

HINTALOVON “CSAM” PROJECT

QUESTIONNAIRE FEEDBACK

collected and collated by Jalsovszky Law Firm

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ITALY




<p>DOES THE TERM “CHILD PORNOGRAPHY” EXIST IN YOUR LEGAL SYSTEM?</p>	<p>Yes, it exists, and its regulation is not set out in a unique rule but is regulated in multiple ways.</p>
<p>IF YES, WHAT IS THE DEFINITION?</p>	<p>The offence in question is committed by anyone who uses minors under the age of eighteen years for:</p> <ul style="list-style-type: none"> - making pornographic performances; - or producing pornographic material; - or whoever trades in child pornography. <p>The offence also punishes anyone who, by any means, including by telematics system</p> <ul style="list-style-type: none"> - distributes, discloses or publicises child pornography, - or distributes or disseminates news or information aimed at the solicitation or sexual abuse of minors under eighteen years of age; - or anyone who knowingly transfers to others, even for free, pornographic material produced through the sexual exploitation of minors under the age of eighteen years.
<p>IF NOT, WHAT OTHER TERM IS USED FOR “CSAM”?</p>	<p>N/A</p>
<p>RELEVANT LEGAL PROVISIONS</p>	<p>In particular, Art. 600ter of the Criminal Code provides the general definition of child pornography.</p> <p>The subsequent Art. 600quater of the Criminal Code punishes the possession of or access to child pornography, clarifying that this last criminal offence cannot be concurrent with the previous one.</p> <p>Article 600quater.1 of the Criminal Code defines and punishes the particular case of virtual pornography, i.e. the case in which child pornographic images have been produced through graphic processing techniques that are not associated in whole or in part with real situations (which, however, make non-real situations appear to be real).</p> <p>Article 600quinquies of the Criminal Code punishes anyone who organises tourist initiatives to exploit child prostitution.</p> <p>The provisions from Art. 600septies C.p. to Art. 600septies.2 provide for:</p> <ul style="list-style-type: none"> - the confiscation of child pornographic material; - a mitigating circumstance for the participant who takes steps to prevent the activity from being taken to further consequences; - a series of accessory penalties (such as loss of parental responsibility, disqualification from certain types of public office, loss of inheritance rights in respect of the offended person).
<p>AGE LIMIT AND OTHER CONDITIONS FOR ENTERING INTO A LAWFUL CONSENSUAL SEXUAL RELATIONSHIP?</p>	<p>The age of sexual consent is not positively disciplined but inferred negatively from the individual prohibitions laid down by law.</p> <p>In any case, however, a minor under 18 cannot validly dispose of his or her image for sexual purposes, as this possibility is precluded by Articles 600-ter and 600-quater (the legislation quoted).</p> <p>Generally speaking, in Italy, sexual acts with minors are punished (Article 609-quarter of the criminal code), as is the crime of sexual violence (Article 609-bis of the criminal code). From the definition of these prohibitions, the age of consent can be deduced.</p> <p>An adult may perform consenting sexual acts with a minor if he or she is at least 14 years old (Art. 609-quarter, para. 1).</p> <p>If the adult is an ascendant, a parent, including an adoptive parent, or his/her cohabiting parent, a guardian, i.e. another person to whom, for reasons of care, education, instruction, supervision or custody, the child is entrusted or who has a cohabiting relationship with the child, may only perform sexual acts with consenting minors, if they are at least 16 years old (Art. 609-quarter Penal Code, para. 1).</p>

	<p>These adults commit an offence if they obtain the consent of the 16-year-old with the abuse of the powers attached to their position (Art. 609-quater Penal Code, para. 2).</p> <p>The punishment of sexual acts with minors does not cancel out but is in addition to the rules on the crime of incest, which punishes carnal relations between blood relatives (Art. 564 of the criminal code).</p> <p>Minors may have consensual intercourse from age 13, provided the other is a minor with a maximum age difference of four years. (Art. 609-quater Penal Code, para. 4).</p>
ANY EXCEPTIONS TO CHILD PORNOGRAPHY / CSAM IN CASE OF „SEXTING“?	<p>The law does not provide a specific exception for this kind of situation. Jurisprudence oscillates between a more restrictive orientation that considers the possession of child sexual abuse material regardless of the consent of the minor to be criminally relevant and a more open attitude that endorses primary sexting, i.e. the creation of child sexual abuse material with the consent of the minor.</p> <p>According to this latter orientation, there is no use of material depicting a minor who has reached the age of sexual consent, set at 14 or 16 years, when the material is intended for strictly private use and does not result from any conditioning, being the result of a sort of free choice by the minor.</p>
ONGOING REVIEW OF OR ANY INITIATIVE RE THE LEGISLATION?	NO



Relevant rules about child pornography - Ir

AUSTRIA 	
DOES THE TERM “CHILD PORNOGRAPHY” EXIST IN YOUR LEGAL SYSTEM?	Our legal system does not use the term "child pornography", but the criminal offense is regulated.
IF YES, WHAT IS THE DEFINITION?	N/A
IF NOT, WHAT OTHER TERM IS USED FOR “CSAM”?	In Austria the term “pornographic depictions of minors” is used. The expression in German is “Pornographische Darstellungen Minderjähriger”.
RELEVANT LEGAL PROVISIONS	Link to the provision (§ 207a StGB) ¹
AGE LIMIT AND OTHER CONDITIONS FOR ENTERING INTO A <i>LAWFUL</i> CONSENSUAL SEXUAL RELATIONSHIP?	Under Austrian law, a sexual relationship is permitted from the age of 14. A sexual relationship with someone under the age of 14 may also be permitted, if the younger person is 13 years old and the other person is up to three years older. During this age sexual contact with sexual intercourse or similar acts is permitted. If the younger person is 12 years old and the other is up to four years older, affectionate acts without sexual intercourse or similar acts (e.g. oral sex) are permitted. The legal basis for this information is §§ 206, 207 of the Austrian Criminal Code (StGB).
ANY EXCEPTIONS TO CHILD PORNOGRAPHY / CSAM IN CASE OF „SEXTING”?	YES The exception is regulated in § 207a (5) and (6). (5) Pursuant to subsections (1) and (3), the following shall not be punished 1. produces or possesses a pornographic depiction of an adult minor with the consent of the minor and for the minor's or the minor's own use, or 2. produces or possesses for his or her own use a pornographic depiction of a minor of age pursuant to subsection (4) Z 4, provided that the act does not entail any risk of dissemination of the depiction. (6) Furthermore, it shall not be punishable whoever 1. in the cases of subsection 1, subsection 2, first case, and subsection 3, produces, possesses, or offers to others for their own use, procures, provides, presents, or otherwise makes accessible a pornographic depiction of a mature minor or 2. possesses a pornographic depiction of a minor of himself or herself.
ONGOING REVIEW OF OR ANY INITIATIVE RE THE LEGISLATION?	Due to the conviction of a well-known Austrian actor (“Teichtmeister trial”) for possession and production of child pornography, criticism of the current legal situation regarding child pornography was expressed in Austria. As a result, political parties are calling for higher penalties and more stringent measures for prevention and victim protection. However, nothing has happened yet.



§207a StGB
English.pdf

¹ <https://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40194048/NOR40194048.pdf>

SLOVAKIA



DOES THE TERM “CHILD PORNOGRAPHY” EXIST IN YOUR LEGAL SYSTEM?	Yes it does.
IF YES, WHAT IS THE DEFINITION?	Definition is provided in Section 132 (4) of the Act no. 300/2005 the Criminal Code ("Criminal Code"), in the following wording: "For the purposes of this Act, child pornography means the depiction of actual or pretended coitus, other sexual intercourse or other similar sexual intercourse with a child or a person appearing to be a child, or the depiction of naked parts of the body of a child or a person appearing to be a child intended for sexual purposes."
IF NOT, WHAT OTHER TERM IS USED FOR “CSAM”?	N/A
RELEVANT LEGAL PROVISIONS	Section 132 (4) of the Criminal Code ²
AGE LIMIT AND OTHER CONDITIONS FOR ENTERING INTO A <i>LAWFUL</i> CONSENSUAL SEXUAL RELATIONSHIP?	<ul style="list-style-type: none"> - Lawful sexual relationship is established by the threshold of 15 years (provided by Section 201 (1) of the Criminal code; - Criminal code further provides that a consensual sexual relationship mustn't be under the use of force, threat of use of force, and mustn't be under the misuse of another's weakness, weaker position or the inability to protect oneself.
ANY EXCEPTIONS TO CHILD PORNOGRAPHY / CSAM IN CASE OF „SEXTING”?	NO
ONGOING REVIEW OF OR ANY INITIATIVE RE THE LEGISLATION?	<p>As far as the available data goes, there are no ongoing initiatives in light of the Proposal.</p> <p>However, this topic is addressed by The National Coordination Centre on Violence against Children. There are previous policy documents in place, available here³</p> <p>The most recent document is the National Action Plan of the European Guarantee for Children in the Slovak Republic with a view to 2030 which, however does not address the issue.</p> <p>We are also attaching a link to the National Project for the Protection of Children from Violence (already ended in 2022) which was under the supervision of the Centre for Labour, Social Affairs and Family⁴</p> <p>We are also not aware of any political party addressing this.</p>

² <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2005/300/>

³ <https://detstvobeznasilia.gov.sk/dokumenty/strategicke-materialy#dokumenty>

⁴ <https://detstvobeznasilia.gov.sk/dokumenty/materialy-podla-specifickych-tem#dokumenty>



