

Strengthening



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Working Paper

Child Sex Offences

Series 1: Child Pornography

**Amendments to the Criminal Code
of Thailand**



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This report was developed under the framework of the UNODC Regional Programme for Southeast Asia and the Pacific 2014-17, Sub programme 4 Criminal Justice, Outcome 13: Member States more effectively investigate and prosecute child sex offences.

The report has been drafted to highlight the work of UNODC and the Government of Thailand in developing and implementing legal measures to protect children from sexual crimes. The report will be used as a basis to inform stakeholders of the need to continue providing support to Member States in the Southeast Asia region and to strengthen collaboration with donors, government counterparts and organisations with a longstanding history of work in the protection of children.

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Executive Summary

Countries in Southeast Asia including Thailand face a common challenge - they are exposed to the sexual abuse and exploitation of children but have lacked the resources and know-how to tackle it effectively. Strong legal frameworks are essential to underpin law enforcement efforts, and provide justice agencies with the tools they need to successfully prosecute serious offences. Thailand is already a regional leader in its law and justice approach to targeting child sex offenders.

Thailand has ratified and acceded to many international legal instruments on children's rights including the UN Convention on the Rights of the Child, the Optional Protocol to the CRC on the Sale of Children, the United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (TIP Protocol) and the ILO Convention no 182 on the Elimination of the worst forms of child labour.

The Government of Thailand have been working with UNODC to develop and implement measures to protect children from sexual crimes. This has been done through legislative reform, technical capacity building of police, prosecutors and judges, and enhanced cooperation within and across borders.

On 14 May 2015, the Ministry of Justice announced that the National Legislative Assembly of Thailand had voted unanimously to amend the Criminal Code of Thailand (B.E. 2499 (1956)) to criminalise *child pornography*. Previously, the possession of child sex abuse material without intent to distribute was not considered a crime under the Criminal Code.

This working paper sets out the international legal standards that exist in relation to child pornography. It considers the relevant legislations from eighteen different jurisdictions: Australia, Canada, Finland, France, Germany, India, Ireland, Israel, Japan, Kenya, New Zealand, the Philippines, South Africa, South Korea, Sri Lanka, Sweden, Switzerland, the United Kingdom and the United States of America. The working paper focusses on what was identified as salient issues during the drafting of the legislation.

The working paper is divided into six parts: Part I sets out the international conventions relevant to child pornography; Part II describes different regional legal frameworks that aim to curtail and eliminate child pornography; Part III outlines the domestic legislation relevant to child pornography in Thailand and the changes proposed by the Amendment Bill; Part IV addresses six potentially contentious issues in the enactment of the new Thai legislation; Part V analyses the amendments to the Criminal Code of Thailand against key international legal instruments; and Part VI provides an overview of UNODC's work in the Southeast Asia and Pacific region in developing nationwide assistance programmes and activities focused on legislative reform matters and on training and capacity building of law enforcement officials.

Note: While noting some organisations prefer the term child sex abuse material, this report will use the term "*child pornography*" for consistency with the legal terminology used in the UN Convention on the Rights of the Child (1989) and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000). Thailand's legislation uses the term "*child pornography*".

Background

In 2011, UNODC Regional Office for Southeast Asia and the Pacific undertook a legislative review in Thailand to examine the extent to which its domestic legislation met key international legal standards applicable to child sexual exploitation in travel and tourism.¹ Following extensive consultations with government counterparts, the review identified legislative gaps and provided concrete recommendations on how to strengthen the legislative framework for the protection of children. These recommendations have served as a constructive basis for the Government of Thailand to undertake legal reform to better address the sexual abuse and exploitation of children.²

The legislative review found that Thailand's domestic legal framework mostly complied with the key international standards relevant to child sexual exploitation. However, gaps pertaining to the criminalization of child pornography,³ and the protection of child victims and witnesses in contact with the criminal justice system, were still apparent.⁴ Child pornography was not specifically addressed or prohibited under national legislation. There was further uncertainty relating to whether child pornography fell within the ambit of the law's general prohibition of "obscene material."⁵ As a result, the mere possession— or possession without intent to distribute – of such material was not a crime under the Criminal Code.

The review recommended that the Government of Thailand develop a clear and separate child pornography offence to ensure that child pornography is prohibited in Thailand.⁶ As part of its mandate to support member states in strengthening their criminal justice systems, UNODC provided its legal review to the Government of Thailand to assist in ensuring that international standards were considered in their efforts to address domestic legislative gaps.

In 2015, using UNODC recommendations as a reference point, the Thai National Legislative Assembly proposed its first bill on the definition of child pornography (the Amendment Bill)⁷. It prescribed punishment of up to five years of imprisonment for mere possession of child pornography, up to seven years for forwarding such material and up to ten years for trade and distribution of such material. On 14th May 2015, the National Legislative Assembly voted on the bill. Of the 196 out of 220 parliamentarians present for the vote, 193 voted in favour of the bill, with one dissenting and two abstaining.⁸ The amendments to the Thai Criminal Code (B.E. 2499 (1956)) reaffirm Thailand's position as a regional leader in progressive legal reform. This commitment to the protection of the rights of children is evidenced by the fact that Thailand has ratified and acceded to many international legal instruments on children's rights.⁹

¹ UNODC. Child Sexual Exploitation in Travel and Tourism: An Analysis of Domestic Legal Frameworks in Thailand (2014) available at http://www.unodc.org/documents/southeastasiaandpacific/Publications/2015/childhood/TH_Legal_Report_2014.pdf. See also "Strengthening Thai laws to fight travellers who sexually abuse children" available at

<http://www.unodc.org/southeastasiaandpacific/en/2012/03/childhood-workshop-thailand/story.html>

² This work was undertaken within the framework of Project Childhood, an Australian Government funded initiative to combat the sexual exploitation of children in travel and tourism in the Mekong Sub-region.

³ "Child pornography" is a term used interchangeably with the term "child sex abuse material". Thailand's legislation uses the term "child pornography". Therefore, that term is used consistently throughout this working paper.

⁴ UNODC. Child Sexual Exploitation in Travel and Tourism: An Analysis of Domestic Legal Frameworks in Thailand (2014), pp. 18-25

⁵ Ibid. p. 21

⁶ Ibid. , pp. 24-25

⁷ No official English translation is available of the bill.

⁸ On 15th May 2015, the Permanent Secretary of Ministry of Justice and UNODC Regional Representative delivered a statement at Parliament. See "UNODC assists Thailand to criminalise possession of child sex abuse material"

<http://www.unodc.org/southeastasiaandpacific/en/2015/05/childhood-sex-abuse-material/story.html>

⁹ Signed and ratified the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, the ILO Convention No. 182 on the Worst Forms of Child Labour, and signed the additional Protocol to the United Nations Convention against Transnational Organised Crime to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Thailand is furthermore the first country in the Southeast Asian region to ratify Optional Protocol to number 3 the Convention on the Rights of the Child on a communications procedure.

Scope

Through a comparative analysis, this working paper sets out the international legal standards that exist in relation to child pornography. It variously considers the relevant legislations from eighteen different jurisdictions: Australia, Canada, Finland, France, Germany, India, Ireland, Israel, Japan, Kenya, New Zealand, the Philippines, South Africa, Sri Lanka, Sweden, Switzerland, the United Kingdom and the United States of America.¹⁰

The working paper is divided into six parts: Part I sets out the international conventions relevant to child pornography; Part II describes different regional legal frameworks that aim to curtail and eliminate child pornography; Part III outlines the domestic legislation relevant to child pornography in Thailand and the changes proposed by the Amendment Bill; Part IV addresses six potentially contentious issues in the enactment of the new Thai legislation; Part V analyses the amendments to the Criminal Code of Thailand against key international legal instruments; and Part VI provides an overview of UNODC's work in the Southeast Asia and Pacific region in developing nationwide assistance programmes and activities focused on legislative reform matters and on training and capacity building of law enforcement officials.

Limitations

This working paper predominantly focuses on what UNODC has identified as the salient issues that arose during the preparatory work of drafting the legislation. These issues have been analysed against key international legal frameworks, and against the relevant legislations of the other jurisdictions outlined above. It has not been possible to comprehensively and thoroughly examine all legislative issues from all jurisdictions in the comparative analysis. However, an attempt has been made to provide a balanced geographical overview of key legal considerations.

Part I – International Legal Frameworks

This section briefly sets out five key international conventions relevant to child pornography - the UN Convention on the Rights of the Child (CRC)¹¹, the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (OPSC)¹², the United Nations Convention against Transnational Organized Crime (UNTOC)¹³, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (TIP Protocol)¹⁴ and the ILO Convention no 182 on the Elimination of the worst forms of child labour.¹⁵

1.1 The Convention on the Rights of the Child

The CRC establishes a broad human rights framework requiring state parties to act in the best interests of the child, and sets important legal standards to prevent and combat child pornography. Articles 34-36 require state parties to protect children from all forms of sexual exploitation. This includes the abuse and exploitation of children in pornographic acts. The CRC has received almost universal ratification with 194 state parties.

¹⁰ The respective legislation and specific provisions are annexed to this document, and appear as Annex 1.

¹¹ The Convention on the Rights of the Child. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49.

¹² Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000 entered into force on 18 January 2002

¹³ United Nations Convention against Transnational Organized Crime, New York, 15 November 2000, In Force 29 September 2003, in accordance with article 38

¹⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000

¹⁵ ILO Convention No. 182. Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Entry into force: 19 Nov 2000)

1.2 The Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography

The OPSC obliges state parties to the protocol to take specific measures to prohibit the sale of children, child prostitution and child pornography. Child pornography is defined in article 2 as “any presentation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes”. Article 3 states that each state shall ensure that, as a minimum, “producing, distributing, disseminating, importing, exporting, offering, selling, or possessing for the above purposes, child pornography [---]” is fully covered under criminal legislation.

1.3 The United Nations Convention against Transnational Organized Crime

The UNTOC does not specifically mention child pornography, but rather the suppression of all conduct that is deemed to constitute transnational organized crime. Research conducted by UNODC suggests that there is some evidence that organized crime groups are involved in child pornography, although on a small scale.¹⁶ The UNTOC requires states to criminalize certain transnational organized criminal behaviour of certain gravity, and to cooperate in its suppression.

1.4 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children

The TIP Protocol supplements the UNTOC and obliges states to take action to prevent, suppress and punish trafficking in persons. Like the UNTOC, the TIP Protocol does not specifically refer to child pornography. While child pornography is a distinct form of criminal activity requiring the implementation of specially targeted domestic measures, it has been argued that there is a close link between trafficking in children and child sex abuse, including child pornography.¹⁷ Furthermore, it has been suggested that the key concept of “sexual exploitation” in the TIP protocol could include pornographic acts and the production of pornographic materials.¹⁸

1.5 ILO Convention no 182 on the Elimination of the worst forms of child labour

The ILO Convention requires state parties to prevent the “worst forms of child labour”.¹⁹ It recognizes the particular vulnerabilities of children, and limits the nature of work that they may engage in. Amongst the worst forms of child labour stipulated in article 3, is “the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances”.

