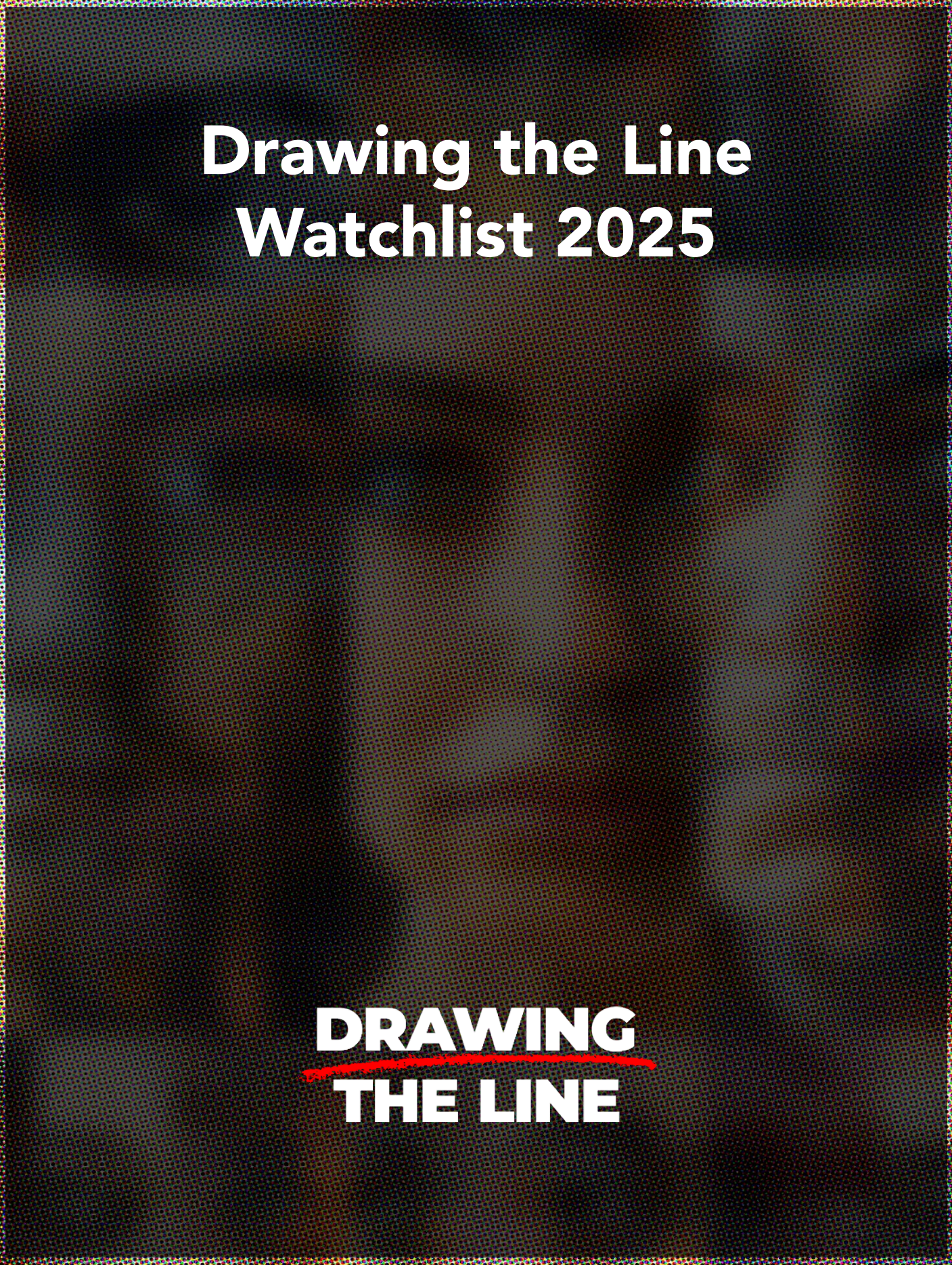
Drawing the Line Watchlist 2025



Executive Summary

The Drawing the Line Watchlist 2025 addresses the escalating tension between global efforts to combat Child Sexual Abuse Material (CSAM) and the preservation of fundamental democratic rights, namely privacy and freedom of expression.

The core finding of the Watchlist is the identification of a dangerous legislative trend: the blurring of the essential legal distinction between content that records or causes concrete harm to real children, and content that is purely fictional, artistic, or imaginative. By treating fictional works—such as drawings or stories that evoke taboo themes—the same as evidence of real abuse under the single umbrella term of CSAM, the global response is expanding state power and sacrificing core liberties.

The Watchlist presents a comprehensive analysis of the legislative frameworks, case law, policy debates, and enforcement practices in ten countries—Australia, Canada, Costa Rica, Denmark, France, Iran, Japan, South Korea, the United Kingdom, and the United States—highlighting the complexities and challenges of addressing CSAM in the digital age. It evaluates each country's framework against international norms of legality, necessity, and proportionality, as articulated in international human rights instruments.

Our research reveals a lack of consistency in terminology, scope, and penalties, leading to conceptual confusion, legal overreach, and unintended consequences. In particular, measures that criminalize expression without demonstrable harm, or that enable indiscriminate surveillance of private communications, are found to be inconsistent with fundamental rights protections. Across these jurisdictions, several key concerns emerge:

- **The diversion of child protection resources** from fighting real child abuse crimes towards the policing of imagination, as evidenced by data from the UK showing a sharp drop in real CSAM prosecutions to make way for prosecutions over artwork and fiction.
- **An expanding web of criminalization** that targets innocent people over victimless fictional works, such as the prosecution of a 17 year old Costa Rican girl over artwork that she posted to her blog.
- **The erosion of privacy and speech rights** without demonstrated public-safety gains, as illustrated by the political momentum of a European proposal to require all private online communications to be scanned.

To realign law and policy with human rights principles, the Watchlist makes the following recommendations to policymakers:

1. **Codify a clear distinction between real and fictional works.**
   Statutes should explicitly differentiate CSAM that directly harms real victims from fictional, artistic, or imaginative works that do not, ensuring that criminal prohibitions are triggered only where real children are involved.

2. **Standardize terminology while distinguishing real-world harm.**
   Reserve child sexual abuse material (CSAM) exclusively for depictions that involve or replicate real abuse. Use consistent, neutral language for fictional works to avoid importing moral judgment or implying victimization where none exists.

3. **Assign distinct enforcement responsibility.**
   Agencies tasked with investigating and prosecuting child sexual abuse should not also regulate fictional or expressive materials. Responsibility for such works should rest with appropriate non-criminal bodies, including classification boards and public-health authorities.

4. **Apply proportionate, harm-based penalties.**
   Criminal sanctions should be reserved for offences involving demonstrable harm to real victims. Where fictional works warrant regulation, use proportionate, non-criminal measures (e.g., age guidance, labeling, access controls) rather than offences designed for real-victim CSAM.