<p>DOES THE TERM “CHILD PORNOGRAPHY” EXIST IN YOUR LEGAL SYSTEM?</p>	<p>YES</p> <p>It exists and includes all of the following acts:</p> <ul style="list-style-type: none"> • Using a minor in a pornographic show; • Grooming a minor for a pornographic performance; • Using a minor in a pornographic photograph, film or recording, regardless of the support; • Grooming a minor for pornographic photography, film or recording, regardless of the medium; • Producing, distributing, importing, exporting, disseminating, exhibiting, or transferring, in any capacity or by any means, pornographic photographs, films or recordings; • Acquiring or holding pornographic photographs, films, or recordings with the intention of distributing, importing, exporting, disseminating, exhibiting, or transferring them; • Intentionally acquiring, possessing, accessing, obtaining, or facilitating access to pornographic photographs, films or recordings through a computer system or other means; • Being of legal age, in person or through a computer system or other means, watching or facilitating access to pornographic performances by children and young people under 16 years of age. <p>Additionally, the concept of child pornography can also be found within so-called soft law, namely, in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.</p>
<p>IF YES, WHAT IS THE DEFINITION?</p>	<p>The article 176(1)(b) of the Penal Code allows us to delimit the concept of child pornography, insofar as it presupposes the use of a minor child in a pornographic photograph, film or recording, regardless of its medium, or enticement for this purpose.</p> <p>1 - Whoever:</p> <p>a) Uses a minor in a pornographic performance or entices him/her to do so;</p> <p>b) Uses a minor in a pornographic photograph, film or recording, regardless of its medium, or entices him or her to do so;</p> <p>c) Produces, distributes, imports, exports, disseminates, displays, transfers or makes available, in any way or by any means, the materials referred to in the previous paragraph;</p> <p>d) Acquires, possesses or harbors the material referred to in paragraph b) for the purpose of distributing, importing, exporting, disseminating, exhibiting or transferring it; shall be punished with imprisonment of between one and five years.</p> <p>(...)</p> <p>8 - For the purposes of this article, any material which, for sexual purposes, depicts minors engaged in sexually explicit behaviour, whether real or simulated, or contains any representation of their sexual organs or any other part of their body, is considered pornographic.</p> <p>The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography defines the concept of child pornography as "(...) any representation, by any means, of a child in the performance of real or simulated sexual activities, or any</p>

	representation of the sexual organs of a child for predominantly sexual purposes."
IF NOT, WHAT OTHER TERM IS USED FOR "CSAM"?	N/A
RELEVANT LEGAL PROVISIONS	<p>Portuguese Penal Code - Article 176 - Child pornography⁵</p> <p>Under the heading of "pornography of minors", Article 176 of the Portuguese Penal Code stipulates that:</p> <p>1 - Whoever:</p> <p>a) Uses a minor in a pornographic show or entices him/her for that purpose;</p> <p>b) Uses a minor in a pornographic photograph, film or recording, regardless of its medium, or entices them to do so;</p> <p>c) Producing, distributing, importing, exporting, disseminating, exhibiting, or transferring, in any way or by any means, the materials referred to in the previous paragraph;</p> <p>d) Acquiring or possessing material referred to in paragraph b) for the purpose of distributing, importing, exporting, disseminating, exhibiting, or transferring it;</p> <p>shall be punished with imprisonment of one to five years.</p> <p>2 - Anyone who carries out the acts described in the previous paragraph professionally or for profit shall be punished with imprisonment of one to eight years.</p> <p>3 - Anyone who carries out the acts described in paragraphs c) and d) of no. 1 using pornographic material with a realistic representation of a minor shall be punished with imprisonment of up to two years.</p> <p>4 - Anyone who acquires or possesses the material described in paragraph 1(b) shall be punished with imprisonment of up to one year or a fine.</p> <p>5 - Attempted offences shall be punishable.</p> <p>Note: The type of offence in Article 176(1)(b) of the Criminal Code presupposes a certain active integration of the agent's conduct, in order to get the minor to take part in the activities described therein. The concept of what is pornographic must be drawn from the opposition to what does not go beyond the limits of the ethical, the erotic and the aesthetic.</p>
AGE LIMIT AND OTHER CONDITIONS FOR ENTERING INTO A LAWFUL CONSENSUAL SEXUAL RELATIONSHIP?	Age 14 is the age limit. There are no other conditions except consent between the parties. ⁶
ANY EXCEPTIONS TO CHILD PORNOGRAPHY / CSAM IN CASE OF „SEXTING“?	<p>NO</p> <p>However, the use of the word "pornography" in describing this phenomenon is rejected, either because it would imply a moral judgement that the victim had agreed to the creation of that content, or because, in most cases, that creation does not fall within the concept of pornography, or because it would leave out a number of situations that it seems relevant to cover, such as the creation and/or sharing of images of the victim or parts of their body that, per se, are not sexual in nature but whose sharing is likely to cause similar damage.</p>

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https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?artigo_id=109A0179&nid=109&tabela=leis&pagina=1&ficha=1&so_miolo=&nverso=

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https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?artigo_id=109A0179&nid=109&tabela=leis&pagina=1&ficha=1&so_miolo=&nverso=

ONGOING REVIEW OF OR ANY INITIATIVE RE THE LEGISLATION?

In terms of legislation, we only note the existence of a draft law (that entered Parliament on 2 June 2023), which aims to change the concept of child pornography.

In this law project, it is explained that "the Penal Code distinguishes crimes of a sexual nature into 'crimes against sexual freedom' and 'crimes against sexual self-determination', and it is in the latter that crimes against minors are found, including the offence of child pornography provided for and punished by article 176 of the Penal Code. However, article 176 "has only been amended by Law 103/2015 of 24 August, densifying concepts and providing for the aggravated criminalization of the practice of certain acts".

The aim is to adapt the concept defined in article 176 of the Penal Code, under the heading 'pornography of minors', to a definition that makes clear the profoundly negative consequences of these behaviors on children and young people.

To sum up, we would like to highlight the Law project no. 809/XV/1st4, amending the concept of the crime of child pornography, on the following grounds:

- Article 176 of the Penal Code was amended only once, by Law 103/2015 of 24 August, densifying concepts and providing for the aggravated criminalization of the practice of some acts, meeting the Council of Europe Convention for the Protection of Children against Sexual Exploitation and against Sexual Abuse, signed in Lanzarote on 25 October 2007.

- Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography, which replaces child pornography, and which replaces Council Framework Decision 2004/68/JHA, states that sexual abuse and sexual exploitation of children sexual abuse and sexual exploitation of children, including child pornography, constitute serious violations of fundamental rights, in particular children's right to protection and care necessary for their well-being, as set out in the as set out in the 1989 UN Convention on the Rights of the Child and the Charter of Fundamental Rights. Rights of the Child and in the Charter of Fundamental Rights of the European Union.

- The aim of this initiative is to clarify that it is not possible for there to be any kind of consent is not possible with regard to sexual offences against minors and, therefore, it is understood that the concept should be rethought in order to give it the seriousness it actually has in the cases considered to be subsumed under the crimes typified as pornography against minors.

- In this way, the aim is to give a concept that is better suited to Article 176 of the Penal Code: sexual abuse of minors based on images.

In Portugal, an open letter signed by 11 associations representing professionals in cybersecurity, data protection and the defence of digital rights, accuses the Commissioner's proposal of calling into question encryption and other protections that guarantee the privacy of Europeans' communications on the Internet, and even doubts that it serves to safeguard children themselves.

The 11 Portuguese associations also guarantee that "the legal services of the Council of Ministers of the European Union, which advise the governments of the Member States, have published a devastating analysis of this proposal".⁷

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<https://www.direitosdigitais.pt/comunicacao/noticias/143-11-associacoes-escrevem-ao-governo-sobre-proposta-ue-compromete-sigilo-encryptacao-comunicacoes>

GERMANY



DOES THE TERM “CHILD PORNOGRAPHY” EXIST IN YOUR LEGAL SYSTEM?	YES
IF YES, WHAT IS THE DEFINITION?	Kinderpornografie ist die fotorealistische Darstellung des sexuellen Missbrauchs einer Person unter 14 Jahren (Kind). Child pornography is the photorealistic depiction of the sexual abuse of a person under the age of 14 (child).
IF NOT, WHAT OTHER TERM IS USED FOR “CSAM”?	N/A
RELEVANT LEGAL PROVISIONS	§ 184b Strafgesetzbuch (criminal code) ⁸ A pornographic content is child pornographic if it has as its subject: a) sexual acts by, on or in front of a person under the age of fourteen (child), b) the representation of a wholly or partially unclothed child in a provocatively sexually accentuated posture, or c) the sexually provocative depiction of the unclothed genitals or buttocks of a child
AGE LIMIT AND OTHER CONDITIONS FOR ENTERING INTO A <i>LAWFUL</i> CONSENSUAL SEXUAL RELATIONSHIP?	“In Germany, teenagers over the age of 14 are allowed to have sex with someone else, provided they both want to and are not pressured or forced into it. To protect children, the law prohibits sexual acts with children under the age of 14. Up to the age of 18, sex may be prohibited in special cases. It depends on the age difference and the relationship of the two persons (e.g. sex between minors and teachers/trainers is prohibited because there is a certain dependency). For all sexual acts - no matter at what age - applies: FREE WILL !!! No one may be forced to do so.” ⁹ The respective regulations regarding child sexual abuse and juvenile sexual abuse are § 176 StGB and § 182 StGB. ¹⁰
ANY EXCEPTIONS TO CHILD PORNOGRAPHY / CSAM IN CASE OF „SEXTING”?	No. But it has to be noted that a distinction is made between children and young people (age 14 to under 18). For juvenile pornography content exists an own regulation: § 184c StGB (Section 184c German Penal Code), Paragraph 1, Sentence 1 A pornographic content is juvenile pornographic if it has as its subject: a) sexual acts by, on or in front of a person who is fourteen but not yet eighteen years old, b) the depiction of a wholly or partially unclothed fourteen but not yet eighteen year old person in a provocatively sexually accentuated posture, or c) the sexually provocative representation of the unclothed genitals or buttocks of a person who is fourteen but not yet eighteen years old, A exception exists due to § 184c Paragraph 4 StGB regarding juvenile pornography as follows: Paragraph 1(3) [...] shall not apply to acts of persons in relation to such juvenile pornography content which they have produced solely for personal use with the consent of the persons depicted. Whereas Paragraph 1(3) says:

⁸ https://www.gesetze-im-internet.de/stgb/_184b.html

⁹ <https://www.profamilia.de/fuer-jugendliche/rechte-und-sexualitaet/sexualitaet-leben>

¹⁰ https://www.gesetze-im-internet.de/stgb/_176.html
https://www.gesetze-im-internet.de/stgb/_182.html

	A custodial sentence not exceeding three years or a monetary penalty shall be imposed on any person who produces or produces a juvenile pornographic content that reproduces an actual event. ¹¹
ONGOING REVIEW OF OR ANY INITIATIVE RE THE LEGISLATION?	<p>The parliamentary group Fraktion die Linke im Bundestag has submitted a motion to the Bundestag to obtain a statement from the German government on the planned EU regulation establishing rules for preventing and combating the sexual abuse of children. The motion was voted against by all other parliamentary group of the Bundestag on Thursday, January 19, 2023.¹²</p> <p>Please see also a statement of the Federal Commissioner for Data Protection and Freedom of Information.¹³</p> <p>This might also give you an overview of current opinions.¹⁴</p>