Part II – Regional Legal Frameworks

This section briefly outlines regional legal frameworks that aim to curtail and eliminate child pornography. They include the Lanzarote Convention²⁰, the Budapest Convention²¹ and the African Charter on the Rights and Welfare of the Child.²²

2.1 The Lanzarote Convention

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), which entered into force in 2010, is the most recent multilateral treaty concerning the protection of children against sexual exploitation and sexual

¹⁶ UNODC, *The Globalisation of Crime, A Transnational Organised Crime Threat Assessment* (2010), p. 213-215

¹⁷ ECPAT, *Examining Neglected Elements in Combating Sexual Exploitation of Children* (2013), p. 11-12.

¹⁸ United Nations, Working Group on Trafficking in Persons, Analysis of key concepts of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, CTOC/COP/WG.4/2010/2, Vienna, 27-29 January 2010, para. 12

¹⁹ ILO Convention No. 182 on the Worst Forms of Child Labour, article 3.

²⁰ Lanzarote Convention, Council Of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, Lanzarote 25.X.2007

²¹ Budapest Convention, Council Of Europe Convention on Cybercrime, Budapest 23.XI.2001

²² African Charter on the Rights and Welfare of the Child, OAU Document CAB/LEG/24.9/49 (1990), entered into force November 29, 1999

abuse. To date, it has been ratified by 36 states that are all members of the intergovernmental Council of Europe. Articles 18-23 stipulate that state parties are required to criminalise conduct related to the sexual abuse and exploitation of children. Article 20 specifically criminalises child pornography. The following acts are to be criminalised: *“producing; offering or making available; distributing or transmitting; procuring for oneself or for another person; possessing and knowingly obtaining access, through information and communication technologies, to child pornography.”*

2.2 The Budapest Convention

The Council of Europe Convention on Cybercrime (Budapest Convention) specifically requires its signatories to criminalise cybercrime, which involve acts that mainly target a computer or a computer system.²³ In addition, the Budapest Convention includes a provision on child pornography in article 9.

2.3 The African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child (ACRWC) is the internal convention on the rights of the child of the African Union (AU). 47 out of the 54 AU member states have ratified the Charter. Article 27 of the Charter requires states to undertake to protect children from all forms of sexual exploitation and sexual abuse, including *“the use of children in pornographic activities, performances and materials.”*

Part III – National Legal Framework

This section analyses the domestic legislation covering child pornography in Thailand, and the changes that will follow upon enactment of the Amendment Bill.

3.1 Status of ratification of key International and Regional Instruments

Thailand has ratified or acceded to the CRC, the OPSC, the UNTOC, the TIP Protocol and the ILO Convention. Although the Lanzarote Convention is open for ratification by states other than members of the Council of Europe, this is yet to occur. The Budapest Convention has been ratified by some states outside the Council of Europe but Thailand is not one of those.²⁴ The ACRWC is open to accession by AU states only.

3.2 Criminal Code

Child pornography is not defined in Thai legislation. However, the Criminal Code (B.E. 2499 (1956)) criminalizes a broader range of conducts relating to the production, import or export, circulation of documents, drawings, prints, paintings, printed matter, pictures, posters, symbols, photographs, film, tape, picture tape or any other thing that is deemed to be “obscene”. What constitutes obscene is not defined, and whether child pornography can fall within the ambit of its definition is not clear. Importantly, the Criminal Code does not criminalise mere possession. Possession is criminalised only if it can be proven that the possession is for or by trade, for distribution, or for public flaunting.²⁵

3.3 Computer Crime Act

The Computer Crime Act (B.E. 2550 (2007)), section 14(4) criminalises the importation of any data of a pornographic nature to a computer system that is publicly accessible. No definitions are provided, and it is unclear what constitutes data of a “pornographic nature”.

²³ Budapest Convention, preamble paragraph 9.

²⁴ Ratified by USA, Australia, Dominican Republic, Japan, Mauritius and Panama. In addition, it has been signed by Canada and South Africa.

²⁵ Section 287

3.4 Anti-Trafficking in Persons Act

The Anti-Trafficking in Persons Act (B.E. 2551 (2008)) aims to suppress, among other things, trafficking of children for exploitative purposes, such as producing pornographic material depicting children.²⁶ Section 4 sets out that a child is anyone under the age of eighteen.

3.5 Child Protection Act

The Child Protection Act (B.E. 2546 (2003)), article 26(9) prohibits any act by which a child is forced, threatened, used, induced, instigated, encouraged or allowed to perform or act in a pornographic manner. A child is defined in section 4 as anyone under the age of eighteen, except those who have attained majority through marriage.

3.6 Proposed definition of child pornography

The Amendment to the Criminal Code Act will come into force ninety days after its publication in the Government Gazette. All the amendments have new sub-paragraphs and appear in their respective provision in the Criminal Code as in the underlined text below.²⁷

3.6.1 Section 1(17)²⁸

“‘Child pornography’ means materials or matter²⁹ that are understood as or depict sexual acts of a child or with a child who is not over the age of 18, through images, stories or in a manner that can be understood as pornographic³⁰, whether in the form of documents, drawings, illustrations, printed matter, pictures, advertised images, symbols, photographs, movies, audio tapes, video tapes, or any other similar manner. This definition shall include various materials and matter listed previously that can be stored in computer systems or other electronic equipment that can show understandable results.”

3.6.2 Section 287/1

Whoever possesses child pornography for the sexual benefit of oneself or of another person, the offender shall be punished with imprisonment of not over 5 years or fined not over 100,000 baht or both.

If the offender in Paragraph 1 forwards³¹ the child pornography to another person, the offender shall be punished with imprisonment of not over 7 years or fined 140,000 baht or both.

3.6.3 Section 287/2

“Whoever

(1) for the purpose of trade or by trade or for distribution or public exhibition, makes, produces, imports into or causes to be imported into the Kingdom, exports or causes to be exported from the Kingdom, takes or causes to be taken, or disseminates by any means any child pornography;

²⁶ Sections 4-9

²⁷ There is no available official English translation of the content of the Amendment Act as yet. For this working paper, UNODC has relied on an unofficial translation made by the Regional Office for South East Asia and the Pacific. The content of the existing Criminal Code of Thailand is the official English translation.

²⁸ Text in ***bold italics*** were deleted by the National Legislative Assembly on the day of voting in parliament on 14 May 2015 - “‘Child pornography’ means materials or matter that are understood as or depict sexual acts of a child or with a child ***or in view of a child*** who is not over the age of 18, through images, stories or in a manner that can be understood as pornographic, whether in the form of documents, ***messages***, drawings, illustrations, printed matter, pictures, advertised images, symbols, photographs, movies, audio tapes, video tapes, or any other similar manner. This definition shall include various materials and matter listed previously that can be stored in computer systems or other electronic equipment that can ***be converted into images or messages or sounds whether the data is stored permanently or not*** show understandable results.”

²⁹ The word used in the Amendment Bill is “สิ่ง” which translates into English as “thing”, “entity”, “article” and “matter”. During the drafting of the law, it has been stated that the reason why this particular word is used is to cover intangible items.

³⁰ The word in the Amendment Bill is “ลามกอนาจาร” which translates into English as “pornographic”, “obscene” or “indecent”

³¹ The word used in the Amendment Bill is “ส่งต่อ” which translates into English as “forwards” or “submits”.

- (2) trades, participates or engages in the trade of child pornography and then distributes child pornography or exhibits child pornography to the public, or hires out child pornography;
- (3) for the purpose of disseminating or trading of child pornography, advertises or propagates by any means that there is a person who commits an act which amounts to an offence under this section, or advertises or propagates how or from whom child pornography may be obtained

shall be liable to imprisonment from 3 years to 10 years or a fine from 60,000 baht to 200,000 baht or both

Part IV – Comparative Analysis of Legislation from different jurisdictions

This section highlights six salient issues in the enactment of the new Thai legislation. It provides a comparative analysis on each issue, clarifies the international legal standard and describes the minimum requirements that Thailand should observe under international law.

4.1 The definition of “child”

4.1.1 Comparative analysis

The definitions of “child” are most commonly found in legislation criminalising child pornography. For example, the Lanzarote Convention states in article 3 that a “*child shall mean any person under the age of 18 years*”. The ACRWC is similar, stating in article 2 that “[f]or the purposes of this Charter, a child means every human being below the age of 18 years.”

The majority of the countries that form part of the research for this working paper have a strict eighteen year limit for the definition of “child” in their respective criminal law. However, some definitions show slight variations with reference to child pornography. For example:

- The **Australian** states of New South Wales³² and Queensland³³ define a child, with reference to child pornography, as someone being under the age of sixteen.
- **Irish** legislation defines a child, with reference to child pornography, as anyone under the age of seventeen.³⁴
- **German** legislation differentiates between “*juvenile*” and “*child*”, the former being anyone between fourteen and eighteen years old and the latter anyone below the age of fourteen. However, pornography is criminalised with reference to both terms, albeit with slightly different scales of penalties.³⁵
- **Swedish** legislation applies to a person under the age of eighteen or a “*whose pubertal development is not complete*”.³⁶
- **French** legislation employs the term “*minor*” which carries a different definition depending on the crime concerned. With reference to child pornography, a minor is a person under the age of eighteen, or if the age is unknown, a person whose physical appearance is that of a minor.³⁷
- **Philippine** legislation defines a child as anyone under the age of eighteen. However, a person who is above eighteen, but unable to fully take care of him/herself can also be considered a child. Persons also fall under the same definition, if they are above eighteen but are being depicted as minors.³⁸

³² New South Wales, Crimes Act, section 91FA

³³ Queensland, Criminal Code Act, section 228.

³⁴ Irish Child Trafficking and Pornography Act, section 2.

³⁵ German Criminal Code, section 184b and section 184c

³⁶ Swedish Criminal Code, section 10a

³⁷ French Criminal Code, article 277-23

³⁸ Philippines, Anti-Child Pornography Act, section 3

4.1.2 International legal framework

For Thailand, the two main international conventions that concern the definition of a child are the CRC and the ILO Convention no. 182. The CRC defines a child as any person below the age of eighteen, unless national law stipulates another age for majority. However, in the area of juvenile justice³⁹, the UN Committee on the Rights of the Child⁴⁰ has indicated that state parties should not reduce the protection available to persons under eighteen simply because majority is reached earlier, but that the Convention and the guidelines should be applied to anyone under the age of eighteen.⁴¹ The same point has been made by the UN Human Rights Committee.⁴² The ILO Convention No. 182 does not contain any exceptions, and anyone under the age of eighteen is considered a child. Furthermore, in the TIP protocol, a child is defined as anyone under the age of eighteen years old.

Conclusions - A child is a person under the age of eighteen. If a person attains majority by other means in accordance with national legislation, this should still not exclude pornography depicting the person from being defined as child pornography. A conclusion to the contrary is not in accordance with the obligations under the CRC, as set out in the article 34. The UN Committee on the Rights of the Child has established that *“the child affected by situation of sale, prostitution and pornography should be considered mainly as a victim and that all measures adopted should ensure full respect for his or her human dignity as well as special protection and support within the family and society”*.⁴³ The status as a victim could not reasonably be said to be lost by the mere fact that the person under eighteen has attained majority through, for example, marriage. This conclusion is given increased strength by the strict eighteen year definition in the ILO Convention and the employment of a strict eighteen year old or higher limit in an overwhelming majority of the countries examined in this working paper.

