creates duties of the government, social organizations, educational institutions, religious institutions, families, and/or the community to provide coaching, mentoring, social recovery, physical, and mental health regulated by a Government Regulation for all children who are victims or subjects/performers of pornography.

19 – Has ratified the CRC and the OPSC

- Indonesia ratified the Convention on the Rights of the Child on September 5, 1990.³⁴⁵
- Indonesia ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on September 24, 2012.³⁴⁶
- Indonesia ratified the Worst Forms of Child Labour Convention, 1999 (No. 182) on March 28, 2000.³⁴⁷

20 – Age of criminal liability

Law No. 11 of 2012 on Juvenile Criminal Justice System³⁴⁸ (also referred to as “Law on the Child Criminal Justice System”) increased the minimum age of criminal responsibility in Indonesia from 8 years to 12 years.³⁴⁹ Prior to the enactment and effectiveness of the Law on Juvenile Criminal Justice System (promulgated on July 15, 2012 and effective as of July 15, 2014), the minimum age of criminal responsibility in Indonesia was 8 years old as provided under Law No. 3 of 1997 on Child Justice. However, the Law on Juvenile Criminal Justice System (Law No. 11 of 2012) repealed the Law on Child Justice (Law No. 3 of 1997).

21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children

The primary legislation that specifically addresses the use of ICTs to commit crimes against children in Indonesia is the Anti-Pornography Law (Law No. 44 of 2008 concerning pornography). Every person who downloads pornography that explicitly contains child pornography shall be punished with imprisonment for a maximum of four years and/or a maximum fine of Rp2,000,000,000.00 (two billion rupiah) pursuant to Articles 4, 5, and 31 of the Anti-Pornography Law.

³⁴⁴ Article 16 of the Anti-Pornography Law

(1) Government, Social Institutions, Educational Institutions, Religious Institutions, families and/ or the Community shall provide coaching, mentoring, social recovery, physical and mental health for all children who are victims or subjects/performers of pornography.

(2) Provisions on coaching, mentoring, social recovery, physical and mental health as referred to in 16(1) shall be further determined by the legislation.

³⁴⁵ *Status of Ratification and Accession of the CRC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en (last visited Oct. 24, 2014).

³⁴⁶ *Status of Ratification and Accession of the OPSC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last visited Oct. 24, 2014).

³⁴⁷ *Status of the Ratification of the Worst Forms of Child Labour Convention, 1999*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited Oct. 24, 2014).

³⁴⁸ Law No. 11 of 2012 on Juvenile Criminal Justice System, available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/91044/105366/F1691070779/IDN91044%20IDN.pdf> (in Indonesian) (last visited Jan. 16, 2015).

³⁴⁹ UN HUMAN RIGHTS COMM., *Consideration of reports submitted by States parties under article 40 of the International Covenant on Civil and Political Rights, Concluding observations on the initial report of Indonesia Prepared by the Committee*, at 1, paragraph 3, available at http://www.omct.org/files/2013/07/22327/concluding_observations_indonesia_july_2013_hrcttee.pdf (last visited Jan. 16, 2015).

22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online

Indonesian law does not have explicit provisions that criminalize child trafficking with the intent of producing pornography.

However, Law No. 21 of 2007 on Elimination of Human Trafficking Crimes³⁵⁰ (also known as “Eradication of the Criminal Act of Trafficking in Persons Act” or “Anti-Trafficking Law 2007”, hereafter referred to as “Law on Elimination of Human Trafficking Crimes”) criminalizes child trafficking for the purposes of exploitation including all forms of sexual exploitation pursuant to its Articles 1, 2, and 17 as stated below.³⁵¹

Article 2 of the Law on Elimination of Human Trafficking Crimes³⁵² states that everyone who recruits, transports, harbors, delivers, transfers, or receives another person by the threat of violence, the use of violence, abduction, confinement, fraud, deception, abuse of power or of a position of vulnerability, debt bondage or giving payments or benefits to obtain consent from the person in control over another person, for the purpose of exploiting that person in the territory of the Republic of Indonesia, shall be punished with imprisonment for a minimum of three years and a maximum of 15 years and a fine of a minimum of Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp600,000,000.00 (six hundred million rupiah).

If the criminal offenses referred to in Article 2 of the Law on Elimination of Human Trafficking Crimes are committed against a child, the penalty shall be increased by one third according to Article 17 of this Law.

Pursuant to Article 1, point 5 of the Law on Elimination of Human Trafficking Crimes, the term “child” in this Law refers to a person who is not yet 18 years of age, including a child still in the womb. In addition, according to Article 1, point 7 of the Law on Elimination of Human Trafficking Crimes, the term “exploitation” in this Law includes other forms of sexual exploitation.

Article 297 of the Criminal Code criminalizes trafficking of women (regardless of their ages) and underage boys.

Article 59 of the Law on Child Protection³⁵³ requires the government or an authorized state institution to be responsible for providing special protection to children who are being exploited economically or sexually or children who are the victims of kidnapping, sale, and trading.

³⁵⁰ Law No. 21 of 2007 on Elimination of Human Trafficking Crimes, available at http://www.protectionproject.org/wp-content/uploads/2010/09/Indonesia_Anti-Trafficking-Law_2007-Indonesian.pdf (in Indonesian) (last visited Jan. 16, 2015).

³⁵¹ CHILDWISE AND AUSTRALIAN GOV'T, *supra* note 109, at 25.

³⁵² Article 2 of the Law on Elimination of Human Trafficking Crimes

(1) Everyone who recruits, transports, harbors, delivers, transfers, or receives another person by the threat of violence, the use of violence, abduction, confinement, fraud, deception, abuse of power or of a position of vulnerability, debt bondage or giving payments or benefits to obtain the consent from the person in control over another person, for the purpose of exploiting that person in the territory of the Republic of Indonesia, shall be punished with imprisonment for a minimum of 3 years and a maximum of 15 years and a fine of a minimum of Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp600,000,000.00 (six hundred million rupiah).

(2) If the act referred to in paragraph (1) results in the exploited, the offender shall be punished to the same penalties as referred to in paragraph (1).

³⁵³ Article 59 of the Law on the Child Protection

The government or an authorized state institution shall be responsible and accountable for providing special protection to children in emergency situations, children who find themselves in dealings with the law, children from minority and isolated groups, children who find themselves being exploited economically or sexually, children who are traded, children who become the victims of the misuse of narcotics, alcohol, psychotropic substances and other addictive substances, children who are the victims of kidnapping, sale and trading, children who are the victims of both physical and/or mental violence, disabled children, children who are the victims of abuse, and neglected/abandoned children.

According to Article 83 of the Law on Child Protection, every person who trades in, sells, or kidnaps a child, either for his own purposes or for sale, shall be subject to imprisonment of a minimum term of three years to a maximum term of 15 years and, and a fine of at least Rp60,000,000.00 (sixty million rupiah) to a maximum of Rp300,000,000.00 (three hundred million rupiah).

Indonesian law does not provide explicit provisions criminalizing advertising child sex tourism online.

23, 24, 25, and 26 – Existence of legislation criminalizing online grooming, a clear definition of online grooming, the age of a potential victim, and related crimes

Indonesian law does not have an explicit provision which criminalizes online grooming. In addition, Indonesian law does not provide a clear definition of online grooming.

However, Article 7 of the Anti-Pornography Law prohibits every person from funding or facilitating acts involving pornography, including pornography that explicitly contains child pornography. Those who violate Article 7 of this Law shall be punishable by imprisonment for a minimum of two years and a maximum of 15 years and/or a fine of a minimum of Rp1,000,000,000.00 (one billion rupiah) and a maximum of Rp7,500,000,000.00 (seven billion five hundred million rupiah) pursuant to Article 33 of the same Law.

In addition, Article 12 of Anti-Pornography Law prohibits any person from inviting, enticing, taking advantage of, allowing, abusing the power, or coercing children to use pornography products or pornography services. Those who contravene Article 12 of this Law shall be punished with imprisonment for a minimum of six months and a maximum of six years and/or a fine of a minimum of Rp250,000,000.00 (two hundred and fifty million rupiah) and a maximum of Rp3,000,000,000.00 (three billion rupiah) pursuant to Article 38 of the same Law.

Indonesian law does not provide a clear definition of online grooming or sexual grooming.

In addition, even though there are no explicit provisions that consider everyone under the age of 18 as a potential victim of online grooming in Indonesia, the age of a potential victim of an offense involving facilitating or other types of soliciting activities related to pornography that explicitly contains child pornography is 18 years pursuant to Article 1, paragraph 4 of the Anti-Pornography Law.

27 – Criminalizes showing pornography to a child as a standalone offense

Article 283 of the Criminal Code³⁵⁴ punishes anyone who shows contents, which offends against decency, to a minor whom the offender knows or reasonably must suspect has not yet reached the age of 16 years.

³⁵⁴ Article 283 of Criminal Code

(1) By a maximum imprisonment of nine (9) months or a maximum fine of six hundred rupiahs shall be punished any person who offers, hands over permanently or temporarily, hands to or shows to a minor of whom he knows or reasonably must suspect that it has not yet reached the age of seventeen (17) years, either a writing, a portrait or an Article offensive against decency, or a means to prevent or a means to curb the pregnancy, if the contents of the writing, or if the portrait, the Article of the means are known to him.

(2) By the same punishment shall be punished the person who in the presence of a minor as referred to in the foregoing paragraph, reads out the contents of a writing offensive against decency, if this is known to him.

(3) By a maximum imprisonment of four months or a maximum light imprisonment of three months or a maximum fine of six hundred rupiahs shall be punished any person who offers, hands over permanently or temporarily, hands to or shows to a minor as referred to in the first paragraph either a writing, a portrait or an Article offensive against decency, or a means to prevent or a means to curb the pregnancy, or reads out the contents of a writing offensive against decency in the presence of a minor as referred to in the first paragraph, if he has serious reasons to suspect that the writing, the portrait or the Article is offensive against decency or that the means is a means to prevent or to curb pregnancy.

28 – Has legislation regarding cyberbullying

Indonesia does not have legislation regarding cyberbullying.

29 – Has legislation concerning sexting

There is no legislation concerning sexting in Indonesia.

Table 2.7 – Country: Japan

1 – Has legislation specific to child pornography	Yes
2 – Has a clear definition of child pornography	Yes
3 – Considers everyone under 18 as a potential victim of activities related to child pornography	Yes
4 – Criminalizes accessing or downloading child pornography images	Yes (downloading) (one-year moratorium from July 15, 2014)
5 – Criminalizes possession of child pornography	Yes (one-year moratorium from July 15, 2014)
6 – Criminalizes virtual images and sexually exploitative representations of children	No
7 – Addresses the criminal liability of children involved in pornography	No (if children are victims, not offenders)
8 – Establishes criminal liability of legal persons for production or commercialization of child pornography	Yes
9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State	Yes
10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State	No
11 – Establishes confiscation of assets used to commit or facilitate child pornography offenses	Yes
12 – Establishes confiscation of proceeds derived from child pornography offenses	Yes
13 – Requires professionals working with children to report child pornography activities	No
14 – Requires Internet Service Providers to report child pornography	No
15 – Has telephone or online hotlines to enable the public to report child abuse	Yes
16 – Creates data retention or data preservation provisions	Yes
17 – Requires the identification of users of public computers in cybercafés	No
18 – Has a national plan to combat violence against children	Yes
19 – Has ratified the CRC and the OPSC	Yes
20 – Age of criminal liability	14
21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children	Yes
22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online	1) Yes; 2) No
23 – Has legislation that criminalizes online grooming as a standalone offense	No (but criminalizes acts related to online grooming)
24 – Has a clear definition of online grooming	No
25 – Considers everyone under 18 as a potential victim of online grooming	Possibly Yes
26 – 1) Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child; or 2) criminalizes grooming regardless of the intent	1) Yes; 2) No
27 – Criminalizes showing pornography to a child as a standalone offense	No
28 – Has legislation regarding cyberbullying	Yes
29 – Has legislation concerning sexting	No

Japan

In Japan, the Constitution of Japan (enacted in 1946)³⁵⁵ (hereafter referred to as “Constitution”) has provisions that protect children’s rights. Specifically, Article 27 of the Constitution states that children shall not be exploited.

In addition, the laws which protect children’s rights and/or govern violence against children are as follows:

- Penal Code (enacted in 1907 and amended in 2009)³⁵⁶
- Child Welfare Act (enacted by Act No. 164 of December 12, 1947 and amended by Act No. 73 on June 1, 2007)³⁵⁷
- Act on the Prevention, etc. of Child Abuse (enacted by Act No. 82 on May 24, 2000 and amended by Act No. 53 on May 25, 2011) (hereafter referred to as “Child Abuse Prevention Act”)³⁵⁸
- Act on Regulation and Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children (enacted in 1999, last amended in 2014, and effective as of July 15, 2014)³⁵⁹ (hereafter referred to as “Child Pornography Prohibiting Act”)
- Online Dating Site Regulating Act (also known as “Law to Regulate Solicitation of Children through Matching Business via Internet”) (enacted in 2003 and amended in 2008)³⁶⁰
- Act on the Promotion of Preventive Measures for Bullying (also known as “Anti-Bullying Law”) (enacted in 2013)³⁶¹
- Act on Development of an Environment that Provides Safe and Secure Internet Use for Young People (enacted by Act No. 79 of 2008 and amended by Act No. 71 of 2009)³⁶²

Articles 34 (1) (vi)³⁶³ and 60 (1) of the Child Welfare Act³⁶⁴ make it illegal to have a child engage in an obscene act such as having a sex with others or doing other acts of a sexual nature.

³⁵⁵ Constitution of Japan, available at <http://www.japaneselawtranslation.go.jp/law/detail/?ft=1&re=02&dn=1&co=01&ia=03&x=55&y=17&ky=constitution&page=33> (in Japanese and English) (last visited Jan. 16, 2015).

³⁵⁶ Penal Code, available at <http://www.japaneselawtranslation.go.jp/law/detail/?re=02&dn=1&x=34&y=19&co=1&ia=03&yo=&gn=&sy=&ht=&no=&bu=&ta=&ky=penal&page=56> (in Japanese and English) (last visited Jan. 16, 2015).

³⁵⁷ Child Welfare Act, available at <http://www.japaneselawtranslation.go.jp/law/detail/?ft=1&re=02&dn=1&co=01&ia=03&x=30&y=24&ky=child&page=30> (in Japanese and English) (last visited Jan. 16, 2015).

³⁵⁸ Act on the Prevention, etc. of Child Abuse, available at <http://www.japaneselawtranslation.go.jp/law/detail/?ft=1&re=02&dn=1&co=01&ia=03&x=30&y=24&ky=child&page=28> (in Japanese and English) (last visited Jan. 16, 2015).

³⁵⁹ Act on Regulation and Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children 2014 (also known as “Child Pornography Prohibiting Act”, enacted in 1999, last amended in 2014, and effective as of July 15, 2014), available at <http://law.e-gov.go.jp/htmldata/H11/H11HO052.html> (in Japanese) (last visited Jan. 16, 2015).

Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children 2014 (also known as “Child Pornography Prohibiting Act 2004”, enacted in 1999 and amended in 2004), available at <http://www.japaneselawtranslation.go.jp/law/detail/?ft=1&re=02&dn=1&co=01&ia=03&x=0&y=0&ky=child+pornography&page=2> (in Japanese and English) (last visited Jan. 16, 2015). For the purposes of this Regional Study, an unofficial English Translation of the Child Pornography Prohibiting Act 2014 was conducted based on its original text and with reference to English Translation of the Child Pornography Prohibiting Act 2004.

³⁶⁰ Online Dating Site Regulating Act, available at <http://law.e-gov.go.jp/htmldata/H15/H15HO083.html> (in Japanese) (last visited Jan. 16, 2015). For the purposes of this Regional Study, an unofficial English translation of the Online Dating Site Regulating Act was conducted.

³⁶¹ Act on the Promotion of Preventive Measures for Bullying, available at http://www.mext.go.jp/a_menu/shotou/seitoshidou/1337278.htm (in Japanese) (last visited Jan. 16, 2015). For the purposes of this Regional Study, an unofficial English translation of the Act on the Promotion of Preventive Measures for Bullying was conducted.

³⁶² Act on Development of an Environment that Provides Safe and Secure Internet Use for Young People, available at <http://www8.cao.go.jp/youth/youth-harm/law/pdf/english.pdf> (last visited Jan. 21, 2015).

EXTRACTS OF LEGISLATION RELATED TO THE TABLE:

1 – Has legislation specific to child pornography

The Act on Regulation and Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children (hereafter referred to as “Child Pornography Prohibiting Act”) criminalizes activities related to child pornography.

Article 7 of the Child Pornography Prohibiting Act³⁶⁵ has provisions that criminalize prescribed activities involving child pornography as stated below.

According to Article 7 (1) of the Child Pornography Prohibiting Act, it is illegal for any person to possess child pornography or retain electromagnetic records or any other record that depicts the pose of a child, which falls under child pornography for the purpose of satisfying his own sexual curiosity. Furthermore, Article 7 (2) of this Act punishes any person who provides child pornography or provides electromagnetic records or any other

³⁶³ Article 34 (1) (vi) of the Child Welfare Act

(1) No person shall commit an act listed in any of the following items:

(vi) Cause a child to commit an obscene act

³⁶⁴ Article 60 (1) of the Child Welfare Act

A person who violates the provision of Article 34 paragraph (1) item (vi) shall be punished by imprisonment with work for not more than 10 years or a fine of not more than 3,000,000 yen, or by cumulative imposition of both of them.

³⁶⁵ Article 7 of the Child Pornography Prohibiting Act (Provision of Child Pornography and Other Related Activities) (last amended in 2014)

(1) Any person who is in possession of child pornography, for the purpose of satisfying its sexual curiosity (limited to a person who gets child-pornography of its own will and a person who is undoubtedly corresponding to this condition) shall be sentenced by imprisonment with work for not more than one year or a fine of not more than one million yen. The same shall apply to a person who retains electromagnetic records or any other record which depicts the pose of a child, which falls under any of the items of paragraph 3 of Article 2, for the purpose of satisfying its own sexual curiosity (limited to a person who gets child pornography of its own will and a person who is undoubtedly corresponding to this condition).

(2) Any person who provides child pornography shall be sentenced to imprisonment with work for not more than three years or a fine of not more than three million yen. The same shall apply to a person who provides electromagnetic records or any other record which depicts the pose of a child, which falls under any of the items of paragraph 3 of Article 2, in a visible way through electric telecommunication lines.

(3) Any person who produces, possesses, transports, imports to or exports from Japan child pornography for the purpose of the activities prescribed in the preceding paragraph shall be punished by the same penalty as is prescribed in the said paragraph. The same shall apply to a person who retains the electromagnetic records prescribed in the preceding paragraph for the purpose of the same activities.

(4) In addition to the preceding paragraph, any person who produces child pornography by having a child pose in any way which falls under any of the items of paragraph 3 of Article 2, depicting such pose in photographs, recording media containing electromagnetic records or any other medium shall be punished by the same penalty prescribed in paragraph 2 of this article.

(5) In addition to the two preceding paragraphs, any person who produces child pornography in photographs, recording media containing electromagnetic records or any other medium by secretly depicting a child pose which falls under any of the items of paragraph 3 of Article 2 shall be punished by the same penalty prescribed in paragraph 2 of this article.

(6) Any person who provides child pornography to unspecified persons or a number of persons, or displays it in public shall be sentenced to imprisonment with work for not more than five years and/or a fine of not more than five million yen. The same shall apply to a person who provides electromagnetic records or any other record which depicts the pose of a child, which falls under any of the items of paragraph 3 of Article 2, to unspecified persons or a number of persons in a visible way through telecommunication lines.

(7) Any person who produces, possesses, transports, imports to or exports from Japan child pornography for the purpose of the activities prescribed in the preceding paragraph shall be punished by the same penalty as is prescribed in the said paragraph. The same shall apply to a person who retains the electromagnetic records prescribed in the preceding paragraph for the purpose of the same activities.

(8) Any Japanese national who imports or exports child pornography to or from a foreign country for the purpose of the activities prescribed in paragraph 6 of this article shall be punished by the same penalty prescribed in the said paragraph.

record that depicts the pose of a child, which falls under child pornography in a visible way through electric telecommunication lines. The provision of child pornography to unspecified persons or a number of persons (also referred to as “distribution of child pornography”³⁶⁶), providing electromagnetic records, or any other record that depicts the pose of a child which falls within the definition of child pornography to unspecified persons/a number of persons in a visible way through electric telecommunication lines, or displaying it in public, is also prohibited pursuant to Article 7 (6) of this Act. In addition, it is forbidden for any person to produce, possess, transport, import, or export child pornography or retain such electromagnetic records in electronic formats with the purpose of providing it either to others or to unspecified persons/a number of persons pursuant to Article 7 (7) and Article 7 (8) of this Act.

In respect of pornography offenses, the distribution, sale, or public display of obscene materials is a crime pursuant to Article 175 of the Penal Code.³⁶⁷ In addition, the possession of obscene materials for the purpose of distributing, selling, or displaying in public is illegal under the same Article of the Penal Code.

2 – Has a clear definition of child pornography

Japanese law provides a clear definition of child pornography as elaborated below.

Pursuant to Article 2 (3) of the Child Pornography Prohibiting Act,³⁶⁸ the term “child pornography” in this Act is defined as photographs, recording media containing electromagnetic records (any record which is produced by electronic, magnetic, or any other means unrecognizable by natural perceptive functions and is used for data-processing by a computer; the same shall apply hereinafter) or any other medium which depicts the pose of a child, which falls under any of the following items, in a visible way: (i) any pose of a child engaged in sexual intercourse or any conduct similar to sexual intercourse; (ii) any pose of a child having his or her genital organs touched by another person or of a child touching another person’s genital organs, which arouses or stimulates the viewer’s sexual desire; (iii) any pose of a child wholly or partially naked, which deliberately exposes or emphasizes the sexual parts (genitals organs, region around the genital organs, buttocks, or chest) and arouses or stimulates the viewer’s sexual desire.

³⁶⁶ The term “distribution of child pornography” used in Article 7 of the Child Pornography Prohibiting Act of 1999 shall be deemed to be replaced with a) provision of child pornography to unspecified persons or a number of persons and other related acts (Article 7 (4) of Child Pornography Prohibiting Act of 2004 and Article 7 (6) of Child Pornography Prohibiting Act of 2014), b) production of child pornography with the purpose of provision to unspecified persons or a number of persons and other related acts (Article 7 (5) of the Child Pornography Prohibiting Act of 2004 and Article 7 (7) of the Child Pornography Prohibiting Act of 2014); and c) importation of child pornography for the purpose of provision to unspecified persons or a number of persons and other related acts (Article 7 (6) of the Child Pornography Prohibiting Act of 2004 and Article 7 (8) of Child Pornography Prohibiting Act of 2014) pursuant to Article 3 of the Supplementary Provision to the Child Pornography Prohibiting Act of 2004.

³⁶⁷ Article 175 of the Penal Code (Distribution of Obscene Materials)

A person who distributes sells or displays in public an obscene document, drawing or other objects shall be punished by imprisonment with work for not more than 2 years, a fine of not more than 2,500,000 yen or a petty fine. The same shall apply to a person who possesses the same for the sale.

³⁶⁸ Article 2 (3) of the Child Pornography Prohibiting Act (Definitions) (last amended in 2014)

The term “child pornography” as used in this Act shall mean photographs, recording media containing electromagnetic records (any record which is produced by electronic, magnetic or any other means unrecognizable by natural perceptive functions and is used for data-processing by a computer; the same shall apply hereinafter) or any other medium which depicts the pose of a child, which falls under any of the following items, in a visible way:

- (i) Any pose of a child engaged in sexual intercourse or any conduct similar to sexual intercourse;
- (ii) Any pose of a child having his or her genital organs touched by another person or of a child touching another person's genital organs, which arouses or stimulates the viewer's sexual desire;
- (iii) Any pose of a child wholly or partially naked, which deliberately exposes or emphasizes sexual parts (genital organs, parts around genital organs, buttock, or chest), and arouses or stimulates the viewer's sexual desire.

3 – Considers everyone under 18 as a potential victim of activities related to child pornography

Japanese law considers every person under the age of 18 years as a potential victim of activities related to child pornography defined and punishable by Articles 2, 7, and 8 of the Child Pornography Prohibiting Act. Article 2 (1) of this Act defines the term “child” as a person under 18 years old. Article 9 of the same Act prescribes that lacking knowledge of the child’s age shall not be used as grounds for exemption from punishment unless there is no negligence.

In Japan, the age of consent to sexual intercourse is 13 years for women pursuant Article 177 of the Penal Code.³⁶⁹ Furthermore, the age of consent to indecent act is 13 years for women and men according to Article 176 of the Penal Code.³⁷⁰ However, having sexual intercourse with a child (under 18 years of age) in return for giving or promising remuneration to the child shall constitute a criminal offense according to Articles 2 (2) and 4 of the Child Pornography Prohibiting Act.

4 – Criminalizes accessing or downloading child pornography images

Japanese law criminalizes downloading child pornography images as stated below. Article 7 (1) of the Child Pornography Prohibiting Act (last amended in 2014 and effective as of July 15, 2014) criminalizes possession of child pornography or retention of electromagnetic records or any other records that depict poses of a child for the purposes of satisfying one’s own sexual curiosity, regardless of the intent to distribute. This paragraph shall be applicable to a person who, without a doubt, comes to possess the child pornography of his/her own will.

There is a one-year moratorium from the effective date on punishing those who violate Article 7 (1) of the Child Pornography Prohibiting Act in order to give people in possession or retention of child pornography the time to dispose of it.

5 – Criminalizes possession of child pornography

Possession of child pornography without the intent to distribute is a crime in Japan as provided below.

Article 3-2 of the Child Pornography Prohibiting Act (last amended in 2014) prohibits the possession of child pornography and the retention (or storage) of electronic records of child pornography.

Furthermore, Article 7 (1) of the Child Pornography Prohibiting Act makes it an offense to possess child pornography or to retain electronic records or any other records that depict poses of a child for the purposes of satisfying one’s own sexual curiosity. Mere possession of child pornography shall be punishable by imprisonment with work for not more than one year, or a fine of not more than 1 million yen. The application of this paragraph shall be limited to a person who, without a doubt, comes to possess the child pornography of his/her own will.

³⁶⁹ Article 177 of the Penal Code (Rape)

A person who, through assault or intimidation, forcibly commits a sexual intercourse with a female of not less than 13 years of age commits the crime of rape and shall be punished by imprisonment with work for a definite term of not less than 3 years. The same shall apply to a person who commits a sexual intercourse with a female under 13 years of age.

³⁷⁰ Article 176 of the Penal Code (Forcible Indecency)

A person who, through assault or intimidation, forcibly commits an indecent act upon a male or female of not less than thirteen years of age shall be punished by imprisonment with work for not less than 6 months but not more than 10 years. The same shall apply to a person who commits an indecent act upon a male or female under thirteen years of age.

Although the Amendment of the Child Pornography Prohibiting Act became effective as of July 15, 2014, there is a one-year moratorium on punishment for possessing child pornography without the intent to distribute in order to give possessors the time to discard of it.

In addition, possession of child pornography for the purposes of providing it to unspecified persons or a number of persons, shall be subject to a heavier punishment than that for the simple possession of child pornography as stipulated in Article 7 (3) and 7 (7) of the Child Pornography Prohibiting Act.³⁷¹

6 – Criminalizes virtual images and sexually exploitative representations of children

Japanese law does not criminalize the production, distribution, possession, and commercialization of child pornography including virtual images and sexually exploitative representations of children that do not necessarily use real children in their production.

There were concerns about infringement of freedom of expression in case of including cartoons, animations, and games that involve virtual images and sexually exploitative representations of children into child pornography provided under the Child Pornography Prohibiting Act. The amendment to revise the Child Pornography Prohibiting Act (approved by both the Lower and Upper Houses of Parliament of Japan in June 2014 and effective as of July 15, 2014) excluded mention of sexually explicit manga comics, anime videos, and computer-generated graphics, which was part of a draft amendment bill to revise the Child Pornography Prohibiting Act. Thus, the current Child Pornography Prohibiting Act regulates child pornographic images depicting real children.³⁷²

7 – Addresses the criminal liability of children involved in pornography

Japanese law does not address the criminal liability of children involved in pornography as long as they are victims, and not offenders.

In cases of child offenders, the minimum age of criminal liability in Japan is 14 years under Article 41 of the Penal Code.

8 – Establishes criminal liability of legal persons for production or commercialization of child pornography

Japanese law establishes the criminal liability of legal persons for production or commercialization of child pornography. Pursuant to Article 11 of the Child Pornography Prohibiting Act,³⁷³ both an individual offender and a judicial person may be jointly accountable when a representative, a proxy, employee, or any other staff member of a judicial person has committed any of the child pornography crimes as provided in paragraphs 2 to 8 of Article 7 of this Act.

9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State

Japan establishes its extraterritorial jurisdiction over child pornography offenses prescribed in the Child Pornography Prohibiting Act when the alleged offender is a national of Japan. Article 10 of the Child

³⁷¹ *Japan Possession of Child Pornography Finally Punishable*, LIBRARY OF CONGRESS, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_1205404088_text (last visited Nov. 19, 2014).

³⁷² Japan outlaws child porn possession, but explicit manga, anime get green light: Law won't apply to sexually explicit manga, anime, *supra* note 65.

³⁷³ Article 11 of the Child Pornography Prohibiting Act (Dual Liability) (last amended in 2014)

When a representative of a juridical person or a proxy, employee or any other staff member of a juridical person or of an individual has committed any of the crimes prescribed in Articles 5 and 6, as well as paragraphs 2 to 8 of Article 7 with regard to the business of said juridical person or individual, not only the offender shall be punished but also said juridical person or individual shall be punished by the fine prescribed in the respective articles.

Pornography Prohibiting Act³⁷⁴ (Crimes Committed by Japanese Nationals outside Japan) stipulates that the crimes prescribed in paragraphs 1 to 7 of Article 7, (Provision of Child Pornography and Other Related Activities) shall be governed by Article 3 of the Penal Code (Crimes Committed by Japanese Nationals outside Japan), when said crimes are committed by a national of Japan abroad.³⁷⁵

In addition, Article 3 of the Supplementary Provision to the Child Pornography Prohibiting Act of 2004³⁷⁶ deals with Transitional Measures on Application of the Act on Punishment of Organized Crimes and Control of Crime Proceeds.

10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State

Japan does not establish its extraterritorial jurisdiction over child pornography offenses when the victim is a national of Japan.

11 – Establishes the confiscation of assets used to commit or facilitate child pornography offenses; and 12 – Establishes the confiscation of proceeds derived from such offenses

Articles 19³⁷⁷ and 19-2 of the Penal Code³⁷⁸ contain provisions for: 1) the confiscation of assets used to commit or facilitate crimes; and 2) the confiscation of proceeds derived from crimes. Article 8 of the Criminal Act states that Part 1, the General Provisions under Part 1 of the Penal Code (Articles 1 –72) shall be applicable to crimes for which punishments are provided by other laws and regulations, except as otherwise provided in such laws and regulations.

³⁷⁴ Article 10 the Child Pornography Prohibiting Act (Crimes Committed by Japanese Nationals outside Japan) (last amended in 2014)

The crimes prescribed in Articles 4 to 6, paragraphs 1 to 7 of Article 7, and paragraphs 1 and 3 (limited to the part related to paragraph 1 of the same article of Article 8) shall be governed by Article 3 of the Penal Code.

³⁷⁵ ECPAT, EXTRATERRITORIAL LAWS: WHY THEY ARE NOT REALLY WORKING AND HOW THEY CAN BE STRENGTHENED (2008), at 10, available at http://resources.ecpat.net/worldcongressIII/PDF/Journals/EXTRATERRITORIAL_LAWS.pdf (last visited Jan. 16, 2015).

³⁷⁶ Article 3 of the Supplementary Measure to the Child Pornography Prohibiting Act of 2004 (Transitional Measures on Application of the Act on Punishment of Organized Crimes and Control of Crime Proceeds)

Where the enforcement day of this Act precedes the enforcement day of the Partial Amendment to the Penal Code Regarding the Internationalization and Organization of Crimes and Advancement of Information Processing, with respect to the application of appended table 59 of the Act on Punishment of Organized Crimes and Control of Crime Proceeds(Act No.136 of 1999) prior to enforcement of the partial amendment, the term "Article 7 (Distribution of Child Pornography)" in the appended table shall be deemed to be replaced with "Paragraph 4 (Provision of Child Pornography to Unspecified Persons or a Number of Persons and Other Related Acts), Paragraph 5 (Production of Child Pornography with the Purpose of Provision to Unspecified Persons or a Number of Persons and Other Related Acts) or Paragraph 6 of Article 7 (Importation of Child Pornography for the Purpose of Provision to Unspecified Persons or a Number of Persons and Other Related Acts).

³⁷⁷ Article 19 of the Penal Code (Confiscation)

(1) The following objects may be confiscated:

- (i) An object which is a component of a criminal act;
- (ii) An object used or intended for use in the commission of a criminal act;
- (iii) An object produced or acquired by means of a criminal act or an object acquired as reward for a criminal act;
- (iv) An object received in exchange for the object set forth in the preceding item.

(2) An object set forth in the preceding paragraph may be confiscated only if it does not belong to a person other than the criminal; provided, however, that it may be confiscated when a person other than the criminal acquires the object after the crime with knowledge of the applicability of the preceding items.

³⁷⁸ Article 19-2 of the Penal Code (Collection of a Sum of Equivalent Value)

When the whole or part of the object prescribed in items (iii) and (iv) of paragraph (1) of Article 19 cannot be confiscated, a sum of money equivalent thereto may be collected.

Accordingly, Japanese law provides for: 1) the confiscation of assets used to commit or facilitate child pornography offenses stipulated in Article 7 of the Child Pornography Prohibiting Act; and 2) the confiscation of proceeds derived from such offenses subject to Articles 19 and 19-2 of the Penal Code.

13 – Requires professionals working with children to report child pornography activities

Japanese law does not contain explicit provisions that require professionals who work with children to report incidents involving children’s participation in pornographic materials to law enforcement agencies or other relevant authorities when they learn of such incidents.

However, the Child Abuse Prevention Act requires anyone, who is aware of circumstances where a child is suspected to be abused, to report to the relevant authorities as stated below.

Pursuant to Article 6 (1) of the Child Abuse Prevention Act³⁷⁹, if a person discovers a child who, he/she thinks is being abused, such person is obliged to report the case immediately, either directly or through a child committee, to a municipal or prefectural welfare agency or child care guidance center. Article 6 (2) of this Act³⁸⁰ specifies that the notification given pursuant to the provisions of Article 6 (1) of the same Act shall be deemed to be notification given pursuant to the provision of Article 25 of the Child Welfare Act.

In addition, a person who discovers a child in need of aid shall be required to notify directly a welfare office or child guidance center established by the municipal or prefectural government or to a welfare office or child guidance center through a commissioned child welfare volunteer according to Article 25 of the Child Welfare Act.³⁸¹ However, this shall not apply to a child of 14 years of age or more who has committed a crime, and in such case, the notice shall be provided to the family court under the same Article of this Act.

Moreover, Article 5 (1) of the Child Abuse Prevention Act³⁸² states that teachers, officials, and other staff workers of schools, child welfare institutions, hospitals, and other bodies involved in child welfare in the course of their operations, and officials of child welfare institutions, medical practitioners, public health nurses, attorneys at law and other persons involved in child welfare in the course of their duties, shall endeavor to detect child abuse at an early stage, acknowledging that they are in positions to detect child abuse easily. Article

³⁷⁹ Article 6 (1) of the Child Abuse Prevention Act (Notification of Child Abuse)

A person who has detected a child who appears to have suffered child abuse shall promptly give notification to the municipality or the welfare office or child guidance center established by the prefecture, or to the municipality or such welfare office or child guidance center through a commissioned child welfare volunteer.

³⁸⁰ Article 6 (2) of the Child Abuse Prevention Act (Notification of Child Abuse)

The notification given pursuant to the provision of the preceding paragraph shall be deemed to be a notification given pursuant to the provision of Article 25 of the Child Welfare Act (Act No. 164 of 1947), and the provisions of the same Act shall apply.

³⁸¹ Article 25 of the Child Welfare Act (Notifications regarding Aid-requiring Child)

A person who discovers an Aid-requiring Child shall give notification directly to a Welfare Office or child guidance center established by the municipal or prefectural government, or to said Welfare Office or child guidance center through a commissioned child welfare volunteer; provided, however, that this shall not apply to a child of 14 years of age or more who has committed a crime.

In this case, notification shall be given to the family court.

³⁸² Article 5(1) of the Child Abuse Prevention Act (Early Detection, etc. of Child Abuse)

Teachers, officials and other staff workers of schools, child welfare institutions, hospitals and other bodies involved in child welfare in the course of their operations, and officials of child welfare institutions, medical practitioners, public health nurses, attorneys-at-law and other persons involved in child welfare in the course of their duties, shall endeavor to detect child abuse at an early stage, acknowledging that they are in the positions to detect child abuse easily.

2 (ii) of this Act³⁸³ further articulates that the definition of the term “child abuse” in this Act shall include acts of engaging in indecency against the child or causing the child to engage in indecency.

14 – Requires Internet Service Providers to report child pornography

Japanese legislation does not require Internet Service Providers (ISPs) to report to law enforcement agencies or relevant authorities when ISPs discover suspected child pornography on their own networks.

However, pursuant to Article 16-3 of the Child Pornography Prohibiting Act³⁸⁴, online service providers are strongly urged to make an effort to cooperate with law enforcement and take measures to prevent the spread of child pornography online.

15 – Has telephone or online hotlines to enable the public to report child abuse

Japan has a Childline (0120-99-7777), which is a telephone hotline established by the Child Support Center Japan that provides counseling services for children who have issues related to bullying, abuse, and violence.³⁸⁵

In addition, the Internet Hotline Center Japan enables Internet users to report illegal content or content harmful to young people on the Internet. Online illegal or contents harmful to young people include child pornography or online dating websites that allow adults to solicit children for sexual intercourse via such websites. The Center analyzes all reports received, and illegal and harmful information is forwarded to the National Police Agency, and then to the ISPs for deletion. In some cases, legal advisors are asked for a professional determination.³⁸⁶

16 – Creates data retention or data preservation provisions

The Criminal Procedure Code [amended by Amendment of Criminal Procedure Code (enacted in June 2011)³⁸⁷] has data preservation provisions.³⁸⁸

Article 197 of the Criminal Procedure Code allows a public prosecutor, public prosecutor's assistant officer, or judicial police official to ask telecommunication business operators, etc. not to erase the source of communication, destination, communication date and time, and other communication record for a fixed period of time ranging from 30 to 60 days when it is necessary or particularly necessary.

³⁸³ Article 2 (ii) of the Child Abuse Prevention Act (Definition of Child Abuse)

The term "child abuse" as used in this Act means the following acts committed by a custodian (meaning a person who exercises parental authority, a guardian of a minor or other person who is currently engaged in custody of a child; hereinafter the same shall apply) against a child (meaning a person who is under 18 of age; hereinafter the same shall apply) under his/her custody:

(ii) Engage in indecency against the child or cause the child to engage in indecency.

³⁸⁴ Article 16-3 of the Child Pornography Prohibiting Act (Efforts of business operators pertaining to the internet) (last amended in 2014)

In consideration of extreme difficulty of restoration of rights of children by disposal, deletion, etc. of child pornography in cases where damages resulting from possession, distribution, etc. of child pornography easily grow in scope and thereby child pornography diffuses in Japan and abroad through the internet, business operators that provide telecommunications services necessary for distribution or inspection of information to unspecified persons through the internet shall endeavor to cooperate with investigative authority, take measures for preventing submission of information pertaining to child pornography based on the authority of administration of said business operator, and take other measures that contribute to the prevention of the such act using the internet.

³⁸⁵ CHILDLINE SUPPORT CENTER JAPAN, <http://www.childline.or.jp/supporter/> (in Japanese) (last visited Nov. 20, 2014).

³⁸⁶ INTERNET HOTLINE CENTER JAPAN, <http://www.internethotline.jp/index-en.html> (last visited Nov. 20, 2014).

³⁸⁷ Amendment of Criminal Procedure Code (enacted in June 2011), available at http://www.moj.go.jp/keiji1/keiji12_00025.html (in Japanese) (last visited Jan. 19, 2015).

³⁸⁸ CTR. FOR DEMOCRACY AND TECH., *supra* note 90, at 17 n. 92.

17 – Requires the identification of users of public computers in cybercafés

Japanese laws or regulations do not provide explicit provisions that require the identification of users of public computers in cybercafés.

18 – Has a national plan to combat violence against children

Japan has a national policy to combat violence against children with a particular focus on the rights of children and young people. The “Vision for Children and Young People (2010)”³⁸⁹, which replaced the “National Youth Development Policy (2008)”³⁹⁰, outlines the Act on the Promotion of Development and Support for Children and Young People (enacted by Act No. 79 of 2008 and amended by Act No. 71 of 2009).

The Vision for Children and Young People (2010) (hereafter referred to as “Youth Policy Vision”) provides measures against crimes that harm the welfare of children and young people, including child pornography.

The measures described in the Youth Policy Vision state that, “In order to prevent children and young people from becoming the victims of crime relating to child prostitution and child pornography, rigorous investigations and appropriate treatment will be conducted, in addition to conducting public announcements and awareness-raising activities for the society as a whole.”³⁹¹

The Youth Policy Vision further articulates that in particular, with regard to measures for eliminating child pornography, comprehensive measures will be implemented in cooperation with relevant ministries and agencies, including the promotion of a people’s movement for the elimination of child pornography, the promotion of measures to prevent the distribution of and access to images of child pornography on the Internet, and the early detection of child victims and promotion of support activities.

Moreover, Japan has a national plan for online child safety that devotes part of its activities to fighting Internet-related violence and crimes against children as stated below.

The “Second Basic Plan on Measures for Providing Safe and Secure Internet Use for Young People (2012)”³⁹², which replaced “The Basic Plan on Measures for Providing Safe and Secure Internet Use for Young People (2009)”³⁹³, was issued based on the Act on Development of an Environment that Provides Safe and Secure Internet Use for Young People (enacted by Act No. 79 of 2008 and amended by Act No. 71 of 2009).

Measures mentioned in the Second Basic Plan on Measures for Providing Safe and Secure Internet Use for Young People (2012) include, among others, as follows:

³⁸⁹ HEADQUARTERS FOR PROMOTION OF DEV. AND SUPPORT FOR CHILDREN AND YOUNG PEOPLE, VISION FOR CHILDREN AND YOUNG PEOPLE (2010), available at http://www.youthpolicy.org/national/Japan_2010_Youth_Policy_Vision.pdf (last visited Jan. 16, 2015).

³⁹⁰ HEADQUARTERS FOR YOUTH DEV., NATIONAL YOUTH DEVELOPMENT POLICY (2008), available at http://www.youthpolicy.org/national/Japan_2008_National_Youth_Development_Policy.pdf (last visited Jan. 16, 2015).

³⁹¹ HEADQUARTERS FOR PROMOTION OF DEV. AND SUPPORT FOR CHILDREN AND YOUNG PEOPLE, *supra* note 386, at 19.

³⁹² COUNCIL FOR PROMOTING MEASURES AGAINST CONTENT HARMFUL TO YOUNG PEOPLE ON THE INTERNET AND DEV. OF AN APPROPRIATE ENVIRONMENT, THE SECOND BASIC PLAN ON MEASURES FOR PROVIDING SAFE AND SECURE INTERNET USE FOR YOUNG PEOPLE (2012), available at http://www8.cao.go.jp/youth/youth-harm/suisin/pdf/dai2ji_keikaku_eng.pdf (last visited Jan. 19, 2015).

³⁹³ COUNCIL FOR PROMOTING MEASURES AGAINST CONTENT HARMFUL TO YOUNG PEOPLE ON THE INTERNET AND DEV. OF AN APPROPRIATE ENVIRONMENT, THE BASIC PLAN ON MEASURES FOR PROVIDING SAFE AND SECURE INTERNET USE FOR YOUNG PEOPLE (2009), available at http://www8.cao.go.jp/youth/youth-harm/suisin/pdf/keikaku_eng.pdf (last visited Jan. 19, 2015).

- a) Promotion of efforts to cope with “cyberbullying” via off-school websites, etc. by taking effective measures for prevention, early detection, and preemptive moves toward resolving cyberbullying problems on the Internet;
- b) Improvement of business operators performance of obligations to provide services and software to filter content harmful to young people and the dissemination of the services and software for filtering content harmful to young people; and
- c) Promotion of measures to control cybercrimes, such as prohibited online dating sites, and child pornography cases on the Internet, so as to prevent young people from suffering crime damage via the Internet and to strengthen the enforcement systems necessary for that purpose.³⁹⁴

19 – Has ratified the CRC and the OPSC

- Japan ratified the Convention on the Rights of the Child on April 22, 1994.³⁹⁵
- Japan ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on January 24, 2005.³⁹⁶
- Japan ratified the Worst Forms of Child Labour Convention, 1999 (No. 182) on June 18, 2001.³⁹⁷

20 – Age of criminal liability

Under Article 41 of the Penal Code, the minimum age of criminal liability in Japan is 14 years old.

The Juvenile Law adopts special measures with respect to the criminal cases of juveniles. For the criminal cases of juveniles who are under 20 years old, the Juvenile Law is applied instead of the Criminal Procedure Law. The Family Court has primary jurisdiction over such cases.

Children under age 14, however, are handled primarily by the child guidance center, as provided by the Child Welfare Law, when they have committed acts, which, if committed by a person aged 14 or over, would constitute a crime. These children under 14 years of age fall under the jurisdiction of the family court only when the governor of the prefecture or the chief of the child guidance center refers them to the family court.

21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children

The principal law that specifically addresses crimes against children with the use of ICTs is the Child Pornography Prohibiting Act.

With respect to child pornography offenses, any person who provides electromagnetic records or any other record that depicts the pose of a child, which falls under any of the items of Article 2 (3) of the Child Pornography Prohibiting Act, in a visible way through electric telecommunication lines, shall be sentenced to imprisonment with labor for not more than three years, or a fine of not more than three million yen, pursuant to Article 7 (2) of this Act.

³⁹⁴ COUNCIL FOR PROMOTING MEASURES AGAINST CONTENT HARMFUL TO YOUNG PEOPLE ON THE INTERNET AND DEV. OF AN APPROPRIATE ENVIRONMENT, *supra* note 389, at 7 and 17.

³⁹⁵ *Status of Ratification and Accession of the CRC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en (last visited Oct. 24, 2014).

³⁹⁶ *Status of Ratification and Accession of the OPSC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last visited Oct. 24, 2014).

³⁹⁷ *Status of the Ratification of the Worst Forms of Child Labour Convention, 1999*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited Oct. 24, 2014).

22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online

Article 8 of the Child Pornography Prohibiting Act³⁹⁸ criminalizes trafficking in a child for the purpose of having the child be party to sexual intercourse in child prostitution, or for the purpose of producing child pornography by depicting the pose of the child which falls under any of the items as specified by Article 3 (2) of this Act.

Japanese law does not provide explicit provisions criminalizing advertising child sex tourism online.

23, 24, 25, and 26 – Existence of specific legislation criminalizing online grooming, a clear definition of online grooming, the age of a potential victim, and related crimes

Japanese law does not have explicit provisions criminalizing online grooming. Also, Japanese law does not provide a clear definition of online grooming.

However, the Law to Regulate Solicitation of Children through Matching Business via the Internet (also called as “Online Dating Site Regulating Act”) contains provisions addressing activities relevant to online grooming in Japan.

Article 2 (1) of the Law to Regulate Solicitation of Children through Matching Business via the Internet defines the term “child” in this Law as any person under the age of 18.

Article 6 of the Law to Regulate Solicitation of Children through Matching Business via the Internet prohibits any person from engaging in any of the following acts (hereinafter referred to as “prohibited soliciting”) by using an online dating service (also known as “via the Matching Business Website on the Internet”): (a) soliciting a child for sexual intercourse or other sexual acts for the purpose of satisfying one’s sexual curiosity; (b) soliciting another person who is 18 years old or older to have sexual intercourse or other sexual acts with a child; (c) soliciting a child for dating by offering compensation; or (d) soliciting a person who is 18 years old or older to have a date with a child if the person pays a fee.

Any person who violates Article 6 of the Law to Regulate Solicitation of Children through Matching Business via the Internet shall be punished by a fine of not more than one million yen pursuant to Article 11 of this Law.³⁹⁹

27 – Criminalizes showing pornography to a child as a standalone offense

Japanese law does not have provisions criminalizing showing pornography to a child as a standalone offense.

28 – Has legislation regarding cyberbullying

Japan adopted the Act on the Promotion of Preventive Measures for Bullying (also known as “Anti-Bullying Law”) in 2013.

³⁹⁸ Article 8 of the Child Pornography Prohibiting Act (Trafficking in Children for the Purpose of Child Prostitution)

(1) Any person who buys or sells a child for the purpose of having the child be a party to sexual intercourse in child prostitution, or for the purpose of producing child pornography by depicting the pose of a child, which falls under any of the items of paragraph 3 of Article 2, shall be sentenced to imprisonment with work for not less than one year and not more than ten years.

(2) Any Japanese national who transports a child residing in a foreign state who has been kidnapped by enticement or force or sold, out of that state shall be sentenced to imprisonment with work for a definite term of not less than two years.

(3) Any person who attempts the crimes prescribed in the two preceding paragraphs shall be punished.

³⁹⁹ *Children’s rights in Japan, Children under Japanese Law*, LIBRARY OF CONGRESS, <http://www.loc.gov/law/help/child-rights/japan.php#f24> (last visited Nov. 20, 2014).

Article 2 (1) of the Act on the Promotion of Preventive Measures for Bullying provides that the term "bullying" as used in this Act means an act which has a mental or physical influence against a child by children who are in the same school as the child or in a certain personal relationship with the child (including that which is conducted through the Internet) that makes the child who is the subject of the act to feel mental or physical pain.

Article 19 of the Act on the Promotion of Preventive Measures for Bullying deals with the promotion of measures against bullying carried out through the Internet as stated below.

Article 19 (1) of the Act on the Promotion of Preventive Measures for Bullying states that an establisher of a school and the school are required to conduct the necessary awareness activities for children enrolled in the school, as well as their custodians (or parents) for the prevention and effective handling of bullying performed through the Internet, based on the high degree of distribution of information, anonymity of the sender, and other characteristics of information sent through the Internet. Article 19 (2) of this Act further articulates that the State and local governments shall endeavor to develop a system that copes with cases related to bullying, as well as support the efforts of affiliates and other relevant organizations to monitor in order to determine whether they are involved in bullying children through the Internet. Moreover, Article 19 (3) of the same Act provides that in cases where bullying is done through the Internet, a bullied child and the child's custodians (or parents) may, as necessary, request that the Legal Affairs Bureau and District Legal Affairs Bureau cooperate when the deletion of the information pertaining to bullying, or the disclosure of the Identification Information of the sender prescribed in Article 4 (1) of the Act of Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Senders is requested.

According to a new Global Youth Online Behavior Survey released by Microsoft in 2012, Japan has the second lowest online bullying rate among the 25 countries surveyed. Seven Asia Pacific countries were covered in the survey – Australia, China, India, Japan, Malaysia, Pakistan, and Singapore.⁴⁰⁰

29 – Has legislation concerning sexting

There is no legislation concerning sexting in Japan.

Jurisprudence

1. What is the crime of producing child pornography

The Supreme Court of Japan handed down a decision concerning the facts stated below. When a person who has caused a child to perform any of the postures listed in Article 2, paragraph 3 of the Act on Punishing Acts Related to Child Prostitution and Child Pornography, and on Protecting Children and recorded the posture using a recording medium for electromagnetic record, stored that electromagnetic record on another recording medium, thereby producing child pornography, these acts also constitute the crime of producing child pornography under Article 7, paragraph 3 of the said Act.⁴⁰¹

⁴⁰⁰ MICROSOFT, WORLDWIDE (WW), ONLINE BULLYING SURVEY –EXECUTIVE SUMMARY – JAPAN (2012), available at http://download.microsoft.com/download/E/8/4/E84BEEAB-7B92-4CF8-B5C7-7CC20D92B4F9/WW%20Online%20Bullying%20Survey%20-%20Executive%20Summary%20-%20Japan_Final.pdf (last visited Jan. 16, 2015).

⁴⁰¹ See SUPREME COURT OF JAPAN, http://www.courts.go.jp/app/hanrei_en/detail?id=819 (last visited Nov. 20, 2014).

2. Organized crimes

The Supreme Court of Japan also ruled “concerning the number of crimes committed by a person who has provided child pornography to unspecified persons or a number of persons and also possessed child pornography for the purpose of providing the same to unspecified persons or a number of persons” under the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography. The defendant in the case was charged for violation of the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children, for selling obscene pictures and possessing obscene pictures for the purpose of sale, and for violation of the Act on Punishment of Organized Crimes and Control of Crime Proceeds.

Summary of Decision

1. Where a person provides child pornography to unspecified persons or a number of persons, and also possesses child pornography for the purpose of providing the same to unspecified persons or a number of persons, the crime of providing child pornography set forth in Article 7, paragraph (4) of the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children and the crime of possessing child pornography for the purpose of provision set forth in paragraph (5) of said Article can be construed to constitute crimes for consolidated punishment.

2. Where a person sells and provides items which fall within both the category of child pornography and the category of obscene objects under Article 175 of the Penal Code, to unspecified persons or a number of persons, and also possesses these items for the purpose of selling and providing the same to unspecified persons or a number of persons, on the grounds that the act of selling obscene objects and the act of providing child pornography can be construed as a single act constituting multiple crimes, and the same applies to the relationship between the act of possessing obscene objects for the purpose of sale and the act of possessing child pornography for the purpose of provision, all of these acts as a whole constitute a single crime, provided that the act of selling obscene objects and the act of possessing the same for the purpose of sale can be regarded as collectively constituting a single crime.⁴⁰²

⁴⁰² See SUPREME COURT OF JAPAN, http://www.courts.go.jp/app/hanrei_en/detail?id=1007 (last visited Nov. 20, 2014).

Table 2.8 – Country: Lao People's Democratic Republic

1 – Has legislation specific to child pornography	Yes
2 – Has a clear definition of child pornography	No
3 – Considers everyone under 18 as a potential victim of activities related to child pornography	Yes
4 – Criminalizes accessing or downloading child pornography images	No
5 – Criminalizes possession of child pornography	No
6 – Criminalizes virtual images and sexually exploitative representations of children	No
7 – Addresses the criminal liability of children involved in pornography	No (if children are victims, not offenders)
8 – Establishes criminal liability of legal persons for production or commercialization of child pornography	No
9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State	Yes
10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State	No
11 – Establishes confiscation of assets used to commit or facilitate child pornography offenses	No
12 – Establishes confiscation of proceeds derived from child pornography offenses	No
13 – Requires professionals working with children to report child pornography activities	No
14 – Requires Internet Service Providers to report child pornography	No
15 – Has telephone or online hotlines to enable the public to report child abuse	Yes
16 – Creates data retention or data preservation provisions	No
17 – Requires the identification of users of public computers in cybercafés	No
18 – Has a national plan to combat violence against children	Yes
19 – Has ratified the CRC and the OPSC	Yes
20 – Age of criminal liability	15
21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children	No
22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online	1) Yes; 2) No
23 – Has legislation that criminalizes online grooming as a standalone offense	No
24 – Has a clear definition of online grooming	No
25 – Considers everyone under 18 as a potential victim of online grooming	No
26 – 1) Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child; or 2) criminalizes grooming regardless of the intent	No
27 – Criminalizes showing pornography to a child as a standalone offense	No (administrative sanction)
28 – Has legislation regarding cyberbullying	No
29 – Has legislation concerning sexting	No

Lao People's Democratic Republic

In the Lao People's Democratic Republic (also known as "Lao PDR"), the Constitution of the Lao PDR (adopted on August 15, 1991)⁴⁰³ (hereafter referred to as "Constitution") has provisions protecting children's rights. Specifically, Article 29 of the Constitution requires the State, society, and families to attend to implementing development policies and supporting the progress of women and to protecting the legitimate rights and benefits of women and children.

In addition, the laws which protect children's rights and/or govern violence against children are as follows:

- Penal Law (enacted in 1990, last amended in 2005 and effective in 2006)⁴⁰⁴
- Law on the Protection of Rights and Interests of Children (enacted in 2007)⁴⁰⁵
- Law on the Development and Protection of Women (enacted in 2004)⁴⁰⁶

EXTRACTS OF LEGISLATION RELATED TO THE TABLE:

1 – Existence of specific legislation on child pornography

Article 86 of the Law on the Protection of Rights and Interests of Children⁴⁰⁷ specifically criminalizes the production, distribution, dissemination, importation, exportation, display, or sale of child pornography with a penalty of imprisonment for one year to three years and fine.

Moreover, Article 138 of the Penal Law⁴⁰⁸ punishes any person who engages in widespread production, dissemination, distribution of pornographic items, magazines, pictures, video cassettes, and other materials contrary to fine traditions.

2 – Has a clear definition of child pornography

The law does not contain a provision which provides a clear definition of child pornography. However, child pornographic materials include films, magazines, photographs, videos, VCDs, DVDs, and other items depicting child pornography pursuant to Article 86 of the Law on the Protection of Rights and Interests of Children.

⁴⁰³ Constitution of the Lao People's Democratic Republic, available at <http://www.wipo.int/wipolex/en/details.jsp?id=5829> (last visited Jan. 16, 2015).

⁴⁰⁴ Penal Law, available at <http://www.wipo.int/wipolex/en/details.jsp?id=5795> (last visited October 7, 2013).

⁴⁰⁵ Law on the Protection of Rights and Interests of Children, available at [http://www.vientianetimes.org.la/Laws%20in%20English/65.%20Law%20on%20the%20Protection%20of%20the%20Rights%20of%20Children%20\(2006\)%20Eng.pdf](http://www.vientianetimes.org.la/Laws%20in%20English/65.%20Law%20on%20the%20Protection%20of%20the%20Rights%20of%20Children%20(2006)%20Eng.pdf) (last visited Jan. 21, 2015).

⁴⁰⁶ Law on the Development and Protection of Women, available at <http://www.ilo.org/dyn/travail/docs/1425/Law%20on%20the%20Development%20and%20Protection%20of%20Women%202004.pdf> (last visited Jan. 16, 2015).