5. **Maintain separate statistical reporting.**
   Official crime statistics must clearly distinguish cases involving CSAM from those involving fictional works. Disaggregated data enable evidence-based policy, budget accountability, and a measurable reallocation of resources toward lived abuse rather than imagined content.

Ultimately, the evidence and principles surveyed in this Watchlist point to a single conclusion: law and policy must draw a clear, harm-based boundary between personal expression and lived abuse. Moral panic and misplaced enforcement priorities blur that line, eroding the hard-won safeguards that protect human dignity and limit state power. A coherent, evidence-based framework—one that targets real harm while respecting expression and privacy—will better protect children and strengthen the legitimacy of child-protection efforts worldwide. Only by drawing that line clearly can justice, rights, and child protection remain aligned.

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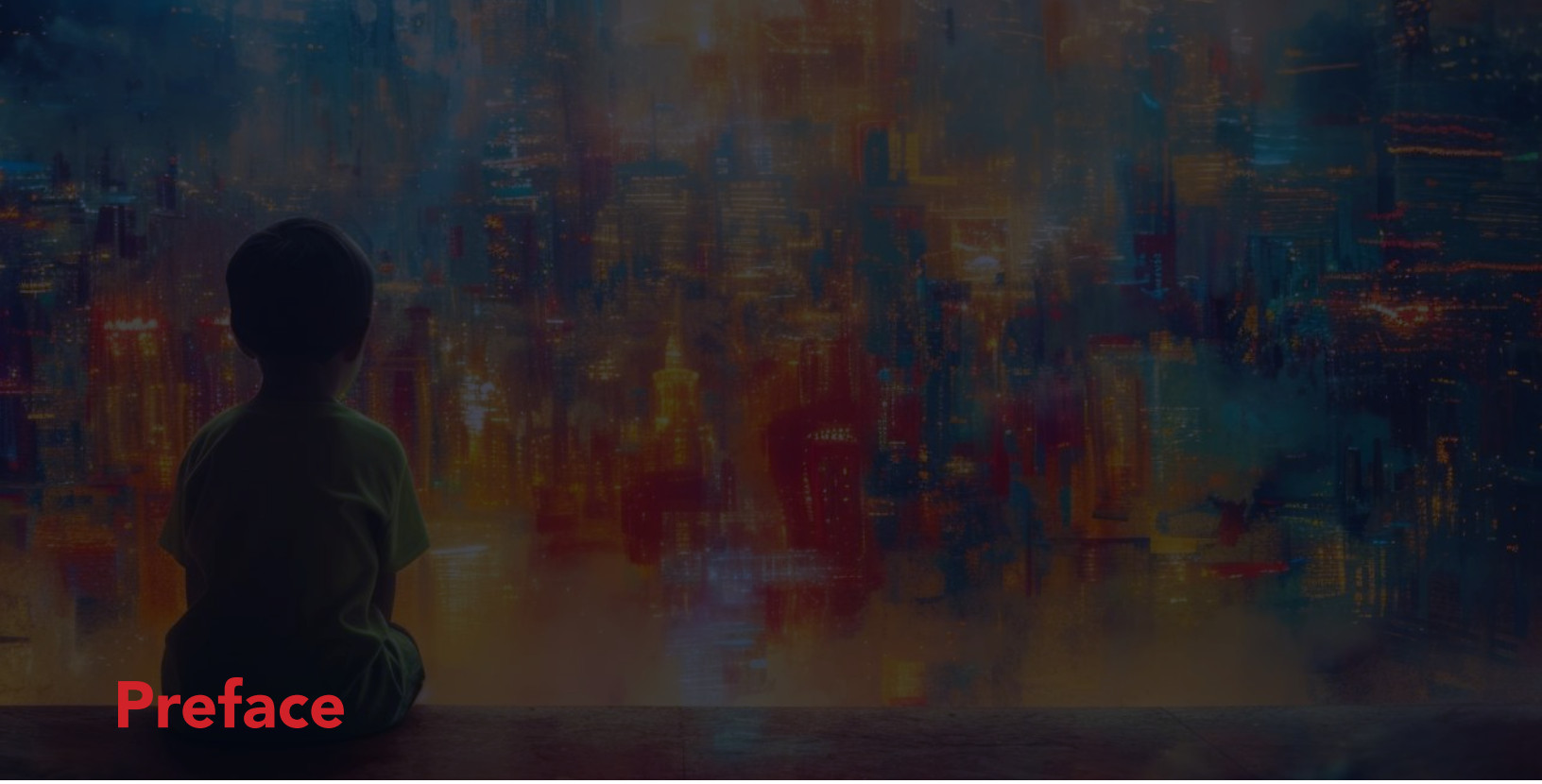


Preface

The fight against child sexual abuse material (CSAM) has become the defining battle at the heart of Internet governance. Few issues command such unanimity of moral purpose, yet few have tested the limits of democratic restraint so severely. In the name of protecting children, governments have expanded censorship powers, eroded privacy, and blurred the line between thought and crime.

A question that illustrates these tensions starkly is where we should draw the line between materials that record the abuse of, or infringe the sexual privacy of, real children, and those that exist purely in imagination—drawings, stories, or artistic depictions that may evoke childhood, sexuality, or taboo themes without involving any real child. To many people, it seems intuitive that they should be treated the same—and that a single term, CSAM, can cover them all. But this intuition collapses an essential distinction between reality and imagination, between harm and thought. Once that line is blurred, both justice and liberty are at risk.

Real child sexual abuse causes concrete, personal harm to real children. Fictional or artistic works—however distasteful their subject matter—do not. The law around child sexual abuse, and the language that shapes it, should therefore draw a line that centers children rather than imagination or expression.

Yet rational discussion of this boundary has become almost impossible. With the political heat of the Epstein files and conspiracies such as QAnon, child sexual abuse has assumed an outsized place in political discourse. Looming as an existential threat that requires exceptional measures, politicians and platforms alike have learned that there is no upside to nuance. To question the scope of child protection laws is to risk being accused of defending abuse itself (Goujard, 2021). As a result, long and spurious chains of association now link personal expression with lived abuse.

In this climate, fear untethers public discourse from the checks and balances that are supposed to constrain state power. Evidence-based policy—grounded in psychology, criminology, and human rights (eg. Baskurt et al., 2025; Letourneau et al., 2018)—is displaced by slogans of "zero tolerance." Public sentiment and political expediency allow this drift. Thus the scope of repression expands: any reference to child sexuality—real or fictional, harmful or harmless—is treated as inherently deviant and criminal.

Importantly, this report does not assert that offensive material online poses no concern, or that society has no interest in limiting its distribution. But these legitimate interests can be addressed through education, classification, trust and safety, and harm-reduction strategies—measures proportionate to the risk and consistent with human rights.