4.2 Scope of the child pornography definition

4.2.1 Comparative analysis

The way in which the scope of the child pornography definition is set out varies between the surveyed countries. Some countries identify ways in which child pornography can be depicted while others use more broad terms. For example, the Japanese and Kenyan anti-child pornography laws set out lists of which types of material can be child pornography. The Japanese list includes: *“photographs, recording media containing electromagnetic records, any record which is produced by electronic, magnetic or any other means unrecognizable by natural perceptive functions and is used for data-processing by a computer”*.⁴⁴ The Kenyan list includes: *“any obscene book, pamphlet, paper, drawing, painting, art, representation or figure or any other obscene object whatsoever which depict the image of any child”*.⁴⁵

Other examples include legislation with more broad terms. For example, article 2 of the Lanzarote Convention 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”*. The French Criminal Code states that *“a picture or representation of a minor”* can be child pornography.⁴⁶

In general, three major differences in legislative approaches emerge:

³⁹ Although juvenile justice is a different legal area than child pornography, it can allow for analogous interpretation.

⁴⁰ The Committee on the Rights of the Child is a body of independent legal experts that monitor implementation of the CRC by its state parties. It also monitors implementation of the Optional Protocols to the Convention.

⁴¹ Committee on the Rights of the Child, General Comment No. 10, Children’s Rights in Juvenile Justice (CRC/C/GC/10), 25 April 2007

⁴² Human Rights Committee, General Comment No. 17 (HRI/GEN/1/Rev.8), 1989. The Human Rights Committee is a body of independent legal experts that monitors implementation of the International Covenant on Civil and Political Rights by its state parties.

⁴³ Committee on the Rights of the Child, Report on the sixth session, April 1994, CRC/C/29, p. 4

⁴⁴ Japan, Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, Article 2(3).

⁴⁵ Kenya, Sexual Offences Act, section 16.

⁴⁶ French Criminal Code, article 227-23

- the definition of child pornography that includes instances where the depictions is not necessarily of a “real” child. Such examples include computer generated material and cartoons. There is an ongoing legal debate as to how one should deal with material that might be obscene but that does not originate in real-life abuse.⁴⁷ For example, the Budapest Convention, article 9(2)(c) uses the wording “*realistic images representing a minor engaged in sexually explicit conduct*;
- the inclusion of “*written material*” in the definition of child pornography, for example in the Canadian Criminal Code. Section 163.1(b) sets out that child pornography includes “*any written material [---] that advocates or counsels sexual activity with a person under the age of eighteen [---].*” In some countries, this could potentially contradict provisions concerning freedom of speech⁴⁸; and
- widening the scope of the definition of child pornography to include depictions sexual activities carried out in the presence of children, but not necessarily directly involving the children. For example, under German law, for an act to constitute child pornography, the parties engaged in the sexual conduct need not be children, if the act is performed in the presence of children.

4.2.2 International Legal Framework

The OPSC is the only international legally binding instrument that defines child pornography. Article 2(c) sets out 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.*”

Conclusion - A comparative analysis of the countries included in this paper suggests that there is some variation in how child pornography is defined in different jurisdictions. The three main points of differences that emerge are: the inclusion of simulated, virtual or realistic (but not real) child pornography; the inclusion of written material; and depictions of sexual activities in the presence of children.

4.3 Infant, child and juvenile pornography

4.3.1 Comparative analysis

The majority of countries analysed in this paper do not differentiate between categories of victims. Some countries, however, do have scales of penalties that are connected to the gravity of the offence. For example, some U.S states, Finland and Sweden make a legislative difference between child pornography and aggravated child pornography, where factors that would render an offence “aggravated” is if the child is very young or if the abuse includes violence.⁴⁹

Germany is the only surveyed country that differentiates between juvenile and child pornography. A person is defined as a child if aged under fourteen years. A person is a juvenile if aged between fourteen and eighteen. The practical difference is the differing scales of penalties (juvenile pornography can result in the maximum imprisonment of three years, as opposed to five years for child pornography). Possession of juvenile pornography is deemed to be excused if the material is in the voluntary possession of only the persons depicted, and is strictly for their personal use. In other words, persons that have reached the age of sexual consent, are free to keep material depicting their sexual activity if it is only for their use.⁵⁰

⁴⁷ See for example Cisneros, D, “Virtual Child” Pornography on the Internet: A “Virtual” Victim?, 1 Duke Law & Technology Review 1-8 (2002) and Bird, P, Virtual Child Pornography Laws and the Constraints Imposed by the First Amendment, Barry Law Review: Vol. 16: Iss. 1, Article 5.

⁴⁸ United States Supreme Court, *Ashcroft v Free Speech Coalition*, 535 U.S. 234 (2002), Supreme Court of Sweden, *Simon Lundstrom v Office of the Prosecutor-General*, B 990-11 (15 June 2012)

⁴⁹ Illinois General Assembly, 720 ILCS 5/11-20.1, sections 11-20.1, Finnish Criminal Code, section 18(a), Swedish Criminal Code, section 10a 50 German Criminal Code, section 184b (child) and 184c (juvenile)

4.3.2 International Legal Framework

The United Nations Commission on Crime Prevention and Criminal Justice⁵¹ has stated that the differentiation between juvenile, child and sometimes infant pornography is not desirable. It has stated that: *“Effective crime prevention and criminal justice responses to combat sexual exploitation of children, prepared by UNODC for the eighteenth session of the Commission on Crime Prevention and Criminal Justice (CCPCJ), notes that some Member States generally define “child” for the purposes of national child sexual exploitation legislation as any person less than 18 years of age, while others chose to differentiate between distinct categories of minors, such as infants, juveniles, and adolescents, thereby using different age-thresholds. Variations in the definition of “child” under different legal systems is one factor that can complicate the ability of law enforcement agencies and others to intervene in cases of child abuse and exploitation.”*⁵²

Conclusion - It is not suitable to employ different age thresholds. Defining a ‘child’ as a person under the age of eighteen does not impede the establishment of scales of offences based on the factors such as gravity and age.

4.4 Criminalisation of the mere possession of child pornography

4.4.1 Comparative analysis

The Lanzarote Convention states that all parties are required to criminalise the mere possession (possession without the intent to distribute) of child pornography.⁵³ It is up to state parties to employ two possible exceptions to the criminalisation of mere possession of child pornography. Those are when the material exclusively constitutes simulated representations or real images of a non-existent child, or where it depicts children who have reached the legal age of sexual consent in the particular state and these images are produced and possessed by them with their consent and solely for their own private use.⁵⁴

In 2014, Japan became the last of the 34 member states of the Organisation for Economic Co-operation and Development (OECD) to criminalise mere possession of child pornography.⁵⁵ Out of the countries analysed in this paper, mere possession is criminalised in a majority of countries that have specific child pornography legislation. One of the few exceptions is South Korea that criminalises possession only for the purpose of profit.⁵⁶

4.4.2 International Legal Framework

The CRC is not specific on the issue of child pornography. However, the OPSC deals with the issue directly. Article 3(1)(c) of the OPSC stipulates that each state party shall ensure that, as a minimum, the producing, distributing, disseminating, importing, exporting, offering, selling or possessing (for a number of purposes) of child pornography should be covered by its criminal or penal law.

With reference to this provision, the Committee on the Rights of the Child has clarified that interpreted strictly, the article only requires criminalisation for *“the above purposes”*, namely importing, producing, distributing, disseminating, exporting, offering and selling. Nevertheless, the

⁵¹ The Commission on Crime Prevention and Criminal Justice was established by the United Nations Economic and Social Council (ECOSOC), as one of its functional commissions. The Commission acts as the principal policymaking body of the United Nations in the field of crime prevention and criminal justice.

⁵² Commission on Crime Prevention and Criminal Justice, Study facilitating the identification, description and evaluation of the effects of new information technologies on the abuse and exploitation of children (E/CN.15/2014/CRP.1), 7 May 2014.

⁵³ Lanzarote Convention, Article 20(e)

⁵⁴ Lanzarote Convention, Article 20(3)

⁵⁵ Reuters, “After years of pressure, Japan bans possession of child porn” 18/6-14, available at <http://www.reuters.com/article/2014/06/18/japan-pornography-idUSL4NOOY1SL20140618>, accessed 21/4-15

⁵⁶ ECPAT, “Global Monitoring Report on the Status of Action Against Commercial Sexual Exploitation of Children”, available at http://www.ecpat.net/sites/default/files/global_monitoring_report-south_korea.pdf, accessed on 22/4-15.

Committee has on several occasions stated that the criminalisation of mere possession is encouraged.⁵⁷ The recommendation is that countries “adopt and implement specific legislation adequately defining and punishing child pornography, including its possession, in accordance with article 3, paragraph 1(c) of the [OPSC].”⁵⁸

Conclusion - In light of actions undertaken by a large amount of states and the comments and observations made by the UN Committee on the Rights of the Child, it is advisable that the mere possession of child pornography should be criminalised.

4.5 Criminalised access

4.5.1 Comparative analysis

Child pornography is widely accessible on the internet given the continuing advancement in technology. Child pornography that is merely accessed, and thus not saved on a computer, may not necessarily be in anyone’s possession. Child pornography or child sex abuse broadcasted via a live stream is never stored on the receiver’s computer. The same is true of child pornography that is stored on a cloud service, thus stored in cyberspace and not on any particular physically existing hard drive. This new technological development has led some countries to criminalise access to child pornography.

Article 20(f) of the Lanzarote Convention requires criminalisation of “*knowingly obtaining access, through information and communication technologies, to child pornography*”. This is applicable to all signatory states, and as set out in the explanatory report to the Lanzarote Convention, it is “*intended to catch those who view child images on line by accessing child pornography sites but without downloading and who cannot therefore be caught under the offence of procuring or possession in some jurisdictions. To be liable the person must both intend to enter a site where child pornography is available and know that such images can be found there. Sanctions must not be applied to persons accessing sites containing child pornography inadvertently. The intentional nature of the offence may notably be deduced from the fact that it is recurrent or that the offences were committed via a service in return for payment.*”⁵⁹

A global study by the UN Commission on Crime Prevention and Criminal Justice concluded that approximately ninety percent of the national legislative provisions reviewed included criminalisation of production and distribution of child pornography. In addition, over sixty percent of countries criminalised “possession”, with almost forty percent including provisions on “accessing” child pornography.⁶⁰ Some of the countries analysed in this paper that have criminalised intentional access to child pornography include India⁶¹, Switzerland⁶², Sweden⁶³, Finland⁶⁴, Canada⁶⁵ and the USA⁶⁶.

4.5.2 Criminalisation of ‘access’ to child pornography in New Zealand

⁵⁷ United Nations Committee on the Rights of the Child, Consideration of Reports submitted by state parties under the OPSC, Concluding Observations on Chile, op. cit., paras. 23-24; and on Costa Rica, op. cit., paras. 14-15 and 24-25.

⁵⁸ United Nations Committee on the Rights of the Child, Consideration of Reports submitted by state parties under the OPSC, Concluding Observations on Chile, op. cit., paras. 24

⁵⁹ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Explanatory Report, available at <http://conventions.coe.int/Treaty/EN/Reports/Html/201.htm>, accessed on 9/4-15, para. 140

⁶⁰ Commission on Crime Prevention and Criminal Justice, Study facilitating the identification, description and evaluation of the effects of new information technologies on the abuse and exploitation of children (E/CN.15/2014/CRP.1), 7 May 2014, p. 42

⁶¹ India, Information Technology Amendment Law, section 67B, using the term “browses”.

