

Legal questionnaire completed by MLL Legal Ltd • December 2025

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Is this jurisdiction a European Union (EU) Member State or otherwise subject to EU laws/regulations (such as an overseas territory or department of an EU Member State)?

No

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 jurisdiction):

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

Swiss Civil Code https://www.fedlex.admin.ch/eli/cc/24/233_245_233/en

Under Swiss civil law, a “child” or “minor” is a person who has not yet reached the age of 18, otherwise referred to as the age of majority. This is established in Article 14 of the Swiss Civil Code (“CC”).

Article 14 CC provides that a person has reached the age of majority if he or she has reached the age of 18.

Minors are generally subject to restricted legal capacity under Swiss law. However, the law recognizes certain exceptions where a minor possesses sufficient capacity of judgement such as for certain everyday transactions (Articles 16-19 CC).

Article 19 CC addresses capacity to exercise civil rights:

Art. 19: Any person who has capacity of judgement and is of the age of majority and is not subject to an adult protection measure that restricts his or her capacity to exercise civil rights has full capacity to exercise civil rights.

Article 19c CC provides specific rules on the limited capacity of minors who have capacity of judgement:

Art. 19c: The actions of persons who are of the age of majority or who are minors but have capacity of judgement and are subject to an adult protection measure that restricts their capacity to exercise civil rights are binding on them if they are capable of understanding the consequences of those actions; otherwise such actions are binding



only to the extent that the person appointed as the minor's legal representative has consented to them or subsequently ratifies them.

- 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>)**

See Swiss Criminal Code https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en

Swiss law does not have a single statutory definition of "child sexual exploitation" as that term is used in U.S. law. However, Swiss criminal law addresses the sexual exploitation of minors through multiple provisions within the Swiss Criminal Code ("CP") that criminalize various forms of sexual abuse and exploitation.

The primary provisions addressing child sexual exploitation include:

Sexual Acts with Children

Article 187 CP criminalizes sexual acts with children under 16 years of age (https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en#art_187):

Art. 187 para. 1: Any person who carries out a sexual act with a child under 16 years of age, any person who involves such a child in a sexual act, is liable to a custodial sentence not exceeding five years or to a monetary penalty.

The penalties are enhanced when the child is under 12 years of age. Article 187 para. 1bis CP provides:

Art. 187 para. 1bis: If the child is under 12 years of age, a custodial sentence of not less than one and up to five years may be imposed.

Close-in-age exceptions apply under certain circumstances. Article 187 para. 2 provides that no penalty applies if the age difference between the offender and the child does not exceed three years.

Sexual Acts with Dependent Persons

Article 188 CP criminalizes sexual acts with dependent persons aged 16 or 17 where a position of dependency is exploited:

Art. 188 para. 1: Any person who carries out a sexual act with a dependent person who is his or her child, stepchild, foster child, or any person who is his or her pupil, apprentice or employee or who is dependent on him or her in some other way, or who involves such a person in a sexual act, if the child is under 18 years of age, is liable to a custodial sentence not exceeding three years or to a monetary penalty.

https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en#art_188

Pornography Involving Minors (Child Sexual Abuse Material)

Article 197 CP contains comprehensive provisions addressing pornography involving minors, including production, distribution, and possession of both "actual" sexual acts with minors and "not actual" (virtual or computer-generated) sexual acts with minors

(https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en#art_197).

Article 197 para. 1 CP criminalizes offering or showing pornography through various mediums to persons under 16:



Art. 197 para. 1: Any person who offers, shows, makes available or makes accessible pornography to a person under the age of 16 years is liable to a custodial sentence not exceeding three years or to a monetary penalty.

Article 197 para. 3 CP criminalizes recruiting minors to participate in pornographic performances:

Art. 197 para. 3: Any person who recruits a person under the age of 18 years to take part in a pornographic performance or any person who coerces, threatens or in any other way induces that person to do so is liable to a custodial sentence not exceeding three years or to a monetary penalty.

Article 197 paras. 4 and 5 CP address production and distribution of pornography depicting sexual acts with animals or "not actual" sexual acts with minors:

Art. 197 paras. 4 and 5: Any person who manufactures, imports, keeps in storage, puts into circulation, promotes, exhibits, offers, shows, makes available or makes accessible or acquires or procures for himself or for another by electronic or other means pornographic content depicting sexual acts with animals or non-actual sexual acts with minors is liable to a custodial sentence of up to three years or to a monetary penalty.

Article 197 para. 4 CP also provides for enhanced penalties of up to five years or a monetary penalty where the pornography depicts actual sexual acts with minors.

Additional paras. of Article 197 CP address possession for personal use (paras. 5- 7), confiscation (para. 6), and limited exceptions for consensual peer-to-peer content under strict conditions (para. 8).

General protection and policy note (federal social policy page) referencing CP provisions against sexual exploitation of minors (incl. Art. 187 ff., 197 CP):

<https://www.bsv.admin.ch/bsv/fr/home/politique-sociale/kinder-und-jugendfragen/grundlagen-gesetze/gesetze.html>

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

See Swiss Criminal Code https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en

Swiss law does not have a specific definition of "sexually explicit conduct" as that term is used in U.S. law (18 U.S.C. 2256(2)). However, Swiss criminal law addresses similar conduct through provisions that prohibit various sexual acts and pornographic content involving minors.

The most relevant provisions include:

Pornography Offenses

Article 197 CP criminalizes various pornography-related offenses. The term "pornography" is used throughout Article 197 CP but is not explicitly defined in the statute. Swiss courts interpret pornography as content that depicts or describes sexual acts in a crude, degrading manner that reduces persons to mere sexual objects.



The relevant paragraphs of Article 197 CP are set out above under the "child sexual exploitation" section 1(b) above.

Sexual Acts with Children

Article 187 CP criminalizes sexual acts with children under 16. The term "sexual act" encompasses a broad range of sexually explicit conduct. The full text of Article 187 CP is provided above under the "child sexual exploitation" section 1(b) above.

Swiss legal doctrine and case law interpret "sexual act" broadly to include any act with sexual significance involving physical contact or comparable acts of sexual relevance, regardless of whether there is direct bodily contact.

In summary, while Swiss law does not use the term "sexually explicit conduct," the concepts of "sexual act" in Articles 187-189 CP and pornography in Article 197 CP encompass conduct that would constitute sexually explicit conduct under U.S. law.

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

See Swiss Criminal Code https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en

While Swiss law does not have a specific statutory definition of "child sexual abuse" as a defined term, Article 189 of the Criminal Code provides for the punishment of the perpetrator when the acts were committed against a child over the age of 16.

However, sexual acts with children under 16 years are comprehensively criminalized under Article 187 CP, with enhanced penalties if the child is under 12.