¹¹ https://www.gesetze-im-internet.de/stgb/_184c.html

¹² <https://www.bundestag.de/dokumente/textarchiv/2023/kw03-de-praevention-kindesmissbrauch-927034>

¹³ https://www.bfdi.bund.de/DE/Fachthemen/Inhalte/Telemedien/CSA_Verordnung.html

¹⁴


<https://daserste.ndr.de/panorama/aktuell/Sogenannte-Kinderpornografie-Gesetzesverschaeerfung-soll-korrigiert-werden,kinderpornografie270.html>

THE NETHERLANDS



DOES THE TERM “CHILD PORNOGRAPHY” EXIST IN YOUR LEGAL SYSTEM?	YES
IF YES, WHAT IS THE DEFINITION?	An image - or a data carrier, containing an image - of a sexual conduct, involving a person who has apparently not reached the age of eighteen.
IF NOT, WHAT OTHER TERM IS USED FOR “CSAM”?	N/A
RELEVANT LEGAL PROVISIONS	<p>Article 240b Dutch Penal Code (Wetboek van Strafrecht):</p> <ol style="list-style-type: none"> 1. A person who distributes, offers, openly exhibits, manufactures, imports, transports, exports, acquires, possesses or gains access to an image - or a data carrier containing an image - of a sexual act, involving or appearing to involve a person who has apparently not yet reached the age of eighteen years, shall be punished with imprisonment of up to four years or a fine of the fifth category. 2. A person who makes a profession or habit of committing one of the crimes described in the first paragraph shall be punished with imprisonment of up to eight years or a fifth-category fine.
AGE LIMIT AND OTHER CONDITIONS FOR ENTERING INTO A LAWFUL CONSENSUAL SEXUAL RELATIONSHIP?	<p>The age of sexual majority in the Netherlands is sixteen (Article 245 of the Penal Code), as long as the following conditions are met:</p> <ul style="list-style-type: none"> - There is voluntary consent. - There is no question of juvenile prostitution (Article 248b of the Penal Code): committing fornication with someone between 16 and 18 years of age who makes himself available for sexual acts for payment. <p>It is therefore punishable under the law to engage in sexual activities with someone under 16 years of age. However based on case law, sexual acts with someone between 12 and 16 year are often not reported and punished when the following conditions are met and other circumstances of the case are taken into account:</p> <ul style="list-style-type: none"> - There is voluntary consent; - There is a slight age difference; - There is an affective relationship; - There is no abuse of a relationship of authority or trust.
ANY EXCEPTIONS TO CHILD PORNOGRAPHY / CSAM IN CASE OF „SEXTING”?	<p>YES</p> <p>Under Article 240b of the Penal Code, sexting under the age of eighteen is a form of child pornography, and therefore punishable. However based on case law, generally, no prosecution is brought when the following circumstances are met and other circumstances of the case are taken into account:</p> <ul style="list-style-type: none"> - Voluntary consent - A slight age difference - Absence of any indication of a risk of dissemination of the image(s) to anyone other than those involved <p>Supreme Court 9 February 2016, ECLI:NL:HR:2016:213¹⁵, para 2.6.1.</p>
ONGOING REVIEW OF OR ANY INITIATIVE RE THE LEGISLATION?	The proposed Sexual Offences Act (Wet seksuele misdrijven) replaces the current Title XIV Sex Offences. This expands and modernises the scope of criminal law protection, which is in line with the Proposal. Among other things, the proposal raises the penalty ceilings for certain conduct, such as

¹⁵ <https://uitspraken.rechtspraak.nl/#/details?id=ECLI:NL:HR:2016:213>

	(online) child sexual abuse, and broadens the criminal protection against sexual assault, rape, online sexual abuse and sexual harassment.
POLAND 	
DOES THE TERM “CHILD PORNOGRAPHY” EXIST IN YOUR LEGAL SYSTEM?	<p>NO</p> <p>While provisions of Polish statutes occasionally make reference to the term 'child pornography' (as is the case in the Act on the National Cybersecurity System), there is no legal definition of 'child pornography' within the Polish legal system”. It was introduced in a draft legislation on the protection of children from dangerous Internet content, but the legislative process has been frozen.</p> <p>While the provisions of the Criminal Code do not provide a definition for 'child pornography', the Polish Supreme Court has clarified the meaning of the term and its implications. It has been widely accepted that this definition should be used, even though it is not explicitly included in the Criminal Code. According to the Supreme Court's definition, 'child pornography' refers to any material that visually depicts a child engaged in actual or simulated sexually explicit activity or any depiction of a child's genitals primarily for sexual purposes." (Supreme Court Order of 15.1.2020, V KK 655/19).</p>
IF YES, WHAT IS THE DEFINITION?	N/A
IF NOT, WHAT OTHER TERM IS USED FOR “CSAM”?	<p>ENG: pornographic material involving a minor PL: treści pornograficzne z udziałem małoletniego</p> <p>There was a very good definition in the proposed law¹⁶ but the legislative process was aborted.</p> <p>treści pornograficzne – wszelkie treści ukazujące rzeczywiste lub symulowane zachowania o charakterze seksualnym tylko z udziałem małoletniego, w tym prezentujące różne formy kontaktów seksualnych oraz przedstawiające organy płciowe w funkcjach seksualnych pornographic content - any content showing real or simulated behaviour of a sexual nature with the participation of a minor, including presenting various forms of sexual contact and depicting sexual organs in sexual functions</p>
RELEVANT LEGAL PROVISIONS	<p>Art. 202. Pornography - THE CRIMINAL CODE¹⁷</p> <p>§ 1. Anyone who publicly displays pornographic material in such a manner that it is imposed upon a person against their wish shall be liable to a fine, community sentence or imprisonment for a maximum term of 2 years.</p> <p>§ 2. (repealed)</p> <p>§ 3. Anyone who, for the purpose of disseminating, produces, records, imports, stores or possesses, distributes or presents pornographic material involving a minor, or pornographic material associated with the use of violence or involving an animal, shall be liable to imprisonment for a term going between 2 and 12 years.</p> <p>§ 4. Anyone who records pornographic material involving a minor shall be liable to imprisonment for a term going between one year and 10 years.</p> <p>§ 4a. Anyone who stores, possesses or procures access to pornographic material involving a minor shall be liable to imprisonment for a term going between 3 months and 5 years.</p>

¹⁶ <https://www.sejm.gov.pl/sejm9.nsf/PrzebiegProc.xsp?nr=3282>

¹⁷ <https://lexlege.pl/kk/art-202/>

	<p>§ 4b. Anyone who produces, distributes, presents, stores or possesses pornographic material presenting a produced or processed image of a minor involved in a sexual activity shall be liable to a fine, community sentence or imprisonment for a maximum term of 2 years.</p> <p>§ 4c. The penalty specified in § 4b shall be imposed on anyone who, for the purpose of obtaining sexual gratification, participates in the presentation of pornographic material involving a minor.</p> <p>§ 5. The court may order forfeiture of instruments or other items used or intended to be used to commit the offences described in §§ 1-4b, even if they are not the property of the offender.</p> <p>Art. 200. Sexual intercourse with a minor. - THE CRIMINAL CODE</p> <p>§ 1. Anyone who engages in a sexual intercourse or another sexual activity with a minor under the age of 15, or causes the same to submit to or to perform such activity, shall be liable to imprisonment for a term going between 2 and 12 years.</p> <p>§ 2. (repealed)</p> <p>§ 3. Anyone who presents pornographic content to a minor under the age of 15 or provides him or her with objects of such nature or disseminates pornographic material in a manner allowing such a minor to become familiar with it shall be liable to imprisonment for a maximum term of 3 years.</p> <p>§ 4. The penalty specified in § 3 shall be imposed on anyone who, for the purpose of obtaining his or her own sexual gratification or that of another person, presents the performance of a sexual activity to a minor under the age of 15.</p> <p>§ 5. The penalty specified in § 3 shall be imposed on anyone who advertises or promotes the act of disseminating pornographic material in a manner allowing a minor under the age of 15 to become familiar with it.</p>
<p>AGE LIMIT AND OTHER CONDITIONS FOR ENTERING INTO A LAWFUL CONSENSUAL SEXUAL RELATIONSHIP?</p>	<p>Completed 15 years of age. The Polish legislator has set a formal age of consent at 15 years old. The age threshold established in art. 200 § 1 of the Criminal Code is rigid and is not subject to relativization (it is independent of an individual's maturity or any other factors).</p> <p>Article 200 [Sexual abuse of a minor]. 200 § 1. Whoever has sexual intercourse with a minor under 15 years of age or engages in another sexual act with such a person or leads such a person to submit to or perform such an act, shall be subject to the penalty of deprivation of liberty for a term of between 2 and 15 years.</p> <p>According to Article 112 of the Civil Code, in calculating the age of an individual, the time limit expires at the beginning of the last day that corresponds to the date of birth . The consent of a minor under 15 years of age to sexual intercourse or other sexual activity is not relevant to the existence of the offense.</p>
<p>ANY EXCEPTIONS TO CHILD PORNOGRAPHY / CSAM IN CASE OF „SEXTING“?</p>	<p>NO</p> <p>Pornographic content involving children is included in the so-called hard pornography . In addition, it is assumed that the legislator, with regard to minors, relied on the construction of an absolute prohibition of their participation in the process of producing pornographic content. Article 202 § 3 of the CC provides for the basic type of a separate crime aimed primarily at preventing the creation and dissemination of pornographic content covered by the absolute prohibition, i.e. related to pedophilic content, epitomizing violence and the use of an animal.</p>

ONGOING REVIEW OF OR ANY INITIATIVE RE THE LEGISLATION?

Article 202 of the Criminal Code is one of the most frequently amended provisions of the current Criminal Code. In 2004, it was expanded by § 4 and 5, at the same time extending the functional characteristics of § 2 and 3. A little over a year later, the normative content previously contained in § 4 was partially transferred to § 4a, doubling the upper limit of the statutory threat within the framework of the existing § 4, and moreover expanding the functional characteristics expressed in § 3. At the end of 2008, a new editorial unit was added - § 4b, referring to the produced or processed image of a minor participating in sexual activity. In turn, with the content of the law of 4.04.2014, the legislator made it clear that the punishment of imprisonment should also be subject to the person who, for the purpose of sexual gratification, participates in the presentation of pornographic content with the participation of a minor, and moreover modified the content of § 4a, expanded the scope of criminalization resulting from § 3 and 4, modified - obviously increasing - the statutory threat for the crime stipulated in § 1, and finally moved the normative content previously sentenced in Article 202 § 2 to Article 200 § 3 of the Criminal Code . The amendment also took place in 2023. - In May, amendments came into force, according to which § 1 and § 4b changed the penalties that can be imposed for the acts indicated in these paragraphs (now only imprisonment, the possibility of imposing a fine and the penalty of restriction of liberty was abandoned). On October 1, 2023, another change will come into force - in Article 202 § 3, the upper limit of the statutory threat will be increased from 12 to 15 years' imprisonment.