⁶² Criminal Code of Switzerland, Article 197 (5), using the term “consumes” child pornography.

⁶³ Criminal Code of Sweden, Chapter 16, section 10a, using the formulation “watches, after having obtained access”.

⁶⁴ Criminal Code of Finland, section 19 (540/2011), using the formulation “obtaining access”.

⁶⁵ Penal Code of Canada, section 163.1, using the formulation “accessing any”.

⁶⁶ Criminal Code of the United States of America, 18 U.S. Code § 2252, using the formulation “knowingly access with intent to view”.

On the 8th of May 2015, an amendment to the *Films, Videos, and Publications Classification Act* was enacted having received unanimous approval in the New Zealand Parliament. The amendment clarifies that the term “possession” includes “*intentionally viewing an electronic publication without consciously downloading or saving it*”.⁶⁷

There are several reasons as to why this amendment is particularly important. By widening the term “possession” instead of enacting new legislation limited to a specific term such as “access” or “browsing”, it shows a possible new legislative trend in countries that have identified computer based child pornography as an emerging problem. Furthermore, the construction of the legislation was chosen specifically with the rapid technological advancements in mind.⁶⁸

4.5.3 International legal framework

The UN Committee on the Rights of the Child recommends that state parties to OPSC adopt and implement specific legislation on the obligation of Internet service providers to prevent the dissemination of, and access to, child pornography on the Internet.⁶⁹

The Commission on Crime Prevention and Criminal Justice has stated that “*while the majority of international and regional instruments require criminalisation of a wide range of actions associated with child pornography, including ‘production’, ‘offering’, ‘making available’, ‘distribution’, ‘transmission’, ‘possession’ and in some instances also knowingly ‘obtaining access’ to child pornography, national laws show some diversity with respect to which of these acts are included.*”⁷⁰

Conclusion - Many states have gone further than the requirements under the CRC and OPSC and have criminalised the intentional access of child pornography. In light of advancements in technology, many states with a well developed ICT-infrastructure have identified access to child pornography as being of significant importance. New Zealand, the most recent country to address the issue, has included ‘access’ under its definition of possession and does not address the term separately. Furthermore, it is a requirement under the more recent Council of Europe Lanzarote Convention to ensure that intentional access is prohibited.

4.6 Scale of penalty

4.6.1 Comparative analysis

There are significant differences in the approaches employed by states to the sentences available for child pornographic offences. Different national criminal policies may provide different answers to the type and level of punishment suitable. For example, there are significant differences between the United States Criminal Code and the Canadian Criminal Code. Both countries have similar legal systems, share borders and language but the U.S legislation sets out that persons convicted of a child pornography offence face imprisonment between fifteen and thirty years while the same crime in Canada results in imprisonment between one and ten years.⁷¹ It is thus not possible to draw any comprehensive conclusions by looking at national legislation since very little common ground is to be found.

4.6.2 International legal framework

⁶⁷ New Zealand, *Objectionable Publications and Indecency Legislation Bill*, Government Bill, 124—1, available at http://www.parliament.nz/en-nz/pb/legislation/bills/00DBHOH_BILL12234_1/objectionable-publications-and-indecency-legislation-bill, accessed on 11 May 2015.

⁶⁸ New Zealand, Report of the Justice and Electoral Committee, *Objectionable Publications and Indecency Legislation Bill*, Government Bill, 124—1, available at http://www.parliament.nz/resource/en-nz/50DBSCH_SCR6190_1/184ac4c7f302fd1d37ae4dd51a720212ceb1385f, accessed on 10 May 2015.

⁶⁹ United Nations Committee on the Rights of the Child, *Consideration of Reports submitted by state parties under the OPSC*, Concluding Observations on Costa Rica, paras. 14-15 and 24-25

⁷⁰ Commission on Crime Prevention and Criminal Justice, *Study facilitating the identification, description and evaluation of the effects of new information technologies on the abuse and exploitation of children* (E/CN.15/2014/CRP.1), 7 May 2014, p. 42

⁷¹ United States Criminal Code, 18 U.S Code § 2251(e) and Canadian Criminal Code, section 161(1)(2)(a)

From a purely illustrative perspective, it can be argued that the scale of penalty can have an effect on international cooperation in criminal matters. International cooperation in criminal matters is particularly important since much of the child pornographic material is now shared and disseminated using the internet and without any regard for state borders.⁷²

Many bilateral treaties on mutual legal assistance and extradition, as well as multilateral conventions, set penalty thresholds rather than listing all crimes that give rise to cooperation obligations.⁷³ In other words, if the domestic penalty is of a certain level, it can enable cooperation across borders under international law. There is no international convention that obliges cooperation specifically with reference to child pornography. However, the UNTOC can be used as a basis for international cooperation in criminal matters, provided that the offence is transnational in nature, involves an organised criminal group and the crime under national law can result in a maximum deprivation of liberty of four years or a more serious penalty.

Conclusion - There is no international standard as to which scale of penalty shall be imposed. Domestic legislation shows significant disparity and the UN does not promote any specific model. The scale of penalty can have effects on international cooperation in criminal matters and that factor can for the benefit of global suppression be elaborated on in the domestic legislative procedure.

Part V – Amendments to the Criminal Code of Thailand

This section provides a summary of the amendments to the Criminal Code of Thailand and their compliance with the international legal framework in six key areas as follows:

5.1 The definition of “child”

The provision inserted in section 1(17) of the Criminal Code of Thailand defines ‘child’ as anyone who is under the age of eighteen. The legislation is therefore in accordance with the international legal framework and does not contain exceptions where majority is attained at through other factors such as marriage. Furthermore, it logically connects to existing legislation, particularly the Anti-Trafficking in Persons Act, where a child is defined as anyone below the age of eighteen.

5.2 Scope of child pornography definition

The definition in section 1(17) of the Criminal Code of Thailand includes the provisions required for it to be in accordance with the definition found in the OPSC. With the inclusion of “stories”, the definition goes one step further than required which highlights Thailand’s commitment to protecting the rights of children.

5.3 Infant, child and juvenile pornography

The amendments to the Criminal Code employ a strict eighteen year limit and do not differentiate between different age categories. The scale of penalty allows the judiciary to determine the severity of the offence on a case-by-case basis.

5.4 Criminalisation of the mere possession of child pornography

The amendment to the Criminal Code provided in the new section 287/1, criminalises possession of child pornography for the sexual benefit of oneself or another person. This is in line with the recommendations made by the UN Committee on the Rights of the Child and its commentary to the OPSC.⁷⁴ The new section 287/2 prohibits the same acts that are criminalised with reference to adult

⁷² UNODC, Comprehensive Study on Cybercrime Draft (2013), p. 100-103

⁷³ UNODC, Manual on Mutual Legal Assistance and Extradition (2012), p. 45-46

⁷⁴ Committee on the Rights of the Child, Consideration of reports submitted by states parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Concluding observations: Thailand (CRC/C/OPSC/THA/CO/1), 21 February 2012, section VI. The Committee stated the following: “The Committee

pornography in section 287 of the criminal code but with reference to children. The criminalisation includes the act of facilitating offences under article 287/2, such as disseminating, trading, selling and exhibiting child pornography.

5.5 Criminalised access

The criminalisation of access to child pornography is not explicitly included in the new section 287/1. It is not required under the international legal framework. However, as had been made clear from the case of New Zealand, it is possible to consider the term “possession” to include intentional access. If such an interpretation was to be employed, this would address a potential legislative gap and prevent the sharing of child pornography via new technologies such as live streams, cloud services or popular mobile phone applications such as “Snapchat” where no material is actually saved.

5.6 Scale of penalty

The scale of penalty allows for international cooperation in criminal matters in accordance with the UNTOC, which requires a possible imprisonment of four years. For any crime connected to child pornography, be it possession, dissemination, production, the possible imprisonment is five years or higher.

Conclusion - The amendments to the Criminal Code of Thailand strengthen the capacity of the criminal justice system in Thailand to effectively respond to child pornography. The scale of penalties also allows for international cooperation under the UNTOC, provided all other requirements are fulfilled. The new legislation is recognition of Thailand’s commitment to strengthening its criminal justice system with a view to better promoting and protecting the rights of children. It will be important to ensure that every effort is made to promote the effective implementation of the new national legislation.

Part VI – UNODC Technical Assistance

Countries in Southeast Asia including Thailand face a common challenge - they are exposed to the sexual abuse and exploitation of children but have lacked the resources and know-how to tackle it effectively. Strong legal frameworks are essential to underpin law enforcement efforts, and provide justice agencies with the tools they need to successfully prosecute serious offences.

UNODC works in the Southeast Asia and Pacific region with international and regional partners to develop nationwide assistance programmes and activities focused on legislative reform matters and on training and capacity-building of law enforcement officials. UNODC has the innovative tools and mechanisms necessary to support member states further strengthen capacity of police, prosecutors and judges in training, legal reform efforts and cooperation mechanisms within and across borders on crimes against children.

The Government of Thailand have been working with UNODC to develop and implement measures to protect children from sexual crimes. Thailand is already a regional leader in its law and justice approach to targeting child sex offenders and UNODC has a long standing relationship with Thai government agencies - the Ministry of Justice, Courts of Justice, Office of Attorney General, Royal Thai Police, and Ministry of Information and Communication Technology, Ministry of Social Development and Human Security - and regularly conducts knowledge-sharing seminars on modus operandi of offenders and emerging trends. This helps ensure that comprehensive legal measures

recommends that the State party continue to revise and bring its Penal Code and other relevant legislation into full compliance with articles 2 and 3 of the Optional Protocol. In particular, the State party should: [---]
(b) Revise and bring its penal provisions on child pornography into full compliance with articles 2 and 3 of the Optional Protocol

are updated for enforcement, prosecution and adjudication of child sex offenders and the protection of children.

Annex 1

Comparative review of child pornography legislation

UN Conventions

Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

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

Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000, entry into force 18 January 2002

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

For the purposes of the present Protocol:

[---]

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime

Entry into force: 15 November 2000

Article 3

Use of terms

For the purposes of this Protocol:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age.

International Labour Organization, Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

Entry into force: 19 November 2000

Article 2

For the purposes of this Convention, the term child shall apply to all persons under the age of 18.

Article 3

For the purposes of this Convention, the term the worst forms of child labour comprises:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Regional Instruments

Lanzarote Convention

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

Lanzarote, 25.X.2007

Article 20

Offences concerning child pornography

1 Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct, when committed without right, is criminalised:

- a producing child pornography;
- b offering or making available child pornography;
- c distributing or transmitting child pornography;
- d procuring child pornography for oneself or for another person;
- e possessing child pornography;
- f knowingly obtaining access, through information and communication technologies, to child pornography.

2 For the purpose of the present article, the term “child pornography” shall mean any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child’s sexual organs for primarily sexual purposes.

