

Gaps in legislation against child abuse images in South East Asia and challenges

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End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes

Country report published by ECPAT International in 75 countries



ECPAT International releases its 2nd Edition of
AGENDA FOR ACTION
Examining countries around the world and
their policies and laws to protect against the
commercial sexual exploitation of children



End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes

Country report published by ECPAT International in 75 countries

- Includes review of national legislation against child pornography
- Understanding gaps and differences with standard international legal instruments such as OPSC , CoE Convention on cybercrime and CoE convention against child sexual exploitation and sexual abuse
- Recommendations and observations
- Advocacy on legal reforms and harmonisation



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1. Definition of child pornography

OPSC Article 2: “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes”

	Cambodia	Indonesia	Philippines	Thailand	Vietnam
Adequate definition of CP in domestic legislation	Definition of child pornography only partially compliant with OPSC Article 40 of the Law on Suppression of Human Trafficking and Sexual Exploitation “a visible material such as a photograph or videotape, including a material in electronic form, depicting a minor’s naked figure which excites or	No definition of child pornography	Definition fully compliant with OPSC	No definition of child pornography	No definition of child pornography

Illustration: Definition in the case of Malaysia

Sale, etc., of obscene books, etc.

292. Whoever—

- (a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever;
- (b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation;
- (c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner



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Definition contd.

- (d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in an act which is an offence under this section, or that any such obscene object can be procured from or through any person; or
- (e) offers, or attempts to do any act which is an offence under this section, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

Penal Code 115

Exception—This section does not extend to any book, pamphlet, writing, drawing, or painting kept or used bona fide for religious purposes or any representation sculptured, engraved, painted or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose



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Observations

- Built around obscenity clauses
- No distinction for child abuse images
- Does not link to viewing of images online
- Does not cover grooming offences
- No benchmark for judiciary- sentencing guidelines pretty weak for severe child abuse images

Challenges

- Open to interpretation
- False perception that obscenity laws and anti pornography laws will adequately cover child abuse materials
- Lack of understanding of issues related to sexual exploitation online
- Lack of drive (from civil society and states for legal harmonisation)



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1.1 “Any representation, by whatever means”

A child-safe definition of child pornography should include **visual**, **audio** and **written** representations of children.

	Cambodia	Indonesia	Philippines	Thailand	Vietnam
Visual	Yes	Yes	Yes	Yes	Yes
Audio	No	Yes	Yes	Yes	-
Written	No	Yes	Yes	Yes	-

1.2 Virtual child pornography

According to the *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual* covers the production and possession of pornographic material: consisting exclusively of **simulated representations or realistic images of a non-existent child**".

Domestic legislations criminalizing *virtual child pornography* :

	Cambodia	Indonesia	Philippines	Thailand	Vietnam
Virtual child pornography	No	No	Yes	No	No



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Observations



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2. Offences covered by legal standards

The Optional Protocol requires states parties to cover under their criminal or penal law, all acts of :

- producing
- distributing
- disseminating
- importing, exporting
- offering
- selling
- possessing for the above purposes child pornography.



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2.1 Offences covered by domestic legislation

	Cambodia	Indonesia	Philippines	Thailand	Vietnam
Producing	Yes	Yes	Yes	Yes	Yes
Distributing	Yes	Yes	Yes	Yes	Yes
Disseminating	Yes	Yes	Yes	Yes	Yes
Importing and exporting	Yes	Yes	Yes	Yes	Yes
Offering	Yes	Yes	Yes	Yes	Yes
Selling	Yes	Yes	Yes	Yes	Yes
Possessing for distributing etc.	Yes	Yes (mere possession)	Yes (mere possession)	Yes	Yes



- In relation to child pornography
- In relation to obscene materials

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Points to note

- Other than the Philippines, no countries define child abuse images (among the ones discussed)
- Criminalising mere possession applies to general obscene material, in some countries for the intent of distribution)
- Can apply to non real images (such as drawings, but not specific to children)
- Does not cover grooming offences
- Legislation linked to religious overtones

2.2 Mere possession of child pornography

Both the *Council of Europe Convention on Cybercrime* and the *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* cover mere possession of child pornography.

	Cambodia	Indonesia	Philippines	Thailand	Vietnam
Mere possession of child pornography	No	No	No	No	No



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2.3 Knowingly accessing child pornography

The *Council of Europe on the Protection of Children against Sexual Exploitation and Sexual Abuse* has established the offense of “**knowingly obtaining access, through information and communication technology, to child pornography**” (Art. 20-1 f). This offense covers cases of persons who intentionally access and view child pornography websites without downloading (e.g. those who access material in real-time)

	Cambodia	Indonesia	Philippines	Thailand	Vietnam
Knowingly accessing child pornography	No	No	Yes	No	No



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2.4 Solicitation of children for sexual purposes (grooming)

The *Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* criminalizes the intentional proposal, through information and communication technologies, of an adult to meet a child for engaging in sexual activities with him or her or to produce child pornography. This proposal should be followed by material acts leading to such a meeting. (Art. 23)

	Cambodia	Indonesia	Philippines	Thailand	Vietnam
Online solicitation (grooming)	No	No	Yes	No	No



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New technologies and Impacts

- Current trend in real time distribution of videos through On-demand streaming
- Peer to peer file sharing
- TOR and other encrypted networks

Challenges

- Cybercrime laws do not address viewing of materials that are not downloaded/stored/possessed
- Cybercrime laws in some cases (ex. Thailand gives specificity such as defining data as bits stored in computer systems, but fails to define dynamic content that is not stored)
- Lack of drive (from civil society and states for legal harmonisation)



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Q&A



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Thank you !

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exploitation of children***

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