Mongolia

Legal questionnaire completed by Melville Erdenedalai LLP • March 2024

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1. **What laws and regulations contain legal definitions of the following terms or corresponding terms in your local jurisdiction (links to existing U.S. legal definitions are included, where relevant, as background for comparison – please include definitions of any corresponding terms in your country):**

   a. **child or minor (18 U.S.C. 2256(1), https://www.law.cornell.edu/uscode/text/18/2256)**

      Mongolia has adopted several laws to protect children's rights and on child protection. These include the Law on Children's Rights, the Law on Child Protection and the Family Law.

      There is no specific definition of a "child" under the law. However, the Law on Children's Rights provides that "This law shall apply to ensure the rights of a child from birth to 18 years of age" (Article 3.1 of the Law on Children's Rights).

      Moreover, the Law on Child Protection provides that "The care and services specified in this law can be provided to Mongolian citizens from birth to 18 years of age, or if provided in international treaties of Mongolia, to persons over 18 years of age to 21 years of age" (Article 3.3 of the Law on Child Protection).

      Further, Mongolia is a party to the "Convention on the Rights of the Child" which states that "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier". Mongolia is also a party to the two Protocols of the Convention of the Rights of the Child.

      Therefore, a child can be understood as anyone under the age of 18 years old.

      "A minor" as specified in the Criminal Code of Mongolia is a person who has not reached the age of fourteen (Article 10.1 of the Criminal Code).

   b. **child sexual exploitation (Missing Children's Assistance Act of 2023, Section 2, (a)(1)(9), https://www.congress.gov/118/bills/s2051/BILLS-118s2051es.pdf)**

      There is no specific definition of "child sexual exploitation" in the law.

      However, the act of "sexual exploitation" is a criminal offence under the Criminal Code. The Criminal Code does not provide separate criminal offence for child sexual exploitation and adult sexual exploitation. However, the Criminal Code provides for different sanctions taking

into consideration of the age of the victim. Specifically, different sanctions would be imposed based on whether the victim is an adult, a minor, or a child aged between 14-18 years old. Under the Criminal Code "forcing to have sexual intercourse with others by using force, or threatening to use force or taking advantage of the dependency nature [of the victim] due to material, position or other circumstances but without limiting right of free travel" is considered as a criminal act of sexual exploitation (Article 12.3 of the Criminal Code). The criminal sanction is elevated if the crime is committed by forcefully engaging a minor or 14- to 18-year-old children into prostitution with the intent to gain profit. If the crime is committed against a minor, it is not necessary for the crime to be committed in the manner described above.

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

There is no explicit definition of "sexually explicit conduct".

Under the Criminal Code, the "immoral satisfaction of sexual desire" which is described as the immoral fulfillment of sexual desire by using force against the victim's will, or threatening to use force, or taking advantage of the victim's inability to defend oneself provided that this does not constitute an act of rape is a criminal offence (Article 12.2 of the Criminal Code). If the crime is committed against children aged between 14-18 years old (Article 12.2.2 of the Criminal Code) or minors (Article 12.2.3 of the Criminal Code), the criminal sanction is elevated. Immoral satisfaction of sexual desire against a minor does not require the crime to be committed in the manner described above.

Further, the act of rape which is defined as "forcibly having sexual intercourse or conducting act of sexual nature by force against victim's will using force, threatening to use force or taking advantage of a situation, in which the person is not capable of defending oneself or resisting due to mental illness, intoxication or under the influence of drug or temporary distraction of one's psychological activity or other illnesses, or taking advantage of dependency nature [of the victim] due to material, position or other circumstances" (Article 12.1 of the Criminal Code). The "act of sexual nature" is described as inserting one's genitals into any part of the victim's body or inserting one's own organ or other objects into the victims genitals. Rape of a minor does not require the crime to be committed in the manner described above. Therefore, engaging in sexual intercourse or any sexual activity with a minor would constitute rape. This would not however apply to children aged 14-18 years old.

Further, if the crime is committed as described above against children aged between 14-18 years old, the criminal sanction is elevated.