3 Each Party may reserve the right not to apply, in whole or in part, paragraph 1.a and e to the production and possession of pornographic material:

- consisting exclusively of simulated representations or realistic images of a non-existent child;

– involving children who have reached the age set in application of Article 18, paragraph 2, where these images are produced and possessed by them with their consent and solely for their own private use.

Budapest Convention

Council of Europe Convention of Cybercrime
Budapest, 23.XI.2001

Article 9

Offences related to child pornography

1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:

- a producing child pornography for the purpose of its distribution through a computer system;
- b offering or making available child pornography through a computer system;
- c distributing or transmitting child pornography through a computer system;
- d procuring child pornography through a computer system for oneself or for another person;
- e possessing child pornography in a computer system or on a computer-data storage medium.

2 For the purpose of paragraph 1 above, the term "child pornography" shall include pornographic material that visually depicts:

- a a minor engaged in sexually explicit conduct;
- b a person appearing to be a minor engaged in sexually explicit conduct;
- c realistic images representing a minor engaged in sexually explicit conduct.

3 For the purpose of paragraph 2 above, the term "minor" shall include all persons under 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years.

4 Each Party may reserve the right not to apply, in whole or in part, paragraphs 1, sub-paragraphs d. and e, and 2, sub-paragraphs b. and c.

African Charter on the Rights and Welfare of the Child

OAU Doc. CAB/LEG/24.9/49 (1990), entered into force November 29, 1999

Article 2

Definition of a Child

For tile purposes of this Charter. a child means every human being below the age of 18 years.

Article 27

Sexual Exploitation.

1. States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:

- (a) the inducement, coercion or encouragement of a child to engage in any sexual activity;
- (b) the use of children in prostitution or other sexual practices;
- (c) the use of children in pornographic activities, performances and materials.

Countries

Australia

Australia has got both federal and state law. In a conflict of laws, the federal supersedes the state one according to the hierarchy of norms. With reference to criminal law, most legislation on federal

level concern crimes against the state, and crimes might differ both in definition and penalties on state level.

Criminal Code of New South Wales

NSW Crime Act 1900

SECT 91FA

For the purposes of this Division:

"child" means a person who is under the age of 16 years.

SECT 91FB

(1) In this Division:

"child abuse material" means material that depicts or describes, in a way that reasonable persons would regard as being, in all the circumstances, offensive:

- (a) a person who is, appears to be or is implied to be, a child as a victim of torture, cruelty or physical abuse, or
- (b) a person who is, appears to be or is implied to be, a child engaged in or apparently engaged in a sexual pose or sexual activity (whether or not in the presence of other persons), or
- (c) a person who is, appears to be or is implied to be, a child in the presence of another person who is engaged or apparently engaged in a sexual pose or sexual activity, or
- (d) the private parts of a person who is, appears to be or is implied to be, a child.

SECT 91G

(1) Any person who:

- (a) uses a child who is under the age of 14 years for the production of child abuse material, or
- (b) causes or procures a child of that age to be so used, or (c) having the care of a child of that age, consents to the child being so used or allows the child to be so used, is guilty of an offence.

Maximum penalty: imprisonment for 14 years.

(2) Any person who:

- (a) uses a child who is of or above the age of 14 years for the production of child abuse material, or
- (b) causes or procures a child of that age to be so used, or (c) having the care of a child of that age, consents to the child being so used or allows the child to be so used, is guilty of an offence.

SECT 91H

(1) In this section: "possess" child abuse material includes, in relation to material in the form of data, being in possession or control of data (within the meaning of section 308F (2))

SECT 208F(2)

(2) For the purposes of this section, "possession or control of data" includes:

- (a) possession of a computer or data storage device holding or containing the data or of a document in which the data is recorded, and
- (b) control of data held in a computer that is in the possession of another person (whether the computer is in this jurisdiction or outside this jurisdiction).

Criminal Code of Queensland

Criminal Code Act 1899

SECT 228

(1) Any person who knowingly, and without lawful justification or excuse—

(a) publicly sells, distributes or exposes for sale any obscene book or other obscene printed or written matter, any obscene computer generated image or any obscene picture, photograph, drawing, or model, or any other object tending to corrupt morals; or

(b) exposes to view in any place to which the public are permitted to have access, whether on payment of a charge for admission or not, any obscene picture, photograph, drawing, or model, or any other object tending to corrupt morals; or

(c) publicly exhibits any indecent show or performance, whether on payment of a charge for admission to see the show or performance or not; is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

(2) In the case of an offence defined in subsection (1)(a) or (b), if the matter or thing is obscene or tends to corrupt morals by reason of depicting a person who is or is represented to be—

(a) a child under the age of 16 years—the offender is liable to imprisonment for 5 years; or

(b) a child under the age of 12 years—the offender is liable to imprisonment for 10 years.

(3) In the case of an offence defined in subsection (1)(c), if a person appearing in the indecent show or performance is or is represented to be—

(a) a child under the age of 16 years—the offender is liable to imprisonment for 5 years; or

(b) a child under the age of 12 years—the offender is liable to imprisonment for 10 years.

(4) It is a defence to a charge of any of the offences defined in this section to prove that it was for the public benefit that the act complained of should be done.

(5) Whether the doing of any such act is or is not for the public benefit is a question of fact.

(6) In this section— computer generated image means electronically recorded data capable, by way of an electronic device, of being produced on a computer monitor, television screen, liquid crystal display or similar medium as an image, including an image in the form of text.

228B

(1) A person who makes child exploitation material commits a crime. Maximum penalty—14 years imprisonment. (2) In this section— make child exploitation material includes— (a) produce child exploitation material; and (b) attempt to make child exploitation material.

228C

(1) A person who distributes child exploitation material commits a crime. Maximum penalty—14 years imprisonment. (2) In this section— distribute child exploitation material includes— (a) communicate, exhibit, send, supply or transmit child exploitation material to someone, whether to a particular person or not; and (b) make child exploitation material available for access by someone, whether by a particular person or not; and (c) enter into an agreement or arrangement to do something in paragraph (a) or (b); and (d) attempt to distribute child exploitation material.

228D

A person who knowingly possesses child exploitation material commits a crime. Maximum penalty—14 years imprisonment

Canada

Criminal Code of Canada

SECT 163.1

(1) In this section, "child pornography" means

(a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,

(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 explicit sexual activity, or

(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;

(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;

(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; or

(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.

2) Every person who makes, prints, publishes or possesses for the purpose of publication any child pornography is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of one year; or

(b) an offence punishable on summary conviction and is liable to imprisonment for a term not exceeding two years less a day and to a minimum punishment of imprisonment for a term of six months.

(3) Every person who transmits, makes available, distributes, sells, advertises, imports, exports or possesses for the purpose of transmission, making available, distribution, sale, advertising or exportation any child pornography is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of one year; or

(b) an offence punishable on summary conviction and is liable to imprisonment for a term not exceeding two years less a day and to a minimum punishment of imprisonment for a term of six months.

(4) Every person who possesses any child pornography is guilty of

(a) an indictable offence and is liable to imprisonment for a term of not more than five years and to a minimum punishment of imprisonment for a term of six months; or

(b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.

(4.1) Every person who accesses any child pornography is guilty of

(a) an indictable offence and is liable to imprisonment for a term of not more than five years and to a minimum punishment of imprisonment for a term of six months; or

(b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.

(4.2) For the purposes of subsection (4.1), a person accesses child pornography who knowingly causes child pornography to be viewed by, or transmitted to, himself or herself

Finland

Criminal Code

(39/1889)

Section 18

Distribution of a sexually offensive picture (650/2004)

(1) A person who manufactures, offers for sale or for rent or otherwise offers or makes available, keeps available, exports, imports to or transports through Finland to another country, or otherwise distributes pictures or visual recordings that factually or realistically depict

(1) a child,

(2) violence or

(3) bestiality shall be sentenced for distribution of a sexually offensive picture to a fine or imprisonment for at most two years. (540/2011)

(2) An attempt is punishable.

(3) The provisions in section 17, subsection 2 apply also to the pictures and visual recordings referred to in this section.

(4) A child is defined as a person below the age of eighteen years and a person whose age cannot be determined but whom there is justifiable reason to assume is below the age of eighteen years. The picture or visual recording is deemed factual in the manner referred to in subsection 1, paragraph 1, if it has been produced in a situation in which a child has actually been the object of sexually offensive conduct and realistic, if it resembles in a misleading manner a picture or a visual recording produced through photography or in another corresponding manner of a situation in which a child is the object of sexually offensive conduct. The definitions of the terms factual and realistic apply correspondingly in the cases referred to in subsection 1, paragraphs 2 and 3. (540/2011)

Section 18(a)

Aggravated distribution of a sexually offensive picture depicting a child (650/2004)

(1) If, in the distribution of a sexually offensive picture depicting a child (1) the child is particularly young,

(2) the picture also depicts severe violence or particularly humiliating treatment of the child,

(3) the offence is committed in a particularly methodical manner or

(4) the offence has been committed within the framework of a criminal organisation referred to in section 1a, subsection 4 and the offence is aggravated also when assessed as whole, the offender shall be sentenced for aggravated distribution of a sexually offensive picture depicting a child to imprisonment for at least four months and at most six years. (2) An attempt is punishable.

Section 19

Possession of a sexually offensive picture depicting a child (540/2011)

(1) A person who unlawfully has in his or her possession a picture or visual recording which depicts a child in the sexually offensive manner referred to in section 18, shall be sentenced for possession of a sexually offensive picture depicting a child to a fine or to imprisonment for at most one year.

(2) A person who in return for payment or otherwise by agreement has obtained access to a picture or visual recording referred to in subsection 1 so that it is available to him or her on a computer or another technical device without being recorded on the device shall also be sentenced for possession of a sexually offensive picture depicting a child.

France

Criminal Code

Of 1810

Article 227-23

Taking, recording or transmitting a picture or representation of a minor with a view to circulating it, where that image or representation has a pornographic character, is punished by three years' imprisonment and a fine of €45,000.

Attempting to do so is subject to the same penalties. The same penalty applies to offering or distributing such a picture or representation by any means, and to importing or exporting it, or causing it to be imported or exported.

The penalties are increased to five years' imprisonment and a fine of €75,000 where use was made of a communication network for the circulation of messages to an unrestricted public in order to circulate the image or representation of a minor.

Possessing such an image or representation is punished by two years' imprisonment and a fine of €30,000.

The offences set out in the second, third and fourth paragraphs are punished by ten years' imprisonment and by a fine of €500,000 where they are committed by an organised gang. The provisions of the present article also apply to the pornographic images of a person whose physical appearance is that of a minor unless it is proved that the person was over eighteen on the day his picture was taken or recorded.

ARTICLE 227-24

The manufacture, transport, distribution by whatever means and however supported, of a message bearing a pornographic or violent character or a character seriously violating human dignity, or the trafficking in such a message, is punished by three years' imprisonment and a fine of €75,000, where the message may be seen or perceived by a minor. Where the offences under the present article are committed through the press or by broadcasting, the specific legal provisions governing those matters are applicable to define the persons who are responsible.

ARTICLE 227-25

The commission without violence, constraint, threat or surprise of a sexual offence by an adult on the person of a minor under fifteen years of age is punished by five years' imprisonment and a fine of €75,000.