⁴⁰⁷ Article 86 of the Law on the Protection of Rights and Interests of Children (Disseminating Child Pornography)

Any person who produces, distributes, disseminates, imports, exports, displays or sells magazines, photographs, films, videos, VCDs, DVDs and other items of child pornography, shall be punished by imprisonment from one year to three years and fined from 2,000,000 Kip to 6,000,000 Kip.

⁴⁰⁸ Article 138 of the Penal Law (Dissemination of Pornographic Objects and Objects Contrary to Fine Traditions)

Any person engaging in the widespread production, distribution, or dissemination of pornographic items, magazines, pictures, video cassettes and other materials contrary to fine traditions shall be punished by three months to one year of imprisonment and shall be fined from 200,000 Kip to 5,000,000 Kip.

3 – Considers everyone under 18 as a potential victim of activities related to child pornography

Article 2, Paragraph 1 of the Law on the Protection of the Rights and Interests of Children considers everyone less than 18 years of age as a child for the purpose of this Law. Article 86 of this Law punishes any person who engages in prescribed activities related to child pornography.

In Lao People’s Democratic Republic, the age of consent to sexual activity is 15 years for boys and girls pursuant to Article 129 of the Penal Law.⁴⁰⁹

4 – Criminalizes accessing or downloading child pornography images

There is no explicit provision that criminalizes accessing or downloading images.

However, Article 86 of the Law on the Protection of Rights and Interests of Children makes it illegal to make, distribute, import, export, show, or sell magazines, photographs, films, videos, VCDs, DVDs, and “other items of child pornography”.

5 – Criminalizes possession of child pornography

The law of Lao PDR does not criminalize possession of child pornography regardless of the offender’s intent to distribute.

6 – Criminalizes virtual images and sexually exploitative representations of children

Laotian law does not provide explicit provisions that criminalize the production, distribution, possession, and commercialization of child pornography including virtual images and sexually exploitative representations of children that do not necessarily use real children in their production. However, Article 86 of the Law on the Protection of Rights and Interests of Children prescribes that anyone who produces, distributes, disseminates, imports, exports, displays, or sells magazines, photographs, films, videos, VCDs, DVDs, and “other items of child pornography” shall be punished by imprisonment from one to three years and fined from 2,000,000 Kip to 6,000,000 Kip.

7 – Addresses the criminal liability of children involved in pornography

Laotian law does not address the criminal liability of children involved in pornography for their participation as long as they are victims and not offenders. However, Article 48 of the Law on the Protection of Rights and Interests of Children⁴¹⁰ prohibits children from being infatuated with pornographic and obscene materials.

⁴⁰⁹ Article 129 of the Penal Law (Sexual Intercourse with a Child)

Any person engaging in sexual intercourse with a girl or boy under 15 years of age shall be punished by one to five years of imprisonment and shall be fined from 2,000,000 Kip to 5,000,000 Kip.

⁴¹⁰ Article 48 of the Law on the Protection of Rights and Interests of Children (Prohibitions for Children)

The basic prohibitions for children are as follows:

- Consuming narcotic drugs, drinking alcohol or beer, smoking cigarettes, and [consuming] other narcotic substances;
- Serving in nightclubs, guesthouses, hotels, and restaurants;
- Using services in nightclubs, guesthouses, hotels, and restaurants in wrongful ways, such as for consuming narcotic drugs, or drinking intoxicating substances;
- Being infatuated with pornographic and obscene things;
- Playing games that are outside of the curriculum during school time;
- All kinds of gambling;
- Bearing all kinds of weapons or explosives;

8 – Establishes criminal liability of legal persons for production or commercialization of child pornography

Laotian law does not establish the criminal liability of legal persons for child pornography offenses prescribed in the Law on the Protection of Rights and Interests of Children or pornography offenses stipulated in the Penal Law. Specifically, Article 2 of the Penal Law⁴¹¹ provides that an individual can only be charged with and punished for an offence based on intentional or negligent acts deemed dangerous for society as defined in the Penal Law or in other laws of the Lao People's Democratic Republic that define criminal penalties.

9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State

Lao People's Democratic Republic establishes its extraterritorial jurisdiction over child pornography offenses prescribed in the Law on the Protection of Rights and Interests of Children subject to Article 4 of the Penal Law when the alleged offender is its national as stated below.

According to Article 4 of the Penal Law,⁴¹² Lao citizens who commit offenses outside of the territory of the Lao People's Democratic Republic shall be charged with and punished for such offenses if they are defined as offenses under the Penal Law of the Lao People's Democratic Republic.

Further, the Penal Law provides a definition of the term “offenses” mentioned in Article 4 of this Law. Article 6 of the same Law⁴¹³ states that all acts and abstentions deemed dangerous to the political, economic, or social system of the Lao People's Democratic Republic, to the property of the State, collectives or individuals, to the lives, health, integrity, rights or freedom of the people, or to national security or public order as provided in the Penal Law or in “other laws” of the Lao People's Democratic Republic that define criminal penalties shall be considered offenses.

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- Other prohibitions as provided by the laws and regulations.

⁴¹¹ Article 2 of the Penal Law (Basis of Penal Responsibilities)

An individual can only be charged with and punished for an offence based on intentional or negligent acts deemed dangerous for society as defined in the Penal Law or in other laws of the Lao People's Democratic Republic that define criminal penalties, and [such individual can be punished] only when a decision is rendered by a court.

⁴¹² Article 4 of the Penal Law (Application of Penal Law outside the Territory of the Lao People's Democratic Republic)

Lao citizens who commit offenses outside the territory of the Lao People's Democratic Republic shall be charged with and punished for such offenses if they are defined [as offenses under] the Penal Law of the Lao People's Democratic Republic.

Aliens and apatrids residing in the Lao People's Democratic Republic who commit offenses outside the territory of the Lao People's Democratic Republic shall also be charged and punished.

Foreign individuals who commit offenses outside the territory of the Lao People's Democratic Republic shall be charged and punished as provided in the Penal Law of the Lao People's Democratic Republic if such a case is provided for in international conventions.

⁴¹³ Article 6 of the Penal Law (Definition of Offence)

All acts and abstentions deemed dangerous to the political, economic or social system of the Lao People's Democratic Republic, to the property of the State, collectives or individuals, to the lives, health, integrity, rights or freedom of the people, or to national security or public order as provided in the Penal Law or in other laws of the Lao People's Democratic Republic that define criminal penalties shall be considered offences.

All acts or abstentions with all the components of offences but resulting in damage under 500,000 Kip shall not be considered offences, except for acts of recidivism or acts performed as a profession.

10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State

Lao People’s Democratic Republic does not establish its extraterritorial jurisdiction over child pornography offenses as provided in Article 86 of the Law on the Protection of Rights and Interests of Children when the victim is a national of the Lao People's Democratic Republic.

**11 – Establishes the confiscation of assets used to commit or facilitate child pornography offenses; and
12 – Establishes the confiscation of proceeds derived from child pornography offenses**

Article 34 of the Penal Law provides general provisions that establish confiscation of items connected to the offense as stated below. According to Article 34 of the Penal Law⁴¹⁴, “confiscation of property and connected items” refers to confiscation by the State of items that were used in the offense or in preparation for the offense, or that were obtained from an intentional offense. Items belonging to other individuals used in the offense shall be confiscated by the State if the owner lending them is not in good faith or if confiscation is deemed necessary for national security. However, Article 34 of the Penal Law explicitly states that a sentence of confiscation of property may only be imposed in serious cases as stated in the specific part of this Law or any other law which applies this Article of this Law.

As stated earlier, child pornography offenses are governed by Article 86 of the Law on the Protection of Rights and Interests of Children. In addition, pornography offenses are specified in Article 138 of the Penal Law. However, neither Article 138 of the Penal Law nor Article 86 of the Law on the Protection of Rights and Interests of Children provide for: 1) the confiscation of assets used to commit or facilitate child pornography offenses or pornography offenses; and 2) proceeds derived from such offenses.

Accordingly, Laotian law does not provide for: 1) the confiscation of assets used to commit or facilitate child pornography offenses or pornography offenses; and 2) the confiscation of proceeds derived from such offenses.

13 – Requires professionals working with children to report child pornography activities

Laotian law does not have provisions that require professionals who work with children to report child pornography activities to relevant authorities when they learn of incidents involving children’s participation in pornographic materials.

However, any individual or organization that is aware of or observes any situation regarding any child at risk of needing special protection or any child in need of special protection, must promptly notify or report on that situation to the Committee on Protection and Assistance to Children or to an investigative agency, if it is a criminal offense pursuant to Article 38 of the Law on the Protection of Rights and Interests of Children.⁴¹⁵

⁴¹⁴ Article 34 of the Penal Law (Confiscation of Property and [Connected Items])

“Confiscation of property” refers to the confiscation by the State of part or all of an offender’s property without any compensation.

A sentence of confiscation of property may only be imposed in serious cases as stated in the specific part of this Law.

In the event that the confiscation of all of the offender’s property is imposed, exception must be made for property necessary for the livelihood of the offender and his family according to the list attached to this Law. In the event that partial confiscation of property is imposed, the court must set up a clear list of the property to be confiscated.

“Confiscation of items [connected to the offense]” refers to [the confiscation] by the State of items that were used in the offense or in the preparation for the offense, or that were obtained from an intentional offense. Items belonging to other individuals used in the offense shall be confiscated by the State if the owner lending them is not in good faith or if confiscation is deemed necessary for national security.

Items belonging to the State or collectives shall not be confiscated but shall be returned to the relevant authorities.

⁴¹⁵ Article 38 of the Law on Protection of Rights and Interests of Children (Reporting)

According to Article 2, Paragraph 2 of the Law on the Protection of Rights and Interests of Children⁴¹⁶, children in need of special protection include those who are victims of physical/sexual abuse, prostitution, human trafficking, and exploitation.

14 – Requires Internet Service Providers to report child pornography

Laotian law does not have provisions that require Internet Service Providers (ISPs) to report suspected child pornography to law enforcement agencies or other relevant authorities after they become aware of suspected or actual child pornographic materials on their networks.

However, Article 36 of the Law on Telecommunication (amended No. 09/NA, issuing date: December 21, 2011)⁴¹⁷ prohibits telecommunication service providers from exaggerating or displaying pornography (salacious content).

15 – Has telephone or online hotlines to enable the public to report child abuse

A new 24-hour telephone hotline has been launched by the Lao National Tourism Administration and the Tourism Police to help keep children safe from sexual exploitation. The hotline number 192 was launched to coincide with the opening of the 25th South East Asian (SEA) Games as part of efforts to make the event a safe experience for children.⁴¹⁸

16 – Creates data retention or data preservation provisions

Laotian law does not have data retention or data preservation provisions.

17 – Requires the identification of users of public computers in cybercafés

Lao People's Democratic Republic does not have legislation or regulations that require the identification of users of public computers in cybercafés.

A network system shall be established under the direction of the Committee on Protection and Assistance to Children in order to keep track of situations happening in the children's community and the society, and to identify situations that cause children to need special protection.

The main duties of the network are the following:

- To monitor children who have been neglected or taken advantage of;
- To collect data and statistics relating to children in need of special protection and regularly report to the Committee on Protection and Assistance to Children;
- To provide counseling and recommendations to children in need of special protection;
- To facilitate and collaborate with relevant sectors concerning protection and assistance to children.

In addition, any person or organisation that knows of or observes any situation regarding any child at risk of needing special protection or any child in need of special protection, must promptly notify or report on that situation to the Committee on Protection and Assistance to Children or to an investigation agency.

⁴¹⁶ Article 2, Paragraph 2 of the Law on the Protection of the Rights and Interests of Children (Definitions)

The various terms used in this Law shall have the following meanings:

2. Children in need of special protection means those who are half-orphaned, orphaned, abandoned, neglected or without parental care; children who are victims of physical abuse, sexual abuse, prostitution, human trafficking; children who work in hazardous conditions seriously affecting their life or health; exploited and displaced children; drug-addicted children; children affected by HIV/AIDS; and children adversely affected by legal proceedings

⁴¹⁷ Law on Telecommunication, available at <http://www.laotradeportal.gov.la/index.php?r=site/display&id=515> (last visited Jan. 16, 2015).

⁴¹⁸ Lao PDR's Tourism Authority sets up a Child Protection Hotline, UNODC, <http://www.unodc.org/laopdr/en/stories/192-hotline-launch.html> (last visited Nov. 20, 2014).

18 – Has a national plan to combat violence against children

The Laotian Government recently adopted a National Plan of Action for the Prevention and Elimination of Violence against Women and Violence against Children 2014-2020.⁴¹⁹

19 – Has ratified the CRC and the OPSC

- Lao People’s Democratic Republic acceded to the Convention on the Rights of the Child in 1991.⁴²⁰
- Lao People’s Democratic Republic acceded to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography in 2006.⁴²¹
- Lao People’s Democratic Republic ratified the Worst Forms of Child Labour Convention, 1999 (No. 182) in June 2005.⁴²²

20 – Age of criminal liability

The minimum age of criminal responsibility in the Lao People's Democratic Republic is 15 years old pursuant to Article 7 of the Penal Law and Article 50 of the Law on Protection of Rights and Interests of Children.

21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children

Lao People’s Democratic Republic does not have legislation that specifically addresses the use of ICTs to commit crimes against children. However, with regard to child pornography, Article 86 of the Law on the Protection of the Rights and Interests of Children criminalizes the production, distribution, dissemination, importation, exportation, display, or sale of magazines, photographs, films, videos, VCDs, DVDs, and “other items of child pornography”.

22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online

Laotian law has explicit provisions criminalizing child trafficking for publishing pornography as stated below.

Article 134 of the Penal Law⁴²³ criminalizes the recruitment, moving, transfer, harboring, or receipt of a child (under 18 years of age) and using such child in pornography.

⁴¹⁹ *Prime Minister calls for end to violence against children on Children’s Day*, UNICEF LAO PDR, http://www.unicef.org/laos/media_22612.html (last visited Nov. 20, 2014).

⁴²⁰ *Status of Ratification and Accession of the CRC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en (last visited Oct. 24, 2014).

⁴²¹ *Status of Ratification and Accession of the OPSC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last visited Oct. 24, 2014).

⁴²² *Status of the Ratification of the Worst Forms of Child Labour Convention, 1999*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited Oct. 24, 2014).

⁴²³ Article 134 of the Penal Law (Human Trafficking)

Human trafficking means the recruitment, moving, transfer, harbouring, or receipt of any person within or across national borders by means of deception, threats, use of force, debt bondage or any other means [and using such person in] forced labour, prostitution, pornography, or anything that is against the fine traditions of the nation, or removing various body organs [of such person], or for other unlawful purposes.

Any of the above-mentioned acts committed against children under 18 years of age shall be considered as human trafficking even though there is no deception, threat, use of force, or debt bondage.

Any person engaging in human trafficking shall be punished by five years to fifteen years of imprisonment and shall be fined from 10,000,000 Kip to 100,000,000 Kip.

Where human trafficking is performed as a regular profession or in an organised group, where the victims are children, where there are two or more victims, where any victim is a close relative of the offender, or where any victim suffers serious injury or becomes an invalid or insane, the offender committing human trafficking shall be punished by fifteen to twenty years of imprisonment and shall be fined from more than 100,000,000 Kip to 500,000,000 Kip and his property shall be confiscated as provided in Article 34 of this law.

Pursuant to Article 134 of the Penal Law, provisions of the Law on the Development and Protection of Women may also be used for punishing any person who commits offenses of trafficking of women and children.

Article 24 of the Law on the Development and Protection of Women⁴²⁴ makes it an offense to traffic children (under the age of 18 years) for prostitution, for publishing pornography, and what is in contradiction to fine national culture, for the removal of various body parts, or for other unlawful purpose. Article 49 of the Law on the Development and Protection of Women⁴²⁵ specifies penalties for those who commit an offense involving trafficking in children.

Trafficking in children without specified purposes shall be subject to the provisions provided under Article 90 of the Law on the Protection of the Rights and Interests of Children.⁴²⁶

When the offense causes the victim to be a lifetime invalid, to be infected with HIV, or to die, the offender in human trafficking shall be punished by life imprisonment and shall be fined from more than 500,000,000 Kip to 1,000,000,000 Kip and his property shall be confiscated as provided in Article 34 of this law.

For trafficking in women and children, provisions of the Law on the Development and Protection of Women may be used.

Any attempt to commit such an offense shall also be punished.

⁴²⁴ Article 24 of the Law on the Development and Protection of Women (Trafficking in Women and Children)

Trafficking in women means the recruitment, hiding, moving, transportation, transfer, harbouring, [or] receipt of women, within or across national borders, by means of deception, the giving or receiving of bribes, threats, the use of force, [the use of] other forms of coercion, abduction, debt bondage or by other means[,] for forced labor, [for] prostitution, [for] publishing pornography and what is in contradiction to fine national culture, [for] the removal of various body parts, or for other unlawful purposes.

If these acts are committed against children under 18 years old, then even though there is no deception, threat, force, or debt bondage, trafficking shall be regarded to have occurred.

Any individual who co-operates with the offender [who commits] an offense mentioned above[,] whether by incitement, providing assets or vehicles to the offender, the provision of shelter, or the concealment or removal of traces of an infraction, shall be considered as an accomplice in trafficking in women and children.

Trafficking in women and children is an offense.

⁴²⁵ Article 49 of the Law on the Development and Protection of Women (Penal Measures against Trafficking in Women and Children)

Any person committing the offense of trafficking in women and children shall be punished by five to fifteen years of imprisonment and shall be fined from 10,000,000 Kip to 100,000,000 Kip, and shall be subject to confiscation of property as provided under Article 32 of the Penal Law.

In cases where offenders organise themselves, the victims are children, the victims are more than two persons, the victims are close relatives of the offenders, [or] the victims suffer severe injury [or] mental insanity, the offender in trafficking in women and children shall be punished by fifteen to twenty years of imprisonment and shall be fined from 100,000,000 Kip to 500,000,000 Kip[,] and shall be subject to confiscation of property as provided under Article 32 of the Penal Law.

In cases where offenders cause the victim lifetime incapacity, or [cause the victim to be] infected with HIV/AIDS, or cause death, the offender in trafficking in women and children shall be punished with life imprisonment and shall be fined from 500,000,000 Kip to 1,000,000,000 Kip[,] and shall be subject to confiscation of property as provided under Article 32 of the Penal Law, or shall be subject to capital punishment.

Preparation and attempts shall be subject to punishment.

Any person who has been an accomplice in the trafficking of women and children, as stipulated in paragraph 3 of Article 24 of this law, shall be punished by four to ten years of imprisonment and shall be fined from 5,000,000 Kip to 50,000,000 Kip[,] and shall be subject to confiscation of property as provided under Article 32 of the Penal Law.

⁴²⁶ Article 90 of the Law on the Protection of the Rights and Interests of Children (Trafficking in Children)

Any person who commits an offense of trafficking in children shall be punished by imprisonment from five years to fifteen years and fined from 10,000,000 Kip to 100,000,000 Kip and shall have his assets confiscated as provided in Article 134 of the Penal Law.

23, 24, 25, and 26 – Existence of specific legislation criminalizing online grooming, a clear definition of online grooming, the age of a potential victim, and related crimes

Laotian law does not contain provisions criminalizing online grooming. In addition, Laotian law does not provide a definition of online grooming. Furthermore, there is no explicit provision that considers anyone under the age of 18 years as a potential victim of online grooming under Laotian law.

27 – Criminalizes showing pornography to a child as a standalone offense

Laotian law does not provide provisions that explicitly criminalize showing pornography to a child as a standalone offense. However, showing pornography to a child can be subject to an administrative sanction as stated below.

According to Article 49 of the Law on the Protection of the Rights and Interests of Children,⁴²⁷ parents, guardians, and adults are prohibited from allowing children to be infatuated with pornographic and obscene things. Moreover, Article 84 of this Law⁴²⁸ provides that individuals or organizations that violate this Law by allowing children to take part in pornographic and obscene activities or committing other violations stated in the same Law will be fined or subject to disciplinary sanctions, as a form of administrative sanction.

Article 2, Paragraph 1 of the Law on the Protection of the Rights and Interests of Children considers anyone under the age of 18 years as a child for the purposes of this Law.

28 – Has legislation regarding cyberbullying

Lao People's Democratic Republic does not have legislation regarding cyberbullying.

29 – Has legislation concerning sexting

There is no legislation concerning sexting in Lao People's Democratic Republic.

⁴²⁷ Article 49 of the Law on the Protection of Rights and Interests of Children (Prohibitions for Parents, Guardians and other Persons)

Prohibitions for parents, guardians and other persons are as follows:

- Obstructing children from receiving medical treatment, immunization, [or] education or from participating in various activities for the physical, moral or mental development of the children or the development of their knowledge or ability;
- Causing serious physical injury, insulting children;
- Being bad examples for the children;
- Using children to buy or advertise narcotic or intoxicating substances;
- Allowing children to use or provide services in nightclubs, guest houses, hotels and gambling places;
- Allowing children to enter their restaurants that serve alcoholic drinks, beer, or other intoxicating drinks;
- Allowing children to be infatuated with pornographic and obscene things;
- Putting up signs to advertise alcohol, cigarettes, beer, or other intoxicating substances near schools or children community areas;
- Other prohibitions as provided by the laws and regulations.

⁴²⁸ Article 84 of the Law on the Protection of Rights and Interests of Children (Administrative Measures)

Individuals or organisations that violate this law will be fined or subject to disciplinary sanctions when acting as follows:

- Violations referred to in Article 83, that continue after re-education;
- Allowing children to enter a restaurant serving alcohol, beer or intoxicating drinks;
- Allowing children to take part in pornographic and obscene activities;
- Employing children over the limit of hours or to perform heavy work as prescribed by the Labour Law;
- Other violations stated in this law, which are administrative violations.

Besides the above-mentioned measures, the violators may be subject to suspension or withdrawal of business license.

Fines are determined in specific regulations.

Table 2.9 – Country: Malaysia

1 – Has legislation specific to child pornography	Yes
2 – Has a clear definition of child pornography	No
3 – Considers everyone under 18 as a potential victim of activities related to child pornography	Yes
4 – Criminalizes accessing or downloading child pornography images	No
5 – Criminalizes possession of child pornography	No (but criminalizes possession of obscene objects with the intent to distribute)
6 – Criminalizes virtual images and sexually exploitative representations of children	1) No; 2) Yes (not specifically, but obscene objects)
7 – Addresses the criminal liability of children involved in pornography	No (if children are victims, not offenders)
8 – Establishes criminal liability of legal persons for production or commercialization of child pornography	Yes (not specifically, but obscene objects)
9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State	Yes (not specifically, but obscenity offenses)
10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State	No
11 – Establishes confiscation of assets used to commit or facilitate child pornography offenses	No
12 – Establishes confiscation of proceeds derived from child pornography offenses	No
13 – Requires professionals working with children to report child pornography activities	Yes
14 – Requires Internet Service Providers to report child pornography	No
15 – Has telephone or online hotlines to enable the public to report child abuse	Yes
16 – Creates data retention or data preservation provisions	Yes (but only addresses personal data retention principles)
17 – Requires the identification of users of public computers in cybercafés	Yes
18 – Has a national plan to combat violence against children	Yes
19 – Has ratified the CRC and the OPSC	Yes
20 – Age of criminal liability	10 - 12
21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children	No
22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online	1) Yes (not explicitly, but all forms of sexual exploitation); 2) No
23 – Has legislation that criminalizes online grooming as a standalone offense	No
24 – Has a clear definition of online grooming	No
25 – Considers everyone under 18 as a potential victim of online grooming	No
26 – 1) Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child; or 2) criminalizes grooming regardless of the intent	No
27 – Criminalizes showing pornography to a child as a standalone offense	Yes
28 – Has legislation regarding cyberbullying	No
29 – Has legislation concerning sexting	No

Malaysia

In Malaysia, a wide range of children's rights are protected through adopting domestic legislation and by joining relevant international treaties including the Convention on the Rights of the Child (CRC) and the Optional Protocol to the Convention on Rights of Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC).

The laws which protect children's rights and/or govern violence against children are as follows:

- Penal Code (Act 574)⁴²⁹ (hereafter called as "Penal Code")
- Child Act 2001 (Act 611)⁴³⁰ (hereafter called as "Child Act 2001")
- Children and Young Persons (Employment) Act 1966 (Act 350)⁴³¹ (hereafter referred to as "Children and Young Persons (Employment) Act 1996")
- Anti-Trafficking in Persons Act 2007 (Act 670)⁴³² (hereafter referred to as "Anti-Trafficking in Persons Act 2007")

EXTRACTS OF LEGISLATION RELATED TO THE TABLE:

1 – Has legislation specific to child pornography

The Child Act 2001 makes it an offense for a person, who is in charge of taking care of a child, to use a child or permit him or her to be used in pornographic objects or performances as elaborated below.

Section 17 (2) (c) of the Child Act 2001⁴³³ states that a child is "sexually abused" if he has taken part, whether as a participant or an observer, in any activity which is sexual in nature for the purposes of: (i) any pornographic, obscene or indecent material, photograph, recording, film, videotape or performance; or (ii) sexual exploitation by any person for that person's or another person's sexual gratification.

Pursuant to Section 31 (1) (b) of the Child Act 2001⁴³⁴, any person who, being a person having the care of a child, sexually abuses the child or causes him to be so abused, commits an offense and shall be liable to a fine not to exceed 20,000 ringgit, or imprisonment for a term not to exceed ten years, or both.

⁴²⁹ Penal Code (Act 574), available at <http://www.agc.gov.my/Akta/Vol.%2012/Act%20574.pdf> (last visited Jan. 16, 2015).

⁴³⁰ Child Act 2001 (Act 611), available at <http://www.unicef.org/malaysia/Child-Act-2001.pdf> (last visited Jan. 16, 2015).

⁴³¹ Children and Young Persons (Employment) Act (Act 350), available at <http://www.ilo.org/dyn/travail/docs/1529/Children%20and%20Young%20Persons%20Employment%20Act%201966.pdf> (last visited Jan. 16, 2015).

⁴³² Anti-Trafficking in Persons Act 2007(Act 670), available at <http://www.hsph.harvard.edu/population/trafficking/malaysia.traf.07.pdf> (last visited Jan. 16, 2015).

⁴³³ Section 17 (2) (c) of the Child Act 2001 (Meaning of child in need of care and protection)

(2) For the purposes of this Part, a child is—

(c) sexually abused if he has taken part, whether as a participant or an observer, in any activity which is sexual in nature for the purposes of—

- (i) any pornographic, obscene or indecent material, photograph, recording, film, videotape or performance; or
- (ii) sexual exploitation by any person for that person's or another person's sexual gratification.

⁴³⁴ Section 31 (1) (b) of the Child Act 2001 (Treatment, neglect, abandonment or exposure of children)

(1) Any person who, being a person having the care of a child

(b) sexually abuses the child or causes or permits him to be so abused, commits an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

Section 292 of the Penal Code⁴³⁵ criminalizes activities related to obscenity in general, which may be also applicable to child pornography as stated below.

Section 292 (a) of the Penal Code punishes anyone who sells, lets to hire, distributes, publicly exhibits, or in any manner puts into circulation obscene books, pamphlets, papers, drawings, paintings, representations or figures, or any other obscene object (hereafter referred to as “any obscene object”). Section 292 (a) of the Penal Code also criminalizes the possession and production of any obscene object for the purpose of its sale, distribution, or putting into public exhibition.

In addition, Section 292 (b) of the Penal Code outlaws the importation, exportation, or conveyance of any obscene object for the purposes of the sale, distribution or public exhibition, with the knowledge or having reason to believe that such object will be sold, distributed, or publicly exhibited, or in any manner put into circulation.

Further, it is forbidden to participate in or receive profit from any business where the offender knows or has reason to believe that any such obscene objects are produced, kept, imported, exported, conveyed, publicly exhibited, or put into the circulation under Section 292 (c) of the Penal Code. Moreover, pursuant to Section 292 (d) of the Penal Code, advertising obscene objects is also prohibited.

Moreover, Section 293 of the Penal Code punishes any person who sells, distributes, exhibits, or circulates obscene objects (as referred to in Section 292 of the Penal Code) to a minor under the age of 20 years.

Furthermore, Section 294 of the Penal Code punishes anyone, to the annoyance of others, who: (a) does any obscene act in any public place; or (b) sings, recites, or utters any obscene song, ballad, or words in or near any public place.

2 – Has a clear definition of child pornography

Malaysian law does not provide a clear definition of child pornography. However, the exception to Section 292 of the Penal Code states that this Section does not extend to any obscene materials (objects) (including any

⁴³⁵ Section 292 of the Penal Code (Sale, etc., of obscene books, etc.)

Whoever—

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever;

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation;

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation;

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offense under this section, or that any such obscene object can be procured from or through any person; or

(e) offers, or attempts to do any act which is an offense under this section,

shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

Exception—This section does not extend to any book, pamphlet, writing, drawing, or painting kept or used bona fide for religious purposes or any representation sculptured, engraved, painted or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

book, pamphlet, writing, drawing, or painting) kept or used for *bona fide* religious purposes or any representation sculptured, engraved, painted, or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

3 – Considers everyone under 18 as a potential victim of activities related to child pornography

Section 2 (1) of the Child Act 2001 states that “child” means a person under the age of 18 years. Further, this Act criminalizes using a child in any activity that is sexual in nature for the purpose of pornographic, obscene, or indecent material or sexual exploitation by any person for that person’s or another’s sexual gratification.

In Malaysia, the age of consent to sexual intercourse is 16 years for women pursuant to Section 375 (f) of the Penal Code.⁴³⁶

4 – Criminalizes accessing or downloading child pornography images

Malaysian law does not provide explicit provision that criminalizes accessing or downloading child pornography images.

However, Section 292 of the Penal Code punishes any person who sells, lets to hire, distributes, publicly exhibits, or “in any manner” puts into circulation any obscene object.

5 – Criminalizes possession of child pornography

Malaysian law does not explicitly criminalize possession of child pornography without the intent to distribute. It only criminalizes possession of any obscene objects for the purpose of hire, sale, distribution, public exhibition/public circulation, etc. pursuant to Section 292 (a) of the Penal Code which reads, “(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation makes, produces, or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation, or figure or any other obscene object whatsoever.”

6 – Criminalizes virtual images and sexually exploitative representations of children

While not specific to child pornography, Malaysian law criminalizes illicit activities involving obscene objects which may include sexually exploitative representations of persons. Specifically, Section 292 of the Penal Code includes any obscene book, pamphlet, paper, drawing, painting, or “any representation” whatsoever into any obscene object as referred to in this Section.

7 – Addresses the criminal liability of children involved in pornography

Malaysian law does not address the criminal liability of children involved in pornography as long as they are victims, and not the offenders.

In case of child offenders, Section 2 of the Child Act 2001 states that in this Act, in relation to criminal proceedings, “child” means a person who has attained the age of criminal responsibility as prescribed in Section 82 of the Penal Code. The minimum age of criminal responsibility in Malaysia is ten years of age pursuant to Section 82 of the Penal Code.

⁴³⁶ Section 375 (f) of the Penal Code (Rape)

A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the following descriptions:

(f) with or without her consent, when she is under sixteen(16) years of age.

8 – Establishes criminal liability of legal persons for production or commercialization of child pornography

Malaysian law establishes the criminal liability of legal persons for production or commercialization of obscene objects, which might also apply to activities involving child pornography.

Section 2 of the Penal Code states that every “person” shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within Malaysia. Section 11 of the Penal Code⁴³⁷ provides that the word “person” includes any company or association or body of persons, whether incorporated or not.

9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State

Malaysia establishes its extraterritorial jurisdiction over obscenity offenses stipulated in the Penal Code, which may also encompass child pornography offenses, subject to the provisions of the Extra-Territorial Offences Act 1976 (Act 163)⁴³⁸, when the alleged offender is a national of Malaysia.

Section 2 of the Extra-Territorial Offences Act 1976⁴³⁹ (Act 163) states that if any offense under any other written law committed by any citizen or any permanent resident of Malaysia outside of its territory, such offense shall be deemed to be punishable as an offense under the relevant written laws as if such offense were done or committed in Malaysia.

10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State

Malaysia does not establish extraterritorial jurisdiction over obscenity offenses as provided in the Penal Code, which might also cover child pornography offenses, if the victim is a national of Malaysia.

⁴³⁷ Section 11 of the Penal Code (Person)

The word “person” includes any company or association or body of persons, whether incorporated or not.

⁴³⁸ Extra-Territorial Offences Act 1976 (Act 163), available at http://www.vertic.org/media/National%20Legislation/Malaysia/MY_ExtraTerritorial_Offences_Act.pdf (last visited Jan. 16, 2015).

⁴³⁹ Section 2 of the Extra-Territorial Offences Act 1976 (Extra-territorial effect of offenses committed outside Malaysia)

(1) (a) Any act contrary to the provisions of any of the written laws specified in the Schedule, being the provisions relating to the creation of, and the punishment for, offenses; or

(b) any offense under any other written law the commission of which is certified by the Attorney General to affect the security of the Federation, shall, if such act is done or such offense is committed, as the case may be,—

(i) on the high seas on board any ship or on any aircraft registered in Malaysia;

(ii) by any citizen or any permanent resident on the high seas on board any ship or on any aircraft;

(iii) by any citizen or any permanent resident in any place without and beyond the limits of Malaysia,

be punishable as an offense under the relevant written law as if such act or offense were done or committed in Malaysia.

(2) For the purpose of this Act, “permanent resident” has the meaning assigned by the Courts of Judicature Act 1964 [Act 91].

(3) The Yang di-Pertuan Agong may by order, amend, or add to, the Schedule.

**11 – Establishes the confiscation of assets used to commit or facilitate child pornography offenses; and
12 – Establishes the confiscation of proceeds derived from child pornography offenses**

Malaysian law neither provides for: 1) the confiscation of assets used to commit or facilitate obscenity offenses as provided in Sections 292 and 293 of the Penal Code, which might also cover child pornography offenses; nor 2) the confiscation of proceeds derived from such offenses.

13 – Requires professionals working with children to report child pornography activities

The Child Act 2001 requires professionals who work with children to report incidents involving child sexual abuse to relevant authorities when they learn of such incidents. In addition, the Child Act 2001 defines child sexual abuse to include children’s participation in pornographic materials as stated below.

Sections 27⁴⁴⁰ and 29 of the Child Act 2001⁴⁴¹ require either a medical officer or a registered medical practitioner to immediately inform a Protector upon the belief on reasonable grounds that a child is physically or emotionally injured as a result of being ill-treated, neglected, abandoned, exposed, or “sexually abused”.

If any medical officer or a registered medical practitioner, who has believed on reasonable grounds that a child has been physically or emotionally injured, fails to immediately inform the Protector of the suspected situation surrounding a child in issue, such professional will be subject to penalty as provided in Sections 27 and 29 of Child Act 2001.

Specifically, Section 17 (2) (c) of the Child Act 2001 states that a child is “sexually abused” if he has taken part, whether as a participant or an observer, in any activity which is sexual in nature for the purpose of (i) any pornographic, obscene or indecent material, photograph, recording, film, videotape or performance; or (ii) sexual exploitation by any person for that person’s or another person’s sexual gratification.

14 – Requires Internet Service Providers to report child pornography

Malaysian law does not have reporting requirements for Internet Service Providers (ISPs) upon finding child pornography on their networks. However, the Communications and Multimedia Act 1998 (Act 588)⁴⁴² addresses liabilities of content application service providers with respect to obscene, indecent, or offensive information as stated below.

⁴⁴⁰ Section 27 of the Child Act 2001 (Duty of medical officer or medical practitioner)

(1) If a medical officer or a registered medical practitioner believes on reasonable grounds that a child he is examining or treating is physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he shall immediately inform a Protector.

(2) Any medical officer or registered medical practitioner who fails to comply with subsection (1) commits an offense and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(3) If the registered medical practitioner referred to in subsection (1) is a medical officer, he may take the child referred to in that subsection into temporary custody until such time as the temporary custody of the child is assumed by a Protector or police officer.

⁴⁴¹ Section 29 of the Child Act 2001 (Duty of child care provider)

(1) If a child care provider believes on reasonable grounds that a child is physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he shall immediately inform a Protector.

(2) Any child care provider who fails to comply with subsection (1) commits an offense and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

⁴⁴² Communications and Multimedia Act 1998 (Act 588) (Incorporating all amendments up to January 1, 2006), available at <http://www.agc.gov.my/Akta/Vol.%2012/Act%20588.pdf> (last visited Jan. 16, 2015).

Section 211 of the Communications and Multimedia Act 1998⁴⁴³ prohibits content applications service providers⁴⁴⁴ or other persons using a content applications service from providing content which is indecent, obscene, or offensive in character with the intent to annoy, abuse, threaten, or harass any person. The offenders, upon conviction, are liable to a fine not to exceed 50,000 ringgit, or imprisonment for a term not to exceed one year, or both, pursuant to this Section. Repeated offenders are subject to a further fine of 1,000 ringgit for every day or part of a day during which the offense is continued after conviction, according to the same Section.

Section 213 (1) of the Communications and Multimedia Act 1998 further articulates that a content code be prepared by the content forum or the Commission which shall include model procedures for dealing with offensive or indecent content.

The Communications and Multimedia Content Forum of Malaysia (CMCF) issued the Malaysian Communications and Multimedia Content Code⁴⁴⁵ in exercise of its powers provided under the Communications and Multimedia Act 1998. This Code, registered by the Malaysian Communications and Multimedia Commission (MCMC), provides guidelines and procedures observed by all content application service providers, by virtue of self-regulation, in respect of offensive or indecent content prohibited under Section 211 of this Act.

The definition of the term “content application service providers” provided under Part 1 of the Malaysian Communications and Multimedia Content Code explicitly includes persons who provide Internet access services. In addition, child pornography is expressly included within the category of prohibited obscene content pursuant to Part 2 of this Code. “Child pornography” as mentioned in Part 2 of this Code includes the depiction of any part of the body of a minor in what might be reasonably considered a sexual context, and any written material or visual and/or audio representation that reflects sexual activity, whether explicit or not, with a minor.

Adherence by ISPs to the provisions of the Malaysian Communications and Multimedia Content Code is voluntary, unless ISPs are directed to comply by the Commission pursuant to Section 99 of the Communications and Multimedia Act 1998 and Part 1 of the Malaysian Communications and Multimedia Content Code.

15 – Has telephone or online hotlines to enable the public to report child abuse

Childline Malaysia is a 24-hour hotline service for children under 18 years of age who are in need of protection, support, care, and information by calling 15999. Childline Malaysia is initiated by the Malaysian Children TV Programme Foundation with support from the Ministry of Women, Family and Community Development, the Social Welfare Department, UNICEF Malaysia, and Child Helpline International.

The main topics dealt with by Childline Malaysia are as follows: Childline 24/7 telephone hotline; Malaysian Child Protection Policy; working with children and young people to stop child abuse; recognizing symptoms of

⁴⁴³ Section 211 of the Communications and Multimedia Act 1998 (Prohibition on provision of offensive content)

(1) No content applications service provider or other person using a content applications service, shall provide content which is indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person.

(2) A person who contravenes subsection (1) commits an offense and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both and shall also be liable to a further fine of one thousand ringgit for every day or part of a day during which the offense is continued after conviction.

⁴⁴⁴ Section 6 of the Communications and Multimedia Act states that in this Act content applications service means an applications service which provides content. Moreover, the term “content”, in this Act means any sound, text, still picture, moving picture or other audio-visual representation, tactile representation or any combination of the preceding which is capable of being created, manipulated, stored, retrieved or communicated electronically.

⁴⁴⁵ THE COMMUNICATIONS AND MULTIMEDIA CONTENT FORUM OF MALAYSIA, THE MALAYSIAN COMMUNICATIONS AND MULTIMEDIA CONTENT CODE, available at <http://www.skmm.gov.my/skmmgovmy/files/attachments/ContentCode.pdf> (last visited Jan. 16, 2015).

child abuse; knowing the consequences of child abuse; laws and processes in reporting child abuse and neglect and consequences of not reporting; and child abuse survivor stories.⁴⁴⁶

16 – Creates data retention or data preservation provisions

Section 268 of the Communications and Multimedia Act 1998⁴⁴⁷ specifies that the Minister may make rules to be published in the Gazette to provide for record-keeping and to require one or more licensees or persons to keep and retain records. However, rules that specify the data retention period have yet to be published as of today (November 25, 2014).

Furthermore, while not specific to retention of non-content based data including subscriber information (data that helps identify the subscriber), as well as traffic data (i.e., information on the route, time, date, duration, destination, and source of a communication), the Personal Data Protection Act 2010 (Act 709)⁴⁴⁸ has provisions addressing personal data retention principle. Section 10 of the Personal Data Protection Act 2010⁴⁴⁹ provides that, “The personal data processed for any purpose shall not be kept longer than necessary for the fulfilment of that purpose. Also, a data user has a duty to take all reasonable steps to ensure that all personal data is destroyed or permanently deleted if it is no longer required for the purpose for which it was to be processed.”

17 – Requires the identification of users of public computers in cybercafés

The Cyber Centre and Cyber Café (Federal Territory of Kuala Lumpur) Rules 2012⁴⁵⁰ contain provisions which require the identification of users of public computers in cybercafés as stated below.

According to Section 3 of the Cyber Centre and Cyber Café (Federal Territory of Kuala Lumpur) Rules, no person shall use any place or premises as a center or cybercafé unless a license for that purpose has been issued under these rules by the Commissioner.

Moreover, Section 12 (1) of the Cyber Centre and Cyber Café (Federal Territory of Kuala Lumpur) Rules 2012 requires the licensee to provide and maintain a record of computer usage for each computer as determined under paragraph 4 (4) (b) of these Rules in his licensed premises. Pursuant to Section 12 (1) of these Rules, the record of computer usage in the licensed areas for cybercafés and cyber centres shall consist of the following items: (a) name and identity card number of the user or passport number for non-citizens; (b) telephone number of the user; (c) identification number of the computer used; (d) date, time and period of use of such computer; and (e) any other additional information which the licensee thinks necessary.

⁴⁴⁶ *Childline Malaysia: Call Center Operations*, CHILDLINE, <http://www.mctf.org.my/childline/call-centre.htm> (last visited Nov. 20, 2014).

⁴⁴⁷ Section 268 of the Communications and Multimedia Act 1998 (Minister may make rules on record-keeping)

The Minister may make rules, to be published in the Gazette, to provide for record-keeping and to require one or more licensees or persons to keep and retain records.

⁴⁴⁸ Personal Data Protection Act 2010 (Act 709), available at: [http://www.kkmm.gov.my/pdf/Personal Data Protection Act 2010.pdf](http://www.kkmm.gov.my/pdf/Personal%20Data%20Protection%20Act%202010.pdf) (last visited Nov. 20, 2014).

⁴⁴⁹ Section 10 of the Personal Data Protection Act 2010 (Retention Principle)

(1) The personal data processed for any purpose shall not be kept longer than is necessary for the fulfilment of that purpose.

(2) It shall be the duty of a data user to take all reasonable steps to ensure that all personal data is destroyed or permanently deleted if it is no longer required for the purpose for which it was to be processed.

⁴⁵⁰ Cyber Centre and Cyber Café (Federal Territory of Kuala Lumpur) Rules 2012, available at http://malaysianlaw.my/attachments/PUA-179-2012-Cyber-Centre_78347.pdf (last visited Jan. 16, 2015).

Section 10 (1) of the Cyber Centre and Cyber Café (Federal Territory of Kuala Lumpur) Rules 2012 prohibits licensees from engaging prescribed acts, among others, as follows: (a) displaying, exhibiting, or allowing the customer to download any obscene pictures or articles in the licensed premise; (b) allowing in the licensed premise the selling of printed materials which are obscene and negative in nature; or (c) exhibiting or displaying any picture that is not suitable to the custom, religion or good value of Malaysian community.

18 – Has a national plan to combat violence against children

Malaysia has a comprehensive National Plan of Action for Children streamlined with the National Child Protection Policy including a national plan to combat violence against children for the protection of children.

This National Child Protection Policy has been set by the Ministry of Women, Family and Community Development and is currently underway.

In particular, the National Child Protection Policy states that it aims to ensure every child be protected from abuse, violence, and exploitation and also raise awareness and encourage the commitment of all parties, including every member of the community in protecting children.⁴⁵¹

19 – Has ratified the CRC and the OPSC

- Malaysia acceded to the Convention on the Rights of the Child in February 1995.⁴⁵²
- Malaysia acceded to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography in April 2012.⁴⁵³
- Malaysia ratified the Worst Forms of Child Labour Convention, 1999 (No. 182) in November 2000.⁴⁵⁴

20 – Age of criminal liability

The minimum age of criminal responsibility in Malaysia is 10 years pursuant to Section 82 of the Penal Code. If an offender is a child above 10 years but under 12 years of age and of insufficient maturity to understand the nature and consequence of his conduct on the occasion at issue, such child offender is exempted from criminal liability according to Section 83 of the Penal Code.

21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children

Malaysia does not have legislation that specifically addresses the use of ICTs to commit crimes against children.

However, while not specific to child pornography, Section 292 (a) of the Penal Code punishes anyone who “in any manner” puts into circulation obscene books, pamphlets, papers, drawings, paintings, representations or figures, or any other obscene object.

General cybercrime is covered by the Computer Crimes Act 1997 (Act 563).⁴⁵⁵ The Computer Crimes Act 1997 contains provisions addressing offenses involving: 1) unauthorized access to computer material; 2) unauthorized

⁴⁵¹ MINISTRY OF WOMEN, FAMILY AND COMMUNITY DEV., CHILD PROTECTION AND CHILD WELFARE SERVICES IN MALAYSIA: BEIJING HIGH LEVEL MEETING NOVEMBER 4-6, 2010, available at http://www.unicef.org/eapro/Malaysia_Beijing_paper_26_Oct_2010_FINAL.pdf (last visited Jan. 16, 2015).

⁴⁵² *Status of Ratification and Accession of the CRC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en (last visited Oct. 24, 2014).

⁴⁵³ *Status of Ratification and Accession of the OPSC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last visited Oct. 24, 2014).

⁴⁵⁴ *Status of the Ratification of the Worst Forms of Child Labour Convention, 1999*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited Oct. 24, 2014).

⁴⁵⁵ Computer Crimes Act 1997 (Act 563), available at <http://www.agc.gov.my/Akta/Vol.%202012/Act%20563.pdf> (last visited Jan. 16, 2015).

access with intent to commit or facilitate commission of further offenses; 3) unauthorized modification of the contents of any computer; 4) wrongful communication; and 5) abetments and attempts punishable as offenses.

22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising sex child sex tourism online

Malaysian law does not have explicit provisions that criminalize child trafficking with the intent of producing pornography.

However, Malaysian law contains provisions criminalizing trafficking in children for the purposes of exploitation, including all forms of sexual exploitation, as elaborated below.

Section 14 of the Anti-Trafficking in Persons Act 2007⁴⁵⁶ punishes any person who commits the offense of trafficking in persons against a child (a person who is under the age of 18 years), for the purpose of exploitation. Also, Section 2 of the Anti-Trafficking in Persons Act 2007⁴⁵⁷ defines “exploitation” as all forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, any illegal activity or the removal of human organs.

In addition, Section 43 of the Child Act 2001⁴⁵⁸ punishes anyone who sells, lets for hire, disposes of, buys, hires or otherwise obtains possession, etc. of a child under 18 years with the intent to have the child be employed or

⁴⁵⁶ Section 14 of the Anti-Trafficking in Persons Act 2007 (Offense of trafficking in children)

Any person, who traffics in persons being a child, for the purpose of exploitation, commits an offense and shall, on conviction, be punished with imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine.

⁴⁵⁷ Extract of Section 2 of the Anti-Trafficking in Persons Act 2007 (Definitions)

“exploitation” means all forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, any illegal activity or the removal of human organs;

“child” means a person who is under the age of eighteen years.

⁴⁵⁸ Section 43 of the Child Act 2001 (Offenses)

(1) Any person who—

(a) sells, lets for hire or otherwise disposes of, or buys or hires or otherwise obtains possession of, a child with intent that the child is to be employed or used for the purpose of prostitution, either within or outside Malaysia, or knowing or having reason to believe that the child will be so employed or used;

(b) procures a child for purposes of prostitution or for the purposes of having sexual intercourse with any other person, either within or outside Malaysia;

(c) by or under any false pretence, false representation, or fraudulent or deceitful means made or used, either within or outside Malaysia, brings or assists in bringing into, or takes out of or assists in taking out of, Malaysia, a child with intent that the child is to be employed or used for purposes of prostitution, either within or outside Malaysia, or knowing or having reason to believe that the child will be so employed or used;

(d) brings into Malaysia, receives or harbours a child knowing or having reason to believe that the child has been procured for purposes of prostitution or for the purposes of having sexual intercourse with any other person, either within or outside Malaysia, and with intent to aid such purpose;

(e) knowing or having reason to believe that a child has been brought into Malaysia in the circumstances as set out in paragraph (c) or has been sold, let for hire, or hired or purchased in the circumstances as set out in paragraph (a), or in contravention of any other written law receives or harbours the child with intent that he is to be employed or used for purposes of prostitution either within or outside Malaysia;

(f) detains a child in a brothel against the child's will;

(g) detains a child in any place against the child's will with intent that the child is to be employed or used for purposes of prostitution or for any unlawful or immoral purpose;

(h) by means of any advertisement or other notice published in any manner or displayed in any place offers a child for purposes of prostitution or seeks information for that purpose or accepts such advertisement or notice for publication or display;

used for the purpose of prostitution or having sexual intercourse with any other person or any other illegal purpose either within or outside Malaysia, while knowing or having reason to believe that the child will be so employed or used for that illegal purpose.

Furthermore, Section 372 the Penal Code⁴⁵⁹ punishes anyone who sells, lets for hire, disposes of or procures, buys or hires or obtains possession of any person with the intention that the person is to be employed or used

(i) acts as an intermediary on behalf of a child or exercises control or influence over the movements of a child in such a manner as to show that the person is aiding or abetting or controlling the prostitution of that child;

(j) engages or hires, for any valuable consideration, a child to provide services for that person's sexual gratification;

(k) attempts to do any act in contravention of this section,

commits an offense and shall on conviction—

(aa) in the case of offenses under paragraphs (a) to (h) or paragraph (k), be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding fifteen years or to both; and

(bb) in the case of an offense under paragraph (i) or (j), be liable to a fine not exceeding fifty thousand ringgit and to imprisonment for a term of not less than three years but no more than fifteen years and shall also be punished with whipping of not more than six strokes.

(2) Any person who is convicted of a second or subsequent offense—

(a) under paragraphs (1)(a) to (g) or paragraph (1)(k), shall be liable to whipping of not more than ten strokes; and

(b) under paragraphs (1)(i) or (j), shall be punished with whipping of not less than six strokes but not more than ten strokes,

in addition to any term of imprisonment imposed in relation to such offense.

(3) Sections 173A and 294 of the Criminal Procedure Code shall not apply in respect of offenses under paragraphs (1)(i) and (j).

⁴⁵⁹ Section 372 of the Penal Code (Exploiting any person for purposes of prostitution)

(1) Whoever—

(a) sells, lets for hire or otherwise disposes of, or procures, buys or hires or otherwise obtains possession of, any person with such intention that the person is to be employed or used for the purpose of prostitution or of having sexual intercourse with any other person, either within or outside Malaysia, or knowing or having reason to believe that the person will be so employed or used;

(b) by or under any false pretense, false representation, or fraudulent or deceitful means made or used, either within or outside Malaysia, brings or assists in bringing into, or takes out or assists in taking out of, Malaysia, any person with such intention that the person is to be employed or used for the purpose of prostitution or of having sexual intercourse with any other person, either within or outside Malaysia, or knowing or having reason to believe that the person will be so employed or used;

(c) receives or harbours any person—

(i) who has been sold, let for hire or otherwise disposed of, or who has been procured, purchased, hired or otherwise obtained possession of in the circumstances as set out in paragraph (a); or

(ii) who has been brought into or taken out of Malaysia in the circumstances as set out in paragraph (b),

knowing or having reason to believe that the person is to be employed or used for the purpose of prostitution or of having sexual intercourse with any other person, either within or outside Malaysia, and with intent to aid such purpose;

(d) wrongfully restrains any person in any place with such intention that the person will be used or employed for the purpose of prostitution or of having sexual intercourse with any other person;

(e) by means of any advertisement or other notice published in any manner or displayed in any place for prostitution service or a service which a reasonable person would understand it to be a prostitution service, offers any person for the purpose of prostitution or seeks information for that purpose or accepts such advertisement or notice for publication or display;

(f) acts as an intermediary on behalf of another or exercises control or influence over the movements of another in such a manner as to show that the person is aiding or abetting or controlling the prostitution of that order,

shall be punished with imprisonment for a term which may extend to fifteen years and with whipping, and shall also be liable to a fine.

(2) For the purpose of paragraph (d) of subsection (1), it shall be presumed until the contrary is proved that a person wrongfully restrains a person if he—

(a) withholds from that person wearing apparel or any other property belonging to that person or wearing apparel commonly or last used by that person;

for the purpose of prostitution or having sexual intercourse with any other person either within or outside of Malaysia.

Malaysian law does not contain explicit provisions that criminalize advertising child sex tourism online. However, Section 292 (d) of the Penal Code punishes anyone who advertises or makes known by any means that any person is engaged or is ready to engage in any act related to obscene objects stipulated in this Section, or that any such obscene objects can be procured from or through any person. In addition, Section 372 of the Penal Code states that whoever by means of any advertisement or other notice published in any manner or displayed in any place for prostitution service or a service which a reasonable person would understand to be a prostitution service, offers any person for the purpose of prostitution or seeks information for that purpose or accepts such advertisement or notice for publication or display shall be punished with imprisonment for a term which may extend to 15 years and with whipping, and shall also be liable to a fine.

23, 24, 25, and 26 – Existence of specific legislation criminalizing online grooming, a clear definition of online grooming, the age of a potential victim, and related crimes

Malaysian law does not provide provisions criminalizing online grooming. Also, Malaysian law does not provide a clear definition of online grooming. However, Section 372B of the Penal Code⁴⁶⁰ punishes anyone who solicits or importunes for the purpose of prostitution or any immoral purpose in any place. Moreover, Section 377E of the Penal Code⁴⁶¹ criminalizes inciting a child under 14 years of age to commit an act of gross indecency with themselves or another person.

Malaysian law does not have explicit provisions that consider any person under the age of 18 years as a potential victim of online grooming. However, Section 2 (1) of the Child Act 2001 defines a “child” as a person under the age of 18 years.

27 – Criminalizes showing pornography to a child as a standalone offense

Section 293 of the Penal Code⁴⁶² punishes any person who sells, leases, distributes, exhibits, or circulates to any person under the age of 20 years any obscene object as referred to in to Section 292 of the Penal Code with a penalty of imprisonment for a term which may extend to five years, or a fine, or both.

(b) threatens that person to whom wearing apparel or any other property has been let or hired out or supplied to with legal proceedings if he takes away such wearing apparel or property;

(c) threatens that person with legal proceedings for the recovery of any debt or alleged debt or uses any other threat whatsoever; or

(d) without any lawful authority, detains that person’s identity card issued under the law relating to national registration or that person’s passport.

(3) In this section and in sections 372A and 372B, “prostitution” means the act of a person offering that person’s body for sexual gratification for hire whether in money or in kind; and “prostitute” shall be construed accordingly.

⁴⁶⁰ Section 372B of the Penal Code (Soliciting for purpose of prostitution)

Whoever solicits or importunes for the purpose of prostitution or any immoral purpose in any place shall be punished with imprisonment for a term not exceeding one year or with fine or with both.

⁴⁶¹ Section 377E of the Penal Code (Inciting a child to an act of gross indecency)

Any person who incites a child under the age of fourteen years to any act of gross indecency with him or another person shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to whipping.

⁴⁶² Section 293 of the Penal Code (Sale, etc., of obscene objects to young person)

Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished with imprisonment for a term which may extend to five years or with fine or with both.

28 – Has legislation regarding cyberbullying

According to a survey conducted by Microsoft in 2012, 33% of Malaysian children reported experiencing cyberbullying.⁴⁶³ However, Malaysia does not have legislation regarding cyberbullying.

29 – Has legislation concerning sexting

There is no legislation concerning sexting in Malaysia.

⁴⁶³ MICROSOFT, WORLDWIDE (WW), ONLINE BULLYING SURVEY - EXECUTIVE SUMMARY - MALAYSIA (2012), available at http://download.microsoft.com/download/E/8/4/E84BEEAB-7B92-4CF8-B5C7-7CC20D92B4F9/WW%20Online%20Bullying%20Survey%20-%20Executive%20Summary%20-%20Malaysia_Final.pdf (last visited Jan. 16, 2015).

Table 2.10 – Country: Mongolia

1 – Has legislation specific to child pornography	Yes
2 – Has a clear definition of child pornography	No (advertising pornography)
3 – Considers everyone under 18 as a potential victim of activities related to child pornography	No (16-18)
4 – Criminalizes accessing or downloading child pornography images	No
5 – Criminalizes possession of child pornography	No (storing items advertising pornography – administrative sanction)
6 – Criminalizes virtual images and sexually exploitative representations of children	No
7 – Addresses the criminal liability of children involved in pornography	No
8 – Establishes criminal liability of legal persons for production or commercialization of child pornography	No (administrative liability)
9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State	Yes (not specifically, but pornography offenses)
10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State	No
11 – Establishes confiscation of assets used to commit or facilitate child pornography offenses	Yes (not specifically, but pornography offenses)
12 – Establishes confiscation of proceeds derived from child pornography offenses	Yes (not specifically, but pornography offenses)
13 – Requires professionals working with children to report child pornography activities	No
14 – Requires Internet Service Providers to report child pornography	No
15 – Has telephone or online hotlines to enable the public to report child abuse	Yes
16 – Creates data retention or data preservation provisions	No
17 – Requires the identification of users of public computers in cybercafés	No
18 – Has a national plan to combat violence against children	Yes
19 – Has ratified the CRC and the OPSC	Yes
20 – Age of criminal liability	14 - 16
21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children	No
22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online	1) Yes (not explicitly but sale/purchase of humans under the legal age); 2) No
23 – Has legislation that criminalizes online grooming as a standalone offense	No
24 – Has a clear definition of online grooming	No
25 – Considers everyone under 18 as a potential victim of online grooming	No
26 – 1) Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child; or 2) criminalizes grooming regardless of the intent	No
27 – Criminalizes showing pornography to a child as a standalone offense	No (administrative sanction)
28 – Has legislation regarding cyberbullying	No
29 – Has legislation concerning sexting	No

Mongolia

In Mongolia, the Constitution of Mongolia (enacted in 1992)⁴⁶⁴ (hereafter referred to as “Constitution”) contains provisions for the protection of children’s rights. Specifically, Article 16 (11) of the Constitution declares that “The State shall protect the interests of the family, motherhood and the child.”