Rather, this report's central claim is straightforward, and should be uncontroversial: that child protection laws aimed at criminalizing or censoring personal expression must conform to human rights norms. And a human rights approach demands laws that are child-centered, not offender-obsessed—focused on acts of abuse rather than imagined intentions or fantasies.

To navigate this distinction, we need clearer guidance on where the line should be drawn in law and in policy. This is the purpose of the Drawing the Line Project, initiated by the Center for Online Safety and Liberty (COSL). In this first edition of its flagship publication, the Drawing the Line Watchlist, we have uncovered alarming trends across multiple jurisdictions:

- **Real child abuse image prosecutions have plummeted** in the United Kingdom, due to the diversion of enforcement resources to sustain a skyrocketing criminal blitz over fictional works.
- S**everal countries do not even track the difference** between prosecutions or convictions over real CSAM, with prosecutions over fictional works—obliterating the distinction between expression and abuse.
- **In Canada and Australia, novelists are being prosecuted for child abuse** over horror and BDSM-themed novels for adults.
- **In Costa Rica, a child was prosecuted over drawings on her blog**, as a result of a report from Canadian authorities—prosecuted under a "zero tolerance" law pushed by foreign lobbyists.
- **In Europe, child safety rhetoric is driving surveillance and filtering proposals** that would turn every Internet device into government-controlled spyware.
- **In Australia**, police are seeking new powers to distribute real CSAM in their pursuit of arrests, revictimizing children in a manner that UNICEF has described as a clear violation of the Convention on the Rights of the Child.

Our recommendations are simple but urgent. Law enforcement must return its focus to real cases of abuse. Fictional and artistic works, when regulated at all, belong in the hands of classification boards, educators, and public-health agencies—not the criminal courts. Language, statistics, and policy must draw a line between personal expression and lived abuse.

The challenge, ultimately, is to draw that line with honesty and precision. In doing so we must be guided by evidence and by human rights, not by fear or moral panic. Laws that cross this line lose sight of their purpose and their ethical foundation: to protect children, not to police imagination. Drawing the Line Between Personal Expression and Lived Abuse exists to keep that boundary visible—and to remind us that justice depends on where, and how, we draw it.

Introduction

Across many jurisdictions, fictional sexual materials—including stories, illustrations, animation, and AI-generated imagery—are increasingly being treated under the same legal frameworks as depictions of actual child sexual abuse (CSAM). This conflation raises serious concerns about proportionality, freedom of expression, and the effective allocation of law-enforcement resources. It also obscures the critical distinction between victimless expression and real harm, diverting attention from survivor-centred justice and evidence-based child-protection efforts.

The **Drawing the Line** project was established to examine and challenge this trend. This legal review forms its core research component, addressing the misuse of "online safety" discourse to criminalize non-harmful, fictional sexual expression and to conflate it with real CSAM. The review asks how and why national legal systems have collapsed this distinction and assesses the compatibility of such laws with international human-rights standards. Its findings are intended to inform public education, media advocacy, and policy reform aimed at aligning national laws with principles of legality, proportionality, and harm reduction.

To capture a range of legal and cultural approaches, ten countries were selected to represent diverse legal traditions and regional contexts. Together they provide a balanced sample of common-law, civil-law, Islamic, and mixed legal systems across different cultural and economic environments:

- **North America:** United States, Canada
- **Latin America:** Costa Rica
- **Europe:** United Kingdom, France, Denmark
- **Middle East and North Africa:** Iran
- **Oceania:** Australia
- **Asia:** Japan, South Korea

Methodology

The analysis applies the legal dogmatic (doctrinal) method to examine how each jurisdiction regulates fictional works that depict minors sexually. This approach interprets and systematizes existing legal rules, statutes, and case law to form a coherent understanding of how domestic law treats fictional works.

Deductive reasoning is used to identify established legal rules in treaties, penal codes, and judicial interpretations; inductive reasoning to extract principles from case law and policy trends; and analogical reasoning to evaluate how courts might treat fictional works by reference to analogous offences involving obscene or simulated content.

To contextualize these doctrinal findings, the study employs a comparative legal method across the ten jurisdictions, enabling the identification of common patterns, outlier practices, and areas of potential rights conflict. Each country chapter follows a standardized analytical matrix covering:

- **Legal frameworks—**whether fictional works are criminalized under the same provisions as real CSAM, and how key terms and thresholds are defined;
- **Criminalization and enforcement—**the range of penalties applied, and whether official statistics distinguish between real and fictional works;
- **Comparative best practices—**examples of harm-based or rights-consistent approaches and observable trends in enforcement or sentencing;
- **Human-rights analysis—**an assessment of each legal regime's conformity with international norms of free expression, proportionality, legality, and due process.

Sources of Law

Primary sources include domestic penal codes and statutes, relevant international treaties such as the Budapest Convention on Cybercrime and the Lanzarote Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, and applicable principles of customary international law. Case law from national and regional courts and authoritative scholarly commentary are used as subsidiary means of interpretation.

Secondary sources—including academic studies, policy reports, and NGO analyses from organizations such as Article 19 and Access Now—provide contextual insight into how these laws are debated and applied in practice. Media coverage of prosecutions and official statements from lawmakers and law-enforcement agencies further illuminate the political and cultural narratives surrounding fictional sexual content.

Analytical Framework

Each country chapter is structured according to the following framework of analysis:

1. **Legal Frameworks**—identification of statutory bases for criminalization and differentiation (if any) between real and fictional works.
2. **Criminalization and Enforcement**—examination of data collection, penalty ranges, and prosecutorial practice.
3. **Comparative Best Practices**—aanalysis of jurisdictions that explicitly distinguish or protect fictional works through harm-based thresholds.
4. **Human Rights Considerations**—evaluation of compliance with international obligations concerning freedom of expression, proportionality, and legality.

The human-rights standards underpinning this analysis are elaborated in the next chapter, which situates these domestic laws within the broader international framework of free-expression and child-protection obligations.

Terminology

Throughout this report, the term child sexual abuse material (CSAM) is used as a general descriptor only for depictions of actual child sexual abuse involving identifiable, real victims. When referring to a country's specific statutory language, the report uses the terminology found in that jurisdiction's legislation—for example, child abuse material in Australia or child pornography in the United States.

Although the term child pornography has been widely criticized for implying the possibility of consent, no such implication is intended here. Its use is purely descriptive, to maintain fidelity to the legal sources being discussed. Moreover, since the focus of this report is on fictional works, the concept of consent is not applicable at all, since no real persons are involved.

The fictional materials addressed in this study are not always explicitly sexual. Domestic laws in several jurisdictions extend criminal liability to works of art, biography, or literature that include child-related themes or nudity, regardless of intent to arouse. These will be referred to in this report using the broad term "fictional works." However where materials are specifically sexual in nature, this report generally uses the term fantasy (or fictional) sexual material (FSM), following contemporary research literature (eg. Lievesley et al., 2023).