In May 2023 a legal definition of child pornography was introduced in a draft legislation on the protection of children from dangerous Internet content. It was an advanced draft covering many issues raised in the above-question. However, the legislative process was frozen in September, and the reasons might be the upcoming parliamentary elections. Thus, it is likely that the legislative process will be resumed after the elections. On October 1, 2023, an amendment increasing penalties for pedophilia entered into force.

CANADA




DOES THE TERM “CHILD PORNOGRAPHY” EXIST IN YOUR LEGAL SYSTEM?	YES
IF YES, WHAT IS THE DEFINITION?	<p>Child pornography offences are governed by the Criminal Code of Canada.</p> <p>Under s.163.1(1), "Child pornography" is defined as:</p> <p>(a) a photographic, film, video or other visual representation, whether or not it was made by electronic means,</p> <p>i. that shows a person who is or is depicted as being under the age of eighteen years and is engaged in or is depicted as engaged in explicitly sexual activity, or</p> <p>ii. the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years.</p> <p>(b) any written material, visual representation or audio recording that advocates or counsels sexual activity with a person under the age of eighteen years that would be an offence under this Act; or</p> <p>(c) any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this Act;</p> <p>(d) any audio recording that has as its dominant characteristic the description, presentation or representation, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this Act.</p> <p>Under the Criminal Code, persons may be guilty of:</p> <ul style="list-style-type: none"> • Making child pornography (s.163.1(2)) • Distribution of child pornography (s.163.1(2)) • Possession of child pornography (s.163.1(2)) • Accessing child pornography (s.163.1(2))
IF NOT, WHAT OTHER TERM IS USED FOR “CSAM”?	The term "child sexual abuse materials" is currently being used in Canadian courts by judges who acknowledge that videos and images of children being sexually assaulted is not "pornography". Bill C-291 is seeking to change the legislative terminology from "child pornography" to "child pornography and exploitation materials".
RELEVANT LEGAL PROVISIONS	Link to the Criminal Code of Canada, s.163.1 ¹⁸
AGE LIMIT AND OTHER CONDITIONS FOR ENTERING INTO A <i>LAWFUL</i> CONSENSUAL SEXUAL RELATIONSHIP?	<p>In Canada, a person must be 16 for consent to be valid.</p> <p>The Criminal Code makes an exception to the rule of 16 years old for valid consent when the parties are close in age. Where the complainant is between the ages of 12 and 14, consent may be valid if the accused is:</p> <p>(a) Less than two years older than the complainant; and</p> <p>(b) Not in a position of trust or authority, not in a position of dependency, or is in a relationship with the complainant that is exploitative. (s.150.1(2))</p> <p>The Criminal Code also makes an exception for parties between the ages of 14 and 16, consent may be valid if the accused is:</p> <p>(a) Less than five years older than the complainant; and</p> <p>(b) Is not in a relationship of trust or authority, depending, or is in a relationship with the complainant that is exploitative. (s.150.1(2.1))</p>

¹⁸ <https://laws-lois.justice.gc.ca/eng/acts/c-46/section-163.1.html>

	<p>The defence of mistake in age will only be valid if the defendant can prove that he or she took all reasonable steps to ascertain the age of the complainant (s.150.1(4))</p> <p>Consent given by someone of legal consenting age may be vitiated in the following circumstances:</p> <p>(a) the consent is given by someone other than the complainant; (272.1(2)(a))</p> <p>(b) the complainant is unconscious (272.1(2) (a.1))</p> <p>(c) the complainant is incapable of consenting to the activity for any other reason (272.1(2)(b))</p> <p>(d) the accused induces the complainant to engage in the activity by abusing a position of trust, power or authority (272.1(2)(c))</p> <p>(e) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; (272.1(2)(d))</p> <p>(f) the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity (272.1(2)(e)).</p> <p>(g) Consent must also be obtained at the time the sexual activity in question takes place ((272.1(1.1)).</p>
<p>ANY EXCEPTIONS TO CHILD PORNOGRAPHY / CSAM IN CASE OF „SEXTING“?</p>	<p>NO</p>
<p>ONGOING REVIEW OF OR ANY INITIATIVE RE THE LEGISLATION?</p>	<p>Yes, Bill C-291</p> <p>Parliament has introduced Bill C-291 which seeks to remove the term "child pornography" from Canada's legislation, replacing it with "child sexual abuse and exploitation materials". This bill was approved by the House of Commons on February 1, 2023 and the Senate has completed its second reading as of June 1, 2023.</p> <p>The text of the bill and it's legislative progress can be accessed here¹⁹</p>

¹⁹ <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-291/third-reading>

SINGAPORE 	
DOES THE TERM “CHILD PORNOGRAPHY” EXIST IN YOUR LEGAL SYSTEM?	NO
IF YES, WHAT IS THE DEFINITION?	N/A
IF NOT, WHAT OTHER TERM IS USED FOR “CSAM”?	The Singapore Penal Code (1871) (“PC”), which sets out the elements and penalties of general criminal offences, uses the term “child abuse material”.
RELEVANT LEGAL PROVISIONS	The definition of “child abuse material” can be found in Section 377C of the PC which is attached at Annex A. This term is used in the context of criminalising a person’s possession, use, production, distribution or advertising of child abuse material. The relevant sections can also be found in the attached Annex A.
AGE LIMIT AND OTHER CONDITIONS FOR ENTERING INTO A <i>LAWFUL</i> CONSENSUAL SEXUAL RELATIONSHIP?	In Singapore, only persons above the age of 16 can consent to having a sexual relationship. If the minor is below 14, a person is liable to statutory rape. It should be noted that there is no statutory definition of consent. Instead, the PC has stated what consent is not. See Section 90 PC at Annex B.
ANY EXCEPTIONS TO CHILD PORNOGRAPHY / CSAM IN CASE OF „SEXTING”?	No. Not only will the person be charged under the PC, it is possible that the person may also be charged under Section 8 of the Children and Young Person Act 1993 (see attached Annex C) which states that:- a. Any person who in public or private “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. Any person who in public or private “procures or attempts to procure the commission of any obscene or indecent act by any child or young person”, is guilty of an offence and can be fined up to \$10,000 or jailed up to 5 years, or both. Any subsequent convictions under Section 7 carry a higher fine of up to \$20,000, a longer jail term of up to 7 years, or both. The defences to child abuse material offences are limited to those found under Section 377BN PC (see Annex A at pages 3 to 5). Generally, these defences will only apply if it can be shown that the offence was committed for the prevention or detection of the offense, in the context of obtaining evidence for court proceedings, ensuring safety or national security, or for legitimate purposes related to science, medicine, education, or art.
ONGOING REVIEW OF OR ANY INITIATIVE RE THE LEGISLATION?	The last major review of the PC was in 2018 when the legal committee realised that the law was inadequate to address the circulation and production of these child abuse materials, given the increased accessibility to the internet. The mentioned sections were introduced into the PC from 1st Jan 2020. Some of the relevant sections mentioned above were recently amended in 2021 and they came into force on 1st March 2022.



Annex A.pdf



Annex B.pdf



Annex C.pdf

THE PHILIPPINES



DOES THE TERM “CHILD PORNOGRAPHY” EXIST IN YOUR LEGAL SYSTEM?	Yes, the term child pornography exists in the Philippine legal system, as provided under Section 3(b) of Republic Act No. 9775, or otherwise known as the Anti-Child Pornography Act of 2009.
IF YES, WHAT IS THE DEFINITION?	Section 3(b) of Republic Act No. 9775 (“RA 9775”), or otherwise known as the Anti-Child Pornography Act of 2009, defines child pornography as “any representation, whether visual, audio, or written combination thereof, by electronic, mechanical, digital, optical, magnetic or any other means, of child engaged or involved in real or simulated explicit sexual activities.” This definition was expanded by Section 3(c) of Republic Act No. 11930 (“RA 11930”) or the Anti-Online Sexual Abuse or Exploitation of Children (OSAEC) and Anti-Child Sexual Abuse or Exploitation Materials (CSAEM) Act which expanded the definition under RA 9775, viz: “Child sexual abuse or exploitation material or child sexual abuse material (CSAEM/CSAM) refers to any representation, whether offline, or by, through or with the use of ICT, by means of visual, video, audio, written, or any combination thereof, by electronic, mechanical, digital, optical, magnetic or any other means, of a child engaged or involved in real or simulated sexual activities, or depicting acts of sexual abuse or exploitation of a child as a sexual object. It shall also include materials that focus on the genitalia or other private body parts of a child. For purposes of this Act, CSAEM may interchangeably be referred to as CSAM”
IF NOT, WHAT OTHER TERM IS USED FOR “CSAM”?	N/A
RELEVANT LEGAL PROVISIONS	The following are the relevant legal provisions concerning child pornography and CSAM: • Section 3(b) of RA 9775: “‘Child pornography’ refers to any representation, whether visual, audio, or written combination thereof, by electronic, mechanical, digital, optical, magnetic or any other means, of child engaged or involved in real or simulated explicit sexual activities.” • Section 3(c) of RA 11930: “Child sexual abuse or exploitation material or child sexual abuse material (CSAEM/CSAM) refers to any representation, whether offline, or by, through or with the use of ICT, by means of visual, video, audio, written, or any combination thereof, by electronic, mechanical, digital, optical, magnetic or any other means, of a child engaged or involved in real or simulated sexual activities, or depicting acts of sexual abuse or exploitation of a child as a sexual object. It shall also include materials that focus on the genitalia or other private body parts of a child. For purposes of this Act, CSAEM may interchangeably be referred to as CSAM[.]”
AGE LIMIT AND OTHER CONDITIONS FOR ENTERING INTO A <i>LAWFUL</i> CONSENSUAL SEXUAL RELATIONSHIP?	We submit that the age limit for entering lawful consensual sexual relationships in the Philippines is eighteen (18) years of age and over, provided that the said person is not demented and can take care of himself or herself. Meanwhile, those having a sexual relationship with a person who is below eighteen (18) years of age may be prosecuted for lascivious conduct under Republic Act No. 7610, or otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act. Recently, the Philippine Congress passed into law Republic Act No. 11648, which admits of certain exceptions in case of a sexual relationship with a person under sixteen (16) years of age, to wit: “[T]here shall be no criminal liability on the part of a person having carnal knowledge of another person under sixteen (16) years of age when the age

