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A COMPARATIVE STUDY OF CHILD PORNOGRAPHY LAWS IN THE REPUBLIC OF KOREA AND IN THAILAND AGAINST THE BACKGROUND OF INTERNATIONAL LEGAL FRAMEWORKS**

Abstract

Child pornography is almost universally condemned as a form of child sexual abuse and exploitation. Consequently, child pornography is prohibited in many countries. In response to the pervasiveness of child pornography, the United Nations and the Council of Europe have adopted international legal frameworks to criminalize the production, distribution, and possession of child pornographic materials. At present, both the Republic of Korea (South Korea) and Thailand have their own criminal laws against child pornography. The purpose of this article is to present a comparative analysis of the child pornography laws in these two Asian nations against the background of these international legal frameworks to evaluate the extent to which the Korean and Thai child pornography laws are in line with them.

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Keywords

child pornography laws; Thailand; Republic of Korea (South Korea); United Nations; Council of Europe

Introduction

Child pornography is almost universally condemnable since it is regarded as the recording or documentation of "heinous" sexual abuse and exploitation of innocent children.[1] Since the mid-1990s, paedophiles have relied mostly on the Internet to acquire and share sexually explicit images of children, resulting in the unprecedented dissemination and availability of child pornography.[2] Bitterly, once the images and VDO clips of children being sexually abused are uploaded to the Internet, they could become perpetually accessible and distributable.[3] This means that children, especially those featuring in child pornographic materials, could suffer from endless harm (unless their images are completely removed from the Internet and every computer, which is technically impossible to verify). Therefore, it is not surprising that the problem of child pornography has become a major social concern in many countries around the world.[4] This problem is not new to either the Republic of Korea (hereinafter "South Korea") or Thailand. According to the Internet Watch Foundation, in 2006 South Korea and Thailand were the two key distributors of child pornography in Asia, accounting for 3.6% and 2.16% of the total data available at the time.[5] Although over a decade has passed, these two Asian nations still struggle with the issue of child pornography. In 2018, South Korea made the headlines when international media reported that "Welcome To Vid-

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[1] M. Eneman, *The New Face of Child Pornography*, [in:] M. Klang and A. Murray (eds), *Human Rights in the Digital Age*, Glasshouse Press: London, 2004, p. 27.

[2] Y. Akdeniz, *Internet Child Pornography and the Law*: *National and International Responses*, Ashgate: Aldershot, 2008, p. 1.

[3] M. Eneman, *supra note 1*, p. 27.

[4] Y. Akdeniz, *supra note 2*, p. 1.

[5] J.H. Heo, *Need Systematic Crackdown on Child Pornography*, Hankyoreh, 2012, available at: https://english.hani.co.kr/arti/english_edition/e_national/550085.html [last accessed 22.3.2023].

eo", one of the largest child pornography sites on the darknet,[6] was taken down and its Korean operator, Son Jong-woo, was arrested (along with 337 suspected users in 38 countries) by international collaboration between law enforcement agencies from the UK, the US, Germany, South Korea, and others.[7] In addition, the domestic data provided by the Korean National Police Agency shows that in 2016 alone there were 1,198 cases involving the production and possession of child sexual abuse materials and there were 1,973 child victims nationwide.[8] Likewise, in Thailand, a number of child pornography cases have been frequently reported by the media and Thai law enforcement agencies. For example, the Thailand Internet Crimes Against Children (TICAC) task force revealed that, according to its investigation of child sexual exploitation and abuse cases between 2015-2019, there were 152 cases of child sexual abuse materials throughout the country.[9] As reported in the news article, in 2021, thanks to a tip from the Australian police, Thailand's Department of Special Investigation (DSI) conducted an investigation, leading to the arrest of Danudetch Saengkaew, a Thai who ran a child modelling agency, on the charges of child sexual abuse and having over 500,000 child pornographic images in his possession.[10] It is scarcely doubted that these reports and cases demonstrate that the problem of child pornography in these two countries persists, and, in order to protect children from being exploited and abused by paedophiles, that legal responses are essential.

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[6] The "Welcome to Video" site contained 250,000 videos (around 8 terabytes) of child sexual abuse materials, making it one of the largest child pornography sites on the darknet. See J.T. Koh, *Arrest Warrant Denied for Korean Child Porn Site Operator*, The Korea Herald, 2020, available at: https://www.koreaherald.com/view.php?ud=20201110000673 [last accessed 23.3.2023].

[7] BBC, *Dark Web Child Abuse: Hundreds Arrested Across 38 Countries*, 2019, available at: https://www.bbc.com/news/world-50073092 [last accessed 23.3.2023].

[8] K. Ryu, A. Varrella, *South Korea: ECPAT Country Overview A Report on the Scale, Scope and Context of the Sexual Exploitation of Children*, 2018, p. 11, available at: https://ecpat.org/wp-content/uploads/2021/06/ECPAT-Country-Overview-Korea.pdt [last accessed 23.3.2023].

[9] ECPAT, INTERPOL, and UNICEF, *Disrupting Harm in Thailand: Evidence on Online Child Sexual Exploitation and Abuse*, 2022, p. 41, available at: https://ecpat.org/wp-content/uploads/2022/02/DH_Thailand_ONLINE_final.pdf [last accessed 23.3.2023].

[10] BBC, *Thai Child Modelling Agent Charged over Child Sex Abuse Images*, 2021, available at: https://www.bbc.com/news/world-asia-56091287 [last accessed 23.3.2023].

As far as legal responses are concerned, there have been numerous proposals and attempts to criminalize child pornography-related acts at both the international and national levels. At the international level, the United Nations and the Council of Europe play significant roles in setting legal frameworks to outlaw *inter alia* the production, distribution, and possession of child pornography. The Convention on the Rights of the Child (CRC) and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (CRC-OP-SC) are two principal international treaties that impose legal obligations on their member states to criminalize the production, dissemination, and possession of child pornography. South Korea and Thailand are both parties to these two United Nations treaties and are therefore obliged to have and enforce domestic laws to suppress the production and availability of child pornography. Similarly, the Convention on Cybercrime of the Council of Europe requires its member states to make the production, distribution, and possession of child pornography punishable by domestic criminal laws. South Korea has been invited to join the Convention on Cybercrime and the Council of Europe is awaiting its answer.[11] At the national level, South Korea has the Act on the Protection of Children and Youth Against Sex Offense of 2008 as the principal piece of legislation to fight against child pornography. Thailand's Criminal Code was amended in 2015 to specifically address the problem of child pornography. The child pornography laws in these two countries will be examined below.