Human Rights Framework

The modern international human rights system emerged from the devastation of the Second World War. In its wake, the international community resolved that certain boundaries must never again be crossed—not even in the name of security, morality, or the public good. The Universal Declaration of Human Rights and the treaties that followed were designed to curb the excesses of state power, to ensure that fear and outrage would never again justify the abandonment of fundamental freedoms.

Today, the same moral urgency that once drove the post-war human rights project resurfaces in the global campaign against child sexual abuse. Few causes command such universal consensus, yet the fervour to eradicate abuse has also tested the limits of the human rights system itself. Measures enacted under this banner—ranging from criminalization of expression to pervasive surveillance and Internet censorship—pose a constant challenge to the principles of legality, necessity, and proportionality that international law was created to uphold.

In particular, the regulation of sexual expression implicates fundamental human rights, and all the more so at the margins where such expression touches social taboos or stigmas. Laws that criminalize the creation or possession of consensually produced adult content, drawings, stories, or digital creations, or that enable mass surveillance and Internet censorship in the name of child protection, must be examined not only for their moral or political motivations but against the binding standards of international human rights law.

International Human Rights Law

The foundation of the international human rights framework is the Universal Declaration of Human Rights (UDHR), whose Article 19 guarantees the right to "seek, receive and impart information and ideas of all kinds." The International Covenant on Civil and Political Rights (ICCPR), to which most democratic states are party, transforms this right into binding treaty law.

Article 19(3) of the ICCPR allows restrictions only when they are:

1. Provided by law;
2. Necessary to protect a legitimate aim—such as the rights or reputations of others, national security, or public order; and
3. Proportionate to that aim, representing the least intrusive means available.

The UN Human Rights Committee, in its authoritative General Comment No. 34 (2011), has clarified that restrictions on expression "must not put in jeopardy the right itself." Criminal penalties for possessing or creating purely fictional or artistic works are therefore highly suspect, since such measures neither protect identifiable victims nor demonstrably advance public safety.

The Office of the United Nations High Commissioner for Human Rights (OHCHR) has cautioned that the criminalization of artistic or fictional expression "risks eroding the boundary between child protection and censorship" and that imprisonment for non-exploitative creative works is an extreme and disproportionate response (Malcolm 2023a).

Importantly, this does not mean that states may do nothing to address the harms of offensive creative content. States may adopt educational, social, or technical measures to address perceived harms, but the use of criminal law is a last resort, generally reserved for conduct that directly exploits real individuals.

Treaties on the Rights of the Child and Related Conventions

States frequently rely on international child-protection instruments as justification for broad criminalization of sexual representations involving minors. However, these treaties cannot detract from the ICCPR, and while they vary in scope and interpretation, none unequivocally mandates the prohibition of wholly fictional or imaginary material.

The Convention on the Rights of the Child (1989) is the foundational global instrument on children's rights. Article 34 requires States to protect children from "all forms of sexual exploitation and sexual abuse," including the exploitative use of children in pornography. The focus, by its wording, is on the protection of actual children from being used in the production of such material. Yet the CRC leaves open how States should address material that does not involve identifiable minors, and its general language has allowed for divergent interpretations in domestic law.

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) (2000) supplements the CRC by requiring criminalization of child pornography, which it defines in Article 2(c) as:

"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."
This wording introduces textual ambiguity: "simulated" could refer to real children depicted in staged scenarios, but has also been read by some States (and by the Guidelines on the Implementation of the OPSC, discussed below) to encompass virtual, morphed, or computer-generated images. The Committee on the Rights of the Child has, in its Concluding Observations, occasionally endorsed this broader reading, urging States to prohibit "virtual pornography" or "cartoon or computer-generated" material that sexualizes children.

However, this interpretation is not universally accepted. Several States, including Japan and Denmark, have maintained that the Protocol's intent is limited to the exploitation of real children, and that extending it to purely fictional works would exceed its protective purpose. The Protocol contains no explicit requirement that States criminalize simulated or fictional works, and it permits a degree of implementation discretion consistent with national legal traditions.

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007)—the Lanzarote Convention—takes a somewhat broader approach. Article 20(2) obliges States to criminalize the production, distribution, and possession of "child pornography," defined in Article 20(2)(a) as material that "visually depicts a child engaged in real or simulated sexually explicit conduct," and under Article 20(3) it also allows Parties the option to extend this to "simulated representations or realistic images of a non-existent child."

Several States have entered reservations or declarations under Article 20(3) limiting the definition to depictions of real children. This flexibility explains the diversity seen in domestic laws across Europe—from narrower transpositions in countries such as the Netherlands to expansive interpretations in the United Kingdom.

The Budapest Convention on Cybercrime (2001) also includes a provision on "child pornography" in Article 9, drafted partly in parallel with Lanzarote. It defines the term broadly, covering both "a person appearing to be a minor" and "realistic images representing a minor." Yet again, Article 9(4) allows States to enter reservations in respect of these categories. Several Parties, including Canada and Japan, have exercised that right, thereby limiting their obligations to material involving real minors.

Soft Law Instruments

Additionally, there are several relevant non-binding or "soft law" international texts. The Committee on the Rights of the Child's Implementation Guidelines on the OPSC (CRC/C/156, 2019) provide the most detailed soft-law interpretation of States' obligations under the OPSC. In paragraph 63, the Committee "encourages States parties to include in their legal provisions regarding child sexual abuse material (child pornography) representations of non-existing children or of persons appearing to be children, in particular when such representations are used as part of a process to sexually exploit children."

Some State parties, including Japan, criticized the Committee for overstepping its mandate by implying an expanded interpretation that effectively revises the text of the OPSC (Malcolm, 2019b). Nonetheless, the Guidelines reflect a soft-law expectation that States should address virtual and digitally generated sexual material within their child-protection frameworks, even if national implementation varies widely. The evolution of this interpretation and its policy consequences are discussed further in the Costa Rica section below.

Another relevant soft law instrument from the UN Committee on the Rights of the Child is its General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment. This document urges States to safeguard children from online harm, but it also emphasizes the obligation to respect privacy, freedom of expression, and access to information. It calls for balanced regulation and warns against disproportionate restrictions that unduly limit young people's participation in the digital world.

Taken together, these instruments establish an evolving and often ambiguous framework. None mandates the blanket prohibition of fictional or artistic depictions; instead, they create a menu of obligations, permitting—but not requiring—States to extend their laws to "realistic" or "virtual" representations. The ability to make reservations or interpretive declarations has produced a patchwork of national approaches, from minimal criminalization focused on real abuse to maximalist regimes that treat imaginary works as equivalent to CSAM.