	<p>difference between the parties is not more than three (3) years, and the sexual act in question is proven to be consensual, non-abusive, and non-exploitative: Provided, further, That if the victim is under thirteen (13) years of age, this exception shall not apply. As used in this Act, non-abusive shall mean the absence of undue influence, intimidation, fraudulent machinations, coercion, threat, physical, sexual, psychological, or mental injury or maltreatment, either with intention or through neglect, during the conduct of sexual activities with the child victim. On the other hand, non-exploitative shall mean there is no actual or attempted act or acts of unfairly taking advantage of the child's position of vulnerability, differential power, or trust during the conduct of sexual activities."</p>
<p>ANY EXCEPTIONS TO CHILD PORNOGRAPHY / CSAM IN CASE OF „SEXTING“?</p>	<p>NO. Further to our discussions above, under Philippine Law, there are no exceptions to child pornography/CSAM. Philippine Law, in fact, penalizes as statutory rape an intimate relationship with a child, regardless of whether the latter consents thereto or not. Pertinently, the Honorable Supreme Court of the Republic of the Philippines has ruled that: “Statutory rape is committed by sexual intercourse with a woman below twelve (12) years of age regardless of her consent, or the lack of it, to the sexual act. Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape. For the absence of free consent is conclusively presumed when the victim is below the age of twelve (12). At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant. (People v. XXX, G.R. No. 229836, [July 17, 2019], citing People v. Cadano, Jr., G.R. No. 207819, [March 12, 2014], 729 PHIL 576-587)</p>
<p>ONGOING REVIEW OF OR ANY INITIATIVE RE THE LEGISLATION?</p>	<p>N/A</p>

SLOVENIA



<p>DOES THE TERM “CHILD PORNOGRAPHY” EXIST IN YOUR LEGAL SYSTEM?</p>	<p>Yes. The term “child pornography” is not used in Slovenian legislation, but it does emerge in the legislature’s explanation of the Criminal Code (CC), which regulates this matter, and in the case law.</p>
<p>IF YES, WHAT IS THE DEFINITION?</p>	<p>Child pornography is defined especially as production of photographs, audiovisual or other items of pornographic or other sexual nature depicting minors, participation or knowing presence in a pornographic or other sexual performance of minors, acquisition, production and distribution of pornographic or other sexual materials depicting minors or their realistic images and possession or intentional access to such materials by means of information and communication technology or disclosure of identity of a minor in such materials.</p>
<p>IF NOT, WHAT OTHER TERM IS USED FOR “CSAM”?</p>	<p>N/A</p>
<p>RELEVANT LEGAL PROVISIONS</p>	<p>A criminal offence under Article 176(2) of CC is committed if the perpetrator by force, threat, deception, excessive or abusive powers, recruitment, solicitation or for exploitative purpose instructs, obtains or encourages a minor to produce photographs, audiovisual or other items of a pornographic or other sexual nature, for participation in a pornographic or other sexual performance, or if the perpetrator is knowingly present at such performances. The crime is punishable by imprisonment of six months to eight years.</p> <p>A criminal offence under Article 176(3) of CC is committed if the perpetrator, for himself or any third person, acquires, produces, distributes, sells, imports or exports or otherwise provides pornographic or other sexual materials depicting minors or their realistic images, or possesses such materials, obtains access to or intentionally access such materials by means of information and communication technology, or discloses the identity of a minor in such materials. The crime is punishable by imprisonment of six months to eight years.</p> <p>If an act referred to in Article 176(2) or Article 176(3) of CC is committed within a criminal organization for the commission of such criminal offences, the perpetrator shall be sentenced to imprisonment of one to eight years (Article 176(4) of CC).</p> <p>“Grooming” is also defined as a criminal offence, i.e. if a perpetrator proposes, by means of information and communication technology, to meet with a person under fifteen years of age for the purpose of committing the crime of sexual assault or for the purpose of producing photographs or audiovisual or other items with pornographic or other sexual content, and this proposal is followed by material acts in order to realize such a meeting (Article 173a(1) of CC). This act is an independent preparatory offence, which is a precondition for the commission of other crimes against sexual integrity. If the crime of sexual assault or the production of pornographic material is actually committed, the offender is prosecuted only for these committed crimes.</p>
<p>AGE LIMIT AND OTHER CONDITIONS FOR ENTERING INTO A LAWFUL CONSENSUAL SEXUAL RELATIONSHIP?</p>	<p>A minor who has attained the age of fifteen years is a subject with full capacity to give consent and can independently decide upon their sexual intercourse and other sexual acts (Article 173(1) of CC). Sexual acts with a person under 15 years of age are not unlawful if they are committed by a person of comparable age and if they correspond to their level of mental and physical maturity (Article 173(5) of CC).</p> <p>At the same time, a minor (below the age of eighteen years) cannot validly consent to be depicted in pornographic or other sexual material (Article 176 of CC).</p>

<p>ANY EXCEPTIONS TO CHILD PORNOGRAPHY / CSAM IN CASE OF „SEXTING“?</p>	<p>YES</p> <p>The act referred to in Article 176(3) of CC insofar as it involves acquiring, producing, possessing or gaining access through information or communication technologies to pornographic or other sexual material is not unlawful, if it was committed amongst minors of a comparable age who consented to the act, if it corresponds to their level of mental and physical maturity and if depicts such persons (Article 176(5) of CC).</p> <p>The act under Article 173a(1) of CC (so-called grooming) is not unlawful if it was committed with a person of comparable age and if it is appropriate to that person’s mental and physical maturity (Article 173a(2) in conjunction with Article 173(5) of CC).</p>
<p>ONGOING REVIEW OF OR ANY INITIATIVE RE THE LEGISLATION?</p>	<p>We are not aware of any current review of the relevant legislation in light of the Proposal and of any ongoing initiatives from NGOs or political parties.</p>

BRAZIL



DOES THE TERM “CHILD PORNOGRAPHY” EXIST IN YOUR LEGAL SYSTEM?	NO
IF YES, WHAT IS THE DEFINITION?	N/A
IF NOT, WHAT OTHER TERM IS USED FOR “CSAM”?	In Brazil, the Law No. 8.069/90 (The Brazilian Children and Adolescent Statute) predicts the crime of producing, reproducing, directing, selling, offering, exchanging, making available, transmitting, distributing, publishing, or disseminating photograph, film or record containing child sexual abuse material. The exact term used in such law for child sexual abuse material is “ explicit sex scene of pornography ” [original in Portuguese: “cena de sexo explícito ou pornografia”] (Art. 241-E), which is described as being “any situation involving a child or adolescent in explicit sexual activity, real or simulated, or display of a child’s or adolescent’s genitals for primarily sexual purposes” [original in Portuguese: “qualquer situação que envolva criança ou adolescente em atividades sexuais explícitas, reais ou simuladas, ou exibição dos órgãos genitais de uma criança ou adolescente para fins primordialmente sexuais”].
RELEVANT LEGAL PROVISIONS	Articles. 240, 241, 241-A, 241-B, 241-C, 241-D, 241-E of Law No. 8.069/90 ²⁰
AGE LIMIT AND OTHER CONDITIONS FOR ENTERING INTO A <i>LAWFUL</i> CONSENSUAL SEXUAL RELATIONSHIP?	The Brazilian Penal Code predicts the presumption that any sexual relationship with children/adolescent under 14 years old is consider crime of “rape of a vulnerable person”, regardless of consent by the children/adolescent involved (Article 217 of the Brazilian Penal Code). It is because the Brazilian Law considers that someone under 14 years old has no maturity nor complete discernment to decide whether to have sex with someone else nor to understand the consequences of such decision.
ANY EXCEPTIONS TO CHILD PORNOGRAPHY / CSAM IN CASE OF „SEXTING”?	YES It is not considered a crime if the CSAM material is kept stored or shared for the purpose of communicating it to the competent authorities by Public Officials, legal entities, or internet provider companies (article 241-B, §2, I, II and III of Law No. 8.069/90).
ONGOING REVIEW OF OR ANY INITIATIVE RE THE LEGISLATION?	The Senate is analyzing and discussing a bill which predicts the increasing of punishment for anyone who registers, sells, or exposes child pornography by any means, as well as the practice of child harassment through any virtual environment (Bill No. 830/2022).

²⁰ https://www.planalto.gov.br/ccivil_03/leis/l8069.htm

UGANDA



DOES THE TERM “CHILD PORNOGRAPHY” EXIST IN YOUR LEGAL SYSTEM?	YES
IF YES, WHAT IS THE DEFINITION?	<p>Child Pornography is defined as any representation through publication, exhibition, cinematography, indecent show, through information technology or by whatever means, of a child engaged in real or simulated explicit sexual activity, or any representation of sexual parts of a child for primarily sexual purposes. (Section 2 of the Children (Amendment) Act, 2016)</p> <p>Separately and for context, Pornography is defined as any representation through publication, exhibition, cinematography, indecent show, 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 excitement. (The Prevention of trafficking in persons Act 2009 section 2(m))</p>
IF NOT, WHAT OTHER TERM IS USED FOR “CSAM”?	N/A
RELEVANT LEGAL PROVISIONS	<p>i) The Children’s Act Cap 59 as amended; section 2 Children Act - ULII²¹</p> <p>ii) The Prevention of Trafficking in persons Act 2009; section 2(m) Prevention of Trafficking in Persons Act, 2009 - ULII²²</p> <p>A child is defined as a person below the age of eighteen years. (Section 2 of the Anti-Pornography Act, 2014) The Constitution of the Republic of Uganda also defines a child as a person below the age of 18 years. (Article 257(c) of the Constitution of the Republic of Uganda, 1995)</p> <p>The law further makes it an offence where any person makes pornographic material available to a child. (Section 23 of the Computer Misuse Act, 2011) Such a person would be liable to a fine of UGX 7,200,000/= approximately USD 1,950, or a fine not exceeding fifteen years or both.</p>
AGE LIMIT AND OTHER CONDITIONS FOR ENTERING INTO A <i>LAWFUL</i> CONSENSUAL SEXUAL RELATIONSHIP?	<p>The lawful age is 18 years. It is an offence for one to have sex with a person who is below the age of 18 years. (Section 129 of the Penal Code Act, 120) Breach of this provision amounts to a felony and on conviction, one is liable for life imprisonment.</p>
ANY EXCEPTIONS TO CHILD PORNOGRAPHY / CSAM IN CASE OF „SEXTING”?	NO
ONGOING REVIEW OF OR ANY INITIATIVE RE THE LEGISLATION?	NO