Article 187 para. 1 CP provides:

Art. 187, para. 1: Any person who carries out a sexual act with a child under 16 years of age, any person who involves such a child in or incites such a child to commit a sexual act, is liable to a custodial sentence not exceeding five years or to a monetary penalty.

Article 187 para. 1b CP provides for enhanced penalties when the child is under 12:

Art. 187, para. 1b: If the child is under 12 years of age and the offender engages in a sexual act or causes the child to do so with another person or an animal, a custodial sentence of not less than one year shall be imposed.

Close-in-age exceptions apply under Article 187 para. 2 CP which provides that no penalty applies if the age difference between the offender and the child does not exceed three years.

Article 187 para. 4 CP provides separate penalties for instances where there is a misconception of a child's age:

Art. 187, para. 4: Any person who acts under the misconception that a child is 16 years of age or older (but would not have had due care been exercised) will be subject to a custodial sentence not exceeding three years or to a monetary penalty.

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



See Swiss Criminal Code https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en

Swiss law regulates pornography involving minors and distinguishes between pornography depicting actual sexual acts with minors and "not actual" sexual acts with minors (which includes virtual, computer-generated, or simulated depictions).

The Swiss Criminal Code contains several provisions addressing different aspects of child pornography and CSAM, all contained in Article 197 CP:

Showing Pornography to Minors

Art. 197 para. 1: Any person who offers, shows, makes available or makes accessible pornography to a person under the age of 16 years is liable to a custodial sentence not exceeding three years or to a monetary penalty.

Recruiting Minors for Pornographic Performances

Art. 197 para. 3: Any person who recruits a person under the age of 18 years to take part in a pornographic performance or any person who coerces, threatens or in any other way induces that person to do so is liable to a custodial sentence not exceeding three years or to a monetary penalty.

Production and Distribution of Pornography Depicting Sexual Acts with Minors

Art. 197 para. 4: Any person who manufactures, imports, keeps in storage, puts into circulation, promotes, exhibits, offers, shows, makes available or makes accessible or acquires or procures for himself or for another by electronic or other means pornographic content depicting sexual acts with animals or non-actual sexual acts with minors is liable to a custodial sentence not exceeding three years or to a monetary penalty.

The penalty for violations of para. 4 is a custodial sentence not exceeding three years or a monetary penalty.

Art. 197 para. 5: The penalty is a custodial sentence not exceeding five years or a monetary penalty if the content described in para. 4 relates to actual acts that show:

- a. sexual acts with animals;
- b. sexual acts with minors.

Possession and Consumption Offenses

Article 197 para. 5b CP criminalizes possession for personal use of pornography depicting non-actual sexual acts with minors:

Art. 197 para. 5b: Any person who consumes or possesses for his or her own use or acquires or procures for himself or herself by electronic means pornographic content depicting sexual acts with animals or acts of violence between adults or non-actual sexual acts with minors is liable to a custodial sentence not exceeding one year or to a monetary penalty.

Article 197 para. 5 CP specifically criminalizes possession and consumption of pornography depicting actual sexual acts with minors:

Art. 197 para. 5: Any person who consumes or possesses for his or her own use or acquires or procures for himself or herself by electronic means pornographic content



which relates to actual acts and which shows sexual acts with minors is liable to a custodial sentence not exceeding three years or to a monetary penalty.

Confiscation

Article 197 para. 6 CP provides for confiscation of items used in pornography offenses.

- 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>)**

See Swiss Criminal Code https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en

Swiss law explicitly covers "not actual sexual acts with minors," which includes virtual, computer-generated, or AI-generated depictions of sexual acts with minors.

Article 197 para. 4 CP criminalizes the production, distribution, and possession of pornography depicting "not actual" sexual acts with minors:

Art. 197 para. 4: Any person who manufactures, imports, keeps in storage, puts into circulation, promotes, exhibits, offers, shows, makes available or makes accessible or acquires or procures for himself or for another by electronic or other means pornographic content depicting sexual acts with animals or acts of violence between adults or non-actual sexual acts with minors is liable to a custodial sentence not exceeding three years or to a monetary penalty.

- 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>)**

See Swiss Criminal Code https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en

Swiss law does not have a specific statutory offense explicitly labeled as "grooming" or "enticement." However, Swiss criminal law addresses conduct that would constitute grooming or enticement through offenses that criminalize inducing minors into sexual acts and recruiting minors for pornographic performances.

Inducing Children into Sexual Acts

Article 187 paras. 1 CP criminalizes inducing a child under 16 into a sexual act:

Art. 187 para. 1: Any person who induces a child under 16 years of age to carry out a sexual act or who involves the child in such an act is liable to a custodial sentence not exceeding five years or to a monetary penalty. Penalties shall be between one and five years for persons inducing children under the age of 12 (see Art. 187 para 1bis)

Recruiting Minors for Pornographic Performances

Article 197 para. 3 CP criminalizes recruiting a minor to participate in a pornographic performance:

Art. 197 para. 3: Any person who recruits a person under the age of 18 years to take part in a pornographic performance or any person who coerces, threatens or in any other way induces that person to do so is liable to a custodial sentence not exceeding three years or to a monetary penalty.



Sexual Coercion

If coercion is involved in grooming or enticement, Article 189 CP on sexual coercion applies:

Art. 189 para. 1: Any person who coerces a person to commit or submit to an act similar to sexual intercourse or any other sexual act, namely by threatening the victim or a person close to the victim with imminent serious risk to life, limb, honor or property, or by making use of the victim's fear of such danger, is liable to a custodial sentence not exceeding ten years or to a monetary penalty.

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

See Swiss Criminal Code https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en

The age of consent for sexual activity in Switzerland is 16 years. Sexual acts with persons under 16 are criminalized under Article 187 CP, with specific gradations:

Article 187 para. 1 CP establishes the general age of consent at 16:

Art. 187 para. 1: Any person who carries out a sexual act with a child under 16 years of age, any person who involves such a child in a sexual act, is liable to a custodial sentence not exceeding five years or to a monetary penalty.

Enhanced penalties apply if the child is under 12 years of age (Article 187 para. 1bis CP).

A close-in-age exception applies under Article 187 para. 2 CP, which provides that no penalty applies if the age difference between the offender and the child does not exceed three years.

Additionally, Article 188 CP criminalizes sexual acts with dependent minors aged 16-17 where a position of dependency is exploited:

Art. 188 para. 1: Any person who carries out a sexual act with a dependent person who is his or her child, stepchild, foster child, or any person who is his or her pupil, apprentice or employee or who is dependent on him or her in some other way, or who involves such a person in a sexual act, if the child is under 18 years of age, is liable to a custodial sentence not exceeding three years or to a monetary penalty.