In this sense, the human rights framework does not speak with a single voice. Rather, it reflects an ongoing tension between child protection imperatives and the principle of proportionality that underpins international law.

Regional Instruments

Beyond the ICCPR, several regional instruments also articulate relevant principles:

- The European Convention on Human Rights (ECHR) protects freedom of expression under Article 10 and privacy under Article 8. The European Court of Human Rights (ECtHR) has repeatedly stressed that artistic and fictional expression enjoys the same protection as political or journalistic speech. In Vereinigung Bildender Künstler v. Austria (2007), the Court held that an injunction against exhibiting a satirical painting depicting prominent public figures in sexual scenes violated Article 10 of the Convention. It emphasized that freedom of artistic expression constitutes an essential element of a democratic society that must be protected, even if the ideas presented may "offend, shock or disturb." The Court found that the Austrian courts had failed to strike a fair balance between protecting morals and safeguarding artistic freedom.
- The American Convention on Human Rights (ACHR), Article 13, similarly prohibits prior censorship and demands that criminal sanctions be reserved for the most serious abuses. In "The Last Temptation of Christ" (Olmedo-Bustillos et al. v. Chile) (2001), the Court found that Chile's ban on the exhibition of Martin Scorsese's film violated Article 13. It held that prior censorship, even when justified on grounds of public morals or religion, is incompatible with the Convention except in the narrow cases explicitly allowed by Article 13(4) (public entertainment regulations protecting minors). The Court emphasized that artistic works are a form of expression "of ideas and opinions through the creation of images," and that moral offence or religious sensitivity alone cannot justify censorship.

Together, these regional norms, alongside comparable principles such as Article 9 of the African Charter on Human and Peoples' Rights, reinforce the consistent global principle established by the international human rights instruments: that fictional or artistic representations must not be treated as equivalent to acts of real abuse, and any interference with expression must be strictly justified.

Application to Blocking and Surveillance

In addition to criminal measures, efforts to combat child sexual abuse material online have also led to the widespread adoption of domain and URL blocking regimes, one of which will be referred to in the section on France below. A Joint Declaration on Freedom of Expression on the Internet issued by the Special Rapporteurs for Freedom of Expression of the Americas, Europe, Africa, and the United Nations in 2011 identifies "the protection of minors from sexual abuse" as one of the few justifications for the mandatory blocking of entire websites. However under human rights law, these measures must be narrowly tailored.

In UPC Telekabel Wien GmbH v Constantin Film Verleih GmbH (C-314/12, CJEU 2014), the Court of Justice of the European Union (CJEU) held that blocking injunctions must meet a strict proportionality test: they must effectively target unlawful material, avoid overblocking lawful content, and preserve users' rights to receive information. Blanket DNS or IP blocking of entire domains—particularly those hosting a mixture of lawful and unlawful material, or those that host fictional or artistic sexual content—fails this test.

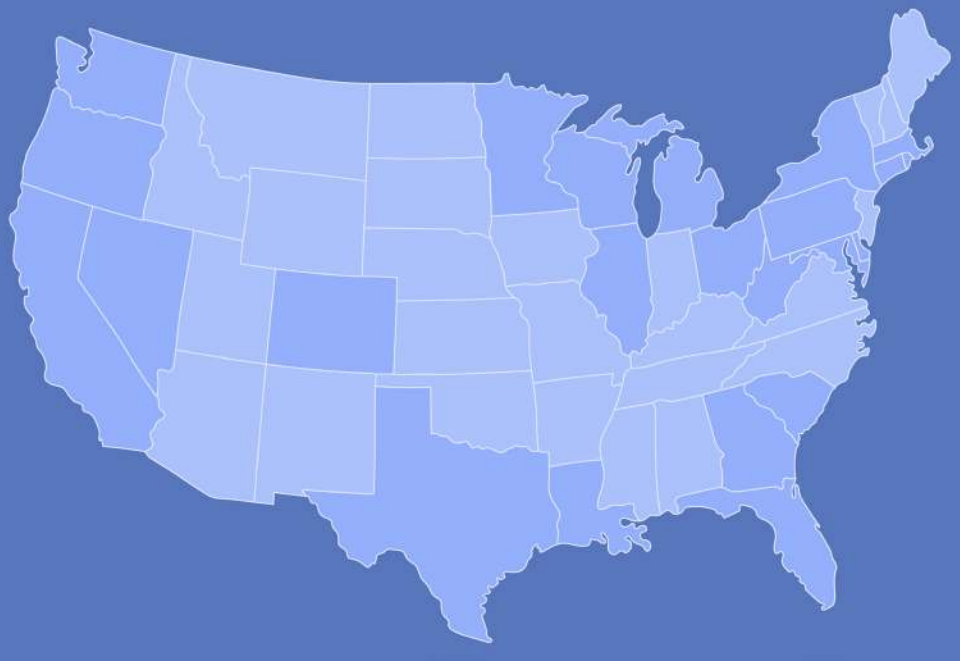
Although surveillance is not the primary focus of this report, its relevance is unavoidable. Article 17 of the ICCPR provides that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence," and ECHR Article 8 is the equivalent European provision. Surveillance or monitoring schemes designed to detect child sexual abuse material must thus satisfy the same tests of legality, necessity, and proportionality. Blanket or generalized monitoring of private communications—particularly where automated systems may misclassify lawful or fictional works—cannot meet these standards.

The UN Human Rights Council and the European Data Protection Supervisor have both emphasized that such monitoring must be targeted, necessary, and proportionate, and that automated analysis of private communications creates acute risks of rights violations (EDPB-EDPS, 2022; United Nations High Commissioner for Human Rights, 2021). Systems that scan users' messages for potential "synthetic" or "AI-generated" sexual imagery raise even graver concerns, since they extend surveillance to lawful expression and imagination.

Conclusion

Taken together, the instruments and doctrines outlined above establish a human rights framework that condemns the sexual exploitation of real children while placing strict limits on how far States may go in pursuing that objective. The post-war human rights system was built on the recognition that even the most compelling social causes can become pretexts for overreach. In the context of child protection, this means that the criminalization of expression, the blocking of information, and the surveillance of private communications must each be tested against the principles of legality, necessity, and proportionality.

The framework does not deny the gravity of child sexual abuse, but it insists that its prevention must be pursued within the rule of law and without eroding the freedoms that define a democratic society. As the following country studies illustrate, it is precisely where moral urgency is greatest that these safeguards are most often strained—and where the integrity of the international human rights order is most in need of defence.



United States

The United States has played a central role in shaping international discourse on the regulation of sexual expression and child protection. Its legal framework is marked by a uniquely punitive approach, in which obscenity and child pornography are treated as distinct but overlapping categories of unprotected speech. This overlap, combined with expansive federal enforcement, has produced a system that often treats fictional works as harshly as material involving actual child abuse.