²¹ <https://ulii.org/akn/ug/act/statute/1996/6/eng%402016-06-02>

²² <https://ulii.org/akn/ug/act/2009/7/eng@2009-10-23>

USA



<p>DOES THE TERM “CHILD PORNOGRAPHY” EXIST IN YOUR LEGAL SYSTEM?</p>	<p>YES</p>
<p>IF YES, WHAT IS THE DEFINITION?</p>	<p>Under federal law 18 U.S.C. § 2256(8),</p> <p>“Child pornography” means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where--</p> <p>(A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;</p> <p>(B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or</p> <p>(C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.</p> <p>Note, a minor in this context is someone under the age of 18. (Protection of Children Against Sexual Exploitation Act),</p>
<p>IF NOT, WHAT OTHER TERM IS USED FOR “CSAM”?</p>	<p>Under federal law 28 U.S.C. § 540D(1), for purposes of the U.S. Federal Bureau of Investigation, defines “child sexual abuse material” as 18 U.S.C. § 2256(8)(A) (please see above).</p>
<p>RELEVANT LEGAL PROVISIONS</p>	<p>There are a many statutes regarding child pornography in the United States, including statutes enacted by dozens of states. At the federal level, the main statute is:</p> <p>Protection of Children Against Sexual Exploitation Act (includes the Child Pornography Prevention Act), 18 U.S. Code § 2251 et seq.²³</p>
<p>AGE LIMIT AND OTHER CONDITIONS FOR ENTERING INTO A <i>LAWFUL</i> CONSENSUAL SEXUAL RELATIONSHIP?</p>	<p>Generally speaking, consensual and voluntary sexual relations between persons of the age of majority who are capable of giving consent (i.e. not mentally or intellectually impaired because of a permanent condition, intoxication or drugs) and that is not accomplished by threat or force would be lawful. The age of consent is determined by statute in practically all of the 50 states in the United States. In most states, the age of consent is 16, 17 or 18 years old. Other examples are: Georgia (10 years), Michigan (13 years), Arkansas (14 years), Massachusetts (16 years). In many states, marriage is a legal defence to such laws. In Delaware, 16 and 17 year-olds may consent to intercourse if the other partner is younger than 30 years old.</p>
<p>ANY EXCEPTIONS TO CHILD PORNOGRAPHY / CSAM IN CASE OF „SEXTING”?</p>	<p>At the federal level, NO.</p> <p>Still, in the context of a criminal prosecution for sexting, each case is evaluated based on its own circumstances. A sext sent by one minor to another minor probably will not lead to liability. When an adult (over the age of consent) sends a sext to a minor, even within a lawful intimate relationship, there is a strong possibility of criminal liability. There could be mitigating circumstances such as the material was sent with a legitimate purpose or the sender suffering from a medical condition.</p>
<p>ONGOING REVIEW OF OR ANY INITIATIVE RE THE LEGISLATION?</p>	<p>There are a number of U.S. states that have enacted a sexting statute.²⁴</p>

²³ <https://www.law.cornell.edu/uscode/text/18/part-1/chapter-110>

²⁴ <https://cyberbullying.org/the-status-of-sexting-laws-across-the-united-states>

	<p>At the federal level, the Bill titled “Strengthening Transparency and Obligations to Protect Children Suffering from Abuse and Mistreatment Act of 2023” or the “STOP CSAM Act of 2023” was introduced to the U.S. Senate on April 19, 2023.</p> <p>The National Center for Missing & Exploited Children (NCMEC), a partnership of the Office of Juvenile Justice and Delinquency Prevention under the U.S. Department of Justice operates a national CyberTipline where private citizens and companies can report suspected online child exploitation, including CSAM.</p>
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ARGENTINA



DOES THE TERM “CHILD PORNOGRAPHY” EXIST IN YOUR LEGAL SYSTEM?	The term “child pornography” does not exist explicitly in the Argentine legal system. Though, Argentina signed and ratified the “Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography” (hereinafter referred to as the “Protocol”). Please see additional comments in this respect below.
IF YES, WHAT IS THE DEFINITION?	Section 2, Subsection C of the Protocol states that child pornography means “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities, or any representation of the sexual parts of a child for primarily sexual purposes”.
IF NOT, WHAT OTHER TERM IS USED FOR “CSAM”?	The Argentine legislation uses the term “representation” in Section 128 of the Argentine Criminal Code, which refers to any photo, video or show with sexual content where a child (under age 13) is represented.
RELEVANT LEGAL PROVISIONS	<p>Section 128 – Argentine Criminal Code: "The person who produces, finances, offers, trades, publishes, facilitates, discloses, or distributes, by any means, any representation of a minor under eighteen (18) years of age engaged in explicit sexual activities or any representation of their genitalia for predominantly sexual purposes, as well as those who organize live performances of explicit sexual representations in which such minors participate, shall be punished with imprisonment for a period of three (3) to six (6) years.</p> <p>Anyone who knowingly possesses representations as described in the previous paragraph shall be punished with imprisonment for a period of four (4) months to one (1) year.</p> <p>Anyone who knowingly possesses representations as described in the first paragraph with unequivocal intent for distribution or commercialization shall be punished with imprisonment for a period of six (6) months to two (2) years.</p> <p>Anyone who facilitates access to pornographic shows or supplies pornographic material to minors under the age of fourteen (14) shall be punished with imprisonment for a period of one (1) month to three (3) years.</p> <p>All the penalty ranges provided in this Section shall be increased by one-third in their minimum and maximum when the victim is under the age of thirteen (13)." (text as amended by Section 1 – Act No. 27,436).</p> <p>Section 129 – Argentine Criminal Code: "Anyone who performs or causes others to perform acts of obscene exhibitions to be involuntarily seen by third parties shall be punished with a fine ranging from one thousand to fifteen thousand pesos.</p> <p>If the affected individuals are under the age of eighteen (18), the penalty shall be imprisonment for a period of six (6) months to four (4) years. The same applies, regardless of the affected person's consent, when the victim is under the age of thirteen (13)."</p>
AGE LIMIT AND OTHER CONDITIONS FOR ENTERING INTO A LAWFUL CONSENSUAL SEXUAL RELATIONSHIP?	<ul style="list-style-type: none"> - Consent of both persons must be free, and expressed without mediation of violence, intimidation or any other element that prevents the victim to express his/her consent (Section 119 – Argentine Criminal Code). - Regarding age of consent: <ul style="list-style-type: none"> (a) No consent from the victim under the age of thirteen (13) can be considered valid from our legal system perspective. (b) If a person aged sixteen (16) or older takes advantage of the sexual immaturity of a person aged between thirteen (13) and sixteen (16) to have a sexual relationship, this configures the crime of “estupro”

	<p>(Section 120 – Argentine Criminal Code: “Any person who performs any of the actions described in the second or third paragraph of Section 119 with a person under the age of 16, taking advantage of his/her sexual immaturity, due to the legal age of the perpetrator, the perpetrator’s position of authority over the victim, or equivalent circumstances, shall be punished with imprisonment or confinement for a period of three (3) to six (6) years, provided that a more severely punished offense does not apply.”</p> <p>(c) Any person that sexually abuses a person, or that inflicts over such person violence, threats, coercive abuse or intimidation stemming from a relationship of dependence, authority, or power, or that takes advantage of the fact that, for any reason, the victim cannot freely consent the action, shall be punished with imprisonment for a period of six (6) months to four (4) years.</p> <p>(d) The above conducts shall have an increased penalty, as follows: (i) when the abuse, due to its duration or circumstances, constitutes a severely degrading sexual subjection for the victim, the imprisonment period shall be four (4) to ten (10) years; and (ii) when the circumstances described in the first paragraph arise, or there is anal, vaginal, or oral penetration, or when other similar acts are performed involving the insertion of objects or body parts through either of the first two routes, the imprisonment period shall be six (6) to fifteen (15) years.</p>
<p>ANY EXCEPTIONS TO CHILD PORNOGRAPHY / CSAM IN CASE OF „SEXTING“?</p>	<p>No particular exceptions to the child pornography regime described above are considered in our legal system in that respect.</p> <p>Notwithstanding the above, it is worth noting that there are certain precedents of “sexting” and “revenge porn”, where our local courts judged based on the criteria of analogy (i.e. terms of Section 128 – Argentine Criminal Code relative to diffusion of representations with sexual content, and other penal types such as duress, extortion, threats, etc.).</p>
<p>ONGOING REVIEW OF OR ANY INITIATIVE RE THE LEGISLATION?</p>	<p>There are not specific proposals or initiatives to change the current local legislation on child pornography.</p> <p>There are, though, certain law projects aimed to preserve the victims of “sexting” and “revenge porn”, in order to simplify the penal process in favor of victims, both from a bureaucratic and personal dimension, their previous sexual behaviour cannot be used by the perpetrator as an argument, and the evidence be handled with the utmost discretion.</p>

KENYA



<p>DOES THE TERM “CHILD PORNOGRAPHY” EXIST IN YOUR LEGAL SYSTEM?</p>	<p>YES</p>
<p>IF YES, WHAT IS THE DEFINITION?</p>	<p>Though the term "child pornography" is not particularly defined by the Kenya Sexual Offences Act No. 3 of 2006, the Act creates the offence of Child Pornography. It states under section 16:</p> <p>"(1) Any person including a juristic person who—</p> <p>(a) knowingly displays, shows, exposes or exhibits obscene images, words or sounds by means of print, audio-visual or any other media to a child with intention of encouraging or enabling a child to engage in sexual acts;</p> <p>(aa) 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 or her possession any obscene book, pamphlet, paper, drawing, painting, art, representation or figure or any other obscene object whatsoever which depict the image of any child;</p> <p>(b) imports, exports or conveys any obscene object for any of the purposes specified in subsection (1), or knowingly 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;</p> <p>(c) takes part in or receives profits from any business in the course of which he or she knows or has reason to believe that any such obscene objects are, for any of the purposes specifically in this section, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation;</p> <p>(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 produced from or through any person; or</p> <p>(e) offers or attempts to do any act which is an offence under this section, is guilty of an offence of child pornography and upon conviction is liable to imprisonment for a term of not less than six years or to a fine of not less than five hundred thousand shillings or to both and upon subsequent conviction, for imprisonment to a term of not less than seven years without the option of a fine.</p> <p>(2) This section shall not apply to—</p> <p>(a) a publication which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, art, representation or figure is in the interest of science, literature, learning or other objects of general concern;</p> <p>(b) any book, pamphlet, paper, writing, drawing, painting, representation or figure which is kept or used bona fide for religious purposes;</p> <p>(c) any representation sculptured, engraved, painted or otherwise represented on or in any ancient monument recognized as such in law; and</p> <p>(d) activities between two persons of over eighteen years by mutual consent.</p> <p>(3) For the purposes of subsection (1), a book, pamphlet, paper, drawing, painting, art, representation or 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, if taken as a whole, tends 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." By virtue of Article 2 (6) of the Constitution of Kenya, 2010 any treaty and convention ratified by</p>