Additionally, the laws which protect children’s rights and/or govern violence against children are as follows:

- Criminal Code (enacted in 2002)⁴⁶⁵
- Law Combating Pornography and Prostitution (enacted in 1998 and last amended in 2012)⁴⁶⁶ (also known as “Law against Pornography and Prostitution”) (hereafter referred to as “Law Combating Pornography and Prostitution”)
- Law on the Protection of the Rights of the Child (enacted in 1996 and last amended in 2008)⁴⁶⁷ (also known as “Law on Protection of Children’s Rights”) (hereafter referred to as “Law on the Protection of the Rights of the Child”)
- Family Law (enacted in 1999)⁴⁶⁸
- Law on Advertisement (enacted in 2002)⁴⁶⁹

Article 4.5 of the Family Law states that the “welfare of children [sic] shall be respected.”

EXTRACTS OF LEGISLATION RELATED TO THE TABLE:

1 – Has legislation specific to child pornography

Article 123 of the Criminal Code⁴⁷⁰ generally prohibits any person from engaging in prescribed activities involving items advertising pornography, regardless of whether the individuals being depicted are adults or children. The Criminal Code further provides that when such pornography offenses are committed by the use of violence against a minor, it is considered a circumstance aggravating penalty.

⁴⁶⁴ Constitution of Mongolia, available at <http://www.wipo.int/wipolex/en/details.jsp?id=3039> (last visited Jan. 16, 2015).

⁴⁶⁵ Criminal Code, available at <http://www.wipo.int/wipolex/en/details.jsp?id=5578> (last visited Jan. 16, 2015).

⁴⁶⁶ Law Combating Pornography and Prostitution (enacted in 1998 and last amended in 2012), available at <http://www.legalinfo.mn/law/details/445?lawid=445> (in Mongolian) (last visited Jan. 21, 2015).

Law Combating Pornography and Prostitution (enacted in 1998), available at <http://legal-policy.mn/mn/wp-content/uploads/2014/01/13.-Combating-pornography-and-prostitution-act-1998.01.222.pdf> (in English) (last visited Jan. 16, 2015).

⁴⁶⁷ Law on the Protection of the Rights of Child (enacted in 1996 and last amended in 2008), available at <http://www.legalinfo.mn/law/details/561> (in Mongolian) (last visited Jan. 16, 2015).

Law on the Protection of the Rights of the Child (enacted in 1996), available at <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/78391/83815/F205588245/MNG78391.pdf> (in English) (last visited Jan. 16, 2015).

⁴⁶⁸ Family Law, available at <http://www.refworld.org/docid/3ed91a1c2.html> (last visited Jan. 16, 2015).

⁴⁶⁹ Law on Advertisement, available at [http://www.lehmanlaw.mn/downloads/Advertisement\(2002\).pdf](http://www.lehmanlaw.mn/downloads/Advertisement(2002).pdf) (last visited Jan. 16, 2015).

⁴⁷⁰ Article 123 of the Criminal Code (Advertising and dissemination of pornography and prostitution)

123.1. Preparation, dissemination, sale, display to the public, crossing of the state frontier of the press, literature, films, video tapes, and other items advertising pornography shall be punishable by a fine equal to 31 to 50 amounts of minimum salary or by incarceration for a term of 1 to 3 months.

123.2. Inducing a person under 16 to engage in the same crime shall be punishable by a fine equal to 71 to 100 amounts of minimum salary amount or by incarceration for a term of more than 3 to 6 months.

123.3. The same crime committed by use of violence against a minor, by a person who previously was sentenced for this crime, by an organized group or by a criminal organization shall be punishable by imprisonment for a term of up to 5 years.

Pursuant to Article 123.1 of the Criminal Code, the preparation, dissemination, sale, display to the public, or crossing of the state frontier of press, literature, films, video tapes, and other items advertising pornography shall be punishable by a fine equal to 31 to 50 times the minimum salary or by incarceration for a term of one to three months. According to Article 123.2 of this Code, inducing a person under the age of 16 to engage in a crime as stated above shall be punishable by a fine equal to 71 to 100 amounts of minimum salary amount or by incarceration for a term of more than three to six months. If the crime as stated above is committed by the use of violence against a minor or by a person who was previously been sentenced for this crime, or by an organized group, or by a criminal organization, such crime shall be punishable by imprisonment for a term of up to five years provided under Article 123.3 of the same Code.

Article 6 (5) of the Law on the Protection of the Rights of the Child prohibits the involvement of a child in the advertisement of pornography against his/her own, as well as his/her parents', guardians', and care givers' will. According to Article 7 (4) of this Law, attracting a child into pornography is prohibited as a part of the rights of children to be protected. A citizen, government official, or an economic entity that violates provisions of the Law on the Protection of the Rights of the Child shall be liable to a fine of a prescribed amount provided under Article 25 of the same Law.

Furthermore, Article 5 of the Law Combating Pornography and Prostitution provides the prohibition of advertising pornography and prostitution. Pursuant to Article 5.1 of the Law Combating Pornography and Prostitution, advertising pornography by press and broadcast media shall be prohibited. In addition, producing, distributing, selling, or storing for these purposes, publications, magazines, books, pictures, films, video, and other items advertising pornography shall be prohibited according to Article 5.2 of this Law. Furthermore, smuggling publications, magazines, books, films, videos, pictures, and other items advertising pornography shall be prohibited provided under Article 5.3 of the same Law.

Violations of the provisions of Article 5 of the Law Combating Pornography and Prostitution shall result in administrative sanctions or constitute a criminal offense pursuant to Article 13 of this Law.⁴⁷¹

⁴⁷¹ Article 13 of the Law Combating Pornography and Prostitution (Liability for breach of Legislation on Combating Pornography and Prostitution act)

13.1. If a breach referred to in articles 5.1, 5.2 of this law have been repeated within a year criminal offense shall be imposed.

13.2. If a breach of this law does not constitute a criminal offense, offending persons shall be imposed the following administrative sanctions.

13.2.1 for a breach of the article 4.1 of this law all income earned from the prostitution shall be confiscated and offending persons shall be arrested for 14-30 days;

13.2.2. offending persons who breaches article 4.2 of this law shall be imposed a fine of 35000 to 50000 tugrugs or arrested for 7-15 days, business entities and organisations shall be imposed a fine of 100000 to 250000 tugrugs and hotels and night clubs used as a house of prostitution shall be closed and if it is transported by vehicles intended to prostitute, the vehicles shall be confiscated;(This provision was repealed dated on January 19, 2012)

13.2.3. for a breach of the article 5.1 of this law all incomes earned from advertising pornography and prostitution shall be confiscated and offending persons shall be imposed a fine of 40000-60000 tugrugs, business entities and organisations shall be imposed a fine of 100000 to 150000 tugrugs, and if the breach are repeated within a year activities of the press organisations shall be stopped;

13.2.4. for a breach of the article 5.2 of this law, articles related to the pornography and prostitution shall be confiscated and offending persons shall be imposed a fine of 40000to 50000 tugrugs;

13.2.5. for a breach of the article 5.3 of this law, articles smuggled or attempted to smuggle shall be confiscated and offending persons shall be imposed a fine of 35000 to 50000 tugrugs or arrested for 7-15 days and business entities and organisations shall be imposed a fine of 200000 to 250000 tugrugs;

13.2.6. for a breach of the article 6.2 of this law, offending persons and officials shall be imposed a fine of 30000 to 50000 tugrugs, business entities and organisations shall be imposed a fine of 100000 to 150000 tugrugs;

Pursuant to Article 6 (5) of the Law on Advertisement,⁴⁷² the production and dissemination of the advertisement that promotes pornography shall be prohibited.

2 – Has a clear definition of child pornography

Mongolian law does not provide a clear definition of child pornography. However, Article 3.1.1 of the Law Combating Pornography and Prostitution stipulates that the term “advertising pornography” in this Law means making explicitly to depict or broadcast or display the act of sexual intercourse or human genitals with the intention to incite sexual desire by magazines, books, films, audio, video, pictures, and/or by any other form.

3 – Considers everyone under 18 as a potential victim of activities related to child pornography

Mongolian law does not contain provisions that consider everyone under the age of 18 years as a potential victim of activities related to child pornography.

With regard to the definition of a child, there are disparities between the domestic laws of Mongolia.

Article 123.2 of the Criminal Code states that inducing a person under 16 years of age to engage in the crime of pornography as stipulated in Article 123.1 of this Code shall be punishable.

In addition, Article 123.3 of the same Code prescribes that if pornography offenses stipulated in Article 123.1 of this Code are committed by the use of violence against a minor, it is to be considered an aggravating circumstance.

In the context of the ban on the involvement of a child in activities harmful to his/her physical, psychological, moral, and intellectual development, including crime, violations of the laws, pornography, prostitution, or offering the child for all forms of abuse as mentioned in Article 7 (4) of the Law on the Protection of the Rights of the Child, any person under the age of 18 years is considered a child according to Article 3 (1) of this Law.

13.2.7. for a breach of the article 7, and article 8.1.3 of this law, offending persons shall be imposed a fine of 25000 to 30000 and in the case of business entities and organisations shall be imposed a fine of 150000 to 250000 tugrugs;

13.2.8. for a breach of the articles of the 8.1.1, 8.1.2 of this law all incomes earned from showing erotic films, video prints shall be confiscated and offending persons shall be imposed a fine of 25000 to 50000 tugrugs and in the case of 150000 to 200000 tugrugs;

13.2.9. for a breach of the article 9.3 of this law income earned from, illegally, erotic publication, books, films, video prints which are not supervised by the Council shall be confiscated and offending persons shall be imposed a fine of 30000 to 50000 tugrugs and business entities /organisations shall be imposed a fine of 100000 to 200000 tugrugs;

13.2.10. for a breach of the articles 10.1, 10.2 of this law, offending persons shall be imposed a fine of 30000 to 50000 tugrugs and in the case of the business entities or organisations shall be imposed a fine of 150000 to 200000 tugrugs;

13.3. The authorised officer shall impose an administrative sanction prescribed in the article 13.2 of this law by the following:

13.3.1. judge shall imposed penalties of confiscation for vehicles and arrest in accordance with article 13.2 of this law;

13.3.2. authorised officer of the police organisation shall impose the relevant penalties for the breach prescribed in the articles of 4.2, 5.1, 5.2, 6.2, 7, 8.1.2, 8.1.3, 9.1, 10 of this law;

13.3.3. for breach of the article 8.1 of this law the relevant penalties shall be imposed by the Governors of the Aimags, Capital city, Soum and Duurig;

13.3.4. Customs inspector shall imposed persons who breach article 5.3 of this law.

⁴⁷² Extract of Article 6(5) of the Law on Advertisement (General requirements for production and dissemination of advertisement)

6.5. Following activities are prohibited in production and dissemination of advertisement:

6.5.7. advertisement that frightens or incites citizens to violence and pornography or may trigger actions or activities causing danger to human life, health and safety.

4 – Criminalizes accessing or downloading child pornography images

Mongolian law does not contain provisions that explicitly criminalize accessing or downloading child pornography images.

However, Article 123 of the Criminal Code criminalizes the dissemination, preparation, sale, display to the public, or transfer across the state frontier of written materials, literature, films, videotapes, and “other items advertising pornography” provided that there is an enhanced punishment provided for the same crimes committed by use of violence against a minor.

Furthermore, Article 3.1.1 of the Law Combating Pornography and Prostitution defines the term “advertising pornography” as making explicitly to depict, broadcast, or display the act of sexual intercourse or human genitals with the intention to incite sexual desire by magazines, books, films, audio, videos, pictures, and/or “by any other forms”.

5 – Criminalizes possession of child pornography

The Mongolian legal system does not criminalize possession of child pornography or pornography in general without the intent to distribute.

However, pursuant to Article 5.2 of the Law Combating Pornography and Prostitution, it is forbidden to store publications, magazines, books, films, videos, pictures, and other items advertising pornography for the purpose of distribution, etc. A first-time violation of Article 5.2 of this Law shall be subject to a fine and confiscation of articles advertising pornography as forms of administrative sanctions pursuant to Article 13.2 of this Law. If a contravention of Article 5.2 of this Law has been repeated within a year, it constitutes a criminal offense pursuant to Article 13.1 of the same Law.

6 – Criminalizes virtual images and sexually exploitative representations of children

Mongolian law does not criminalize the production, distribution, commercialization, and possession of child pornography including virtual images and sexually exploitative representations of children which do not necessarily use children in their production.

7 – Addresses the criminal liability of children involved in pornography

Mongolian law does not address the criminal liability of children involved in pornography for their participation, so long as they are victims and not offenders.

In cases of child offenders, the minimum age of criminal responsibility in Mongolia is 14 to 16 years, depending on the seriousness of the crimes committed, pursuant to Article 21 of the Criminal Code.

8 – Establishes criminal liability of legal persons for production or commercialization of child pornography

Mongolian law does not contain provisions establishing criminal liability of legal persons in general, pursuant to Article 8.1 of the Criminal Code, which states that “physical persons only shall be subject to criminal liability”.

However, Mongolian law has provisions creating administrative liabilities of legal persons for commercialization of items advertising pornography, which may also govern commercialization of child pornographic materials, in cases where such acts of legal persons do not constitute criminal offenses as stated below.

With regard to items advertising pornography, Article 5.1 of the Law Combating Pornography and Prostitution prohibits the advertisement of pornography by press and broadcast media. Business entities and organizations that breach Article 5.1 of this Law shall be subject to a fine of 100,000 to 150,000 MNT and if such breach is

repeated within one year, activities of the press (or media) organization shall be suspended provided under Article 13.2.3 of this Law.

Pursuant to Article 5.3 of the Law Combating Pornography and Prostitution, it is forbidden to smuggle magazines, books, pictures, films, videos, or other items advertising pornography. If business entities and organizations violate Article 5.3 of this Law, such legal bodies shall be subject to a fine of 200,000 to 250,000 MNT pursuant to Article 13.2.5 of this Law.

Furthermore, according to Articles 7.2.3 and 8.1.3 of Law Combating Pornography and Prostitution, it is not allowed to show or display erotic magazines, books, videos, pictures, films, drama, shows, performances, or other entertainment to persons under the age of 18. In the case where business entities and organizations contravene Articles 7 and 8 of this Law, such legal persons shall be subject to a fine of 150,000 to 250,000 MNT pursuant to Article 13.2.7 of this Law.

9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State

Mongolia establishes its extraterritorial jurisdiction over pornography offenses provided under the Criminal Code, which may also be applicable to child pornography offenses, if the alleged offender is a national or a permanent resident of Mongolia.

Article 14 of the Criminal Code⁴⁷³ allows the application of Mongolian jurisdiction for crimes as specified by this Code committed outside of its own territory when the offender is a national or a permanent resident of Mongolia. Pursuant to Article 14.1 of the Criminal Code, if a citizen of Mongolia or a stateless person permanently residing in Mongolia committed a crime stipulated in this Code abroad, and he/she has not been sentenced for it, such offender shall be subject to criminal liability. In addition, according to Article 14.4 of the Criminal Code, foreign nationals and stateless persons who have committed crimes beyond the territory of Mongolia shall be subject to criminal liability under this Code only if an international agreement to which Mongolia is a party provides so.

Furthermore, Article 16.1 of the Criminal Code states that culpable acts and omissions subject to criminal liability specified in the Criminal Code which are socially dangerous shall be recognized as crimes.

⁴⁷³ Article 14 of Criminal Code (Grounds and Rules of Application of the Criminal Code to the Persons Who Have Committed Crimes Beyond the Territory of Mongolia)

14.1. If a citizen of Mongolia or a stateless person permanently residing in Mongolia has committed a crime specified in this Code abroad and he/she has not been sentenced for it, he/she shall be subject to criminal liability under this Code.

14.2. If the person specified in paragraph 1 above has been imposed penalty for the crime abroad, a Mongolian court may commute the penalty imposed in accordance with this Code or renounce the person recognized guilty. Unless otherwise provided in an international agreement to which Mongolia is a party the court may recognize the person not guilty in accordance with the grounds and rules set in this Code.

14.3. Unless otherwise provided in an international agreement to which Mongolia is a party Mongolian servicemen who have committed crimes in the course of their service abroad shall be subject to criminal liability under this Code.

14.4. Foreign nationals and stateless persons who have committed crimes beyond the territory of Mongolia shall be subject to criminal liability under this Code if only an international agreement to which Mongolia is a party provides so.

14.5. If a foreign national or a stateless person who does not permanently reside in Mongolia has committed a crime against the interests of Mongolia beyond its territory for which he/she has not been sentenced, he/she may be subjected to criminal liability under this Code in the events specified in an international agreement to which Mongolia is a party.

Moreover, according to Article 123.1 of the Criminal Code, the preparation, dissemination, sale, display to the public, or crossing of the state frontier of the press, literature, films, videotapes, and other items advertising pornography shall constitute a crime under this Code.

10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State

Mongolian law does not provide an explicit provision that establishes its extraterritorial jurisdiction over crimes when the victim is its national. However, Mongolia establishes its extraterritorial jurisdiction over crimes committed outside of its territory if such crimes are against the interests of Mongolia. Pursuant to Article 14.5 of Criminal Code, if a foreign national or a stateless person who does not permanently reside in Mongolia has committed a crime against the interests of Mongolia beyond its territory, and he/she has not been sentenced for it, such person shall be subject to criminal liability under this Code if the events are specified in an international agreement to which Mongolia is a party.

**11 – Establishes the confiscation of assets used to commit or facilitate child pornography offenses; and
12 – Establishes the confiscation of proceeds derived from child pornography offenses**

Mongolian law establishes provisions for the confiscation of property used to commit pornography offenses as stipulated in the Criminal Code or proceeds derived from such offenses, which may also govern child pornography offenses, as stated below.

Article 49 of the Criminal Code⁴⁷⁴ provides general provisions for the confiscation of property. Pursuant to Article 49.2 of the Criminal Code, seizure of items created by way of crime, arms and means used for committing crime, or income gained by way of crime and other things incidental thereto shall be mandatory in addition to the confiscation of property.

In addition, Mongolian law provides for confiscation with regard to pornography offenses.

When any individuals or legal persons advertise pornography by press and broadcast media, thus violating Article 5.1 of the Law Combating Pornography and Prostitution, all proceeds obtained from the advertisement of said pornography shall be confiscated pursuant to Article 13.2.3 of this Law.

Further, if materials promoting pornography including magazines, books, movies, and videos, were prepared (or produced), distributed, sold, or intentionally possessed by individuals or business entities and thus, there is a breach of Article 5.2 of the Law Combating Pornography and Prostitution, Article 13.2.4 of this Law allows a court to issue an order for confiscation of goods related to advertising pornography.

Moreover, for contravention of Article 5.3 of the Law Combating Pornography and Prostitution by smuggling or attempting to smuggle items promoting pornography, items involved in this breach shall be subject to confiscation pursuant to Article 13.2.5 of this Law.

⁴⁷⁴ Article 49 of the Criminal Code (Confiscation of Property)

49.1. Confiscation of property represents a forced free-of-charge withdrawal of the culprit's share property for the benefit of the state in the instances specified in the Special Part of this Code.

49.2. Seizure of items created by way of crime, arms and means used for committing it, or income gained by way of crime and other things incidental thereto shall be mandatory in addition to the confiscation of property.

49.3. When imposing confiscation of property the court shall specify in the judgment what items and property are being confiscated.

Furthermore, any income earned from showing erotic films, video prints in contravention of Articles of 8.1.1 and 8.1.2 of the Law Combating Pornography and Prostitution⁴⁷⁵ shall be confiscated provided under Article 13.2.8 of this Law.

13 – Requires professionals working with children to report child pornography activities

Mongolian law does not have provisions that require professionals who work with children to report child pornography activities to the relevant authorities when they learn of incidents involving children’s participation in pornographic materials.

14 – Requires Internet Service Providers to report child pornography

Mongolian law does not require Internet Service Providers (ISPs) to report suspected child pornography to law enforcement agencies or other relevant authorities upon finding suspected child pornography on their networks.

15 – Has telephone or online hotlines to enable the public to report child abuse

The National Authority for Children (NAC) has operated Friends 1979, a helpline for children available in Mongolia, to receive the complaints related to child protection including child abuse, child neglect, child labor, and child exploitation.⁴⁷⁶

16 – Creates data retention or data preservation provisions

There is law that creates data retention or data preservation provisions in Mongolia. However, Articles 20 and 21 of the Law on the Information Transparency and Rights to Information (enacted in 2011)⁴⁷⁷ have provisions that enable the protection of personal and organizational information with confidentiality.

17 – Requires the identification of users of public computers in cybercafés

Mongolia does not have legislation or regulations that require the identification of users of public computers in cybercafés.

18 – Has a national plan to combat violence against children

Mongolia has a national plan to combat violence against children.

Mongolia issued a Government Resolution of the Approval of National Plan of Action on Commercial Sexual Exploitation and Trafficking of Children and women. This National Plan of Action on Commercial Sexual Exploitation and Trafficking of Children and Women has three implantation stages consisting of: 1) Stage One (2006-2008); 2) Stage Two (2008-2011); and 3) Stage Three (2011-2014).⁴⁷⁸

⁴⁷⁵ Articles 8.1.1 and 8.1.2 of the Law Combating Pornography and Prostitution (Prohibited Items for Show of Erotic films, Video prints, Drama and Dance)

8.1. The following things shall be prohibited in the show of erotic films, video prints, drama, dance, striptease shows, performance competition or other entertainment:

8.1.1. to show these kinds of films and video prints in other places except than specially permitted by Central and local public administrative authorities in charge of science, education and culture;

8.1.2. to broadcast through public channels of televisions

⁴⁷⁶ CHILD HELPLINE INT’L, THE VOICES OF CHILDREN AND YOUNG PEOPLE IN ASIA PACIFIC (2013), at 2, available at http://www.childhelplineinternational.org/media/71326/asiapacific_web.pdf (last visited Jan. 16, 2015).

⁴⁷⁷ Law on the Information Transparency and Rights to Information, available at <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan047231.pdf> (last visited Jan. 16, 2015).

⁴⁷⁸ Resolution of the Government of Mongolia, No.234 of 2005, available at <http://www.notip.org.cn/UserImages/00002167.doc> (last visited Jan. 16, 2015).

19 – Has ratified the CRC and the OPSC

- Mongolia ratified the Convention on the Rights of the Child on July 5, 1990.⁴⁷⁹
- Mongolia ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on June 27, 2003.⁴⁸⁰
- Mongolia ratified the Worst Forms of Child Labour Convention, 1999 (No. 182) on February 26, 2001.⁴⁸¹

20 – Age of criminal liability

The minimum age of criminal responsibility in Mongolia is 14 to 16 years, depending on the seriousness of the crimes, pursuant to Article 21 of the Criminal Code.⁴⁸² According to Article 21.1 of the Criminal Code, persons who have reached 16 years of age at the time of committing a crime shall be subject to criminal liability. In addition, pursuant to Article 21.2 of the Criminal Code, persons 14 to 16 years of age shall be held criminally liable if they commit the following prescribed offenses: homicide (Article 91), deliberate infliction of a severe bodily injury (Article 96), rape (Article 126), theft in aggravating circumstances (Article 145), misappropriation (Article 146), robbery (Article 147), deliberate destruction or damage of property (Article 153), and hooliganism in aggravating circumstances (Articles 181.2 and 181.3) of the Criminal Code.

21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children

Mongolia does not have legislation that specifically addresses the use of ICTs to commit crimes against children.

However, while not specific to child pornography, Article 123 of the Criminal Code criminalizes the dissemination, preparation, sale, display to the public, or transfer across the state frontier of written materials, literature, films, videotapes, and “other items advertising pornography” provided that there is an enhanced punishment provided for the same crimes committed by use of violence against a minor.

Furthermore, Article 3.1.1 of the Law Combating Pornography and Prostitution defines the term “advertising pornography” as making explicitly to depict, broadcast, or display the act of sexual intercourse or human genitals with the intention to incite sexual desire by magazines, books, films, audio, videos, pictures, and/or “by any other forms”.

22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) online advertising of sex tourism with children

Mongolian law does not provide explicit provisions that criminalize trafficking with the intent of producing pornography and advertising child sexual tourism online.

⁴⁷⁹ *Status of Ratification and Accession of the CRC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en (last visited Oct. 24, 2014).

⁴⁸⁰ *Status of Ratification and Accession of the OPSC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last visited Oct. 24, 2014).

⁴⁸¹ *Status of the Ratification of the Worst Forms of Child Labour Convention, 1999*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited Oct. 24, 2014).

⁴⁸² Article 21 of the Criminal Code (Age Limit for Criminal Liability)

21.1. Persons who have attained 16 years of age at the time of committing a crime shall be subject to criminal liability.

21.2. Persons of 14 to 16 years of age shall be subject to criminal liability for homicide (Article 91), deliberate infliction of a severe bodily injury (Article 96), rape (Article 126), theft in aggravating circumstances (Article 145), misappropriation (Article 146), robbery (Article 147), deliberate destruction or damage of property (Article 153) and hooliganism in aggravating circumstances (Articles 181.2 and 181.3).

21.3. If the court finds that the culprit who has committed for the first time a minor or a less serious crime before attaining the age of 18 may be reformed without imposing punishment, it may apply a measure of coercion of educational character specified in this Code.

However, Article 113 of the Criminal Code⁴⁸³ addresses human trafficking in general as elaborated below. Article 113.1 of the Criminal Code makes it an offense to sell and/or purchase human beings with a penalty of a fine equal to 51 to 250 times the minimum salary, 300 to 500 hours of forced labor, or imprisonment up to three years. The penalty shall be increased to imprisonment for a term of more than five to ten years if the crime of sale or acquisition of human beings was committed under the following circumstances prescribed by Article 113.2 of the Criminal Code: 1) with the purpose of taking human blood, tissue, or organs; 2) with the purpose of engaging the victim into prostitution; 3) repeatedly; 4) against two or more persons; 5) against a person under the legal age; 6) in a group, by a group at an advance agreement. Moreover, if the same crime of human trafficking is committed on a permanent basis, by an organized group or a criminal organization or such crime entailed grave harm, the punishment shall be heightened to imprisonment for a term of more than 10 to 15 years pursuant to Article 113.3 of the Criminal Code.

23, 24, 25, and 26 – Existence of legislation criminalizing online grooming, a clear definition of online grooming, the age of a potential victim, and related crimes

Mongolian law does not provide provisions criminalizing online grooming. Furthermore, Mongolian law does not provide a clear definition of online grooming.

However, the Law Combating Pornography and Prostitution criminalizes activities related to prostitution as defined in Article 3.1.2 of this Law.⁴⁸⁴

There are no explicit provisions that consider everyone under 18 years of age as a potential victim of online grooming under Mongolian law.

27 – Criminalizes showing pornography to a child as a standalone offense

Mongolian law does not contain explicit provisions that criminalize showing pornography to a child as a standalone offense. However, showing or displaying pornography to a child can be subject to an administrative sanction as stated below.

⁴⁸³ Article 113 of the Criminal Code (Sale and purchase of humans)

113.1. Sale or acquisition of humans shall be punishable by a fine equal to 51 to 250 amounts of minimum salary, 300 to 500 hours of forced labor or imprisonment for a term of up to 3 years.

113.2. The same crime committed:

113.2.1. with the purpose of taking human blood, tissues or organs;

113.2.2. with the purpose of engaging the victim into prostitution;

113.2.3. repeatedly;

113.2.4. against two or more persons;

113.2.5. against a person under the legal age;

113.2.6. in a group, by a group at an advance agreement

shall be punishable by imprisonment for a term of more than 5 to 10 years.

113.3. The same crime committed on a permanent basis, by trafficking, by an organized group or a criminal organization or if it has entailed grave harm shall be punishable by imprisonment for a term of more than 10 to 15 years.

⁴⁸⁴ Article 3.1.2 of the Law Combating Pornography and Prostitution (Definitions of the law)

3.1. The following terms in this law shall have the below mentioned meanings:

3.1.2. "Prostitution" means soliciting for sex, inducing others into it, pandering and procuring as well as advertising prostitution

Article 3.1.3 of the Law Combating Pornography and Prostitution⁴⁸⁵ stipulates that the term “erotic” in this Law refers to the display of a naked human body with the intention to arouse appreciation for a beauty by art or in an artistic manner.

According to Article 7.2.3 of the Law Combating Pornography and Prostitution, it is not allowed to display erotic magazines, books, videos, and pictures to persons under 18 years of age. In addition, pursuant to Article 8.1.3 of the same Law⁴⁸⁶, it is forbidden to show erotic films, video prints, drama, dance, striptease shows, performance competition, or other entertainment to persons under the age of 18.

Those who violate Articles 7⁴⁸⁷ and 8.1.3 of the Law Combating Pornography and Prostitution by providing erotic materials to a minor under 18 years of age shall be subject to punishment with a fine of 25,000 MNT to 30,000 MNT, and in the event that offenders are business entities and organizations, such legal persons shall be subject to a fine of 150,000 MNT to 250,000 MNT pursuant to Article 13.2.7 of this Law.⁴⁸⁸

28 – Has legislation regarding cyberbullying

There is no legislation regarding cyberbullying in Mongolia.

29 – Has legislation concerning sexting

Mongolia does not have legislation concerning sexting.

⁴⁸⁵ Article 3.1.3 of the Law Combating Pornography and Prostitution (Definitions of the law)

3.1. The following terms in this law shall have the below mentioned meanings:

3.1.3. “erotic” means to display a naked human body with intention to arouse appreciation for a beauty by art or in artistic manner.

⁴⁸⁶ Article 8.1.3 of the Law Combating Pornography and Prostitution (Prohibited Items for Show of Erotic films, Video prints, Drama and Dance)

8.1. The following things shall be prohibited in the show of erotic films, video prints, drama, dance, striptease shows, performance competition or other entertainment:

8.1.3. to show persons under the age of 18.

⁴⁸⁷ Article 7 of the Law Combating Pornography and Prostitution (Regulations for Sale of Erotic Publication, Books, Video prints)

7.1. Erotic publications, books, video prints shall be on sale in specially designated places, prescribed by the Governors of the Capital City or Aimags (Provinces).

7.2. The following things shall be prohibited in the sale of erotic publications, books, and video prints:

7.2.1. to sell at offices, streets, squares, children's organisation, kindergartens, schools, dormitories and student hostels, food and goods markets, trade and entertainment places;

7.2.2. to sell from the hand;

7.2.3. to display to persons under the age of 18.

⁴⁸⁸ Article 13.2.7 of the Law Combating Pornography and Prostitution (Liability for breach of Legislation on Combating Pornography and Prostitution act)

13.2. If a breach of this law does not constitute a criminal offense, offending persons shall be imposed the following administrative sanctions.

13.2.7. For a breach of the article 7, and article 8.1.3 of this law, offending persons shall be imposed a fine of 25000 to 30000 and in the case of business entities and organizations shall be imposed a fine of 150000 to 250000 tugrugs.

Table 2.11 – Country: Myanmar

1 – Has legislation specific to child pornography	Yes
2 – Has a clear definition of child pornography	No (pornography)
3 – Considers everyone under 18 as a potential victim of activities related to child pornography	No (16)
4 – Criminalizes accessing or downloading child pornography images	No
5 – Criminalizes possession of child pornography	No (but criminalizes possession of obscene objects with the intent to distribute)
6 – Criminalizes virtual images and sexually exploitative representations of children	1) No; 2) Yes (not specifically, but obscene objects)
7 – Addresses the criminal liability of children involved in pornography	No (if children are victims, not offenders)
8 – Establishes criminal liability of legal persons for production or commercialization of child pornography	Yes (not specifically, but obscene objects)
9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State	Yes (not specifically, but obscenity offenses)
10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State	No
11 – Establishes confiscation of assets used to commit or facilitate child pornography offenses	No
12 – Establishes confiscation of proceeds derived from child pornography offenses	No
13 – Requires professionals working with children to report child pornography activities	No
14 – Requires Internet Service Providers to report child pornography	No
15 – Has telephone or online hotlines to enable the public to report child abuse	No
16 – Creates data retention or data preservation provisions	No
17 – Requires the identification of users of public computers in cybercafés	Yes
18 – Has a national plan to combat violence against children	Yes
19 – Has ratified the CRC and the OPSC	Yes
20 – Age of criminal liability	7 - 12
21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children	No
22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online	1) Yes (not explicitly, but all forms of sexual exploitation); 2) No
23 – Has legislation that criminalizes online grooming as a standalone offense	No
24 – Has a clear definition of online grooming	No
25 – Considers everyone under 18 as a potential victim of online grooming	No
26 – 1) Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child; or 2) criminalizes grooming regardless of the intent	No
27 – Criminalizes showing pornography to a child as a standalone offense	Yes
28 – Has legislation regarding cyberbullying	No
29 – Has legislation concerning sexting	No

Myanmar

Myanmar (also known as the “Union of Burma”, hereafter referred to as “Myanmar” unless provided otherwise by Myanmar’s law) has made a significant effort to protect children’s rights by joining relevant international treaties including the Convention on the Rights of the Child (CRC) and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC), as well as through adopting domestic legislation.

Laws which protect children’s rights and/or govern violence against children are as follows:

- Child Law (enacted in 1993)⁴⁸⁹
- Penal Code (enacted in 1860, effective as of May 1861)⁴⁹⁰
- Anti-Trafficking in Persons Law (enacted in 2005)⁴⁹¹

EXTRACTS OF LEGISLATION RELATED TO THE TABLE:

1 – Has legislation specific to child pornography

Section 66 (f) of the Child Law⁴⁹² makes it an offense to use a child in pornographic cinema, video, television, and photography with a penalty of up to two years imprisonment, or fine of up to 1,000 kyats, or both.

In addition, Section 292 of the Penal Code⁴⁹³ creates various offenses related to obscenity in general, which may govern child pornography offenses as well, as elaborated below.

⁴⁸⁹ Child Law, available at <http://myanmarhumantrafficking.gov.mm/content/child-law> (last visited Jan. 16, 2015).

⁴⁹⁰ Penal Code, available at http://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf (last visited Jan. 16, 2015).

⁴⁹¹ Anti-Trafficking in Persons Law, available at http://www.no-trafficking.org/content/pdf/antitrafficking_in_persons_law_english.doc (last visited Jan. 16, 2015).

⁴⁹² Section 66 (f) of the Child Law

Whoever commits any of the following acts shall, on conviction be punished with imprisonment for a term which may extend to 2 years or with fine which may extend to kyats 10,000 or with both: -

(f) using the child in pornographic cinema, video, television or photography.

⁴⁹³ Section 292 of the Penal Code (Sale, etc., of obscene books, etc.)

Whoever-

(a) sell, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purpose of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offense under this section or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offense under this section,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Exception - This section does not extend to any book, pamphlet, writing, drawing or painting kept or used bona fide for religious purposes or any representation sculptured engraved painted or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

Section 292 (a) of the Penal Code punishes anyone who sells, lets to hire, distributes, publicly exhibits, or in any manner puts into circulation obscene books, pamphlets, paper, drawings, paintings, representations or figures, or any other obscene object (hereafter referred to as “any obscene object”). Section 292 (a) of the Penal Code also criminalizes the possession and production of any obscene object for the purpose of the sale, distribution, or putting into public exhibition.

Section 292 (b) of the Penal Code criminalizes the importation, exportation, or conveyance of any obscene object for the purposes of the sale, distribution, or public exhibition with knowledge or having reason to believe that such object will be sold, distributed, or publicly exhibited, or in any manner put into circulation.

It is also forbidden to participate in or receive profit from any business where the offender knows or has reason to believe that any such obscene objects are produced, kept, imported, exported, conveyed, publicly exhibited, or put into circulation under Section 292 (c) of the Penal Code. In addition, pursuant to Section 292 (d) of the Penal Code, advertising obscene materials is not allowed.

Moreover, Section 293 of the Penal Code prohibits any person from selling, distributing, exhibiting, or circulating obscene objects as referred to in Section 292 of the Penal Code to a minor under the age of 20 years. Furthermore, Section 294 of the Penal Code punishes anyone, to the annoyance of others, who: (a) does any obscene act in any public place; or (b) sings, recites, or utters any obscene song, ballad, or words in or near any public place.

2 – Has a clear definition of child pornography

There is no statutory definition regarding child pornography in Myanmar. However, Section 3 (b) of the Anti-Trafficking in Persons Law⁴⁹⁴ has a provision providing a clear definition of pornography. Section 3 (b) of the Anti-Trafficking in Persons Law stipulates that the expression “pornography” in this Law means representation through exhibition, indecent show, publication, cinematography, or by use of modern information technology, of a sexual activity or of the sexual parts of a person for a primarily sexual purpose.

In addition, the obscene object stipulated in Section 292 of the Penal Code includes any obscene book, pamphlet, paper, drawing, painting, representation, or figure, or any other obscene object.

Furthermore, the exception to Section 292 of the Penal Code states that this Section does not extend to any obscene objects (including any book, pamphlet, writing, drawing, or painting) kept or used for *bona fide* religious purposes or any representation sculpted, engraved, painted, or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

3 – Considers everyone under 18 as a potential victim of activities related to child pornography

The Child Law does not have provisions that consider everyone under 18 years of age as a potential victim of offenses related to child pornography, regardless of the age of sexual consent.

⁴⁹⁴ Section 3(b) of the Anti-Trafficking in Persons Act

The expressions contained in this Law shall have the meanings given hereunder:-

(b) Pornography means representation through exhibition, indecent show, publication, cinematography or by use of modern information technology of a sexual activity or of the sexual parts of a person for primarily sexual purpose.

However, Section 2 (a) and (b) of the Child Law⁴⁹⁵ states that while the expression “youth” in this Law refers to anyone over 16 but below 18 years of age, the expression “child” in this Law means anyone under 16 years of age. In addition, Section 66 (f) of the Child Law enumerates criminal offenses and criminal penalties for using a child in pornographic cinema, video, television, or photography.

In Myanmar, the age of consent to sexual intercourse is 14 years for females pursuant to Section 375 of the Penal Code.⁴⁹⁶

4 – Criminalizes accessing or downloading child pornography images

The law of Myanmar does not have explicit provisions which criminalize accessing or downloading child pornographic images. However, while not specific to child pornography, the use of electronic transactions technology to sell, let to hire, distribute, publically exhibit, or put into circulation obscene objects pursuant to the Penal Code and the Electronics Transactions Law (enacted in 2004)⁴⁹⁷ might be criminalized as stated below.

Section 292 of the Penal Code punishes anyone who sells, lets to hire, distributes, publicly exhibits, or “in any manner” puts into circulation any obscene object.

Furthermore, it is unlawful to use electronic transactions technology to: (a) do acts detrimental to the security of the State, prevalence of law and order, community peace and tranquility, national solidarity, national economy, or national culture; or (b) receive or send and distribute any information relating to security of the State, prevalence of law and order, community peace and tranquility, national solidarity, national economy, or national culture pursuant to Section 33 of the Electronics Transactions Law.⁴⁹⁸ Failure to abide by Section 33 of this Law can result in a fine and imprisonment of a term from 7 to 15 years.

⁴⁹⁵ Section 2 (a) and (b) of the Child Law

The following expressions contained in this Law shall have the meanings given hereunder:

- (a) Child means a person who has attained the age of 16 years.
- (b) Youth means a person who has attained the age of 16 years but has not attained the age of 18 years.

⁴⁹⁶ Section 375 of the Penal Code (Rape)

A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:

- 1) Against her will;
- 2) Without her consent;
- 3) With her consent, when her consent has been obtained by putting her in fear of death or of hurt;
- 4) With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.;
- 5) With or without her consent, when she is under 14 years.

Explanation – Penetration is sufficient to constitute the sexual intercourse necessary for the offense of rape.

Exception – Sexual intercourse by a man with his wife, the wife not being under 13 years of age, is not rape.

⁴⁹⁷ Electronics Transactions Law, available at <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan041197.pdf> (last visited Jan. 16, 2015).

⁴⁹⁸ Section 33 of the Electronic Transactions Law

Whoever commits any of the following acts by using electronic transactions technology shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 7 years to a maximum of 15 years and may also be liable to a fine -

- (a) doing any act detrimental to the security of the State or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture.

5 – Criminalizes possession of child pornography

The law of Myanmar does not explicitly criminalize possession of child pornography without the intent to distribute.

Section 292 (a) of the Penal Code only punishes any person who possesses an obscene object for the purpose of sale, distribution, public circulation, or putting into public exhibition.

6 – Criminalizes virtual images and sexually exploitative representations of children

While not specific to child pornography, the Penal Code criminalizes illicit activities involving obscene objects which may include sexually exploitative representations of persons. Specifically, Section 292 of the Penal Code provides that any obscene book, pamphlet, paper, drawing, painting, “representation”, or figure, or any other obscene object whatsoever is treated as any obscene object as referred to in this Section.

7 – Addresses the criminal liability of children involved in pornography

The law of Myanmar does not address the criminal liability of children involved in pornography for their participation as long as they are victims, and not offenders.

In cases of child offenders, nothing is an offense which is done by a child under seven years of age pursuant to Section 82 of the Penal Code and Section 28 of the Child Law. In addition, nothing is an offense which is done by a child above 7 years of age and under 12 years of age, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on the occasion pursuant to Section 83 of the Penal Code and Section 28 of the Child Law.

8 – Establishes criminal liability of legal persons for production or commercialization of child pornography

The Penal Code establishes the criminal liability of legal persons for production or commercialization of obscene objects, which might also cover activities related to child pornographic materials.

Section 292 of the Penal Code punishes any person who sells, lets to hire, distributes, publicly exhibits, or in any manner puts into circulation any obscene object. Furthermore, Section 292 of the Penal Code also criminalizes the production of any obscene object for the purpose of sale, distribution, public circulation, or putting into public exhibition. In addition, Section 11 of the Penal Code provides that the term “person” includes any company or association, or body of persons, whether incorporated or not.

9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State

Myanmar establishes its extraterritorial jurisdiction over obscenity offenses as provided in Section 292 of the Penal Code, which may also apply to child pornography offenses, when the alleged offender is its national as stated below.

Section 3 of the Penal Code⁴⁹⁹ stipulates that any person liable, by any law in force in the Union of Burma, to be tried for an offense committed beyond the limits of the Union of Burma shall be death according to the

(b) receiving or sending and distributing any information relating to secrets of the security of the State or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture.

⁴⁹⁹ Section 3 of the Penal Code (Punishment of offenses committed beyond, but which by law may be tried within the Union of Burma)

Any person liable, by any law in force in the Union of Burma, to be tried for an offense committed beyond the limits of the Union of Burma shall be death with according to the provisions of this Code for any act committed beyond the Union of Burma in the same manner as if such act had been committed within the Union of Burma.

provisions of this Code for any act committed beyond the Union of Burma in the same manner as if such act had been committed within the Union of Burma.

Furthermore, Section 4 of the Penal Code⁵⁰⁰ states that this Code also applies to any offense committed by any citizen of the Union of Burma wherever he may be. According to the Explanation to Section 4 of the Penal Code, the word "offense" under this Section includes every act committed outside of the Union of Burma, if committed in the Union of Burma, would be punishable under this Code.

10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State

The Penal Code does not contain provisions that establish the extraterritorial jurisdiction of Myanmar over obscenity offenses stipulated in this Code, which might also encompass child pornography offenses, when the victim is its national.

11 – Establishes the confiscation of assets used to commit or facilitate child pornography offenses; and 12 – Establishes the confiscation of proceeds derived from child pornography offenses

The Penal Code does not have provisions for the: 1) confiscation of assets used to commit or facilitate obscenity offenses prescribed in this Code, which might also cover offenses involving child pornography; and 2) confiscation of proceeds derived from such offenses.

However, Section 27 of the Anti-Trafficking in Persons Act criminalizes making use of or arranging with a trafficking victim for the purpose of pornography by punishment with imprisonment for a term ranging from five years to ten years and also a fine. Section 3 (b) of this Act defines "pornography" as representation through exhibition, indecent show, publication, cinematography, or by use of modern information technology, of a sexual activity or of the sexual parts of a person for primarily sexual purposes.

In addition, Section 33 of the Anti-Trafficking in Persons Act⁵⁰¹ allows the court to order the confiscation or disposal, in accordance with the stipulations, of the property involved in the offense, which has been seized as exhibits. The court may also declare to pay damages to the trafficking victim from the money confiscated or from the proceeds of the sale of property or from the fine.

13 – Requires professionals working with children to report child pornography activities

Myanmar does not have legislation or regulations that provide explicit provisions requiring professionals who work with children to report child pornography activities to relevant authorities when they learn of incidents involving children's participation in pornographic materials.

⁵⁰⁰ Section 4 of the Penal Code (Extension of code to extra-territorial offences)

The provisions of this Code apply also to any offence committed by any citizen of the Union wherever he may be.

Explanation - In this section the word "offence" includes every act committed outside the Union of Burma which, if committed in the Union of Burma, would be punishable under this Code.

⁵⁰¹ Section 33 of the Anti-Trafficking in Persons Act

The Court shall, in passing a sentence for any offense provided in this Law, pass an order for confiscation or disposal in accordance with the stipulations of the property involved in the offense, which have been seized as exhibits. It may pass an order to pay damages to the trafficked victim from the money confiscated or from the proceeds of sale of property or from the fine.

However, pursuant to Section 33 of the Child Law,⁵⁰² anyone who is aware of circumstances involving a child in need of protection and care listed in Section 32 of this Law⁵⁰³ may report such circumstances to competent agencies as stated below.

Pursuant to Section 33 (a) of the Child Law, anyone who is of the opinion that any child mentioned in section 32 of this Law should be protected and cared for by the State may intimate this to the relevant Social Welfare Officer stating the facts of the case.

Furthermore, Section 33 (b) of the Child Law requires the Social Welfare Officer to make investigations in the prescribed manners to determine whether or not the child needs the protection and care of the State upon the receipt of the intimation made by another or if he has received personally relevant information. After the investigation in order to determine whether a child in issue is one who needs the protection and care of the State, the social welfare worker shall submit his findings together with his opinion to the director general. In addition, the Social Welfare Officer has the power in respect of the investigation as stated above, to inform the parents, guardian, or police officer and causing the child to be brought before him.

In addition, pursuant to Section 62 of the Child Law,⁵⁰⁴ a probation officer has the following duties and powers including, but not limited to: (a) reporting to the relevant Social Welfare Officer, if it is found that a child is in

⁵⁰² Section 33 of the Child Law

(a) Whoever is of the opinion that any child mentioned in section 32 should be protected and cared by the State may intimate the relevant Social Welfare Officer stating the facts of the case;

(b) The Social Welfare Officer shall, on receipt of the intimation under sub-section (a) or if he has personally received information in any manner make investigations in the manner prescribed to determine whether or not the child needs the protection and care of the State and submit his findings together with his opinion to the Director General;

(c) The Social Welfare Officer has the following powers in respect of the investigation under sub-section (b)

(i) informing the parents, guardian or police officer and causing the child to be brought before him;

(ii) entrusting the child to the parents or guardian on execution of a bond or sending the child to a temporary care station, before receiving the decision of the Director General.

(iii) calling and examining necessary witnesses;

(iv) hearing the explanation of the parents, guardian or the child, if necessary.

⁵⁰³ Section 32 of the Child Law

The following child is a child in need of protection and care:-

(a) one who has no parents or guardian;

(b) one who earns his living by begging;

(c) one who is of so depraved a character that he is uncontrollable by his parents or guardian;

(d) one who is in the custody of a cruel or wicked parents or guardian;

(e) one who is of unsound mind;

(f) one who is afflicted with a contagious disease;

(g) one who uses a narcotic drug or a psychotropic substance;

(h) one who is determined as such from time to time by the Social Welfare Department.

⁵⁰⁴ Section 62 of the Child Law

The duties and powers of a Probation Officer are as follows :-

(a) making necessary investigations and submitting a report, when assigned responsibility in respect of the child by the Juvenile Court;

(b) managing and supervising a child who is ordered to submit to his management and supervision in the manner prescribed;

need of protection and care under this Law; and (b) informing the relevant police officer or the Juvenile Court, if it is found that there is likelihood of danger befalling any child or that a child is in danger. However, the list detailing which children may be considered “a child in need of protection and care” in Section 32 of the Child Law does not explicitly address a child who is involved in pornographic or obscene materials.

14 – Requires Internet Service Providers to report child pornography

Myanmar does not have legislation or regulations that contain explicit provisions that require Internet Service Providers (ISPs) to report child pornography to law enforcement agencies or other relevant authorities when they discover it on their own networks.

15 – Has telephone or online hotlines to enable the public to report child abuse

Myanmar does not have telephone or online hotlines to enable the public to report child abuse. However, while not specific to child abuse, Myanmar has telephone hotlines (Anti Human Trafficking Hotlines – 067 411 317 or 067 411 318) that enable the public to report trafficking incidents.⁵⁰⁵

16 – Creates data retention or data preservation provisions

Myanmar does not have any law that provides data retention or data preservation provisions as of April 4, 2014.

17 – Requires the identification of users of public computers in cybercafés

The Public Access Center Regulations by Myanmar Info-Tech⁵⁰⁶ require the identification of users of public computers in cybercafés as stated below.

Section 1 of the Public Access Center Regulations by Myanmar Info-Tech stipulates that “All cyber café users must supply his/her name, identity card (or passport number), address, and phone number to the cyber café and the cyber café owner must record the users’ identities.”

Section 8 of these Regulations further articulates that cybercafés must post a sign stating that “Cyber Crimes (Hacking, Virus Distribution, Port Scanning, etc.) and acts against Myanmar culture are prohibited.”

18 – Has a national plan to combat violence against children

Myanmar has a National Plan of Action for Children (2006 – 2015), which consists of plans based on the UN Millennium Development Goals (MDGs) and the UN World Fit for Children goals (WFFC) which outlines

(c) reporting to the relevant Social Welfare Officer, if it is found that a child is in need of protection and care under this Law;

(d) informing the relevant police officer or the Juvenile Court, if it is found that there is likelihood of danger befalling any child or that a child is in danger;

(e) arresting the child without a warrant and handing him over to a police officer, if a child who has escaped from a training school, home, temporary care station or a custodian is found;

(f) coordinating and co-operating with the parents or guardians concerned, local elders and persons from social organizations for the benefit of children;

(g) carrying out duties relating to the child, which are assigned by the Social Welfare Department.

⁵⁰⁵ *Report Abuse, Myanmar*, THECODE.ORG, <http://www.thecode.org/report-a-concern/> (last visited Nov. 20, 2014).

⁵⁰⁶ *Public Access Center Regulations by Myanmar Info-Tech*, OPENNET INITIATIVE, <https://opennet.net/blog/2008/07/burmese-regulations-cybercafes-stringent-expected> (last visited Nov. 20, 2014).

measures for implementation in four focused areas – Health and Nutrition, Water and Sanitation, Education and Child Development, and Child Protection.⁵⁰⁷

19 – Has ratified the CRC and the OPSC

- Myanmar acceded to the Convention on the Rights of the Child on July 15, 1991.⁵⁰⁸
- Myanmar acceded to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on January 16, 2012.⁵⁰⁹
- Myanmar ratified the Worst Forms of Child Labour Convention, 1999 (No. 182) on December 18, 2013 and the Convention entered into force on December 18, 2014.⁵¹⁰

20 – Age of criminal liability

The minimum age of criminal responsibility in Myanmar is seven years of age pursuant to Section 82 of the Penal Code⁵¹¹ and Section 28 of the Child Law.⁵¹² If a child above 7 but under 12 years of age and of insufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion commits an offense, such child is also exempted from criminal liability pursuant to Section 83 of the Penal Code⁵¹³ and Section 28 of the Child Law.

21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children

Myanmar does not have legislation that specifically addresses the use of ICTs to commit crimes against children. However, while not specific to child pornography, Section 3 (b) of the Anti-Trafficking in Persons Law defines the term “pornography” as a representation through exhibition, indecent show, publication, cinematography, or “by use of modern information technology” of a sexual activity or of the sexual parts of a person for primarily sexual purposes.

Furthermore, while not specific to child pornography, Section 292 (a) of the Penal Code punishes anyone who sells, lets to hire, distributes, publicly exhibits, or “in any manner” puts into circulation obscene books, pamphlets, paper, drawings, paintings, representations or figures, or any other obscene object.

⁵⁰⁷ MINISTRY OF SOCIAL WELFARE RELIEF & RESETTLEMENT, NAT’L COMM. ON THE RIGHTS OF THE CHILD, MYANMAR NATIONAL PLAN OF ACTION FOR CHILDREN (2006 – 2015), available at http://ovcsupport.net/wp-content/uploads/Documents/Myanmar_National_Plan_of_Action_for_Children_2006_2015_1.pdf (last visited Jan. 19, 2015).

⁵⁰⁸ *Status of Ratification and Accession of the CRC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en (last visited Oct. 24, 2014).

⁵⁰⁹ *Status of Ratification and Accession of the OPSC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last visited Oct. 24, 2014).

⁵¹⁰ *Status of the Ratification of the Worst Forms of Child Labour Convention, 1999*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited Jan. 19, 2015).

⁵¹¹ Section 82 of the Penal Code (Act of a child under seven years of age)

Nothing is an offense which is done by a child under seven years of age.

⁵¹² Section 28 of the Child Law

(a) Nothing is an offense which is done by a child under 7 years of age;

(b) Nothing is an offense which is done by a child above 7 years of age and under 12, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

⁵¹³ Section 83 of the Penal Code (Act of a child above seven and under twelve of immature understanding)

Nothing is an offense which is done by a child above seven years age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on the occasion.

Moreover, Section 33 of the Electronic Transactions Law makes it an offense to: (a) do any acts detrimental to the prevalence of law and order or national culture; or (b) receive or send and distribute any information relating to the prevalence of law and order or national culture “by using electronic transactions technology”. Those who commit such offenses shall be punishable with a penalty of imprisonment for a term extending from a minimum of seven years to a maximum of 15 years and a fine according to Section 33 of this Law.

22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online

The Anti-Trafficking in Persons Law and the Penal Code do not provide explicit provisions that criminalize child trafficking with the intent of producing pornography.

However, Section 24 of the Anti-Trafficking in Persons Law punishes a person who is guilty of trafficking in persons especially women, children, and youth, with imprisonment for a term of a minimum of ten years to a maximum of life imprisonment and with a fine. In addition, while the expression “youth” in this Law means person who has attained the age of 16 years but has not attained the age of 18 years, the expression “child” in this Law means a person who has not attained the age of 16 years pursuant to Section 3 (j) and (k) of this Law.⁵¹⁴

Section 27 of the Anti-Trafficking in Persons Law punishes anyone who is guilty of an offense involving making use of or arranging with a trafficking victim for the purpose of pornography, upon his/her conviction, with a penalty of imprisonment of a term ranging from a minimum of five to maximum ten years and a fine.

Furthermore, Section 372 of the Penal Code⁵¹⁵ punishes anyone who sells, lets to hire, or otherwise disposes of any person under the age of 18 years with the intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person, or for any unlawful or immoral purposes, or knowing it to be likely that such person will at any age be employed or used for any such purpose.

Moreover, Section 373 of the Penal Code⁵¹⁶ punishes anyone who buys, hires, or otherwise obtains possession of any person under the age of 18 years with the intent that such person shall at any age be employed or used

⁵¹⁴ Section 3 (j) and (k) of the Anti-Trafficking in Persons Law

The expressions contained in this Law shall have the meanings given hereunder:-

(j) Child means a person who has not attained the age of 16 years;

(k) Youth means a person who has attained the age of 16 years but has not attained the age of 18 years.

⁵¹⁵ Section 372 of the Penal Code (Selling minor for purposes of prostitution, etc.)

Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation 1 – When a female under the age of eighteen years ..., sold, let for hire or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation 2 – For the purposes of this section "illicit intercourse" means sexual intercourse between person not united by marriage or by any union or tie which, though not amounting to a marriage, is recognized by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.

⁵¹⁶ Section 373 of the Penal Code (Buying minor for the purposes of prostitution, etc.)

Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

for the purpose of prostitution or illicit intercourse with any person, or for any unlawful or immoral purposes, or knowing it to be likely that such person will at any age be employed or used for any such purpose.

The Penal Code does not provide explicit provisions that criminalize advertising child sex tourism online. However, Section 292 (d) of the Penal Code punishes any person who advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act involving obscene objects as provided in this Section or that any such obscene object can be procured from or through any person.

23, 24, 25, and 26 – Existence of legislation criminalizing online grooming, a clear definition of online grooming, the age of a potential victim, and related crimes

The law of Myanmar does not have provisions that criminalize online grooming. In addition, the law of Myanmar does not provide a clear definition of online grooming as well.

Moreover, Myanmar’s law does not contain provisions that consider everyone under the age of 18 as a potential victim of online grooming. However, a child is defined as anyone under 16 years of age pursuant to Section 2 (a) of the Child Law and Section 3 (j) of the Anti-Trafficking in Persons Law. Additionally, a “youth” is defined as anyone over 16 but below 18 years of age according to Section 2 (b) of the Child Law and Section 3 (k) of the Anti-Trafficking in Persons Law.

27 – Criminalizes showing pornography to a child as a standalone offense

Section 293 of the Penal Code⁵¹⁷ criminalizes the sale, distribution, exhibition, or circulation of obscene objects as referred to in Section 292 of this Code to a minor under the age of 20 years with a penalty of imprisonment up to six months, or a fine, or both.

28 – Has legislation regarding cyberbullying

There is no legislation regarding cyberbullying in Myanmar.

29 – Has legislation concerning sexting

Myanmar does not have legislation concerning sexting.

Explanation 1 – Any prostitute or any person keeping or managing a brothel who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation 2 – “Illicit intercourse” has the same meaning as in section 372.