Taking the issue of child pornography as its focus, the primary objective of this article is to provide a comparative analysis of the criminal laws against child pornography in South Korea and Thailand against the background of the two major relevant international legal frameworks, namely the CRC-OP-SC and the Convention on Cybercrime, in order to assess the extent to which the criminal laws in these two countries are in line with these international legal frameworks. It should be noted that, although Thailand has not yet been invited to join the Convention on Cybercrime, the Convention still serves as an international

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[11] Council of Europe, *News: Cameroon, Korea, Sierra Leone and Uruguay Invited to Join the Convention on Cybercrime*, 2013, available at: https://www.coe.int/en/web/cybercrime/-/cameroon-korea-sierra-leone-and-uruguay-invited-to-join-the-convention-on-cybercrime [last accessed 22.3.2023].

legal framework against which the Thai law on child pornography can be evaluated. In addition, in terms of the scope of study, while there are several offences relating to child pornography, this article concentrates only on production, distribution, and possession offences. Furthermore, it focuses primarily on child pornography depicting real children.

This article is composed of four sections. It begins with an overview of child pornography and the harm that justifies its criminalization. The second section examines the legal frameworks outlined in the CRC-OP-SC and the Convention on Cybercrime. The third part will then analyze the criminal legislation against child pornography in South Korea and Thailand. The final section compares the child pornography laws of Korea and Thailand against the aforementioned international legal frameworks.

I. An Overview of Child Pornography

1. Child Pornography in the Digital Age

According to Max Taylor and Ethel Quayle, sexual contact between adults and children has been a social phenomenon with varying degrees of social and cultural acceptance since antiquity.[12] Yet, the concept that considers such adult-child sexual contact to be a social problem emerged in the 1980s.[13] It was largely due to the necessity for enhanced child protection coupled with the fear that more children would become victims of sexual abuse due to the increase in demand driven by the emergence of more advanced digital technologies.[14] The Internet has made it possible for individuals with a sexual interest in children to download a vast amount of child pornographic materials at no cost and, more importantly, in private. Also, digital cameras have enabled them to become producers of such materials.[15] The criminalization of child pornography as a method to protect children has become an important

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[12] M. Taylor, E. Quayle, *Child Pornography: An Internet Crime*, Brunner-Routledge: Hove, 2003, p. 47.

[13] *Ibid*.

[14] *Ibid*., p.7.

[15] *Ibid*.

tool in many countries around the globe since then. It is evident in the significant increase of the number of countries with child pornography laws from only 27 in 2006 to 118 in 2018.[16]

2. Harm to Children and the Criminalization of Child Pornography

One of the main rationales used to ban child pornography is the physical and mental harm to the subject child in the production.[17] Admittedly, the main victim suffering from the production of child pornography is the child subject of that pornographic act. Perhaps the most direct and noticeable harm to the physical health of a minor in pornographic visual material comes in the form of sexual assault. As a result of the creation of a photograph or a motion picture of an actual child having sexual intercourse with other children or adults, the body and mind of such a naïve child are sure to be violated. Additionally, given the fact that the resilience of children to various forms of sexual conduct is considerably less than that of adults, child pornographic performers could suffer more severe pain caused by sexual intercourse than their adult counterparts.[18] In this sense, the production of child pornography is at least equivalent to sexual abuse and exploitation.[19] In terms of the mental harm derived from being the subject of child pornography, the long-term trauma is an obvious one. As argued above, images of child pornography (especially those circulated on the Internet) serve as permanent visual documentation of a child at a particular age being sexu-

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[16] International Centre for Missing and Exploited Children, *Child Sexual Abuse Material: Model Legislation & Global Review*, 2018, p. 5, available at: https://cdn.icmec.org/wp-content/uploads/2018/12/CSAM-Model-Law-9th-Ed-FINAL-12-3-18-1.pdf [last accessed 23.3.2023].

[17] A. Adler, *The Perverse Law of Child Pornography*, "Columbia Law Review", Vol. 101, 2001, p. 242, available at: https://cyber.harvard.edu/ilaw/Speech/Adler_full.html [last accessed 23.3.2023].

[18] G. Hawkins, F.E. Zimring, *Pornography in a Free Society*, Cambridge University Press: New York, 1988, p. 183.

[19] Y. Akdeniz, *Sex on the Net: The Dilemma of Policing Cyberspace*, South Street Press: Reading, 1999, p. 49.

ally abused.[20] As long as such photographic records exist, that person's childhood nightmare of shame will continue even after that person has ceased being a child. The stigma of taking part in pornography would remain as an incurable mental pain for the rest of his or her life. It is even worse that, when such undesirable photos or video clips are circulated, the private life and family of the victimized child will be increasingly under threat.[21]

On a larger scale, child pornography is also detrimental to other children in general. Foremost, the consumption of child pornography in turn increases the demand for children to be sexually abused.[22] Undeniably, child pornography is a lucrative business with very high potential profits. In the "Welcome To Video" case, it was estimated that Son Jong-woo alone could have earned bitcoin worth as much as 358,000 USD for running this child pornography site.[23] In addition, as a result of the international operation to shut down "Welcome To Video", at least 337 people were arrested in 38 different countries.[24] This is strong evidence to indicate that the demand for sexually explicit materials of minors is very real and hidden in virtually every corner of the globe. Given these facts, the creators of child pornography would not hesitate to hunt down more children to continue to supply the child pornography market.

Another danger of a sexualized photograph involving children is that it may be used by paedophiles to lure children into sexual acts.[25] Child pornography can be used as a tool to reduce the inhibitions of victimized children and normalize inappropriate sexual acts between

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[20] M. Taylor, E. Quayle, *supra note* 12, p. 24.

[21] *Ibid*.

[22] *Ibid*., pp. 7 and 24.

[23] The Korea Herald, *supra note* 6.

[24] US Department of Justice, *South Korean National and Hundreds of Others Charged Worldwide in the Takedown of the Largest Darknet Child Pornography Website, Which was Funded by Bitcoin*, "Justice News", 2019, available at: https://www.justice.gov/opa/pr/south-korean-national-and-hundreds-others-charged-worldwide-takedown-largest-darknet-child [last accessed 24.3.2023].

[25] H. Cohen, *Child Pornography: Principles and Federal Statutes*, [in:] W.T. Holliday (ed.), *Governmental Principles and Statutes on Child Pornography*, Nova Science Publishers: New York, 2003, p. 5.

adults and children.[26] Given their curiosity, human beings' innate desire for sex, and a lesser capacity for making sound judgments than adults,[27] it is more likely for children to be coaxed into sexual violation.