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>)

Swiss law does not have a specific statutory definition of "sextortion." However, conduct that would constitute sextortion—extorting money or sexual favors from a child by threatening to share sexually explicit images or child sexual abuse material (CSAM)—is addressed through multiple provisions CP that criminalize both coercion/extortion and offenses related to child pornography and CSAM.

Sexual Coercion

See Swiss Criminal Code: https://www.fedlex.admin.ch/eli/cc/54/757_781_799/fr#fn-d1024772e12924



Where the perpetrator threatens to share sexually explicit images or CSAM in order to coerce a child into sexual acts or favors, Article 189 CP applies:

Art. 189 para. 1: Any person who coerces a person to commit or submit to an act similar to sexual intercourse or any other sexual act, namely by threatening the victim or a person close to the victim with imminent serious risk to life, limb, honor or property, or by making use of the victim's fear of such danger, is liable to a custodial sentence not exceeding ten years or to a monetary penalty.

Article 189 para. 3 CP provides for enhanced penalties where the perpetrator acts in a particularly cruel manner or exploits a position of dependency:

Art. 189 para. 2: In especially serious cases, and in particular where the offender acts in a cruel manner towards the victim or is acting in concert with others, a custodial sentence of not less than one year may be imposed.

Extortion

Where the perpetrator threatens to share sexually explicit images or CSAM in order to extort money or other economic benefits, Article 156 CP on extortion applies:

Art. 156: Any person who with a view to securing an unlawful gain for himself or another causes a person by the use of force or the threat of serious harm to behave in such a way as to cause financial loss to himself or to another is liable to a custodial sentence not exceeding five years or to a monetary penalty.

Coercion

Additionally, Article 181 CP on general coercion may apply:

Art. 181: Any person who by the use of force or the threat of serious harm, or by restricting another's freedom of action in some other way compels him to do, not do or allow something to be done is liable to a custodial sentence not exceeding three years or to a monetary penalty.

https://www.fedlex.admin.ch/eli/cc/54/757_781_799/fr?print=true&printId=%23art_181

Pornography Involving Minors

The creation, possession, or distribution of sexually explicit images or CSAM that would be used in sextortion threats is separately criminalized under Article 197 CP. The relevant provisions of Article 197 CP are set out in detail above under the "child pornography / child sexual abuse material (CSAM)" section 1(e).

Extraterritorial Jurisdiction

Switzerland can exercise jurisdiction over child-related sexual offenses, including qualified pornography offenses involving minors, even when committed abroad, if the offender is present in Switzerland and is not extradited.

Article 5 para. 1 (c) CP provides:

Art. 5, para. 1 (c): This Code also applies to any person who commits an offence abroad that Switzerland is obliged to prosecute by virtue of an international agreement if: [...] c. at the time of commission of the offence or thereafter, he is present in Switzerland and he is not being extradited and provided the act is also liable to prosecution at the place of commission or the place of commission does not fall under the jurisdiction of any state. If the legislation of the place of commission is more lenient, that legislation must be applied.



Article 6 is reserved.

Article 5 paragraph 1 (a–c) CP establishes a very broadly framed form of universal jurisdiction for certain sexual offences against minors and for child pornography committed abroad. Paragraph 1 (c), in particular, covers child pornography offences, such as the production, distribution and facilitation of pornographic material involving minors or persons who appear to be under 18, as well as the recruitment of minors for pornographic performances (Art. 197 para. 3–4 CP). Taken together with letters (a), (b) and (abis), the provision thus extends Swiss jurisdiction to sexual acts with dependants (Art. 188 CP), sexual acts with children (Art. 187 CP) and sexual acts with minors against remuneration (Art. 196 CP).

Jurisdiction is conditional only on the alleged offender being present in Switzerland at the time of the proceedings and not being extradited. Unlike Article 6 CP, Article 5 dispenses with both the requirement of double criminality and the application of the *lex mitior* (more favorable law): Swiss criminal law applies even where the conduct is not punishable at the place of commission and even if foreign law would be more lenient. This unilateral and highly expansive form of universal jurisdiction, which goes beyond what is required by the relevant international instruments, is widely criticised in Swiss doctrine as excessive and potentially problematic from the perspective of international law and individual legal certainty. Article 6 CP remains reserved.

This provision is particularly relevant for pornography offenses under Article 197 para. 5–7 CP (qualified pornography involving actual sexual acts with minors).

https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en

Summary

While "sextortion" is not a defined term in Swiss law, the conduct is comprehensively addressed through the combination of provisions on sexual coercion (Art. 189 CP), extortion (Art. 156 CP), general coercion (Art. 181 CP), and pornography involving minors (Art. 197 CP). These provisions apply cumulatively, meaning a perpetrator engaging in sextortion could face prosecution under multiple articles.

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

Swiss law does not contain an explicit statutory requirement that mandates online platforms to review, screen, moderate, or detect content to identify child pornography or child sexual abuse material (CSAM). However, several CP provisions create criminal liability that may require platforms to implement such measures in practice.

Criminal Prohibitions Creating Implicit Obligations

Article 197 CP prohibits making child pornography or CSAM available to others, including through electronic means.

The relevant provisions of Article 197 CP have been set out in full in section 1 above. The key



prohibitions include:

- Article 197 para. 1: Prohibits offering, showing, making available, or making accessible pornography to persons under 16.
- Article 197 para. 4: Criminalizes manufacturing, importing, keeping in storage, putting into circulation, promoting, exhibiting, offering, showing, making available, making accessible, or acquiring by electronic means pornographic content depicting sexual acts with animals or acts of violence or non-actual sexual acts with minors.
- Article 197 para. 5: Provides enhanced penalties for content depicting actual sexual acts with minors.

Practical Implications for Online Platforms

Given these criminal prohibitions, online platforms face potential liability if they "make accessible" or "make available" CSAM through their services. The terms "make accessible" and "make available" in Article 197 CP are broad and could encompass platform activities that host or facilitate the distribution of CSAM.

While there is no explicit statutory mandate requiring platforms to implement specific content moderation processes, platforms must take measures reasonably necessary to prevent the hosting or distribution of CSAM in order to avoid criminal liability under Article 197 CP.

Content review, screening, moderation, and detection systems are legally prudent measures that platforms should employ to:

- Prevent making CSAM "accessible" or "available" through their services
- Demonstrate good faith efforts to comply with criminal law prohibitions
- Mitigate potential criminal exposure under Article 197 CP

Constitutional and International Obligations

Switzerland's Constitution and international obligations further support the expectation that platforms implement protective measures.