Obscenity and Child Pornography

In the United States, two bodies of criminal law—child pornography and obscenity—operate against a constitutional backdrop that seeks to balance freedom of expression with the protection of children from exploitation. In *New York v. Ferber,* 458 U.S. 747 (1982), the Supreme Court held that visual depictions of minors engaged in sexually explicit conduct constitute a categorical class of unprotected speech because the State's interest in safeguarding children is compelling (at 756-57). Statutorily, federal child-exploitation offenses are centered in 18 U.S.C. §§ 2251–2252A (production, receipt, distribution, and possession), with "sexually explicit conduct" defined to include, among other things, the lascivious exhibition of the genitals.

Obscenity is a separate, judge-made category of unprotected speech defined by the three-part test of *Miller v. California*, 413 U.S. 15 (1973): the average person, applying contemporary community standards, must find that the work appeals to the prurient interest; it must depict sexual conduct in a patently offensive way; and, taken as a whole, it must lack serious literary, artistic, political, or scientific value. Obscenity prosecutions generally proceed under 18 U.S.C. §§ 1461–1465 (mailing, transportation, and sale of obscene matter), while 18 U.S.C. § 1466A specifically targets visual representations of the sexual abuse of children—whether actual, computer-generated, or otherwise made to appear as involving minors—when those depictions meet the Miller test for obscenity.

Constitutional Protections

The constitutional doctrines most salient here are the First Amendment and the Fourteenth Amendment's substantive due process guarantee. The First Amendment excludes both child pornography *(Ferber)* and obscenity *(Miller)* from its protection, albeit on different rationales. Substantive due process, as articulated in *Stanley v. Georgia*, 394 U.S. 557 (1969), recognizes a narrow right of autonomy in the private possession of obscene material within the home. While the state has an interest in preventing distribution, "a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch" (at 565).

This yields an important asymmetry: mere possession of child pornography may be criminalized, while mere possession of obscenity in the home may not. In *Osborne v. Ohio*, 495 U.S. 103, 111–14 (1990), the Court narrowly upheld state bans on possession of child pornography,

reasoning that such bans help eradicate the market and address the direct harm inherent in production (at 111). By contrast, *Stanley* protects the private possession of obscenity (though not its acquisition, distribution, or production), reflecting a distinct constitutional treatment of obscenity vis-à-vis child exploitation material.

Virtual Representations

The most contested terrain lies with virtual or simulated images that depict imaginary children. In *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002), the Supreme Court reviewed the Child Pornography Prevention Act of 1996 (CPPA), which criminalized not only computer-generated images that "appear to be" minors engaged in sexual conduct but also films using adult actors who were made to look younger. The Court struck these provisions down as unconstitutionally overbroad, emphasizing that unlike the materials at issue in *Ferber*, such depictions "record no crime and create no victims by their production" (at 241). The government's arguments that virtual images might encourage pedophiles or lead to child abuse were deemed too speculative and indirect to justify suppression of protected speech (at 253–54).

Thus, in principle there is only a limited overlap between the regulation of victimless expressive materials and the categorical ban on child pornography. Yet there are three important caveats. The first, and narrowest, concerns computer-generated depictions that are indistinguishable from images of real children. Although *Ashcroft* struck down the broader provisions of the CPPA, it left open the possibility that such hyper-realistic simulations could be treated the same as actual child pornography. Congress responded in the PROTECT Act of 2003, which amended 18 U.S.C. § 2256(8)(B) to define "child pornography" to include visual depictions that are indistinguishable from those of a minor. Importantly, this provision situates such images within the child pornography framework itself, not under the obscenity statutes, thereby narrowing—but not eliminating—the constitutional gap that Ashcroft had exposed.

The Dost Test

The second caveat is much broader, and concerns the definition of "sexually explicit conduct" as applied to minors. In *Ferber*, the Court left this term largely undefined. Lower courts filled the gap, most prominently in *United States v. Dost*, 636 F. Supp. 828 (S.D. Cal. 1986). That case introduced a six-factor test for determining whether an image constitutes a "lascivious exhibition of the genitals or pubic area." Subsequent courts have applied this test expansively, sometimes even to photographs in which children are fully clothed.

The Dost factors include subjective criteria such as "whether the visual depiction suggests coyness or a willingness to engage in sexual activity," and "whether the visual depiction is intended or designed to elicit a sexual response in the viewer" (at 831). In practice, courts have applied these factors by imputing sexual meaning to otherwise innocent images, reasoning from the perspective of a potential pedophile rather than the intent of the photographer or the context of the image.

This approach effectively shifts the basis of criminalization from harm to the child in the production process to the psychological response of a deviant viewer. Legal scholar Amy Adler has criticized this drift, arguing that "Courts increasingly interpret the test in a way that invites us to view objectively nonsexual pictures of children through the gaze of the pedophile, transforming these images into 'child pornography'" (Adler, 2016, p. 99).

The consequences of this elasticity are evident in recent controversies. In January 2025, Texas police raided an art gallery displaying photographs of the children of artist Sally Mann, alleging they constituted child pornography, despite their widely recognized artistic context and lack of sexual intent (Aton, 2025). By contrast, in October 2025, a federal judge rejected claims that the naked infant on the cover of Nirvana's *Nevermind* album could satisfy the Dost test (Brittain, 2025). These contrasting episodes illustrate the grey area created by the test's subjectivity, where the line between art and contraband can depend more on prosecutorial discretion and cultural anxiety than on any clear standard of harm.

Penalties

The third caveat about the separation between child pornography and obscenity under U.S. law is that although Congress could not constitutionally equate these two categories, it has often aligned the penalties as if they were equivalent. This pattern is not unique to the United States but appears in other jurisdictions as well.

Considering child pornography (actual CSAM), federal law—and many state systems—impose penalties for mere possession that rival or exceed those for hands-on sexual abuse of minors. While this may be defensible due to the harmful nature of CSAM distribution, it makes less sense that obscenity offenses have been legislatively harmonized with these child pornography penalties. Under federal law, obscenity crimes carry sentences of up to 10 years for possession and 20 years for distribution, mirroring the sanctions for offenses involving real children.

This equalization of punishment was driven by the PROTECT Act of 2003, which sought to erase the sentencing distinction between materials involving actual harm to children and materials that are merely obscene. The rationale was grounded in the same assumptions rejected in *Ashcroft v. Free Speech Coalition*—namely, that fictional or unrealistic depictions might encourage sexual abuse of children. Yet empirical research has cast serious doubt on that claim (Paul & Linz, 2008).

The most extreme application of these obscenity penalties was the prosecution of Thomas Arthur, who received a 40-year sentence for distributing written stories accompanied by some hand-drawn illustrations (SHG, 2021). Such outcomes stand in stark contrast to punishments for contact sexual offenses. For example, Ghislaine Maxwell received a 20-year sentence for sex trafficking of minors, while Stanford University athlete Brock Turner served only six months for sexually assaulting an unconscious woman. These disparities highlight the paradox that fictional or expressive offenses may attract punishments as severe—or even more severe—than those imposed for crimes involving direct sexual abuse of living victims.