Finally, viewing sexually provocative images of children may also lead paedophiles to commit sexual offences.[28] Frequent viewing of child pornography may break down the wall between sexual fantasy and reality. Consequently, it is highly possible for a viewer of child pornography to commit sexual offences against children in the real world.[29] Also, it may bring about an increase in "the number of persons desiring and seeking children as sex objects".[30]

It can be said that the growing concern about the hazardous impacts on children derived from the consumption and production of child pornography and the requirement of special protection for vulnerable children are two key factors which justify the criminalization of producers, distributors, and possessors of child pornography. As appears clearly in Article 3 (2) of the CRC, it is the direct responsibility of an individual State member to ensure the well-being of its own young citizens by any measures necessary.[31] To achieve that goal, it is requisite for member states to eradicate child pornography by enforcing criminal laws against it and its relevant activities.

II. International Legal Frameworks: the CRC-OP-SC and the Convention on Cybercrime

At the international level, there are two prominent legal frameworks regarding the fight against child pornography. The first one is the CRC-

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[26] M. Taylor, E. Quayle, *supra note* 12, p. 25.

[27] G. Hawkins, F.E. Zimring, *supra note* 18, p. 183.

[28] M. Taylor, E. Quayle, *supra note* 12, pp. 24-25.

[29] *Ibid*.

[30] G. Hawkins, F.E. Zimring, *supra note* 18, p. 184.

[31] Article 3 (2) of the CRC reads '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'.

OP-SC, which is a supplementary legal instrument that strengthens the normative framework in relation to the rights of children set forth in the CRC by providing member states "with strategic guidance for implementation and [helping] to narrow the gap between international standards and reality on the ground"[32] with regard to the enforcement of law against *inter alia* child pornography. The second one is the Convention on Cybercrime of the Council of Europe which, while primarily aimed at combating crimes against computer systems and networks (pure cybercrime), covers offences relating to child pornography, since the Committee of Experts on Crime in Cyberspace was of the opinion that the distribution of such materials via the Internet was "the increasing danger … at global level".[33] It is interesting to note the offences of child pornography in Art. 9 constitute the only content-based provision in the Convention on Cybercrime.

1. Defining Child Pornography

The logical starting point for examining all the legal frameworks relating to child pornography should be the definition(s) of child pornography. According to Art. 2(c) of the CRC-OP-SC, "child pornography" refers to "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." Art. 9(2) of the Convention on Cybercrime defines "child pornography" as "pornographic material that visually depicts: a) a minor engaged in sexually explicit conduct; b) a person appearing to be a minor engaged in sexually explicit conduct; c) realistic images representing a minor engaged in sexually explicit conduct."

The first question that must be addressed is "until what age is a person considered a child?" By referring to Art. 1 of the CRC, the CRC-OP-SC defines, as a general principle, a person who is "below the age of

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[32] M.S. Pais, *The Protection of Children from Sexual Exploitation: Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, "International Journal of Children's Rights", Issue 4, 2010, p. 559.

[33] P. Csonka, *Contribution to the Conference on Combating Child Pornography on the Internet*, Vienna 29 September – 1 October 1999, cited in Y. Akdeniz, *supra note* 2, p. 195.

[18] years …" as a child. Interestingly, although Art. 9(3) of the Convention on Cybercrime also sets the age limit of a person to be legally regarded as a minor (or a child) at 18, it leaves room for member states to lower the age limit to 16. This means that a 17-year-old person may not be considered a minor in certain member states of the Convention on Cybercrime.

The second inquiry that should be made is what types of materials fall within the definitions of child pornography. As specified by the Handbook on the CRC-OP-SC, pornographic content can be "represented in live performances, photographs, motion pictures, video recordings, and the recording or broadcasting of digital images."[34] In addition, several delegations, particularly those from the European Union and the United States, maintained that "any representation" in Art. 2(c) should be interpreted only to mean visual representation.[35] Therefore, it can be inferred that the CRC-OP-SC primarily aims at visual child pornography, regardless of whether it is in a traditional medium such as photographs, magazines, or videotapes, or a digital format. Likewise, in Art. 9 of the Convention on Cybercrime, the phrase "material that visually represents" also makes it obvious that the Council of Europe wants to concentrate only on digital visual materials.[36] Then, the next consideration is what sexually explicit characteristics the content must have to qualify as child pornography. As prescribed in Art. 2 of the CRC-OP-SC, to be considered child pornography, the material must show a child engaged in a sexually explicit activity, regardless of whether such activity is real or simulated, or a child's sexual body part for a sexually arousing purpose. Similarly, in Art. 9(2)(a) of the Convention on Cybercrime, the material must depict a child "[engaged] in a [real or simulated] sexually

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[34] UNICEF, Handbook on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2009, p. 12, available at: https://www.unicef.org/documents/handbook-optional-protocol-sale-children-child-prostitution-and-child-pornography [last accessed 27.3.2023].

[35] U. Cedrangolo, *The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and the Jurisprudence of the Committee on the Rights of the Child: Innocenti Working Paper No. 2009-03*, UNICEF Innocenti Research Centre, Florence, 2009, p. 9, footnote 32.

[36] Y. Akdeniz, *supra note* 2, p. 197.

explicit conduct".[37] However, the Explanatory Report to the Convention on Cybercrime also gives details of sexually explicit activities, which include the following acts:

> a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, between minors, or between an adult and a minor, of the same or opposite sex; b) bestiality; c) masturbation; d) sadistic or masochistic abuse in a sexual context; or e) lascivious exhibition of the genitals or the pubic area of a minor.

Furthermore, in comparison to the CRC-OP-SC, the scope of illegal materials in the Convention of Cybercrime is broader to cover the depiction of a person who appears to be a child engaged in a sexually explicit activity, Art. 9(2)(b), and the realistic depiction representing a child engaged in a sexually explicit activity in Art. 9(2)(c). This means that, while the CRC-OP-SC aims to criminalize only the materials depicting real children, the Convention on Cybercrime intends to outlaw pornographic materials that do not portray real children, but give the impression of showing real children participating in sex, such as child-appearing performers who are actually adults or computer-generated or computer-manipulated images that look highly realistic and show children having sex. As noted in the Explanatory Report, the reason for its broader scope is that the Convention on Cybercrime seeks to prevent paedophiles from using so-called "unreal" child pornographic materials to seduce children into sex (or "grooming"), fuel paedophilic fantasies, or normalize child sexual abuse, all of which could facilitate or encourage sexual offences against children.[38] (This is one of the justifications for the criminalization of child pornography as discussed above). However, Art. 9(4) allows the member states to make a reservation on the criminalization of materials depicting adult performers appearing to be children and/or realistic-looking images of children involved in sex.