ARTICLE 227-26

The offence set out under article 227-25 is punished by ten years' imprisonment and a fine of €150,000: 1° when it was committed by a legitimate, natural or adoptive ascendant or by any other person having authority over the victim; 2° when it was committed by a person abusing the authority conferred by his position; 3° when it was committed by two or more persons acting as perpetrators or accomplices; 4° when the minor was put in contact with the offender by using a telecommunications network for the dissemination of messages to an unrestricted public.

ARTICLE 227-27

Sexual acts committed without violence, constraint, threat or surprise on a minor aged over fifteen and not emancipated by marriage are punished by two years' imprisonment and a fine of €30,000: 1° where they are committed by a legitimate, natural or adoptive ascendant or by any other person having authority over the victim; 2° where they are committed by a person abusing the authority conferred by his functions.

Germany

Criminal Code (Strafgesetzbuch, StGB)

13 November 1998, Federal Law Gazette I, p. 945, p. 3322

Section 184b

Distribution, acquisition and possession of child pornography

(1) Whosoever

1. disseminates;
2. publicly displays, presents, or otherwise makes accessible; or
3. produces, obtains, supplies, stocks, offers, announces, commends, or undertakes to import or export in order to use them or copies made from them within the meaning of Nos 1 or 2 above or facilitates such use by another pornographic written materials (section 11 (3)) related to sexual activities performed by, on or in the presence of children (section 176 (1)) (child pornography) shall be liable to imprisonment from three months to five years.

(2) Whosoever undertakes to obtain possession for another of child pornography reproducing an actual or realistic activity shall incur the same penalty.

(3) In cases under subsection (1) or subsection (2) above the penalty shall be imprisonment of six months to ten years if the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences and the child pornography reproduces an actual or realistic activity.

(4) Whosoever undertakes to obtain possession of child pornography reproducing an actual or realistic activity shall be liable to imprisonment not exceeding two years or a fine. Whosoever possesses the written materials set forth in the 1st sentence shall incur the same penalty.

(5) Subsections (2) and (4) above shall not apply to acts that exclusively serve the fulfilment of lawful official or professional duties.

(6) In cases under subsection (3) above section 73d shall apply. Objects to which an offence under subsection (2) or (4) above relates shall be subject to a deprivation order. Section 74a shall apply.

Section 184c

Distribution, acquisition and possession of juvenile pornography

(1) Whosoever

1. disseminates;
2. publicly displays, presents, or otherwise makes accessible; or
3. produces, obtains, supplies, stocks, offers, announces, commends, or undertakes to import or export in order to use them or copies made from them within the meaning of Nos 1 or 2 above or facilitates such use by another pornographic written materials (section 11 (3)) related to sexual activities performed by, on or in the presence of persons between the ages of fourteen to eighteen years (juvenile pornography) shall be liable to imprisonment not exceeding three years or a fine.

(2) Whosoever undertakes to obtain possession for another of juvenile pornography reproducing an actual or realistic activity shall incur the same penalty.

(3) In cases under subsection (1) or subsection (2) above the penalty shall be imprisonment of three months to five years if the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences and the juvenile pornography reproduces an actual or realistic activity.

(4) Whosoever undertakes to obtain possession of child pornography reproducing an actual or realistic activity shall be liable to imprisonment not exceeding one year or a fine. The 1st sentence shall not apply to acts of persons related to juvenile pornography produced by them while under eighteen years of age and with the consent of the persons therein depicted.

(5) Section 184b (5) and (6) shall apply mutatis mutandis.

India

Information Technology Amendment Law

9th June 2000/Jyaistha 19, 1922 (Saka)

SECT 67B

Whoever, -

- (a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or
- (b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or,
- (c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or,
- (d) facilitates abusing children online; or
- (e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

Provided that provisions of section 67, 67A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting representation or figure in electronic form –

- (i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting representation or figure is in the interest of science, literature, art or learning, or other objects of general concern; or
- (ii) is kept or used for bona fide heritage or religious purposes.

For the purpose of this section, “children” means a person who has not completed the age of 18 years.

Protection of Children from Sexual Offences Act

NO/DL (N)04/0007/2003-12

SECT 1

(d) “child” means any person below the age of eighteen years

SECT 13

Whoever, uses a child in any form of media (including programme or advertisement, telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution) for the purpose of sexual gratification which includes –

- (a) representation of the sexual organs of a child;
- (b) usage of a child engaged in real or simulated sexual acts (with or without penetration);
- (c) the indecent or obscene representation of a child,

Shall be guilty of the offence of using a child for pornographic purposes.

SECT 15

Any person, who stores, for commercial purposes, any pornographic material in any form involving a child shall be punished with imprisonment of either description which may extend to three years or with fine or with both.

Ireland

Child Trafficking and Pornography Act

Number 22 of 1998

Section 2

In this Act, except where the context otherwise requires—

[--]

“child” means a person under the age of 17 years;

“child pornography” means—

(a) any visual representation— (i) that shows or, in the case of a document, relates to a person who is or is depicted as being a child and who is engaged in or is depicted as being engaged in explicit sexual activity, (ii) that shows or, in the case of a document, relates to a person who is or is depicted as being a child and who is or is depicted as witnessing any such activity by any person or persons, or (iii) whose dominant characteristic is the depiction, for a sexual purpose, of the genital or anal region of a child,

(b) any audio representation of a person who is or is represented as being a child and who is engaged in or is represented as being engaged in explicit sexual activity,

(c) any visual or audio representation that advocates, encourages or counsels any sexual activity with children which is an offence under any enactment, or

(d) any visual representation or description of, or information relating to, a child that indicates or implies that the child is available to be used for the purpose of sexual exploitation within the meaning of section 3, irrespective of how or through what medium the representation, description or information has been produced, transmitted or conveyed and, without prejudice to the generality of the foregoing, includes any representation, description or information produced by or from computer-graphics or by any other electronic or mechanical means but does not include— (I) any book or periodical publication which has been examined by the Censorship of Publications Board and in respect of which a prohibition order under the Censorship of Publications Acts, 1929 to 1967, is not for the time being in force, (II) any film in respect of which a general certificate or a limited certificate under the Censorship of Films Acts, 1923 to 1992, is in force, or (III) any video work in respect of which a supply certificate under the Video Recordings Acts, 1989 and 1992, is in force;

Section 5

(1) Subject to sections 6(2) and 6(3), any person who—

(a) knowingly produces, distributes, prints or publishes any child pornography,

(b) knowingly imports, exports, sells or shows any child pornography,

(c) knowingly publishes or distributes any advertisement likely to be understood as conveying that the advertiser or any other person produces, distributes, prints, publishes, imports, exports, sells or shows any child pornography,

(d) encourages or knowingly causes or facilitates any activity mentioned in paragraph (a), (b) or (c),
or

(e) knowingly possesses any child pornography for the purpose of distributing, publishing, exporting, selling or showing it, shall be guilty of an offence and shall be liable— (i) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or both, or (ii) on conviction on indictment to a fine or to imprisonment for a term not exceeding 14 years or both.

(2) In this section “distributes”, in relation to child pornography, includes parting with possession of it to, or exposing or offering it for acquisition by, another person, and the reference to “distributing” in that context shall be construed accordingly

Section 6

(1) Without prejudice to section 5(1)(e) and subject to subsections (2) and (3), any person who knowingly possesses any child pornography shall be guilty of an offence and shall be liable—
(a) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or both, or
(b) on conviction on indictment to a fine not exceeding £5,000 or to imprisonment for a term not exceeding 5 years or both.
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Israel

The Penal Law

5737-1977

SECT 214

Obscene publication and display.

(a) If a person did one of the following, then he is liable to three years imprisonment:

(1) he published an obscene publication or prepared it for publication;

(2) he presented, organized or produced an obscene display –

(a) in a public place;

(b) in a place which is not public – unless it is used for residential purposes or is used by a body of persons, membership in which is restricted to persons aged eighteen and up and is for a continuous period.

(b) If a person published an obscene publication and it includes the likeness of a minor, including a representation or a drawing of a minor, then he shall be liable to five years imprisonment.

(b1) If a person utilized the body of a minor in order to advertise an obscenity, or used a minor in the presentation of an obscenity, then he shall be liable to seven years imprisonment.

(b2) If an offense under subsections (b) or (b1) was committed by a person responsible for a minor, as defined in section 368A, or with the consent of an aforesaid responsible person, then the responsible person shall be liable to ten years imprisonment.

(b3) If a person has in his possession an obscene publication that includes the likeness of a minor, then he shall be liable to one year imprisonment; for purposes of this section, "has in his possession" – exclusive of whoever has in his possession incidentally and in good faith.

(c) If the Court deals with an offense under this section, committed by a person in the course of his business, then it may also use its powers under sections 16 and 17 of the Licensing of Business Law 5728-1968, but it shall not use its authority under section 17, unless it is satisfied that there is prima facie evidence of the offense, and that the use of its authority is necessary for the public good.

(d) An indictment shall only be filed –

(1) under subsection (a) – within two years after the day on which the offense was committed, and only by the District Attorney or with his written consent.

(2) under subsections (b) and (b3) – by the District Attorney or with his written consent.

(d) An indictment under this section shall only be filed within two years after the day on which the offense was committed, and only by the District Attorney or with his written consent.

Japan

Criminal Code

Act No.45 of 1907

Article 175

A person who distributes, sells or displays in public an obscene document, drawing or other objects shall be punished by imprisonment with work for not more than 2 years, a fine of not more than 2,500,000 yen or a petty fine. The same shall apply to a person who possesses the same for the purpose of sale.

Act on Punishment of Activities Relating to Child Prostitution and Child Pornography

Act No.79 of 2014

Article 2

Definitions:

(3) The term "child pornography" as used in this Act shall mean photographs, recording media containing electromagnetic records, any record which is produced by electronic, magnetic or any other means unrecognizable by natural perceptive functions and is used for data-processing by a computer; the same shall apply hereinafter or any other medium which depicts the pose of a child, which falls under any of the following items, in a visible way:

- i Any pose of a child engaged in sexual intercourse or any conduct similar to sexual intercourse;
- ii Any pose of a child having his or her genital organs touched by another person or of a child touching another person's genital organs, which arouses or stimulates the viewer's sexual desire;
- iii Any pose of a child wholly or partially naked, which arouses or stimulates the viewer's sexual desire.

Article 7

Provision of Child Pornography and Other Related Activities

1. Any person who provides child pornography shall be sentenced to imprisonment with work for not more than three years or a fine of not more than three million yen. The same shall apply to a person who provides electromagnetic records or any other record which depicts the pose of a child, which falls under any of the items of paragraph 3 of Article 2, in a visible way through electric telecommunication lines.

2. Any person who produces, possesses, transports, imports to or exports from Japan child pornography for the purpose of the activities prescribed in the preceding paragraph shall be punished by the same penalty as is prescribed in the said paragraph. The same shall apply to a person who retains the electromagnetic records prescribed in the preceding paragraph for the purpose of the same activities.

3. In addition to the preceding paragraph, any person who produces child pornography by having a child pose in any way which falls under any of the items of paragraph 3 of Article 2, depicting such pose in photographs, recording media containing electromagnetic records or any other medium shall be punished by the same penalty prescribed in paragraph 1 of this article.