Article 11 para. 1 of the Swiss Federal Constitution (Cst) establishes special constitutional protection for children and young persons:

Art. 11, para. 1: Children and young persons have the right to special protection of their integrity and to the encouragement of their development. They may personally exercise their rights to the extent that they are capable of judgement.

https://www.fedlex.admin.ch/eli/cc/1999/404/en#art_11

Additionally, Switzerland's obligations under the UN Convention on the Rights of the Child (UNCRC) ([Convention on the Rights of the Child](#)) and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) ([Lanzarote Convention - Children's Rights](#)) require implementing measures for the detection, reporting, and investigation of child abuse, which includes child sexual abuse material.

Summary

While Swiss law does not impose an explicit statutory mandate requiring online platforms to review, screen, moderate, or detect CSAM, the criminal prohibitions in Article 197, as well as Switzerland's obligations under the UNCRC and Lanzarote Convention, create strong incentives for platforms to implement such measures. Platforms that fail to take reasonable



steps to prevent the availability of CSAM on their services risk criminal liability. Therefore, implementing content detection and moderation systems is both legally prudent and practically necessary for compliance with Swiss law.

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

Swiss law does not contain an explicit statutory requirement mandating that online platforms review, screen, moderate, or detect content to identify enticement, grooming, or sextortion of children. However, Switzerland's constitutional obligations to protect children and its international commitments create expectations that platforms implement reasonable preventive and detection measures.

Article 11 para. 1 Cst. ensures special protection for children's integrity (full text provided above).

Switzerland's obligations under the UNCRC require measures for detection, reporting, referral, investigation, and judicial intervention regarding child abuse.

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), to which Switzerland is a party, requires States to take measures to prevent all forms of sexual exploitation and sexual abuse of children.

While grooming, enticement, and sextortion offenses are addressed through the criminal provisions described above (Articles 187, 189, 197 CP), there is no explicit statutory requirement mandating platforms to monitor for such conduct.

However, these constitutional norms and international obligations underpin expectations that platforms implement reasonable preventive and detection measures to protect children, including identifying grooming, enticement, or sextortion and facilitating reporting to authorities.

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

Swiss law does not contain an explicit general statutory duty requiring online platforms to report child pornography, CSAM, enticement, grooming, or sextortion to law enforcement or government agencies.

Article 362 CP contains coordination and reporting duties for authorities regarding pornography produced or imported from abroad. This provision obligates investigative authorities to inform the federal central office responsible for combating pornography.

Art. 362: If the cantonal prosecuting authorities commence an investigation into an offence under Article 197, they shall inform the central federal office designated for this purpose. In cases involving pornography produced or imported from abroad, they shall request the assistance of the central federal office.

https://www.fedlex.admin.ch/eli/cc/54/757_781_799/fr#art_362



This provision is directed at authorities, not private platforms.

While there is no explicit statutory general duty for platforms to report CSAM to an authority or a nongovernmental organization, in practice, reporting to police is consistent with Switzerland's UN Convention obligations to provide measures for detection, reporting, and referral of child abuse cases and with constitutional child protection requirements.

If a platform becomes aware of CSAM on its system, prompt reporting to law enforcement aligns with these obligations and mitigates criminal exposure under Article 197 CP by demonstrating cooperation and enabling seizure and confiscation under Article 197 para. 6 CP.

https://www.fedlex.admin.ch/eli/cc/54/757_781_799/fr#art_197_a

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

Swiss law does not contain an explicit statutory requirement mandating online platforms to remove or take down child pornography, CSAM, enticement, grooming, or sextortion content. However, the criminal prohibitions in the Swiss Criminal Code create a practical obligation to remove such content promptly.

Article 197 CP prohibits "making accessible" or "making available" pornography depicting sexual acts with minors. The relevant provisions have been set out in full above.

Once a platform becomes aware of CSAM on its service, continued hosting of such content could constitute ongoing violations of Article 197 CP, as the platform would be "making accessible" the prohibited material.

Article 197 para. 6 CP provides for confiscation of items related to pornography offenses:

Art. 197, para. 6: Any person who carries out an act in terms of para. 4, 5, or 5bis and who in so doing has kept, entered or recorded content on a data carrier or has used installations, obtains, has conveyed or has imported items is liable to their confiscation.

Platforms must ensure such content is promptly removed to avoid ongoing "making accessible" or "making available" violations and potential liability. Removal is therefore required once identified or notified; failure to remove risks criminal exposure.

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

Swiss law does not contain an explicit statutory requirement mandating that online platforms use human moderators to screen or moderate for child pornography or CSAM.

However, given the criminal prohibitions under Article 197 CP and the need for accurate assessment of content—including consideration of exceptions such as cultural or scientific value not being considered pornographic under Article 197 para. 9 CP—employing trained human moderators is a recommended measure to ensure compliant enforcement against CSAM and to avoid wrongful retention or dissemination.



Article 197 para. 9 CP provides:

Art. 197, para. 9: Objects or representations that have scientific or cultural value in terms of paras. 1-7 are not pornographic.

https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en?print=true&printId=%23art_197

- 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**

As discussed in part (d) above, prompt removal is necessary to avoid committing the offenses of making such content accessible or distributing it under Article 197.

Notifications from victims, nongovernmental organizations, law enforcement, or government agencies should trigger immediate takedown and preservation of evidence for law enforcement, consistent with UN Convention obligations regarding reporting and referral of child abuse cases.

While there is no explicit statutory mandate requiring removal upon notification, failure to remove CSAM after notification would constitute continued violations of Article 197 CP and potential criminal liability.

- 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.**

Swiss law does not impose a statutory mandate requiring online platforms to use specific technologies such as hashing technology or artificial intelligence/machine learning tools to detect, remove, block, or take down child pornography, CSAM, enticement, grooming, or sextortion.

While hashing technology is not mandated by law, its use is consistent with the duty to prevent making CSAM "accessible" or "available" under Article 197. Hashing technology supports rapid identification and removal of known CSAM and cooperation with confiscation measures under Article 197 para. 6 CP.

Similarly, the use of AI or machine learning tools to detect CSAM, grooming, or sextortion is not legally mandated. However, such technologies can assist platforms in fulfilling their obligation to prevent making CSAM accessible and to detect prohibited conduct before it causes harm to children.

While Swiss law does not mandate specific technologies, platforms should implement appropriate technical measures—including hashing, AI/ML tools, and other detection systems—as part of their overall compliance strategy to prevent hosting and distribution of

CSAM and to protect children from online sexual exploitation.

- 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.?**

The provided sources do not set differential obligations by platform size or user numbers. Criminal prohibitions in Art. 197 CP apply to any actor who makes CSAM accessible, distributes, stores, imports, possesses, etc. Public exhibition or unsolicited offering carries separate sanctions (Art. 197 para. 2 CP).

Coordination duties in Art. 362 CP apply to investigative authorities, not platforms. UNCRC obligations (Art. 19) apply at the state policy level rather than differentiating private platforms by size. Therefore, all platforms should implement robust measures proportionate to their risk profile to prevent and remove CSAM and related exploitation.