Regarding the definition of child pornography, it can be concluded that, first, even though the age limits in the CRC-OP-SC and the Convention on Cybercrime are different, both international frameworks

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[37] Council of Europe, *Explanatory Report to the Convention on Cybercrime*, 2001, p. 16, available at: https://rm.coe.int/16800cce5b [last accessed 27.3.2023].

[38] *Ibid*.

agree that a person under the age of 16 is unquestionably a child. Second, both conventions are aimed primarily at child pornographic visual materials. Last, the criteria to determine whether the material is considered to be child pornography or not are whether it shows 1) a child engaged in sexually explicit conduct regardless of whether such conduct is real or simulated, 2) an adult appearing to be a child engaged in sex, 3) realistic images or pseudo-photographs of a child participating in sexually explicit activity,[39] or 4) a sexual part of a child for a sexually simulating purpose. Nonetheless, it should be noted that the Convention on Cybercrime permits the member states to make reservations. For example, if the non-obscene sexually explicit material of a child has an artistic, medical, scientific, or any other equivalent value (due to the right to freedom of expression); or if the person shown in the material is in fact an adult, such material could be allowed in their jurisdictions.[40]

2. Offences Relating to Child Pornography

This section examines the criminal offences of child pornography outlined in the CRC-OP-SC and Cybercrime Convention. Art. 34(c) of the CRC establishes a primary objective to combat child sexual abuse materials by making it a legal obligation for all member states to "take all appropriate national…measures to prevent…the exploitative use of children in pornographic performances and materials." This is translated into the more detailed guidelines set forth in Art. 3(1)(c) of the CRC-OP-SC, which requires the member states to impose criminal penalties on *inter alia* production, distribution, dissemination and possession for these purposes.[41] The important issue to be noted is that this provision criminalizes the possession of child pornography only when

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[39] Y. Akdeniz, *supra note* 2, p. 197.

[40] Council of Europe, *supra note* 37., p. 17.

[41] Art. 3(1)(c) of the reads "1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis: … (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2."

it is used for "producing, distributing [and] disseminating [purposes]".[42] In other words, according to a strict interpretation of the text, the possession of child pornography for personal use is not covered by this provision. This reflects the crucial fact that the CRC-OP-SC is intended to fight against the commercial exploitation of children in particular; therefore, the possession of such items that have no relation to commerce is not within its scope.[43] Nonetheless, The Committee on the Rights of the Child recommended the member states to criminalize "the simple possession, since 'storage' implied a further commercialization of the product".[44] As far as the Convention on Cybercrime is concerned, Art. 9 requires the member states to impose criminal penalties on 1) the production of child pornography for the purpose of its distribution through a computer system; 2) the making of child pornographic materials available through a computer system such as creating a child pornography website;[45] 3) the distribution and transmission (or sending from one person to another)[46] of child pornography through a computer system and 4) the possession of child pornography in a computer system or on a computer-data storage medium.[47] It is significant to note that this provision does not apply to the production of child pornography that is not intended for distribution through a computer system.[48] It is worth noting that, however, once the child sexual abuse materials have been created or produced, their existence means that they need to be stored on a digital storage medium such as a hard disk drive, a USB flash drive, or a cloud storage platform. In this light, the creator

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[42] UNICEF, *supra note* 34, p. 12.

[43] U. Cedrangolo, *supra note* 35, p. 9.

[44] *Ibid*., p. 10.

[45] Council of Europe, *supra note* 37, p. 16.

[46] *Ibid*.

[47] Art. 9 of the Convention on Cybercrime reads "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."

[48] Council of Europe, *supra note* 37, p. 16.

or producer of child pornography may be charged with possession of child pornography, unless the jurisdiction to which he or she is subject has made a reservation to exempt the possession offence. Regarding the possession offence, unlike the CRC-OP-SC, simple possession of child pornographic materials for personal use is sufficient to constitute the commission of a crime. Importantly, the Explanatory Report makes it clear that, for a person to commit an offence in relation to child pornography, the person must do it intentionally.[49] This means that, as regards a possession offence, a person must have "knowledge and control" over the child pornographic data stored in the digital medium.[50] Nonetheless, as just mentioned, a reservation can be made to exempt the possession of child pornography not intended for distribution.

To sum up, the CRC-OP-SC and the Convention on Cybercrime both create international legal frameworks that, as a matter of general principle, call for the criminalization of child pornography production (especially for distribution), distribution (including disseminating and making available), and possession (for both commercial and personal usage purposes).

The international legal frameworks pertinent to the definition of child pornography and the offences examined in this section will be used to comparatively analyse the child pornography laws in South Korea and Thailand in the final part of this article.

III. Child Pornography Laws in South Korea and Thailand

This part of the article is devoted to the examination of criminal laws against child sexual abuse materials in South Korea and Thailand.

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[49] *Ibid.*, p. 17.

[50] *Ibid.*

1. Child Pornography Law in South Korea

A. Legislative Background of Korean Child Pornography

As a consequence of its ratifications of the CRC[51] in 1991 and the CRC-OP-SC[52] in 2004,[53] South Korea is legally bound to implement legal measures to safeguard children in accordance with legal obligations set out in both international treaties. These include the criminalization of child pornography. Previously, child pornography was not an issue of public concern due to the lack of public awareness of the seriousness of the harm caused by such material.[54] Furthermore, the target of law enforcement in South Korea was the production and dissemination of obscene materials under Sections 243 and 244 of the Korean Criminal Code.[55] However, in the wake of the intensifying problem of child-related sex crimes after the year 2000, South Korean law enforcement authorities became aware of the severity of the problem and since then have expanded their operations to take legal actions against those who possess child pornography.[56] In February 2000, the Act on the Protection of Youth Against Sex Offenses was enacted with the aim of providing youngsters with safeguards against *inter alia* being used in the production of pornography, and also to prohibit the distribution of such materials.[57] However, to respond to a series of serious cases of sexual crime

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[51] Art. 34(c) of the CRC.

[52] Arts. 1, 3(c) and 10 of the CRC-OP-SC.

[53] United Nations, *UN Treaty Body Database: Republic of Korea*, n.d., available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=172&Lang=EN [last accessed 19.3.2023].

