

Legal questionnaire completed by Yusof Halim & Partners • June 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>)
 - 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>)
 - c. **sexually explicit conduct** (18 U.S.C. 2256(2), <https://www.law.cornell.edu/uscode/text/18/2256>)
 - d. **child sexual abuse** (18 U.S.C. 2243(a), <https://www.law.cornell.edu/uscode/text/18/2243>)
 - e. **child pornography or child sexual abuse material (CSAM)** (18 U.S.C. 2256(8), <https://www.law.cornell.edu/uscode/text/18/2256>)
 - 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>)

Questions 1b, c, d, e, f and i. will be dealt with together. Question g is dealt with separately.

- i) Section 2(3)(c) of the CYPA covers a broad range of what constitutes as ‘sexual abuse’ of children and young persons:

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

- ii) Section 293B of the Penal Code (Amendment) Order 2012 is read together with the Penal Code (Chapter 22). The section specifically covers the offence of taking, distributing, showing, advertising and accessing any indecent photograph(s) of children:

“Taking, distribution, showing, advertisement and access of indecent photograph of child.

1. Whoever —

- a. takes or permits to be taken or abets the taking of any indecent or obscene photograph or pseudo-photograph of a child;
- b. distributes or shows such indecent or obscene photographs or psuedo-photographs;



- c. has in his possession such indecent or obscene photographs with a view to their being distributed or shown by himself to others;
- d. publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs, or intends to do so; or
- e. accesses any indecent or obscene photograph or pseudo-photograph of a child, shall be guilty of an offence and shall be punished with imprisonment which may extend to 10 years, or with fine, or with both."

iii) Section 293C of the Penal Code (Amendment) Order 2012 is read together with Section 293B as well as the Penal Code (Chapter 22). The section specifically defines:

"Section 239C: Interpretation.

1. In sections 293A and 293B —

(...)

(e) "film" includes any form of video-recording;

(f) "child" means a person under the age of 18 years;

(g) "psuedo-photograph" means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph;

(...)"

iv) Brunei Darussalam has ratified United Nations Convention on the Rights of Child on 27th December 1995 with no special conditions added nor exceptions for the following articles:

- Article 16: protecting children from interference with their privacy,
- Article 17(e): protecting children from information harmful to their well-being,
- Article 34(c): preventing the exploitation of children in illegal activities.

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>)

i) Section 377G of the Penal Code (Chapter 22) defines grooming and enticement:

"Sexual grooming of person under 16

377G. (1) Whoever is of or above the age of 21 years (A) if having met or communicated with another person (B) on two or more previous occasions —

(a) A intentionally meets B or travels with the intention of meeting B; and

(b) at the time of the acts referred to in paragraph (a)-

(i) A intends to do anything to or in respect of B, during or after the meeting, which if done will involve the commission by A of a relevant offence;

(ii) B is under 16 years of age; and

(iii) A does not reasonably believe that B is of or above the age of 16 years, shall be punished with imprisonment for a term not exceeding 3 years, fine or both.

(2) In subsection (1), "relevant offence" means an offence under ---

(a) section 354, 354A, 354B, 375, 377, 377B, 377C or 377D;

(b) section 2 of the Unlawful Carnal Knowledge Act (Chapter 29); or

(c) section 3(1) of the Women and Girls Protection Act (Chapter 120).

(3) For the purposes of this section, it is immaterial whether the two or more previous

occasions of A having met or communicated with B referred to in subsection (1) took place in or outside Brunei Darussalam.”

Section 377G is meant to prevent individuals who are 21 years old or older from intentionally meeting or communicating with a person under 16 years old, with the intent to commit specific offenses listed in the law. For the purpose of this questionnaire, this would particularly include:

- Section 377B of the Penal Code (Chapter 22) (Engaging in sexual activity in presence of person under 16);
- Section 377C of the Penal Code (Chapter 22) (Causing person under 16 to watch sexual act);
- Section 377D of the Penal Code (Chapter 22) (Commercial sex with person under 18);
- Section 2 of Carnal Knowledge Act, Chapter 29 (Prohibition of carnal knowledge of girls under 16 years); and
- Section 3(1) of Women and Girls Protection, Chapter 120 (Selling or hiring for purpose of prostitution).

Other than the specific offences mentioned above, the term “relevant offence” referred to in section 377G also includes the following sections:

- Section 354 of the Penal Code (Chapter 22) (Assault or criminal force to person with intent to outrage modesty);
- Section 354A of the Penal Code (Chapter 22) (Aggravated outraging modesty);
- Section 354B of the Penal Code (Chapter 22) (Outraging modesty by person in position of trust or authority);
- Section 375 of the Penal Code (Chapter 22) (Rape); and
- Section 377 of the Penal Code (Chapter 22) (Unnatural offences).