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 is no Swiss federal statute or regulation that imposes a general, explicit duty on all online platforms to implement age verification before granting access to their services. However, platforms that make pornographic content accessible must ensure they do not offer, show, or otherwise make such content accessible to persons under 16, as failure to do so is a criminal offense. This creates a practical compliance need for reliable age verification or age-gating measures where a platform hosts or distributes pornographic content.

Criminal Law Baseline - Pornography and Minors

Article 197 para. 1 CP makes it a criminal offense to offer, show, make available, or make accessible pornography to persons under the age of 16:

Art. 197 para. 1: Any person who offers, shows, makes available or makes accessible pornography to a person under the age of 16 years is liable to a custodial sentence not exceeding three years or to a monetary penalty.

The Swiss Federal Supreme Court has characterized these provisions as primarily serving preventive youth protection and as concretizing Article 11 Cst, which establishes children's right to special protection of their integrity.

Practically, platforms distributing pornographic material must implement measures sufficient to prevent minors' access. While the law does not prescribe "age verification" as a specifically named method, any effective control mechanism (such as age gating or age assurance) is recommended to avoid "making accessible" to persons under 16 and the associated criminal liability.

Constitutional and International Framework

Article 11 para. 1 Cst provides:

Art. 11, para. 1: Children and young persons have the right to special protection of their integrity and to the encouragement of their development. They may personally exercise their rights to the extent that they are capable of judgement.

https://www.fedlex.admin.ch/eli/cc/1999/404/en#art_11

Additionally, Switzerland's obligations under the UNCRC require that measures affecting children must prioritize their best interests.

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

Article 3 of the UNCRC provides:

Art. 3 para. 1: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

Art. 3 para. 2: "States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures."

Art. 3 para. 3: "States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."

These constitutional and international norms underpin expectations that platforms adopt proportionate protection measures, which can include age verification, where minors may otherwise be exposed to harmful content.

Parameters of the Process

No Swiss federal statute or regulation prescribes specific technical parameters or methods for age verification technology. None of the applicable provisions dictate requirements such as identity document checks, third-party verification systems, or specific technical standards.

Platforms therefore have discretion to choose proportionate and effective methods consistent with their data protection obligations. The key parameter derived from criminal law is preventing access by persons under 16 to pornographic content. Any process a platform designs must reliably screen out users under 16 from such content to avoid committing the "making accessible" offense under Article 197, para. 1.

For material depicting sexual acts with minors (child sexual abuse material), additional prohibitions on manufacture, distribution, possession, and confiscation apply under Article 197 para. 4-6 CP. Platforms must not host or distribute such material at all and must remove it and cooperate with authorities if encountered.

Data Protection Considerations

If a platform uses identity or age-assurance technologies, it must observe general data protection duties under the Swiss Federal Act on Data Protection (FADP) and the Data Protection Ordinance (DPO), including principles of transparency, proportionality, and data minimization.

The Swiss Federal Act on Data Protection is available at:

<https://www.fedlex.admin.ch/eli/cc/2022/491/en>

The Swiss Data Protection Ordinance is available at:

<https://www.fedlex.admin.ch/eli/cc/2022/568/en>

Enforcement and Management

Enforcement of age verification requirements is achieved through criminal liability if a platform's operations result in minors being able to access pornographic content. The Swiss Federal Supreme Court has emphasized the preventive youth-protection purpose of Article 197. There is no separate regulatory enforcement scheme for age verification; enforcement occurs through criminal prosecution if violations occur.

Differing Requirements by Platform Type

No Swiss statute or regulation sets different obligations based on platform size, number of users, or other scale-based thresholds. The decisive factor is the type of content and service offered. If a platform makes pornographic content accessible, it must ensure that persons under 16 cannot access such content, regardless of the platform's size or number of users. For child sexual abuse material or "hard pornography," hosting or distribution is categorically prohibited regardless of platform size.

Summary

While there is no general legal requirement for all online platforms to implement age verification, platforms that host or distribute pornographic content must implement effective measures to prevent access by persons under 16 to avoid criminal liability under Article 197 CP. The specific technical means of age verification are not prescribed by law, allowing platforms to choose appropriate methods while observing data protection principles.

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?

There is no Swiss federal statute that generally obliges online platforms to obtain parental consent before a minor can use their services. Legal obligations in Switzerland are content-driven and context-specific rather than based on a blanket parental consent requirement.

No General Parental Consent Mandate

Swiss law does not impose a general requirement that online platforms obtain parental consent before allowing minors to access or use their services. The obligations that do exist are focused on preventing minors from accessing harmful content, particularly pornography, rather than on obtaining parental consent for platform access.

Content-Based Criminal Constraints

As discussed above, Article 197 para. 1 CP makes it a criminal offense to offer, show, make available, or make accessible pornography to persons under 16. Platforms that host or distribute pornographic content must ensure minors under 16 cannot access it to avoid criminal liability.

The statute does not require parental consent as the control mechanism. Rather, any effective method that prevents access by persons under 16 is necessary to avoid liability. Parental consent does not provide a legal workaround that would allow minors under 16 to access pornographic content; the prohibition is absolute.

Article 197 para. 2 addresses public display of pornography:

Art. 197 para. 2: Any person who publicly shows or displays pornographic pictures or objects or offers them to another against his wishes or any person who makes available or exhibits

broadcast or television programs of such content or shows them to the public is liable to a fine.
https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en#art_197

For material depicting sexual acts with minors and other forms of qualified pornography, more stringent prohibitions apply under Article 197 para. 4-6 CP. Hosting or distributing such content is categorically prohibited, and items are subject to confiscation. Parental consent is irrelevant in these cases, as the content cannot be lawfully accessible at all.

Personality Rights and Consent Framework

Swiss civil law provides a framework for protecting personality rights that includes consent as a potential justification for actions that might otherwise interfere with personality rights.

Article 28 of the Swiss Civil Code addresses protection of personality:

Art. 28 para. 1: "Any person whose personality rights are unlawfully infringed may petition the court for protection against all those causing the infringement."

Art. 28 para. 2: "An infringement is unlawful unless it is justified by the consent of the person whose rights are infringed or by an overriding private or public interest or by law."

https://www.fedlex.admin.ch/eli/cc/24/233_245_233/en#art_28

This provision frames consent as a legal justification for actions affecting personality rights but does not itself impose a duty on platforms to obtain parental consent before allowing service access.

Article 296 CC addresses parental authority:

Art. 296 para. 1: Children are subject to parental authority until they reach the age of majority.

Art. 296 para. 2: Parental authority entails the right to determine the child's residence.