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

There is no specific definition of "child sexual abuse" under the law.

Article 6.5 of the Law on Combatting Domestic Violence, provides a general definition of "sexual violence as the act of forcing a person who is subject to the application of this law to engage in any sexual act by taking advantage of their dependency nature (Article 6.5 of the Law on Combatting Domestic Violence). The perpetrator and the victim can be:

a) wife, husband, other family members, cohabitants, guardians, persons who are under

their custody or care, and other persons who are living with the family;
b) biological or adopted child, biological or adoptive parents, brothers, sisters, or younger siblings that are living separately; and
c) divorced spouses, former cohabitants, or those persons who had a familial relationship without cohabitation, or persons who had children together.

There is general description of violence against children under the Law on Child Protection which provides "negligence, sexual abuse, physical punishment, or emotional pressure that harms the life, health, development, physical or mental health of a child intentionally or unintentionally" (Article 4.1.8 of the Law on Child Protection).

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

This is also not defined in law.

However, the preparation, dissemination, sale, storage of press, literature, photo, films, video recordings and other items that advertise pornography involving children" is a crime under the Criminal Code (Article 16.9 of the Criminal Code). The sanction is elevated if the crime is committed using cyber environment or committed against minors. It should be noted that the Criminal Code does not define what constitutes as "pornography". The Law on Combatting Pornography defines the term "advertisement of pornography" as the act of making others read, listen to, and watch engaging in sexual intercourse and human genitalia through the press, literature, films, video or audio recordings, and other forms in an overt manner with the intention of inciting sexual desire; and "pornographic act" as engaging in prostitution, coercing others into prostitution, implicating others in such acts, and advertising pornography.

f. computer-generated images or videos of child pornography or CSAM (created by artificial intelligence or morphed) (18 U.S.C. 2256(8) & (9), https://www.law.cornell.edu/uscode/text/18/2256)

The term is not defined.

As provided above, using the internet to prepare, disseminate, sale, and store pornographic materials involving children is criminalized under the Criminal Code (Article 16.9 of the Criminal Code).

Further, the Law on Child Protection provides that employees, public officials, citizens, legal entities which distributed audio, audio-video, video recordings, and photographs or publicly humiliated by using newspapers, television, radio, and digital network by invading the privacy of children shall be subject to sanctions under the law. However, the specific sanctions are not provided in law.

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

There is no specific definition.

However, the "intentional display, delivery, advertisement of press, literature, photo, film, video recording and other items that advertise pornography to a child, making a child to commit pornographic act, or suggestion of prostitution or sexual intercourse to a child" is a crime under Criminal Code (Article 16.8 of the Criminal Code).

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

There is no defined legal age of consent for sexual activity.

However, having sexual intercourse with children under the age of 14 years old is a criminal offense explicitly classified as rape under the Criminal Code. Further, it is also a criminal offence "if a person of 18 years old having been able to have known, or having known, that a victim has reached 14 years old but not 16 years old, has sexual intercourse with an underage person" is punishable under the Criminal Code (Article 12.5 of the Criminal Code).

i. **Sextortion (extorting money or sexual favors from a child by threatening to share sexually explicit, child pornography or CSAM images of the child) (Missing Children's Assistance Act of 2023, Section 2, (a)(1)(8), https://www.congress.gov/118/bills/s2051/BILLS-118s2051es.pdf)**

The term is not defined under the law.

It is possible for the act to be categorized as crime of "threatening" which is defined as demanding others to do or not to do certain actions by using force or threatening to use force against them or their close family, or threatening to distribute facts and information that may harm their rights and legal interests (Article 13.5 of the Criminal Code).

2. **Please explain any legal or regulatory requirement or recommendation for Online Platforms to undertake any of the following activities on their systems to protect children online from sexual exploitation:**

a. **review, screen, moderate, or detect content to identify child pornography or CSAM content**

There is general prohibition on preparing, distributing, selling and storing/keeping of publication, literature, pictures, films, video recordings and other items that promote pornography (Article 5.2 of Law on Pornography). However, there are no specific law or regulation which impose an obligation on Online Platforms to review, screen, moderate, or detect content to identify child pornography or CSAM content.