⁵¹⁷ Section 293 of the Penal Code (Sale, etc. of obscene objects to young person)

Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Table 2.12 – Country: Philippines

1 – Has legislation specific to child pornography	Yes
2 – Has a clear definition of child pornography	Yes
3 – Considers everyone under 18 as a potential victim of activities related to child pornography	Yes
4 – Criminalizes accessing or downloading child pornography images	Yes (accessing)
5 – Criminalizes possession of child pornography	Yes
6 – Criminalizes virtual images and sexually exploitative representations of children	Yes
7 – Addresses the criminal liability of children involved in pornography	No (if children are victims, not offenders)
8 – Establishes criminal liability of legal persons for production or commercialization of child pornography	Yes
9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State	No
10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State	No
11 – Establishes confiscation of assets used to commit or facilitate child pornography offenses	Yes
12 – Establishes confiscation of proceeds derived from child pornography offenses	Yes
13 – Requires professionals working with children to report child pornography activities	Yes
14 – Requires Internet Service Providers to report child pornography	Yes
15 – Has telephone or online hotlines to enable the public to report child abuse	Yes
16 – Creates data retention or data preservation provisions	Yes
17 – Requires the identification of users of public computers in cybercafés	No (draft bill)
18 – Has a national plan to combat violence against children	Yes
19 – Has ratified the CRC and the OPSC	Yes
20 – Age of criminal liability	15 – 18
21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children	Yes
22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online	1) Yes; 2) No (but criminalizes sex tourism)
23 – Has legislation that criminalizes online grooming as a standalone offense	Yes (grooming whose definition includes online grooming)
24 – Has a clear definition of online grooming	Yes (grooming)
25 – Considers everyone under 18 as a potential victim of online grooming	Yes
26 – 1) Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child; or 2) criminalizes grooming regardless of the intent	Yes
27 – Criminalizes showing pornography to a child as a standalone offense	Yes
28 – Has legislation regarding cyberbullying	Yes
29 – Has legislation concerning sexting	No

Philippines

In the Philippines, a wide range of children’s rights are protected through adopting domestic legislation and by joining relevant international treaties including the Convention on the Rights of the Child (CRC) and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC).

Laws which protect children’s rights and/or govern violence against children are as follows:

- Republic Act No. 9775, an act defining the crime of child pornography, prescribing penalties therefor and for other purposes (also known as “Anti-Child Pornography Act of 2009”) (hereafter also referred to as “Republic Act No. 9775”)⁵¹⁸
- Republic Act No. 7610, an act providing for stronger deterrence and special protection against child abuse, exploitation, and discrimination and for other purposes (also known as “Special Protection of Children against Abuse, Exploitation and Discrimination Act”) (hereafter also referred to as “Republic Act No. 7610”)⁵¹⁹
- Republic Act 9208, an act to institute policies to eliminate trafficking in persons especially women and children, establishing the necessary institutional mechanisms for the protection and support of trafficked persons, providing penalties for its violation, and for other (also known as “Anti-Trafficking in Persons Act of 2003”), as amended by Republic Act No. 10364, an act expanding Republic Act No. 9208, entitled an act to institute policies to eliminate trafficking in persons especially women and children, establishing the necessary institutional mechanisms for the protection and support of trafficked persons, providing penalties for its violations and for other purposes (also known as “Expanded Anti-Trafficking in Persons Act of 2012”) (hereafter referred to as “Republic Act No. 9208”⁵²⁰, as amended by Republic Act No. 10364”⁵²¹)
- Republic Act No. 9262, an act defining violence against women and their children, providing for protective measures for victims, prescribing penalties therefore, and for other purposes (also known as “Anti-Violence Against Women and Their Children Act of 2004”) (hereafter also referred to as “Republic Act No. 9262”)⁵²²
- Republic Act No. 10175, an act defining cybercrime, providing for the prevention, investigation, suppression and the imposition of penalties therefor and for other purposes) (also known as “Cybercrime Prevention Act of 2012”) (hereafter also referred to as “Republic Act No. 10175”)⁵²³
- Act No. 3815, Revised Penal Code of the Philippines (hereafter referred to as “Revised Penal Code”)⁵²⁴
- Republic Act No. 10627, an act requiring all elementary and secondary schools to adopt policies to prevent and address the acts of bullying in their institutions (also known as “Anti-Bullying Act of 2013”) (hereafter also referred to as “Republic Act No. 10627”)⁵²⁵

⁵¹⁸ Republic Act No. 9775, available at http://www.congress.gov.ph/download/ra_14/RA09775.pdf (last visited Jan. 16, 2015).

⁵¹⁹ Republic Act No. 7610, available at <http://www.chanrobles.com/republicactno7610.html> (last visited Jan. 21, 2015).

⁵²⁰ Republic Act No. 9208, available at http://www.lawphil.net/statutes/repacts/ra2003/ra_9208_2003.html (last visited Jan. 16, 2015).

⁵²¹ Republic Act No. 10364, available at <http://www.gov.ph/downloads/2013/02feb/20130206-RA-10364-BSA.pdf> (last visited Jan. 16, 2015).

⁵²² Republic Act No. 9262, available at http://www.lawphil.net/statutes/repacts/ra2004/ra_9262_2004.html (last visited Jan. 16, 2015).

⁵²³ Republic Act No. 10175, available at <http://www.gov.ph/2012/09/12/republic-act-no-10175/> (last visited Jan. 16, 2015).

⁵²⁴ Act No. 3815, Revised Penal Code, available at http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_revised_penal_code.pdf (last visited Jan. 16, 2015).

⁵²⁵ Republic Act No. 10627, available at <http://www.gov.ph/2013/09/12/republic-act-no-10627/> (last visited Jan. 16, 2015).

- Republic Act 9344, an act establishing a comprehensive juvenile justice and welfare system, creating the juvenile justice and welfare council under the department of justice, appropriating funds therefor and for other purposes (also known as “Juvenile Justice and Welfare Act of 2006”), as amended by Republic Act No. 10630, an act strengthening the juvenile justice system in the Philippines, amending for the purpose of Republic Act No. 9344, otherwise known as “Juvenile Justice and Welfare Act of 2006” and appropriating funds therefor (also known as “Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile justice and Welfare Council under the Department of Social Welfare and Development, Appropriating Funds Therefor, and for Other Purposes”) (hereafter referred to as “Republic Act No. 9344⁵²⁶, as amended by Republic Act No. 10630⁵²⁷”)

Furthermore, the rules and regulations which protect children’s rights and/or govern violence against children in the Philippines are as follows:

- Rules and Regulations on the Reporting and Investigation of Child Abuse Cases⁵²⁸
- Implementing Rules and Regulations of Republic Act No. 9775, otherwise known as the Anti-Child Pornography Act of 2009 (hereafter also referred to as “Implementing Rules and Regulations of the Anti-Child Pornography Act of 2009”)⁵²⁹
- Implementing Rules and Regulations of Regulations of Republic Act No. 10627, otherwise known as the Anti-Bullying Act of 2013 (hereafter also referred to as “Implementing Rules and Regulations of the Anti-Bullying Act of 2013”)⁵³⁰

EXTRACTS OF LEGISLATION RELATED TO THE TABLE:

1 – Has legislation specific to child pornography

The Philippines has legislation specific to child pornography as stated below.

The Anti-Child Pornography Act of 2009 and the Cybercrime Prevention Act of 2012 criminalize activities related to child pornography in the Philippines.

Section 4 of the Anti-Child Pornography Act of 2009⁵³¹ enumerates illegal acts relating to child pornography. Besides, Section 15 (b)-(i) of this Act⁵³² punishes any person found guilty of violating Section 4 of the same Act.

⁵²⁶ Republic Act No. 9344, available at <http://www.gov.ph/2006/04/28/republic-act-no-9344-s-2006/> (last visited Jan. 16, 2015).

⁵²⁷ Republic Act No. 10630, available at <http://www.gov.ph/2013/10/03/republic-act-no-10630/> (last visited Jan. 16, 2015).

⁵²⁸ Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, available at <http://www.chanrobles.com/REPUBLIC%20ACT%20No.%207610.%20IMPLEMENTING%20RULES%20&%20REGULATIONS.pdf> (last visited Jan. 21, 2015).

⁵²⁹ Implementing Rules and Regulations of the Anti-Child Pornography Act of 2009, available at <http://www1.umn.edu/humanrts/research/Philippines/IRR%20of%20the%20Anti%20Child%20Pornography%20Act.pdf> (last visited Jan. 21, 2015).

⁵³⁰ Implementing Rules and Regulations of the Anti-Bullying Act of 2013, available at <http://www.gov.ph/2013/12/13/implementing-rules-and-regulations-of-republic-act-no-10627/> (last visited Jan. 21, 2015).

⁵³¹ Section 4 of the Anti-Child Pornography Act of 2009 (Unlawful or Prohibited Acts)

It shall be unlawful for any person:

- (a) To hire, employ, use, persuade, induce or coerce a child to perform in the creation or production of any form of child pornography;
- (b) To produce, direct, manufacture or create any form of child pornography;
- (c) To publish, offer, transmit, sell, distribute, broadcast, advertise, promote, export or import any form of child pornography;
- (d) To possess any form of child pornography with the intent to sell, distribute, publish, or broadcast: Provided. That possession of three (3) or more articles of child pornography of the same form shall be prima facie evidence of the intent to sell, distribute, publish or broadcast;

It is unlawful for any person to: 1) induce, persuade, coerce, or use a child to perform in the creation or production of any form of child pornography (Section 4 (a)); 2) produce or create any form of child pornography (Section 4 (b)); and 3) publish, sell, transmit, offer, distribute, broadcast, advertise, export, or import any form of child pornography (Section 4 (c)). Any person found guilty of violating Section 4 (a), (b), and (c) of this Act shall suffer the penalty of reclusion temporal in its maximum period and a fine of not less than one million pesos, (Php1,000,000.00) but not more than two million (Php2,000,000.00) pursuant to Section 15 (b) of the Anti-Child Pornography Act of 2009. The duration of the penalty of reclusion temporal shall be from 12 years and one day to 20 years, according to Article 27 of the Revised Penal Code. Specifically, the maximum period of the penalty of reclusion temporal shall be from 17 years, four months and one day to 20 years, pursuant to Article 76 of the same Code.

In addition, according to Section 4 of the Anti-Child Pornography Act of 2009, it is unlawful for anyone to: 1) engage in the luring or grooming of a child (Section 4 (h)); 2) willfully access any form of child pornography (Section 4 (j)); or 3) possess any form of child pornography (Section 4 (l)). Any person found guilty of violating

(e) To knowingly, willfully and intentionally provide a venue for the commission of prohibited acts as, but not limited to, dens, private rooms, cubicles, cinemas, houses or in establishments purporting to be a legitimate business;

(f) For film distributors, theaters and telecommunication companies, by themselves or in cooperation with other entities, to distribute any form of child pornography;

(g) For a parent, legal guardian or person having custody or control of a child to knowingly permit the child to engage, participate or assist in any form of child pornography;

(h) To engage in the luring or grooming of a child;

(i) To engage in pandering of any form of child pornography;

(j) To willfully access any form of child pornography;

(k) To conspire to commit any of the prohibited acts stated in this section. Conspiracy to commit any form of child pornography shall be committed when two (2) or more persons come to an agreement concerning the commission of any of the said prohibited acts and decide to commit it; and

(l) To possess any form of child pornography.

⁵³² Section 15 (b)-(i) of Anti-Child Pornography Act of 2009 (Penalties and Sanctions)

The following penalties and sanctions are hereby established for offenses enumerated in this Act:

(b) Any person found guilty of violating Section 4(a), (b) and (c) of this Act shall suffer the penalty of reclusion temporal in its maximum period and a fine of not less than One million pesos (Php1,000,000.00) but not more than Two million (Php2,000,000.00);

(c) Any person found guilty of violating Section 4(d), (e) and (f) of this Act shall suffer the penalty of reclusion temporal in its medium period and a fine of not less than Seven hundred fifty thousand pesos (Php750,000.00) but not more than One million pesos (Php1,000,000.00);

(d) Any person found guilty of violating Section 4(g) of this Act shall suffer the penalty of *reclusion temporal* in its minimum period and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than Seven hundred thousand pesos (Php700,000.00);

(e) Any person found guilty of violating Section 4(h) of this Act shall suffer the penalty of *prision mayor* in its maximum period and a fine of not less than Three hundred thousand pesos (Php300,000.00) but not more than Five hundred thousand pesos (Php500,000.00);

(f) Any person found guilty of violating Section 4(i) of this Act shall suffer the penalty of *prision mayor* in its minimum period and a fine of not less than Three hundred thousand pesos (Php300,000.00) but not more than Five hundred thousand pesos (Php500,000.00);

(g) Any person found guilty of violating Section 4(j) of this Act shall suffer the penalty of *prision correccional* in its maximum period and a fine of not less than Two hundred thousand pesos (Php200,000.00) but not more than Three hundred thousand pesos (Php300,000.00);

(h) Any person found guilty of violating Section 4(k) of this Act shall suffer the penalty of *prision correccional* in its medium period and a fine of not less than One hundred thousand pesos (Php100,000.00) but not more than Two hundred fifty thousand pesos (Php250,000.00);

(i) Any person found guilty of violating Section 4(l) of this Act shall suffer the penalty of *arresto mayor* in its minimum period and a fine of not less than Fifty thousand pesos (Php50,000.00) but not more than One hundred thousand pesos (Php100,000.00).

Section 4 (h), (i), and (j) of this Act shall be subject to penalty in accordance with Section 15 (e), (f), or (g) of the same Act as discussed below.

Moreover, Section 5 of the Anti-Child Pornography Act of 2009 specifies that the crime of child pornography is deemed committed by a syndicate if carried out by a group of three or more persons conspiring or confederating with one another and shall be punished under Section 15 (a) of this Act. Any person found guilty of syndicated child pornography as defined in Section 5 of this Act shall suffer the penalty of reclusion perpetua and a fine of not less than two million pesos (Php2,000,000.00), but not more than five million pesos (Php5,000,000.00) pursuant to Section 15 (a) of the same Act. Any person sentenced to any of the perpetual penalties shall be pardoned after undergoing the penalty for 30 years, unless such person by reason of his conduct or some other serious cause shall be considered by the Chief Executive as unworthy of pardon according to Article 27 of the Revised Penal Code.

In addition, according to Sections 4 (c) (2) and 8 of the Cybercrime Prevention Act of 2012, child pornography offenses defined, prohibited, and punishable under the Anti-Child Pornography Act of 2009 are committed through a computer system, these offenses shall constitute cybercrime offenses, provided that the penalty to be imposed shall be one degree higher than that provided for in the Anti-Child Pornography Act of 2009.

Furthermore, Section 9 of the Special Protection of Children against Abuse, Exploitation and Discrimination Act⁵³³ makes it an offense to hire, employ, use, persuade, induce, or coerce a child to perform in obscene exhibitions and indecent shows, whether live or video, or model in obscene publications or pornographic materials or to sell or distribute such materials.

Article 201 of the Revised Penal Code⁵³⁴ also criminalizes acts related to immoral doctrines, obscene publications, and exhibitions and indecent shows.

⁵³³ Section 9 of the Special Protection of Children against Abuse, Exploitation and Discrimination Act (Obscene Publications and Indecent Shows)

Any person who shall hire, employ, use, persuade, induce or coerce a child to perform in obscene exhibitions and indecent shows, whether live or in video, or model in obscene publications or pornographic materials or to sell or distribute the said materials shall suffer the penalty of prision mayor in its medium period.

If the child used as a performer, subject or seller/distributor is below twelve (12) years of age, the penalty shall be imposed in its maximum period.

Any ascendant, guardian, or person entrusted in any capacity with the care of a child who shall cause and/or allow such child to be employed or to participate in an obscene play, scene, act, movie or show or in any other acts covered by this section shall suffer the penalty of prision mayor in its medium period.

⁵³⁴ Article 201 of the Revised Penal Code (Immoral doctrines, obscene publications and exhibitions and indecent shows)

The penalty of prision mayor or a fine ranging from six thousand to twelve thousand pesos, or both such imprisonment and fine, shall be imposed upon:

(1) Those who shall publicly expound or proclaim doctrines openly contrary to public morals;

(2) (a) the authors of obscene literature, published with their knowledge in any form; the editors publishing such literature; and the owners/operators of the establishment selling the same;

(b) Those who, in theaters, fairs, cinematographs or any other place, exhibit, indecent or immoral plays, scenes, acts or shows, whether live or in film, which are prescribed by virtue hereof, shall include those which

(1) glorify criminals or condone crimes;

(2) serve no other purpose but to satisfy the market for violence, lust or pornography;

(3) offend any race or religion;

(4) tend to abet traffic in and use of prohibited drugs; and

(5) are contrary to law, public order, morals, and good customs, established policies, lawful orders, decrees and edicts;

(3) Those who shall sell, give away or exhibit films, prints, engravings, sculpture or literature which are offensive to morals.

2 – Has a clear definition of child pornography

The Anti-Child Pornography Act of 2009 provides a clear definition of child pornography.

According to Section 3 (b) of the Anti-Child Pornography Act of 2009, “child pornography” refers to any representation, whether visual, audio, or written combination thereof, by electronic, mechanical, digital, optical, magnetic, or any other means, of a child engaged or involved in real or simulated explicit sexual activities.

In addition, pursuant to Section 3 (c) of the Anti-Child Pornography Act of 2009, “explicit sexual activity” includes actual or simulated: 1) sexual intercourse or lascivious acts including, but not limited to, contact involving genital to genital, oral to genital, anal to genital, or oral to anal, whether between persons of the same or opposite sex; 2) bestiality; 3) masturbation; 4) sadistic or masochistic abuse; 5) lascivious exhibition of genitals, buttocks, breasts, pubic area and/or anus; or 6) use of any object or instrument for lascivious acts.

3 – Considers everyone under 18 as a potential victim of activities related to child pornography

The law considers everyone under the age of 18 as a potential victim of activities related to child pornography defined, prohibited, and punishable by the Anti-Child Pornography Act of 2009. Section 3 (a) of the Anti-Child Pornography Act of 2009 stipulates that “child” refers to a person below 18 years of age.

In the Philippines, the age of consent to sexual intercourse is 12 years for females pursuant to Article 335 of the Revised Penal Code. However, having sexual contact with a minor, whether a female or a male (under 18), is an offense if the minor consents to the act for money, etc. according to Section 5 of the Special Protection of Children against Abuse, Exploitation and Discrimination Act.

4 – Criminalizes accessing or downloading child pornography images

Section 4 (j) of the Anti-Child Pornography Act of 2009 explicitly makes it unlawful to willfully access any form of child pornography. Any person found guilty of violating Section 4 (j) of this Act shall suffer the penalty of prision correccional in its maximum period and a fine of not less than two hundred thousand pesos (Php200,000.00) but not more than three hundred thousand pesos (Php300,000.00) pursuant to Section 15 (g) of the same Act. The duration of the penalty of prision correccional shall be from six months and one day to six years according to Article 27 of the Revised Penal Code. Specifically, the maximum period of the penalty of prision correccional shall be from four years, two months and one day to six years pursuant to Article 76 of this Code.

5 – Criminalizes possession of child pornography

Section 4 (l) of the Anti-Child Pornography Act of 2009 criminalizes possession of any form of child pornography without the intent to distribute. Pursuant to Section 15 (i) of this Act, any person found guilty of violating Section 4 (l) of the same Act shall suffer the penalty of arresto mayor in its minimum period and a fine of not less than fifty thousand pesos (Php50,000.00) but not more than one hundred thousand pesos (Php100,000.00). The duration of the penalty of arresto mayor shall be from one month and one day to six months according to Article 27 of the Revised Penal Code. Specifically, the minimum period of the penalty of arresto mayor shall be from one to two months pursuant to Article 76 of this Code.

In addition, pursuant to Section 4 (d) of the Anti-Child Pornography Act of 2009, it is forbidden to possess any form of child pornography with the intent to sell, distribute, publish, or broadcast provided that possession of three or more articles of child pornography of the same form shall be prima facie evidence of the intent to sell, distribute, publish, or broadcast. If a person is found guilty of violating Section 4 (d) of this Act, such person shall be subject to the penalty of reclusion temporal in its medium period and a fine of not less than seven hundred fifty thousand pesos (Php750,000.00), but not more than one million pesos (Php1,000,000.00) according to

Section 15 (c) of the same Act. The medium period of the penalty of reclusion temporal shall be from 14 years, eight months and one day to 17 years and four months pursuant to Article 76 of the Revised Penal Code.

6 – Criminalizes virtual images and sexually exploitative representations of children

Philippine law criminalizes the production, distribution, possession, and commercialization of child pornography including virtual images and sexually exploitative representations of children that do not necessarily use real children in their production as elaborated below.

Regarding virtual images of children, Section 3 (a) of the Anti-Child Pornography Act of 2009 stipulates that the term “child” in this Act refers to a person below 18 years of age. In addition, Section 3 (a) of the same Act explicitly prescribes that, for the purpose of this Act, a definition of the term “child” in this Act shall also extend to: 1) a person regardless of age who is presented, depicted, or portrayed as a child defined herein; and 2) computer-generated, digitally or manually crafted images, or graphics of a person who is represented or who is made to appear to be a child as defined herein.

Furthermore, concerning sexually exploitative representations of children, Section 3 (b) of the Anti-Child Pornography Act of 2009 defines the term “child pornography” in this Act as any representation of a child engaged or involved in real or simulated explicit sexual activities provided that the term “explicit sexual activity” is defined by Section 3 (c) of the same Act.

7 – Addresses the criminal liability of children involved in pornography

Philippine law does not address the criminal liability of children involved in pornography as long as they are victims, and not offenders. Sections 18 and 19 of the Anti-Child Pornography Act of 2009 address mandatory services and programs for victims of child pornography.

In the case of child offenders, the minimum age of criminal liability in the Philippines is 15 years pursuant to Section 6 of the Republic Act No. 9344, as amended by Republic Act No. 10630. Section 6 of the Republic Act No. 9344, as amended by Republic Act No. 10630 further articulates that a child over 15 years of age, but below 18 years of age, shall be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

8 – Establishes criminal liability of legal persons for production or commercialization of child pornography

Section 3 (k) of the Anti-Child Pornography Act of 2009 provides that “person” refers to any natural or judicial entity. Thus, any legal entities that violate Section 4 of the Anti-Child-Pornography Act of 2009 by engaging in production or commercialization of child pornography shall be subject to criminal penalty as stipulated in Section 15 of this Act.

In addition, Section 16 (b) of the Anti-Child Pornography Act of 2009, which establishes the grounds for imposing a penalty on a judicial person in the case of commission of child pornography offenses, reads, “If the offender is a judicial person, the penalty shall be imposed upon the owner, manager, partner, member of the board of directors and /or any responsible officer who participated in the commission of the crime or shall have knowingly permitted or failed to prevent its commission.”

9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State; and

10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State

The Anti-Child Pornography Act of 2009 and the Implementing Rules and Regulations of the Anti-Child Pornography Act of 2009 do not provide explicit provisions establishing the extraterritorial jurisdiction of the Philippines over child pornography offenses stipulated in this Act when the alleged offender is a national of the Philippines or when the victim is a national of the Philippines.

However, Section 22 of the Anti-Child Pornography Act of 2009⁵³⁵ describes the transnational nature of child pornography offenses. Furthermore, Section 23 of this Act prescribes that the Department of Justice (DOJ), in consultation with the Department of Foreign Affairs (DFA), shall endeavor to include child pornography among the extraditable offenses in future treaties. Further, Section 16 (c) of the same Act articulates that if the offender is a foreigner, he/she shall be immediately deported after the complete service of his/her sentence and shall be forever barred from entering the country.

In addition, the Anti-Child Pornography Act of 2009 and the Implementing Rules and Regulations of the Anti-Child Pornography Act of 2009 contain provisions addressing territorial jurisdiction over child pornography offenses prescribed in this Act as stated below. Section 8 of the Anti-Child Pornography Act of 2009 and Section 42 of the Implementing Rules and Regulations of the Anti-Child Pornography Act of 2009 state that jurisdiction over cases for the violation of the Anti-Child Pornography Act of 2009 shall be vested in the Family Court, which has territorial jurisdiction over the place where the offense or any of its essential elements were committed pursuant to Republic Act No. 8369, otherwise known as the “Family Courts Act of 1997”. Section 42 of the Implementing Rules and Regulations of the Anti-Child Pornography Act of 2009 further articulates that in provinces or cities where there are no Family Courts, jurisdiction over cases for the violation of the Anti-Child Pornography Act of 2009 shall be vested with the Regional Trial Court.

11 – Establishes the confiscation of assets used to commit or facilitate child pornography offenses; and

12 – Establishes the confiscation of proceeds derived from child pornography offenses

Section 17 of the Anti-Child Pornography Act of 2009⁵³⁶ enables the court to order the confiscation and forfeiture, in favor of the Government, of all the proceeds, tools, and instruments used in the commission of the

⁵³⁵ Section 22 of the Anti-Child Pornography Act of 2009 (Child Pornography as a Transnational Crime)

Pursuant to the Convention on transnational Organized Crime, the DOJ may execute the request of a foreign state for assistance in the investigation or prosecution of any form of child pornography by: (1) conducting a preliminary investigation against the offender and, if appropriate, to file the necessary charges in court; (2) giving information needed by the foreign state; and (3) to apply for an order of forfeiture of any proceeds or monetary instrument or properly located in the Philippines used in connection with child pornography in the court;

Provided, That if the DOJ refuses to act on the request of for delaying the execution thereof: Provided, further, That the principles of mutuality and reciprocity shall, for this purpose, be at all times recognized.

⁵³⁶ Section 17 of the Anti-Child Pornography Act of 2009 (Confiscation and Forfeiture of the Proceeds, Tools and Instruments Used in Child Pornography)

In addition to the penalty imposed for the violation of this Act, the court shall order the confiscation and forfeiture in favor of the government of all the proceeds, tools and instruments used in the commission of the crime, unless they are the property of a third person not liable for the unlawful act; Provided, however, That all awards for damages shall be taken from the personal and separate properties of the offender; Provided, further, That if such properties are insufficient, the deficiency shall be taken from the confiscated and forfeited proceeds, tools and instruments.

All proceeds derived from the sale of properties used for the commission of any form of child pornography shall accrue to the special account of the DSWD which shall be used exclusively for the implementation of this Act.

When the proceeds, tools and instruments used in the commission of the offense have been destroyed diminished in value or otherwise rendered worthless by any act or omission, directly or indirectly, of the offender, or it has been concealed, removed, converted or transferred to prevent the same from being found or to avoid forfeiture or confiscation, the offender shall be ordered to pay the amount equal to the value of the proceeds, tools and instruments used in the commission of the offense.

child pornography offenses unless they are the property of a third party who is not liable for the unlawful act. Furthermore, Section 17 of this Act specifies that all awards for damages shall be taken from the personal and separate properties of the offender, provided that if such properties are insufficient, the deficiency shall be taken from the confiscated and forfeited proceeds, tools, and instruments.

In addition, Section 17 of the Anti-Child Pornography Act of 2009 provides that all proceeds derived from the sale of properties used for the commission of any form of child pornography shall accrue to the special account of the Department of Social Welfare and Development (DSWD), which shall be used exclusively for the implementation of this Act.

13 – Requires professionals working with children to report child pornography activities

The Rules and Regulations on the Reporting and Investigation of Child Abuse Cases have provisions that require professionals who work with children to report incidents involving child abuse after they have knowledge of such incidents as stated below. Additionally, these Rules and Regulations define the term “child abuse” to include exploitation of a child. Besides, the term “exploitation” defined by these Rules and Regulations includes the involvement of a child in pornographic materials as stated below.

Section 5 of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases establishes the duty of all teachers and administrators in public schools, probation officers, government lawyers, law enforcement officers, other government officials and employees whose work involves dealing with children, to report all incidents of possible child abuse to the Department. The term “Department” is defined as a duly authorized officer or social worker of the Department of Social Welfare and Development or similar agency of a local government unit provided under Section 2 j) of these Rules and Regulations.

In addition, Section 4 of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases specifies that the head of any public or private hospital, medical clinic and similar institution, as well as the attending physician and nurse, shall report to the DSWD, either orally or in writing, the examination and/or treatment of a child who appears to have suffered abuse within 48 hours from knowledge of the same.

Furthermore, according to Section 2 b) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, the term “child abuse” refers to the infliction of physical or psychological injury, cruelty to, or neglect, sexual abuse or exploitation of a child. Moreover, pursuant to Section 2 i) of these Rules and Regulations, the term “exploitation” means the hiring, employment, persuasion, inducement, or coercion of a child to perform in obscene exhibitions and indecent shows, whether live or in video or film, or to pose or act as a model in obscene publications or pornographic materials, or to sell or distribute said materials.

Furthermore, according to Section 6 of the Anti-Child Pornography Act of 2009, complaints on cases of any form of child pornography and other offenses punishable under this Act may be filed by the following people: (1) offended party; (2) parents or guardians; (3) ascendant or collateral relative within the third degree of consanguinity; (4) officer, social worker, or representative of a licensed child-caring institution; (5) officer or social worker of DSWD; (6) local social welfare development officer; (7) Barangay chairman; (8) any law enforcement officer; (9) at least three concerned responsible citizens residing in the place where the violation occurred; or (10) any person who has personal knowledge of the circumstances of the commission of any offense under this Act.

14 – Requires Internet Service Providers to report child pornography

Philippine law contains provisions that require Internet Service Providers (ISPs) to report to law enforcement agencies when they learn of the commission of child pornography activities or offenses using their servers or facilities as stated below.

Section 9 of the Anti-Child Pornography Act of 2009⁵³⁷ obliges an ISP to notify the Philippine National Police (PNP) or the National Bureau of Investigation (NBI) that any form of child pornography is being committed using its server or facility within seven days from learning of the facts and circumstances. However, the ISPs, in good faith in compliance with this Section, can be exempted from civil liabilities. In addition, all ISPs are required to install available technology, program or software to filter or block access to or transmission of child pornography pursuant to Section 9 of this Act. ISPs are mandated to preserve evidence pertaining to child pornography offenses on their servers or facilities for the purpose of investigation or prosecution by the proper authorities under Section 9 of the same Act.

Any ISP that willfully and knowingly fails to comply with the notice and installation requirements under Section 9 of the Anti-Child Pornography Act of 2009 shall be subject to penalty as specified by Section 15 (k) of this Act.⁵³⁸

Moreover, Section 11 of the Anti-Child Pornography Act of 2009⁵³⁹ requires Internet Content Hosts to report the presence of any form of child pornography and the particulars of the person maintaining, hosting, distributing or

⁵³⁷ Section 9 of the Anti-Child Pornography Act of 2009 (Duties of an Internet Service Provider (ISP))

All internet service providers (ISPs) shall notify the Philippine National Police (PNP) or the National Bureau of Investigation (NBI) within seven (7) days from obtaining facts and circumstances that any form of child pornography is being committed using its server or facility. Nothing in this section may be construed to require an ISP to engage in the monitoring of any user, subscriber or customer, or the content of any communication of any such person: Provided, That no ISP shall be held civilly liable for damages on account of any notice given in good faith in compliance with this section.

Furthermore, an ISP shall preserve such evidence for purpose of investigation and prosecution by relevant authorities.

An ISP shall, upon the request of proper authorities, furnish the particulars of users who gained or attempted to gain access to an internet address which contains any form of child pornography.

All ISPs shall install available technology, program or software to ensure that access to or transmittal of any form of child pornography will be blocked or filtered.

An ISP who shall knowingly, willfully and intentionally violate this provision shall be subject to the penalty provided under Section 15(k) of this Act.

The National Telecommunications Commission (NTC) shall promulgate within ninety (90) days from the effectivity of this Act the necessary rules and regulations for the implementation of this provision which shall include, among others, the installation of filtering software that will block access to or transmission of any form of the child Pornography.

⁵³⁸ Section 15 (k) of the Anti-Child Pornography Act of 2009 (Penalties and Sanctions)

The following penalties and sanctions are hereby established for offenses enumerated in this Act:

(k) Any ISP found guilty of willfully and knowingly failing to comply with the notice and installation requirements under Section 9 of this Act shall suffer the penalty of a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than One million pesos (Php1,000,000.00) for the first offense. In case of subsequent offense, the penalty shall be a fine of not less than One million pesos

(Php1,000,000.00) but not more than Two million pesos (Php2,000,000.00) and revocation of its license to operate.

⁵³⁹ Section 11 of the Anti-Child Pornography Act of 2009 (Duties of an Internet Content Host)

An Internet Content Host shall:

- (a) Not host any form of child pornography on its internet address;
- (b) Within seven (7) days, report the presence of any form of child pornography, as well as the particulars of the person maintaining, hosting, distributing or in any manner contributing to such internet address, to the proper authorities; and
- (c) Preserve such evidence for purposes of investigation and prosecution by relevant authorities.

An internet content host shall, upon the request of proper authorities, furnish the particulars of users who gained or attempted to gain access to an internet address that contains any form of child pornography.

in any manner contributing to such Internet address, to the proper authorities. Furthermore, Section 11 of this Act mandates Internet Content Hosts to preserve evidence of the crime involving child pornography offenses committed using their servers or facilities for the purpose of investigation and prosecution by relevant authorities. Any person found guilty of violating Section 11 of this Act shall be punished with the penalty provided under Section 15 (j) of the same Act.⁵⁴⁰

Furthermore, Section 10 of the Anti-Child Pornography Act of 2009⁵⁴¹ creates mandatory reporting duties of credit card companies and banks within seven days from the discovery in case of having direct knowledge of any form of child pornography activities or transactions. In case of the willful or intentional violation of this notice duty under Section 10 of this Act as stated above, the business will be subject to penalties under Section 15 (l) of the same Act.⁵⁴²

15 – Has telephone or online hotlines to enable the public to report child abuse

The Department of Justice (DOJ) of the Philippines provides information on telephone or online hotlines that enable the public to report child abuse as stated below. The term “child abuse” is any act which inflicts physical or psychological injury, cruelty to or the neglect of, sexual abuse of, or which exploits, a child. Therefore, the lines operated by the Department of Justice enable the public to report the sexual exploitation of children upon the discovery of the suspected circumstances.

- Department of Social Welfare & Development or Child Health and Intervention and Protective Service (CHIPS) Tel. No. 734-4216

An Internet Content Host who shall knowingly, willfully and intentionally violate this provision shall be subject to the penalty provided under Section 15(j) of this Act:

Provided, That the failure of the internet content host to remove any form of child pornography within forty-eight (48) hours from receiving the notice that any form of child pornography is hitting its server shall be conclusive evidence of willful and intentional violation thereof.

⁵⁴⁰ Section 15 (j) of the Anti-Child Pornography Act of 2009 (Penalties and Sanctions)

The following penalties and sanctions are hereby established for offenses enumerated in this Act:

(j) Any person found guilty of violating Section 11 of this Act shall suffer the penalty of *prision correccional* in its medium period and a fine of not less than One million pesos (Php1,000,000.00) but not more than Two million pesos (Php2,000,000.00) for the first offense. In the case of a subsequent offense, the penalty shall be a fine not less than Two million pesos (Php2,000,000.00) but not more than Three million pesos (Php3,000,000.00) and revocation of its license to operate and immediate closure of the establishment.

⁵⁴¹ Section 10 of the Anti-Child Pornography Act of 2009 (Responsibility of Mall Owners/Operators and Owners or Lessors of Other Business Establishments)

All mall owners/operators and owners or lessors of other business establishments shall notify the PNP or the NBI within seven (7) days from obtaining facts and circumstances that child pornography is being committed in their premises. Provided, That public display of any form of child pornography within their premises is a conclusive presumption of the knowledge of the mall owners/operators and owners or lessors of other business establishments of the violation of this Act: Provided, further, That a disputable presumption of knowledge by mall owners/operators and owners or lessors of other business establishments should know or reasonably know that a violation of this Act is being committed in their premises. Photo developers, information technology professionals, credit card companies and banks and any person who has direct knowledge of any form of child pornography activities shall have the duty to report any suspected child pornography materials or transactions to the proper authorities within seven (7) days from discovery thereof. Any willful and intentional violation of this provision shall be subject to the penalty provided under Section 15(l) of this Act.

⁵⁴² Section 15 (l) of the Anti-Child Pornography Act of 2009 (Penalties and Sanctions)

The following penalties and sanctions are hereby established for offenses enumerated in this Act:

(l) Any mall owner-operator and owner or lessor of other business establishments including photo developers, information technology professionals, credit card companies and banks, found guilty of willfully and knowingly failing to comply with the notice requirements under Section 10 of this Act shall suffer the penalty of a fine of not less than One million pesos (Php1,000,000.00) but not more than Two million pesos (Php2,000,000.00) for the first offense. In the case of a subsequent offense, the penalty shall be a fine of not less than Two million pesos (Php2,000,000.00) but not more than Three million pesos (Php3,000,000.00) and revocation of its license to operate and immediate closure of the establishment.

- Anti-Child Abuse, Discrimination, Exploitation Division (ACADED) National Bureau of Investigation Tel. Nos. 525-6028/525-8231 loc. 403 & 444
- Commission on Human Rights Child Rights Center Tel. No. 927-4033 (Mon-Fri during office hours)
- Philippine National Police Operation Center Tel. Nos. 712-8613/722-0540 & 724 8749 or nearest police station
- DOJ Task Force on Child Protection, Tel. Nos. 523-8481 to 89, loc. 378 or contact the nearest Provincial, City or Regional Prosecutor
- Local Barangay Council for the Protection of Children⁵⁴³

16 – Creates data retention or data preservation provisions

The Cybercrime Prevention Act of 2012 creates data retention provisions as elaborated below.

The integrity of traffic data⁵⁴⁴ and subscriber information relating to communication services provided by a service provider shall be preserved for a minimum period of six months from the date of the transaction according to Section 13 of the Cybercrime Prevention Act of 2012.⁵⁴⁵

Moreover, law enforcement authorities may order a one-time extension for another six months provided that once computer data preserved, transmitted, or stored by a service provider is used as evidence in a case, the mere furnishing to such service provider of the transmittal document to the office of the prosecutor shall be deemed a notification to preserve the computer data until the termination of the case provided under Section 13 of the Cybercrime Prevention Act of 2012.

17 – Requires the identification of users of public computers in cybercafés

The Philippines does not have legislation or regulations that require the identification of users of public computers in cybercafés (no federal rule effective as of July 14, 2014).

However, Draft Bill No. 2340 – An Act Making Mandatory the Registration of Computer Users in Internet Cafés and Other Similar Establishments⁵⁴⁶ has provisions addressing the identification of users of public computers in Internet cafés as stated below. Section 3 of this draft Bill No. 2340 states that “In the failure of a computer user to present a valid ID prior to availing of the services provided by internet cafés, the administrator of the said internet café will not extend the client access to the services they offer”. Furthermore, Section 3 of the same draft Bill articulates that “there must be an announcement posted on the establishment that computer user registration is required and that they do not honor clients who do not have valid identification”.

⁵⁴³ *Child Protection Program*, DEP’T OF JUSTICE OF THE PHILIPPINES, <http://www.doi.gov.ph/child-protection-program.html> (last visited Nov. 20, 2014).

⁵⁴⁴ Pursuant to Section 12 of the Cybercrime Prevention Act of 2012, the term “traffic data” refers only to the communication’s origin, destination, route, time, date, size, duration, or type of underlying service, but not content, nor identities.

⁵⁴⁵ Section 13 of the Cybercrime Prevention Act of 2012 (Preservation of Computer Data)

The integrity of traffic data and subscriber information relating to communication services provided by a service provider shall be preserved for a minimum period of six months from the date of the transaction. Content data shall be similarly preserved for six (6) months from the date of receipt of the order from law enforcement authorities requiring its preservation.

Law enforcement authorities may order a one-time extension for another six (6) months: Provided, That once computer data preserved, transmitted or stored by a service provider is used as evidence in a case, the mere furnishing to such service provider of the transmittal document to the Office of the Prosecutor shall be deemed a notification to preserve the computer data until the termination of the case.

⁵⁴⁶ Draft Bill No. 2340 – An Act Making Mandatory the Registration of Computer Users in Internet Cafés and Other Similar Establishments, available at http://www.congress.gov.ph/download/basic_15/HB02340.pdf (last visited Jan. 16, 2015).

Furthermore, draft Bill No. 2473 – An Act Prohibiting the Entry of Minors in Internet Cafés or Computer Rental Shops/Computer Gaming Shops or Centers, Providing Penalties for Violation thereof and Other Purposes⁵⁴⁷ contains provisions addressing the identification of users of public computers in Internet café as discussed below. Section 9 of draft Bill No. 2473 stipulates that, “In case of doubt as to the age of the client/customer, the owners, managers and attendants shall verify, by means of any valid form of photographic identification containing the date of birth of the bearer otherwise refuse admission so as to ensure that no person below the age of majority enters the said establishments.”

In addition, Section 3 (g) of the Anti-Child Pornography Act of 2009⁵⁴⁸ provides a definition of the term “Internet café or Kiosk”. The term “Internet café or Kiosk” in this Act refers to an establishment that offers or proposes to offer services to the public for the use of its computer/s or computer system for the purpose of accessing the Internet, computer games, or related services. Moreover, Section 12 of the same Act⁵⁴⁹ provides the local government’s authority to monitor and regulate the establishment and operation of the Internet café or Kiosk within its ambit.

18 – Has a national plan to combat violence against children

Reports by the Philippines presented to the UN Committee on the Rights of the Child states that the “National Framework of Action against Commercial Sexual Exploitation of Children (2001 – 2005) is anchored on the Philippine National Strategic Framework for Plan Development for Children 2000-2025 or ‘Child21’ and served as a child rights-based response guide and roadmap for actions, initiatives or endeavors pursued by the Local Government Units (LGUs), NGOs, private sectors and the national agencies from the prevention to re-integration of children who became victims of commercial sexual exploitation”.⁵⁵⁰

Moreover, Section 2 of the Anti-Child Pornography Act of 2009⁵⁵¹ declares a national policy to protect every child from all forms of exploitation and abuse including, but not limited to: (1) the use of a child pornographic

⁵⁴⁷ Draft Bill No. 2473 – An Act Prohibiting the Entry of Minors in Internet Cafés or Computer Rental Shops/Computer Gaming Shops or Centers, Providing Penalties for Violation thereof and Other Purposes, available at http://congress.gov.ph/download/comms_related_15/HB%202473.pdf (last visited on July 14, 2014).

⁵⁴⁸ Section 3 (g) of the Anti-Child Pornography Law of 2009 (Definition of Terms)

(g) "Internet cafe or kiosk" refers to an establishment that offers or proposes to offer services to the public for the use of its computer/s or computer system for the purpose of accessing the internet, computer games or related services.

⁵⁴⁹ Section 12 of the Anti-Child Pornography Act of 2009 (Authority to Regulate Internet Café or Kiosk)

The local government unit (LGU) of the city or municipality where an internet café or kiosk is located shall have the authority to monitor and regulate the establishment and operation of the same or similar establishments in order to prevent violation of the provisions of this Act.

⁵⁵⁰ UN COMM. ON THE RIGHTS OF THE CHILD, *Consideration of Reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Initial reports of States parties due in 2004, Philippines*, U.N. Doc. CRC/C/OPSC/PHL/1 (Dec. 13, 2011), at 17, paragraph 50, available at http://www.bayefsky.com/reports/philippines_crc_c_opsc_phl_1_2009.pdf (last visited Jan. 16, 2015).

⁵⁵¹ Section 2 of the Anti-Child Pornography Act of 2009 (Declaration of Policy)

The State recognizes the vital role of the youth in nation building and shall promote and protect their physical, moral, spiritual, intellectual, emotional, psychological and social well-being. Towards this end, the State shall:

- (a) Guarantee the fundamental rights of every child from all forms of neglect, cruelty and other conditions prejudicial to his/her development;
- (b) Protect every child from all forms of exploitation and abuse including, but not limited to:
 - (1) the use of a child in pornographic performances and materials; and
 - (2) the inducement or coercion of a child to engage or be involved in pornography through whatever means; and
- (c) Comply with international treaties to which the Philippines is a signatory or a State party concerning the rights of children which include, but not limited to, the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the

performances and materials; and (2) the inducement or coercion of a child to engage or be involved in pornography through whatever means.

19 – Has ratified the CRC and the OPSC

- The Philippines ratified the Convention on the Rights of the Child on August 21, 1990.⁵⁵²
- The Philippines ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on May 28, 2002.⁵⁵³
- The Philippines ratified the Worst Forms of Child Labour Convention, 1999 (No. 182) on November 28, 2000.⁵⁵⁴

20 – Age of criminal liability

The minimum age of criminal liability in the Philippines is 15 years pursuant to Section 6 of the Republic Act No. 9344, as amended by Republic Act No. 10630.⁵⁵⁵ Section 6 of the Republic Act No. 9344, as amended by Republic Act No. 10630, further articulates that a child over 15 years, but below 18 years of age, shall be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children

The principal laws that specifically address crimes against children committed by the use of ICTs in the Philippines are the Anti-Child Pornography Act of 2009 and the Cybercrime Prevention Act of 2012.

The definition of the term “child pornography” under Section 3 (b) of the Anti-Child Pornography Act of 2009 includes any representation, whether visual, audio, or written combination thereof, “by electronic, mechanical, digital, optical, magnetic, or any other means”, of a child engaged or involved in real or simulated explicit sexual activities.

Furthermore, if child pornography offenses defined and punishable by the Anti-Child Pornography Act of 2009 are committed through a computer system, such offenses shall be considered as cybercrime offenses and the

Sale of Children, Child Prostitution and Child Pornography, the International Labor Organization (ILO) Convention No.182 on the Elimination of the Worst Forms of Child Labor and the Convention Against Transnational Organized Crime.

⁵⁵² *Status of Ratification and Accession of the CRC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en (last visited Oct. 24, 2014).

⁵⁵³ *Status of Ratification and Accession of the OPSC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last visited Oct. 24, 2014).

⁵⁵⁴ *Status of the Ratification of the Worst Forms of Child Labour Convention, 1999*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited Oct. 24, 2014).

⁵⁵⁵ Section 6 of the Republic Act No. 9344, as amended by Republic Act No. 10630 (Minimum Age of Criminal Responsibility)

A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child is deemed to be fifteen (15) years of age on the day of the fifteenth anniversary of his/her birthdate.

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

said offenses shall be subject to penalties provided under Sections 4 (c) (2) and 8 of the Cybercrime Prevention Act of 2012.

22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online

Philippine law explicitly criminalizes child trafficking with the intent of producing pornography as stated below.

Section 4 of the Republic Act No. 9208, as amended by Republic Act No. 10364⁵⁵⁶ makes it illegal to recruit, transport, harbor, obtain, transfer, maintain, hire, offer, provide, adopt, or receive a child for purposes of

⁵⁵⁶ Section 4 of the Republic Act No. 9208, as amended by Republic Act No. 10364 (Acts of Trafficking in Persons)

It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

(a) To recruit, obtain, hire, provide, offer, transport, transfer, maintain, harbor, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, or sexual exploitation;

(b) To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage;

(d) To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;

(e) To maintain or hire a person to engage in prostitution or pornography;

(f) To adopt persons by any form of consideration for exploitative purposes or to facilitate the same for purposes of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(g) To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(h) To recruit, hire, adopt, transport, transfer, obtain, harbor, maintain, provide, offer, receive or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person;

(i) To recruit, transport, obtain, transfer, harbor, maintain, offer, hire, provide, receive or adopt a child to engage in armed activities in the Philippines or abroad;

(j) To recruit, transport, transfer, harbor, obtain, maintain, offer, hire, provide or receive a person by means defined in Section 3 of this Act for purposes of forced labor, slavery, debt bondage and involuntary servitude, including a scheme, plan, or pattern intended to cause the person either:

(1) To believe that if the person did not perform such labor or services, he or she or another person would suffer serious harm or physical restraint; or

(2) To abuse or threaten the use of law or the legal processes; and

(k) To recruit, transport, harbor, obtain, transfer, maintain, hire, offer, provide, adopt or receive a child for purposes of exploitation or trading them, including but not limited to, the act of buying and/or selling a child for any consideration or for barter for purposes of exploitation. Trafficking for purposes of exploitation of children shall include:

(1) All forms of slavery or practices similar to slavery, involuntary servitude, debt bondage and forced labor, including recruitment of children for use in armed conflict;

(2) The use, procuring or offering of a child for prostitution, for the production of pornography, or for pornographic performances;

(3) The use, procuring or offering of a child for the production and trafficking of drugs; and

(4) The use, procuring or offering of a child for illegal activities or work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals; and

(l) To organize or direct other persons to commit the offenses defined as acts of trafficking under this Act.

exploitation or trading them, including, but not limited to, the act of buying and/or selling a child⁵⁵⁷ for any consideration or for barter for purposes of exploitation. Trafficking for purposes of exploitation of children shall include the use, procuring or offering of a child for prostitution⁵⁵⁸, for the production of pornography⁵⁵⁹, or for pornographic performances pursuant to Section 4 (k) (2) of the Republic Act No. 9208, as amended by Republic Act No. 10364.

Any person found guilty of committing any of the acts enumerated in Section 4 of the Republic Act No. 9208, as amended by Republic Act No. 10364 shall suffer the penalty of imprisonment of 20 years and a fine of not less than one million pesos (Php1,000,000.00) but not more than two million pesos (Php2,000,000.00) pursuant to Section 10 of the Republic Act No. 9208, as amended by Republic Act No. 10364.⁵⁶⁰

Philippine law does not have explicit provisions that criminalize advertising child sex tourism online. However, Section 4 (d) of the Republic Act No. 9208, as amended by Republic Act No. 10364 explicitly includes “sex tourism” as an offense of trafficking in person. The term “sex tourism” refers to a program organized by travel and tourism-related establishments and individuals consisting of tourism packages or activities, utilizing and offering escort and sexual services as enticement for tourists, which includes sexual services and practices offered during rest and recreation periods for members of the military according to Section 3 (g) of the Republic Act No. 9208, as amended by Republic Act No. 10364.

Section 10 of the Republic Act No. 9208, as amended by Republic Act No. 10364 specifies punishment for committing offenses of trafficking in person mentioned in Section 4 (d) of the Republic Act No. 9208, as amended by Republic Act No. 10364 by undertaking or organizing tours and travel plans that consist of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography, or sexual exploitation.⁵⁶¹

23 – Has legislation that criminalizes online grooming as a standalone offense

The Anti-Child Pornography Act of 2009 criminalizes the grooming and luring of a child as stated below. In addition, the definition of the term “grooming” provided under this Act includes online grooming.

⁵⁵⁷ The term “child” refers to a person below eighteen (18) years of age or one who is over eighteen (18) but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition according to Section 3 (b) of the Republic Act No. 9208, as amended by Republic Act No. 10364.

⁵⁵⁸ The term “prostitution” refers to any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration pursuant to Section 3(c) of the Republic Act No. 9208, as amended by Republic Act No. 10364.

⁵⁵⁹ The term “pornography” refers to any representation, through publication, exhibition, cinematography, indecent shows, information technology, or by whatever means, of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual purposes pursuant to Section 3(j) of the Republic Act No. 9208, as amended by Republic Act No. 10364.

⁵⁶⁰ Section 10 of the Republic Act No. 9208, as amended by Republic Act No. 10364 (Penalties and Sanctions)

The following penalties and sanctions are hereby established for the offenses enumerated in this Act:

- (a) Any person found guilty of committing any of the acts enumerated in Section 4 shall suffer the penalty of imprisonment of twenty (20) years and a fine of not less than One million pesos (P1,000,000.00) but not more than Two million pesos (P2,000,000.00);

⁵⁶¹ According to Section 3 (h) of the Republic Act No. 9208, as amended by Republic Act No. 10364, the term “sexual exploitation” refers to participation by a person in prostitution, pornography or the production of pornography, in exchange for money, profit or any other consideration or where the participation is caused or facilitated by any means of intimidation or threat, use of force, or other forms of coercion, abduction, fraud, deception, debt bondage, abuse of power or of position or of legal process, taking advantage of the vulnerability of the person, or giving or receiving of payments or benefits to achieve the consent of a person having control over another person; or in sexual intercourse or lascivious conduct caused or facilitated by any means as provided in this Act.

24 – Has a clear definition of online grooming

Although there is no clear definition of online grooming, Philippine law provides a clear definition of grooming, which may extend to offline grooming, as well as online grooming, as discussed below.

Section 3 (h) of the Anti-Child Pornography Act of 2009 defines “grooming” as the act of preparing a child or someone who the offender believes to be a child for sexual activity or a sexual relationship by communicating any form of child pornography including online enticement or enticement through other means.

In addition, Section 3 (i) of the Anti-Child Pornography Act of 2009 defines “luring” as the act of communicating by means of a computer system with a child or someone who the offender believes to be a child for the purpose of facilitating the commission of sexual activity or production of any form of child pornography.

25 – Considers everyone under 18 as a potential victim of online grooming

The Anti-Child Pornography Act of 2009 considers everyone under 18 years of age as a potential victim of grooming offenses.

Section 3 (a) of the Anti-Child Pornography Act of 2009 defines “child” as a person below 18 years of age.

26 – Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child, or criminalizes grooming regardless of the intent

Section 3 (h) of the Anti-Child Pornography Act of 2009 defines “grooming” as the act of preparing a child or someone who the offender believes to be a child for sexual activity or a sexual relationship by communicating any form of child pornography including online enticement or enticement through other means. In addition, Section 4 (h) of the Anti-Child Pornography Act of 2009 prohibits any person from grooming or luring a child. Any person found guilty of violating Section 4 (h) of this Act shall suffer the penalty of prision mayor in its maximum period and a fine of not less than three hundred thousand pesos (Php300,000.00), but not more than five hundred thousand pesos (Php500,000.00) pursuant to Section 15 (e) of the same Act. The duration of the penalty of prision mayor shall be from six years and one day to 12 years according to Article 27 of the Revised Penal Code. Specifically, the maximum period of the penalty of prision mayor shall be from ten years and one day to 12 years pursuant to Article 76 of this Code.

Therefore, the law criminalizes grooming a child when the offender has communicated with a child with the specific intent of sexual activity or a sexual relationship with that child.

27 – Criminalizes showing pornography to a child as a standalone offense

Section 3 (a) of the Anti-Violence Against Women and Their Children Act of 2004 defines violence against women and their children in this Act including physical, sexual, psychological violence, and economic abuse.

Specifically, Section 3 (a) B and C of the Anti-Violence Against Women and Their Children Act of 2004⁵⁶² provides a definition of sexual violence and psychological violence against woman and children, which is related to criminalizing the showing of pornography to a child.

⁵⁶² Section 3 (a) B, C of the Anti-Violence Against Women and Their Children Act of 2004 (Definition of Terms)

As used in this Act,

(a) "Violence against women and their children" refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts:

Section 3 (a) B of the Anti-Violence Against Women and Their Children Act of 2004 states that “sexual violence” refers to an act which is sexual in nature, committed against a woman or her child, which includes forcing the woman or her child to watch obscene publications and indecent shows. Moreover, Section 3 (a) C of the Anti-Violence Against Women and Their Children Act of 2004 states that “psychological violence” includes causing or allowing the victim (a woman or her child) to witness pornography in any form.

Section 5 (h) (5) of the Anti-Violence Against Women and Their Children Act of 2004 ⁵⁶³ also stipulates that the crime of violence against women and their children is committed through engaging in a purposeful, knowing, or reckless act, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman and her child. Such act shall include, but is not limited to, acts of engaging in any form of violence. Acts falling under Section 5 (h) of this Act shall be punished by prison mayor and a fine in the amount of not less than one hundred thousand pesos (Php100,000.00), but not more than three hundred thousand pesos pursuant to Section 6 (f) of the same Act.⁵⁶⁴ The duration of the penalty of prison mayor shall be from six years and one day to 12 years according to Article 27 of the Revised Penal Code.⁵⁶⁵ Additionally, Article 76 of this Code provides that the time included in the penalty of prison mayor in its entirety shall be from six years and one day to 12 years.

B. "Sexual violence" refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:

a) rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim's body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;

b) acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;

c) prostituting the woman or child.

C. "Psychological violence" refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and mental infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.

⁵⁶³ Section 5 (h) (5) of the Anti-Violence Against Women and Their Children Act of 2004 (Acts of Violence Against Women and Their Children)

The crime of violence against women and their children is committed through any of the following acts:

(h) Engaging in purposeful, knowing, or reckless conduct, personally or through another that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:

(5) Engaging in any form of harassment or violence

⁵⁶⁴ Section 6 (f) of the Anti-Violence Against Women and Their Children Act of 2004 (Penalties)

The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:

(f) Acts falling under Section 5 (h) and Section 5 (i) shall be punished by prison mayor.

If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed in the section.

In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (Php100,000.00) but not more than three hundred thousand pesos (Php300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.

⁵⁶⁵ Extract of Article 27 of the Revised Penal Code

Section One. — Duration of Penalties

Prison mayor and temporary disqualification — The duration of the penalties of prison mayor and temporary disqualification shall be from six years and one day to twelve years, except when the penalty of disqualification is imposed as an accessory penalty, in which case its duration shall be that of the principal penalty.

Furthermore, Section 3 (j) of the Anti-Child Pornography Act of 2009 defines “pandering” as the act of offering, advertising, promoting, representing, or distributing, through any means, any material or purported material that is intended to cause another to believe that the material or purported material contains any form of child pornography, regardless of the actual content of the material or purported material.

Section 4 (i) of the Anti-Child Pornography Act of 2009 makes it illegal for anyone to engage in the pandering of any form of child pornography. Any person found guilty of violating Section 4 (i) of this Act shall suffer the penalty of *prision mayor* in its minimum period and a fine of not less than three hundred thousand pesos (Php300,000.00) but not more than five hundred thousand pesos (Php500,000.00) according to Section 15 (f) of the same Act.⁵⁶⁶

28 – Has legislation regarding cyberbullying

There is legislation regarding cyberbullying in the Philippines. Pursuant to Section 2 of the Anti-Bullying Act of 2013, the term “bullying” is defined as any severe or repeated use by one or more students of a written, verbal or electronic expression, or a physical act or gesture, or any combination thereof, directed at another student that has the effect of actually causing or placing the latter in reasonable fear of physical or emotional harm or damage to his property. In addition, Section 2 of the Anti-Bullying Act of 2013 explicitly includes cyberbullying or any bullying done through the use of technology or any electronic means in the definition of bullying.

Furthermore, pursuant to Section 3, paragraph b, subparagraph 4 of the Implementing Rules and Regulations of the Anti-Bullying Act of 2013 and Section 3, paragraph M, subparagraph 2 of the DepED Order No. 40, s. 2012, the term “cyberbullying” or “any bullying done through the use of technology or any electronic means” refers to any conduct resulting to harassment, intimidation, or humiliation, through the use of electronic means or other forms of technology, such as, but not limited to texting, email, instant messaging, chatting, internet, social media, social networking websites, online games, or other platforms or formats.

Section 3 of the Anti-Bullying Act of 2013 and Section 5(2) of the Implementing Rules and Regulations of the Anti-Bullying Act of 2013 direct all elementary and secondary schools to adopt anti-bullying policies and such policies shall include provisions that prohibit cyberbullying or any bullying done through the use of technology or any electronic means.

