

ASEAN Guidelines for harmonized and comprehensive national legislation against all forms of online child sexual exploitation and abuse

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Objectives & scope

- Guidelines provide for:
 - an explanation on the importance and meaning of legal standards
 - principles and key areas for legislation
 - Best practice example (where possible, from the region)
- Scope of the Guidelines set out in activities 1.2.1 – 1.2.4 RPA, Annex 3 RPA
- Spans across various legal fields, such as substantive criminal law, criminal procedure law, civil law, as well as private sector regulation

Tiered approach to OCSEA legislation

Tiered approach to OCSEA legislation to consider the different legislative stages
AMS are currently in:

- Tier 1: substantive and procedural criminal law provisions on OCSEA
- Tier 2: criminal procedure provisions for victim protection and compensation; obligations for companies offering digital products, platforms and services
- Tier 3: regulations for the financial sector, data protection, data retention

Tier 1: Substantive criminal law

- **Child sexual abuse material (CSAM):**
 - Avoid terminology such as 'child pornography'
 - Covers real children, virtual children as well as persons made to appear as minors
 - Criminalise 'mere' possession of CSAM, streaming and live-streaming of OCSEA
- **Grooming:**
 - Intended abuse can take place offline or online
 - Mere intent to abuse the child is sufficient
- **Sexual extortion:**
 - Blackmailing, forcing or pressuring should be understood from a child's perspective
 - Promised benefits indeed do not have to be given

Tier 1: Criminal procedure law

- **Extra-territorial jurisdiction:** prosecute criminal offences even where these have not been committed on the country's territory
- **Extradition:** abolishment of double criminality standard recommended
- **Mutual legal assistance:** leverage ASEAN Treaty on Mutual Legal Assistance in Criminal Matters
- **Child victim-friendly justice system:** put in place justice system which protects the rights of children and respects their specific needs and vulnerabilities

Tier 2: Criminal procedure law

- **Ex officio prosecutions:**

- Criminal investigations to be initiated without the need for a report to be made by the victim and to allow the proceedings to continue even if the victim withdraws

- **Statutes of limitations:**

- Ensure that statutes of limitations for initiating proceedings do not start to run until the victim reaches the age of eighteen

Tier 2: Compensation

- Different avenues for compensation possible
- Provide, in accordance with domestic legal frameworks, accessible mechanisms for legal remedies, such as compensation for child victims of OCSEA
- Child victim-friendly and gender-sensitive measures should be applied for compensation procedures

Tier 2: Private sector regulation

- Establish a legal requirement for private sector companies to report and remove CSAM from their platforms and services when they become aware of it
- Endeavour to impose criminal and civil liability and penalties for non-compliance

Tier 3: Private sector regulation (ctd)

- **Anti-money laundering laws:** categorise commercial transactions in the context of OCSEA as predicate offences
- **Data protection and privacy rules for children:** including strong safeguards, transparency, oversight and access to remedy
- **Data retention laws:** necessary and proportionate laws that allow for retention and preservation of digital evidence



Thank you!