Article 8.2 of the Law on Child Protection provides that the Communications Regulatory Commission of Mongolia ("CRC") and the central police department are mandated to regularly inform the public with recommendations and instructions regarding the protection of children from games, books, artistic work, news, information, advertisements and online/electronic networks that may harm children's development, health, education, and maturity and monitor the activities thereof. However, other than this provision, no specific regulations have been adopted on how this mandate can be enforced in practice.

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

There are no specific law or regulation which impose an obligation on Online Platforms to review, screen, moderate, or detect content to identify enticement, grooming, or sextortion of a child.

c. report child pornography, CSAM, enticement, grooming, or sextortion that they become aware of or are notified about on their systems to a law enforcement or government agency or nongovernmental organization

There are no specific law or regulation which impose an obligation on Online Platforms to report child pornography, CSAM, enticement, grooming, or sextortion that they become aware of or are notified about on their systems to a law enforcement or government agency or nongovernmental organization.

The Law on Prevention of Crimes and Minor Offences imposes in obligation on citizens to report crimes and minor offences to relevant organizations and obligation to demand from others to detect and stop crimes, promptly report, not to conceal, cooperate with and provide assistance to police and legal organizations (Articles 31.1.1 and 31.1.5 of the Law on Prevention of Crime and Minor Offences). Similar regulation is provided under the Law on Children's Rights where citizens and legal entities are under an obligation to crimes and minor offences against children to the relevant authorities (Article 18.1.1 of the Law on Children's Rights).

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

There are no specific law or regulation which impose an obligation on Online Platforms to remove or take down any child pornography, CSAM, enticement, grooming, or sextortion that they identify, become aware of, or are notified about.

We understand that in collaboration with UNICEF and with the assistance of Internet Watch Foundation, an international organisation, a system was created for reporting in Mongolian language "to remove, prevent, and provide information about images, videos, and inappropriate content of children from the Internet (Communications Regulatory Commission).

Moreover, we understand that since October 2019, the CRC has opened a "Green Channel" to cooperate with Facebook. Within the framework of this cooperation, arrangements are being made to remove and limit inappropriate and illegal news, information, and content in the field of child protection in the online environment (Communications Regulatory Commission). We understand that the CRC started collaborating with Youtube from May 2021 in this area.

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

There are no specific law or regulation which impose an obligation on Online Platforms to review content by human moderators to screen or moderate for child pornography or CSAM.

f. **remove child pornography, CSAM, enticement, grooming, or sextortion from their systems when notified of its presence by a victim, nongovernmental organization, law enforcement, or government agency**

There are no specific law or regulation which impose an obligation on Online Platforms to remove child pornography, CSAM, enticement, grooming, or sextortion from their systems when notified of its presence by a victim, nongovernmental organization, law enforcement, or government agency.

Regardless of the legal environment, we understand that anyone can report anonymously or not, to remove in Mongolian or take down any child pornography, CSAM, enticement, grooming, or sextortion.

g. **use any specific technology to detect, remove, block, or take down any child pornography, CSAM, enticement, grooming, or sextortion, including:**
   i. **"Hashing technology" (https://www.thorn.org/blog/hashing-detect-child-sex-abuse-imagery/). Many Online Platforms hash and tag images and videos of child pornography or CSAM and then use hashing technology to scan content on their systems to detect the distribution of child pornography or CSAM online so it can be removed.**
   ii. **Artificial intelligence or machine learning tools to detect the presence of child pornography, CSAM, enticement, grooming, or sextortion.**

There are no specific law or regulation which impose an obligation on Online Platforms to use any specific technology to detect, remove, block, or take down any child pornography, CSAM, enticement, grooming, or sextortion including hashing technology and artificial intelligence or machine learning tools.