4. Any person who provides child pornography to unspecified persons or a number of persons, or displays it in public shall be sentenced to imprisonment with work for not more than five years and/or a fine of not more than five million yen. The same shall apply to a person who provides electromagnetic records or any other record which depicts the pose of a child, which falls under any of the items of paragraph 3 of Article 2, to unspecified persons or a number of persons in a visible way through telecommunication lines.

5. Any person who produces, possesses, transports, imports to or exports from Japan child pornography for the purpose of the activities prescribed in the preceding paragraph shall be punished by the same penalty as is prescribed in the said paragraph. The same shall apply to a person who retains the electromagnetic records prescribed in the preceding paragraph for the purpose of the same activities.

6. Any Japanese national who imports or exports child pornography to or from a foreign country for the purpose of the activities prescribed in paragraph 4 of this article shall be punished by the same penalty prescribed in the said paragraph.

Article 9

Knowledge of the Age of the Child

No one who uses a child shall be exempt from punishment pursuant to the provisions of Articles 5 to 8 on the grounds of lacking knowledge of the age of the child. However, this shall not apply in cases where there is no negligence.

Kenya

The Sexual Offences and Act

No 3 of 2006

SECT 16

(1) Any person including a juristic person who -

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

(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;

(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;

(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

(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.

(2) This section shall not apply to -

(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;

(b) any book, pamphlet, paper, writing, drawing, painting, representation or figure which is kept or used bona fide for religious purposes;

(c) any representation sculptured, engraved, painted or otherwise represented on or in any ancient monument recognized as such in law; and

(d) activities between two persons of over eighteen years by mutual consent.

(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.

New Zealand

Crimes Act

Public Act 1961 No. 43

Section 124

Distribution or exhibition of indecent matter

(1) Every one is liable to imprisonment for a term not exceeding 2 years who, without lawful justification or excuse,—

- (a) sells, exposes for sale, or otherwise distributes to the public any indecent model or object; or
- (b) exhibits or presents in or within view of any place to which the public have or are permitted to have access any indecent object or indecent show or performance; or
- (c) exhibits or presents in the presence of any person in consideration or expectation of any payment or otherwise for gain, any indecent show or performance.

(2) It is a defence to a charge under this section to prove that the public good was served by the acts alleged to have been done.

(3) It is a question of law whether the sale, exposure for sale, distribution, exhibition, or presentation might in the circumstances serve the public good, and whether there is evidence of excess beyond what the public good requires; but it is a question of fact whether or not the acts complained of did so serve the public good and whether or not there was such excess.

(4) It is no defence that the person charged did not know that the model, object, show, or performance to which the charge relates was indecent, unless that person also satisfies the court—

- (a) that he or she had no reasonable opportunity of knowing it; and
- (b) that in the circumstances his or her ignorance was excusable.

(5) No private prosecution (as defined in section 5 of the Criminal Procedure Act 2011) for an offence against this section can be commenced without the Attorney-General's consent.

(6) Nothing in this section shall apply to any publication within the meaning of the Films, Videos, and Publications Classification Act 1993, whether the publication is objectionable within the meaning of that Act or not.

Films, Videos, and Publications Classification Act

Public Act 1993 No. 94

Section 3

Meaning of objectionable

(1) For the purposes of this Act, a publication is objectionable if it describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good.

(1A) Without limiting subsection (1), a publication deals with a matter such as sex for the purposes of that subsection if—

- (a) the publication is or contains 1 or more visual images of 1 or more children or young persons who are nude or partially nude; and
- (b) those 1 or more visual images are, alone, or together with any other contents of the publication, reasonably capable of being regarded as sexual in nature.

(1B) Subsection (1A) is for the avoidance of doubt.

(2) A publication shall be deemed to be objectionable for the purposes of this Act if the publication promotes or supports, or tends to promote or support,—

- (a) the exploitation of children, or young persons, or both, for sexual purposes; or
- (b) the use of violence or coercion to compel any person to participate in, or submit to, sexual conduct; or
- (c) sexual conduct with or upon the body of a dead person; or
- (d) the use of urine or excrement in association with degrading or dehumanising conduct or sexual conduct; or
- (e) bestiality; or
- (f) acts of torture or the infliction of extreme violence or extreme cruelty.

(3) In determining, for the purposes of this Act, whether or not any publication (other than a publication to which subsection (2) applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable, particular weight shall be given to the extent and degree to which, and the manner in which, the publication—

- (a) describes, depicts, or otherwise deals with—
 - (i) acts of torture, the infliction of serious physical harm, or acts of significant cruelty:
 - (ii) sexual violence or sexual coercion, or violence or coercion in association with sexual conduct:
 - (iii) other sexual or physical conduct of a degrading or dehumanising or demeaning nature:
 - (iv) sexual conduct with or by children, or young persons, or both:
 - v) physical conduct in which sexual satisfaction is derived from inflicting or suffering cruelty or pain:
- (b) exploits the nudity of children, or young persons, or both:
- (c) degrades or dehumanises or demeans any person:
- (d) promotes or encourages criminal acts or acts of terrorism:
- (e) represents (whether directly or by implication) that members of any particular class of the public are inherently inferior to other members of the public by reason of any characteristic of members of that class, being a characteristic that is a prohibited ground of discrimination specified in section 21(1) of the Human Rights Act 1993.

(4) In determining, for the purposes of this Act, whether or not any publication (other than a publication to which subsection (2) applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable, the following matters shall also be considered:

- (a) the dominant effect of the publication as a whole:
- (b) the impact of the medium in which the publication is presented:
- (c) the character of the publication, including any merit, value, or importance that the publication has in relation to literary, artistic, social, cultural, educational, scientific, or other matters:
- (d) the persons, classes of persons, or age groups of the persons to whom the publication is intended or is likely to be made available:
- (e) the purpose for which the publication is intended to be used:
- (f) any other relevant circumstances relating to the intended or likely use of the publication.

Section 123

Offences of strict liability relating to objectionable publications

(1) Every person commits an offence against this Act who—

- (a) makes an objectionable publication; or
- (b) makes a copy of an objectionable publication for the purposes of supply, distribution, display, or exhibition to any other person; or
- (c) imports into New Zealand an objectionable publication for the purposes of supply or distribution to any other person; or

- (d)supplies or distributes (including in either case by way of exportation from New Zealand) an objectionable publication to any other person; or
- (e)has in that person's possession, for the purposes of supply or distribution to any other person, an objectionable publication; or
- (f)in expectation of payment or otherwise for gain, or by way of advertisement, displays or exhibits an objectionable publication to any other person.

(2) Every person who commits an offence against subsection (1) is liable on conviction,—

- (a)in the case of an individual, to a fine not exceeding \$10,000:
- (b)in the case of a body corporate, to a fine not exceeding \$30,000.

(3) It shall be no defence to a charge under subsection (1) that the defendant had no knowledge or no reasonable cause to believe that the publication to which the charge relates was objectionable.

(4) Without limiting the generality of this section, a publication may be—

- (a)supplied (within the meaning of that term in section 2) for the purposes of any of paragraphs (b) to (e) of subsection (1); or
- (b)distributed (within the meaning of that term in section 122) for the purposes of any of paragraphs (b) to (e) of subsection (1); or
- (c)imported into New Zealand for the purposes of paragraph (c) of subsection (1),—
not only in a physical form but also by means of the electronic transmission (whether by way of facsimile transmission, electronic mail, or other similar means of communication, other than by broadcasting) of the contents of the publication

Section 131

Offence to possess objectionable publication

(1) Subject to subsections (4) and (5), every person commits an offence against this Act who, without lawful authority or excuse, has in that person's possession an objectionable publication.

(2) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding,—

- (a)in the case of an individual, \$2,000:
- (b)in the case of a body corporate, \$5,000.

(3) It shall be no defence to a charge under subsection (1) that the defendant had no knowledge or no reasonable cause to believe that the publication to which the charge relates was objectionable.

(4) Nothing in subsection (1) makes it an offence for any of the following persons to be in possession of an objectionable publication, where such possession is for the purpose of and in connection with the person's official duties:

- (a)the Chief Censor: (b)the Deputy Chief Censor: (c)any classification officer: (d)any person holding office pursuant to clause 2 of Schedule 1: (e)any member of the Board: (f)the labelling body or any person who is carrying out the functions of the labelling body: (g)any Inspector:
- (h)any constable: (i)any officer of the Customs: (j)any Judge of the High Court, or District Court Judge, Coroner, Justice, or Community Magistrate: (k)in relation to any publication delivered to the National Librarian pursuant to Part 4 of the National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003, the National Librarian, any other employee in the department responsible for the administration of that Act, or any person employed in the Parliamentary Library: (l)any other person in the service of the Crown.

(5) It is a defence to a charge under subsection (1) if the defendant proves that the defendant had possession of the publication to which the charge relates, in good faith,—

- (a) for the purpose or with the intention of delivering it into the possession of a person lawfully entitled to have possession of it; or
- (b) for the purposes of any proceedings under this Act or any other enactment in relation to the publication; or
- (c) for the purpose of giving legal advice in relation to the publication; or
- (d) for the purposes of giving legal advice, or making representations, in relation to any proceedings; or
- (e) in accordance with, or for the purpose of, complying with any decision or order made in relation to the publication by the Chief Censor, the Classification Office, the Board, or any court, Judge, Justice, or Community Magistrate; or
- (f) in connection with the delivery of the publication to the National Librarian in accordance with Part 4 of the National Library of New Zealand (Te Puna Matāuranga o Aotearoa) Act 2003.

(6) Nothing in subsection (5) shall prejudice any defence that it is open to a person charged with an offence against this section to raise apart from that subsection.

(7) For the avoidance of doubt, in this section the term **proceedings** includes proceedings before the Classification Office.

Philippines

Anti-Child Pornography Act

Republic Act No 9775

SECT 3

Definition of Terms. -

(a) "Child" refers to a person below eighteen (18) years of age or over, but is unable to fully take care of himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

For the purpose of this Act, a child shall also refer to:

(1) a person regardless of age who is presented, depicted or portrayed as a child as defined herein; and

(2) computer-generated, digitally or manually crafted images or graphics of a person who is represented or who is made to appear to be a child as defined herein.

(b) "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.

SECT 4

Unlawful or Prohibited Acts. - It shall be unlawful for any person:

(a) To hire, employ, use, persuade, induce or coerce a child to perform in the creation or production of any form of child pornography;

(b) To produce, direct, manufacture or create any form of child pornography;

(c) To publish offer, transmit, sell, distribute, broadcast, advertise, promote, export or import any form of child pornography;

(d) To possess any form of child pornography with the intent to sell, distribute, publish, or broadcast: Provided. That possession of three (3) or more articles of child pornography of the same form shall be prima facie evidence of the intent to sell, distribute, publish or broadcast;

(e) To knowingly, willfully and intentionally provide a venue for the commission of prohibited acts as, but not limited to, dens, private rooms, cubicles, cinemas, houses or in establishments purporting to be a legitimate business;

(f) For film distributors, theaters and telecommunication companies, by themselves or in cooperation with other entities, to distribute any form of child pornography;

(g) For a parent, legal guardian or person having custody or control of a child to knowingly permit the child to engage, participate or assist in any form of child pornography;

(h) To engage in the luring or grooming of a child;

(i) To engage in pandering of any form of child pornography;

(j) To willfully access any form of child pornography;

(k) To conspire to commit any of the prohibited acts stated in this section. Conspiracy to commit any form of child pornography shall be committed when two (2) or more persons come to an agreement concerning the commission of any of the said prohibited acts and decide to commit it; and

(l) To possess any form of child pornography.