29 – Has legislation concerning sexting

There is no legislation concerning sexting in the Philippines. However, the Cybercrime Prevention Act of 2012 criminalizes “cybersex” as a content-related offense among cybercrime offenses punishable under this Act. According to Section 4 (c) (1) of the Cybercrime Prevention Act of 2012, “cybersex” refers to the willful engagement, maintenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favor or consideration. Section 8 of the Cybercrime Prevention Act of 2012⁵⁶⁷ punishes any person who violates Section 4 (c) (1) of this Act.

⁵⁶⁶ Section 15 (f) of the Anti-Child Pornography Act of 2009 (Penalties and Sanctions)

The following penalties and sanctions are hereby established for offenses enumerated in this Act:

(f) Any person found guilty of violating Section 4(i) of this Act shall suffer the penalty of *prision mayor* in its minimum period and a fine of not less than Three hundred thousand pesos (Php300,000.00) but not more than Five hundred thousand pesos (Php500,000.00).

⁵⁶⁷ Extract of Section 8 of Cybercrime Prevention Act of 2012 (Penalties)

Any person found guilty of any of the punishable acts enumerated in Section 4(c)(1) of this Act shall be punished with imprisonment of *prision mayor* or a fine of at least Two hundred thousand pesos (Php200,000.00) but not exceeding One million pesos (Php1,000,000.00) or both.

Table 2.13 – Country: Republic of Korea

1 – Has legislation specific to child pornography	Yes
2 – Has a clear definition of child pornography	Yes
3 – Considers everyone under 18 as a potential victim of activities related to child pornography	Yes (under 19)
4 – Criminalizes accessing or downloading child pornography images	Yes (downloading)
5 – Criminalizes possession of child pornography	Yes
6 – Criminalizes virtual images and sexually exploitative representations of children	Possibly Yes
7 – Addresses the criminal liability of children involved in pornography	No (if the child is a victim, not an offender)
8 – Establishes criminal liability of legal persons for production or commercialization of child pornography	Yes
9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State	Yes
10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State	Yes
11 – Establishes confiscation of assets used to commit or facilitate child pornography offenses	Yes
12 – Establishes confiscation of proceeds derived from child pornography offenses	Yes
13 – Requires professionals working with children to report child pornography activities	Yes
14 – Requires Internet Service Providers to report child pornography	No
15 – Has telephone or online hotlines to enable the public to report child abuse	Yes
16 – Creates data retention or data preservation provisions	Yes
17 – Requires the identification of users of public computers in cybercafés	No
18 – Has a national plan to combat violence against children	Yes
19 – Has ratified the CRC and the OPSC	Yes
20 – Age of criminal liability	14
21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children	Yes
22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online	1) Yes; 2) No
23 – Has legislation that criminalizes online grooming as a standalone offense	No (but criminalizes acts related to online grooming)
24 – Has a clear definition of online grooming	No
25 – Considers everyone under 18 as a potential victim of online grooming	Possibly Yes (not explicitly)
26 – 1) Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child; or 2) criminalizes grooming regardless of the intent	Unclear
27 – Criminalizes showing pornography to a child as a standalone offense	Yes
28 – Has legislation regarding cyberbullying	Yes
29 – Has legislation concerning sexting	Possibly Yes (but does not use the term “sexting”)

Republic of Korea

In the Republic of Korea, the Constitution of the Republic of Korea (enacted on July 17, 1948 and last amended on October 29, 1987) (hereafter referred to as “Constitution”) contains provisions for the protection of children’s rights. Specifically, Article 34 (4) of the Constitution provides that the State has the duty to implement policies for enhancing the welfare of minors.

Laws which protect children’s rights and/or govern violence against children are as follows:

- Criminal Act (enacted in 1953)
Criminal Act (last amended on December 30, 2014 and effective as of December 30, 2014) (*available online in Korean*)
Criminal Act (amended on April 5, 2013 and effective as of June 19, 2013) (*available online in both Korean and English*)
- Act on Special Cases concerning the Punishment, etc. of Sexual Crimes (enacted in 2010)
Act on Special Cases concerning the Punishment, etc. of Sexual Crimes (last amended on December 18, 2012 and effective as of December 19, 2013) (*available online in Korean*)
Act on Special Cases concerning the Punishment, etc. of Sexual Crimes (amended on January 17, 2012 and effective as of March 16, 2012) (*available online in both Korean and English*)
- Act on the Protection of Children and Juveniles from Sexual Abuse (enacted in 2009)
Act on the Protection of Children and Juveniles from Sexual Abuse (last amended on January 28, 2014 and effective as of September 29, 2014) (*available online in Korean*)
Act on the Protection of Children and Juveniles from Sexual Abuse (amended on December 18, 2012 and effective as of June 19, 2013) (*available online in both Korean and English*)
- Act on the Prevention of and Countermeasures against Violence in Schools (enacted in 2004)
Act on the Prevention of and Countermeasures against Violence in Schools (last amended on July 30, 2013 and effective as of January 31, 2014) (*available online in Korean*)
Act on the Prevention of and Countermeasures against Violence in Schools (amended on March 23, 2013 and effective as of March 23, 2013) (*available online in both Korean and English*)
- Child Welfare Act (enacted in 1961)
Child Welfare Act (last amended on January 28, 2014 and effective as of September 29, 2014) (*available online in Korean*)
Child Welfare Act (amended by Act No. 9122 on June 13, 2008) (*available online both in English and Korean*)
- Act on Promotion of Information and Communication Network Utilization and Information Protection, etc. (enacted in 2001)
Act on Promotion of Information and Communication Network Utilization and Information Protection, etc. (last amended on May 28, 2014 and effective as of November 29, 2014) (*available online in Korean*)
Act on Promotion of Information and Communication Network Utilization and Information Protection, etc. (amended by Act No. 10166 on March 22, 2010) (*available online in both Korean and English*)
- Juvenile Protection Act (enacted in March 7, 1997; last amended on March 22, 2013; and effective as of September 23, 2013) (*available online in both Korean and English*)⁵⁶⁸

⁵⁶⁸ For the purposes of this Regional Study, the unofficial English translation of Constitution and laws of the Republic of Korea was used. It is available at http://elaw.klri.re.kr/kor_service/main.do (last visited Jan. 16, 2015).

In case of the absence of the unofficial English translation of the latest laws of the Republic of Korea available online, the unofficial English translation of laws of the Republic of Korea was conducted based on the original texts of laws of the Republic of Korea, available at <http://www.law.go.kr/main.html> (*in Korean*) with reference to the unofficial English translation of the former laws of the Republic of Korea (prior to the recent amendment of the said laws), available at http://elaw.klri.re.kr/kor_service/main.do (last visited Jan. 16, 2015).

With respect to the sexual exploitation of children, Article 302 of the Criminal Act punishes a person who has sexual intercourse with a minor under the age of 19 years through fraud, threat, or force with imprisonment for not more than five years.

In addition, Article 17, subparagraph 2 of the Child Welfare Act prohibits any person from: 1) having a child engage in lewd acts or mediating such acts; or 2) committing child sexual abuse, such as sexual harassment, which make such child feel sexually ashamed.

EXTRACTS OF LEGISLATION RELATED TO THE TABLE:

1 – Has legislation specific to child pornography

Article 11 of the Act on the Protection of Children and Juveniles from Sexual Abuse⁵⁶⁹ criminalizes the production, distribution, public exhibition, importation, exportation, sale, lease, or provision of child or juvenile pornography. Possession of a child or juvenile pornographic item with the knowledge that such item in his/her possession is child or juvenile pornography shall be punished by imprisonment for not more than one year or a fine not exceeding 20 million won pursuant to the same Article of this Act.

Furthermore, while not specific to child or juvenile pornography, Article 243 of the Criminal Act articulates that “Any person who distributes, sells, lends, openly displays or shows any obscene documents, drawings, pictures, films or other things shall be punished by imprisonment for not more than one year or by a fine not exceeding 5 million won.”

Moreover, while not specific to child or juvenile pornography, Article 244 of the Criminal Act specifies that “A person who, for the purpose of accomplishing the acts as prescribed in Article 243, manufactures, possesses, imports or exports obscene goods, shall be punished by imprisonment for not more than one year or by a fine not exceeding 5 million won.”

2 – Has a clear definition of child pornography

The Act on the Protection of Children and Juveniles from Sexual Abuse provides a clear definition of child or juvenile pornography as stated below.

⁵⁶⁹ Article 11 of the Act on the Protection of Children and Juveniles from Sexual Abuse (Production, Distribution, etc. of Child or Juvenile Pornography)

- (1) Any person who produces, imports or exports child or juvenile pornography shall be punished by imprisonment for life or for a fixed term of at least five years.
- (2) Any person who sells, lends, distributes or provides child or juvenile pornography for commercial purposes, or possesses or transports them any of such purposes, or publicly exhibits or displays them shall be punished by imprisonment with prison labor for not more than ten years.
- (3) Any person who distributes, provides, publicly exhibits or displays child or juvenile pornography shall be punished by imprisonment with prison labor for not more than seven years or by a fine not exceeding 50 million won.
- (4) Any person who recruits a child or juvenile for a child or juvenile pornography producer, knowing that he/she is to be used for producing child or juvenile pornography shall be punished by imprisonment with prison labor at least three year.
- (5) Any person who possesses child or juvenile pornography knowing that it is child or juvenile pornography shall be punished by imprisonment with prison labor for a period for not more than one year or by a fine not exceeding 20 million won.
- (6) Any person who attempts to commit an offense as prescribed in paragraph (1) shall be punished.

Article 2, subparagraph 5 of the Act on the Protection of Children and Juveniles from Sexual Abuse⁵⁷⁰ stipulates that the term “child or juvenile pornography” in this Act means the depiction of children or juveniles, or persons or representations that can be perceived evidently as children or juveniles, doing any act defined in subparagraph 4 (purchasing child or juvenile sex) or engaging in any other sexual act in the form of a film, video, game software, or picture or image, etc. displayed on computers or other communications media.

According to Article 2, subparagraph 4 of the Act on the Protection of Children and Juveniles from Sexual Abuse,⁵⁷¹ the term “purchasing child or juvenile sex” in this Act refers to doing any of the following acts to a child or juvenile or compelling them to do such an act, in return for offering or promising to offer money and valuables or other property gains, services or convenience to those who arrange the purchase of child or juvenile sex, or those who actually protect and supervise the child or juvenile, or any other person: (a) sexual intercourse; (b) pseudo-sexual intercourse using parts of the body, such as the mouth and anus, or implements; (c) touching or exposing the whole or part of the body, which causes sexual humiliation or repugnance of ordinary people; (d) masturbation.

In 2014, the Supreme Court of the Republic of Korea ruled that a pornographic film featuring an adult actress wearing a high school uniform and posing as a teenager does not necessarily fall within the scope of the former Article 2, subparagraph 5 of the former Act on the Protection of Children and Juveniles from Sexual Abuse (prior to amendment on December 18, 2012), which defines “child or juvenile pornography” as the depiction of children or juveniles, or persons or representations that can be perceived as children or juveniles.

The Supreme Court of the Republic of Korea further articulated that in order for the said images to be deemed “representations that can be perceived as children or juveniles” provided under Article 2, subparagraph 5 of the former Act on the Protection of Children and Juveniles from Sexual Abuse (prior to amendment on December 18, 2012), the source of an image, the details of its production, as well as the identity and appearance of the character shall be comprehensively considered.⁵⁷²

⁵⁷⁰ Article 2, subparagraph 5 of the Act on the Protection of Children and Juveniles from Sexual Abuse (Definitions)

The terms used in this Act shall be defined as follows:

5. The term "child or juvenile pornography" means depiction of children or juveniles, or persons or representations that can be perceived evidently as children or juveniles, doing any act defined in any of subparagraph 4 or engaging in any other sexual act in the form of a film, video, game software, or picture, image, etc. displayed on computers or other communications media.

⁵⁷¹ Article 2, subparagraph 4 of the Act on the Protection of Children and Juveniles from Sexual Abuse (Definitions)

The terms used in this Act shall be defined as follows:

4. The term “purchasing child or juvenile sex” means doing any of the following acts to a child or juvenile or compelling a child or juvenile to do such act, in return for offering or promising to offer money and valuables or other property gains, services or favors to those who arrange the purchase of child or juvenile sex, or those who actually protect and supervise the child or juvenile, or any other third person:

- (a) Sexual intercourse;
- (b) Pseudo-sexual intercourse using part of the body, such as the mouth and anus, or implements;
- (c) Contacting or exposing all or part of the body, which would cause sexual humiliation or repugnance of ordinary people;
- (d) Masturbation.

⁵⁷² See the full text of Decision 2013 Do 4503 at http://glaw.scourt.go.kr/wsjo/panre/sio100.do?contId=2153353&q=*&nq=&w=panre§ion=panre_tot&subw=&subsection=&subld=1&csq=&groups=6,7,5,9&category=&outmax=1&msort=s:6:0,d:1:1,p:2:0&onlycount=&sp=&d1=&d2=20141020~20141119&d3=&d4=&d5=&pg=19&p1=&p2=&p3=&p4=&p5=&p6=&p7=&p8=&p9=&p10=&p11=&p12=&sysCd=WSJO&tabGbnCd=&saNo=&joNo=&lawNm=&hanjaYn=N&userSrchHistNo=&poption=&srch=&range=&tabld=01 (in Korean) (last visited Jan. 16, 2015).

3 – Considers everyone under 18 as a potential victim of activities related to child pornography

Article 2, subparagraph 1 of the Act on the Protection of Children and Juveniles from Sexual Abuse⁵⁷³ states that the term “children or juveniles” in this Act means persons under 19 years of age provided that persons for whom the first day of January of the year in which they reach 19 years of age has arrived shall be excluded.⁵⁷⁴

In the Republic of Korea, the age of consent for sexual intercourse or indecent acts is 13 years for females pursuant to Article 305 of the Criminal Act.⁵⁷⁵ However, purchasing child or juvenile sex is a crime according to Article 13 (1) of the Act on the Protection of Children and Juveniles from Sexual Abuse, provided that such child or juvenile is under 19 years of age as specified by Article 2, subparagraph 1 of this Act.

4 – Criminalizes accessing or downloading child pornography images

Article 11 (5) of the Act on the Protection of Children and Juveniles from Sexual Abuse criminalizes downloading child or juvenile pornography images as stated below.

To be criminalized under Article 11 (5) of the Act on the Protection of Children and Juveniles from Sexual Abuse, Internet users must not only download child or juvenile pornography from a peer-to-peer (P2P) network or other Internet website with the knowledge that the downloaded item contains child or juvenile pornography, but also store such item in physical form (i.e., save the item on their computer hard drive) according to the announcement made by the National Police Agency of the Republic of Korea in 2012. In order to establish “possession of child or juvenile pornography” prescribed in the Act on the Protection of Children and Juveniles from Sexual Abuse, the prosecutor must prove that: (1) the alleged offender has the knowledge that the downloaded item contains child or juvenile pornographic material; and (2) child or juvenile pornographic images has in his/her actual possession. Simply viewing online through streaming services would not be considered “possession” for the purpose of the Act. In addition, if the material was stored on the viewer’s computer without his/her knowledge, this would not be considered possession.⁵⁷⁶

5 – Criminalizes possession of child pornography

Article 11 (5) of the Act on the Protection of Children and Juveniles from Sexual Abuse criminalizes possession of child or juvenile pornography without the intent to distribute if a person has knowledge that the item in his/her possession is child or juvenile pornography as stipulated in this Act.

⁵⁷³ Article 2, subparagraph 1 of the Act on the Protection of Children and Juveniles from Sexual Abuse (Definitions)

The terms used in this Act shall be defined as follows:

1. The term “children or juveniles” means persons under 19 years of age: Provided, That persons for whom the first day of January of the year in which they reach 19 years of age has arrived shall be excluded;

⁵⁷⁴ This clause requires understanding how age is counted in the Republic of Korea. There are 2 different ways: (1) “full” age (same as here) – on your birthday, you become a year older. This is usually used for legal or official purposes (This Act is an exception in that sense); (2) Korean age – everyone gets a year older on the first day of the year (This Act adopts this method. For example, if A is turning “full” 19 on his birthday this year, he would not be considered “child or juvenile” for the purposes of the Act, even if he has not turned 19 yet).

⁵⁷⁵ Article 305 of the Criminal Act (Sexual Intercourse or Indecent Act with Minor)

A person who has sexual intercourse with a female under 13 years of age or commits an indecent act on such a person shall be punished in accordance with Article 297 (Rape), 298 (Indecent act by compulsion), 301 (Death or Injury Resulting from Rape) and 301-2 (Murder after Rape or Rape resulting in death)

⁵⁷⁶ NAT’L POLICE AGENCY OF THE REPUBLIC OF KOREA, EXPLANATION OF CHILD OR JUVENILE PORNOGRAPHY (2012), at 3-5, available at <http://www.police.go.kr/portal/bbs/view.do?nttId=12673&bbsId=B0000002&searchCnd=1&searchWrd=%EC%9D%8C%EB%9E%80%EB%AC%BC§ion=&sdate=&edate=&useAt=&replyAt=&menuNo=200066&viewType=&delCode=0&pageIndex=1> (in Korean) (last visited Jan. 16, 2015).

In addition, Article 11 (2) of the Act on the Protection of Children and Juveniles from Sexual Abuse also imposes the heightened punishment in cases where a person possesses child or juvenile pornography for the purposes of the sale, distribution, rental, or other prescribed illegal purposes.

6 – Criminalizes virtual images and sexually exploitative representations of children

The law possibly criminalizes the production, distribution, commercialization, and possession of child pornography including virtual images and sexually exploitative representations of children that do not necessarily use real children in their production as stated below.

The term “child or juvenile pornography” means the depiction of children or juveniles, or persons or representations that can be perceived evidently as children or juveniles, doing any act as defined in Article 2, subparagraph 4 of the Act on the Protection of Children and Juveniles from Sexual Abuse (purchasing child or juvenile sex) or engaging in any other sexual act in the form of film, video, game software, or picture or image, etc. displayed on computers or other communications media pursuant to Article 2, subparagraph 5 of the Act on the Protection of Children and Juveniles from Sexual Abuse.

7 – Addresses the criminal liability of children involved in pornography

There is no law in the Republic of Korea that addresses the criminal liability of children involved in pornography if said children are victims of crimes, and not the offenders. Pursuant to Article 2, subparagraph 6 of the Act on the Protection of Children and Juveniles from Sexual Abuse, a definition of the term “victimized children or juveniles” in this Act includes children or juveniles who become victims of child or juvenile pornography offenses provided under Article 11 of the same Act.

In case of child offenders, the minimum age of criminal liability in the Republic of Korea is 14 years pursuant to Article 9 of the Criminal Act.

8 – Establishes criminal liability of legal persons for production or commercialization of child pornography

The Act on the Protection of Children and Juveniles from Sexual Abuse recognizes the criminal liability of a corporation for production or commercialization of child or juvenile pornography. Specifically, Article 32 of the Act on the Protection of Children and Juveniles from Sexual Abuse⁵⁷⁷ punishes not only an offender, but also a corporation, when the representative, an agent, or any other employee of the corporation commits an offense as provided in Article 11 of this Act (Production, Distribution, etc. of Child or Juvenile Pornography) in connection with the business of the corporation.

The legal persons could be exonerated from liability if the legal persons prove that they have not neglected to exercise due diligence and supervision for the relevant duties in order to prevent such an offense.

⁵⁷⁷ Article 32 of the Act on the Protection of Children and Juveniles from Sexual Abuse (Joint Penal Provisions)

If the representative of a corporation, or an agent, employee or any other employed person of a corporation or an individual commits an offense prescribed under any of Articles 11 (3) and (5), 14 (3) and 15 (2) and(3) or Article 31(3) in connection with the business of the corporation or individual, not only shall such offender be punished accordingly, but the corporation or individual shall also be punished by the fine prescribed in the relevant provisions, and if such person commits an offense prescribed under any of Articles 11 (1), (2), (4) and (6), 12, 14 (1), (2) and (4) and 15 (1),not only shall such offender be punished accordingly, but the corporation or individual shall also be punished by a fine not exceeding 50 million won: Provided, That the same shall not apply where the corporation or individual has not neglected to exercise due diligence and supervision for the relevant duties in order to prevent such offense.

9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State; and

10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State

The Republic of Korea establishes its extraterritorial jurisdiction over child or juvenile pornography offenses prescribed in the Act on the Protection of Children and Juveniles from Sexual Abuse when: 1) the alleged offender is its national; or 2) a victim is its national subject to Articles 3, 6, and 8 of the Criminal Act.⁵⁷⁸

Article 3 of the Criminal Act provides that this Act shall apply to all Korean nationals who commit crimes outside of the territory of the Republic of Korea. In addition, Article 33 of the Act on the Protection of Children and Juveniles from Sexual Abuse⁵⁷⁹ states that where criminally prosecuting a Korean citizen who commits a sex offense against a child or juvenile outside of the territory of the Republic of Korea, pursuant to Article 3 of the Criminal Act, the State shall endeavor to obtain criminal information swiftly from the relevant foreign country and punish such offender.

Moreover, Article 6 of the Criminal Act stipulates that this Act shall apply to aliens who commit crimes, other than those specified in the preceding Article, against the Republic of Korea or her nationals outside of the territory of the Republic of Korea. Article 6 of the Criminal Act further articulates that this shall not apply in cases where such acts under the Act in effect at the time of the act do not constitute a crime, or the prosecution thereof or the execution of the punishment therefor is remitted.

Furthermore, pursuant to Article 8 of the Criminal Act, the general provisions of this Act (Articles 1-86) shall also apply to such crimes as are provided by other Acts and subordinate statutes unless provided otherwise by such Acts and subordinate statutes.

11 – Establishes the confiscation of assets used to commit or facilitate child pornography offenses; and

12 – Establishes the confiscation of proceeds derived from child pornography offenses

Article 48 of the Criminal Act⁵⁸⁰ provides general provisions for: 1) the confiscation of assets used to commit or facilitate crimes stipulated in this Act and other laws; and 2) the confiscation of proceeds derived from such crimes. According to Article 8 of the Criminal Act, Part 1, General Provisions under the Criminal Act (Articles 1-86) shall be applicable to crimes as stipulated in any other laws unless provided otherwise under such other laws.

⁵⁷⁸ Information verified by peer reviewer, Jeongmin Hong, on October 1, 2014.

⁵⁷⁹ Article 33 of the Act on the Protection of Children and Juveniles from Sexual Abuse(Punishment of Nationals Who Commit Offenses Overseas)

Where criminally prosecuting a Korean citizen who commits a sex offense against a child or juvenile outside the territory of the Republic of Korea, pursuant to Article 3 of the Criminal Act, the State shall endeavor to obtain criminal information swiftly from the relevant foreign country and punish such offender.

⁵⁸⁰ Article 48 of the Criminal Act (Confiscation and Additional Collection)

- (1) A thing which is not the property of a person other than the criminal or which was acquired by a person other than the criminal with the knowledge of its nature after commission of the crime, may be confiscated in whole or in part if it is:
 1. A thing which has been used or was sought to be used in the commission of the crime;
 2. A thing produced or acquired by means of a criminal conduct;
 3. A thing received in exchange for a thing mentioned in the preceding two subparagraphs.
- (2) When the things mentioned in the preceding paragraph cannot be confiscated, the equivalent price thereof shall be collected.
- (3) When only a part of document, books and drawing, special media records, such as electromagnetic records, etc., or valuable security is confessable, that part shall be destroyed.

Specifically, Article 48 (1) of the Criminal Act illustrates objects that are subject to confiscation upon the commission of a crime (or a criminal act) by a criminal including, but not limited to: 1) a thing which has been used or was sought to be used in the commission of crime; 2) a thing produced or acquired by means of criminal conduct; and 3) a thing received in exchange for a thing mentioned in 1) and 2).

Furthermore, Article 48 (2) of the Criminal Act stipulates that when the things mentioned above cannot be confiscated, the equivalent price thereof shall be collected. Moreover, in respect of additional measures related to confiscation, when only a part of a document, book, drawing, special media records (i.e., electromagnetic records, etc.), or valuable security is confessable, that part will be subject to destruction pursuant to Article 48 (3) of the Criminal Act.

Accordingly, the legal system of the Republic of Korea provides for the: 1) confiscation of assets used to commit or child pornography offenses stipulated in Article 11 of the Act on the Protection of Children and Juveniles from Sexual Abuse; and 2) confiscation of proceeds derived from such offenses subject to Article 48 of the Criminal Act.

13 – Requires professionals working with children to report child pornography activities

Article 34 of the Act on the Protection of Children and Juveniles from Sexual Abuse⁵⁸¹ has provisions that require professionals who work with children to report child or juvenile pornography offenses to a law enforcement agency as stated below.

⁵⁸¹ Article 34 of the Act on the Protection of Children and Juveniles from Sexual Abuse (Reporting on Sex Offenses against Children or Juveniles)

(1) Any person who becomes aware of the occurrence of a sex offense against a child or juvenile may report such offense to an investigative agency.

(2) When the head of any of the following institutions, facilities or organizations and any employee thereof becomes aware of the occurrence of a sex offense against a child or juvenile in the course of performing his/her duties, he/she shall immediately report such offense to an investigative agency: (amended on 21 January 2014)

1. Kindergartens defined in subparagraph 2 of Article 2 of the Early Childhood Education Act;
2. Schools defined in Article 2 of the Elementary and Secondary Education Act;
3. Medical institutions defined in Article 3 of the Medical Service Act;
4. Child welfare facilities defined in subparagraph 10 of Article 3 of the Child Welfare Act;
5. Welfare facilities for persons with disabilities under Article 58 of the Act on Welfare of Persons with Disabilities;
6. Day care centers defined in subparagraph 3 of Article 2 of the Infant Care Act;
7. Private teaching institutes defined in subparagraph 1 of Article 2 and teaching schools under subparagraph 2 of the same Article of the Act on the Establishment and Operation of Private Teaching Institutes and Extracurricular Lessons;
8. Support facilities for victims of sex trafficking, etc. under Article 5 of the Act on the Prevention of Sexual Traffic and Protection, etc. of Victims and sex trafficking victim counseling centers under Article 10 of the same Act;
9. Single-parent family welfare centers under Article 19 of the Single-Parent Family Support Act;
10. Domestic violence-related counseling centers under Article 5 of the Act on the Prevention of Domestic Violence and Protection, etc. of Victims and domestic violence victim protection facilities under Article 7 of the same Act;
11. Sexual assault counseling centers under Article 10 of the Sexual Violence Prevention and Victims Protection Act and sexual assault victim protection facilities under Article 12 of the same Act;
12. Juvenile activity facilities defined in subparagraph 2 of Article 2 of the Juvenile Activity Promotion Act;
13. Youth counseling and welfare centers under Article 29 (1) of the Juvenile Welfare Support Act and youth shelters under subparagraph 1 of Article 31 of the same Act;
14. Juvenile protection and rehabilitation centers under Article 35 of the Juvenile Protection Act.

Article 34 (2) of the Act on the Protection of Children and Juveniles from Sexual Abuse obliges the head of the prescribed organizations, institutions, or facilities and any employee thereof to immediately report a sex offense against a child or juvenile when he/she learns of the occurrence of such offense in the course of performing his/her duties.

Institutions, facilities, and organizations prescribed by Article 34 (2) of the Act on the Protection of Children and Juveniles from Sexual Abuse include, but are not limited to: a) schools defined in Article 2 of the Elementary and Secondary Education Act; b) child welfare facilities defined in Article 3, subparagraph 10 of the Child Welfare Act; c) medical institutions defined in Article 3 of the Medical Service Act; and d) youth counseling and welfare centers under Article 29 (1) of the Juvenile Welfare Support Act and youth shelters under Article 31, subparagraph 1 of the same Act.

Furthermore, the definition of a “sex offense against a child or juvenile” as provided in Article 2, subparagraph 2 of the Act on the Protection of Children and Juveniles from Sexual Abuse includes a child or juvenile pornography offense punishable by Article 11 of this Act. Moreover, the definition of “child or juvenile pornography” as specified by Article 2, subparagraph 5 of the same Act includes child or juvenile pornography in the form of a film, video, game software, or picture, image, etc. displayed on computers or communications media.

14 – Requires Internet Service Providers to report child pornography

The Act on the Protection of Children and Juveniles from Sexual Abuse does not contain provisions that require Internet Service Providers (ISPs) to report child or juvenile pornography to law enforcement or other relevant agencies after learning of its presence on their own networks. However, the draft bill to amend the Act on the Protection of Children and Juveniles from Sexual Abuse of March 2013 contains provisions which create a mandatory reporting requirement for online service providers upon the discovery of child pornographic materials on their own networks. The draft amendment has not yet been passed by the Congress as of April 3, 2014.

However, the Act on the Protection of Children and Juveniles from Sexual Abuse has provisions that oblige online service providers, the definition of which includes ISPs,⁵⁸² to remove child or juvenile pornography from their networks once they learn of its presence as stated below.

Article 17 (1) of the Act on the Protection of Children and Juveniles from Sexual Abuse mandates any online service provider to take measures to: a) detect child or juvenile pornography in the information and communication network managed by himself/herself; or b) immediately delete the detected (child or juvenile) pornography and take technical measures to prevent or block transmission.⁵⁸³ Any online service provider that

(3) Except as otherwise expressly provided for in other Acts, no person shall publish any information or material that may identify reporters, etc., such as their personal information or pictures, in publications, or disclose them through broadcasting or any information and communication network.

⁵⁸² Article 2, subparagraph 8 of the Act on the Protection of Children and Juveniles from Sexual Abuse states that in this Act the term "online service providers" in this Act means persons prescribed by Presidential Decree, who provide services for other people to utilize online materials through an information and communications network (referring to an information and communications network defined in Article 2 (1) 1 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. defines an information and communications network as an information and communications system for collecting, processing, storing, searching, transmitting or receiving information by means of telecommunications facilities and equipment under subparagraph 2 of Article 2 of the Telecommunications Business Act or by utilizing computers and applied computer technology along with such telecommunications facilities and equipment.

⁵⁸³ Article 17 (1) of the Act on the Protection of Children and Juveniles from Sexual Abuse (Obligations of Online Service Providers)

fails to comply with either of the two obligations mentioned in a) and b) shall be punished pursuant to Article 17 (1) of this Law.

Article 17 (1) of the Act on the Protection of Children and Juveniles from Sexual Abuse allows an online service provider to be exempted from the obligation stipulated in Article 17 (1) of the same Act under one of the following circumstances: a) the online service provider has not been negligent in paying due attention to detect the child or juvenile pornography in the information and communications network; or b) substantial technical difficulty exists even though he/she has tried to prevent or block the transmission of the detected child or juvenile pornography.

15 – Has telephone or online hotlines to enable the public to report child abuse

Telephone or online hotlines in the Republic of Korea that enable the public to report child abuse are as follows:

- Child Protection Hotline – 1391
- Rescue Line for Children – 1577 or 1391
- Youth Hotline – 1388⁵⁸⁴

16 – Creates data retention or data preservation provisions

The Protection of Communications Secrets Act and the Enforcement Decree of the Protection of Communications Secrets Act provide data retention provisions as stated below.

The operators of telecommunications businesses shall keep communication data for a period ranging from 3 to 12 months depending on the types of data prescribed by the Act pursuant to Articles 2, subparagraph 11 and 15-2 of the Protection of Communications Secrets Act, as well as Article 41 (2) of the Enforcement Decree of the Protection of Communications Secrets Act.⁵⁸⁵

The communication confirmation data involving: a) the date of telecommunications by subscribers; b) the time that telecommunications commence and end; c) the communications number of outgoing and incoming call, etc. and the subscriber's number of the other party; and d) the frequency of use, shall be kept by the operator of the telecommunications business for 12 months, provided that a 6-month data retention period shall be applicable in terms of inner city and/or suburban calls. Other types of communication confirmation data consisting of: a) the computer communications or Internet log-records relating to facts of using the telecommunications services by the users of computer communications or Internet; b) data for tracing the location of an information communications apparatus connecting to information communications networks; and c) data for tracing the location of connectors capable of confirming the location of an information communications apparatus to be used by the users of computer communications or the Internet for connecting with information communications networks, shall be kept by the operator of the telecommunications business for three months.

(1) Any online service provider who fails to take measures prescribed by Presidential Decree to detect child or juvenile pornography in the information and communications network managed by himself/herself or who fails to immediately delete the detected pornography and take technical measures to prevent or block transmission thereof, shall be punished by imprisonment with prison labor for not more than three years or by a fine not exceeding 20 million won: Provided, That this shall not apply where the online service provider has not been negligent in paying due attention to detect the child or juvenile pornography in the information and communications network or where substantial technical difficulty exists even though he/she has tried to prevent or block the transmission of the detected child or juvenile pornography.

⁵⁸⁴ *Child Helpline Worldwide*, CHILD RIGHTS INTERNATIONAL NETWORK, <http://www.crin.org/en/library/publications/childrens-helplines-worldwide> (last visited Nov. 21, 2014).

⁵⁸⁵ CTR. FOR DEMOCRACY AND TECH., *supra* note 90, at 10.

In addition, any prosecutor or any judicial police officer may, when he deems it necessary to conduct any investigation or to execute any punishment, ask any ISP to disclose and provide the voluntarily retained information, referred to as “the communication of confirmation data” by Korean law provided under Article 13 (1) of the Protection of Communications Secrets Act.

17 – Requires the identification of users of public computers in cybercafés

The Republic of Korea does not have legislation or regulations that require the identification of users of public computers in cybercafés. However, an owner or an employee of a cybercafé may demand the identification of users to verify their ages, if any juveniles under the age of 18 years old enter into the business establishments to use the public computers at night (from 10:00 p.m. to 9:00 a.m.) in accordance with the relevant provisions of the Game Industry Promotion Act, the Enforcement Decree of the Game Industry Promotion Act, and the Juvenile Protection Act as stated below.

Article 28, subparagraph 7 of the Game Industry Promotion Act states that game products related to a business operator shall observe business hours and “hours for admitting juveniles” as prescribed by Presidential Decree. Also, Article 2, subparagraph 10 of the Game Industry Promotion Act provides that the term “juveniles” in this Act means a person under the age of 18 (including students in high school pursuant to Article 2 of the Elementary and Secondary Education Act).

Furthermore, pursuant to Article 16 of the Enforcement Decree of the Game Industry Promotion Act, “hours for admitting juveniles” for: a) juvenile game providing business operators; b) combined distribution and game providing business⁵⁸⁶ operators (only applicable where entry by juveniles is allowed pursuant to the proviso to Article 5 (1), subparagraph 2 of the Enforcement Decree of the Juvenile Protection Act); and c) business providing Internet computer game facilities⁵⁸⁷ operators shall be from 9:00 a.m. to 10:00 p.m. However, Article 16 of this Enforcement Decree which prescribes the hours for admitting juveniles to business providing Internet computer game facilities or combined distribution or a game providing business, etc. shall not be applicable in the event that a juvenile is accompanied by a person of parental authority, a guardian, a teacher, or a supervisor of his/her place of work, or any other person who is in a substantial position deserving to protect or supervise the juvenile concerned, such juvenile may be admitted during hours other than the hours for admitting juveniles.

A person who admits juveniles in violation of the hours for admitting juveniles pursuant to Article 28, subparagraph 7 of the Game Industry Promotion Act, shall be punished by imprisonment for not more than one year, or by a fine not exceeding ten million won as the criminal penalty pursuant to Article 46, subparagraph 2 of this Act.

In addition, when the head of a Si/Gun/Gu issues a disposition for the suspension of business because a person who conducts a game providing business, business providing Internet computer game facilities, or combined distribution or a game providing business violates Article 28, subparagraph 7 of the Game Industry Promotion Act, he/she may impose a penalty surcharge not exceeding 20 million won in lieu of such disposition for suspension of business, as prescribed by Presidential Decree, in the form of the administrative sanction according to Article 36 (1) of this Act.

⁵⁸⁶ The term "combined distribution and game providing business" means a business conducting a game providing business, or a business providing Internet computer game facilities, in combination with another business under this Act or a business under other Acts at the same location pursuant to Article 2, subparagraph 8 of the Game Industry Promotion Act.

⁵⁸⁷ The term "business providing Internet computer game facilities" means a business providing necessary apparatus and materials, such as computers or similar, which has public use game products or uses other information providing products incidentally pursuant to Article 2, subparagraph 7 of the Game Industry Promotion Act.

Further, Article 29 (2) of the Juvenile Protection Act articulates that the owner or an employee of a business establishment prohibited from allowing access to and employing juveniles,⁵⁸⁸ shall verify the age of each person entering the business establishment and shall deny access by juveniles under the age of 18. Pursuant to Article 29 (3) of the same Act, if it is necessary to verify a person's age pursuant to paragraph (2), the business owner or an employee of a business establishment harmful to juveniles⁵⁸⁹ may demand the person to produce a resident registration certificate or other identification certificate with which the person's age can be verified, and may deny a person access to the business establishment if the person does not produce an identification certification without justification, although he/she is demanded to produce an identification certificate. A juvenile accompanied by a person with parental authority may be permitted to enter into such business establishment in manners prescribed by the Presidential Decree.

18 – Has a national plan to combat violence against children

The Republic of Korea developed a National Plan of Action on Children, which is a part of the Second National Action Plan for the Promotion and Protection of Human Rights (2012-2016)⁵⁹⁰ after the implementation of the First National Action Plan for the Promotion and Protection of Human Rights (2007-2011).⁵⁹¹

The Second National Action Plan for the Promotion and Protection of Human Rights (2012-2016) urges the Government to take legislative and policy measures to protect children and youth (juveniles) from violence, including bullying and child abuse.

19 – Has ratified the CRC and the OPSC

- The Republic of Korea ratified the Convention on the Rights of the Child on November 20, 1991.⁵⁹²
- The Republic of Korea ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on September 24, 2004.⁵⁹³
- The Republic of Korea ratified the Worst Forms of Child Labour Convention, 1999 (No. 182) on March 19, 2001.⁵⁹⁴

20 – Age of criminal liability

The minimum age of criminal liability in the Republic of Korea is 14 years pursuant to Article 9 of the Criminal Act. According to Article 9 of the Criminal Act, the act of a person under 14 years of age shall not be punished.

⁵⁸⁸ The definition of the term “business establishments prohibited from allowing access to and employing juveniles” may extend to prescribed business establishment among combined distribution and game providing business according to Article 2, subparagraph 5, item (a) of the Juvenile Protection Act.

⁵⁸⁹ The definition of the term “business establishment harmful to juveniles” includes business establishments prohibited from allowing access to and employing juveniles provided under Article 2, subparagraph 5 of the Juvenile Protection Act.

⁵⁹⁰ GOV'T OF THE REPUBLIC OF KOREA, SECOND NATIONAL ACTION PLAN FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (2012-2016), available at http://www.hr.go.kr/HP/COM/bbs_03/ShowData.do?strNbodCd=noti9006&strWrtNo=34&strAnsNo=A&strFilePath=hum/&strRtnURL=HUM_5040&strOrgGbnCd=110000 (in Korean) (last visited Jan. 21, 2015).

⁵⁹¹ NAT'L HUMAN RIGHTS COMM'N OF THE REPUBLIC OF KOREA, FIRST NATIONAL ACTION PLAN FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (2007-2011), available at <http://www.humanrights.go.kr/english/etc/nap.jsp> (last visited Jan. 16, 2015).

⁵⁹² *Status of Ratification and Accession of the CRC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en (last visited Oct. 24, 2014).

⁵⁹³ *Status of Ratification and Accession of the OPSC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last visited Oct. 24, 2014).

⁵⁹⁴ *Status of the Ratification of the Worst Forms of Child Labour Convention, 1999*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited Oct. 24, 2014).

21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children

The principal law in the Republic of Korea that deals with crimes against children committed by the use of ICTs is the Act on the Protection of Children and Juveniles from Sexual Abuse.

With regard to the online sexual exploitation of children, a person who arranges the purchase of child or juvenile sex or a person who provides information that assists in the purchase thereof through an information and communications network as a profession shall be punished by imprisonment for a fixed term of at least seven years pursuant to Article 15 (1), subparagraph 2 of the Act on the Protection of Children and Juveniles from Sexual Abuse.

22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online

Article 12 of the Act on the Protection of Children and Juveniles from Sexual Abuse⁵⁹⁵ punishes any person who deals in or sends a child or juvenile to a foreign country or brings a child or juvenile living in a foreign country into Korea, knowing that they will become an object of an act of purchasing child or juvenile sex or producing child or juvenile pornography. Article 11 (4) of this Law further articulates that any person who recruits a child or juvenile for a child or juvenile pornography producer, knowing that he/she is to be used for producing child or juvenile pornography, shall be punished by imprisonment with prison labor for a period of at least three years.

The Republic of Korea does not have law with explicit provisions that criminalize advertising child sex tourism online.

23, 24, 25, and 26 – Existence of legislation criminalizing online grooming, a clear definition of online grooming, the age of a potential victim, and related crimes

The Act on the Protection of Children and Juveniles from Sexual Abuse does not have explicit provisions criminalizing online grooming. In addition, the Act on the Protection of Children and Juveniles from Sexual Abuse does not provide a clear definition of online grooming. However, the Act on the Protection of Children and Juveniles from Sexual Abuse contains provisions criminalizing activities relevant to online grooming.

Article 15 (1), subparagraph 2 of the Act on the Protection of Children and Juveniles from Sexual Abuse⁵⁹⁶ criminalizes arranging acts of purchasing child and juvenile sex or providing information on arranging acts of purchasing child and juvenile sex on Information and Communication Networks by profession with imprisonment for a limited term of not less than seven years. Since the Supreme Court of Korea has not yet made a decision under Article 15 (1), subparagraph 2 of this Act, there is no guideline indicating for what kind of intent offenders will actually be punished under this Article.

⁵⁹⁵ Article 12 of the Act on the Protection of Children and Juveniles from Sexual Abuse (Child or Juvenile Sex Trafficking)

(1) Any person who deals in or sends a child or juvenile to a foreign country or brings a child or juvenile living in a foreign country into Korea, knowing that they will become an object of an act of purchasing child or juvenile sex or producing child or juvenile pornography, shall be punished by life imprisonment or imprisonment with prison labor for not less than five years.

(2) Any person who attempts to commit an offense as prescribed in paragraph (1) shall be punished.

⁵⁹⁶ Article 15 (1) subparagraph 2 of the Act on the Protection of Children and Juveniles from Sexual Abuse (Business of Arranging Prostitution, etc.)

(1) Any of the following persons shall be punished by imprisonment for a limited term of not less than seven years:

2. A person arranging acts of purchasing child and juvenile sex or providing information on arranging acts of purchasing child and juvenile sex on the Information and Communication Network by profession

In addition, Article 13 (2) of the Act on the Protection of Children and Juveniles from Sexual Abuse⁵⁹⁷ makes it illegal for any person to entice a child or juvenile for purchasing his/her sex or to solicit a child or juvenile to engage in prostitution. All relevant provisions of the Act limit the scope of the Act to behaviors for the purpose of *purchasing* a child or juvenile's sex, requiring some kind of payment for sexual acts.

The Act on the Protection of Children and Juveniles from Sexual Abuse considers anyone under 18 as a potential victim of activities related to online grooming. According to Article 2, subparagraph 1 of the Act on the Protection of Children and Juveniles from Sexual Abuse, the term "children or juveniles" in this Act means persons under 19 years of age provided that persons for whom the first day of January of the year in which they reach 19 years of age has arrived shall be excluded.⁵⁹⁸

27 – Criminalizes showing pornography to a child as a standalone offense

The Juvenile Protection Act has provisions that can be used to criminalize showing pornography to a child as a standalone offense as elaborated below.

It is forbidden to sell, lend, or distribute a media product specified by Presidential Decree as harmful to juveniles to a juvenile or provide to a juvenile for viewing, watching, or using pursuant to Article 16 (1) of the Juvenile Protection Act.⁵⁹⁹ A person who violates Article 16 (1) of the Juvenile Protection Act, by selling, lending, or distributing media products harmful to juveniles to juveniles or providing such media products to juveniles for viewing, watching, or using for profit shall be subject to punishment as stipulated in Article 58, subparagraph 1 of the Juvenile Protection Act.⁶⁰⁰

Article 2 of the Juvenile Protection Act provides definitions of terms related to criminalizing showing pornography to a juvenile as a standalone offenses as stated below.

Article 2, subparagraph 1 of the Juvenile Protection Act⁶⁰¹ defines the term "juvenile" in this Act as a person under the age of 19 years, provided, that persons who will have obtained the age of 19 after January 1 during the relevant year shall be excluded therefrom. Article 2, subparagraph 3 of the Juvenile Protection Act⁶⁰² further

⁵⁹⁷ Article 13 (2) of the Act on the Protection of Children and Juveniles from Sexual Abuse (Act of Purchasing Child or Juvenile Sex, etc.)

Any person who entices a child or juvenile for purchasing their sex or solicits a child or juvenile to prostitute shall be punished by imprisonment with prison labor for not more than one year or by a fine not exceeding ten million won.

⁵⁹⁸ Refer to footnotes 572 and 573 for an explanation of age.

⁵⁹⁹ Article 16 (1) of the Juvenile Protection Act (Prohibition from Selling, etc.)

(1) A person who intends to sell, lend, or distribute a media product specified by Presidential Decree as harmful to juveniles to a person or provide such product to a person for viewing, watching, or using shall verify the age and identity of the person and shall not sell, lend, or distribute such product to a juvenile or provide such product to a juvenile for viewing, watching, or use.

⁶⁰⁰ Article 58, subparagraph 1 of the Juvenile Protection Act (Penal Provisions)

Any of the following persons shall be punished by imprisonment with prison labor for not more than three years or by a fine not exceeding 20 million won:

1. A person who sells, lends, or distributes media products harmful to juveniles to juveniles or provides such media products to juveniles for viewing, watching, or using for profit in violation of Article 16 (1).

⁶⁰¹ Article 2, subparagraph 1 of the Juvenile Protection Act (Definitions)

The terms used in this Act shall be defined as follows:

1. The term "juvenile" means a person under the age of 19: Provided that persons who will have obtained the age of 19 after January 1 during the relevant year shall be excluded therefrom.

⁶⁰² Article 2, subparagraph 3 of the Juvenile Protection Act (Definitions)

The terms used in this Act shall be defined as follows:

articulates that the term “media product harmful to juveniles” means any of the following media products determined or identified by the Commission on Youth Protection or the competent examining authority as harmful to juveniles and publicly notified accordingly by the Ministry of Gender Equity and Family under Articles 7 (1) and 11 of this Law.

Article 9 of the Juvenile Protection Act⁶⁰³ prescribes the criteria for examination of a media product harmful to juveniles and one of the criteria includes determination on lewdness or obscenity of the media product at issue to arouse juveniles’ sexual desire. This Article further articulates that the criteria as stated above shall be applied on the basis of the notion generally accepted in society, and the literary, artistic, educational, medical, and scientific aspects that each media product has and the characteristics of each media product shall be taken into consideration. The same Article provides that necessary matters regarding the detailed criteria for the examination on whether a media product is harmful to juveniles and the application of the criteria shall be prescribed by Presidential Decree.

28 – Has legislation regarding cyberbullying

The Republic of Korea has legislation regarding cyberbullying. The Act on the Prevention of and Countermeasures against Violence in Schools provides the definition of the term “cyberbullying” as stated below.

The term “cyberbullying” in this Act is defined as any form of constant or repeated actions whereby students inflict emotional harm on other students by using the Internet, cell phones, or other information and communications devices to reveal personal information about a specific student or to spread lies or rumors about a specific student, and then inflict pain thereon pursuant to Article 2, subparagraph 1-3 of the same Act.⁶⁰⁴

3. The term “media product harmful to juveniles” means any of the following media products:

- (a) Media products determined or identified by the Commission on Youth Protection as harmful to juveniles and publicly notified accordingly by the Minister of Gender Equality and Family under the main sentence of Article 7 (1) and Article 11;
- (b) Media products determined or identified by the competent examining authority as harmful to juveniles and publicly notified accordingly by the Minister of Gender Equality and Family under the proviso to Article 7 (1) and Article 11.

⁶⁰³ Article 9 of the Juvenile Protection Act (Criteria for Examination of Media Products Harmful to Juveniles)

(1) If the Commission on Youth Protection or an examining authority finds, as a result of its examination under Article 7, that a media product falls under any of the following, it shall determine the media product as harmful to juveniles:

1. If a media product is lewd or obscene to arouse juveniles' sexual desire;
2. If a media product is likely to urge juveniles to commit an atrocity or crime;
3. If a media product provokes or glamorizes violent acts in various forms, including sexual violence, and the abuse of drugs;
4. If a media product induces juveniles to gambling and speculation or is likely to significantly harm the healthy lives of juveniles;
5. If a media product is antisocial or unethical to hinder juveniles' formation of good character and citizen consciousness;
6. If a media product is obviously likely to harm the mental or physical health of juveniles in any other aspect.

(2) The criteria under paragraph (1) shall be applied on the basis of the notion generally accepted in society, and the literary, artistic, educational, medical, and scientific aspects that each media product has and the characteristics of each media product shall be taken into consideration.

(3) Necessary matters regarding the detailed criteria for the examination on whether a media product is harmful to juveniles and the application of the criteria shall be prescribed by Presidential Decree.

⁶⁰⁴ Article 2, subparagraph 1-3 of the Act on the Prevention of and Countermeasures against Violence in Schools (Definitions)

The definitions of the terms used in this Act shall be as follows:

29 – Has legislation concerning sexting

The Act on Special Cases concerning the Punishment, etc. of Sexual Crimes and the Act on Promotion of Information and Communication Network Utilization and Information Protection, etc. have provisions that possibly criminalize sexting as stated below.

Article 13 of the Act on Special Cases concerning the Punishment, etc. of Sexual Crimes⁶⁰⁵ criminalizes sending another person any words, sounds, writings, pictures, images, or other things, which may cause any sense of sexual shame or aversion, through telephone, mail, computer or other communication media device, with the intent to arouse or satisfy his/her own or the other person's sexual appetite.

Furthermore, pursuant to Article 44-7 (1), subparagraph 1 of the Act on Promotion of Information and Communication Network Utilization and Information Protection, etc.⁶⁰⁶ no one is allowed to distribute, sell, lend, or openly display information with obscene contents in the form of code, words (or letters), sound, images or (motion) pictures through an information and communications network.

A person who distributes, sells, lends, or openly displays any obscene codes, letters, sound, images, or motion pictures through an information and communications network in violation of Article 44-7 (1), subparagraph 1 of the Act on Promotion of Information and Communication Network Utilization and Information Protection, etc., shall be punished by imprisonment with prison labor for not more than one year or by a fine not to exceed 10 million won according to Article 74 (1), subparagraph 2 of the Act on Promotion of Information and Communication Network Utilization and Information Protection, etc.⁶⁰⁷

Jurisprudence

There has been some dispute over the definition of “obscenity” on the grounds that the definition impedes the freedom of expression under the Constitution.

1-3. The term "cyberbullying" means any form of constant or repeated actions whereby students inflict emotional harm on other students by using the Internet, cell phones or other information and communications devices to reveal personal information about a specific student or to spread lies or rumors about a specific student, and then inflict pain thereon;

⁶⁰⁵ Article 13 of the Act on Special Cases concerning the Punishment, etc. of Sexual Crimes (Obscene Acts by Using a Medium of Communication)

Any person who makes any words, sounds, writings, drawings, pictures, images or things, which may cause any sense of sexual shame or aversion, arrive at the other party, through a telephone, mail, computer, or other communication media, with the intention of provoking or satisfying his or another person's sexual appetite, shall be punished by imprisonment for not more than two year, or a fine not exceeding 500 million won.

⁶⁰⁶ Article 44-7 (1), subparagraph 1 of the Act on Promotion of Information and Communication Network Utilization and Information Protection, etc. (Prohibition on Circulation of Unlawful Information)

(1) No one may circulate information falling under any of the following subparagraphs through an information and communications network:

1. Information with an obscene content distributed, sold, rented, or displayed openly in the form of code, words, sound, image, or picture;

⁶⁰⁷ Article 74 (1), subparagraph 2 of the Act on Promotion of Information and Communication Network Utilization and Information Protection, etc. (Penal Provisions)

(1) A person falling under any of the following subparagraphs shall be punished by imprisonment with prison labor for not more than one year or by a fine not exceeding 10 million won:

2. A person who distributes, sells, lends, or openly displays any obscene codes, letters, sound, images, or motion pictures in violation of Article 44-7 (1) 1.

Ban on Internet Distribution of Obscene Materials Case
2006Hun-Ba109
2009/05/28

In this case, the Constitutional Court of the Republic of Korea decided that the contested provision, which imposes criminal punishment on those who distribute and sell obscene materials over information and communication networks, does not violate the Constitution for the reason that “obscene” expressions are part of the freedom of speech and press to be protected by the Constitution, and the rule of clarity and the rule against excessive restriction cannot be found to be violated. Three Justices, however, agreed to this conclusion, but based on a different reason. Furthermore, in a 7 to 2 vote, the Court dismissed the complaints of part of the petitioners who were acquitted during their trials respectively for the reason that the relevance of the contested provision to the underlying cases could not be ascertained.

Background of the Case

The petitioners were prosecuted and tried for violating Article 65 (1), subparagraph 2 (hereinafter “Instant Provision”) of the former Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. (hereinafter, the “former Information and Communications Network Act”) by distributing and openly displaying obscene materials on Internet portals and mobile communication services. While their trials were pending, petitioners filed motions before the court to request the constitutional review of the Instant Provision. As the motions were denied, however, the petitioners respectively filed these constitutional complaints with the Constitutional Court, arguing that the Instant Provision violates the rule of clarity and rule against excessive restriction, etc. Meanwhile, some of the petitioners were ruled not guilty of violating the Instant Provision at their ordinary courts respectively.

Provision at issue

Article 65 (1), subparagraph 2 of the Former Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. (revised by Act No. 6360 January 16, 2001, but before revised by Act No. 8289 on January 26, 2007)⁶⁰⁸ [Article 74 (1), subparagraph 2 of the current Act on Promotion of Information and Communication Network Utilization and Information Protection, etc. (last amended on May 28, 2014 and effective as of November 29, 2014)].

Article 65 (Penal Provisions)

(1) Any person falling under any of the following subparagraphs shall be punished by imprisonment with prison labor for not more than one year or by a fine not exceeding 10 million won:

2. A person who has distributed, sold, rented, or openly displayed lascivious (or obscene) codes, letters, sounds, visuals, or films through information and communications networks;

Summary of the Decision

In a unanimous vote, Constitutional Court of the Republic of Korea ruled the Instant Provision constitutional, reasoning that the Instant Provision does not contradict the rule of clarity and prohibition of excessive restriction. At the same time, in a 6 to 3 vote, the Court also overruled its precedent that an “obscene” expression in its strict sense is not protected under Article 21 of the Constitution that ensures freedom of speech and the press (95Hun-Ka16, April 30, 1998) according to the following reasons.

⁶⁰⁸ Former Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. (revised by Act No. 6360 January 16, 2001, but before revised by Act No. 8289 on January 26, 2007), available at <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN025694.pdf> (last visited Jan. 16, 2015).

1. Court Opinion

If an "obscene expression" is interpreted to be outside the boundary of freedom of speech protected by the Constitution, it will not only be impossible to conduct a constitutional review of an obscene expression in accordance with basic constitutional principles for restriction on freedom of speech, such as the rule of clarity and ban on censorship, but also be difficult to apply constitutional basic principles for restriction on fundamental rights, such as statutory restriction and the rule against excessive restriction. As a result, it becomes also impossible to control every obscene expression through preliminary censorship and, in case of no such prior censorship, to impose criminal punishment, to ban possession of obscene materials without the purpose of distribution, or to unlawfully impose disadvantage on obscene publications. In the end, it cannot be overlooked that obscene expressions are highly likely to be denied even the minimum constitutional protection.

Therefore, it should be interpreted that, obscene expressions are also entitled to the protection of freedom of speech under Article 21 of the Constitution, except that they can be regulated for the purpose of ensuring national safety, public law and order or public welfare pursuant to Article 37 (2) Section 2 of the Constitution. As the obscenity specified in the Provision should thus be protected by Article 21 of the Constitution that guarantees the freedom of speech and press, the Constitutional Court has come to overrule its former judgment that obscene expressions are not to be protected as freedom of speech under Article 21 of the Constitution (10-1 KCCR 327, 340-341, 95Hun-Ka16, April 30, 1998).

The "obscenity" in the Instant Provision may have room for more specificity, but it can be considered to provide, in its current form, offenders and law enforcement officials with appropriate standards for review or interpretation and exclude arbitrary interpretation and execution of law as regards which expression is "obscene." In this sense, "obscenity" in the Instant Provision does not contradict the rule of clarity. Even if obscene expressions are subject to constitutional protection of freedom of speech and thus imposing heavy criminal punishment on acts such as distribution of obscene materials and information may somewhat restrict the said fundamental rights, this restriction is necessary for public welfare. Therefore, the Instant Provision hardly contradicts the rule against excessive restriction under Article 37 (2) of the Constitution.

2. Concurring Opinion of Three Justices

Determining the inherent boundary of protection for fundamental rights under the law is significant as the first step of a constitutional review. It is evident that not all of the problematic expressions of every case can be protected as part of the freedom of speech, so discussion on the scope of freedom of speech to be protected becomes an essential prerequisite for a constitutional review of freedom of speech.

As Article 31 (4) of the Constitution specifies the constitutional limitation to the freedom of speech; expressions that exceed the limitation are not protected by the Constitution as part of the freedom of speech. Whether such obscene expressions are to be recognized as part of freedom of speech is a matter determined by how the review standard for obscenity as a normative concept is established.

The concept of "obscenity" in the Instant Provision is "obscenity" in the strict sense of the term – indecent and blunt sexual expression that distorts human dignity or personality, that solely appeals to sexual interest, and that overall has no literary, artistic, scientific or political values. In this context, such obscene expressions are sexual expressions similar to or more harmful than "obscenity" not considered by the U.S. Supreme Court to be part of rights protected under the First Amendment of the U.S. Constitution or "hardcore pornography" defined in the German criminal law. Therefore, obscene expressions in their strict sense exceeds the limitation allowed by Article 21 (4) of the Constitution and therefore are not protected by Article 21 (1) of the Constitution that ensures freedom of speech.

The concept of “obscenity” in the Instant Provision at least offers an appropriate guideline for offenders and law enforcement officers, and implication of the term hardly varies with individual preference of the competent enforcement authority. The Instant Provision, therefore, does not contradict the rule of clarity.