Enforcement Infrastructure

The expansion and equalization of penalties has been accompanied by a substantial enforcement infrastructure. At the federal level, prosecutions are spearheaded by the Child Exploitation and Obscenity Section (CEOS) of the Department of Justice, working in tandem with the Federal Bureau of Investigation (FBI) and Homeland Security Investigations (HSI). These agencies devote significant resources to identifying and prosecuting offenses ranging from large-scale distribution networks to mere possession cases. The prominence of CEOS within DOJ underscores how obscenity and child pornography are treated as part of a unified enforcement agenda, despite their distinct constitutional rationales.

This stands in contrast to many of the other jurisdictions surveyed—such as Australia, Japan, and the United Kingdom—where civil or administrative bodies (classification boards, regulatory agencies) handle obscenity and pornography, reserving criminal sanctions for the most serious cases. In the United States, by comparison, obscenity remains exclusively a criminal matter under both federal and state law, with no official classification system that could mediate between protected and prohibited content.

Moreover, within this criminal model, enforcement resources are disproportionately directed toward possession cases, in which defendants are punished severely even without evidence of production or distribution. As Hessick (2016) observes, this emphasis diverts prosecutorial energy away from crimes involving direct physical harm to children, raising concerns about whether the allocation of enforcement resources reflects the gravity of the underlying harms.

Law Reform

Although U.S. law is already among the strictest in this area, there are active efforts to make it even more punitive. The ENFORCE Act (H.R. 4831, 119th Cong.) would remove the statute of limitations for offenses involving obscene visual depictions of minors, classify such crimes as sex offenses for registration purposes, bar defendants from accessing the contested materials in discovery, and impose a presumptive detention requirement pending trial.

The Protecting Our Children in an AI World Act of 2025 (H.R. 1283) takes a different tack by expanding the statutory definition of "sexually explicit conduct." It would newly encompass "actual or simulated obscene exhibition of the clothed or unclothed genitals, pubic area, buttocks, or female nipple," thereby lowering the threshold for what kinds of images can be prosecuted as obscenity when minors are depicted or appear to be depicted.

At the same time, the government is pressing in the courts to narrow the constitutional protections recognized in Stanley v. Georgia, 394 U.S. 557 (1969), which held that possession of obscene materials in the privacy of one's home could not be

criminalized. In the Seventh Circuit Court of Appeals, Federal prosecutors are seeking to carve out an exception for obscene materials involving depictions of minors, arguing that the special status of child exploitation justifies overriding Stanley's core privacy principle. The Center for Online Safety and Liberty (COSL)—the author of this report—has submitted an amicus curiae brief in that case, warning of the dangers of further eroding constitutional protections in the name of combating virtual or fictional works (COSL, 2025a).

Conclusion

Overall, U.S. law has drawn a sharp constitutional distinction between child pornography and obscenity, yet legislative and prosecutorial practice has steadily blurred that line. Although the Supreme Court has repeatedly emphasized that fictional or virtual depictions do not involve real victims and therefore cannot be equated with child pornography, Congress has repeatedly responded by expanding definitions, harmonizing penalties, and funding aggressive enforcement. The result is a system in which the penalties for producing, distributing, or even possessing fictional works can rival or exceed those for crimes involving real children, and where constitutional protections are continually tested by legislative innovations. This trajectory reflects a uniquely punitive and criminalized approach compared with other jurisdictions, and illustrates the ongoing tension between child protection and freedom of expression in U.S. law.

United States—Summary

Separate laws: Yes—*18 U.S.C. §§ 2251–2252A* cover real child pornography; *18 U.S.C. §§ 1461–1466A* cover obscenity, including fictional works. In practice, the distinction is blurred, especially where images "appear to be" minors.

Separate agencies: No—Enforcement centralized under DOJ's Child Exploitation and Obscenity Section (CEOS), with the FBI and Homeland Security Investigations. No separate body for fictional works.

Separate statistics: Partial—separate data on real and fictional cases are tracked by DOJ and NCJRS, but are aggregated in public statistics. A FOIA request for disaggregated statistics was submitted to DOJ's Criminal Division (23 Sept. 2025) and remains pending at date of publication.

Separate terminology: Yes—Statute refers to *"obscene visual depictions of minors"* (18 U.S.C. § 1466A) for fictional or animated depictions. Only depictions that are indistinguishable from real are subsumed within "child pornography."

Treaty reservations: Yes—U.S. signed but not ratified the Lanzarote Convention; ratified the Budapest Convention with reservations excluding purely fictional/consensual depictions.

Penalty range (fictional): Up to 20 years for production/distribution; up to 10 years for possession (18 U.S.C. § 1466A).

Penalty range (real): 15–30 years for production; 5–20 years for distribution/receipt; up to 10 years for possession (with higher mandatory minimums for repeat offenders).

Enforcement intensity: Moderate—§ 1466A prosecutions are relatively rare compared to real-CSAM cases, but sentences can be severe when brought. DOJ priorities overwhelmingly target real child pornography.

Canada

Canadian law on obscenity and child pornography has followed a distinctive trajectory, but one that—like the United States—has often blurred the line between depictions of real abuse and fictional or artistic representations.

Origins in Obscenity Law

Prior to 1992, Canadian obscenity law was a colonial inheritance, modeled on the British *Obscene Publications* Acts of the 19th century, with morality and corruption of public morals as the operative test. Canadian courts historically applied what was called the "community standards of tolerance" test, adapted from U.K. jurisprudence, and the focus was not on harm but on offensiveness and the risk of corrupting vulnerable audiences. This was exemplified in *Towne Cinema Theatres Ltd v. The Queen* [1985] 1 S.C.R. 494, where the Supreme Court upheld an obscenity conviction under s.163 of the Criminal Code by asking whether the material exceeded what the community would tolerate, without requiring proof of harm.

This approach began to change in the wake of the adoption of the Canadian Charter of Rights and Freedoms in 1982, which for the first time gave constitutional protection to freedom of expression. Laws restricting sexually explicit material now had to be justified against this new constitutional guarantee. Canadian jurisprudence on obscenity was thus reinvented in *R v. Butler* [1992] 1 S.C.R. 452, the Supreme Court's first major opportunity to test s.163 of the Criminal Code against the Charter. In that case, the Supreme Court upheld the constitutionality of s.163, but did so by redefining obscenity as material that causes harm.

Rather than being grounded in direct harm to victims as in the U.S. Supreme Court's reasoning in *New York v Ferber*, the Canadian Supreme Court allowed that a justification for limiting expressive freedom under the Canadian Charter of Rights and Freedoms could also exist where the state could demonstrate indirect or social harm. Such harms could include reinforcing gender inequality and violence against women, rather than moral corruption alone, and these harms did not have to be empirically proved but could be reasonably inferred.