Art. 296 para. 3: Parental authority also includes the right to raise and educate the child and the duty to supervise the child. In so doing, the parents shall take due account of the child's developing maturity.

https://www.fedlex.admin.ch/eli/cc/24/233_245_233/en#art_296

Children are under parental authority until they reach the age of majority (18 years). Parental authority serves the child's welfare, and in practice, parents make decisions in the child's best interests. However, these provisions do not create a statutory requirement for platforms to collect parental consent for account creation or service use.

If a platform's operations could constitute an interference with a child's personality rights—for example, certain data uses or disclosures beyond what is contractually necessary—consent can serve as a legal justification under Article 28, para. 2. For minors, such consent may need to be obtained from the holders of parental authority to be valid, depending on the child's maturity and the nature of the interference.

However, the Swiss Civil Code does not specify age thresholds or procedural parameters for obtaining or managing parental consent in an online setting. Platforms may choose to implement parental consent mechanisms as a prudent measure where actions may interfere with a child's personality rights, but this is not mandated by statute.

Age Thresholds

The relevant age threshold in criminal law applicable to platforms hosting pornographic content is 16 years. Platforms must ensure such content is not accessible to users under 16.

The law does not specify parental consent as an allowed exception to this prohibition. Parental consent does not legalize access for persons under 16 to pornography. The parameter is outcome-focused—preventing access—rather than process-focused with a mandated consent method.

No Differential Requirements by Platform Type or Size

No differential obligation based on platform size or number of users appears in Swiss law. The applicability of requirements turns on service characteristics:

- Platforms that make pornographic content available must implement effective measures to prevent access by persons under 16. Parental consent is not a substitute for this prohibition.
- Platforms that do not provide pornographic content are not under a criminal law duty tied to parental consent for access. They may still use parental consent mechanisms as a prudent measure where actions may interfere with a child's personality rights, but this is not mandated by statute.

Summary

Swiss law does not impose a general requirement for online platforms to obtain parental consent before a child uses their services. The primary legal obligations are content-based: platforms must prevent persons under 16 from accessing pornographic content, and they must not host or distribute child sexual abuse material. These obligations exist regardless of whether parental consent is obtained. While consent may serve as a justification for certain actions affecting personality rights under civil law, there is no platform-wide mandate setting age thresholds or technical parameters for parental consent collection. See Article 197 CP and Articles 28 and 296 CC referenced 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:

Yes. Swiss law provides multiple legal remedies for children who have been victimized by online child sexual exploitation, including children victimized by the distribution of child pornography or CSAM imagery in which they are depicted, and children victimized by enticement, grooming, or sextortion. These remedies include both civil actions and criminal proceedings, as well as government-funded victim support services.

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

Yes. Swiss civil law provides personality rights protections that allow a child whose personality has been unlawfully infringed to bring an action to stop publication of pornography or CSAM imagery.

Article 28 CC provides:

Art. 28 para. 1: "Any person whose personality rights are unlawfully infringed may petition the court for protection against all those causing the infringement."



Art. 28 para. 2: "An infringement is unlawful unless it is justified by the consent of the person whose rights are infringed or by an overriding private or public interest or by law."
https://www.fedlex.admin.ch/eli/cc/24/233_245_233/en#art_28

A child whose personality is unlawfully infringed may bring an action against anyone who participates in the infringement, which includes online platforms facilitating publication.

Article 28a CC specifies the available remedies:

Art. 28a para. 1: The claimant may request the court:

1. to prohibit a threatened infringement;
2. to remedy an existing infringement;
3. to establish the unlawfulness of an infringement that continues to be disruptive/have an offensive effect.

Art. 28a para. 2: In particular, the claimant may request that a correction or the judgment be communicated to third parties or published.

https://www.fedlex.admin.ch/eli/cc/24/233_245_233/en#art_28_a

These provisions allow a child victim to seek injunctive relief to prohibit a threatened infringement and to eliminate an existing infringement. Courts may also order that a correction or the judgment be communicated or published to third parties, which is useful to counter dissemination.

In the context of CSAM, there is no valid justification for the infringement under Article 28 para. 2 CC, and the criminal prohibitions in Article 197 CP confirm the unlawfulness of such content.

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

Yes. Civil court orders to "remedy an existing infringement" under Article 28a, para. 1 can require an online platform to remove the imagery from its systems and to take active steps to prevent further dissemination.

Additionally, under Swiss criminal law, items constituting qualified pornography or CSAM under Article 197 para. 4 and 5 CP are subject to confiscation. Platforms must not host such content and must cooperate with authorities.

Article 197 para. 6 CP provides:

Art. 197, para. 6: Any person who carries out an act in terms of para. 4, 5, or 5bis and who in so doing has kept, entered or recorded content on a data carrier or has used installations, obtains, has conveyed or has imported items is liable to their confiscation.

Continued availability of such content risks criminal exposure for "making accessible" or "putting into circulation" under Article 197 para. 1, 4, and 5 CP.

https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en?print=true&printId=%23art_197

c. An ability to get an injunction or other court order against the Online Platform to stop them



from publishing the pornography or imagery?

Yes. Personality rights actions under Articles 28 and 28a CC provide for injunctions to prohibit ongoing or threatened infringements and to require removal of content.

As set out above, Article 28a para. 1 CC allows a claimant to request the court to prohibit a threatened infringement and to remedy an existing infringement. Courts may also order that a correction or the judgment be communicated to third parties or published, which can help mitigate ongoing harm.

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?

Yes. The same personality rights injunctions available against platforms can be directed at the original poster to prohibit future infringements.

Under Articles 28 and 28a of the Swiss Civil Code, a court can forbid the person who posted the content from further posting or dissemination, regardless of the venue or platform used.

Criminal Proceedings Protections

In criminal proceedings, special protective measures are available for child victims. Article 117 CrimPC provides:

Art. 117 para. 1-2: Where there is a threat of serious harm to the welfare of a victim who is particularly vulnerable, particularly in the case of a child or a victim of a sexual offence, the criminal justice authorities shall take special protective measures. In doing so, they shall take account of the interests of the victim in relation to the general interest in prosecuting criminal offences.

The criminal justice authorities may in particular order that:

- a. questioning shall be carried out under special conditions;
- b. proceedings involving public access to the proceedings shall be held in camera;
- c. the public or specific persons shall be excluded from all or part of the main hearing;
- d. the main hearing shall be held behind closed doors;
- e. personal details of the victim shall not be disclosed.

https://www.fedlex.admin.ch/eli/cc/2010/267/en#art_117

These measures protect the victim during proceedings rather than constituting publication bans per se, but they demonstrate the framework of protections available to child victims.

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?

Yes. Swiss law provides multiple avenues for child victims to seek financial damages or monetary recovery from offenders.