	Kenya forms part of the Laws of the Country. Kenya is a signatory to the Optional Protocol to The Convention on The Rights of The Child on The Sale of Children, Child Prostitution and Child Pornography but is yet to ratify the same.
IF NOT, WHAT OTHER TERM IS USED FOR “CSAM”?	N/A
RELEVANT LEGAL PROVISIONS	See above
AGE LIMIT AND OTHER CONDITIONS FOR ENTERING INTO A <i>LAWFUL</i> CONSENSUAL SEXUAL RELATIONSHIP?	<p>The Age of Consent is Eighteen Years. The Sexual Offences Act provides for the offense of Defilement, which is engaging in sexual activity with a child under section 8. The constitution of Kenya equally provides under Article 260 that a child is any individual below eighteen years.</p> <p>The Courts have equally reiterated that a child cannot consent to a sexual relationship; for instance, in Festus Kitsao Charo v Republic [2021] eKLR the High Court of Kenya stated thus: "The law is that under the Sexual Offences Act, a child below the age of 18 years old cannot give consent to sexual intercourse"</p> <p>Other conditions: Provided for under Section 42 of the Sexual offences Act.</p> <p>i. The consent should be by choice- Not obtained fraudulently/by pretenses.</p> <p>ii. One should have the capacity to consent- be of legal age and mentally sane</p> <p>iii. One should have the freedom to consent- Should not be obtained through force/threats</p>
ANY EXCEPTIONS TO CHILD PORNOGRAPHY / CSAM IN CASE OF „SEXTING”?	<p>YES (N/B: Per the legal framework of Kenya, while exceptions to child pornography exist, any intimate relationship involving a child is not recognized under the law. Such relationships are unequivocally deemed illegal in Kenya.)</p> <p>Provided for under Section 16 (2) of the Sexual Offences Act which states: "(2) This section shall not apply to—</p> <p>(a) a publication which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, art, representation or figure is in the interest of science, literature, learning, or other objects of general concern;</p> <p>(b) any book, pamphlet, paper, writing, drawing, painting, representation, or figure which is kept or used bona fide for religious purposes;</p> <p>(c) any representation sculptured, engraved, painted, or otherwise represented on or in any ancient monument recognized as such in law; and</p> <p>(d) activities between two persons of over eighteen years by mutual consent.</p> <p>The government of Kenya regulates literature materials used in schools through the Kenya Institute of Curriculum Development established under the KICD Act No. 4 of 2013 of the laws of Kenya. Equally, the Kenya Literature Bureau is the government institution that distributes and publishes curriculum textbooks and literature for schools.</p>
ONGOING REVIEW OF OR ANY INITIATIVE RE THE LEGISLATION?	<p>YES, there are proposals to amend the Sexual Offence Act. There is a Sexual Offences Amendment Bill Of 2020 that is yet to be made into law. The Centre for Reproductive Rights proposes the decriminalization of noncoercive, consensual, nonexploitative sexual conduct among teenagers. There are considerations for Kenya to ratify the Optional Protocol to The Convention on The Rights of The Child on The Sale of Children, Child Prostitution, and Child Pornography.</p>

GREECE



DOES THE TERM “CHILD PORNOGRAPHY” EXIST IN YOUR LEGAL SYSTEM?	YES
IF YES, WHAT IS THE DEFINITION?	As provided for in article 348A of the Greek Penal Code, child pornography material is “the representation or the actual or virtual impression, in an electronic or another medium, of the body or part of the body of a minor in a manner that clearly causes sexual arousal, as well as of the actual or virtual indecent act conducted by or with a minor.”
IF NOT, WHAT OTHER TERM IS USED FOR “CSAM”?	N/A
RELEVANT LEGAL PROVISIONS	<p>Article 348A of the Greek Penal Code:</p> <p>"1. Any person who intentionally produces, distributes, publishes, imports or exports, transports, offers, sells or in any other way disposes of, buys, is supplied with, obtains, acquires, or possesses child pornographic material or disseminates or transmits information about the commission of the above acts, is punished by imprisonment of at least one (1) year and monetary sanction.</p> <p>2. Any person who intentionally produces, offers, sells, or in any way disposes of, distributes, transmits, buys, is supplied with, or acquires child pornographic material or disseminates information about the commission of the above acts via a computer system is punished by imprisonment of at least two (2) years and monetary sanction.</p> <p>3. The representation or the actual or virtual impression in an electronic or another medium of the body or part of the body of a minor in a manner that clearly causes sexual arousal, as well as of the actual or virtual indecent act conducted by or with a minor, comprises child pornography within the meaning of the preceding paragraphs.</p> <p>4. The acts of the first and second paragraph are punishable by imprisonment and a monetary sanction if: a) they were committed as a profession, b) the production of child pornography material is connected with the exploitation of the needs, the mental or emotional health or physical disability due to organic disease of a minor or with exercising or threat of using force on a minor or by utilizing a minor who has not attained the age of 15 or if the production of the child pornography material put the minor's life in grave danger, and c) if the perpetrator who produced the material is entrusted for the supervision or guarding of the minor, even temporarily.</p> <p>5. If the production of child pornography material concerns a minor under twelve years old, imprisonment of at least ten (10) years and a monetary sanction shall be imposed. The same sanction is imposed if such an act, as described in cases b) and c) of the previous paragraph, results in serious bodily injury to the victim. If it results in the victim's death, life imprisonment is imposed.</p> <p>6. Anyone who knowingly obtains access to child pornography material through computer systems shall be punished by imprisonment of up to three (3) years or a monetary sanction."</p>
AGE LIMIT AND OTHER CONDITIONS FOR ENTERING INTO A <i>LAWFUL</i> CONSENSUAL SEXUAL RELATIONSHIP?	The age of consent in Greece is 15 (article 339, paragraph 1, Greek Penal Code), i.e., entering a sexual relationship with a minor over 15 years old is lawful if consensual. However, regarding adults to whom the surveillance or guarding of the minor has been entrusted, even temporarily, committing a sexual act with a person younger than 18 years old is punishable (article 342, paragraph 1, Greek Penal Code).

	<p>According to Article 339, paragraph 2, sexual activity between minors under fifteen years old is not punishable unless their age gap is over three years.</p> <p>Article 339 of the Greek Penal Code: "1. Whoever commits a sexual act with a person younger than fifteen years of age or misleads them as a result of acting or undergoing such an act shall be punished unless there is a case to be punished more severely with articles 342 and 351A, as follows: a) if the sufferer has not reached the age of twelve (12), with imprisonment of at least ten (10) years, b) if the sufferer has reached the age of twelve (12), with imprisonment. 2. Sexual acts between minors under fifteen (15) years of age are not punishable unless the age difference between them is over three (3) years, in which case only reformatory or therapeutic measures can be imposed. 3. Whoever pushes or entices a minor, who has not reached the age of fifteen (15), to attend a sexual act, among others, without participating in it, shall be punished with imprisonment of at least two (2) years and a monetary sanction if the minor is younger than fourteen (14) years old and with imprisonment up to three (3) years or a monetary sanction if he has reached the fourteenth (14th) year of his age".</p> <p>Article 342 of the Greek Penal Code: "1. An adult who commits sexual acts with a minor, entrusted to him for supervision or guarding, even temporarily, is punishable as follows: a) if the victim is under 14 years old, with imprisonment of at least ten years and monetary sanction, b) if the victim is over 14 years old, with imprisonment and monetary sanction. The commission of the act of paragraph 1 by a. a relative, b. a person cohabiting with the minor or maintaining friendly relations with their relatives, c. a teacher, educator, trainer, or any other person that tutors the minor, d. a person who receives the services of a minor, e. a priest with whom the child maintains spiritual connection, f. a psychologist, a doctor, nurse or skilled person that provides services to the minor, g. a person abusing the mental or physical disability of the minor, constitutes an aggravating circumstance. 2. An adult who directs gestures, suggestions, narrates, portrays, or presents acts of a sexual nature to a minor whom he is entrusted to supervise or guard, even temporarily, shall be punished by imprisonment of at least six (6) months."</p>
<p>ANY EXCEPTIONS TO CHILD PORNOGRAPHY / CSAM IN CASE OF „SEXTING“?</p>	<p>To our knowledge, the basic rule described above (i.e., article 348A) applies to this case.</p>
<p>ONGOING REVIEW OF OR ANY INITIATIVE RE THE LEGISLATION?</p>	<p>In March 2023, the Greek Government published the "National Action Plan for the Protection of Children from Sexual Abuse and Exploitation 2022-2027", which was drawn up after being put to public consultation, integrating the relevant observations of both institutions and citizens. It provides for interventions at all levels of the administration: social services, education, justice, police, and health. It introduces a series of initiatives, the "National Management Protocol," which aims to unify the actions of all the agencies involved (prosecutors, police, social workers, physical and mental health professionals, educators, etc.), the "National Protocol for the Management of Incidents of Sexually Abused Children" to monitor the progress of each specific incident, and a "Special Criminal Registry" for the perpetrators of child sexual abuse.</p>
<p>CZECH REPUBLIC</p>	