- ii) Brunei has ratified the United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on 21st November 2006 with no special conditions (declarations) to Articles 2 and 3:

Article 2: Measures to prevent the sale of children, child prostitution and child pornography.

Article 3: Criminalising activities related to the sale of children, child prostitution, child sexual exploitation and child pornography.

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

The following sections defines the legal age of consent for sexual activity to be the age of 16:

- Section 377B of the Penal Code (Chapter 22) (Engaging in sexual activity in presence of person under 16);
- Section 377C of the Penal Code (Chapter 22) (Causing person under 16 to watch sexual act); and
- Section 2 of Carnal Knowledge Act, Chapter 29 (Prohibition of carnal knowledge of girls under 16 years).

- 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>)

[see responses to 1a-1f above]

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

Questions 2a, b, c, d, e and f shall be dealt with together.

- i) By virtue of Section 293B of the Penal Code (Amendment) Order 2012 (read together with the Penal Code (Chapter 22)), an offence is created if there is any distribution or advertising of any indecent photograph(s) of children including any access of such material.

In the event that such material exists on Online Platforms and if the matter is brought to attention of the Royal Brunei Police Force or the Ministry of Culture, Youth and Sports (MCYS) by a third party, the matter will be investigated and action will be taken accordingly.

It is implied that Online Platforms are therefore legally obligated to report such materials in order to avoid prosecution under Section 293B of the Penal Code (Amendment) Order 2012.

- ii) In terms of recommendations given to Online Platforms, in addition to the implied legal requirement, Online Platforms are recommended to review the guidance as provided by AITI [Authority for Info-communications Technology Industry] for reports to be addressed to the relevant agencies.

Brunei Darussalam has also established a Content Advisory Council (CAC) in order to coordinate efforts among agencies to handle regulatory, enforcement, and content management issues in the country. Such agencies or regulatory bodies include the Authority for Info-communications Technology Industry (AITI) and the Prime Minister's

Office, who jointly serve as the co-secretariat for the Council. The CAC, along with its working groups involve agencies namely the Royal Brunei Police Force, Internal Security Department (JKDN), and I.T. Protective Security Services (ITPSS).

Other guidelines serve as recommendations and these include the “Online Safety for children” handbook by the Brunei Computer Emergency Response Team (BRUCERT) which is designed specifically for parents, the “Guide to Social Networking Safety” handbook by Authority for Info-communications Technology Industry (AITI) which was designed specifically for teachers in educating and safeguarding their students against potential risks encountered on social media platforms.

Further to the above, BRUCERT along with the Cyber Security Brunei (CSB) have established the “Secure Verify Connect” website as an initiative to promote cybersecurity awareness in Brunei. The website provides guidelines for individuals, business, youth and parents. The contents and guidelines are similar to AITI’s handbook as mentioned above.

- 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 currently no legal requirements or recommendations to use specific technology to detect, remove, block or take down any child pornography, CSAM, enticement, grooming or sextortion however we have written to AITI and Cyber Security Brunei for information on any recommendations to Online Platforms for tools utilised (if any) or the methods in place to detect, remove, or take down the contents referred to and we are pending a response on the same.

- 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 currently no differing requirements for some but not all Online Platforms to perform any of the above activities [...].

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?

Questions 3 and 4 are dealt with together.

There are currently no specific laws that deal with the implementation of any method to verify the age of a user or obtain parental consent before a child uses an online platform. However, law enforcement and regulatory bodies may rely on the Undesirable Publications Act (Chapter 25) in order to prohibit circulation of any publication in or outside Brunei Darussalam by any person.

Online Platforms are defined to be a publication as per Section 2 of the Undesirable Publications Act (Chapter 25) as follows:

““publication” means any of the following other than a film –

(...)

(e) any paper, model, sculpture, tape, disc, article or thing –

(...)

(ii) on which is recorded or stored for immediate or future retrieval any information that, by the use of any computer or other electronic device, is capable of being reproduced or shown as any picture, photograph, word, statement, sign or representation, (...)”

Any “Publication” may be deemed to be obscene (as per Section 2A of the Undesirable Publications Act (Chapter 25) or objectionable (as per Section 2B of the Undesirable Publications Act (Chapter 25) in accordance with the Act if the following criteria are met:

“2A. For the purposes of this Act, a publication is obscene if its effect or where the publication comprises 2 or more distinct parts or items, the effect of any one of its parts or items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all the relevant circumstances, to read, see or hear the matter contained or embodied in it.