Filing Civil Claims in Criminal Proceedings

Article 122 CrimPC allows victims to assert civil claims within criminal proceedings:

1. The person suffering harm may bring civil claims based on the offence as a private claimant in the criminal proceedings.
2. The relatives of the victim have the same right provided they bring their own civil



claims against the accused.

3. The civil proceedings become pending when a declaration in accordance with Article 119 paragraph 2 letter b is made.
4. If a private claimant withdraws the civil claim before the end of the trial before the court of first instance, they may file the claim again in civil proceedings.

https://www.fedlex.admin.ch/eli/cc/2010/267/en#art_122

The injured person may assert civil claims arising from the offense within the criminal case. Relatives may also assert their own civil claims. If a civil claim is withdrawn, the right to pursue it later in civil court is preserved.

Civil Damages and Satisfaction

Article 28a para. 3 CC expressly preserves actions for damages, satisfaction, and turning over of profits in addition to injunctive relief:

Art. 28a para. 3: "Claims for damages and satisfaction and for the surrender of a gain in accordance with the provisions on agency without authority are reserved."

https://www.fedlex.admin.ch/eli/cc/24/233_245_233/en#art_28_a

For bodily injury cases, Article 47 of the Swiss Code of Obligations specifically authorizes satisfaction (monetary compensation for non-economic harm):

Art. 47: In the case of death or injury to the person, the court may, taking account of the circumstances, award the injured party or relatives of the deceased an appropriate sum by way of satisfaction.

https://www.fedlex.admin.ch/eli/cc/27/317_321_377/en#art_47

This provision is often invoked in cases where sexual exploitation has caused mental injury to the victim.

- 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?**

Yes. Switzerland provides government-funded victim support services under the Federal Act on Support for the Victims of Crime (Victim Support Act).

Victim Support Services

Article 8 of the Victim Support Act establishes obligations for authorities to inform victims about victim assistance:

Art. 8, para. 1: Authorities with responsibilities under this Act must inform victims about victim assistance and, subject to the conditions in para. 3, forward their contact details to a counselling centre.

Art. 8, para. 2: Swiss representations may assist Swiss-resident victims of crimes committed abroad by providing information and referral to Swiss counselling centres.

Art. 8, para. 3: These obligations also apply to relatives of victims.

https://www.fedlex.admin.ch/eli/cc/2008/232/en#art_8

Articles 12 to 16 of the Victim Support Act specifies the services provided by counselling centers:



Art. 12 Counselling

https://www.fedlex.admin.ch/eli/cc/2008/232/en#art_12

1. The counselling centers shall provide counselling to victims and their families and support them in exercising their rights.
2. If the counselling centers receive a report in accordance with Article 8 paragraph 1 or 2, they shall contact the victim or the victim's relatives.

Art. 13 Emergency assistance and longer-term assistance

https://www.fedlex.admin.ch/eli/cc/2008/232/en#art_13

1. The counselling centers shall provide victims and their relatives with immediate assistance for the most urgent needs that arise as a result of the offence (emergency assistance).
2. They shall provide victims and their relatives with additional assistance as necessary until the health of the person concerned has stabilized and until the other consequences of the offence have been resolved or compensated for as far as possible (longer-term assistance).
3. The counselling centers may arrange for emergency and longer-term assistance to be provided by third parties.

Art. 14 Scope of services

https://www.fedlex.admin.ch/eli/cc/2008/232/en#art_14

1. The services include the appropriate medical, psychological, social, material and legal assistance in Switzerland that has become necessary as a result of the offence. If required, the counselling centres shall provide emergency accommodation for victims or their relatives.
2. A person resident abroad who is the victim of a criminal offence in Switzerland is also entitled to contributions towards the costs of treatment at their place of residence.

Art. 15 Access to the counselling centers

https://www.fedlex.admin.ch/eli/cc/2008/232/en#art_15

1. The cantons shall ensure that the victim and his or her relatives can receive emergency assistance within a reasonable period of time.
2. The services of the counselling centres may be claimed regardless of when the offence was committed.
3. Victims and their relatives may contact a counselling centre of their choice.

Art. 16 Contributions to the cost of longer-term assistance from third parties

https://www.fedlex.admin.ch/eli/cc/2008/232/en#art_16

The costs of longer-term third-party assistance are covered as follows:

- a. in full if, in accordance with Article 6 paragraphs 1 and 2, the claimant's allowable income does not exceed twice the relevant amount for general living expenses;
- b. proportionately if the claimant's allowable income is between twice and four times the relevant amount for general living expenses in accordance with Article 6 paragraphs 1 and 2.

These services are publicly funded and include psychosocial support and guidance in pursuing legal claims.



The Federal Act on Support for the Victims of Crime is available at:
<https://www.fedlex.admin.ch/eli/cc/2008/232/en>

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

Swiss criminal procedure law provides victims with the right to information about key procedural developments.

Victim's Rights to Information

Article 117 para. 1 CrimPC establishes the framework for victim protections, which includes the right to be informed under other provisions of the Code.

CrimPC contains provisions requiring that victims be informed about procedural developments. These provisions support notifying victims about key events such as arrests and charging decisions in cases where they are the victim.

For child victims under 18, additional protections apply in criminal proceedings under Article 117 para. 2 CrimPC.

Additionally, the Victim Support Act imposes duties on authorities to inform victims about assistance and to connect them to counseling centers, as set out in Article 8.

Summary on Remedies

Swiss law provides comprehensive legal remedies for children victimized by online child sexual exploitation, including:

- Civil injunctions to stop publication and require removal of content (Art. 28 and 28a Swiss Civil Code)
- Court orders requiring platforms to take active steps to remove imagery (Art. 28a Swiss Civil Code)
- Protective orders prohibiting future posting by offenders (Art. 28 and 28a Swiss Civil Code)
- Financial damages and satisfaction claims in civil or criminal proceedings (Art. 28a Swiss Civil Code, Art. 47 CO, Art. 122 CrimPC)
- Government-funded victim support services (Victim Support Act)
- Information rights about criminal proceedings (Swiss Criminal Procedure Code, Victim Support Act)

These remedies are undergirded by the criminal law prohibitions in Article 197 CP, which confirm the unlawfulness of child pornography and CSAM and provide for confiscation of such materials.

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?

Swiss law does not contain a statute or regulation that explicitly mandates "Safety by



Design" as a named, pre-launch requirement for online platforms. However, the criminal prohibitions in the Swiss Criminal Code create practical obligations that effectively require platforms to incorporate protective measures.

Criminal Law Framework

The Swiss Criminal Code prohibits making pornography accessible to persons under 16 and criminalizes multiple acts relating to child sexual abuse material, including acquisition or possession "over electronic means."