We understand that Mongolia has a partnership with IWF (https://report.iwf.org.uk/mn/) where they have created IWF Mongolia reporting portal for removing sexual image or video of children online.

h. **if the applicable laws or regulations require some, but not all, Online Platforms to perform any of the above activities, describe how the differing requirements apply. For example, are differences based on the number of online users, types of services offered, etc.?**

There are no applicable law or regulation providing different treatment.

3. **Are Online Platforms legally required or recommended to implement any method to verify the age of a user before allowing access to an online platform?**

There are no specific law or regulation which require Online Platforms to verify the age of a user before allowing access to an online platform.

There is general requirement applicable to internet service providers to have a service (system or software) that limits access to adult content (+18) for household internet. Information concerning

this service is to be informed to the public through user agreement or the website of the service provider (Article 5.3 of the Special Conditions and Requirements of Internet Service Provision adopted by Resolution 49 of the CRC of 2013). Similarly, content suppliers are under an obligation to provide advance warning to users of content intended for those over the age of 18 years old and enable limited access to content services at user's request (Article 5.4 of the General Conditions and Requirements for Digital Content Service Regulations adopted by Resolution 8 of the CRC of 2011).

The Law on Child Protection provides that citizens and legal entities possessing rights in the internet environment shall have a special package of services for children, and when signing a service contract, they must ask whether there are children under the age of 18 years old in their care and agree whether to use special channel services for adults (Article 8.6 of the Law on Child Protection).

However, there are no specific regulations or guidelines as to how this provision is to be understood and/or implemented in practice.

4. **Are Online Platforms legally required or recommended to implement any method to obtain parental consent before a child uses the services of such Online Platforms?**

   Website service providers are under an obligation to provide advance warning that the content is intended for users over the age of 18 years old, register and access [it] using username and password when providing services relating to content dealing with violence and pornography and those that may have negative impact on children's morality (Article 6.3 of the General Conditions and Requirements for Digital Content Service Regulations adopted by Resolution 8 of the CRC of 2011).

   Other than what is stated in Article 8.6 of the Law on Child Protection and above, there are no specific law or regulation which require Online Platforms to implement any method to obtain parental consent before a child uses the services of such Online Platforms.

5. **Are there legal remedies for children who have been victimized by online child sexual exploitation? This may include children who are victimized by the distribution of child pornography or CSAM imagery in which they are depicted, or children victimized by enticement, grooming or sextortion. If such legal remedies exist, do they include:**

   YES

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

      There is no specific law or regulation directly providing for the right of the victim to stop the publication of the pornography or CSAM imagery by the Online Platform.

      The child victim through his/her legal guardian or legal representative can submit a complaint to the CRC or the police.

      The CRC has the power to undertake certain technological measures by way of providing notice demanding to stop illegal actions, blocking access to the relevant sites from Mongolia

and enlisting them to into black-list (available at Recommendations of the CRC). The CRC reports that it is to take immediate action in the event of the following types of harmful content:

(a) content depicting child sexual exploitation, violence or nudity;
(b) content that encourages or incites dangerous behavior such as suicide or self-harm;
(c) content that may negatively affect the upbringing and morals of children and young people;
(d) threatening, harassing or bullying content;
(e) obscene content; and
(f) content with violent or provocative content.

In the event of the following cases, the CRC would take necessary technological measures based on the decisions issued by relevant authorities:

(a) impersonation, misrepresentation, or fraudulent content;
(b) content that violates intellectual property;
(c) content related to personal privacy;
(d) hate content;
(e) content that violates the concepts of human rights, freedom, justice, and national security; and
(f) content that violates the public mandate.

Based on official decisions and findings of relevant government entities determining that there has been breach of relevant legislation, the CRC has the authority to demand website service providers to take action immediately or within 24 hours to remedy such breach. If no action is taken by the website service providers, it can stop the services and block access to the site from Mongolia with or without informing the website service providers.

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

There are no specific law or regulation which impose an obligation on Online Platform to take active steps to remove the pornography or other imagery from their servers.

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

There is no specific law or regulation applicable to Online Platforms.