Meanwhile, because “obscenity” in its strict sense is not constitutionally protected as part of the freedom of speech, there is no need for review of whether the Instant Provision that penalizes distribution of obscene materials through information and communication networks violates the rule against excessive restriction in regulating the freedom of speech and press.⁶⁰⁹

⁶⁰⁹ *Decision 2006Hun-Ba 109, Ban on Internet Distribution of Obscene Materials Case*, CONSTITUTIONAL COURT OF THE REPUBLIC OF KOREA, http://www.ccourt.go.kr/home/att_file/ebook/1255848933024.pdf (last visited Jan. 19, 2015).

Table 2.14 – Country: Singapore

1 – Has legislation specific to child pornography	Yes
2 – Has a clear definition of child pornography	No (obscene objects)
3 – Considers everyone under 18 as a potential victim of activities related to child pornography	No (16)
4 – Criminalizes accessing or downloading child pornography images	No
5 – Criminalizes possession of child pornography	No (but criminalizes possession of obscene objects in general with the intent to distribute under the Penal Code)
6 – Criminalizes virtual images and sexually exploitative representations of children	Possibly Yes (not specifically, but obscene objects)
7 – Addresses the criminal liability of children involved in pornography	No (if children are victims, not offenders)
8 – Establishes criminal liability of legal persons for production or commercialization of child pornography	Yes (not specifically, but obscene objects)
9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State	No
10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State	No
11 – Establishes confiscation of assets used to commit or facilitate child pornography offenses	No
12 – Establishes confiscation of proceeds derived from child pornography offenses	No
13 – Requires professionals working with children to report child pornography activities	No (child abuse)
14 – Requires Internet Service Providers to report child pornography	No
15 – Has telephone or online hotlines to enable the public to report child abuse	Yes
16 – Creates data retention or data preservation provisions	Yes (but only addresses personal data retention principles)
17 – Requires the identification of users of public computers in cybercafés	No
18 – Has a national plan to combat violence against children	Yes
19 – Has ratified the CRC and the OPSC	1) Yes; 2) No
20 – Age of criminal liability	7 - 12
21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children	Yes
22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online	1) Yes (not explicitly, but for all immoral/illicit purposes); 2) Yes
23 – Has legislation that criminalizes online grooming as a standalone offense	No (sexual grooming)
24 – Has a clear definition of online grooming	No
25 – Considers everyone under 18 as a potential victim of online grooming	No (16)
26 – 1) Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child; or 2) criminalizes grooming regardless of the intent	1) Yes; 2) No
27 – Criminalizes showing pornography to a child as a standalone offense	Yes
28 – Has legislation regarding cyberbullying	Yes (but does not use the term “cyber-bullying”)
29 – Has legislation concerning sexting	No

Singapore

In Singapore, a wide range of children's rights are protected through adopting domestic legislation and by joining relevant international treaties including the Convention on the Rights of the Child (CRC). However, the Singaporean Government has not ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC).

The laws and regulations which protect children's rights and/or govern violence against children in Singapore are as follows:

- Penal Code (Chapter 224)
- Films Act (Chapter 107)
- Undesirable Publications Act (Chapter 338)
- Protection from Harassment Act (Act No. 17 of 2014)
- Children and Young Persons Act (Chapter 38)
- Child Care Centres Act (Chapter 37A)
- Child Care Centres Regulations (issued pursuant to Section 19 of the Child Care Centres Act)⁶¹⁰

EXTRACTS OF LEGISLATION RELATED TO THE TABLE:

1 – Has legislation specific to child pornography

Section 32 of the Films Act⁶¹¹ makes it an offense for a person who is in charge of taking care of a child or young person, to cause, procure, or allow such child or young person to commit or abet in the commission of obscenity offenses mentioned in Section 29 (offenses involving dealings in obscene films), Section 30 (possession of obscene films), and Section 31 (advertising obscene films) of the Films Act.

Furthermore, Section 292 (1) of the Penal Code⁶¹² specifies punishment for committing offenses related to obscene objects as stated below.

⁶¹⁰ For the purposes of this Regional Study, Singaporean laws available at <http://statutes.agc.gov.sg/aol/home.w3p> were used.

⁶¹¹ Section 32 of the Films Act (Offenses involving children and young persons)

(1) Any person who causes or procures any child or young person or, having custody, charge or care of a child or young person, allows that child or young person to commit or abet in the commission of any offense mentioned in section 29, 30 or 31 shall be guilty of an offense and shall be liable on conviction —

(a) to a fine of not less than \$20,000 but not more than \$80,000 or to imprisonment for a term not exceeding 12 months or to both; and

(b) in the case of a second or subsequent conviction, to a fine of not less than \$20,000 but not more than \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) If it is proved that a child has committed or abetted in the commission of any offense mentioned in section 30(1) or 31(1), the person having the custody, charge or care of the child at the time the offense was committed shall be presumed, until the contrary is proved, to have allowed the child to commit or abet in the commission of the offense.

⁶¹² Section 292 (1) of the Penal Code (Sale of obscene books, etc.)

(1) Whoever —

(a) sells, lets to hire, distributes, transmits by electronic means, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, transmission, public exhibition or circulation, makes, produces, or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure, or any other obscene object whatsoever;

(b) imports, exports, transmits by electronic means or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited, or in any manner put into circulation;

Section 292 (1) (a) of the Penal Code makes it an offense to: 1) sell, rent, distribute, transmit by electronic means, publicly exhibit, or in any manner put into circulation any obscene book, pamphlet, paper, drawing, painting, representation, or other obscene object (hereafter referred to as “any obscene object”); or 2) for the purposes of distribution, etc., make, produce, or possess any obscene object. Furthermore, it is unlawful to import, export, or transmit by electronic means any obscene object with the knowledge or reasonable belief that it will be distributed, etc. according to Section 292 (1) (b) of the Penal Code. Any person who commits an offense as provided in Section 292 (1) of the Penal Code shall be punished with imprisonment for a term which may extend to three months, or a fine, or both.

Section 29 of the Films Act⁶¹³ also creates offenses that involve dealings in obscene films including the production or reproduction of obscene films with the knowledge or having the reasonable cause to believe such film is obscene. Section 29 of the Films Act also punishes anyone who imports, distributes, or has in possession for the purpose of distribution an obscene film with the knowledge or having the reasonable cause to believe such film is obscene. Section 30 of the Films Act also makes it illegal to simply possess obscene films regardless of the intent to distribute. Furthermore, Section 31 of the Films Act⁶¹⁴ criminalizes the advertisement of obscene films.

(c) takes part in, or receives profits from, any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, transmitted by electronic means, purchased, kept, imported, exported, conveyed, publicly exhibited, or in any manner put into circulation;

(d) advertises, or makes known by any means whatsoever, that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person; or

(e) offers or attempts to do any act which is an offence under this section,

shall be punished with imprisonment for a term which may extend to 3 months, or with fine, or with both.

⁶¹³ Section 29 of the Films Act (Offenses involving dealings in obscene films)

(1) Any person who makes or reproduces any obscene film (whether or not for the purposes of exhibition or distribution to any other person), knowing or having reasonable cause to believe the film to be obscene shall be guilty of an offense and shall be liable on conviction —

(a) to a fine of not less than \$20,000 but not more than \$40,000 or to imprisonment for a term not exceeding 2 years or to both; and

(b) in the case of a second or subsequent conviction, to a fine of not less than \$40,000 but not more than \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) Any person who imports any obscene film knowing or having reasonable cause to believe the film to be obscene shall be guilty of an offense and shall be liable on conviction —

(a) to a fine of not less than \$1,000 for each such film imported (but not to exceed in the aggregate \$40,000) or to imprisonment for a term not exceeding 12 months or to both; and

(b) in the case of a second or subsequent conviction, to a fine of not less than \$2,000 for each such film imported (but not to exceed in the aggregate \$100,000) or to imprisonment for a term not exceeding 2 years or to both.

(3) Any person who distributes, or has in his possession for the purposes of distributing, to any other person an obscene film knowing or having reasonable cause to believe the film to be obscene shall be guilty of an offense and shall be liable on conviction —

(a) to a fine of not less than \$2,000 for each such film he had distributed or in his possession (but not to exceed in the aggregate \$80,000) or to imprisonment for a term not exceeding 2 years or to both; and

(b) in the case of a second or subsequent conviction, to a fine of not less than \$4,000 for each such film he had distributed or in his possession (but not to exceed in the aggregate \$100,000) or to imprisonment for a term not exceeding 2 years or to both.

(4) Any person who exhibits or has in his possession for the purposes of exhibiting to any other person an obscene film knowing or having reasonable cause to believe the film to be obscene shall be guilty of an offense and shall be liable on conviction —

(a) to a fine of not less than \$10,000 but not more than \$40,000 or to imprisonment for a term not exceeding 2 years; and

(b) in the case of a second or subsequent conviction, to a fine of not less than \$20,000 but not more than \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

⁶¹⁴ Section 31 of the Films Act (Advertising obscene films)

In addition, Section 6 of the Undesirable Publications Act⁶¹⁵ punishes anyone who imports, publishes, sells, supplies, offers to supply, exhibits, distributes, reproduces, or has in his possession any prohibited publication or any extract therefrom.

Moreover, Sections 11⁶¹⁶ and 12 of the Undesirable Publications Act⁶¹⁷ criminalize conducts involving any obscene or objectionable publication (not being a prohibited publication).

(1) Any person who, for the purposes of distributing or exhibiting any obscene film to any other person, advertises the film by any means shall be guilty of an offense and shall be liable on conviction to a fine of not less than \$2,000 but not more than \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

(2) Any person who, for the purposes of distributing or exhibiting any obscene film to any other person, advertises the film by any means knowing or having reasonable cause to believe the film to be obscene shall be guilty of an offense and shall be liable on conviction —

(a) to a fine of not less than \$10,000 but not more than \$50,000 or to imprisonment for a term not exceeding 12 months or to both; and

(b) in the case of a second or subsequent conviction, to a fine of not less than \$20,000 but not more than \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) In this section —

“advertise”, in relation to a film, includes —

(a) publicly exhibiting, displaying or supplying any advertising poster relating to the film;

(b) announcing orally or by any means (including electronic transmission, facsimile transmission, electronic mail or other similar means of communication) other than by broadcasting any offer to sell or supply the film; or

(c) distributing or circulating any advertisement relating to the film;

“advertisement” includes any advertising poster, circular, catalogue or price list;

“advertising poster” means any poster, placard, video slick, photograph or other printed pictorial matter that is intended for use in the advertising or exhibition of a film to the public and includes a miniature representation or enlarged representation of the whole or part of any such poster.

(4) For the purposes of this section, an advertisement shall be deemed to be an advertisement publicly displayed if it is displayed in or so as to be visible from —

(a) any public road; or

(b) any place to which the public have or are permitted to have access (whether on payment or otherwise).

⁶¹⁵ Section 6 of the Undesirable Publications Act (Offenses involving the prohibited publications)

(1) Any person who imports, publishes, sells, offers for sale, supplies, offers to supply, exhibits, distributes or reproduces any prohibited publication or any extract therefrom shall be guilty of an offense and shall be liable on conviction for a first offense to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years or to both, and for a subsequent offense to imprisonment for a term not exceeding 4 years.

(2) Any person who without reasonable excuse has in his possession any prohibited publication or any extract therefrom shall be guilty of an offense and shall be liable on conviction for a first offense to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 12 months or to both, and for a subsequent offense to imprisonment for a term not exceeding 2 years.

(3) In any proceedings against any person for an offense under subsection (2), that person shall be presumed, until the contrary is proved, to have known the contents and the nature of the contents of any publication immediately after such publication came into his possession.

⁶¹⁶ Section 11 of the Undesirable Publications Act (Offenses involving obscene publications)

Any person who —

(a) makes or reproduces, or makes or reproduces for the purposes of sale, supply, exhibition or distribution to any other person;

(b) imports or has in his possession for the purposes of sale, supply, exhibition or distribution to any other person; or

(c) sells, offers for sale, supplies, offers to supply, exhibits or distributes to any other person, any obscene publication (not being a prohibited publication) knowing or having reasonable cause to believe the publication to be obscene

shall be guilty of an offense and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Furthermore, Section 7 of the Children and Young Persons Act⁶¹⁸ punishes any person who, in public or private: (a) commits or abets the commission of, or procures or attempts to procure, the commission by any person of any obscene or indecent act with any child or young person; or (b) procures or attempts to procure the commission of any obscene or indecent act by any child or young person.

2 – Has a clear definition of child pornography

Singaporean law does not provide a clear definition of child pornography. However, the Films Act, the Undesirable Publications Act, and the Penal Code collectively provide definitions of “obscene films/publications/objects”.

(1) Definition of obscenity

There are provisions defining “obscenity” under the Penal Code, the Undesirable Publications Act, and the Films Act as stated below. According to Section 3 of the Undesirable Publications Act and Section 2 (1) of the Films Act, a publication or a film is “obscene” if its effect or (where the publication/film comprises two or more distinct parts or items) the effect of any one of its parts or items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely to read, see, or hear the matter contained or embodied in it.

Also, Section 42 of the Penal Code⁶¹⁹ defines the term “obscene”. Additionally, Section 292 (3) of the Penal Code⁶²⁰ states that for the purposes of this Section and Section 293, an object shall be deemed not to be “obscene” if the sale, letting to hire, distribution, exhibition, circulation, import, export, or conveyance of, or any other dealing in the object is authorized by or under any written law. Also, according to the exception to Section

⁶¹⁷ Section 12 of the Undesirable Publications Act (Offenses involving objectionable publications)

Any person who —

- (a) makes or reproduces, or makes or reproduces for the purposes of sale, supply, exhibition or distribution to any other person;
- (b) imports or has in his possession for the purposes of sale, supply, exhibition or distribution to any other person; or
- (c) sells, offers for sale, supplies, offers to supply, exhibits or distributes to any other person, any objectionable publication (not being a prohibited publication) knowing or having reasonable cause to believe the publication to be objectionable

shall be guilty of an offense and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

⁶¹⁸ Section 7 of the Children and Young Persons Act (Sexual exploitation of child or young person)

Any person who, in public or private —

- (a) commits or abets the commission of or procures or attempts to procure the commission by any person of any obscene or indecent act with any child or young person; or
- (b) procures or attempts to procure the commission of any obscene or indecent act by any child or young person,

shall be guilty of an offense and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 5 years or to both and, in the case of a second or subsequent conviction, to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 7 years or to both.

⁶¹⁹ Section 42 of the Penal Code (Obscene)

The word “obscene”, in relation to anything or matter, means anything or matter the effect of which is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

⁶²⁰ Section 292 (3) of the Penal Code (Sale of obscene books, etc.)

(3) For the purposes of this section and section 293, an object shall be deemed not to be obscene if the sale, letting to hire, distribution, exhibition, circulation, import, export or conveyance of, or any other dealing in, the object is authorised by or under any written law.

292 of the Penal Code⁶²¹, this Section does not apply to any book, pamphlet, writing, drawing or painting kept or used for *bona fide* religious purposes.

(2) Definitions of film, publication, objects

There are provisions defining “film” under the Films Act, “publication” under the Undesirable Publications Act, and “objects” under the Penal Code, with regard to obscene films, publications, or objects under those three Laws.

a) Film

Pursuant to Section 2 (1) of the Films Act, the definition of the term “film” in this Act includes: (a) any film; (b) any video recording, including a video recording designed for a game; (c) any other material record or thing on which is recorded or stored for immediate or future retrieval any information that, by the use of any computer or electronic device, is capable of being reproduced or displayed as wholly or partly visual moving pictures, and includes any part of a film, and any copy or part of a copy of the whole or any part of a film.

b) Publication

Section 2 of the Undesirable Publications Act⁶²² provides the definition of the term “publication (other than film)” in this Act which includes any picture or drawing, whether made by computer graphics or otherwise howsoever.

c) Object

Section 292 (2) of the Penal Code⁶²³ explicitly states that for the purpose of this Section, “object” includes data stored on a computer disc, or by other electronic means, that is capable of conversion to images, writing, or any other form of representation.

⁶²¹ Exception to Section 292 of the Penal Code (Sale of obscene books, etc.)

Exception.—This section does not extend to any book, pamphlet, writing, drawing or painting kept or used bona fide for religious purposes, or any representation sculptured, engraved, painted or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

⁶²² Extract of the Section 2 of the Undesirable Publications Act (Interpretation)

“publication” means any of the following other than a film:

- (a) any book, magazine or periodical, whether in manuscript or final form;
- (b) any sound recording;
- (c) any picture or drawing, whether made by computer-graphics or otherwise howsoever;
- (d) any photograph, photographic negative, photographic plate or photographic slide; or
- (e) any paper, model, sculpture, tape, disc, article or thing —
 - (i) that has printed or impressed upon it any word, statement, sign or representation; or
 - (ii) on which is recorded or stored for immediate or future retrieval any information that, by the use of any computer or other electronic device, is capable of being reproduced or shown as any picture, photograph, word, statement, sign or representation, and includes a copy of any publication

⁶²³ Section 292 (2) of the Penal Code (Sale of obscene books, etc.)

(2) For the purposes of this section, “object” includes data stored in a computer disc, or by other electronic means, that is capable of conversion to images, writing or any other form of representation.

(3) Meanings of objectionable and prohibiting publications

Sections 2, 4 (1), and 5 (1) of the Undesirable Publications Act also provide definitions of “objectionable” and “prohibited” pertaining to objectionable or prohibited publications.

a) Objectionable

Section 4 (1) of the Undesirable Publications Act states that the publication is objectionable if it describes, depicts, expresses, or otherwise deals with matters such as sex, crime, violence, or other stipulated thing in a manner that the availability of the publication is likely to harm to the public good. In determining whether or not any publication is objectionable, the factors to be considered pertaining to child pornography are, among others, as follows: 1) describes, depicts, or otherwise deals with acts of torture, the infliction of serious physical harm, sexual conduct or violence or coercion in association with sexual conduct; 2) whether the publication exploits the nudity of persons or children or both; 3) whether the publication describes, depicts, or otherwise deals with acts of sexual conduct or violence or coercion in association with sexual conduct pursuant to Section 4 (2) of the Undesirable Publications Act.

b) Prohibited

Section 5 (1) of the Undesirable Publications Act states that “prohibited publication” means any publication which is prohibited from the importation, sale, or circulation by the power of the Minister because the publication or the extract therefrom would be contrary to the public interest. Section 2 of this Act states that the meaning of “publication” shall include any book, magazine, or periodical, whether in manuscript or final form; any sound recording; any picture or drawing, whether made by computer-graphics or otherwise howsoever; any photograph, photographic negative, photographic plate or photographic slide; or any paper, model, sculpture, tape, disc, article or thing (i) that has printed or impressed upon it any word, statement, sign or representation; or (ii) on which is recorded or stored for immediate or future retrieval any information that, by the use of any computer or other electronic device, is capable of being reproduced or shown as any picture, photograph, word, statement, sign or representation, and includes a copy of any publication.

3 – Considers everyone under 18 as a potential victim of activities related to child pornography

Singaporean law does not provide explicit provisions that consider everyone under the age of 18 years as a potential victim of activities related to child pornography. However, Singaporean law generally considers everyone under the age of 16 years as a child or a young person as stated below.

According to Section 2 (1) of the Films Act and Section 2 (1) of the Children and Young Persons Act (CYPA), “child” means a person who is below the age of 14 years and “young person” means a person who is 14 years of age or above, but below the age of 16 years.

In Singapore, the age of consent to sexual intercourse is 14 years for women pursuant to Section 375 (1) of the Penal Code.⁶²⁴

⁶²⁴ Section 375 (1) of the Penal Code (Rape)

- (1) Any man who penetrates the vagina of a woman with his penis —
 - (a) without her consent; or
 - (b) with or without her consent, when she is under 14 years of age,
- shall be guilty of an offence.

4 – Criminalizes accessing or downloading child pornography images

Singaporean law does not provide explicit provisions that criminalize accessing or downloading child pornography images.

However, Section 292 (1) (a) of the Penal Code makes it an offense to “transmit by electronic means” or “in any manner” put into circulation any obscene object.

5 – Criminalizes possession of child pornography

Singaporean law does not provide explicit provision which criminalizes possession of child pornography with or without the intent to distribute. However, while not specific to child pornography, Section 30 of the Films Act⁶²⁵ criminalizes possession of obscene films without the intent to distribute, which may also outlaw simple possession of child pornography.

Moreover, Section 292 (1) (a) of the Penal Code criminalizes possession of any obscene book, pamphlet, paper, drawing, paper, and representation or figure or any obscene material for the purposes of sale, letting to hire, distribution, transmission, public exhibition, or circulation.

6 – Criminalizes virtual images and sexually exploitative representations of children

While not specific to child pornography, Singaporean law criminalizes illicit activities involving obscene objects which may include virtual images and sexually exploitative representations of persons. Specifically, Section 292 (2) of the Penal Code states that “object”, for the purposes of this Section, includes data stored on a computer disc, or by other electronic means, that is capable of conversion to “images”, writing, or “any other form of representation”.

7 – Addresses the criminal liability of children involved in pornography

The law does not address the criminal liability of children involved in pornography as long as they are victims, and not offenders. However, Section 11 (1) (a) of the Child and Young Persons Act (CYPA) states that no child or young person shall take part in any public entertainment which is of an immoral nature.

In cases of child offenders, Section 82 of the Penal Code specifies that nothing is an offense which is done by a child under seven years of age. Section 83 of this Code further articulates that nothing is an offense which is done by a child above seven years of age and under 12 years of age, who has not attained sufficient maturity of understanding to judge the nature and consequence of his conduct on that occasion.

8 – Establishes criminal liability of legal persons for production or commercialization of child pornography

The Penal Code has provisions that establish criminal liability of legal persons for production or commercialization of obscene objects, which might also govern activities related to child pornographic items.

⁶²⁵ Section 30 of the Films Act (Possession of obscene films)

(1) Any person who has in his possession any obscene film shall be guilty of an offense and shall be liable on conviction to a fine of not less than \$500 for each such film he had in his possession (but not to exceed in the aggregate \$20,000) or to imprisonment for a term not exceeding 6 months or to both.

(2) Any person who has in his possession any obscene film knowing or having reasonable cause to believe the film to be obscene shall be guilty of an offense and shall be liable on conviction —

(a) to a fine of \$1,000 for each such film in his possession (but not to exceed in the aggregate \$40,000) or to imprisonment for a term not exceeding 12 months or to both; and

(b) in the case of a second or subsequent conviction, to a fine of not less than \$2,000 for each such film in his possession (but not to exceed in the aggregate \$80,000) or to imprisonment for a term not exceeding 2 years or to both.

Section 11 of the Penal Code states that, “A person in this Code shall include any company or association or body of persons, which is incorporated or not.” Therefore, when a corporation commits an obscenity offense as provided in Section 292 of the Penal Code (Sale of obscene books, etc.), the corporation shall be subject to criminal liability.

Relevantly, pursuant to Section 17 of the Undesirable Publications Act⁶²⁶, when an offense prescribed in this Act is committed by a corporation, a partnership, or unincorporated association of persons, a director, manager, partner, secretary, or other similar officer who has the capacity to act, shall be guilty of such offense unless he proves: 1) the offense was committed without his/her consent; and 2) he/she exercised all due diligence to prevent the commission of such offense.

9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State; and

10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State

Singapore does not establish its extraterritorial jurisdiction over obscenity offenses as provided in the provisions of the Penal Code, the Undesirable Publications Act, and the Films Act, which might also cover child pornography offenses when the alleged offender is a national of Singapore or when the victim is a national of Singapore.

However, Singaporean law has provisions that establish the extraterritorial jurisdiction of Singapore over an offense mentioned in Section 376C of the Penal Code (Commercial sex with minor under 18 outside Singapore) when the alleged offender is a citizen or a permanent resident of Singapore as stated below.

Section 376C (1) of the Penal Code states that, “Any person, being a citizen or a permanent resident of Singapore, who does, outside Singapore, any act that would, if done in Singapore, constitute an offence under section 376B (Commercial sex with minor under 18)⁶²⁷, shall be guilty of an offence.” Furthermore, Section 376C (2) of the Penal Code provides that, “A person who is guilty of an offence under this section shall be liable to the same punishment to which he would have been liable had he been convicted of an offence under section 376B”.

⁶²⁶ Section 17 of the Undesirable Publications Act (Corporate offenders)

Where an offense under this Act has been committed by a body corporate, a partnership or an unincorporated association of persons, any person who at the time of the commission of the offense was a director, manager, partner, secretary or other similar officer thereof, or was purporting to act in any such capacity, shall also be guilty of that offense unless he proves that —

- (a) the offense was committed without his consent or connivance; and
- (b) he had exercised all such diligence to prevent the commission of the offense as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

⁶²⁷ Section 376B of the Penal Code (Commercial sex with minor under 18)

- (1) Any person who obtains for consideration the sexual services of a person, who is under 18 years of age, shall be punished with imprisonment for a term which may extend to 7 years, or with fine, or with both.
- (2) Any person who communicates with another person for the purpose of obtaining for consideration, the sexual services of a person who is under 18 years of age, shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with both.
- (3) No person shall be guilty of an offense under this section for any sexual services obtained from that person’s spouse.
- (4) In this section, “sexual services” means any sexual services involving —
 - (a) sexual penetration of the vagina or anus, as the case may be, of a person by a part of another person’s body (other than the penis) or by anything else; or
 - (b) penetration of the vagina, anus or mouth, as the case may be, of a person by a man’s penis.

11 – Establishes the confiscation of assets used to commit or facilitate child pornography offenses; and
12 – Establishes the confiscation of proceeds derived from child pornography offenses

Singaporean law does not explicitly provide for the: 1) confiscation of assets used to commit or facilitate obscenity offenses, which might also cover child pornography offenses; and 2) confiscation of proceeds derived from such offenses.

However, Section 9 of the Undesirable Publications Act⁶²⁸ allows for the forfeiture of any document or any extract from such document that constitutes “prohibited publications” under this Act.

13 – Requires professionals working with children to report child pornography activities

Singaporean law and regulations do not provide explicit provisions that require professionals working with children to report incidents involving activities related to child pornography to relevant authorities when they learn of such incidents. However, Singapore has regulations that establish a mandatory reporting requirement for professionals who work with children upon findings of suspected child abuse cases, although these Regulations do not provide a definition of the term “child abuse” to include the use of a child in pornographic materials as stated below.

Section 21 of the Child Care Centres Regulations states that “The licensee of a child care centre who has reasonable cause to suspect any case of child abuse shall immediately report it to the Director”. However, there is no definition of the term “child abuse” provided under Child Care Centres Regulations and Child Care Centres Act.

14 – Requires Internet Service Providers to report child pornography

Singaporean law does not contain provisions that require Internet Service Providers (ISPs) to report child pornography to law enforcement or other relevant agencies when it is discovered on their own networks. However, the Internet Code of Practice⁶²⁹ and the Broadcasting (Class License) Notification⁶³⁰ address the duties of ISPs and Internet Content Providers (ICPs) licensed under the Broadcasting (Class License) Notification with respect to materials with sexual or obscene content.

Section 2 of the Internet Code of Practice requires all licensed ISPs and ICPs to use their best efforts in order to ensure that prohibited material is not broadcast via the Internet to users in Singapore.

In addition, Section 4 of the Internet Code of Practice⁶³¹ defines “prohibited material” as objectionable material on the grounds of the public interest, public morality, public order, public security, national harmony, or is

⁶²⁸ Section 9 of the Undesirable Publications Act (Forfeiture)

A court before which any proceedings are taken under this Act, if satisfied that any document produced in the proceedings is a prohibited publication or an extract therefrom, shall, whether the alleged offender is convicted or not, order such publication or extract therefrom to be forfeited to the Commissioner of Police, who shall order it to be destroyed or otherwise disposed of in such manner as he thinks fit.

⁶²⁹ Internet Code of Practice, available at http://www.mda.gov.sg/RegulationsAndLicensing/Licences/Documents/Properties/mobj.981.Internet_Code_of_Practice.pdf (last visited Jan. 16, 2015).

⁶³⁰ Broadcasting (Class License) Notification, available at [http://www.mda.gov.sg/RegulationsAndLicensing/ContentStandardsAndClassification/Documents/Internet/Broadcast%20\(Class%20Licence\)%20Notification.pdf](http://www.mda.gov.sg/RegulationsAndLicensing/ContentStandardsAndClassification/Documents/Internet/Broadcast%20(Class%20Licence)%20Notification.pdf) (last visited Jan. 16, 2015).

⁶³¹ Section 4 of the Internet Code of Practice (Prohibited Material)

(1) Prohibited material is material that is objectionable on the grounds of public interest, public morality, public order, public security, national harmony, or is otherwise prohibited by applicable Singaporean laws.

(2) In considering what is prohibited material, the following factors should be taken into account:-

otherwise prohibited by applicable Singaporean laws. The factors to be considered include the following: 1) whether the material promotes sexual violence or sexual activity involving the coercion or non-consent of any kind; and 2) whether the material depicts a person clearly engaged in explicit sexual activity and other prescribed factors pursuant to Section 4 of the Internet Code of Practice.

In accordance with Sections 2 and 4 of the Internet Code of Practice, this Code mandates all licensed ISPs and ICPs to use their best effort so as to make sure that prohibited material is not broadcast via the Internet to their users in Singapore.

Furthermore, Section 2A (2) of the Schedule to the Broadcasting (Class License) Notification provides that if the Authority is satisfied that content in a programme on the World Wide Web is undesirable, harmful or obscene, and the Authority gives to an Internet Access Service Provider written notice that end-users should be prevented from accessing that content on the Internet, the Internet Access Service Provider shall take all reasonable steps to modify, or to enable the relevant subscribers to modify, the Internet content filtering arrangements⁶³² to prevent such end-users from accessing that content.

15 – Has telephone or online hotlines to enable the public to report child abuse

The Singaporean Government has a “Child Protection and Welfare Helpline” (Helpline phone number– 1800-777 0000) that enables the public to report suspected child abuse. Child abuse includes: 1) physical abuse; 2) neglect; 3) sexual abuse; and 4) emotional and psychological abuse.⁶³³

16 – Creates data retention or data preservation provisions

Section 9 (1) of the Electronic Transactions Act⁶³⁴ (Chapter 88) contains provisions that address the requirements to be satisfied in the event that any rule of law requires certain documents, records, or information to be retained in the form of electronic records.

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- (a) whether the material depicts nudity or genitalia in a manner calculated to titillate;
 - (b) whether the material promotes sexual violence or sexual activity involving coercion or non-consent of any kind;
 - (c) whether the material depicts a person or persons clearly engaged in explicit sexual activity;
 - (d) whether the material depicts a person who is, or appears to be, under 16 years of age in sexual activity, in a sexually provocative manner or in any other offensive manner;
 - (e) whether the material advocates homosexuality or lesbianism, or depicts or promotes incest, paedophilia, bestiality and necrophilia;
 - (f) whether the material depicts detailed or relished acts of extreme violence or cruelty;
 - (g) whether the material glorifies, incites or endorses ethnic, racial or religious hatred, strife or intolerance.
- (3) A further consideration is whether the material has intrinsic medical, scientific, artistic or educational value.
- (4) A licensee who is in doubt as to whether any content would be considered prohibited may refer such content to the Authority for its decision.

⁶³² Pursuant to Section 2A (3) of the Schedule to the Broadcasting (Class License) Notification “Internet content filtering arrangements” means any arrangement (whether or not involving Internet content filtering software installed at the Internet Access Service Provider’s computer equipment or the relevant subscriber’s computer equipment) that is likely to provide a reasonably effective means of preventing access by children and other end-users to such content in any programme on the World Wide Web that is undesirable, harmful or obscene or potentially undesirable, harmful or obscene, and that was selected by the relevant subscriber.

⁶³³ THE MINISTRY OF SOCIAL WELFARE AND FAMILY DEV., POLICY ON PROTECTION & WELFARE OF CHILDREN, REPORTING OF SUSPECTED CHILD ABUSE, available at <http://app.msf.gov.sg/Policies/Strong-and-Stable-Families/Nurturing-Protecting-the-Young/Child-Protection-Welfare/Policy-on-Protection-Welfare-of-Children> (last visited Jan. 16, 2015).

⁶³⁴ Section 9 (1) of the Electronic Transactions Act

However, Sections 292 and 293 of the Penal Code that address obscenity offenses, which may also cover child pornography offenses, do not explicitly call for records or information to be retained. Thus, it is unclear whether data retention provisions under the Electronic Transactions Act are applicable to such offenses.

In addition, while not specific to the retention of non-content based data including subscriber information (data that helps identify the subscriber), as well as traffic data (i.e. information on the route, time, date, duration, destination, and source of a communication), the Personal Data Protection Act 2012 contains provisions for personal data retention principles as stated below.

Section 25 of the Personal Data Protection Act 2012 provides for the retention of personal data by mandating an organization to cease to retain its documents containing personal data or remove the means by which the personal data can be associated with particular individuals as soon as it is reasonable to assume that: 1) the purpose for which that personal data was collected is no longer being served by the retention of personal data; and 2) retention of such personal data is no longer needed for legal or business purposes.

17 – Requires the identification of users of public computers in cybercafés

Singapore does not have legislation or regulations that require the identification of users of public computers in cybercafés.

18 – Has a national plan to combat violence against children

Singapore has a national plan to combat violence against children as elaborated below.

The “National Standards for the Protection of Children” was issued by the Ministry of Community Development and Sports in 2002. It outlines the framework for the management of child protection and provides a common understanding of the roles and responsibilities of different sectors and various constituents under the child protection system in Singapore.⁶³⁵

In addition, “Protecting Children in Singapore” was published by the Ministry of Community Development, Youth and Sports in 2005.⁶³⁶

19 – Has ratified the CRC and the OPSC

- Singapore acceded to the Convention on the Rights of the Child on October 5, 1995.⁶³⁷

Where a rule of law requires any document, record or information to be retained, or provides for certain consequences if it is not, that requirement is satisfied by retaining the document, record or information in the form of an electronic record if the following conditions are satisfied:

- (a) the information contained therein remains accessible so as to be usable for subsequent reference;
- (b) the electronic record is retained in the format in which it was originally generated, sent or received, or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;
- (c) such information, if any, as enables the identification of the origin and destination of an electronic record and the date and time when it was sent or received, is retained; and
- (d) any additional requirements relating to the retention of such electronic records specified by the public agency which has supervision over the requirement for the retention of such records are complied with.

⁶³⁵ THE MINISTRY OF COMMUNITY DEV., YOUTH AND SPORTS, NATIONAL STANDARDS FOR THE PROTECTION OF CHILDREN (2002), available at http://app.msf.gov.sg/portals/0/Summary/publication/Resource_Materials_Standards_Protection_Children.pdf (last visited Jan. 16, 2015).

⁶³⁶ THE MINISTRY OF COMMUNITY DEV., YOUTH AND SPORTS, PROTECTING CHILDREN IN SINGAPORE (2005), available at http://app.msf.gov.sg/portals/0/Summary/research/Materials_Protect_Children_in_Spore.pdf (last visited Jan. 16, 2015).

⁶³⁷ *Status of Ratification and Accession of the CRC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en (last visited Oct. 24, 2014).

- Singapore has not ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography as of October 24, 2014.⁶³⁸
- Singapore ratified the Worst Forms of Child Labour Convention, 1999 (No. 182) on June 14, 2001.⁶³⁹

20 – Age of criminal liability

The minimum age of criminal responsibility in Singapore is seven years of age pursuant to Section 82 of the Penal Code. If an offender is a child above seven years of age and under 12 years of age who is not mature enough to judge the nature and consequence of his or her conduct on that occasion, such child is also exempted from criminal liability according to Section 83 of the Penal Code.

21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children

Singapore has legislation that specifically addresses the use of ICTs to commit crimes against children.

In light of crimes against children committed by the use of ICTs, Section 376D (1) (c) of the Penal Code explicitly makes it an offense to print, publish, or distribute any information that is intended to promote conduct that would constitute an offense under Section 376C of this Code (Commercial sex with minor under 18 outside Singapore), or to assist any other person to engage in such conduct with a penalty stipulated in Section 376D (3) of this Code. Section 376D (2) of the Penal Code further articulates that the publication of information means publication of information “by any means, whether by written, electronic, or other form of communication” for the purposes of Section 376D (1) (c) of this Code.

Cybercrime in general is covered by the Computer Misuse and Cybersecurity Act (Chapter 50A) (revised in 2007). The objective of the Computer Misuse and Cybersecurity Act is to secure computer material against unauthorized access or modification, unauthorized use or interception of computer services, unauthorized disclosure of access code, unauthorized obstruction of the use of the computer and access with intent to facilitate an offense stipulated under this Act.

22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online

Singaporean law does not provide explicit provisions criminalizing child trafficking with the intent of producing pornography. However, Sections 372⁶⁴⁰ and 373 of the Penal Code⁶⁴¹ criminalize trafficking in any person under

⁶³⁸ Status of Ratification and Accession of the OPSC, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last visited Oct. 24, 2014).

⁶³⁹ Status of the Ratification of the Worst Forms of Child Labour Convention, 1999, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited Oct. 24, 2014).

⁶⁴⁰ Section 372 of the Penal Code (Selling minor for purposes of prostitution, etc.)

Whoever sells, lets to hire, or otherwise disposes of any person under the age of 21 years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

Explanation—When a female under the age of 21 years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

⁶⁴¹ Section 373 of the Penal Code (Buying minor for purposes of prostitution, etc.)

Whoever buys, hires or otherwise obtains possession of any person under the age of 21 years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

the age of 21 years for the purpose of prostitution or illicit intercourse or for any unlawful and immoral purpose or knowing that it would be likely that such person will at any age be employed or used for any such purpose. Section 12 of the Children and Young Persons Act⁶⁴² also punishes anyone who participates in any part of the unlawful transfer of possession, custody, or control of a child prescribed under this Act.

Section 376D of the Penal Code⁶⁴³ criminalizes advertising child sex tourism online. Specifically, Section 376D (1) (c) of the Penal Code punishes anyone who publishes any information that is intended to promote conduct that would constitute an offense under Section 376C or assist any other person to engage in such conduct. Further, Section 376D (2) of the Penal Code stipulates that for the purposes of Section 376D (1) (c) of this Code, the term “publication of information” refers to publication of information by any means, whether by written or other form of communication.

A person who is guilty of an offense under Section 376D (1) (c) of the Penal Code shall be punishable by imprisonment for a term which may extend to ten years, or a fine, or both pursuant to Section 376D (3) of this Code.

23 – Has legislation that criminalizes online grooming as a standalone offense

Singaporean law does not have explicit provisions that criminalize online grooming. However, Section 376E of the Penal Code⁶⁴⁴ criminalizes sexual grooming against a minor under 16 years of age with imprisonment for a term which may extend to three years, or a fine, or both.

Explanation—Any prostitute, or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of 21 years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

⁶⁴² Section 12 of the Children and Young Persons Act (Unlawful transfer of possession, custody or control of child)

(1) Every person who takes any part in any transaction the object or one of the objects of which is to transfer or confer, wholly or partly, temporarily or permanently, the possession, custody or control of a child for any valuable consideration shall be guilty of an offense and shall be liable on conviction to imprisonment for a term not exceeding 4 years.

(2) Every person who, without lawful authority or excuse, harbors or has in his possession, custody or control any child with respect to whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration by any other person within or outside Singapore

shall be guilty of an offense and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 5 years or to both.

⁶⁴³ Section 376D of the Penal Code (Tour outside Singapore for commercial sex with minor under 18)

(1) Any person who —

(a) makes or organises any travel arrangements for or on behalf of any other person with the intention of facilitating the commission by that other person of an offense under section 376C, whether or not such an offense is actually committed by that other person;

(b) transports any other person to a place outside Singapore with the intention of facilitating the commission by that other person of an offense under section 376C, whether or not such an offense is actually committed by that other person; or

(c) prints, publishes or distributes any information that is intended to promote conduct that would constitute an offense under section 376C, or to assist any other person to engage in such conduct,

shall be guilty of an offense.

(2) For the purposes of subsection (1) (c), the publication of information means publication of information by any means, whether by written, electronic, or other form of communication.

(3) A person who is guilty of an offense under this section shall be punished with imprisonment for a term which may extend to 10 years, or with fine, or with both.

⁶⁴⁴ Section 376E of the Penal Code (Sexual grooming of minor under 16)

(1) Any person of or above the age of 21 years (A) shall be guilty of an offense if having met or communicated with another person (B) on 2 or more previous occasions —

24 – Has a clear definition of online grooming

Although the Singaporean Penal Code does not provide clear definitions of “online grooming” and “sexual grooming”, it does address punishable conducts that shall constitute sexual grooming offenses.

Pursuant to Section 376E (1) of the Penal Code, if any person of or above the age of 21 years (A) has met or communicated with another person (B) on two or more occasions, that person shall be guilty of the offense of sexual grooming provided that the following conditions are met:

- (a) A intentionally meets B or travels with the intention of meeting B; and
- (b) at the time of the acts referred to in paragraph (a)
 - (i) A intends to do anything to or in respect of B, during or after the meeting, which if done will involve the commission by A of a relevant offense as stated below;
 - (ii) B is under 16 years of age; and
 - (iii) A does not reasonably believe that B is of or above the age of 16 years.

Section 376E (2) of the Penal Code prescribes that “relevant offenses” mentioned in Section 376E (1) of this Code include the following: (a) Sections 354 (Assault or use of criminal force against a person with intent to outrage modesty); 354A (Outraging modesty in certain circumstances); 375 (Rape); 376 (Sexual assault by penetration); 376A (Sexual penetration of minor under 16); 376B (Commercial sex with minor under 18); 376C (Commercial sex with minor outside the Singapore); 376D (Tour outside Singapore for commercial sex with minor under 18) or 377A (Outrages on decency) of the Penal Code; (b) Section 7 of the Child and Young Persons Act (Sexual exploitation of child or young person); or (c) Section 140 (1) of the Women’s Charter (Offenses relating to prostitution).

Section 376E (3) of the Penal Code further articulates that for the purposes of this Section, it is immaterial whether the two or more previous occasions of A having met or communicated with B referred to in Section 376E (1) of this Code took place in or outside of Singapore.

25 – Considers everyone under 18 as a potential victim of online grooming

The Penal Code does not consider everyone under the age of 18 as a potential victim of sexual grooming. Pursuant to Section 376E of Penal Code, sexual grooming is illegal when committed by a person of or above the age of 21 years against another person under the age of 16 years.

(a) A intentionally meets B or travels with the intention of meeting B; and

(b) at the time of the acts referred to in paragraph (a) —

(i) A intends to do anything to or in respect of B, during or after the meeting, which if done will involve the commission by A of a relevant offense;

(ii) B is under 16 years of age; and

(iii) A does not reasonably believe that B is of or above the age of 16 years.

(2) In subsection (1), “relevant offense” means an offense under —

(a) section 354, 354A, 375, 376, 376A, 376B, 376F, 376G or 377A;

(b) section 7 of the Children and Young Persons Act (Cap. 38); or

(c) section 140(1) of the Women’s Charter (Cap. 353).

(3) For the purposes of this section, it is immaterial whether the 2 or more previous occasions of A having met or communicated with B referred to in subsection (1) took place in or outside Singapore.

(4) A person who is guilty of an offense under this section shall be punished with imprisonment for a term which may extend to 3 years, or with fine, or with both.

26 – Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child, or criminalizes grooming regardless of the intent

Section 376E of the Penal Code criminalizes sexual grooming when an offender whose age is of or above the age of 21 years (A) has the specific intent of meeting another under the age of 16 years (B) for the commission of prescribed sexual offenses against such child (B).

Furthermore, the Ministry of Home Affairs clarified that besides two prior communications or meetings, a key element in this offense as prescribed in Section 376E of the Penal Code is that the offender must possess a criminal intent at the time of meeting the child or at the time of traveling to meet the child to commit a sexual offense against her.⁶⁴⁵

27 – Criminalizes showing pornography to a child as a standalone offense

Section 293 of the Penal Code⁶⁴⁶ makes it illegal to sell, let to hire, distribute, exhibit, and circulate to any person under the age of 21 years any obscene object referred to in Section 292 of the Penal Code with a penalty of imprisonment for a term which may extend to one year, or a fine, or both.

28 – Has legislation regarding cyberbullying

According to a survey conducted by Microsoft in 2012, 58% of Singaporean children reported experiencing cyberbullying, with Singapore ranking the second highest globally for cyberbullying (also known as online-bullying), while China was ranked first and India was ranked third.⁶⁴⁷

Singapore has legislation regarding cyberbullying, although the terms “cyberbullying” and “bullying” are not explicitly used by Singaporean law. The Protection from Harassment Act (Act No. 17 of 2014) has provisions criminalizing harassment, unlawful stalking, and related anti-social behaviors, such as bullying in work places or cyber-bullying in schools, whether committed in the physical world or online.

Any person who by any means uses any threatening, abusive, or insulting words or behavior or makes any threatening, abusive, or insulting communication, which is heard, seen, or otherwise perceived by any person likely to be caused harassment, alarm, or distress, shall be guilty of an offense of harassment, alarm, or distress pursuant to Section 4 of the Protection from Harassment Act. In addition, an illustration to Section 4 of this Act provides an example of cyber-bullying in schools by stating that “X and Y are classmates. X posts a vulgar tirade against Y on a website accessible to all of their classmates. One of Y’s classmates shows the message on the website to Y, and Y is distressed. X is guilty of an offence under this section.”

Accordingly, it is evident that the Singaporean legislative intent is to cover cyber-bullying in schools under Section 4 of the Protection from Harassment Act, although there is no explicit usage of the terms “bullying”, “bullying through information and communication technologies”, or “cyber-bullying” under this Act.⁶⁴⁸

⁶⁴⁵ *Second Reading Speech of The Penal Code (Amendment) Bill*, by Senior Minister of State A/P Ho Peng Kee on 22 October 2007, *Sexual grooming*, THE MINISTRY OF HOME AFFAIRS, http://www.mha.gov.sg/news_details.aspx?nid=MTEzMQ%3D%3D-Fjrp1hVtn40%3D (last visited Nov. 21, 2014).

⁶⁴⁶ Section 293 of the Penal Code (Sale, etc., of obscene objects to young person)

Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of 21 years any such obscene object as is referred to in section 292, or offers or attempts to do so, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

⁶⁴⁷ MICROSOFT, WORLDWIDE (WW), ONLINE BULLYING SURVEY – EXECUTIVE SUMMARY – SINGAPORE (2012), available at http://download.microsoft.com/download/E/8/4/E84BEEAB-7B92-4CF8-B5C7-7CC20D92B4F9/WW%20Online%20Bullying%20Survey%20-%20Executive%20Summary%20-%20Singapore_Final.pdf (last visited Jan. 16, 2015).

⁶⁴⁸ Second Reading Speech by Minister for Law, K Shanmugam, on the Protection from Harassment Bill (2014), *supra* note 106.

29 – Has legislation concerning sexting

There is no legislation concerning sexting in Singapore.

Table 2.15 – Country: Thailand

1 – Has legislation specific to child pornography	Yes
2 – Has a clear definition of child pornography	No
3 – Considers everyone under 18 as a potential victim of activities related to child pornography	Yes (except the married children)
4 – Criminalizes accessing or downloading child pornography images	No
5 – Criminalizes possession of child pornography	No (but criminalizes possession of obscene materials for public distribution, etc.)
6 – Criminalizes virtual images and sexually exploitative representations of children	1) No; 2) Yes (not specifically, but obscene materials)
7 – Addresses the criminal liability of children involved in pornography	No (if children are victims, not offenders)
8 – Establishes criminal liability of legal persons for production or commercialization of child pornography	No
9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State	Yes (not specifically, but pornography offenses)
10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State	Yes (not specifically, but pornography offenses)
11 – Establishes confiscation of assets used to commit or facilitate child pornography offenses	Yes (not specifically, but obscenity offenses)
12 – Establishes confiscation of proceeds derived from child pornography offenses	Yes (not specifically, but obscenity offenses)
13 – Requires professionals working with children to report child pornography activities	No (illegal child care)
14 – Requires Internet Service Providers to report child pornography	No
15 – Has telephone or online hotlines to enable the public to report child abuse	Yes
16 – Creates data retention or data preservation provisions	Yes
17 – Requires the identification of users of public computers in cybercafés	No
18 – Has a national plan to combat violence against children	Yes
19 – Has ratified the CRC and the OPSC	Yes
20 – Age of criminal liability	7 - 14
21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children	Yes
22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online	1) Yes; 2) No
23 – Has legislation that criminalizes online grooming as a standalone offense	No
24 – Has a clear definition of online grooming	No
25 – Considers everyone under 18 as a potential victim of online grooming	No
26 – 1) Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child; or 2) criminalizes grooming regardless of the intent	No
27 – Criminalizes showing pornography to a child as a standalone offense	No
28 – Has legislation regarding cyberbullying	No
29 – Has legislation concerning sexting	No

Thailand

The Constitution of Thailand (enacted in 2007)⁶⁴⁹ (hereafter referred to as “Constitution”) has provisions for the protection of children’s rights. Specifically, Section 40 (6) of the Constitution provides that every child shall have the right to appropriate protection in judicial processes and shall have the right to appropriate treatment in cases related to sexual offenses.

In addition, the laws and measures which protect children’s rights and/or govern violence against children are as follows:

- Penal Code (enacted in 1956 as amended until Criminal Code No. 17 of 2003)⁶⁵⁰ (also known as “Criminal Code”) (hereafter referred to as “Penal Code”)
- Child Protection Act (enacted in 2003)⁶⁵¹
- Anti-Trafficking in Persons Act (enacted in 2008)⁶⁵²
- Measures in Prevention and Suppression of Trafficking in Women and Children Act (enacted in 1997)⁶⁵³
- Prevention and Suppression of Prostitution Act (enacted in 1996)⁶⁵⁴

EXTRACTS OF LEGISLATION RELATED TO THE TABLE:

1 – Has legislation specific to child pornography

Pursuant to Section 26, 9) of the Child Protection Act,⁶⁵⁵ it is forbidden for any person to force, threaten, use, induce, instigate, encourage, or allow a child to perform or act in a pornographic manner regardless of whether the intention is to obtain remuneration or anything else and regardless of a child’s consent. Any person who violates Section 26 of this Act shall be liable to a term of imprisonment not exceeding three months, or a fine not exceeding 30,000 Baht, or both pursuant to Section 78 of the same Act.⁶⁵⁶

Furthermore, Section 287 of the Penal Code⁶⁵⁷ criminalizes activities involving obscenity, which may also be applicable to conducts related to child pornography. Section 287 (1) of the Penal Code specifically criminalizes

⁶⁴⁹ Constitution of Thailand, available at http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@ilo_aids/documents/legaldocument/wcms_117898.pdf (last visited Jan. 16, 2015).

⁶⁵⁰ Penal Code, available at https://www.unodc.org/tldb/pdf/Thailand/THA_Pena_CodeEN.pdf (last visited Jan. 16, 2015).

⁶⁵¹ Child Protection Act, available at <http://www.thailaws.com/> (last visited Jan. 16, 2015).

⁶⁵² Anti-Trafficking in Persons Act, available at [http://www.no-trafficking.org/content/Laws_Agreement/laws_agreement_pdf/trafficking_in_persons_act_b.e%202551%20\(eng.\).pdf](http://www.no-trafficking.org/content/Laws_Agreement/laws_agreement_pdf/trafficking_in_persons_act_b.e%202551%20(eng.).pdf) (last visited Jan. 16, 2015).

⁶⁵³ Measures in Prevention and Suppression of Trafficking in Women and Children Act, available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/70622/91049/F460130495/THA70622.pdf> (last visited Jan. 16, 2015).

⁶⁵⁴ Prevention and Suppression of Prostitution Act, available at <http://www.baliprocess.net/Files/Legislation/Q-Z/ThailandProstitutionAct.pdf> (last visited Jan. 16, 2015).

⁶⁵⁵ Section 26, 9) of the Child Protection Act

Under the provisions of other laws, regardless of a child’s consent, a person is forbidden to act as follows:

- 9) Force, threaten, use, induce, instigate, encourage or allow a child to perform or act in a pornographic manner, regardless of whether the intention is to obtain remuneration or anything else;

⁶⁵⁶ Section 78 of the Child Protection Act

Any person who violates Section 26 shall be liable to a term of imprisonment not exceeding three months or a fine not exceeding 30,000 Baht, or both.

⁶⁵⁷ Section 287 of the Penal Code

Whoever:

the production, possession, exportation, importation, or circulation of the obscene material for the purpose of trade or by trade, for public distribution or exhibition with imprisonment not exceeding three years, or a fine not exceeding six thousand Baht, or both. Section 287 (2) of the Penal Code makes it illegal to carry on trade, take part, or participate in the trade concerning the obscene material or thing or to distribute or exhibit to the public or hire out such obscene material or thing with a penalty of imprisonment up to three years and/or a fine.

Moreover, the Computer Crime Act (enacted in 2007)⁶⁵⁸ contains provisions that address pornography, which may also cover child pornography. Section 14 of the Computer Crime Act stipulates that any person who commits an offense involving import to a computer system of any computer data of a pornographic nature into a computer system that is publicly accessible shall be liable to imprisonment for a term not exceeding five years, or a fine, or both.

Section 21 of the Computer Crime Act⁶⁵⁹ further articulates that if a relevant competent official found that any computer data contains undesirable sets of instructions, a relevant competent official with the authority to prohibit the sale or dissemination of such may instruct the person who owns or possesses the computer data to: 1) suspend the use of, destroy or correct the computer data therein; or 2) impose a condition with respect to the use, possession, or dissemination of the undesirable sets of instructions.

2 – Has a clear definition of child pornography

Thai law does not provide a clear definition of “child pornography” or “obscene materials”. However, Section 287 (1) of the Penal Code considers any document, drawing, print, painting, printed matter, picture, poster, symbol, photograph, cinematograph film, noise tape, picture tape or any other thing which is obscene as “obscene materials”.

Because Thailand has a civil law system with common law influences, previous decisions of the Supreme Court of Thailand, in addition to the relevant Codes and Acts, are considered as stated below.⁶⁶⁰

-
- (1) For the purpose of trade or by trade, for public distribution or exhibition, makes, produces, possesses, brings or causes to be brought into the Kingdom, sends or causes to be sent out of the Kingdom, takes away or causes to be taken away, or circulates by any means whatever, any document, drawing, print, painting, printed matter, picture, poster, symbol, photograph, cinematograph film, noise tape, picture tape or any other thing which is obscene;
 - (2) Carries on trade, or takes part or participates in the trade concerning the aforesaid obscene material or thing, or distributes or exhibits to the public, or hires out such material or thing;
 - (3) In order to assist in the circulation or trading of the aforesaid obscene material or thing, propagates or spreads the news by any means whatever that there is a person committing the act which is an offense according to this Section, or propagates or spreads the news that the aforesaid obscene material or thing may be obtained from any person or by any means,

shall be punished with imprisonment not exceeding three years or fined not exceeding six thousand Baht, or both.

⁶⁵⁸ Computer Crime Act, available at <http://www.prachatai.com/english/node/117> (last visited Jan. 16, 2015).

⁶⁵⁹ Section 21 of the Computer Crime Act

If a relevant competent official found that any computer data contains undesirable sets of instructions, a relevant competent official with the authority to prohibit the sale or dissemination of such, may instruct the person who owns or possesses the computer data to suspend the use of, destroy or correct the computer data therein, or to impose a condition with respect to the use, possession or dissemination of the undesirable sets of instructions.

The undesirable sets of instructions under paragraph one shall mean to include sets of instructions that cause computer data, a computer system or other instruction sets to be damaged, destroyed, corrected, changed, added, interrupted or, fail to perform according to pre-determined instructions or otherwise as required by a relevant Ministerial Rule, with the exception of sets of instructions aimed at preventing or correcting the foregoing sets of instructions as required by a Minister and published in the Government Gazette.

⁶⁶⁰ *Field Listing, Legal System, The World Factbook*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/fields/2100.html> (last visited Oct. 24, 2014).

In relation to a definition of “obscene materials”, in a previous case (Judgment No. 978/2492 of the Supreme Court of Thailand), the Supreme Court of Thailand defined “obscene” as “anything that is sexually shameful to the eyes or offensive which is the direct opposite of artistic expression”. In a more recent case (Judgment No. 6301/2533 of the Supreme Court of Thailand), the Supreme Court provided a more explicitly descriptive definition of “obscene” for the purposes of the case (that concerned an image of an adult woman) and described the relevant image as “obscene” on the grounds, *inter alia*, that “it is intended to incite wanton sexual desire”.⁶⁶¹

3 – Considers everyone under 18 as a potential victim of activities related to child pornography

Section 4 of the Child Protection Act⁶⁶² considers everyone under the age of 18 years as a potential victim of activities related to child pornography. However, this section does not include minors who have attained majority through marriage according to Section 20 of the Civil and Commercial Code.⁶⁶³

In Thailand, the age of consent to indecent acts is 15 years pursuant to Section 279 of the Penal Code. In addition, Section 283bis of the Penal Code stipulates that taking away a person who is over 15 years of age, but not yet over 18 years of age, for an indecent act, even with the consent of such person, shall constitute a compoundable offense.

4 – Criminalizes accessing or downloading child pornography images

The law does not explicitly criminalize accessing or downloading child pornography images.

While not specific to child pornography, Section 287 of the Penal Code punishes anyone who circulates “by any means” any document, drawing, print, painting, printed matter, picture, poster, symbol, photograph, cinematograph file, noise tape, picture tape or any other thing which is obscene.

5 – Criminalizes possession of child pornography

Thai law does not criminalize possession of child pornography with or without the intent to distribute. However, Section 287 of the Penal Code punishes anyone who possesses obscene materials for the purposes of public distribution or exhibition with imprisonment of not more than three years, or a fine not exceeding 6,000 Baht, or both.

6 – Criminalizes virtual images and sexually exploitative representation of children

While not specific to child pornography, Thai law criminalizes illicit activities involving obscene materials, which may include sexually exploitative representations of persons. Specifically, Section 287 of the Penal Code states that obscene materials shall include: 1) written representations (document, printed matter); 2) visual representations (“drawing”, print, painting, picture, poster, symbol, photograph); 3) visual and audio representations (cinematograph file, noise tape, picture tape); or 4) any other thing which is obscene.

7 – Addresses the criminal liability of children involved in pornography

Thai law does not address the criminal liability of children involved in pornography for their participation so long as the children are victims, and not the offenders.

⁶⁶¹ ALLEN & OVERY, *supra* note 314, at 141.

⁶⁶² Extract of Section 4 of the Child Protection Act

In this Act, “Child” means a person below 18 years of age, but does not include those who have attained majority through marriage.

⁶⁶³ Section 20 of Civil and Commercial Code

A minor becomes *sui juris* upon marriage, provided that the marriage is made in accordance with the provisions of Section 14448.