2B. (1) For the purposes of this Act, a publication is objectionable if, in the opinion of a controller or authorised officer, it, or where the publication comprises 2 or more distinct parts or items, any one of its parts or items describes, depicts, expresses or otherwise deals with –

(a) Matters such as sex (...) crime, cruelty, violence (...) in such a manner that the availability of the publication is likely to be injurious to the public good (...)

(2) In determining for the purposes of this Act whether or not any publication is objectionable, the following matters shall be considered –

(a) the extent and degree to which, and the manner in which, the publication –

(i) describes, depicts or otherwise deals with acts of torture, the infliction of serious physical harm, sexual conduct or violence of coercion in association with sexual conduct;

(ii) exploits the nudity of any person; (...)

(b) the impact of the medium in which the publication is presented;

(...)

(d) the standards of morality, decency and propriety that are generally accepted by reasonable members of the community; and

(e) the persons, classes of person or age groups of the persons to whom the publication is intended or is likely to be made available.”

Any “Publication” that is defined as obscene or objectionable as above would empower the Minister (being the Minister of Home Affairs as defined in Section 2 of the Undesirable Publications Act (Chapter 25)) to prohibit the circulation of that particular publication if in the opinion of the Minister the publication would be contrary to public interest under Section 3(1) of the Undesirable Publications Act (Chapter 25).

While these sections specify a total ban on any “Publication”, the Minister may in their discretion exempt such “Publication” (the Minister may also grant an exemption subject to such conditions as may be specified by the Minister) under Section 15A of the Undesirable Publications Act (Chapter

25).

In relation to the above, the Minister for Home Affairs may direct any Online Platform to have age verification controls and/or parental consent controls if directed.

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?

[see response to 3 above]

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:

NO

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

- i) Section 10(2) of the Offenders (Probation and Community Service) Order, 2006 provides that a court may, on making probation order, an order of condition discharge or an order discharging an offender absolutely, without prejudice to the Court's power of awarding costs against the offender, order the offender to pay compensation to any person as the Court thinks reasonable; but in the case of an order made by a Court of a Magistrate, the compensation shall not exceed B\$1,000.
- ii) There are no statutory or common law obligations that allows for any remedies in civil proceedings as the right to privacy is not recognised in Brunei Darussalam.
- iii) Regarding Question 5b, it is worth to note for 'services' available for victims, the Department of Community Development (JAPEM) provides temporary care and shelter to residents until their cases are completed based on court orders or referrals from government agencies such as the Royal Brunei Police Force, hospitals, schools, Immigration and other; referrals from family or their closest guardian or volunteers subject to what has been agreed on.

With regards to services provided by the Government of Brunei Darussalam, the following helplines are provided:

"Talian Kebajikan 141" – This helpline is run by the Family, Women and Children Division's Social Workers (JAPEM) which is a 24-hour helpline available to assist with issues of abuse, neglect, exploitation, family problems and protection by dialing '141' via telephone.

"Talian ANAK 121" – This is a 24-hour helpline specifically for children in Brunei Darussalam by dialing '121' via telephone which performs the same functions as the '141' helpline.

The key difference in both helplines is that "Talian Kebajikan 141" is a general helpline for

all demographics whereas “Talian ANAK 121” is a helpline specifically for children.

- b. An obligation on the part of the Online Platform to take active steps to remove the pornography or other imagery from their servers?
 - c. An ability to get an injunction or other court order against the Online Platform to stop them from publishing the pornography or imagery?
 - d. A protective order or other court order that prohibits the person who posts the pornography or imagery from doing so in the future on the same or other Online Platform?
 - e. the ability to seek financial damages or any sort of monetary recovery from an offender who has shared the child’s image or video, either in a civil or a criminal proceeding?
 - 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?
 - g. notification to 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?

Online Platforms are not legally required to incorporate “safety by design” into their systems unless otherwise directed by agencies and regulatory bodies under the Undesirable Publications Act (Chapter 25).

- i. If so, must these steps be taken before the launch of an Online Platform?
 - ii. If so, if an Online Platform has already been in public use, when must they have incorporated “Safety by Design” measures?
 - iii. For each of 6(a)(i) or (ii) above, please describe the legal requirement or recommendation.
- b. Please include information about the parameters for monitoring, management, and enforcement of any legal or regulatory requirements for the Online Platform’s incorporation of “Safety by Design”?