DOES THE TERM “CHILD PORNOGRAPHY” EXIST IN YOUR LEGAL SYSTEM?	YES
IF YES, WHAT IS THE DEFINITION?	<p>The general definition is that child pornography is a such pornographic work which depicts or otherwise exploits a child or a person that looks like a child. Whether or not a work is a child pornography is determined primarily by whether or not it was made for the purpose of sexual arousal. If, for example, a mother sends a picture of her child playing naked on the beach with sand to a friend, this is not child pornography unless it was clearly done for sexual purposes.</p> <p>The definition is provided by the Directive 2011/93/EU of the European Parliament and of the Council of 13th December 2011 on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography, and replacing Council Framework Decision 2004/68/JHA, Article 2.</p> <p>Alternatively, the Supreme Court of the Czech Republic has defined the term as following: Pornographic work depicting a child (i.e. a person under the age of 18) within the meaning of Section 205(1)(a) of the Criminal Code may be considered to be, for example, images of naked children in positions that defiantly display their genitals for the purpose of sexual gratification, images of children depicting positions of real or pretended sexual intercourse with them, or other similarly sexually titillating images of children. If the images are not such, then the conclusion that the work is pornographic cannot be inferred from the mere fact that they are made available by means sought by persons suffering from sexual deviance (i.e., persons who find juveniles sexually attractive) for the purpose of satisfying them. (Resolution of the Supreme Court of 28 December 2004, Case No. 7 Tdo 1077/2004)</p>
IF NOT, WHAT OTHER TERM IS USED FOR “CSAM”?	N/A
RELEVANT LEGAL PROVISIONS	Directive 2011/93/EU of the European Parliament and of the Council of 13th December 2011 on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography, and replacing Council Framework Decision 2004/68/JHA, Article 2
AGE LIMIT AND OTHER CONDITIONS FOR ENTERING INTO A <i>LAWFUL</i> CONSENSUAL SEXUAL RELATIONSHIP?	Age limit for consensual sexual intercourse is 15 years based on negative definition from the Criminal Code. (Section 187(1) of the Criminal Code) For the sexual intercourse to be consensual, the existence of consent, that is no forced under threat of violence or other serious harm, is crucial. Nor may the advantage of the person’s defenselessness be exploited (Section 185 and 186 of the Criminal Code). There must be no coercion. Furthermore, sexual intercourse between siblings and direct descendants is prohibited. (Section 188 of the Criminal Code)
ANY EXCEPTIONS TO CHILD PORNOGRAPHY / CSAM IN CASE OF „SEXTING”?	NO However, photographs depicting, for example, an underage girl in her underwear or in an unbuttoned, revealing shirt with one breast visible may not be considered child pornography under certain circumstances. (Resolution of the Supreme Court of the Czech Republic, Case No. 7 Tdo 1068/2012)
ONGOING REVIEW OF OR ANY INITIATIVE RE THE LEGISLATION?	A draft amendment to the Criminal Code is currently being debated in Parliament to make rape more punishable, in particular by abandoning the concept of rape as forcible sexual intercourse and replacing it with the

	<p>concept of non-consensual sexual intercourse. In such a case, in order to commit the offence of rape, it would be sufficient to carry out the sexual intercourse despite the manifestation of non-consent.</p> <p>At the same time, an age limit should be set (12 years), until which a child will always be considered defenseless due to young age. Sexual practices with him/her will always be considered criminal as rape or sexual assault and not as the lesser offence of sexual abuse.</p>
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LUXEMBOURG



<p>DOES THE TERM “CHILD PORNOGRAPHY” EXIST IN YOUR LEGAL SYSTEM?</p>	<p>NO</p> <p>The term “child pornography” (in French: pédopornographie or pornographie mettant en scène des enfants) does not exist per se in the legal system of Luxembourg. However, we find multiples occurrences of the term in precedents in front of the criminal courts.</p>
<p>IF YES, WHAT IS THE DEFINITION?</p>	<p>N/A</p>
<p>IF NOT, WHAT OTHER TERM IS USED FOR “CSAM”?</p>	<p>The criminal offences are listed in the Criminal code of Luxembourg under a section called “Public offences against morality and special provisions to protect young people” (in French: Outrages publics aux bonnes moeurs et dispositions particulières visant à protéger la jeunesse).</p>
<p>RELEVANT LEGAL PROVISIONS</p>	<p>The first type of offense aims to sanction the fabrication, the transport or the diffusion of pornographic content involving or representing underage persons.</p> <ul style="list-style-type: none"> - Art. 383 of the Criminal code - Art. 383bis of the Criminal code - Art. 383ter of the Criminal code <p>The second type of offense aims to sanction the acquisition, the detention or the consultation of child pornography: Art. 384 of the Criminal code Link to relevant legal provisions.²⁵</p>
<p>AGE LIMIT AND OTHER CONDITIONS FOR ENTERING INTO A <i>LAWFUL</i> CONSENSUAL SEXUAL RELATIONSHIP?</p>	<p>The age limit for entering a lawful consensual sexual relationship in Luxembourg is 16 years.</p> <p>More precisely, Article 371-2²⁶ of the Criminal code explains that there is a presumption that a person under 16 can not consent to a sexual relationship. However, it is possible to reverse the presumption in a particular situation where a person who has reached the age of thirteen but has not yet reached the age of sixteen may consent freely if the difference in age between him or her and the other person is not more than four years.</p>
<p>ANY EXCEPTIONS TO CHILD PORNOGRAPHY / CSAM IN CASE OF „SEXTING”?</p>	<p>NO</p> <p>Sidenote: The Ministry of Justice and the Ministry of Education provide a guide²⁷ in order to prevent the risks of sharing sexually explicit photographs. It explains (p. 8) which criminal offences might be prosecuted in case of “sexting”.</p>
<p>ONGOING REVIEW OF OR ANY INITIATIVE RE THE LEGISLATION?</p>	<p>A new legislation dated 7 August 2023²⁸ recently strengthened the Criminal code of Luxembourg against sexual abuses and sexual child abuses.</p> <p>More precisely, concerning the thematic of sexual child abuses, this new legislation provides an autonomous offence of rape of an underage person. It also modifies the article 383bis of the Criminal code in order for it to comply with the provisions of the EU Directive 2011/93/UE.</p> <p>To our knowledge, there is no other legislation currently under review in light of the Proposal.</p>

²⁵ <https://legilux.public.lu/eli/etat/leg/code/penal/20230905>

²⁶ <https://legilux.public.lu/eli/etat/leg/code/penal/20230905>

²⁷

<https://men.public.lu/content/dam/men/catalogue-publications/digital/informations-generales/2021-Guide-Nu-sur-le-net-fr.pdf>

²⁸ <https://legilux.public.lu/eli/etat/leg/loi/2023/08/07/a520/jo>

UNITED KINGDOM



<p>DOES THE TERM “CHILD PORNOGRAPHY” EXIST IN YOUR LEGAL SYSTEM?</p>	<p>NO</p>
<p>IF YES, WHAT IS THE DEFINITION?</p>	<p>N/A</p>
<p>IF NOT, WHAT OTHER TERM IS USED FOR “CSAM”?</p>	<p>There is no definition within the English legal system of “Child Pornography”. This is because child sexual abuse material is a result of children being groomed, coerced and exploited by their abusers and is a form of child sexual abuse. Child Sexual Abuse materials are serious criminal offences against children and therefore the term “child pornography” is not used to avoid confusion, misunderstanding or even harm.</p> <p>Under English law it is illegal to: take, make, distribute, or possess an indecent photograph or a pseudo photographs of a child.</p> <p>These offences predominantly can be found in legislation, predominantly under the Criminal Justice Act 1988 and the Sexual Offences Act 2003. There are however other statutes, judgements, and guidelines that tackle child sexual abuse content. We draw your attention to them here:</p> <p>The law, assessing content and our MOU with the NPCC (iwf.org.uk)²⁹</p>
<p>RELEVANT LEGAL PROVISIONS</p>	<p>Indecent and Prohibited Images of Children – S160 of Criminal Justice Act 1988 - Criminal Justice Act 1988 (legislation.gov.uk)³⁰</p> <p>Causing or inciting child prostitution or pornography- S48 of Sexual Offences Act 2003 - Sexual Offences Act 2003 (legislation.gov.uk)³¹</p> <p>Controlling a child prostitute or a child involved in pornography – S49 of Sexual Offences Act 2003 - Sexual Offences Act 2003 (legislation.gov.uk)³²</p> <p>Arranging or facilitating child prostitution or pornography – S50 of Sexual Offences Act 2003 - Sexual Offences Act 2003 (legislation.gov.uk)³³</p> <p>Interpretation of S48 – S50 of Sexual Offences Act 2003 – S51 of Sexual Offences Act 2003: “1) For the purposes of sections 48 to 50, a person (B) is sexually exploited if— (a) on at least one occasion and whether or not compelled to do so, B offers or provides sexual services to another person in return for payment or a promise of payment to B or a third person, or</p>

²⁹

<https://www.iwf.org.uk/about-us/how-we-assess-and-remove-content/our-mou-the-law-and-assessing-content/#:~:text=Our%20status%20as%20a%20relevant,the%20Sexual%20Offences%20Act%202003.>

³⁰

<https://www.legislation.gov.uk/ukpga/1988/33/part/XI/crossheading/possession-of-indecent-photograph-of-child>

³¹ <https://www.legislation.gov.uk/ukpga/2003/42/section/48>

³² <https://www.legislation.gov.uk/ukpga/2003/42/section/49>

³³ <https://www.legislation.gov.uk/ukpga/2003/42/section/50>

	<p>(b)an indecent image of B is recorded or streamed or otherwise transmitted; and “sexual exploitation” is to be interpreted accordingly. (3)In subsection (2), “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.”</p> <p>Interpretation of “Sexual” – S78 of Sexual Offences Act 2003: “Sexual For the purposes of this Part (except section 71), penetration, touching or any other activity is sexual if a reasonable person would consider that— (a)whatever its circumstances or any person’s purpose in relation to it, it is because of its nature sexual, or (b)because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.”</p>
AGE LIMIT AND OTHER CONDITIONS FOR ENTERING INTO A <i>LAWFUL</i> CONSENSUAL SEXUAL RELATIONSHIP?	<p>The age of consent in England and Wales is 16. This is the age when young people of any sex, gender or sexual orientation can legally consent to taking part in sexual activity. This means that sexual activity between two or more people is always unlawful if at least one of the people is under the age of 16.</p>
ANY EXCEPTIONS TO CHILD PORNOGRAPHY / CSAM IN CASE OF „SEXTING“?	<p>NO</p>
ONGOING REVIEW OF OR ANY INITIATIVE RE THE LEGISLATION?	<p>No. Only a continued “push for dialogues between, and more awareness and action from, the different entitled and sectors which is required for an effective response to this ever growing horrific crime”: 71 countries call to remove online child sexual abuse materials - GOV.UK (www.gov.uk)³⁴</p> <p>It is also the subject of comment in relation to the Online Safety Bill which is making its way through our country’s legislature.</p>

³⁴ <https://www.gov.uk/government/news/71-countries-call-to-remove-online-child-sexual-abuse-materials>