The possibility to have an injunction or other court order issued against Online Platforms prior to court hearing i.e. final decision being made on the matter is not provided in the law. Such can be facilitated at the time of issuance of court decision on the matter.

d. A protective order or other court order that prohibits the person who posts the pornography or imagery from doing so in the future on the same or other Online Platform?

Please see above.

e. the ability to seek financial damages or any sort of monetary recovery from an offender who has shared the child's image or video, either in a civil or a criminal proceeding?

Article 8.1.1.9 of the Criminal Procedure Code provides for general right of victims to seek damage and harm caused as a result of crime and be compensated. Further, Article 8.5.2 of the Criminal Procedure Code provides for rights and procedures applicable to civil claimants in a criminal matter. The relevant provision provides that individuals or legal entities who have suffered physical or non-physical harm due to a crime have the right to file a civil claim against the suspect, accused, or defendant of the crime, as well as any person responsible for the resulting damage.

The provision further provides that the court shall resolve the such civil claim together with the criminal matter. Accordingly, a civil claim related to damages caused by a crime cannot be resolved by a civil court until the relevant criminal case has been adjudicated. Similarly, the same level of right is provided under Articles 9.4.4, 228, 230, 497.1, and 511.1 of the Civil Code whereby a victim or its legal guardian or legal representative is afforded the right to seek financial damages from those who breach their right or caused harm.

f. the ability to seek any other forms of victim compensation/recovery/services provided for under the law and/or by a government-funded source?

Under the Criminal Procedure Code, it is possible for victims to be assigned the status of civil claimant by way of submitting a claim to the criminal court and take part in the proceedings as such. In such case, the civil claimant is precluded from submitting a claim to the civil court.

Procedures and support services, including referral to psychological, health, social welfare services, provided under the Law on Child Protection also apply to child victims of crime. It should be noted that the Law on Child Protection is currently under discussion by Parliament. Once adopted, it will replace the existing legislative framework for child protection.

The Law on Government Special Funds creates Government special fund for Crime Victim Compensation Fund (Article 5.3.4 of the Law on Government Special Funds). The fund aims to provide compensation to family members of persons who have lost their life due to a crime or victims who have suffered serious injury as a result of certain types of crimes committed on the territory of Mongolia (Article 10.1 of the Law on Government Special Funds). The types of crime include rape, sexual exploitation, human trafficking, kidnapping and involving children into criminal acts etc. The fund provides compensation relating to medical costs, funeral expenses and the difference of salary that ought to have been received due to disability.

The Law on Protection of Witnesses and Victims also provides for the legal basis for protecting the life and health of victims, providing them with information and granting support and assistance during criminal procedure. The law provides two types of protections: safety protective measures and psychological protective measures (Article 6 of the Law on Protection of Witnesses and Victims). Psychological protective measures include:

(a) presence of a psychologist, if necessary, from the moment the witness or victim is taken under protection;
(b) inform in advance of potential occurrence of an unpleasant psychological situation during investigation process;
(c) inform in advance of trial details such as time, order, progress and the circumstances;
(d) presence of a psychologist in the courtroom;

(e) other necessary measures.

The right to receive protection under the law arises in the event that harm has occurred or if there is sufficient reason for the occurrence of potential harm to life or health of the victim. Victims can be provided with free legal, psychological, medical and other social assistance if he/she has suffered health problems that occurred due to a crime free of charge.

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

There is no requirement under the law to notify a victim when an offender is arrested for distributing child pornography or CSAM in which the child is depicted.

6. **"Safety by Design" is defined as tools or processes that are built into an Online Platform to protect children by making it easier for the relevant Online Platform to detect or prevent the distribution of child pornography or CSAM.**

a. **Are Online Platforms legally required to incorporate "Safety by Design" into their systems?**

There is no legal requirement in this regard.

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

Please see above.

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

Please see above.

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

Please see above.

b. **Please include information about the parameters for monitoring, management, and enforcement of any legal or regulatory requirements for the Online Platform's incorporation of "Safety by Design"?**

Please see above.