[54] H.W. Won, *The Optional Protocol to the Convention on the Rights of Child on the Sale of Children, Child Prostitution and Child Pornography und Ausfuhrung von Korea*, "International Human Rights Law", No. 8, 2005, p. 52.

[55] K.G. Ahn, *Study on Provisions and Penalty of Pornography Films of Sexual Abuse of Children by Comparing German and Korea*, "Hanyang Law Review", No. 4, 2014, p. 143. It should be noted that Sections 243 and 244 of the Korean Criminal Code prohibits the production, distribution, and public exhibition of obscene materials in general.

[56] *Ibid*.

[57] J.D. Kim, *A Review on the Punishment of Child Pornography Possession Crime in Korea: Focusing on the Comparison with Japanese Law*, "The Journal of Police Policies", No. 1, 2018, p. 9.

against children and adolescents, and the public criticism that the law's penalties were not strong enough, South Korea passed a new piece of legislation, the Act on the Protection of Children and Youth Against Sex Offenses of 2008 (hereinafter "Acheong Act"), to replace its predecessor.[58] At present, the Acheong Act is the main legal measure against child sexual abuse materials in South Korea.

B. Legal Definition of Child Pornography under Korean Law

Art. 2(1) defines "children or youth" as "persons under 19 years of age: [provided, that] persons for whom the first day of January of the year in which they reach 19 years of age has arrived shall be excluded".[59] In other words, under the Acheong Act, the age limit is 19. Furthermore, it is specified in Art. 2(5) that the forms of "child or youth sexual exploitation materials" include "a film, video, game software, or picture, image, etc. displayed on computers, or other communications media".[60] This indicates that the scope of the Korean law against child pornography is limited to visual items, whether digital or analogue. Textual and audio materials are clearly not covered.[61] As regards the sexual characteristics of the materials, by reading Art. 2(4) together with (5), it can be said that for a piece of material to be regarded as child or youth sexual exploitation materials, it must depict children and young people doing the following acts: "(a) sexual intercourse; (b) pseudo-sexual intercourse using parts of the body, such as the mouth and anus, or implements; (c) contacting or exposing all or part of the body, which causes sexual humiliation or repugnance of ordinary people [and] (d) masturbation" or being engaged in any other sexual act.[62] As argued by Park Kyeong-shin, before the 2011 amendment, the Acheong Act was aimed to prohibit only

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[58] *Ibid*.

[59] For the English version of the Acheong Act see Korea Legislation Research Institute, ACT ON THE PROTECTION OF CHILDREN AND YOUTH AGAINST SEX OFFENSES, available at: https://elaw.klri.re.kr/eng_service/lawView.do?hseq=56569&lang=ENG [last accessed 30.03.2023].

[60] *Ibid*.

[61] J.M. Park, J.I. Kim, *Comparative Study of Laws Governing Child Pornography*, "Journal of Korean Council for Children & Rights", No. 3, 2016, p. 501.

[62] Korea Legislation Research Institute, *supra note* 59.

materials that portrayed real young people. However, the phrase "persons or representations that can be obviously perceived as children or youth" was inserted into this provision, making the creators of cartoon or animation characters, computer-generated or manipulated images, and adult performers appearing to be children subject to the criminal offences of child pornography.[63] Nonetheless, in 2014, the Korean Supreme Court ruled that the material in question constitutes child sexual abuse material "only when the character depicted in the material 'clearly and undoubtedly' appears to be a child and is perceived as such by the viewer".[64] As a result, young-looking performers wearing school uniforms, but that are obviously and unquestionably adults, and child-appearing characters in cartoons and animations, definitely do not fall under the scope of the Korean child pornography law.[65] This "clearly and undoubtedly" is worth particular attention, as it highlights the intention of the law to protect real children from sexual abuse and exploitation. Thus, efforts should be made to avoid law enforcement that could unjustifiably interfere with the rights and freedoms of people (especially those relating to expression and privacy).

C. Offences Relating to Child Pornography under Korean Law

In the Acheong Act, Art. 11, which was amended in 2020, is the pivotal provision criminalizing several activities relating to materials involving the sexual exploitation of children. As far as the production is concerned, producing child or adolescent sexual exploitation materials is a criminal offence under Art. 11(1).[66] As is evident from its text, no special objectives, such as for commercial, distribution, or public exhibition purposes, are required. Therefore, the mere production of material de-

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[63] K.S. Park, *Unconstitutionality of Virtual Child Pornography Regulation*, "The Journal of Legal Studies", No. 2, 2013, p. 192.

[64] The Supreme Court, decided on September 24, 2014. 선고 2013도4503, cited in J.M. Park, J.I. Kim, *supra note* 61, pp. 500-501.

[65] *Ibid*., p. 501.

[66] Art.11(1) of the Acheong Act reads "Any person who produces, imports, or exports child or youth sexual exploitation materials shall be punished by imprisonment with labor for an indefinite term or for a limited term of at least five years."

picting a child participating in sexual activity is sufficient to charge the producer with this offence.

The different forms of child pornography distribution are prohibited by Art. 11(2) and (3). Under Art. 11(2), the sales, lending, distribution, provision, public exhibition, or display of child and adolescent sexual exploitation materials for commercial purposes is punishable under this law.[67] Art. 11(3) makes it a crime to distribute, provide, publicly exhibit, or display child adolescent sexual exploitation materials.[68]

As regards possession, Art. 11(2) makes it an offence to possess child and adolescent sexual exploitation materials for commercial purposes. In comparison, Art. 11(5) does not require the "for commercial purposes" element, so it criminalizes purchasing, viewing, or possessing child or youth sexual exploitation materials.[69] The sole requirement is that the perpetrator must have the knowledge that the material in question is child or adolescent sexual exploitation material. This "knowledge" threshold is crucial because it could exempt persons who mistakenly or accidently obtain or see child pornographic materials without knowing in advance. Lastly, regarding the transmission of child pornography via the Internet, the principal provision is not in the Acheong Act, but in the Act on the Promotion and Use of Information and Communications Networks and Information Protection.[70] Art. 44-7 of this statue outlaws the dissemination of obscene content via the Internet. Although it does

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[67] Art.11(2) of the Acheong Act reads "Any person who sells, lends, distributes, or provides child or youth sexual exploitation materials for commercial purposes, or possesses, transports, advertises or introduce them for any of such purposes, or publicly exhibits or displays them shall be punished by imprisonment with labor for up to five years."

[68] Art.11(3) of the Acheong Act reads "Any person who distributes or provides child or youth sexual exploitation materials, advertises or introduces them for any of such purposes, or publicly exhibits or displays them shall be punished by imprisonment with labor for at least three years."