South Africa

Sexual Offences and Related Matters Amendment Act

No. 32 of 2007

Chapter 1(1)

Definitions and interpretation of Act (1)

[---] 'Child' means-

(a) a person under the age of 18 years; or

(b) with reference to sections 15 and 16, a person 12 years or older but under the age of 16 years, and 'children' has a corresponding meaning;

'child pornography' means any image, however created, or any description or presentation of a person, real or simulated, who is, or who is depicted or described or presented as being, under the age of 18 years, of an explicit or sexual nature, whether such image or description or presentation is intended to stimulate erotic or aesthetic feelings or not, including any such image or description of such person-

(a) engaged in an act that constitutes a sexual offence;

(b) engaged in an act of sexual penetration;

(c) engaged in an act of sexual violation;

(d) engaged in an act of self-masturbation;

(e) displaying the genital organs of such person in a state of arousal or stimulation;

(f) unduly displaying the genital organs or anus of such person;

(g) displaying any form of stimulation of a sexual nature of such person's breasts;

(h) engaged in sexually suggestive or lewd acts;

(i) engaged in or as the subject of sadistic or masochistic acts of a sexual nature;

(j) engaged in any conduct or activity characteristically associated with sexual intercourse;

(k) showing or describing such person- (i) participating in, or assisting or facilitating another person to participate in; or (ii) being in the presence of another person who commits or in any other manner being involved in, any act contemplated in paragraphs (a) to (j); or (l) showing or describing the body, or parts of the body, of such person in a manner or in circumstances which, within the context, violate or offend the sexual integrity or dignity of that person or any category of persons

under 18 or is capable of being used for the purposes of violating or offending the sexual integrity or dignity of that person, any person or group or categories of persons;

Chapter 3(2)(19)

Exposure or display of or causing exposure or display of child pornography or pornography to children

A person ('A') who unlawfully and intentionally exposes or displays or causes the exposure or display of-

- (a) any image, publication, depiction, description or sequence of child pornography or pornography;
- (b) any image, publication, depiction, description or sequence containing a visual presentation, description or representation of a sexual nature of a child, which may be disturbing or harmful to, or age-inappropriate for children, as contemplated in the Films and Publications Act, 1996 (Act 65 of 1996), or in terms of any other legislation; or
- (c) any image, publication, depiction, description or sequence containing a visual presentation, description or representation of pornography or an act of an explicit sexual nature of a person 18 years or older, which may be disturbing or harmful to, or age-inappropriate, for children, as contemplated in the Films and Publications Act, 1996, or in terms of any other law, to a child ('B'), with or without the consent of B, is guilty of the offence of exposing or displaying or causing the exposure or display of child pornography or pornography to a child.

Chapter 3(2)(20)

Using children for or benefiting from child pornography (1) A person ('A') who unlawfully and intentionally uses a child complainant ('B'), with or without the consent of B, whether for financial or other reward, favour or compensation to B or to a third person ('C') or not-

- (a) for purposes of creating, making or producing;
- (b) by creating, making or producing; or
- (c) in any manner assisting to create, make or produce, any image, publication, depiction, description or sequence in any manner whatsoever of child pornography, is guilty of the offence of using a child for child pornography.

Any person who knowingly and intentionally in any manner whatsoever gains financially from, or receives any favour, benefit, reward, compensation or any other advantage, as the result of the commission of any act contemplated in subsection (1), is guilty of the offence of benefiting from child pornography.

Sri Lanka

Criminal Code

Act No. 16 of 2006

286A.

(1) Any person who

(a) hires, employs assists, persuades, uses, induces or coerces, any child to appear or perform, in any obscene or indecent exhibition or show or to pose or model for, or to appear in, any obscene or indecent photograph or film or who sells or distributes, or otherwise publishes, or has in his possession, any such photograph or film; or

(b) being the parent, guardian or person having the custody of a child, causes or allows such child to be employed, or to participate, in any obscene or indecent exhibition or show or to pose or model for, or to appear in, any such photograph or film as is referred to in paragraph (a) ;

(c) (i) takes, or assists in taking of any indecent photograph of a child ; or (ii) distributes or shows any such photograph or any publication containing such photograph; (iii) has in his possession for

distribution or showing, any such photograph or publication. (iv) publishes or causes to be published, any such photograph or publishes or causes to be published, any advertisement capable of conveying the message that the advertiser or person named in the advertisement distributes or shows any such photograph or publication or intends to do so, commits the offence of obscene publication and exhibition relating to children and shall on conviction be punished with imprisonment of either description for a term not less than two years and not exceeding ten years and may also be punished with fine.

Sweden

Criminal Code

(1962:700)

Section 10a

A person who (1) portrays a child in a pornographic picture; (2) disseminates, transfers, grants use, exhibits or in any other way makes such a picture of a child available to some other person; (3) acquires or offers such a picture of a child; (4) brings about contact between a buyer and a seller of such pictures of children or takes any other similar step to facilitate dealing in such pictures; or (5) possess, or watches after obtaining access, such a picture of a child shall be sentenced for child pornography crime to imprisonment for at most two years, or, if the crime is petty, to a fine or imprisonment for at most six months.

By child is meant a person whose pubertal development is not complete or, if it is apparent from the picture and its attendant circumstances, who is less than 18 years of age.

A person who in the course of business or otherwise for the purpose of making money disseminates a picture of the kind described in the first paragraph through negligence shall be sentenced as there stated.

If the crime described in the first paragraph is considered to be gross a sentence of at least six months and at most four years shall be imposed for gross child pornography crime. In assessing whether the crime is gross special consideration shall be given to whether it was committed in the course of business or otherwise for profit, was a part of criminal activity that was systematically practised or practised on a larger scale, or concerned a particularly large number of pictures or pictures in which children are exposed to especially ruthless treatment.

The prohibitions against depiction and possession do not apply to a person who draws, paints or in some other similar hand-crafted fashion produces a picture of the kind described in the first paragraph as long as it is not intended for dissemination, transfer, granted use, exhibition or in any other way be made available to others. Even in other cases the act shall not constitute a crime if, having regard to the circumstances, it is justifiable. (Law 1998: 1444)

Section 17

A person preparing or conspiring to mutiny, or who fails to disclose a mutiny, shall be sentenced in accordance with the provisions of Chapter 23. The same shall also apply to [---] attempt or preparation to gross child pornography crime. (Law 1998:1444)

Switzerland

Criminal Code

21 December 1937 (Status as of 1 July 2014)

Art. 197

(1) Any person who offers, shows, passes on or makes accessible to a person under the age of 16 pornographic documents, sound or visual recordings, depictions or other items of a similar nature or pornographic performances, or broadcasts any of the same on radio or television is liable to a custodial sentence not exceeding three years or to a monetary penalty.

(2) Any person who exhibits in public items or performances as described in paragraph 1 above or shows or otherwise offers the same unsolicited to others is liable to a fine. Any person who, in advance, draws the attention of visitors to private exhibitions or performances to their pornographic character does not commit an offence.

(3). Any person who recruits or causes a minor to participate in a pornographic performance is liable to a custodial sentence not exceeding three years or to a monetary penalty.

(4) Any person who produces, imports, stores, markets, advertises, exhibits, offers, shows, passes on or makes accessible to others, acquires, or procures or possesses via electronic media or otherwise items or performances as described in paragraph 1 above that contain sexual acts involving animals, acts of violence involving adults or non-genuine sexual acts with minors is liable to a custodial sentence not exceeding three years or to a monetary penalty. If the items or performances contain genuine sexual acts with minors, the penalty is a custodial sentence not exceeding five years or a monetary penalty.

(5) Any person who consumes or who for his or her own consumption produces, imports, stores, acquires or procures or possesses via electronic media or otherwise items or performances as described in paragraph 1 above that contain sexual acts involving animals, acts of violence involving adults or non-genuine sexual acts with minors is liable to a custodial sentence not exceeding one year or to a monetary penalty. If the items or performances contain genuine sexual acts with minors, the penalty is a custodial sentence not exceeding three years or a monetary penalty.

United Kingdom

The UK does not have a Criminal Code and is heavily weighted on the common law legal system. Offences against children are primarily to be found in the Protection of Children Act 1978 and the Criminal Justice Act 1988 but is also complemented with much case law.

Protection of Children Act

Of 1978

Section 1

(1) It is an offence for a person—

(a) to take, or permit to be taken [or to make], any indecent photograph [or pseudo-photograph] of a child. . .; or

(b) to distribute or show such indecent photographs [or pseudo-photographs]; or

(c) to have in his possession such indecent photographs [or pseudo-photographs], with a view to their being distributed or shown by himself or others; or

(d) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs [or pseudo-photographs], or intends to do so.

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

(3) Proceedings for an offence under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions.

Criminal Justice Act
Of 1988

Section 160

Possession of indecent photograph of child

(1)[Subject to section 160A,] it is an offence for a person to have any indecent photograph [or pseudo-photograph]of a child. . . in his possession.

(2)Where a person is charged with an offence under subsection (1) above, it shall be a defence for him to prove—

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

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

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

(2A)A person shall be liable on conviction on indictment of an offence under this section to imprisonment for a term not exceeding five years or a fine, or both.]

(3)A person shall be liable on summary conviction of an offence under this section to [imprisonment for a term not exceeding six months or] a fine not exceeding level 5 on the standard scale [, or both].

(4)Sections 1(3), 2(3), 3 and 7 of the Protection of Children Act 1978 shall have effect as if any reference in them to that Act included a reference to this section.

United States of America

Criminal Code

18 U.S. Code

§ 2251

a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished as provided under subsection (e), if such person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed.

(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct shall be punished as provided under subsection (e) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or

affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed.

(c)

(1) Any person who, in a circumstance described in paragraph (2), employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct outside of the United States, its territories or possessions, for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e).

(2) The circumstance referred to in paragraph (1) is that—

(A) the person intends such visual depiction to be transported to the United States, its territories or possessions, by any means, including by using any means or facility of interstate or foreign commerce or mail; or

(B) the person transports such visual depiction to the United States, its territories or possessions, by any means, including by using any means or facility of interstate or foreign commerce or mail.

(d)

(1) Any person who, in a circumstance described in paragraph (2), knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering—

(A) to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or

(B) participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct;
shall be punished as provided under subsection (e).

(2) The circumstance referred to in paragraph (1) is that—

(A) such person knows or has reason to know that such notice or advertisement will be transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mailed; or

(B) such notice or advertisement is transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mailed.

(e) Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title and imprisoned not less than 15 years nor more than 30 years, but if such person has one prior conviction under this chapter, section 1591, chapter 71 section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 25 years nor more than 50 years, but if such person has 2 or more prior convictions under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to the sexual exploitation of children, such person shall be fined under this title and imprisoned not less than 35 years nor more than life. Any organization that violates, or attempts or conspires to violate, this section shall be fined under this title. Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for not less than 30 years or for life.



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