In the case of child offenders, the minimum age for criminal responsibility in Thailand is 14 years old pursuant to Sections 73 and 74 of the Penal Code. Section 73 of the Penal Code states that a child who has not yet reached seven years of age shall not be punished for committing what is provided by the law to be an offense. Section 74 of the Penal Code further articulates that whenever a child is over seven years, but not yet over 14 years of age, and commits what is provided by the law to be an offense, he shall not be punished, but the Court shall have the power to render the prescribed opinion.

In addition, Section 75 of the Penal Code stipulates that whenever any person over 14 years, but not yet over 17 years of age, commits any act provided by the law to be an offense, the Court shall proceed according to Section 74 of this Code, if the Court does not deem it expedient to pass judgment inflicting punishment on such person after considering the sense of responsibility and all other things concerning such person.⁶⁶⁴

8 – Establishes criminal liability of legal persons for production or commercialization of child pornography

There are no provisions that establish the criminal liability of legal persons for production or commercialization of obscene materials in general, which might also cover activities related to child pornographic items under Thai legislation.

9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State; and

10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State

Thailand establishes its extraterritorial jurisdiction over pornography offenses as stipulated in the Computer Crime Act, which might also cover child pornography offenses when: 1) the alleged offender is its national; or 2) the victim is its national under the prescribed circumstance as stated below.

Specifically, Section 17 of the Computer Crime Act⁶⁶⁵ recognizes extraterritorial jurisdiction of Thailand over offenses involving pornography stipulated in this Act when: 1) the offender is a national of Thai and the Government of the country where the offense has occurred or the injured party is required to be punished; or 2) the offender is a non-citizen and the Thai Government or Thai person who is an injured party or the injured party is required to be punished.

In addition, regarding offenses prescribed in the Penal Code, Section 8 of this Code⁶⁶⁶ stipulates that “Whoever commits an offence outside the Kingdom shall be punished in the Kingdom; provided that, and, provided further

⁶⁶⁴ Information provided by peer reviewer, Pol. Maj. Premsak Lertsuriyakul, on October 1, 2014.

⁶⁶⁵ Section 17 of the Computer Crime Act

Any person committing an offense against this Act outside the Kingdom and;

1. The offender is Thai and the government of the country where the offense has occurred or the injured party is required to be punished or;
2. The offender is a non-citizen and the Thai Government or Thai person who is an injured party or the injured party is required to be punished;

shall be penalized within the Kingdom.

⁶⁶⁶ Section 8 of the Penal Code

Whoever commits an offense outside the Kingdom shall be punished in the Kingdom; provided that, and, provided further that the offense committed be any of the following namely:

- (a) The offender be a Thai person, and there be a request for punishment by the Government of the country where the offense has occurred or by the injured person; or

that the offence committed be any of the following namely: (a) The offender be a Thai person, and there be a request for punishment by the Government of the country where the offence has occurred or by the injured person; or (b) The offender be an alien, and the Thai Government or a Thai person be the injured person, and there be a request for punishment by the injured person”.

11 – Establishes the confiscation of assets used to commit or facilitate child offenses; and

12 – Establishes the confiscation of proceeds derived from child pornography offenses

Sections 32⁶⁶⁷ and 33 of the Penal Code⁶⁶⁸ provide for the forfeiture of assets used to commit offenses involving obscene materials as stipulated in this Code, which may also govern child pornography offenses.

Section 18 of the Penal Code⁶⁶⁹ includes forfeiture of property as a form of punishment. Moreover, Section 33 of the Penal Code explicitly allows a court to issue an order for the forfeiture of properties as follows: 1) a property

(b) The offender be an alien, and the Thai Government or a Thai person be the injured person, and there be a request for punishment by the injured person;

If such offense to be the offense specified as following shall be punished within the Kingdom namely:

- Offenses Relating to Cause Public Dangers as provided in Section 217, Section 218, Section 221 to Section 223 excepting the case relating to the first paragraph of Section 220, and Section 224, Section 226, Section 228 to Section 232, Section 237, and Section 233 to Section 236 only when it is the case to be punished according to Section 238;
- Offenses Relating to Documents as provided in Section 264, Section 265, Section 266 (1) and (2), Section 268 excepting the case relating to Section 267 and Section 269; (2/1) Offense Relating to the Electronic Card according to be prescribed by Section 269/1 to Section 269/7.
- Offenses Relating to Sexuality as provided in Section 276, Section 280 and Section 285 only for the case relating to Section 276;
- Offenses Against Life as provided in Section 288 to Section 290;
- Offenses Against Body as provided in Section 295 to Section 298;
- Offenses of Abandonment of Children, Sick or Aged Persons as provided in Section 306 to Section 308;
- Offenses Against Liberty as provided in Section 309, Section 310, Section 312 to Section 315, and Section 317 to Section 320;
- Offenses of Theft and Snatching as provided in Section 334 to Section 336;
- Offenses of Extortion, Blackmail, Robbery and Gang-Robbery as provided in Section 337 to Section 340;
- Offenses of Cheating and Fraud as provided in Section 341 to Section 344, Section 346 and Section 347;
- Offenses of Criminal Misappropriation as provided in Section 352 to Section 354;
- Offenses of Receiving Stolen Property as provided in Section 357;
- Offenses of Mischief as provided in Section 358 to Section 360.

⁶⁶⁷ Section 32 of the Penal Code

Any property is prescribed by the law that any person makes or processes to be an offense, such property shall be forfeited wholly, irrespective of whether it belongs to the offender and there is the person inflicted with the punishment according to judgment or not.

⁶⁶⁸ Section 33 of the Penal Code

For the forfeiture of a property, the Court shall, besides having the power to forfeit under the law as specially provided for that purpose, have the power to forfeit the following properties also, namely:

A property used or possessed for use in the commission of an offense by a person; or

A property acquired by a person through the commission of an offense.

Unless such property belongs to the other person who does not connive at the commission of the offense

⁶⁶⁹ Extract of the Section 18 of the Penal Code

Punishments for inflicting upon the offenders are as follows:

- Death;
- Imprisonment;

used or possessed for use in the commission of an offense by a person; or 2) a property acquired by a person through the commission of an offense unless such property belongs to another person who does not connive at the commission of the offense.

Pursuant to Section 37 of the Penal Code⁶⁷⁰, if the person who is ordered by the Court to deliver the property subject to the forfeiture does not deliver it within the time set forth by the Court, the Court shall have the power to give an order stipulated in this Code and such order shall include the order to require such person to pay its value or to seize other property of such person to compensate for its value in full.

13 – Requires professionals working with children to report child pornography activities

Thai law does not provide an explicit provision that requires professionals working with children to report incidents involving child pornography activities to the relevant authorities when they learn of such incidents. However, Section 29 of the Child Protection Act⁶⁷¹ establishes a mandatory reporting requirement for professionals who work with children upon the discovery of circumstances involving torture or unlawful care.

According to Section 29, Paragraph 1 of the Child Protection Act, upon finding a child in circumstances which warrant welfare assistance or safety protection as stipulated under Chapter 3 (Sections 32 – 39) and Chapter 4 (Sections 40 – 50), a person shall provide basic assistance and notify a competent official, administrative official, or police officer or person having the duty to protect a child’s safety according to Section 24 of this Act without delay.

According to Section 29, Paragraph 2 of the Child Protection Act: (1) a physician, nurse, psychologist, or public health official admitting a child for treatment; (2) teacher, instructor, or employer having the duty to take care of a child who is his/her student or employee shall report immediately to a competent official or person having a duty to protect a child’s safety according to Section 24 of this Act, or an administrative official or police officer if it is apparent or suspected that the child has been tortured or is sick due to unlawful care. However, the Child

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- Confinement;
 - Fine;
 - Forfeiture of property.

⁶⁷⁰ Section 37 of the Penal Code

If the person who is ordered by the Court to deliver the forfeited property does not deliver it within the time determined by the Court, the Court shall have the power to give order as follows:

- (1) To seize such property;
- (2) To pay its value, or to seize other property of such person to compensate for its value in full; or
- (3) In case of the Court is of opinion that such person can deliver the property ordered to be delivered, but does not deliver it, or such person can pay its value, but does not pay, the Court shall have the power to confine such person until such person complies with the order, but the period of confinement shall not exceed one year. But, if, afterwards, it appears to the Court itself or by the submission of such person that such person cannot deliver the property or pay its value, the Court may give order to release such person before the expiration of such period.

⁶⁷¹ Section 29 of the Child Protection Act

Upon finding a child in circumstances which warrant welfare assistance or safety protection as stipulated under Chapters 3 and 4, a person shall provide basic assistance and notify a competent official, administrative official or police officer or person having the duty to protect a child’s safety according to the Section 24 without delay.

A physician, nurse, psychologist or public health official admitting a child for treatment; teacher, instructor or employer having the duty to take care of a child who is his or her student or employee, shall report immediately to a competent official or a person having duty to protect a child’s safety according to Section 24, or administrative official or police officer if it is apparent or suspected that the child has been tortured or is sick due to unlawful care.

Persons notifying or reporting in good faith under this Section shall receive appropriate protection and shall not be held liable for any civil, criminal or administrative action arising therefrom.

Protection Act does not contain provisions addressing circumstance that can be perceived as unlawful care against a child.

14 – Requires Internet Service Providers to report child pornography

Thai law does not have provisions requiring Internet Service Providers (ISPs) to report to law enforcement or other relevant authorities upon finding suspected child pornography on their networks.

However, Section 15 of the Computer Crime Act addresses the liabilities of service providers rather than establishing reporting duties for ISPs.

Section 14 of the Computer Crime Act states that importing computer data of a pornographic nature into a computer system accessible to the public shall be punishable by imprisonment up to five years, or a fine up to 100,000 Baht, or both.

Section 15 of the Computer Crime Act⁶⁷² provides that any service provider intentionally supporting or consenting to an offense under Section 14 of this Act shall be subject to the same penalty as that imposed upon a person committing an offense under Section 14.

15 – Has telephone or online hotlines to enable the public to report child abuse

Childline Thailand Foundation (CTF) runs a nationwide 24-hour telephone helpline known as “Childline Thailand” (Helpline phone number – 1387), which provides assistance to children who have been abused and exploited.⁶⁷³

16 – Creates data retention or data preservation provisions

Thai law provides data retention provisions. Pursuant to Section 26 of the Computer Crime Act,⁶⁷⁴ service providers⁶⁷⁵ are required to store computer traffic data⁶⁷⁶ for at least 90 days from the date on which the data is put into the computer system. However, if necessary, a relevant competent official may instruct a service provider to store data for a period of longer than 90 days, but not exceeding one year on a special case or on a temporary basis.

⁶⁷² Section 15 of the Computer Crime Act

Any service provider intentionally supporting or consenting to an offense under Section 14 within a computer system under their control shall be subject to the same penalty as that imposed upon a person committing an offense under Section 14.

⁶⁷³ Call Center, CHILDLINE THAILAND, <http://childlinethailand.org/call-center/> (last visited Nov. 22, 2014).

⁶⁷⁴ Section 26 of the Computer Crime Act

A service provider must store computer traffic data for at least 90 days from the date on which the data is input into a computer system. However, if necessary, a relevant competent official may instruct a service provider to store data for a period of longer than 90 days but not exceeding one year on a special case by case basis or on a temporary basis.

The service provider must keep the necessary information of the service user in order to be able to identify the service user from the beginning of the service provision, and such information must be kept for a further period not exceeding 90 days after the service agreement has been terminated.

The types of service provider to whom the provisions under paragraph one shall apply and the timing of this application shall be established by a Minister and published in the Government Gazette.

A service provider who fails to comply with this Section must be subject to a fine of not more than 500,000 Baht.

⁶⁷⁵ Section 3 of the Computer Crime Act articulates that the term “service provider” in this Act shall mean (1) a person who provides service to the public with respect to access to the Internet or other mutual communication via a computer system, whether on their own behalf, or in the name of, or for the benefit of another person or (2) a person who provides services with respect to the storage of computer data for the benefit of the other person.

⁶⁷⁶ Section 3 of the Computer Crime Act states that the term “computer traffic data” in this Act shall mean data related to computer system-based communications showing sources of origin, starting points, destinations, routes, time, dates, volumes, time periods, types of services or others related to that computer system's communications.

In addition, according to Section 26 of the Computer Crime Act, service providers must keep the necessary information of the service user⁶⁷⁷ in order to be able to identify the service user from the beginning of the service provision, and such information must be kept for a further period not exceeding 90 days after the service agreement has been terminated.

17 – Requires the identification of the users of public computers in cybercafés

Thailand does not have legislation or regulations that require the identification of users of public computers in cybercafés. However, the Computer Crime Act enables the identification of service users through the information kept by the service providers.

Pursuant to Section 26 of the Computer Crime Act, service providers must keep the necessary information of the service user in order to be able to identify the service user from the beginning of the service provisions, and such information must be kept for a further period not to exceed 90 days after the service agreement has been terminated.

In addition, according to Section 18 (3) of the Computer Crime Act⁶⁷⁸, within the power of Section 19 of this Act and for the benefit of an investigation, if there is reasonable cause to believe that there is the perpetration of an offense under this Act, then a relevant competent official shall have the authority only as necessary to identify a person who has committed an offense. Such authorities shall include the power to instruct a service provider to deliver service user-related data that must be stored under Section 26 of the Computer Crime Act or that is in the possession or under the control of a service provider to a relevant competent official.

18 – Has a national plan to combat violence against the children

Thailand has a National Child and Youth Development Plan (2012 – 2016), which integrated the National Policy and Strategic Plan on Child Development in accordance with the “World Fit for Children” (2007 – 2016) and Provincial Strategic Plans on Child and Youth – Friendly Cities. Strategies and measures to protect children from abuse, exploitation, and violence are specified in the National Child and Youth Development Plan (2012 – 2016).⁶⁷⁹

19 – Has ratified the CRC and the OPSC

- Thailand acceded to the Convention on the Rights of the Child on April 26, 1992.⁶⁸⁰
- Thailand acceded to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on January 11, 2006.⁶⁸¹

⁶⁷⁷ Section 3 of the Computer Crime Act stipulates that the term "service user" in this Act means a person who uses the services provided by a service provider, with or without fee.

⁶⁷⁸ Section 18 (3) of the Computer Crime Act

Within the power of Section 19 and for the benefit of an investigation, if there is reasonable cause to believe that there is the perpetration of an offense under this Act, then a relevant competent official shall have any of the following authorities only as necessary to identify a person who has committed an offense in order to:

3. instruct a service provider to deliver to a relevant competent official service users-related data that must be stored under Section 26 or that is in the possession or under the control of a service provider.

⁶⁷⁹ The National Child and Youth Development Plan B.E. 2555 - 2559 (2012 - 2016), available at <http://oppv.opp.go.th/doc/plan2555-2559%20eng.PDF> (last visited Jan. 16, 2015).

⁶⁸⁰ *Status of Ratification and Accession of the CRC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en (last visited Oct. 24, 2014).

⁶⁸¹ *Status of Ratification and Accession of the OPSC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last visited Oct. 24, 2014).

- Thailand ratified the Worst Forms of Child Labour Convention, 1999 (No. 182) on February 16, 2001.⁶⁸²

20 – Age of criminal liability

The minimum age for criminal responsibility in Thailand is 14 years old pursuant to Sections 73 and 74 of the Penal Code. Section 73 of the Penal Code states that a child who has not yet reached seven years of age shall not be punished for committing what is provided by the law to be an offense. Section 74 of the Penal Code further articulates that whenever a child over seven years, but not yet over 14 years of age, commits what is provided by the law to be an offense, he shall not be punished but the Court shall have the power to render the prescribed opinion.

21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children

Thailand has legislation that specifically addresses the use of ICTs to commit crimes against children.

The Child Protection Act contains provisions addressing the use of ICTs to commit crimes against children. According to Section 27 of the Child Protection Act⁶⁸³, advertising or disseminating any information on a child by means of the media or any other kind of information technology with the intention of causing damage to the mind, reputation, prestige, or any other interests of the child or seeking benefit for oneself or others in an unlawful manner will be prohibited. Furthermore, any person who violates Section 27 of this Act shall be liable to imprisonment for a term not exceeding six months, or a fine not exceeding 60,000 Baht, or both pursuant to Section 79 of the same Act.⁶⁸⁴

While not specific to child pornography, Section 287 (3) of Penal Code⁶⁸⁵ punishes any person who, in order to assist in the circulation or trading of the aforesaid obscene material or thing, propagates or spreads the news “by any means” whatever that there is a person committing the act which is an offense according to this Section, or propagates or spreads the news that the aforesaid obscene material or thing may be obtained from any person or “by any means”.

⁶⁸² *Status of the Ratification of the Worst Forms of Child Labour Convention, 1999*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited Oct. 24, 2014).

⁶⁸³ Section 27 of the Child Protection Act

It is forbidden for anyone to advertise or disseminate by means of the media or any other kind of information technology any information on a child or the child’s guardian, with the intention of causing damage to the mind, reputation, prestige, or any other interests of the child or seeking benefit for oneself or others in an unlawful manner.

⁶⁸⁴ Section 79 of the Child Protection Act

Any person who violates Sections 27, 50 or 61 shall be liable to a term of imprisonment not exceeding six months or a fine not exceeding 60,000 Baht, or both.

⁶⁸⁵ Section 287 (3) of the Penal Code

Whoever:

(3) In order to assist in the circulation or trading of the aforesaid obscene material or thing, propagates or spreads the news by any means whatever that there is a person committing the act which is an offense according to this Section, or propagates or spreads the news that the aforesaid obscene material or thing may be obtained from any person or by any means,

shall be punished with imprisonment not exceeding three years or fined not exceeding six thousand Baht, or both.

22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online

The Anti-Trafficking in Persons Act⁶⁸⁶ has provisions that criminalize child trafficking with the intent of producing or distributing pornography as stated below.

Section 6 of the Anti-Trafficking in Persons Act⁶⁸⁷ criminalizes human trafficking for the purpose of exploitation. Pursuant to Section 4 of the Anti-Trafficking in Persons Act, the meaning of exploitation in this Law includes seeking benefits from the prostitution, “production or distribution of pornographic materials” and any other forms of sexual exploitation of another person, regardless of such person’s consent. Whoever commits activities which constitute the offenses of trafficking in persons shall be subject to punishment as stipulated in Section 52 of the Anti-Trafficking in Persons Act.⁶⁸⁸ Pursuant to Section 52 of the Anti-Trafficking in Persons Act, the penalties shall be increased if the trafficking offense is committed against a child under 18 years of age.

Moreover, pursuant to Sections 282⁶⁸⁹ and 283 of the Penal Code⁶⁹⁰, anyone who traffics a man or a woman for indecent sexual acts for gratifying the sexual desire of another person, shall be punished. If the victim is under 15 years of age or 18 years of age, the offender shall be subject to more severe punishment.

⁶⁸⁶ Previously, Section 5 of the Measures in Prevention and Suppression of Trafficking in Women and Children Act(Enacted in 1997) governs an offense concerning the trafficking in women and children for sexual gratification of another person, for an indecent sexual purpose or for gaining any illegal benefit for his/herself or another person, irrespective of the consent of the woman or children shall constitute an offense in accordance with the Penal Code, law on prostitution prevention and suppression, law on safety and welfare of children and youths. However, Section 3 of the Anti-Trafficking in Persons Act (2008) explicitly states that this Act shall repeal the Measures in Prevention and Suppression of Trafficking in Women and Children Act (1997).

⁶⁸⁷ Section 6 of the Anti-Trafficking in Persons Act

Whoever, for the purpose of exploitation, does any of following acts:

- (1) Procuring, buying, selling, vending, brining from or sending to, detaining or confining, harboring, or receiving any person, by means of the threat or use of force, abduction, fraud, deception, abuse of power, or of the giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control; or
- (2) Procuring, buying, selling , vending, bringing from or sending to, detaining or confining, harboring , or receiving a child;

is guilty of trafficking in persons.

⁶⁸⁸ Section 52 of the Anti-Trafficking in Persons Act

Whoever commits an offense of trafficking in persons shall be liable to the punishment of an imprisonment from four years to ten years and a fine from eighty thousand Baht to two hundred thousand Baht.

If the offense under paragraph one is committed against a child whose age exceeds fifteen years but not yet reaching eighteen years, the offender shall be liable to the punishment of an imprisonment from six years to twelve years and a fine from one hundred twenty thousand Baht to two hundred forty thousand Baht .

If the offense under paragraph one is committed against a child not over fifteen years of age, the offender shall be liable to the punishment of an imprisonment from eight years to fifteen years and a fine from one hundred sixty thousand Baht to three hundred thousand Baht.

⁶⁸⁹ Section 282 of the Penal Code

Whoever, for the sexual gratification of another person, procures, lures or traffics a man or woman for an indecent sexual purpose, even with his or her consent, shall be punished with imprisonment of one to ten years, and a fine of two thousand to twenty thousand Baht,

If the commission of the offense in the first paragraph is committed against a person over fifteen years but not yet over eighteen years of age offender shall be punished s\with imprisonment of three to fifteen years and a fine of six thousand to thirty thousand Baht.

If the commission of the offense in the first paragraph is committed against a person not yet over fifteen years of age, the offender shall be punished with imprisonment of five to twenty years, and a fine of ten thousand to forty thousand Baht.

Whoever, for the sexual gratification of another person, receives the person who was procured, lured, or trafficked as provided in the first, second, third paragraph or aids or abets in the commission of such offense, shall be punished with the punishment accordingly provided in the first, second, or third paragraph as the case may be.

⁶⁹⁰ Section 283 of the Penal Code

Thai law does not provide explicit provisions criminalizing advertising child sex tourism online.

23, 24, 25, and 26 – Existence of specific legislation criminalizing online grooming, a clear definition of online grooming, the age of a potential victim, and related crimes

Thai law does not have provisions criminalizing online grooming. In addition, Thai law does not provide a definition of online grooming. Furthermore, there is no explicit provision that considers everyone under the age of 18 years as a potential victim of online grooming under Thai law.

However, Section 26, 9) of the Child Protection Act states that it is forbidden to induce, instigate, encourage, or allow a child to perform or act in a pornographic manner, regardless of whether the intention is to obtain remuneration or anything else. Anyone who commits such an act against a child shall be subject to penalties prescribed under Section 78 of this Act.

Moreover, Section 282 of the Penal Code makes it illegal to procure, lure, traffic a man or woman for the sexual gratification of another person, or for an indecent sexual purpose, irrespective of his/her consent, with the penalty of imprisonment between one to ten years and a fine. The punishment shall be increased to imprisonment of 3 to 15 years and a fine, if such offense is committed against a person over 15 years but below 18 years of age. If such offense is committed against a person who is under 15 years of age, the offender shall be subject to imprisonment of 5 to 20 years and a fine.

Section 4 of the Child Protection Act considers everyone under the age of 18 as a child unless such child obtains a majority through marriage as provided under Section 20 of the Civil and Commercial Code.

27 – Criminalizes showing pornography to a child as a standalone offense

Thai law does not have explicit provisions that criminalize showing pornography to a child as a standalone offense.

28 – Has legislation regarding cyberbullying

Thailand does not have legislation regarding cyberbullying.

29 – Has legislation concerning sexting

There is no specific legislation concerning sexting in Thailand.

Whoever, for sexual gratification of another person, procures, lures, or traffics a man or woman for an indecent sexual purpose, by using the deceitful means, threats, physical assault, immoral influence, or mental coercion by any means, the offender shall be punished with imprisonment of five to twenty years, and a fine of ten thousand to forty thousand Baht.

If the commission of the offense in the first paragraph is committed against a person over fifteen years but not yet over eighteen years of age, the offender shall be punished with imprisonment of seven to twenty years, and a fine of fourteen thousand to forty thousand Baht, or life imprisonment.

If the commission of the offense in the first paragraph is committed against a person not yet over fifteen years of age, the offender shall be punished with imprisonment of ten to twenty years, and a fine of twenty thousand to forty thousand Baht, or life imprisonment, or death penalty.

Whoever, for sexual gratification of another person, receives the person who was procured, lured, or trafficked as provided in the first, second, or third paragraph, or aids or abets in the commission of such offense, shall be punished with the punishment accordingly provided in the first, second, or third paragraph as the case may be.

Table 2.16 – Country: Timor-Leste

1 – Has legislation specific to child pornography	Yes
2 – Has a clear definition of child pornography	Possibly Yes
3 – Considers everyone under 18 as a potential victim of activities related to child pornography	No (17)
4 – Criminalizes accessing or downloading child pornography images	No
5 – Criminalizes possession of child pornography	Yes
6 – Criminalizes virtual images and sexually exploitative representations of children	No
7 – Addresses the criminal liability of children involved in pornography	No
8 – Establishes criminal liability of legal persons for production or commercialization of child pornography	No
9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State	Yes
10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State	Yes
11 – Establishes confiscation of assets used to commit or facilitate child pornography offenses	Yes
12 – Establishes confiscation of proceeds derived from child pornography offenses	Yes
13 – Requires professionals working with children to report child pornography activities	No
14 – Requires Internet Service Providers to report child pornography	No
15 – Has telephone or online hotlines to enable the public to report child abuse	No
16 – Creates data retention or data preservation provisions	No
17 – Requires the identification of users of public computers in cybercafés	No
18 – Has a national plan to combat violence against children	No
19 – Has ratified the CRC and the OPSC	Yes
20 – Age of criminal liability	16
21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children	No
22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online	1) Yes (not explicitly but all forms of sexual exploitation); 2) No
23 – Has legislation that criminalizes online grooming as a standalone offense	No
24 – Has a clear definition of online grooming	No
25 – Considers everyone under 18 as a potential victim of online grooming	No
26 – 1) Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child; or 2) criminalizes grooming regardless of the intent	No
27 – Criminalizes showing pornography to a child as a standalone offense	No
28 – Has legislation regarding cyberbullying	No
29 – Has legislation concerning sexting	No

Timor-Leste

In Timor-Leste, the Constitution of Timor-Leste (adopted on March 20, 2002 and effective as of March 22, 2002)⁶⁹¹ (hereafter referred to as “Constitution”) has provisions for the protection of children’s rights. Specifically, children shall be entitled to special protection by the family, the community, and the State, particularly against all forms of violence, sexual abuse, and exploitation according to Section 18 of the Constitution.

In addition, the laws which protect children’s rights and/or govern violence against children are as follows:

- Penal Code (enacted in 2009)⁶⁹²
- Law Against Domestic Violence (enacted in 2010)⁶⁹³

EXTRACTS OF LEGISLATION RELATED TO THE TABLE:

1 – Has legislation specific to child pornography

Timor-Leste has legislation specific to child pornography. Article 176 of the Penal Code⁶⁹⁴ criminalizes activities related to child pornography as stated below.

Article 176 (1) of the Penal Code makes it an offense for any person for predominantly sexual purposes to use, expose, or represent a minor aged below 17 years performing any sexual activity, whether real or simulated, or by any other means, exhibits sexual activity or sexual organs of such minor. A person who commits an offense stipulated in Article 176 (1) of the Penal Code shall be subject to punishment of imprisonment from three to ten years.

In addition, Article 176 (2) of the Penal Code punishes any person who produces, disseminates, imports, exports, offers, or sells any medium of communication, instrument, document, or record involving child pornography for the purposes referred to in the previous sub-article (for predominantly sexual purposes) or with the aim of disseminating such acts. A person who commits an offense described in Article 176 (2) of the Penal Code shall be punished with imprisonment for three to ten years.

Moreover, Article 155 (1) of the Penal Code⁶⁹⁵, which enumerates offenses involving the maltreatment of a minor, sets out the penalty for any person who: (1) a) provides guardianship or custody, or is responsible for the

⁶⁹¹ Constitution of Timor-Leste, available at http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf (last visited Jan. 16, 2015).

⁶⁹² Penal Code, available at <http://www.wipo.int/wipolex/en/details.jsp?id=10928> (last visited Jan. 16, 2015).

⁶⁹³ Law Against Domestic Violence, available at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_179323.pdf (last visited Jan. 16, 2015).

⁶⁹⁴ Article 176 of the Penal Code (Child pornography)

1. Any person who, for predominantly sexual purposes, uses, exposes or represents a minor aged less than 17 years performing any sexual activity, whether real or simulated, or by any other means, exhibits the sexual activity or sexual organs of a minor, is punishable with 3 to 10 years imprisonment.
2. The same penalty is applicable to any person who produces, distributes, disseminates, imports, exports, offers, sells or possesses any medium of communication, instrument, document or record for the purposes referred to in the previous subarticle or with the aim of disseminating such acts.

⁶⁹⁵ Article 155 (1) of the Penal Code (Mistreatment of a minor)

1. Any person who provides guardianship or custody, or is responsible for the upbringing of a minor aged less than 17 years, or does so under employment, and:

- a) Causes harm to the minor's body or health, or inflicts physical or mental mistreatment or cruel treatment;

upbringing of a minor aged less than 17 years, b) or does so under employment; and (2) uses, recruits, or offers the minor for purposes of prostitution, production of pornographic material or pornographic shows. Such person shall be punished with two to six years imprisonment, if no heavier penalty is applicable by force of another legal provision.

2 – Has a clear definition of child pornography

Timorese law possibly provides a definition of child pornography as stated below.

Article 176 (1) of the Penal Code indicates that “child pornography” in this Code refers to any material which uses, exposes, or represents a minor aged less than 17 years performing real or simulated sexual activity or, by any other means, exhibits the sexual activity or sexual organs of a minor for predominantly sexual purposes.

3 – Considers everyone under 18 as a potential victim of activities related to child pornography

Timorese law considers everyone under 17 years old as a minor who can be a potential victim of child pornography and related offenses as specified by Articles 155 and 176 of the Penal Code.

4 – Criminalizes accessing or downloading child pornography images

The law does not contain explicit provisions which address accessing or downloading child pornography images.

However, under Article 176 (1) of the Penal Code, child pornography includes any material which uses, exposes, or represents a minor aged less than 17 years performing real or simulated sexual activity or “by any other means” exhibits the sexual activity or sexual organs of a minor for predominantly sexual purposes.

In addition, Article 176 (2) of the Penal Code punishes any person who produces, disseminates, imports, exports, offers, sells or possesses “any medium of communication”, instrument, document, or record involving child pornography for predominantly sexual purposes or with the aim of dissemination.

5 – Criminalizes possession of child pornography

The law criminalizes possession of child pornography regardless of the intent to disseminate. Article 176 (2) of the Penal Code makes it an offense to possess any medium of communication, instrument, document, or record containing child pornography for predominately sexual purposes and such offense shall be punishable with three to ten years imprisonment. Article 176 (2) of the Penal Code also criminalizes possession of child pornography for the purpose of dissemination with a penalty of three to ten years imprisonment.

6 – Criminalizes virtual images and sexually exploitative representations of children

Timorese law does not explicitly criminalize the production, distribution, commercialization, or possession of child pornography including virtual images and sexually exploitative representations of children that do not necessarily use real children in their production.

b) Subjects the minor to economic exploitation, hazardous work or work capable of compromising his or her education or physical, mental, spiritual, moral or social development;

c) Subjects the minor to any form of slavery or analogous practice;

d) Uses, recruits or offers the minor for purposes of prostitution, production of pornographic material or pornographic shows; or

e) Uses, recruits, or offers the minor for practicing unlawful acts or activities, namely production and trafficking in narcotics as defined by international conventions, is punishable with 2 to 6 years imprisonment, if no heavier penalty is applicable by force of another legal provision.

However, pursuant to Article 176 (1) of the Penal Code, any person who, for predominantly sexual purposes, uses, exposes, or represents a minor aged less than 17 years performing any sexual activity, whether real or simulated, or by any other means, exhibits the sexual activity or sexual organs of a minor, shall be punishable with three to ten years imprisonment.

7 – Addresses the criminal liability of children involved in pornography

Timorese law does not address the criminal liability of children involved in pornography for their participation both in cases of child victims, as well as child offenders. Article 176 of the Penal Code only deals with child pornography offenses. However, there are no provisions criminalizing activities related to pornography under the Penal Code.

8 – Establishes criminal liability of legal persons for production or commercialization of child pornography

The law does not contain provisions establishing the criminal liability of legal persons for production or commercialization of child pornography as stated below.

Article 12 of the Penal Code⁶⁹⁶ has provisions addressing criminal liability in general. Pursuant to Article 12 (1) of the Penal Code, only individuals are held criminally liable for offenses stipulated in this Penal Code and this is non-transferable. According to Article 12 (2) of the Penal Code, corporate entities are subject to criminal liabilities only for offenses provided in this Penal Code or in specific legislation and as expressly established in law.

Article 176 of the Penal Code does not provide explicit provisions which recognize criminal liability of the corporate or other legal entities. Thus, only natural persons shall be criminally accountable for child pornography offenses provided under the Article 176 of the Penal Code.

9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State; and

10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State

Timor-Leste establishes its extraterritorial jurisdiction over child pornography offenses stipulated in the Penal Code either when the alleged offender is a national of Timor-Leste or when the victim is a national of Timor-Leste as elaborated below.

Pursuant to Article 8 of the Penal Code⁶⁹⁷, except as otherwise provided in treaties and conventions, Timorese criminal law is applicable to acts committed outside of the territory of Timor-Leste in the following cases: (a)

⁶⁹⁶ Article 12 of the Penal Code (Criminal liability)

1. Only individuals are held criminally liable for offenses described in this Code and this is non-transferable.
2. Corporate entities are criminally liable only for offenses provided in this Code or in specific legislation whenever and as expressly established in law.

⁶⁹⁷ Article 8 of the Penal Code (Crimes committed outside national territory)

Except as otherwise provided in treaties and conventions, Timorese criminal law is applicable to acts committed outside of the national territory of Timor-Leste in the following cases:

- a) They constitute crimes provided for in articles 196 to 206, 229 to 242 and 307 to 313;
- b) They constitute crimes described in articles 123 to 135, 161 to 169 and 175 to 178, as long as the perpetrator is found in Timor-Leste and cannot be extradited or a decision has been made not to do so;
- c) They are committed against Timorese nationals, so long as the perpetrator normally lives and is found in Timor-Leste;

They constitute crimes described in Articles 123 to 135, 161 to 169, and 175 (Child prostitution), 176 (Child pornography), 177 (Sexual abuse of a minor) to 178 (Sexual acts with an adolescent), as long as the perpetrator is found in Timor-Leste and cannot be extradited or a decision has been made not to do so; (b) They are committed against Timorese nationals, so long as the perpetrator normally lives and is found in Timor-Leste; and (c) They are committed by a Timorese national or a foreigner against Timorese nationals, so long as the perpetrator is found in Timor-Leste, the acts are equally punishable by the legislation of the place in which the acts were committed and they constitute a crime that allows for extradition and it cannot, in the particular case, be granted.

Application of Timorese law shall be subject to the restrictions set forth by Article 9 of the Penal Code.⁶⁹⁸

11 – Establishes the confiscation of assets used to commit or facilitate child pornography offenses

The Penal Code provides for the forfeiture of assets used to commit or facilitate criminal offenses.

Article 102 of the Penal Code⁶⁹⁹ allows the State to forfeit objects used to commit or intended to be used in the commission of crimes or assets resulting from the same crime. The rights of victims of third parties, in good faith regarding the objects subject to forfeiture, shall be protected.

12 – Establishes the confiscation of proceeds derived from child pornography offenses

The Penal Code provides for the forfeiture of proceeds derived from criminal offenses.

Pursuant to Article 103 of the Penal Code⁷⁰⁰, all items, rights, or benefits directly or indirectly acquired as a result of the commission of crime, shall be subject to the declaration of forfeiture to the State, without prejudice to the rights of any victims or third parties acting in good faith.

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- d) They are committed by Timorese or foreigners against Timorese nationals, so long as the perpetrator is found in Timor-Leste, the acts are equally punishable by the legislation of the place in which the acts were committed and they constitute a crime which allows for extradition and it cannot, in the particular case, be granted;
 - e) They refer to crimes that the Timorese State has an obligation to try pursuant to any international convention or treaty.

⁶⁹⁸ Article 9 of the Penal Code (Restrictions on application of Timorese law)

1. The application of Timorese criminal law to acts perpetrated abroad only occurs when the perpetrator has not been tried with a final decision rendered in the place where the act was committed, or when the perpetrator has wholly or partially evaded execution of the sentence.
2. Though Timorese criminal law may be applied under the terms of the previous subarticle, the act shall be tried according to the law of the country where the act was committed whenever this is more lenient to the perpetrator.
3. In the cases referred to in the previous subarticle, the applicable punishment is converted to that which corresponds to the Timorese system or, if there is no direct correspondence, to that which the Timorese law provides for said act.
4. In the event the perpetrator is tried in Timor-Leste and has been previously tried in the place where the act was committed, the sentence already served outside of Timor-Leste shall be taken into consideration.
5. The provisions described in subarticle 2 are not applicable to crimes identified in lines a) and b) of previous article.

⁶⁹⁹ Article 102 of the Penal Code (Forfeiture of objects of the crime)

1. Objects that were used or destined to be used in the commission of a crime, or were results from the same, shall be forfeited to the State, whenever, due to their nature or the circumstances surrounding the case, the same may endanger the security of persons or public order, or pose serious risk of being used in the commission of further crimes.
2. Rights shall be safeguarded regarding objects belonging to any victim or third party, who has not participated in their use or production nor taken advantage thereof.
3. The court shall determine the disposal of objects declared forfeited whenever not specified in law, and may order the partial or complete destruction thereof or to remove them from circulation.
4. Provisions in subarticle 102.1 shall apply even when no specific person can be punished for the crime.

13 – Requires professionals working with children to report child pornography activities

Timorese law does not have provisions that require professionals who work with children to report child pornography activities to the relevant authorities when they learn of incidents involving children’s participation in pornographic materials.

14 – Requires Internet Service Providers to report child pornography

Timorese law does not require Internet Service Providers (ISPs) to report to law enforcement agencies or other relevant authorities after they learn of suspected online child pornographic material on their own networks.

15 – Has telephone or online hotlines to enable the public to report child abuse

Timor-Leste does not have telephone lines or online hotlines to enable the public to report child abuse as of November 22, 2014. However, the Government of Timor-Leste plans to continue investing in the rehabilitation of street children and to set up a free, 24-hour a day, seven days a week Child Line to report child abuse, according to an official announcement made by the Timorese Government.⁷⁰¹

16 – Creates data retention or data preservation provisions

Timorese law does not have data retention or data preservation provisions.

17 – Requires the identification of users of public computers in cybercafés

Timor-Leste does not have legislation or regulations that require the identification of users of public computers in cybercafés.

18 – Has a national plan to combat violence against children

There is no national plan to combat violence against children in Timor-Leste. However, the Timorese Government has announced that the Government will continue to protect vulnerable children by developing strategies to ensure that Timorese children are protected against violence, neglect, and abuse.

In order to do this, the Timorese Government said that it will strengthen referral mechanisms and systems to implement the Child Protection Policy, including the establishment of efficient monitoring and evaluation systems for protecting children.

In addition, the Timorese Government stated that it will continue providing education programs to families, neighbors, schools, churches, and other service providers on the rights of children and the concept of a ‘Safe Home’, particularly in relation to girls and children with disabilities. The Government also pledged to take measures to eradicate practices that violate the rights of children, such as early marriage, child labor, and other types of exploitation, including domestic violence, sexual abuse, trafficking, and neglect.

⁷⁰⁰ Article 103 of the Penal Code (Forfeiture of benefits)

1. All items, rights or benefits directly or indirectly acquired as a result of the commission of a crime shall be declared forfeited to the State, without prejudice to the rights of any victim or third parties acting in good faith.
2. If said items, rights or benefits cannot be appropriated in kind, their forfeiture shall be compensated through payment of their respective value to the State.

⁷⁰¹ GOV’T OF TIMOR-LESTE, PROGRAM OF THE V CONSTITUTIONAL GOVERNMENT 2012-2017 LEGISLATURE, 2.4.5 VULNERABLE CHILDREN, available at <http://timor-leste.gov.tl/?cat=39&lang=en> (last visited Jan. 16, 2015).

The Timorese Government also noted that it will continue investing in the rehabilitation of street children and set up a free, 24-hour-a-day, seven days a week Child Line to report child abuse; and the Government will implement the Law on Orphan Care and Adoption.⁷⁰²

19 – Has ratified the CRC and the OPSC

- Timor-Leste acceded to the Convention on the Rights of the Child on April 16, 2003.⁷⁰³
- Timor-Leste acceded to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on April 16, 2003.⁷⁰⁴
- Timor-Leste ratified the Worst Forms of Child Labour Convention, 1999 (No. 182) on June 16, 2009.⁷⁰⁵

20 – Age of criminal liability

The minimum age of criminal responsibility in Timor-Leste is 16 years according to Article 20 of the Penal Code.⁷⁰⁶ Pursuant to Article 20 (1) of the Penal Code, minors below age 16 are exempt from criminal liability. In addition, for persons over 16 years of age and less than 21 years, the law shall determine specific provisions concerning the application and execution of criminal penalties in any and all cases not provided for in specific legislation according to Article 20 (2) of the Penal Code.

21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children

Timor-Leste does not have legislation that specifically addresses the use of ICTs or computers to commit crimes against children.

However, with regard to child pornography, Article 176 (1) of the Penal Code criminalizes the use, exposure, or representation of a minor aged less than 17 years, performing any sexual activity, whether real or simulated, or “by any other means”, the exhibition of the sexual activity or sexual organs of a minor for predominately sexual purposes.

In addition, Article 176 (2) of the Penal Code criminalizes the act of producing, disseminating, importing, exporting, offering, selling, or possessing “any medium of communication”, instrument, document, or record involving child pornography for predominantly sexual purposes or with the aim of dissemination.

22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online

Timorese law does not provide explicit provisions that criminalize child trafficking with the intent of producing pornography and advertising child sex tourism online.

⁷⁰² *Id.*

⁷⁰³ *Status of Ratification and Accession of the CRC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en (last visited Oct. 24, 2014).

⁷⁰⁴ *Status of Ratification and Accession of the OPSC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last visited Oct. 24, 2014).

⁷⁰⁵ *Status of the Ratification of the Worst Forms of Child Labour Convention, 1999*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited Oct. 24, 2014).

⁷⁰⁶ Article 20 of the Penal Code (Exemption from criminal liability by reason of age)

1. Minors under 16 are exempt from criminal liability.
2. For persons over 16 years of age and less than 21, the law shall determine specific provisions concerning application and execution of criminal penalties in any and all cases not provided for in specific legislation.

However, Article 163 of the Penal Code⁷⁰⁷ criminalizes trafficking in human beings for the purpose of exploitation by the use of prescribed methods with punishment of 8 to 20 years imprisonment. For the purposes of applying the provisions of Article 163 of the Penal Code, exploitation shall include, among others, exploitation through prostitution of another person or other forms of sexual exploitation.

In cases of adult victims, the methods of human trafficking stipulated in Article 163 of the Penal Code shall include threats, force, or other forms of coercion, kidnapping, fraud, trickery, abuse of power or situation of vulnerability, or by means of delivery or acceptance of payments or benefits, to obtain the consent of a person with authority over another. In the event that a minor under the age of 17 is a victim of a crime of human trafficking for the purpose of exploitation, even if none of the means as stated above are involved, such crime against a minor under age 17 is punishable with 8 to 20 years imprisonment.

The Penal Code also provides a list of circumstances that shall increase penalties for the commission of offenses involving human trafficking. Article 164 of the Penal Code⁷⁰⁸ criminalizes the acts described in Article 163 of this Code with more severe penalties if they are committed: a) as a means to facilitate sexual exploitation or use of the victim by the perpetrator or a third party; b) the victim is a minor under the age of 17; c) the victim is in a foreign country or travelling to a foreign country; d) the victim is used against his/her will in the commission of crimes; or e) the perpetrator is engaged in an activity that grants the same public or religious authority before a group, region, or entire country. Said perpetrator shall be punished with 12 to 25 years imprisonment.

Article 166 of the Penal Code⁷⁰⁹ punishes anyone who transfers a person or group of persons to another person or group of persons against payment of any sum or any other exchange, reward, or advantage, by any act or

⁷⁰⁷ Article 163 of the Penal Code (Human trafficking)

1. Any person who recruits, assigns, purchases, transports, transfers, houses or receives persons, through use of threats, force or other forms of coercion, kidnapping, fraud, trickery, abuse of power or situation of vulnerability, or by means of delivery or acceptance of payments or benefits, to obtain the consent of a person with authority over another, for purposes of exploitation, shall be punishable with 8 to 20 years imprisonment.
2. The penalty referred to in the subarticle above shall apply to any person who recruits, transports, transfers, houses or receives a minor under the age of 17 for the purpose of exploiting the same, even if none of the means referred to in the subarticle above are involved.
3. For the purpose of applying the provisions of this article, exploitation shall include but is not limited to exploitation through prostitution of another person or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or extraction of organs.
4. Consent of the victim is irrelevant, if any of the means referred to in subarticle 1 were employed.

⁷⁰⁸ Article 164 of the Penal Code (Aggravation)

If the acts described in articles 162 and 163 are committed:

- a) As a means to facilitate sexual exploitation or use of the victim, by the perpetrator or a third party;
- b) The victim is a minor under the age of 17;
- c) The victim is in a foreign country or travelling to a foreign country;
- d) The victim is used, against his/her will, in the commission of crimes; or
- e) The perpetrator is engaged in an activity that grants the same public or religious authority before a group, region or entire country;

Said perpetrator shall be punishable with 12 to 25 years imprisonment.

⁷⁰⁹ Article 166 of the Penal Code (Sale of persons)

1. Any person who, apart from the cases provided in article 163, by any act or other means of transaction, transfers a person, or group of persons, to another person or group of persons against payment of any sum or any other exchange, reward or advantage, is punishable with 2 to 8 years imprisonment.
2. If the acts referred to in the previous subarticle are committed:

other means of transactions apart from the cases as specified by Article 163 of the Penal Code with two to eight years imprisonment. If such acts are committed against a minor aged less than 17 years, said perpetrator is punishable with 4 to 12 years imprisonment.

Furthermore, Article 161 of the Penal Code⁷¹⁰ stipulates that any person who uses violence, threat, or deceit to transfer another person from one place to another with the intention to, among others, commit a crime of sexual exploitation, assault, or abuse against the victim, shall be guilty of an offense of abduction and shall also be liable to imprisonment for a term of 4 to 12 years.

23, 24, 25, and 26 – Existence of legislation criminalizing online grooming, a clear definition of online grooming, the age of a potential victim, and related crimes

Timorese law does not contain provisions criminalizing online grooming. In addition, Timorese law does not provide a clear definition of online grooming.

Additionally, there are no explicit provisions that consider everyone under 18 years of age as a potential victim of online grooming under Timorese law. However, as indicated in Articles 174⁷¹¹, 175⁷¹², and 176 of the Penal

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- a) Against a minor aged less than 17 years;
 - b) Through abuse of authority arising from a family relationship, ward or guardianship, or hierarchical, economic or labor-related dependence;
 - c) Through taking advantage of any office or authority held, in any capacity, in a prison, educational or correctional establishment, hospital, mental institution, rest home, clinic or other health establishment or establishment intended to provide assistance or treatment; or
 - d) Upon an unconscious or incapable person who is particularly vulnerable by virtue of disease, physical or mental deficiency;

Said perpetrator is punishable with 4 to 12 years imprisonment.

- 3. Consent of the victim or third party who exerts any form of power over the victim is criminally irrelevant.

⁷¹⁰ Article 161 of the Penal Code (Abduction)

- 1. Any person who, by means of violence, threat or deceit, transfers another person from one place to another with the intention to:

- a) Subject the victim to extortion;
- b) Commit crime of sexual exploitation, assault or abuse;
- c) Obtain ransom or reward; or
- d) Compel public authorities or any third party to commit or refrain from committing an act, or to coercively accept an activity,

is punishable with 4 to 12 years imprisonment.

- 2. If any of the circumstances provided in subarticle 2 of article 160 occurs, the applicable penalty is 5 to 15 years imprisonment.

⁷¹¹ Article 174 of the Penal Code (Sexual exploitation of a third party).

- 1. Any person who, with intent to derive profit or any person who makes a livelihood from, promotes, facilitates, or by any other means, contributes toward engaging another person in prostitution or other sexual acts, is punishable with 3 to 10 years imprisonment.

- 2. The perpetrator is punishable with 4 to 12 years imprisonment, if any of the following circumstances arises:

- a) Exploitation of the situation of abandonment or economic necessity of the victim;
- b) Use of violence, serious threat or coercion over the victim;
- c) Displacing the victim to a country different from where the victim was born or was resident;
- d) Withholding any identification document belonging to the victim.

⁷¹² Article 175 of the Penal Code (Child prostitution)

- 1. Any person who, even with consent of the victim, practices any of the acts of sexual exploitation referred to in the preceding article against a minor aged less than 17 years, is punishable with 4 to 12 years imprisonment in the case of subarticle 1 and 5 to 15 years imprisonment in cases where any of the circumstances described in subarticle 2 occur.

Code, any person under the age of 17 years can be considered a potential victim of offenses involving child sexual exploitation including child prostitution and child pornography.

27 – Criminalizes showing pornography to a child as a standalone offense

Timorese law does not have explicit provisions that criminalize showing pornography to a child as a standalone offense.

However, Timorese law criminalizes sexual abuse against a minor provided under Articles 177 and 178 of the Penal Code. Article 177 (1) of the Penal Code specifies that any person who practices vaginal, anal, or oral coitus with a minor aged less than 14 years is punishable with 5 to 20 years imprisonment. In addition, Article 177 (2) of the Penal Code states that any person who practices any act of sexual relief with a minor aged less than 14 years is punishable with 5 to 15 years imprisonment.

Article 178 of the Penal Code punishes any person who, being an adult and apart from situations provided in this Section, practices any relevant sexual act with a minor aged between 14 and 16 years, taking advantage of the inexperience of the same with imprisonment not exceeding five years.

28 – Has legislation regarding cyberbullying

Timorese law does not have legislation regarding cyberbullying.

29 – Has legislation concerning sexting

Timor-Leste does not have legislation concerning sexting.

2. Any person who offers, obtains, seeks or delivers a minor aged less than 17 years for purposes of child prostitution is punishable with 4 to 12 years imprisonment if no heavier penalty is applicable by force of another legal provision.

Table 2.17 – Country: Vietnam

1 – Has legislation specific to child pornography	Yes
2 – Has a clear definition of child pornography	No
3 – Considers everyone under 18 as a potential victim of activities related to child pornography	No (16-18)
4 – Criminalizes accessing or downloading child pornography images	No
5 – Criminalizes possession of child pornography	No (storage of child pornography – administrative liability)
6 – Criminalizes virtual images and sexually exploitative representations of children	No
7 – Addresses the criminal liability of children involved in pornography	No
8 – Establishes criminal liability of legal persons for production or commercialization of child pornography	No (administrative liability)
9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State	Yes (not specifically, but offenses involving debauched cultural products)
10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State	No
11 – Establishes confiscation of assets used to commit or facilitate child pornography offenses	Yes (not specifically, but offenses involving debauched cultural products)
12 – Establishes confiscation of proceeds derived from child pornography offenses	Yes (not specifically, but offenses involving debauched cultural products)
13 – Requires professionals working with children to report child pornography activities	No
14 – Requires Internet Service Providers to report child pornography	No
15 – Has telephone or online hotlines to enable the public to report child abuse	Yes
16 – Creates data retention or data preservation provisions	Yes
17 – Requires the identification of users of public computers in cybercafés	No
18 – Has a national plan to combat violence against children	Yes
19 – Has ratified the CRC and the OPSC	Yes
20 – Age of criminal liability	14-16
21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children	No
22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising child sex tourism online	1) Yes (not explicitly, but child trafficking in general); 2) No
23 – Has legislation that criminalizes online grooming as a standalone offense	No
24 – Has a clear definition of online grooming	No
25 – Considers everyone under 18 as a potential victim of online grooming	No
26 – 1) Criminalizes grooming when the offender has the specific intent to have online or offline sexual contact with a child; or 2) criminalizes grooming regardless of the intent	No
27 – Criminalizes showing pornography to a child as a standalone offense	No (administrative liability)
28 – Has legislation regarding cyberbullying	No
29 – Has legislation concerning sexting	No

Vietnam

In Vietnam, the Constitution of Vietnam (adopted by the National Assembly on November 28, 2013)⁷¹³ (hereafter referred to as "Constitution") contains provisions for the protection of children's rights. Specifically, Article 37, Clause 1 of the Constitution states that children enjoy protection, care, and education by the family, the State, and society. Article 37 of the Constitution further articulates that infringement, maltreatment, abandonment, abuse, and exploitation of labor and other forms of violating children's rights are strictly prohibited.

In addition, the laws which protect children's rights and/or govern violence against children are as follows:

- Law on Child Protection, Care and Education (also known as "Law on the protection, care for and education of children") (enacted in 2004)⁷¹⁴
- Ordinance on Prostitution Prevention and Combat (enacted in 2003)⁷¹⁵
- Penal Code (enacted in 1999, No. 15/1999)⁷¹⁶
- Civil Code (enacted in 2005, No. 33/2005)⁷¹⁷
- Youth Law (enacted in 2005, No. 53/2005)⁷¹⁸
- Law on the Prevention of and Combat against Human Trafficking (enacted in 2011, No. 66/2011)⁷¹⁹

Furthermore, the decrees which are related to the Law on Child Protection, Care and Education are as follows:

- Decree No. 71/2011/ND-CP detailing and guiding a number of articles of the Law on Child Protection, Care and Education (hereafter referred to as "Decree No. 71/2011/ND-CP")⁷²⁰
- Decree No. 91/2011/ND-CP regulating the sanction of administrative violation on protection, care for and education of children (hereafter referred to as "Decree No. 91/2011/ND-CP")⁷²¹

⁷¹³ Constitution of Vietnam, available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94490/114946/F114201808/VNM94490%20Eng.pdf> (last visited Jan. 21, 2015).

⁷¹⁴ Law on Child Protection, Care and Education, available at <http://www.hsph.harvard.edu/population/trafficking/vietnam.child.04.doc> (last visited Jan. 16, 2015).

⁷¹⁵ Ordinance on Prostitution Prevention and Combat, available at <http://www.ilo.org/dyn/natlex/docs/SERIAL/71702/77065/F997924439/VNM71702.pdf> (last visited Jan. 16, 2015).

⁷¹⁶ Penal Code, available at http://moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=610 (last visited Jan. 16, 2015).

⁷¹⁷ Civil Code, available at http://www.moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=6595 (last visited Jan. 21, 2015).

⁷¹⁸ Youth Law, available at <http://www.mekongmigration.org/labourlaw/images/labourlaw/pdf/vietnam/42%20Youth%20Law%20of%20Vietnam%202005.pdf> (last visited Jan. 16, 2015).

⁷¹⁹ Law on the Prevention of and Combat against Human Trafficking, available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/91653/106409/F-1429920306/VNM91653%20Eng.pdf> (last visited Jan. 16, 2015).

⁷²⁰ Decree No. 71/2011/ND-CP, available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94642/111109/F1540115896/VNM94642%20vnm.pdf> (*in Vietnamese*) (last visited Jan. 16, 2015).

⁷²¹ Decree No. 91/2011/ND-CP, available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94640/111106/F-1012381011/VNM94640.pdf> (last visited Jan. 16, 2015).

EXTRACTS OF LEGISLATION RELATED TO THE TABLE:

1 – Has legislation specific to child pornography

Article 253 of the Penal Code⁷²² stipulates a general ban on debauched cultural products, regardless of whether the individuals being depicted are adults or children. Also, Article 253 of this Code provides a sentencing enhancement in cases where such offenses involving debauched cultural products are committed against juveniles as elaborated below.

Article 253, Clause 1 of the Penal Code makes it an offense to disseminate debauched cultural products or for the purpose of dissemination thereof, to produce, duplicate, circulate, transport, sell or purchase, stockpile decadent books, newspapers, pictures, photographs, films, music, or other objects (hereafter referred to as “decadent objects”) under one of the following circumstances: a) the offense involves a large quantity of cultural products; b) the cultural products are disseminated to more than one person; or c) the offenders have already been administratively sanctioned for such act or have already been sentenced for such offense, not yet entitled to criminal record remission but continue to commit it. Those who violate Article 253, Clause 1 of the Penal Code shall be sentenced to a fine, non-custodial reform for up to three years, or six months to fifteen years of imprisonment depending on the seriousness of the violations.

Article 253, Clause 2 of the Penal Code provides a list of circumstances that shall aggravate penalties for committing offenses mentioned in Article 253, Clause 1 of this Code, which include the following: a) offenses are committed in an organized manner; b) objects involved in the offenses are in a very great quantity; c) offenses are committed against juveniles; d) offenses cause serious consequences; or e) offenses constitute a case of dangerous recidivism. The offenders shall be sentenced to between three and ten years of imprisonment pursuant to Article 253, Clause 2 of the same Code.

⁷²² Article 253 of the Penal Code (Disseminating debauched cultural products)

1. Those who make, duplicate, circulate, transport, sell or purchase, stockpile decadent books, newspapers, pictures, photographs, films, music or other objects for the purpose of dissemination thereof, or commit other acts of disseminating debauched cultural products in one of the following circumstances, shall be sentenced to a fine of between five million dong and fifty million dong, to non-custodial reform for up to three years or to between six months and three years of imprisonment:

- a) The offense involves a large quantity of cultural products;
- b) The cultural products are disseminated to more than one person;
- c) The offenders have already been administratively sanctioned for such act or have already been sentenced for such offense, not yet entitled to criminal record remission but continue to commit it.

2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between three and ten years of imprisonment:

- a) In an organized manner;
- b) Objects involved in the offense are in very great quantity;
- c) Against juveniles;
- d) Causing serious consequences;
- e) Constituting a case of dangerous recidivism.

3. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between seven and fifteen years of imprisonment:

- a) The objects involved in the offense are in particularly great quantity;
- b) Very serious or particularly serious consequences are caused.

4. The offenders may also be subject to a fine of between 3 million dong and 30 million dong.

Pursuant to Article 7, Clause 5 of the Law on Child Protection, Care and Education⁷²³, it is forbidden to: 1) abuse, seduce, or force children to buy, sell, or use violence-provoking or depraved cultural products; 2) produce, duplicate, circulate, transport, or store pornographic cultural products; or 3) produce or trade in toys or games if those items referred to in 1), 2), and 3) are harmful to the healthy development of children.

Article 1 of the Decree No. 91/2011/ND-CP⁷²⁴ stipulates that any individuals or organizations that commit acts of administrative violation on the protection, care for, and education of children specified in Chapter 2 of this Decree (Articles 8 – 21) shall be subject to administrative sanctions.