[69] Art.11(5) of Acheong Act reads "Any person who purchases child or youth sexual exploitation materials or possesses or views them with the knowledge that it is a child or youth sexual exploitation materials, shall be punished by imprisonment with labor for at least one year."

[70] For the English version of this Act see Korea Legislation Research Institute, ACT ON PROMOTION OF INFORMATION AND COMMUNICATIONS NETWORK UTILIZATION AND INFORMATION PROTECTION, available at: https://elaw.klri.re.kr/eng_service/lawView.do?hseq=55570&lang=ENG [last accessed 30.3.2023].

not expressly address child pornography, it may be applicable to the Internet distribution of child pornography.

2. Child Pornography Law in Thailand

A. Legislative Background of Thai Child Pornography

At the time of its accession to the CRC[71] in 1992 and the CRC-OP-SC[72] in 2006,[73] Thailand still lacked a particular law to address the issue of child pornography. Section 287 of the Thai Criminal Code was the primary provision to prohibit the production, distribution, and possession (for commercial purposes or public exhibition)[74] of all pornographic materials, which fell within the scope of obscenity,[75] regardless of whether such materials depicted adults or minors. In other words, no clear distinction was made between adult and child pornographic materials at that time. However, a significant legislative development in relation to the criminalization of child pornography came in February 2015, when the members of the National Legislative Assembly (the NLA)[76] proposed to amend the Thai Criminal Code. It was stated clearly in the White Paper on the Draft Bill of the Criminal Code Amendment Act

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[71] Art. 34 (c) of the CRC.

[72] Arts. 1, 3(c) and 10 of the CRC-OP-SC.

[73] United Nations, *UN Treaty Body Database: Thailand*, n.d., available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=172&Lang=EN [last accessed 19.3.2023].

[74] It should be noted that Section 287 does not prohibit the possession of adult pornography for personal use.

[75] According to Deka Court (the Supreme Court of Thailand), a material is deemed obscene if it depicts human bodies in a sexually explicit manner (i.e., female's nipples and/or male and female's genitals are visible) and, taking into account the contemporary perception of a person of ordinary prudence, this depiction is sexually provocative and repellent. See for example, *Prosecutor v. Gimguy (Gimtun) Saewong*, Deka Court Judgment No. 978/2492, 1949, Deka Court Judgment Search System, paras. 2-4; *Prosecutor v. Bun Saewong and Sumon Taechatada*, Deka Court Judgment No. 1223/2508, 1965, Deka Court Judgment Search System, paras.7-8; and *Prosecutor v. Boonchu Wongchaisuriya*, Deka Court Judgment No. 3510/2531,1988, Deka Court Judgment Search System, para.3, available at: http://deka.supremecourt.or.th/ [last accessed 09.8.2023].

[76] It should be noted that all members of the National Legislative Assembly (2014) were appointed by the military junta after the 2014 coup d'état in Thailand.

(2015) (hereinafter 'the White Paper') that Thailand had a legal obligation to protect children in accordance with the CRC.[77] Furthermore, the White Paper emphasized that the nature of child pornography differed from adult pornography in that activities involving child pornography contributed to child sexual abuse, whereas having adult pornography in possession was a matter of privacy.[78] Therefore, to fulfil the legal obligation and to draw a clear line between adult and child pornography, it was necessary for Thailand to have specific criminal offences for sexually explicit materials involving children.[79] Based on the recommendations of the United Nations Office on Drugs and Crime (UNODC),[80] the NLA passed the Criminal Code Amendment Act (No. 24) B.E. 2558 (2015) in May 2015.[81] As a result, Sections 1(17), 287/1 and 287/2 were added to the Thai Criminal Code to define "child pornography", as well as to make the production, distribution and possession of child pornographic materials criminal offences.

B. Legal Definition of Child Pornography under Thai Law

In Thailand, the definition of "child pornography" can be found in Section 1(17) of the Thai Criminal Code.[82] As far as the age limit is con-

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[77] National Legislative Assembly, *White Paper on the Draft Bill of the Criminal Code Amendment Act (No. …) B.E. …*, 2015, p. 1, available at: https://dl.parliament.go.th/backoffice/viewer2300/web/viewer.php [last accessed 20.3.2023].

[78] *Ibid*.

[79] *Ibid*.

[80] UNODC, *Working Paper: Child Sex Offences Series 1: Child Pornography Amendments to the Criminal Code of Thailand*, 2015, available at: https://www.unodc.org/roseap/uploads/archive/documents/Publications/2015/childhood/2015_Series_1-UNODC_Working_Paper-Amendments_to_the_Criminal_Code_of_Thailand.pdf [last accessed 21.3.2023].

[81] M. Akullo, *Children Sexual Exploitation in Travel and Tourism: A Brief Analysis of Domestic Legal Frameworks in Cambodia, Lao PDR, Thailand and Vietnam*, n.d., available at: https://ecpat.org/wp-content/uploads/2021/08/UNODC.pdf [last accessed 20.3.2023]; United Nations, *UNODC assists Thailand to Criminalise Possession of Child Sex Abuse Material*, n.d., available at: https://www.unodc.org/roseap/en/2015/05/childhood-sex-abuse-material/story.html [last accessed 20.3.2023].

[82] It is important to note that the English version of the UNODC's proposed definition of "child pornography" was later literally translated into Thai without any altera-

cerned, this provision specifies that a child refers to an individual younger than 18 years. For the types of materials, the scope of this provision is remarkably broad to encompass not only visual materials (*i.e.*, drawings, illustrations, printed matter, pictures, marketed images, symbols, photographs, movies, videotapes, and digital data depicting child pornographic images or motion pictures), but also textual and aural resources (*i.e.*, documents, audio tapes, and digital data that can show messages and can play sound). In terms of the characteristics of child pornographic materials, this provision sets the criterion that, if the material in question presents content that can be understood as (in the case of textual and audio materials) or depicts sexual acts of a child or with a child in an obscene manner,[83] it is categorized as child pornography. Intriguingly, the lack of a "realistic presentation" element and the Thai law's expansive definition of "child pornography" encompass a wide range of materials as "child pornography", including novels containing sexual stories about children and audio clips with sound that can be understood as children participating in sex. However, the Handbook and Guideline on the Implementation and Preparation for Law Enforcement in accordance with the Criminal Code Amendment Act (No. 24) B.E. 2558 (2015) (Child Pornography-Related Offences) makes it clear that the legislators intended to limit the scope of child pornography law in the Thai Criminal Code to deal with materials depicting real children; and thus, cartoons, animations and computer-generated images (virtual child pornography) are excluded.[84] It is interesting to

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tions and is currently found in Section 1(17) of the Thai Criminal Code. It reads "'Child pornography' means materials or matter that are understood as or depict sexual acts of a child or with a child who is not over the age of 18, through images, stories or in a manner that can be understood as [obscene], whether in the form of documents, drawings, illustrations, printed matter, pictures, advertised images, symbols, photographs, movies, audio tapes, video tapes, or any other similar manner. This definition shall include various materials and matter listed previously that can be stored in computer systems or other electronic equipment that can show understandable results". See UNODC, *supra note* 80, p.15.