For online platforms, this means that any design that allows distribution or access to CSAM, or makes pornography accessible to persons under 16, creates a risk that criminal conduct will occur through the service. Adopting built-in tools and processes to detect and prevent CSAM distribution and to prevent under-age access to pornography is therefore a practical compliance necessity, even though it is not labeled "Safety by Design" in law.

The relevant provisions of Article 197 CP have been set out in detail above. Key provisions include:

- Article 197, para. 1: Prohibits making pornography accessible to persons under 16
- Article 197, para. 4: Criminalizes producing, importing, storing, distributing, offering, showing, making accessible, or acquiring by electronic means pornographic content depicting sexual acts with animals, acts of violence, or non-actual sexual acts with minors
- Article 197, para. 5: Provides enhanced penalties when content depicts actual sexual acts with minors
- Article 197, para. 12: Provides that objects or representations with scientific or cultural value are not considered pornographic

Budapest Convention Framework

The Council of Europe Convention on Cybercrime (Budapest Convention), to which Switzerland is a party, requires criminalization of CSAM activities over computer systems.

Article 9, para. 1 of the Budapest Convention provides:

- Art. 9, para. 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."

Swiss implementation: <https://www.fedlex.admin.ch/eli/cc/2011/888/fr>

Council of Europe: <https://rm.coe.int/1680081561>

The Budapest Convention explicitly frames the online and IT context and underscores the need for platforms to have measures to prevent and detect such conduct via their systems.

While there is no explicit statutory pre-launch obligation naming "Safety by Design," platforms would otherwise risk immediate criminal violations upon commencing operations. For example, if users begin sharing CSAM or if minors access pornography through the platform, the platform operators could face criminal liability.

Prudent and compliant practice therefore requires implementing detection and prevention measures and age-gating controls before launch, to avoid enabling criminal acts via the platform from the first day of operation.

It is strongly recommended—and practically required for criminal law compliance—that platforms incorporate measures to prevent detection failures and distribution of CSAM and to restrict pornography to adults.

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

While not a formal, named "Safety by Design" mandate, criminal law constraints necessitate effective age controls for pornography and proactive CSAM detection and removal capabilities to avoid immediate exposure to Article 197 offenses and to align with the Budapest Convention's computer-system CSAM offenses.

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

The same criminal law applies continuously. If the platform is operational, measures must be implemented promptly to prevent ongoing violations, such as users distributing CSAM via the platform or minors accessing pornography.

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

Article 197 CP contains limited exceptions:

- Article 197 para. 9: Objects or representations with scientific or cultural value are not considered pornographic (Link: https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en#art_197)
- Article 197 para. 8 and 8bis: Narrow exceptions among minors or near-age peers for certain consensual content under strict conditions

https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en?print=true&printId=%23book_2%2Ftit_5%2Fivl_4

These limited exceptions do not relax platform obligations to prevent CSAM distribution and minor access to pornography at scale.

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"?



Enforcement and Sanctions Under Criminal Law

Acts involving CSAM via electronic means are criminally punishable. The Budapest Convention criminalizes manufacturing for distribution, offering, distributing or transmitting, procuring, and possessing child pornography via computer systems.

Platforms that enable such acts can face serious consequences:

- Criminal liability for individuals involved in platform operations
- Seizure of items and materials
- Confiscation and destruction of prohibited materials ordered by authorities

Article 197, para. 6 CP provides for confiscation of items related to pornography offenses (full text provided above).

https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en?print=true&printId=%23art_197

Making pornography accessible to persons under 16 triggers criminal liability under Article 197, para. 1 CP. Stronger penalties apply when the content depicts actual sexual acts with minors under Article 197, para. 5 CP.

https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en?print=true&printId=%23art_197

Article 135 CP addresses violent content, which may overlap with content moderation concerns:

Art. 135 para. 1: Any person who manufactures, imports, keeps in storage, puts into circulation, promotes, exhibits, offers, shows, makes available, makes accessible, acquires or procures by electronic or other means or possesses objects or representations that depict acts of cruelty or violence against humans or animals which do serious harm to human dignity and which have no cultural or scientific value worthy of protection is liable to a custodial sentence not exceeding three years or to a monetary penalty.

Art. 135 para. 2: If the objects or representations in terms of para. 1 depict actual events in which acts of cruelty or violence were committed against a person under the age of 18 years, a custodial sentence of not less than one year may be imposed.

Art. 135 para. 3: Objects or representations in terms of para. 1 and 2 are subject to confiscation.

https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en?print=true&printId=%23art_135

While distinct from CSAM, violent content provisions are relevant because combined content moderation and detection tools generally fall under platform compliance programs.

Monitoring and Management Expectations for Platforms

The following expectations derive from the criminal law framework described above:

Age-Gating and Access Controls: Platforms must implement age-gating, age verification, or access controls to prevent making pornography accessible to persons under 16. Clear labeling and warnings for pornographic content are necessary to avoid unprompted public offering contexts that would violate Article 197, paras. 1, 2, and 12.

Proactive Detection and Removal: Platforms must implement proactive detection and



swift removal or blocking of CSAM and bestiality content. This should include:

- User reporting channels
- Automated hashing and matching against known CSAM databases
- Moderation workflows

These measures ensure the platform does not host, make accessible, or transmit CSAM, aligning with the criminalization of such acts "over electronic means" under Article 197 CP.

Evidence Preservation and Reporting: When CSAM is detected, platforms should preserve evidence and report to competent authorities. This is consistent with enabling criminal investigations and avoiding continued distribution. Confiscation measures may be ordered by authorities under Article 197 para. 6 CP and Article 135, para. 3 CP.

Terms of Service and User Controls: Platforms should implement terms of service, user controls, and enforcement procedures that deter and sanction users who attempt to distribute prohibited content.

Context for Platform Self-Regulation

Child protection advocacy organizations in Switzerland have noted the lack of specific federal statutory measures against certain online harms beyond public awareness campaigns. This observation underscores the current reliance on criminal law enforcement and platform self-regulation to protect children, further supporting the adoption of "Safety by Design" principles by platforms.

Kinderschutz Schweiz position on platform regulation, available at:

<https://kinderschutz.ch/uber-uns/politische-arbeit/positionspapiere-stellungnahmen/plattformregulierung>

Summary

While Swiss law does not explicitly mandate "Safety by Design" as a named requirement, the criminal prohibitions in the Swiss Criminal Code and Switzerland's obligations under the Budapest Convention create practical obligations for online platforms to incorporate protective measures. Platforms must implement:

- Effective age controls to prevent persons under 16 from accessing pornography
- Proactive detection systems for CSAM
- Swift removal and blocking mechanisms
- User reporting channels
- Evidence preservation and cooperation with authorities
- Terms of service that prohibit and sanction distribution of prohibited content

Failure to implement such measures creates significant risk of criminal liability for platform operators under Articles 135 and 197 CP.