Article 12 of the Decree No. 91/2011/ND-CP⁷²⁵, provided under Chapter 2 (administrative violations, forms and levels of sanction) of this Decree, deals with acts related to child pornography. Pursuant to Article 12, Clause 3, point b of the Decree No. 91/2011/ND-CP, a fine of between VND 15,000,000 and 20,000,000 shall be imposed for writing, translating, copying, producing, distributing, transporting, storing, disseminating, advertising cultural products, information, media products, toys, games, gadgets with “child pornography” contents.

⁷²³ Article 7, Clause 5 of the Law on Child Protection, Care and Education (Prohibited acts)

The following acts are strictly prohibited:

5. Abusing, seducing, or forcing children to buy, sell or use violence-provoking or depraved cultural products; making, duplicating, circulating, transporting or storing pornographic cultural products; producing, trading in toys or games harmful to the healthy development of children.

⁷²⁴ Article 1 of the Decree No. 91/2011/ND-CP (Scope of governing)

1. This Decree prescribes the acts of administrative violation, the forms, the fine levels, the remedies; sanctioning procedures, competence to sanction administrative violations on the protection, care for and education of children.
2. Acts of administrative violation on the protection, care for and education of children specified in Chapter II of this Decree is the violations of the provisions of law on the protection, care for and education of children made by individuals or organizations deliberately or unintentionally without offenses and according to law must be sanctioned administratively.
3. Other acts of administrative violation on the protection, care for and education of children that are not directly specified in this Decree shall apply the provisions of administrative sanctions in the concerned areas of state management.

⁷²⁵ Article 12 of the Decree No.91/2011/ND-CP (Acts of abusing, enticing or forcing children to buy, sell or use cultural products that promote violence, pornography, horror; making, copying, distributing, transporting, storing cultural products with child pornography content; producing, selling toys, games which are harmful to the fine development of children)

1. A fine of between VND 3,000,000 and 5,000,000 shall be imposed for acts of using relationship, reputation, dependence of children; using money, materials, reputation or other benefits; cheating, defrauding to entice, seduce children for contacting, buying, selling, renting, borrowing, using, distributing, participating in producing cultural products, information, media, toys, games, gadgets with violence, pornography, horror contents that are harmful to the development of children.
2. A fine of between VND 5,000,000 and 10,000,000 shall be imposed for acts of forcing, threatening to use force or authority to compel children to contact, buy, sell, rent, borrow, use, distribute, produce cultural products, information, media, toys, games, gadgets with violence, pornography, horror contents that are harmful to the development of children.
3. A fine of between VND 15,000,000 and 20,000,000 shall be imposed for one of the following acts:
 - a) Producing, distributing, transporting, trading, storing, disseminating, advertising toys, games which promote violence, pornography, horror that are harmful to the fine development of children;
 - b) Writing, translating, copying, producing, distributing, transporting, storing, disseminating, advertising cultural products, information, media products, toys, games, gadgets with child pornography contents;
 - c) Importing toys, games which promote violence, pornography, horror that are harmful to the fine development of children.

4. Forms of additional sanction:

Stripping the right to use business license indefinitely (if any) for individuals or organizations committing acts prescribed in Clauses 2 and 3 of this Article.

Furthermore, Article 16 of the Ordinance on Prostitution Prevention and Combat states that agencies, organizations, and individuals must not produce, circulate, transport, store, trade in, export, import, and/or disseminate pictures, articles, products and/or information with depraved, pornographic and/or sex-stimulating contents and forms.

Additionally, Article 26 of the Ordinance on Prostitution Prevention and Combat has provisions addressing pornography. Article 26, Clause 1 of this Ordinance provides that if agencies, organizations, and individuals operating in the domains of culture, cultural services, post, and/or telecommunications commit acts of disseminating, storing, and/or circulating pictures, articles, products, and/or information with depraved, pornographic, sex stimulating contents and forms, they shall be fined, and depending on the nature and seriousness of their violations, be stripped of the right to use permits or practicing certificates or banned from conducting activities stated in their permits or practicing certificates. Article 26, Clause 2 of the same Ordinance stipulates that those who commit acts violating the provisions in Clause 1 of this Article shall, depending on the nature and seriousness of their violations, be administratively sanctioned or examined for penal liability.

2 – Has a clear definition of child pornography

Vietnamese law does not provide a clear definition of “child pornography”.

In addition, definitions of “decadent objects” and/or “debauched cultural products” are not provided under the Penal Code.

3 – Considers everyone under 18 as a potential victim of activities related to child pornography

Vietnamese law does not provide explicit provisions that consider everyone under the age of 18 years as potential victims of activities related to child pornography.

With regard to the definition of the term “child”, there are disparities in the national laws of Vietnam, especially between the Civil Code, the Penal Code, and the Law on Child Protection, Care and Education.

Article 18 of the Civil Code prescribes that persons who are not yet 18 years old are minors. However, Article 1 of the Law on Child Protection, Care and Education considers Vietnamese citizens under the age of 16 years as children.

The Penal Code contains provisions related to the age of a potential victim of sexual offenses against children or juveniles. Article 111, Clause 4 of the Penal Code states that committing rape against a juvenile aged between 16 and under 18 years of age, the offenders shall be sentenced to between five and ten years of imprisonment. Furthermore, Article 115, Clause 1 of the Penal Code provides that any adults having sexual intercourse with children aged from 13 to under 16 years shall be sentenced to between one and five years of imprisonment. In addition, Article 115, Clause 1 of the Penal Code punishes any adults who have sexual intercourse with children below age 16.

4 – Criminalizes accessing or downloading child pornography images

Vietnamese law does not criminalize accessing or downloading child pornography images. However, the use of ICTs to produce, circulate, transport, store, trade, export, import and/or disseminate pornographic information shall be subject to administrative liabilities pursuant to the Decree No. 55/2001/ND-CP on managing, producing and using Internet services (dated August 23, 2001) (hereafter referred to as “Decree No. 55/2001/ND-CP”).⁷²⁶

⁷²⁶ Decree No. 55/2001/ND-CP, available at <http://english.mic.gov.vn/vbqpp/Lists/Vn%20bn%20QPPL/DispForm.aspx?ID=6222> (last visited Jan. 16, 2015).

According to Article 41, Clause 5, Point h of Decree No. 55/2001/ND-CP, a fine ranging from VND 10,000,000 to 20,000,000 will be applied to an administrative violation involving loading onto the Internet or taking advantage of the Internet to spread pornographic information or images, or other information violating legal regulations on the contents of information on the Internet, but not to the level of seriousness as to apply criminal penalties.

5 – Criminalizes possession of child pornography

Vietnamese law does not criminalize the possession of child pornography or debauched cultural products with or without the intent to distribute. However, storing child pornography without the intent to distribute shall be subject to an administrative sanction as stated below.

Regarding activities involving debauched cultural products, the Penal Code explicitly punishes any person who stockpiles debauched cultural products for the purposes of dissemination. However, considering that the term “stockpile” can be defined as acts of accumulating a large stock of (goods or materials),⁷²⁷ it evokes an image of a larger quantity of material than the term “possession”. Thus, the term “stockpile” has a different meaning than the word “possession”.

Concerning conducts related to child pornography, a fine between VND 15,000,000 and 20,000,000, as an administrative sanction, shall be imposed for storing products, culture, information, media, toys, games, or gadgets with child pornography pursuant to Article 12, Clause 3, point b of the Decree No. 91/2011/ND-CP.

6 – Criminalizes virtual images and sexually exploitative representations of children

Vietnamese law does not explicitly criminalize the production, distribution, possession, and commercialization of child pornography including virtual images and sexually exploitative representations of children that do not necessarily use real children in their production.

7 – Addresses the criminal liability of children involved in pornography

The law does not address the criminal liability of children involved in pornography as long as they are victims, and not offenders.

In the case of a child offender, the minimum age of criminal responsibility in Vietnam is 14 to 16 years old, depending on the seriousness of the crime committed, pursuant to Article 12 of the Penal Code.

8 – Establishes criminal liability of legal persons for production or commercialization of child pornography

Vietnamese law does not establish grounds for imposing criminal liability on legal person for committing crimes provided in the Penal Code. Article 2 of the Penal Code states that, “Only those persons who have committed crimes defined by the Penal Code shall bear the penal liabilities therefore”. In addition, reports of the Vietnamese Government presented to the UN Committee on the Rights of the Child⁷²⁸ state that, “The key principle with respect to legal responsibility in the criminal law of Viet Nam is that of individual responsibility. Hence, under Viet Nam’s laws, the subjects of offences are individuals. If the legal entity carries out the actions/acts defined in Art. 3 (1) of the Protocol, the individual belonging to such legal entity who commits the offence shall bear penal liabilities pursuant to relevant articles stipulated in the Penal Code.”

⁷²⁷ *Stockpile*, OXFORD DICTIONARIES, <http://www.oxforddictionaries.com/definition/english/stockpile> (last visited Nov. 19, 2014).

⁷²⁸ UN COMM. ON THE RIGHTS OF THE CHILD, *Consideration of reports submitted by States Parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Initial reports of States Parties: Vietnam due in 2004*, U.N. Doc. CRC/C/OPSC/VNM/1 (Nov. 8, 2005), at 8, available at http://www.bayefsky.com/reports/vietnam_crc_c_opsc_vnm_1_2005.pdf (last visited Jan. 16, 2015).

Vietnam does not have a law that provides explicit provisions addressing the criminal liability of legal persons for production or commercialization of child pornography. However, pursuant to Article 12, Clause 3, Point b of Decree No. 91/2011/ND-CP, acts of writing, translating, copying, producing, distributing, transporting, storing, disseminating, advertising cultural products, information, media products, toys, games, or gadgets with “child pornography” content shall be subject to a fine between VND 15,000,000 and 20,000,000, as an administrative liability.

9 – Recognizes extraterritorial jurisdiction over child pornography offenses when the alleged offender is a national of the State

Vietnam establishes its extraterritorial jurisdiction over offenses involving debauched cultural products prescribed in the Penal Code, which might cover child pornography offenses, as well when the alleged offender is its citizen.

Pursuant to Article 6, Clause 1 of the Penal Code, Vietnamese citizens who commit offenses outside of the territory of Vietnam may be examined for penal liability in Vietnam according to this Code. Article 6, Clause 1 of this Code further articulates that this provision also applies to stateless persons who permanently reside in Vietnam.

10 – Recognizes extraterritorial jurisdiction over child pornography offenses when the victim is a national of the State

Vietnam does not establish its extraterritorial jurisdiction over crimes based on the nationality of the victim. Article 6, Clause 2 of the Penal Code only prescribes that foreigners who commit offenses outside of the territory of Vietnam may be examined for penal liability according to the Penal Code of Vietnam in circumstances provided for in the international treaties which Vietnam has signed or acceded to.

**11 – Establishes the confiscation of assets used to commit or facilitate child pornography offenses; and
12 – Establishes the confiscation of proceeds derived from child pornography offenses**

The Penal Code provides for the confiscation of: 1) property used to commit offenses involving debauched culture products prescribed in this Code, which might also cover offenses related to child pornography; and 2) proceeds derived from such offenses.

Specifically, Article 41 of the Penal Code⁷²⁹ provides for the: 1) confiscation of tools and means used for the commission of crimes; and 2) confiscation of objects or money acquired through the commission of crime or the trading or exchange of such things.

Moreover, concerning activities related to child pornography, Article 7, Clause 2, point b of Decree No. 91/2011/ND-CP states that depending on the nature and seriousness of their violations, individuals and/or organizations that commit administrative violations of the Law on Child Protection, Care and Education may be

⁷²⁹ Article 41 of the Penal Code (Confiscation of objects and money directly related to crimes)

1. The property confiscation for State funds shall apply to:
 - a) Tools and means used for the commission of crimes;
 - b) Objects or money acquired through the commission of crime or the trading or exchange of such things;
 - c) Objects banned from circulation by the State.
2. Things and/or money illegally seized or used by offenders shall not be confiscated but returned to their lawful owners or managers.
3. Things and/or money of other persons, if these persons are at fault in letting offenders use them in the commission of crimes, may be confiscated for State funds.

subject to the confiscation of material evidence, and the means of individuals or organizations used to perform administrative violations on the protection, care for, and education of children, in addition to the principal sanction forms including both warnings and fines.

13 – Requires professionals working with children to report child pornography activities

Vietnamese law does not have provisions that require professionals who work with children to report circumstances involving child pornography activities to law enforcement agencies or other relevant authorities when they learn of such circumstances.

14 – Requires reports Internet Service Providers to report child pornography

Vietnamese law does not contain provisions that require Internet Service Providers (ISPs) to report suspected child pornography after they learn of it on their own networks. However, the Decision issuing the Regulation on Management and Permit Granting for the Provision of Information and Establishment of Websites on Internet (No. 27/2002/QĐ-BVHTT, dated October 10, 2002) (hereafter referred to as “Decision No. 27/2002/QĐ-BVHTT”)⁷³⁰ has provisions to be followed in regards to all information of Internet Content Providers (ICPs) and websites mentioned in this Decision.

Specifically, Article 4, Clause 2 of the Decision No. 27/2002/QĐ-BVHTT⁷³¹ states that all information of Internet Content Providers and websites mentioned in this Regulation must not instigate violence, propagate aggressive wars, provoke hostilities among nationalities and peoples of different countries, nor incite obscenity, depraved life, or crimes. Pursuant to Article 2 of this Decision⁷³², Internet Content Providers in this Regulation are agencies, organizations, and enterprises, granted permits by the Ministry of Culture and Information to provide information on the Internet through ISPs, and “website” is defined as a form of bulletin made on the Internet.

15 – Has telephone or online hotlines to enable the public to report child abuse

Vietnam has telephone hotlines to enable the public to report child abuse to organizations that do child protection work upon seeing a situation where he/she thinks that a child is being abused or at risk of being abused (physical, emotional, or sexual abuse). The Vietnam Child Helpline provides toll-free, national, professional phone counseling and information services, as well as referrals and follow-ups for children and concerned citizens (Telephone number – 1800-1567).⁷³³

⁷³⁰ Decision No. 27/2002/QĐ-BVHTT, available at http://www.moi.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=9887 (last visited Jan. 16, 2015).

⁷³¹ Article 4, Clause 2 of the Decision No. 27/2002/QĐ-BVHTT

All information of Internet content providers and websites mentioned in this Regulation must comply with the following provisions:

2. They must not instigate violence, propagate aggressive wars, provoke hostilities among nationalities and peoples of different countries, nor incite obscenity, depraved life or crimes.

⁷³² Article 2 of the Decision No. 27/2002/QĐ-BVHTT

In this Regulation, the following terms shall be construed as follows:

1. Internet content providers (ICP) are agencies, organizations and enterprises granted permits by the Ministry of Culture and Information to provide information on Internet through Internet service providers (ISP).
2. Website is a form of bulletin made on Internet.

⁷³³ *Child Helpline International*, CENTER FOR HEALTH MARKET INNOVATIONS, <http://healthmarketinnovations.org/program/child-helpline-international> (last visited Nov. 22, 2014).

16 – Creates data retention or data preservation provisions

The Joint Circular on Management of Internet Agent (No. 02/2005/TTLT-BCVT-VHTT-CA-KHĐT)⁷³⁴ has data retention provisions as stated below.

Section 3 of the Joint Circular on Management of Internet Agent states that all Internet agents, in the course of conducting business, shall fully exercise the rights and obligations to use program management software already set up for the agent to store information about users services including access address, time of access, and type of service (email, chat, FTP, Telnet, etc.) for 30 days. The storage duration is counted from the time when information is transmitted from/to servers in service of information security work of functional agencies.

17 – Requires the identification of users of public computers in cybercafés

Vietnam does not have legislation or regulations that require the identification of users of public computers in cybercafés. However, the Decision promulgating the regulation on ensuring safety and security in activities of managing, providing and using Internet services in Vietnam (No. 71/2004/QĐ-BCA (A11) dated January 29, 2004)⁷³⁵ has provisions that require Internet agents to keep information regarding the identification of service users as stated below.

Article 8 of the Decision promulgating the regulation on ensuring safety and security in activities of managing, providing and using Internet services in Vietnam stipulates that Internet agents shall keep service use registration books for recording full and detailed information about their customers, including full names, addresses, serial numbers of identity cards or passports, and the date and time the service was used. Article 1 of this Decision provides that “Internet agents” includes agents that provide Internet service and/or online service.

Moreover, pursuant to Section 3 of the Joint Circular on Management of Internet Agent, an Internet agent, in the course of conducting business, shall exercise its rights and perform its duties to compile books for service use registration which have full statistics and detailed information on service users and guarantors for users under 14 years of age, including full names; addresses of permanent residence; serial numbers of identity cards or passports (for foreigners) or other valid papers such as professional cards, driving licenses, student or pupil ID cards, etc., positions of computers and time volume consumed by service users. Internet agents shall be responsible for the truthfulness of information recorded in these books and shall have to keep, preserve, and supply them to the competent state management agencies when so requested.

Section 1 of the Joint Circular on Management of Internet Agent stipulates that the term “Internet Agents” means Vietnamese organizations or individuals that provide, in the name of Internet Service Providers or Online Service Providers, Internet access services or online services to users under agency contracts and in return enjoy remunerations. Section 1 of this Joint Circular further articulates that the term “Internet Service Providers” means Internet Access Service Providers or Online Service Providers (OSPs) in post and telecommunications (postal OSP, telecommunications OSP).

18 – Has a national plan to combat violence against children

Vietnam has a national plan to combat violence against children as elaborated below.

⁷³⁴ Joint Circular on Management of Internet Agent (No. 02/2005/TTLT-BCVT-VHTT-CA-KHĐT), available at <http://vbpl.vn/tw/Pages/vbpgen-toanvan.aspx?ItemID=6824> (last visited Nov. 20, 2014).

⁷³⁵ Decision promulgating the regulation on ensuring safety and security in activities of managing, providing and using Internet services in Vietnam (No. 71/2004/QĐ-BCA (A11) dated 29 January 2004), available at <http://english.mic.gov.vn/vbqpp/Lists/Vn%20bn%20QPPL/DispForm.aspx?ID=6315> (last visited Jan. 16, 2015).

The Vietnamese Government issued a “Decision approving the National Action Program for Children for the 2012-2020 Period (No. 1555/QD-TTG)” in 2012.⁷³⁶ One of the objectives of this program is to develop and implement programs for the protection, care, and education of the child including reinstating a national program of child protection during the period of 2011-2015 approved in 2011, and adopting and executing a program for the prevention of violence against children during the period of 2016-2020.

In addition, the Vietnamese Government published a “Decision approving the National Program on Child Protection in the 2011-2015 Period (No. 267/QD-TTG)” in 2011.⁷³⁷ One of the objectives of this program is to prevent and eliminate risks of harms for children and mitigate the number of children falling within special circumstances, abuse, and violence.

19 – Has ratified the CRC and the OPSC

- Vietnam ratified the Convention on the Rights of the Child on February 28, 1990.⁷³⁸
- Vietnam ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on December 20, 2001.⁷³⁹
- Vietnam ratified the Worst Forms of Child Labour Convention, 1999 (No. 182) on December 19, 2000.⁷⁴⁰

20 – Age of criminal liability

The minimum age of criminal responsibility in Vietnam is 14 to 16 years old, depending on the seriousness of the crime committed, pursuant to Article 12 of the Penal Code. According to Article 12, Clause 2 of the Penal Code, if persons aged 14 years or older, but under the age of 16 years, committed very serious crimes intentionally, or particularly serious crimes, such persons shall bear penal liabilities for their crimes. Further, pursuant to Article 12, Clause 1 of the Penal Code, persons aged 16 years or older must bear penal liabilities for all crimes they have committed.

21 – Has legislation that specifically addresses the use of ICTs to commit crimes against children

Vietnam does not have legislation that specifically addresses the use of ICTs to commit crimes against children. However, the Law on Information Technology (No. 67/2006/QH11)⁷⁴¹ provides for prohibited activities committed through information technology and the State’s duty to take measures to combat the use of information technology to incite pornography, which might also cover child pornography, as stated below.

While not specific to child pornography, conducts of supplying, exchanging, transmitting, storing, or using digital information for the purposes of: a) exciting violence; or b) exciting obscene criminal or social evils, are prohibited conducts pursuant to Article 12, Clause 2 of the Law on Information Technology.⁷⁴²

⁷³⁶ Decision approving the National Action Program for Children for the 2012-2020 Period, available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94464/111018/F-439006400/VNM94464%20Vnm.pdf> (in Vietnamese) (last visited Jan. 16, 2015).

⁷³⁷ Decision approving the National Program on Child Protection in the 2011-2015 Period, available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/91604/111104/F-754670175/VNM91604%20Eng.pdf> (last visited Jan. 16, 2015).

⁷³⁸ *Status of Ratification and Accession of the CRC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en (last visited Oct. 24, 2014).

⁷³⁹ *Status of Ratification and Accession of the OPSC*, UN TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last visited Oct. 24, 2014).

⁷⁴⁰ *Status of the Ratification of the Worst Forms of Child Labour Convention, 1999*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited Oct. 24, 2014).

⁷⁴¹ Law on Information Technology (No. 67/2006/QH11), available at http://www.moi.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=4761 (last visited Jan. 21, 2015).

⁷⁴² Extract of Article 12, Clause 2 of the Law on the Information Technology (Prohibited conduct)

In addition, although Vietnamese law does not enumerate criminal offenses and penalties for the use of ICTs to commit crimes against children, Article 73 of the Law on Information Technology⁷⁴³ establishes the responsibilities of the State, society, schools, family, the authorized State body, and service providers to take measures to prevent children from accessing information which is harmful to them in the network environment. Specifically, the State, society, and schools are responsible for taking measures to prevent and fight against information technology applications with contents inciting violence or pornography.⁷⁴⁴

22 – Criminalizes: 1) child trafficking with the intent of producing pornography; and 2) advertising of child sex tourism online

Vietnamese law does not provide explicit provisions that criminalize child trafficking with the intent of producing pornography and advertising child sex tourism online.

Under Article 120 of the Penal Code, any person who trades in or fraudulently exchanges or appropriates children in any form shall be sentenced to imprisonment for a term between three and ten years. The penalty will be heightened to between 10 and 20 years of imprisonment when the crime is committed: 1) in an organized manner; 2) for purposes of prostitution; 3) trading in, fraudulently exchanging, or appropriating more than one child; or 4) for the purpose of sending children abroad.

Furthermore, Article 119 of the Penal Code criminalizes trafficking in women with imprisonment of a term between two and seven years. The term of imprisonment will be increased to between 5 and 20 years based on the aggravating circumstances as follows: 1) trading in women for the purpose of prostitution; 2) committing in an organized manner; 3) being of professional character; 4) committing for the purpose of sending women

The following conduct is prohibited:

2. Supplying, exchanging, transmitting, storing or using digital information for the following purpose:

(b) Exciting violence, propagating wars of aggression; sowing hatred among nations and people, exciting obscene, depraved, criminal or social evils or superstition; undermining the nation's fine traditions and customs;

⁷⁴³ Article 73 of the Law on Information Technology (Responsibility to protect children)

1. The State, society and schools have the following responsibilities:

(a) To protect children against the negative impact of information in the network environment;

(b) To take measures to prevent and fight against information technology applications with contents inciting violence and pornography.

2. The family shall be responsible to prevent its children from accessing information harmful to them.

3. The authorized State body shall take the following measures to prevent children from accessing harmful information in the network environment:

(a) Organizing the building and dissemination of the use of software filtering contents;

(b) Organizing the building and dissemination of tools to prevent children from accessing information which is harmful to them;

(c) Providing guidelines on establishment and management of websites for children aimed at promoting the establishment of websites with information contents suitable for and not harmful to children; improving the ability to control information content in the network environment which is suitable and not harmful to children.

4. Service providers shall take measures to prevent children from accessing information harmful to children in the network environment.

5. Information technology products and services with contents harmful to children must bear warning signs.

⁷⁴⁴ COUNCIL OF EUROPE, CYBERCRIME LEGISLATION – COUNTRY PROFILE, VIETNAM (2009), at 9-10, available at http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/Documents/CountryProfiles/cyber_cp_Vietnam_2009_September.pdf (last visited Jan. 16, 2015).

overseas; or 5) trafficking in more than one person; or trafficking more than once. The offenders may also be subject to a fine of between 5 million and 50 million dong, probation, or residence ban for one to five years.

In addition, pursuant to Article 3, Clause 1 of the Law on the Prevention of and Combat against Human Trafficking⁷⁴⁵, trafficking in persons under Articles 119 and 120 of the Penal Code shall be prohibited.

Also, Article 24, Clause 2 of the Ordinance on Prostitution Prevention and Combat prescribes that those who act as a go-between for prostitution, harbor prostitution, coerce prostitution, organize prostitution, or traffic in women and/or children in service of prostitution activities shall be examined for penal liability.

23, 24, 25, and 26 – Existence of specific legislation criminalizing online grooming, a clear definition of online grooming, the age of a potential victim, and related crimes

Vietnamese law does not contain provisions criminalizing online grooming. Furthermore, Vietnamese law does not provide a definition of online grooming.

However, pursuant to Article 116, Clause 1 of the Penal Code, adults who commit obscene acts against children shall be subject to imprisonment of six months to three years. Pursuant to Article 116, Clause 2 of the Penal Code, the commission of crimes under one of the following circumstances results in imprisonment of three to seven years: 1) committing the crime more than once; 2) against more than one child; 3) committing against a child whom the offender has the responsibility to take care of, educate, or medically treat; 4) causing serious consequences; or 5) causing serious recidivism.

There are no explicit provisions that consider everyone under the age of 18 years as potential victims of online grooming under Vietnamese law.

27 – Criminalizes showing pornography to a child as a standalone offense

Vietnamese law does not contain provisions that criminalize showing pornography to a child as a standalone offense.

However, pursuant to Article 11 of the Decree No. 91/2011/ND-CP⁷⁴⁶, a fine of between VND 5,000,000 and 10,000,000, as a form of administrative sanction, shall be imposed for the acts of exposing children to cultural products, information, communication with pornography, violence, or horror contents.

28 – Has legislation regarding cyberbullying

There is no legislation regarding cyberbullying in Vietnam.

⁷⁴⁵ Article 3, Clause 1 of the Law on the Prevention of and Combat against Human Trafficking (Prohibited acts)

1. Trafficking in persons under Articles 119 and 120 of the Penal Code.

⁷⁴⁶ Article 11 of the Decree No. 91/2011/ND-CP (Acts of exposing children to cultural products, information, media products with pornography, violence, horror contents)

1. A fine of between VND 5,000,000 and 10,000,000 shall be imposed for the acts of exposing children to cultural products, information, communication with pornography, violence, horror contents.

2. A fine of between VND 10,000,000 and 20,000,000 shall be imposed for the acts of attaching children's images into cultural products, information, communication with pornography, violence, horror contents.

3. Remedial measures:

Forced to destroy cultural products, information, media products with pornography, violence, horror contents used to perform acts prescribed in Clauses 1 and 2 of this Article.

29 – Has legislation concerning sexting

There is no legislation concerning sexting in Vietnam.

C. TABLE 3 – OFFENSES AND PENALTIES

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Table 3.1 – Producing child pornography

Country	Offenses	Penalties
Brunei Darussalam	(1) Takes an indecent/obscene photograph or pseudo-photograph of a child; (2) For purposes of distribution, etc. makes or produces any obscene objects	(1) Up to 10 years imprisonment and/or a fine (2) Imprisonment extending to 2 years and a fine
Cambodia	(1) Produces child pornography (2) Produces child pornography for distribution, etc.	(1) Imprisonment for 5 to 10 years (2) Imprisonment for 10 to 20 years
China	For the purpose of profit, produces pornographic materials	Imprisonment up to 3 years and a fine
Democratic People’s Republic of Korea	Makes, without authorization, decadent objects, etc.	Short-term labor for a term not more than 1 year
India	(1) Creates text or digital images depicting children in obscene/indecent/sexually explicit manner; (2) For purposes of distribution, etc. makes or produces any obscene objects	(1) Up to 5 years imprisonment and a fine (IT Act) (2) Imprisonment extending to 2 years and a fine (Penal Code)
Indonesia	Produces pornography that explicitly contains child pornography	Imprisonment for 6 months to 12 years and/or a fine
Japan	Produces child pornography for purpose of providing it to (1) others; (2) unspecified persons or a number of persons	(1) Up to 3 years imprisonment or a fine (2) Up to 5 years imprisonment and/or a fine
Lao PDR	Produces items of child pornography	1 to 3 years imprisonment and a fine
Malaysia	For purposes of distribution, etc. makes or produces any obscene objects	Up to 3 years imprisonment and/or a fine
Mongolia	Preparation of items advertising pornography	Incarceration for a term of 1 to 3 months or a fine
Myanmar	For purpose of distribution, etc. makes or produces any obscene object	3 months and/or a fine
Philippines	Produces or creates any form of child pornography	Penalty of reclusion temporal in its maximum period (from 17 years, 4 months and 1 day to 20 years) and a fine
Republic of Korea	Produces child or juvenile pornography	Imprisonment for life or for a fixed term of at least 5 years
Singapore	Produces or makes obscene objects, for the purpose of distribution, etc.	3 months imprisonment and/or a fine (Penal Code)
Thailand	For public distribution, etc., makes, produces obscene objects	Up to 3 years imprisonment and/or a fine
Timor-Leste	Produces child pornography	3 to 10 years imprisonment
Vietnam	For the purposes of dissemination, etc., makes decadent objects or debauched cultural products	A fine, non-custodial reform for up to 3 years, or 6 months to 3 years imprisonment (Penal Code)

Table 3.2 – Distributing, Disseminating child pornography

Country	Offenses	Penalties
Brunei Darussalam	Distributes any indecent or obscene photograph or pseudo-photograph of a child	Up to 10 years imprisonment and/or a fine
Cambodia	Distributes child pornography	Imprisonment for 2 to 5 years and a fine
China	(1) For profit : disseminates pornographic materials (2) Not for profit and if circumstances are serious : disseminates pornographic materials	(1) 1) Imprisonment up to 3 years and a fine; 2) if serious, imprisonment for 3 to 10 years and a fine; 3) if especially serious, 10 years or life imprisonment and a fine (2) Up to 2 years imprisonment
Democratic People’s Republic of Korea	Distributes, without authorization, decadent objects, etc.	(1) Short-term labor for a term not more than 1 year (2) If grave, reform through labor for not more than 5 years
India	Distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner	Up to 5 years imprisonment and a fine
Indonesia	Distributes pornography that explicitly contains child pornography	Imprisonment for 6 months to 12 years and/or a fine
Japan	Provides child pornography to unspecified persons or a number of persons (also referred to as “distribution of child pornography”)	Up to 5 years imprisonment and/or a fine
Lao PDR	Disseminates items of child pornography	1 to 3 years imprisonment and a fine
Malaysia	Distributes any obscene objects	Up to 3 years imprisonment and/or a fine
Mongolia	Dissemination of items advertising pornography	Incarceration for a term of 1 to 3 months or a fine
Myanmar	Distributes any obscene objects	3 months and/or a fine
Philippines	Distributes any form of child pornography	Penalty of reclusion temporal in its maximum period (from 17 years, 4 months and 1 day to 20 years) and a fine
Republic of Korea	(1) Distributes child or juvenile pornography; (2) Distributes child or juvenile pornography for commercial purposes	(1) Imprisonment for not more than 7 years or a fine (2) Imprisonment for not more than 10 years
Singapore	Distributes obscene objects	Imprisonment up to 3 months and/or a fine (Penal Code)
Thailand	Distributes obscene objects to the public	3 years imprisonment and/or fine
Timor-Leste	Distributes, disseminates child pornography	3 to 10 years imprisonment
Vietnam	Commits other acts of disseminating decadent objects or debauched cultural products	A fine, non-custodial reform for up to 3 years, or 6 months to 3 years imprisonment (Penal Code)

Table 3.3 – Importing, Exporting child pornography

Country	Offenses	Penalties
Brunei Darussalam	For the purposes of distribution, etc., imports, exports any obscene articles	Up to 2 years imprisonment and a fine
Cambodia	For the purpose of distribution, etc., imports, exports child pornography	Imprisonment for 2 to 5 years and a fine
China	For the purpose of dissemination or for making profits, smuggles pornographic materials	(1) A fine and imprisonment for 1) 3 to 10 years, 2) if serious, 10 years or life; (2) In case of a minor offender, imprisonment up to 3 years and a fine
Democratic People’s Republic of Korea	Imports, without authorization, decadent objects, etc.	(1) Short-term labor for not more than 1 year; (2) If grave, reform through labor for not more than 5 years
India	For the purposes of distribution, etc. imports, exports any obscene object	Up to 2 years imprisonment and a fine
Indonesia	Imports, exports pornography that explicitly contains child pornography	Imprisonment for 6 months to 12 years and/or a fine
Japan	Imports to or exports from Japan child pornography for the purpose of providing it to (1) others; (2) unspecified persons, etc.	(1) Up to 3 years imprisonment or a fine (2) Up to 5 years imprisonment and/or a fine
Lao PDR	Imports or exports items of child pornography	1 to 3 years imprisonment and a fine
Malaysia	For the purposes of distribution, etc., imports, exports any obscene object	Max. 3 years imprisonment and/or a fine
Mongolia	Crossing of the state frontier of items advertising pornography	Incarceration for a term of 1 to 3 months or a fine
Myanmar	For the purpose of distribution, etc., imports, exports any obscene object	3 months and/or a fine
Philippines	Exports or imports any form of child pornography	Penalty of reclusion temporal in its maximum period (from 17 years, 4 months and 1 day to 20 years) and a fine
Republic of Korea	Imports or exports child or juvenile pornography	Imprisonment for life or for a fixed term of at least 5 years
Singapore	For the purposes of distribution, etc., imports, exports any obscene object	3 months imprisonment and/or a fine (Penal Code)
Thailand	For the purposes of public distribution, etc., brings into or sends out of Thailand any obscene materials, etc.	3 years imprisonment and/or fine
Timor-Leste	Imports, exports child pornography	3 to 10 years imprisonment
Vietnam	Importing toys, games which promote pornography	A fine (administrative sanction)

Table 3.4 – Offering child pornography

Country	Offenses	Penalties
Brunei Darussalam	Offers an indecent photograph or pseudo-photograph of a child for acquisition by another person	Up to 10 years imprisonment and/or a fine
Cambodia	Displays, projects or presents in public place a child pornography	Imprisonment for 2 to 5 years and a fine
China	For the purposes of profit, publishes pornographic materials	A fine and imprisonment for (1) Max. 3 years; (2) If serious, 3 to 10 years, (3) If especially serious, 10 years or life
Democratic People's Republic of Korea	No crime	No crime
India	(1) Publishes a material in any electronic form which depicts children engaged in sexually explicit act or conduct; (2) Offers to do any act which is an offence under this Section	(1) Imprisonment up to 5 years and a fine (IT Act) (2) Imprisonment up to 2 years and a fine (Penal Code)
Indonesia	Offers/provides pornography that explicitly contains child pornography	Imprisonment for 6 months to 12 years and/or a fine
Japan	Provides child pornography	Up to 3 years imprisonment or a fine
Lao PDR	Displays items of child pornography	1 to 3 years imprisonment and a fine
Malaysia	Offers to do any act which is an offence under this Section	Max. 3 years imprisonment and/or a fine
Mongolia	Advertises pornography by press or broadcast	A fine (administrative sanction)
Myanmar	Offers to do any act which is an offence under this Section	3 months and/or a fine
Philippines	Offers any form of child pornography	Penalty of reclusion temporal in its maximum period (from 17 years, 4 months and 1 day to 20 years) and a fine
Republic of Korea	(1) Provides child or juvenile pornography (2) Provides child or juvenile pornography for commercial purposes	(1) Imprisonment for not more than 7 years or a fine (2) Imprisonment for not more than 10 years
Singapore	Offers to do any act which is an offence under this Section	3 months imprisonment and/or a fine (Penal Code)
Thailand	In order to assist trading of obscene materials, etc., propagates or spreads the news that such obscene materials may be obtained from any person or by any means	3 years imprisonment and/or a fine
Timor-Leste	Offers child pornography	3 to 10 years imprisonment
Vietnam	For the purposes of dissemination, etc., circulates decadent objects or debauched cultural products	A fine, non-custodial reform for up to 3 years, or 6 months to 3 years imprisonment (Penal Code)

Note: The term “this Section” mentioned in Table 3.4 – Offering child pornography for India, Malaysia, Myanmar and Singapore refers to Section 292 of the Penal Code (Sale, etc., of obscene books, etc.). Also, this Section 292 of the Penal Code in these 4 countries criminalizes acts of putting into circulation, in any manner, any obscene objects.

Table 3.5 – Selling child pornography

Country	Offenses	Penalties
Brunei Darussalam	Sells any obscene articles	Up to 2 years imprisonment and a fine
Cambodia	Sells child pornography	Imprisonment for 2 to 5 years and a fine
China	For the purposes of profit, sells pornographic materials	(1) Imprisonment up to 3 years and a fine; (2) If serious, imprisonment for 3 to 10 years and a fine; (3) If especially serious, 10 years or life imprisonment and a fine
Democratic People's Republic of Korea	No crime	No crime
India	Sells any obscene object	(1) Up to 2 years imprisonment and a fine (2) Repeated Max. 5 years imprisonment and a fine
Indonesia	Trades pornography that explicitly contains child pornography	Imprisonment for 6 months to 12 years and/or a fine
Japan	Sells obscene objects/materials	Imprisonment for not more than 2 years, a fine or a petty fine
Lao PDR	Sells items of child pornography	1 to 3 years imprisonment and a fine
Malaysia	Sells any obscene objects	Up to 3 years imprisonment and/or a fine
Mongolia	Sale of items advertising pornography	Incarceration for a term of 1 to 3 months or a fine
Myanmar	Sells any obscene objects	3 months and/or a fine
Philippines	Sells any form of child pornography	Penalty of reclusion temporal in its maximum period (from 17 years, 4 months and 1 day to 20 years) and a fine
Republic of Korea	Sells child or juvenile pornography	Imprisonment for not more than 7 years or a fine
Singapore	Sells any obscene objects	Imprisonment up to 3 months and/or a fine (Penal Code)
Thailand	Carries on trade concerning obscene materials	3 years imprisonment and/or a fine
Timor-Leste	Sells child pornography	3 to 10 years imprisonment
Vietnam	For the purposes of dissemination, etc., sells decadent objects or debauched cultural products	A fine, non-custodial reform for up to 3 years, or 6 months to 3 years imprisonment (Penal Code)

Table 3.6 – Possessing child pornography

Country	Offenses	Penalties
Brunei Darussalam	(1) Possesses an indecent/obscene photograph/pseudo-photograph of a child; (2) Does an act described in (1) for distribution, etc.	(1) Up to 5 years imprisonment and/or a fine (2) Up to 10 years imprisonment and/or a fine
Cambodia	For the purpose of distribution, etc. possesses child pornography	2 to 5 years and a fine
China	No crime	No penalty
Democratic People's Republic of Korea	Illegally keeps decadent objects	(1) Short-term labor for not more than 1 year; (2) If grave, reform through labor for not more than 5 years
India	(1) For the purposes of distribution, etc. has in his possession any obscene objects; (2) Stores any pornographic material in any form involving a child for commercial purposes	(1) Up to 2 years imprisonment and a fine (Penal Code); (2) Up to 3 years imprisonment and/or a fine (Protection of Children from Sexual Offenses Act)
Indonesia	Possesses or has in storage of pornography that explicitly contains child pornography without authorization by law	Max. 4 years imprisonment and/or a fine
Japan	(1) Possess child pornography; (2) Possesses child pornography for purpose of providing it to 1) others, 2) unspecified/a number of persons	(1) Up to 1 years imprisonment or a fine (2) 1) Up to 3 years imprisonment or a fine, 2) Up to 5 years imprisonment and/or a fine
Lao PDR	No crime	No crime
Malaysia	For purposes of distribution, etc. possesses obscene objects	Max. 3 years imprisonment and/or a fine
Mongolia	For the purposes of distribution, stores items advertising pornography	A fine (administrative sanction)
Myanmar	For the purpose of distribution, etc. possesses any obscene object	3 months and/or a fine
Philippines	(1) Possesses any form of child pornography; (2) Possesses child pornography with intent to distribute, etc.	(1) Penalty of arresto mayor in its minimum period (from 1 to 2 months) &a fine; (2) Penalty of reclusion temporal in its medium period (from 14 years, 8 months and 1 day to 17 years and 4 months) &a fine
Republic of Korea	(1) Knowingly possesses child or juvenile pornography; (2) Possesses child or juvenile pornography for the purposes of distribution, etc.	(1) Imprisonment for not more than 1 year or a fine (2) Imprisonment for not more than 10 years
Singapore	For the purposes of distribution, etc., possesses any obscene objects (Penal Code)	3 months imprisonment and/or a fine (Penal Code)
Thailand	For the purposes of public distribution, etc. possesses obscene objects	3 years imprisonment and/or a fine
Timor-Leste	Possesses child pornography for predominantly sexual purposes or with the aim of dissemination	3 to 10 years imprisonment
Vietnam	Storing information, etc. with child pornography	A fine (administrative sanction)

Table 3.7 – Trafficking of children for the purpose of producing pornography

Country	Offenses	Penalties
Brunei Darussalam	Not explicitly, but child trafficking for all forms of sexual exploitation	4 to 30 years imprisonment and a whipping
Cambodia	Trafficking in a minor for the purpose of producing pornography	15 to 20 years imprisonment
China	Not explicitly, but child trafficking in general	(1) A fine and imprisonment for not less than 5 to 10 years; (2) If serious, imprisonment for at least 10 years or life and a fine; (3) if especially serious, sentenced to the death
Democratic People’s Republic of Korea	No crime, but the abduction of children for personal gain, etc.	Short-term labor for not more than 1 year
India	Not explicitly, but trafficking of a minor for the purpose of any form of sexual exploitation	Imprisonment for a term of not less than 10 years but may extend to life and a fine
Indonesia	Not explicitly, but child trafficking for all forms of sexual exploitation	A penalty of human trafficking offenses 3 to 15 years imprisonment and a fine. If such offenses are committed against a child, a penalty shall be increased by one third.
Japan	Trafficking in children for the purpose of producing child pornography	1 to 10 years imprisonment
Lao PDR	Trafficking of a child for publishing pornography	A fine and imprisonment for (1) 5 to 15 years; (2) if serious, 15 to 20 years; and (3) if especially serious, 1) life imprisonment and a fine or 2) capital punishment
Malaysia	Not explicitly, but child trafficking for all forms of sexual exploitation	3 to 20 years and a fine
Mongolia	Not explicitly, but the sale or purchase of humans under the legal age	5 to 10 years imprisonment
Myanmar	Not explicitly, but child trafficking for all forms of sexual exploitation	Imprisonment for Min. 10 years to Max. life and a fine
Philippines	Trafficking in a child for purposes of the use, procuring or offering of the child for the production of pornography	Imprisonment up to 20 years and a fine
Republic of Korea	Trafficking in a child or juvenile knowing that he or she will become an object of producing child or juvenile pornography	Imprisonment for life or for at least 5 years
Singapore	Not explicitly, but selling, buying, etc. of a minor for all immoral/illicit purposes	Max. 10 years and a fine (Penal Code)
Thailand	Child trafficking for seeking benefits from the production or distribution of pornography	(1) child over 15 below 18: 6 to 12 years and a fine (2) child not over 15 years: 8 to 15 years and a fine
Timor-Leste	Not explicitly, but trafficking in a minor for sexual exploitation	12 to 25 years imprisonment
Vietnam	Not explicitly but trading in, fraudulently exchanging or appropriating children	3 to 10 years imprisonment

Table 3.8 – Showing pornography to a child as a standalone offense

Country	Offenses	Penalties
Brunei Darussalam	Sells, lets to hire, distributes, exhibits or circulates to any person under 20 any obscene articles	(1) Max. 3 years imprisonment and a fine (2) Repeated: Max. 5 years imprisonment and a fine
Cambodia	No standalone offense	No standalone offense
China	Disseminates pornographic materials to a minor under 18	Heavier punishment than fixed-term imprisonment of not more than two years
Democratic People's Republic of Korea	No standalone offenses (No explicit provisions)	No standalone offense (No explicit provisions)
India	Sells, lets to hire, distributes, exhibits or circulates to any person under 20 any obscene objects	(1) Imprisonment up to 3 years and a fine (2) Repeated: Imprisonment up to 7 years and a fine
Indonesia	Shows an object whose contents which offends decency to a minor under 16 years of age (1) if an offender knows or reasonably must suspect the age of a minor or indecency of the contents (2) if he has serious reasons to suspect indecency of the contents	(1) a maximum imprisonment of 9 month or a fine (2) a maximum imprisonment of 4 months or a max light imprisonment of 3 months or a fine
Japan	No standalone offenses	No standalone offenses
Lao PDR	Allows children to be infatuated with pornographic and obscene things (or to take part in pornographic and obscene activities)	A fine or a disciplinary measure (administrative sanction)
Malaysia	Sells, lets to hire, distributes, exhibits or circulates to any person under 20 any obscene object	Imprisonment up to 5 years and/or a fine
Mongolia	Displays or shows erotic items to persons under 18	A fine (administrative sanction)
Myanmar	Sells, lets to hire, distributes, exhibits or circulates to any person under 20 any obscene object	6 months imprisonment and/or a fine
Philippines	Forces a child to watch obscene publications and indecent shows	Penalty of Prison Mayor (Duration from 6 years and 1 day to 12 years) and a fine
Republic of Korea	Sells, lends, distributes a media product which is lewd or obscene to arouse juveniles' sexual desire to juveniles or provides such media product to juveniles for viewing, watching, or using for profit	Imprisonment for not more than 3 years or a fine
Singapore	Sells, lets to hire, distributes, exhibits or circulates to any person under 21 years any obscene object	Max. 1 year imprisonment and/or a fine
Thailand	No standalone offense	No standalone offense
Timor-Leste	No standalone offense	No standalone offense
Vietnam	Exposes a child to cultural/media products, information with pornography	A fine (administrative sanction)

Table 3.9 – Online Grooming

Country	Offenses	Penalties
Brunei Darussalam	Sexual grooming against a person under 16 years of age	Max. 3 years imprisonment and/or a fine
Cambodia	No crime	No crime
China	No crime	No crime
Democratic People's Republic of Korea	No crime	No crime
India	(1) Commits sexual harassment upon a child, with sexual intent, by repeatedly/constantly following/watching/contacting a child either directly or through electronic, digital, or any other means (2) Facilitates abusing children online	(1) Imprisonment for a term extending to 3 years and a fine (Protection of Children from Sexual Offenses Act) (2) Imprisonment up to 5 years and a fine (IT Act)
Indonesia	No crime	No crime
Japan	Not explicitly, but solicits a child under 18 years of age for sexual intercourse, other sexual acts, or for dating with such child by offering compensation through a matching business website on the Internet	A fine
Lao PDR	No crime	No crime
Malaysia	No crime	No crime
Mongolia	No crime	No crime
Myanmar	No crime	No crime
Philippines	Engages in the luring or grooming of a child (A definition of grooming includes online enticement)	Penalty of prison mayor in its maximum period (from 10 years and 1 day to 12 years) and a fine
Republic of Korea	Not explicitly, but arranges the purchase of child or juvenile sex or provides information which assists in the purchase thereof through an information and communications network as a profession	Imprisonment for a fixed term of not less than 7 years
Singapore	Sexual grooming against a minor under 16 years of age	Imprisonment up to 3 years and/or a fine
Thailand	No crime	No crime
Timor-Leste	No crime	No crime
Vietnam	No Crime	No crime

D. TABLE 4 – LEGISLATIVE STATUS THAT CRIMINALIZES CONDUCT RELATED TO CHILD PORNOGRAPHY

TABLE 4 – LEGISLATIVE STATUS THAT CRIMINALIZES CONDUCT RELATED TO CHILD PORNOGRAPHY

Country	To produce	To distribute / disseminate	To sell	To import	To export	To possess	To offer/provide or to commit acts of making available ⁷⁴⁷		
							To offer	To provide	To make available
Brunei Darussalam	Possibly ✓ as well as P & (G) ⁷⁴⁸	✓	✓ (G)	P & ✓ (G)	P & ✓ (G)	✓	✓		
Cambodia	✓	✓	✓	P	P	P			✓
China	✓(G) (for profit)	✓(G) (with or without the aim of profit)	✓(G) (for profit)	✓(G) (for profit)	✓(G) (for profit)	X			✓(G) (for profit)

Key:

✓ : Yes – Contains provisions under the law that criminalize activities related to child pornography

✓ (G): Generally Yes – does not have provisions under the law criminalizing conducts specifically regarding child pornography, but has provisions under the law criminalizing conducts related to pornography or obscenity in general

P: Partially Yes – does not have provisions criminalizing acts without the intent to distribute, but has provisions under the law criminalizing acts for the purposes of distribution, etc. in relation to child pornography or pornography/obscenity in general

X: No – Does not contain provisions under the law that enumerate criminal offenses and criminal penalties for activities involving child pornography or obscenity/pornography in general

⁷⁴⁷ For the purposes of discussing this part (Appendix D. Table 4 – Legislative Status that Criminalizes Conducts Related to Child Pornography), if countries have a law that provides explicit provisions criminalizing offering or providing child pornography, in addition to having provisions under the same law specifying punishment for making available child pornography, the provisions explicitly addressing offer or provision of child pornography shall prevail over other provisions governing acts of making available child pornography.

⁷⁴⁸ Section 293B of the Penal Code (amended by Penal Code Amendment Order 2012) criminalizes taking any indecent/obscene photograph or pseudo-photograph of a child. In addition, Section 292 of the Penal Code punishes any person, for purposes of distribution, etc. makes or produces any obscene objects.

Country	To produce	To distribute / disseminate	To sell	To import	To export	To possess	To offer/provide or to commit acts of making available ⁷⁴⁹		
							To offer	To provide	To make available
Democratic People's Republic of Korea	✓ (G)	✓ (G)	X	✓ (G)	X	Possibly ✓ (G) (keep)	X	X	X
India	Possibly ✓ as well as P & (G) ⁷⁵⁰	✓	✓ (G)	P & ✓ (G)	P & ✓ (G)	Possibly ✓ (storing for commercial purposes) as well as P & ✓ (G) ⁷⁵¹	✓ (G) (Penal Code)		✓ (IT Act)
Indonesia	✓	✓	✓ (trade)	✓	✓	✓	✓	✓	
Japan	P	✓	✓ (G)	P	P	✓		✓	
Lao PDR	✓	✓	✓	✓	✓	X			✓
Malaysia	P & ✓ (G)	✓ (G)	✓ (G)	P & ✓ (G)	P & ✓ (G)	P & ✓ (G)	✓ (G)		
Mongolia	✓ (G)	✓ (G)	✓ (G)	✓ (G)	✓ (G)	X (Administrative Sanction) (store)	X	X	X (Administrative Sanction)

⁷⁴⁹ Table 4 Explanation, *supra* note 747.

⁷⁵⁰ Section 67B of the Information Technology Act (enacted in 2000 and amended by the Information Technology Amendment Act 2008) (also known as the "IT Act") criminalizes creating text or digital images depicting children in an obscene/indecent/sexually explicit manner. In addition, Section 292 of the Penal Code punishes any person, for purposes of distribution, etc. makes or produces any obscene objects.

⁷⁵¹ Section 15 of the Protection of Children from Sexual Offenses Act (enacted in 2012) specifies punishment for storing any pornographic material in any form involving a child for commercial purposes. Furthermore, Section 292 of the Penal Code criminalizes possession of any obscene objects for the purpose of distribution, etc.

Country	To produce	To distribute / disseminate	To sell	To import	To export	To possess	To offer/provide or to commit acts of making available ⁷⁵²		
							To offer	To provide	To make available
Myanmar	P & ✓ (G)	✓ (G)	✓ (G)	P & ✓ (G)	P & ✓ (G)	P & ✓ (G)	✓ (G)		✓
Philippines	✓	✓	✓	✓	✓	✓	✓		✓
Republic of Korea	✓	✓	✓	✓	✓	✓		✓	
Singapore	P & ✓ (G)	✓ (G)	✓ (G)	P & ✓ (G)	P & ✓ (G)	P & ✓ (G) (Penal Code)	✓ (G) (Penal Code)		
Thailand	P & ✓ (G)	✓ (G)	✓ (G) (trade)	P & ✓ (G)	P & ✓ (G)	P & ✓ (G)			P & ✓ (G)
Timor-Leste	✓	✓	✓	✓	✓	✓	✓		
Vietnam	P & ✓ (G)	✓ (G)	P & ✓ (G)	X (Possibly administrative sanction)	X	X (Administrative Sanction) (store)			P & ✓ (G)

⁷⁵² Table 4 Explanation, *supra* note 747.

E. TABLE 5 – OVERVIEW OF LEGISLATIVE RESPONSES TO CRIMES AGAINST CHILDREN⁷⁵³

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⁷⁵³ For the purposes of addressing this part (Appendix E. Table 5 – Overview of Legislative Responses to Crimes against Children), if a country has provisions under the law specifically governing child pornography offenses and such country has provisions under the same law or another law enumerating obscenity/pornography offenses, provisions specific to child pornography offenses shall prevail over provisions addressing obscenity offenses/pornography offenses.

Table 5.1 – Law that provides a clear definition of child pornography

Provides a clear definition of child pornography	Possibly provides a definition of child pornography	Provides a definition of child pornography in the elucidation of the law	Provides a definition of pornographic /obscene objects	Does not provide a definition of child pornography or pornographic/obscene objects
Brunei Darussalam	India	Indonesia	China	Democratic People’s Republic of Korea
Cambodia	Timor-Leste		Myanmar	Lao PDR
Japan			Singapore	Malaysia
Philippines				Mongolia
Republic of Korea				Thailand
				Vietnam

Table 5.2 – Law that criminalizes possession of child pornography

Criminalizes possession of child pornography with and/or without the intent to distribute	Criminalizes storing child pornography for commercial purposes and possession of obscene objects for the purposes of distribution, etc.	Criminalizes illegally keeping decadent objects	Criminalizes possession of obscene objects for the purposes of distribution, etc.	Does not criminalize possession of child pornography or pornographic/obscene objects without engaging in any further activities
Brunei Darussalam	India	Democratic People’s Republic of Korea	Malaysia	China
Cambodia			Myanmar	Lao PDR
Indonesia			Singapore (Penal Code)	Mongolia
Japan			Thailand	Vietnam
Philippines				
Republic of Korea				
Timor-Leste				

Table 5.3 – Law that criminalizes offering child pornography

Explicitly criminalizes offering or providing child pornography	Explicitly criminalizes offering to do illicit activities related to obscene objects under the Penal Code	Criminalizes acts of making available child pornography	Criminalizes acts of making available pornographic/obscene/debauched cultural products	Does not criminalize offering or making available child pornography or pornographic/decadent objects
Brunei Darussalam	India	Cambodia	China	Democratic People’s Republic of Korea
Indonesia	Malaysia	Lao PDR	Thailand	Mongolia
Japan	Myanmar		Vietnam	
Philippines	Singapore			
Republic of Korea				
Timor-Leste				

Table 5.4 – Law that criminalizes activities related to child pornography including virtual images (A) and sexually exploitative representations (B) of children

Explicitly criminalizes activities related to child pornography including A and B of children	Possibly criminalizes activities related to child pornography including A and B of children	Possibly criminalizes activities related to child pornography including A and B by law, in combination with the elucidation of the law	Criminalizes obscenity offenses including A and B of persons	Criminalizes offenses involving obscene objects or decadent objects including B (i.e., drawings) of persons	Does not criminalize activities related to child pornography or pornographic/obscene objects including A and B of children or persons
Philippines	Brunei Darussalam	Indonesia	Singapore	Democratic People’s Republic of Korea	Cambodia
	India			Malaysia	China
	Republic of Korea			Myanmar	Japan
				Thailand	Lao PDR
					Mongolia
					Timor-Leste
					Vietnam

Table 5.5 – Law that criminalizes online grooming

Explicitly criminalizes grooming and defines grooming to include online grooming	Possibly criminalizes acts constituting online grooming	Explicitly criminalizes sexual grooming	Criminalizes acts related to online grooming	Does not criminalize online grooming, sexual grooming, or related activities
Philippines	India	Brunei Darussalam	Japan	Cambodia
		Singapore	Republic of Korea	China
				Democratic People’s Republic of Korea
				Indonesia
				Lao PDR
				Malaysia
				Mongolia
				Myanmar
				Thailand
				Timor-Leste
				Vietnam

Table 5.6 – Law that establishes the State’s extraterritorial jurisdiction over child pornography offenses

Establishes the State’s extraterritorial jurisdiction over child pornography offenses based on the nationality of the alleged offender or the nationality of the victim	Establishes the State’s extraterritorial jurisdiction over child pornography offenses based on the nationality of the alleged offender	Establishes the State’s extraterritorial jurisdiction over offenses involving pornography/ obscenity, etc. based on the nationality of the alleged offender or based on the nationality of the victim	Establishes the State’s extraterritorial jurisdiction over offenses involving pornography/ obscenity, etc. based on the nationality of the alleged offender	Does not establish the State’s extraterritorial jurisdiction over child pornography or obscenity/pornography offenses based on the nationality of the alleged offender or the nationality of the victim
Cambodia	Brunei Darussalam	China	India	Philippines
Republic of Korea	Japan	Democratic People’s Republic of Korea	Indonesia	Singapore
Timor-Leste	Lao PDR	Thailand	Malaysia	
			Mongolia	
			Myanmar	
			Vietnam	

Table 5.7 – Legislation that specifically addresses the use of ICTs to commit crimes against children

Has legislation that explicitly and specifically addresses the use of ICTs to commit crimes against children	Has legislation that mentions “electronic form” or “any medium of communication” as a form of child pornography related to child pornography offenses	Has legislation that possibly addresses the use of ICTs to commit crimes against children along with judicial interpretations	Does not have legislation that specifically addresses the use of ICTs to commit crimes against children
Brunei Darussalam	Cambodia	China	Democratic People’s Republic of Korea
India	Timor-Leste		Lao PDR
Indonesia			Malaysia
Japan			Mongolia
Philippines			Myanmar
Republic of Korea			Vietnam
Singapore			
Thailand			



The World Bank
1818 H Street, NW
Washington D.C. 20433
www.worldbank.org



International Centre for Missing
& Exploited Children
1700 Diagonal Road, Suite 625
Alexandria, Virginia 22314
www.icmec.org

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