[83] This is to be determined by the Thai obscenity standard explained in *supra note* 75.

[84] Ministry of Justice, *Handbook and Guideline on the Implementation and Preparation for Law Enforcement in accordance with the Criminal Code Amendment Act (No.24) B.E. 2558 (2015) (Child Pornography-Related Offences)*, 2015, p. 7, available at: https://dl.parliament.go.th/handle/20.500.13072/493528 [last accessed 28.3.2023].

note that it is unclear why NLA legislators agreed to keep the definition with such a broad reach to cover not only visual, but also textual and audio materials, as this topic was not discussed in any NLA reports or minutes. Yet, it is notable that the types of materials specified in Section 1(17) are identical to the list of adult obscene materials in Section 287. In other words, it may be a matter of "copy and paste" rather than a careful and deliberate consideration of how far the definition of "child pornography" should extend. Interestingly, according to the information from the DSI, most of the child pornographic materials that the DSI has investigated thus far are visual materials depicting real children.[85] Additionally, the cases brought to the Thai courts to date have involved mainly visual materials depicting actual people under the age of eighteen engaged in sexual activities, such as image files of young girls with their breasts and genitalia explicitly exposed[86] and image files of young boys participating in oral sex.[87]

C. Offences Relating to Child Pornography under Thai Law

Section 287/1 and Section 287/2 are the two main provisions that criminalize acts involving child abusive materials. As far as production is concerned, Section 287/2 prohibits making or producing child pornography "for the purpose of trade or by trade or for distribution or public exhibition".[88] Given this, it can be said that the production of child sexu-

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[85] N. Woraprateep, สื่อลามกอนาจารเด็กที่ทางเราดำเนินการ ต้องเป็นภาพเด็กที่อายุต่ำกว่า 18 ปีครับ ซึ่งตามนิยามใน ป.อาญาของไทย สื่อลามกอนาจารเด็ก นิยามไว้กว้างมากครับ เคส *virtual child porn* ยังไม่เคยเจอ, "Personal Communication", 24 March 2023.

[86] *Prosecutor v. Defendants (name withheld)*, Judgment Red No. Kor Mor 10/2562, 2019, Court of First Instance Judgement Search System, para. 5, available at: https://decision.coj.go.th/ [last accessed 09.8.2023].

[87] *Prosecutor v. Defendants (name withheld)*, Judgment Red No. Aor 449/2562,2019, Court of First Instance Judgement Search System, para. 1, available at: https://decision.coj.go.th/ [last accessed 09.8.2023].

[88] Section 278/2 para.1 reads "Whoever (1) for the purpose of trade or by trade or for distribution or public exhibition, makes, produces, imports into or causes to be imported into the Kingdom, exports or causes to be exported from the Kingdom, takes or causes to be taken, or disseminates by any means any child pornography; … shall be liable to imprisonment from 3 years to 10 years or a fine from 60,000 baht to 200,000 baht or both." See UNODC, *supra note* 80, p. 15.

al abuse materials for personal viewing may not fall within the scope of this Section. However, as discussed earlier, the storage of such materials (after production) in a medium is a possession offence.

Regarding the offence of distribution, Section 287/2 makes it an offence to disseminate child pornographic materials by any means, including electronic means "for the purpose of trade or by trade or…public exhibition."[89] It appears that this section does not cover the private transmission of child pornography from one individual to another. For example, Person A sends a child pornographic clip to Person B through a chat application. In this context, the distribution is not for the purpose of public exhibition since it is only Person B who can view the material. Yet, Section 287/1 para.2 closes the gap by criminalizing the simple sending of such material to others, without the "purposes" element required by Section 287/2 para.1. In other words, the simple transmission of child pornography for sexual purposes is enough to constitute a distribution offence.[90]

Lastly, it can be said that, by Section 287/1 para.1, Thai law has introduced for the first time the offence of possession of obscene content for personal use.[91] In the White Paper, the NLA members who proposed the child pornography law defended the need to make possession a criminal offence on the basis that individuals who had child pornography in their possession were likely to trade such items with each other.[92] The prohibition of possession was an effective means of preventing these harmful actions. Additionally, they emphasized that downloading such child pornographic data to personal computers or mobile devices must be considered an act of possession.[93] The act of downloading child pornographic material definitively demonstrated that the individuals had an undeniable intention to acquire the material. It underlines the fact that "intention" is an indispensable element of the possession offence.

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[89] *Ibid*.

[90] Section 287/1 para.2 reads "If the offender in Paragraph 1 forwards the child pornography to another person, the offender shall be punished with imprisonment of not over 7 years or fined 140,000 baht or both." See UNODC, *supra note* 80, p. 15.

[91] It should be noted that Section 287 which focuses on adult pornography has never prohibited the possession of such materials for personal viewing.

[92] National Legislative Assembly, *supra note* 77, p. 2.

[93] *Ibid*.

Section 287/1 para.1 imposes criminal penalties on the possession of child pornography for private use if such possession is for "the sexual benefit of oneself or of another person",[94] which essentially means to gratify the sexual desires of the possessor or others.[95]

Regarding the possession offence, Thai courts have delivered some significant decisions. For instance, in 2019, the Chiang Mai Provincial Court found that the defendants were guilty of possessing child pornography as they had files of sexually explicit photos of young girls, who were the victims of human trafficking and child prostitution, in their mobile phones in order to transmit them to potential clients.[96] Similarly, in the same year, the Lampang Provincial Court ruled that the defendant was guilty of possessing child pornography since he had several image files depicting young boys engaged in oral sex stored in his mobile phone.[97]

IV. Comparative Analysis of Child Pornography Laws in South Korea and Thailand under the Legal Frameworks of the United Nations and the Council of Europe

The main objective of this section is to compare the legal regulations of child pornography in South Korea and Thailand to the international legal frameworks established by the CRC-OP-SC and the Cybercrime Convention.

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[94] Section 287/1 para. 1 reads "Whoever possesses child pornography for the sexual benefit of oneself or of another person, the offender shall be punished with imprisonment of not over 5 years or fined not over 100,000 baht or both." See UNODC, *supra note* 80, p. 15.

[95] S. Suppakan, *Legal Principle and Judgments: Criminal Law*, 7th ed, Amarin Printing & Publishing, Bangkok, p. 456.

[96] Judgment Red No. Kor Mor 10/2562, *supra note* 86.

[97] Judgment Red No. Aor 449/2562, *supra note* 87.

1. Legal Definition of Child Pornography

It is generally accepted that the maximum age at which an individual is considered to be a child entitled to legal protection is the most important consideration of child pornography law. The CRC establishes the age limit to determine whether a person is legally a child at 18 years old. However, the Convention on Cybercrime permits its member states to define a child as an individual who is younger than 16 years of age. Given these two international frameworks, the maximum age for a person to be considered a child is between 16 and 18. Hence, the Thai definition of child pornography, which prohibits the sexually explicit representation of a person under the age of 18, is consistent with international standards. In contrast, the Acheong Act of South Korea defines a child as a person who is under 19. It can be argued that the maximum age established by the Korean child pornography law is a bit higher than that set in the international legal frameworks.

Regarding the types of materials, the Korean law on child pornography, which focuses on visual items, is consistent with international legal frameworks, as both international conventions seek to restrict solely visual materials. However, the Thai child pornography law includes textual and audio materials; thus, its scope is broader than the international legal frameworks.

The last consideration regarding the definition of child pornography is the sexual characteristics of the materials. The explicit representation of a child engaged in a sexual act, regardless of whether it is real or simulated, does not pose a problem, because both the Korean and Thai laws on child pornography comply with international legal standards. However, the issue that merits consideration is the realism of the materials. The CRC-OP-SC focuses only on materials that portray real children. However, to prevent the use of child pornography to entice minors for sexual abuse, the Convention on Cybercrime intends to outlaw visual images that realistically present children engaged in sex as if they were real (despite the fact that the individuals in the materials are not real children). The "realistic portrayal" criterion is clearly evident in the Acheong Act. Its importance is strengthened by the 2014 ruling of the Supreme Court of Korea that emphasizes the "clearly and undoubtedly" element as a crucial factor to determine if it is child pornogra-

phy. In contrast, without considering the realism of the depiction, the Thai child pornography law requires only that the presentation is understood to be a child engaged in a sexual act. This leaves child pornography criteria under the Thai law uncertain and vague, leading to the potential excessive restriction of freedom of expression and the right to privacy of adults in their sexual lives. It can be argued that the requirement of realistic depiction is essential since it could keep the scope of the criminal law enforcement narrow and focal on the suppression of paedophilic activities to safeguard children, without unnecessary interference with adults' rights and freedoms. Last but not least, it appears that neither South Korea nor Thailand enforces laws against cartoon and animated characters that resemble children. This is in accordance with international legal systems.

2. Offences Relating to Child Pornography

As discussed earlier, both the CRC-OP-SC and the Convention on Cybercrime have a common goal to safeguard children from sexual abuse and exploitation by the criminalization of the production, distribution, and possession of child pornographic materials. As examined above, these three offences are covered by laws in South Korea and Thailand. South Korea has Art. 11 of the Acheong Act and Thailand has Sections 287/1 and 287/2 as their key child pornography laws. Therefore, it can be said that the laws on child sexual abuse materials in South Korea and Thailand are not different from what the international legal frameworks require.

Concerning the production offence, international legal frameworks make it illegal to produce or make child pornography for commercial purposes (the CRC-OP-SC) and for Internet distribution (the Convention on Cybercrime). The production of child pornography for commercial purposes, distribution (through both electronic and non-electronic means), and public exhibition or display is punishable by law in both South Korea and Thailand. Interestingly, under Korean law, the simple production of child pornography for no particular purpose is also illegal.

With regard to the distribution offences, both South Korea and Thailand have laws against various child pornography distribution actions,

including Internet distribution. While Thailand has a specific offence for the online dissemination of child pornography (Section 287/1), South Korea appears to have just a general provision, Art. 44-7, in a different piece of legislation (the Act on Promotion and Use of Information and Communications Networks and Information Protection).

As regards the last offence, it is posited that the chain of demand and supply for child sexual abuse materials could be broken by the criminalization of possession. Although the CRC-OP-SC criminalizes only the possession of child pornography for commercial, distribution and public exhibition purposes, Art. 9(e) of the Convention on Cybercrime also criminalizes possession for personal use. As discussed above, both South Korea and Thailand outlaw the possession of child pornography, regardless of whether it is intended for commercial, distribution, or public exhibition purposes. Both countries' laws are apparently consistent with the concept laid down in Art. 9(e) of the Convention on Cybercrime. It is interesting to note that, while the Convention on Cybercrime limits its applicability to digital data, the Korean and Thai laws can be applicable to hard copies and other tangible items. In addition, normally, for an individual to have something in possession, he or she must have knowledge of what the item is and want to keep it. This holds true for having child pornography in possession. As indicated earlier, Korean law requires the knowledge that the material is child pornography, whereas Thai law requires the intent to possess such material. Therefore, it can be said that both Korean and Thai laws have interconnected requirements for the commission of a possession offence. Lastly, Korean law goes further by making it an offence to just view the child sexual abuse material (with knowledge of what it is). However, viewing does not always necessarily mean storage or possession. In this regard, it can be contended that Korean law is stricter than the international legal frameworks.

Conclusion

As previously discussed, at the international level, the United Nations and the Council of Europe establish international legal frameworks to combat the ongoing problem of online and offline child pornography.

At the national level, currently, both South Korea and Thailand have their own child pornography regulations to meet the requirements set out in the two treaties of the United Nations, namely, CRC and the CRC-OP-SC. In addition, the Council of Europe awaits a response from South Korea about its accession to the Convention on Cybercrime.

In general, the laws against child pornography in both South Korea and Thailand are in line with the international legal frameworks to a great extent, as the production, distribution and possession of child pornographic materials are illegal in these two countries. Nonetheless, there are distinctions in different issues, notably the maximum age a person is still deemed to be a child, the types of materials covered by the definition of child pornography, and the considerations about realistic depictions of fictional youngsters engaged in sexual activity. This article is expected to be informative and provide some ideas that would motivate legal scholars to do more comparative studies of child pornography laws in other countries or regions.