Broader Legislation and Its Effects

Butler's recognition that expressive freedom under the Charter could be curtailed to prevent social harms emboldened legislators to extend the criminal law into new territory. In the climate of heightened concern over child sexual abuse in the early 1990s, Parliament moved swiftly to address depictions involving minors, even where no actual child was harmed in their creation. This shift reflected a belief—consistent with Butler's reasoning—that such materials could produce indirect harms by normalizing or encouraging exploitation.

Thus the following year, Parliament dramatically expanded the scope of the criminal law with Bill C-128, which added a new s.163.1 to the Code dealing specifically with "child pornography,"

forcing the bill through on the final day of the 1993 legislative session. The breadth of this provision was remarkable. It criminalized not only photographic depictions of real child sexual abuse, but also "any written material or visual representation" that advocates or counsels sexual activity with a person under the age of eighteen years. As drafted, this definition extended to wholly imaginary depictions such as drawings and cartoons, fictional stories or other written works, and audio recordings.

Within a year, the law's wide reach was being felt. An art gallery was raided over the paintings of artist Eli Langer (CBC, 2015), Canadian customs authorities seized books en route to bookstores from the United States, and a Quebec judge banned a television movie about sexual abuse of children in an orphanage (Lyall, 1993).

Constitutional Challenges

A constitutional challenge to s.163.1 arose in *R v. Sharpe* [2001] 1 SCR 45. John Robin Sharpe was charged in part for possessing fictional stories that he had written privately. At trial, he argued that the law violated his rights under the Charter. The British Columbia Supreme Court initially accepted this claim, and the case was appealed to the Supreme Court of Canada. There, the Court upheld the law's constitutionality but sought to temper its impact by reading in two narrow exemptions. The first protected written material or visual representations created and held privately by the accused for personal use, effectively recognizing a limited privacy interest. The second protected recordings of lawful sexual activity made by or depicting the accused, provided they were kept exclusively for private use. The Court justified these carve-outs as necessary to prevent the criminal law from intruding too far into private expression and self-documentation.

Nonetheless, public reaction to the Sharpe decision was overwhelmingly hostile. Sharpe himself was vilified in the media, and the perception that the Court had "opened the door" to child pornography provoked a political backlash (Gotell, 2001).

That backlash soon found expression in Parliament again. Between 2002 and 2005, amendments were introduced that tightened s.163.1 further. The most significant changes were the removal of the requirement that fictional material "advocates or counsels" sexual activity, and the abolition of the so-called "artistic merit" defence. In combination, these changes meant that fictional works could be criminal even if they neither encouraged unlawful conduct nor had any intent to promote abuse, and artists could no longer rely on the inherent value of their work as a defence. Scholars and advocates observed that this made Canada's child pornography law among the most expansive in the world, one that criminalized mere depictions with no necessary nexus to real harm (Ryder, 2003).

The breadth of the amended law eventually led to further constitutional litigation. In *Godbout v. Attorney General of Quebec* (2020 QCCS 2967), prosecutors sought to apply s.163.1 to a horror novel that retold the story of *Hansel and Gretel* with disturbing, sexually explicit elements. The Quebec Superior Court struck down parts of the law, holding that the removal of the "advocates or counsels" language rendered it unconstitutional.

Judge Blanchard explained that, as drafted, the provision could criminalize not only fictional authors but also survivors of child sexual abuse who wrote about their own experiences. This would infringe their core Charter rights to freedom of expression, since such personal accounts and social commentaries lie at the very heart of protected discourse. The Court stressed that expressive activity aimed at denouncing abuse or enabling survivors to process trauma could not be suppressed by the blunt instrument of criminal law.

The Quebec Crown appealed unsuccessfully to the Supreme Court, leaving the lower court's invalidation standing. Yet despite this ruling, Parliament has not amended the Criminal Code, leaving the unconstitutional provisions in place and sowing confusion about their enforceability.

Penalties and Enforcement

The penalties for child pornography offences under s.163.1 are harsh, though not as extreme as those seen in the United States. For indictable offences involving the making, distribution, or possession for the purpose of distribution, the Criminal Code provides a mandatory minimum sentence of one year imprisonment and a maximum of 14 years. For simple possession, the penalty is lower but still substantial: a mandatory minimum of six months and a maximum of five years. Convictions also trigger mandatory registration on the national sex offender registry, which can have lifelong consequences for employment, travel, and social participation.

Enforcement of s.163.1 remains primarily in the hands of police and Crown prosecutors, but the role of the Canadian Centre for Child Protection (C3P) which runs the CSAM reporting hotline Cybertip.ca also deserves mention. Kohm (2020) argues that C3P, publicly supported but operating with little transparency, has exercised outsized influence on the legal and public framing of the issue of child protection in Canada, steering legislative agendas toward the most expansive definitions and aggressive enforcement mechanisms. This has had impacts not only within Canada but also abroad—as the next section on Costa Rica will explain.

Canada does not have a single, national content classification or ratings system for media. Instead, responsibility for classifying films, videos, and other media has historically rested with the provinces and territories, many of which maintain their own film classification boards or delegate that role to others.

Law Reform

Under Bill C-291 which came into effect in October 2025, Canada changed the terminology "child pornography" to the term "child sexual abuse and exploitation material" or CSAEM in federal legislation. As appears on its face, this is a hybrid of two terms: CSAM which refers to actual abusive sexual images and videos of those under 18, and CSEM which refers to fictional or otherwise non-abusive material (ECPAT, 2025). By binding these terms together, the Canadian legislature is doubling down on their conflation in law.

Conclusion

In sum, Canada's trajectory on obscenity and child pornography law reflects a steady expansion of criminal liability from colonial moralism, to Butler's harm-based rationale, to a hybrid "CSAEM" regulatory regime that, as Pearson (2025) observes, "literally erases child sexual abuse from mattering" in its regulation of even fictional or symbolic depictions. Although courts have attempted to cabin these laws through Charter-based exemptions and invalidations, the result has been a patchwork in which a statute partly declared unconstitutional remains on the books.

The Canadian experience demonstrates how broad legislative drafting, coupled with advocacy by non-governmental organizations, has produced one of the world's most expansive regimes—one that continues to test the limits of constitutional freedom of expression by conflating expressive works with exploitative imagery.

Canada—Summary

Separate laws: No—Criminal Code s.163.1 covers both real and fictional "CSAEM," including written, audio, and visual depictions.

Separate agencies: No—Enforcement is through RCMP, local police, and federal prosecutors; no separate agency for fictional works.

Separate statistics: No—National statistics don't disaggregate real vs. fictional CSAM prosecutions.

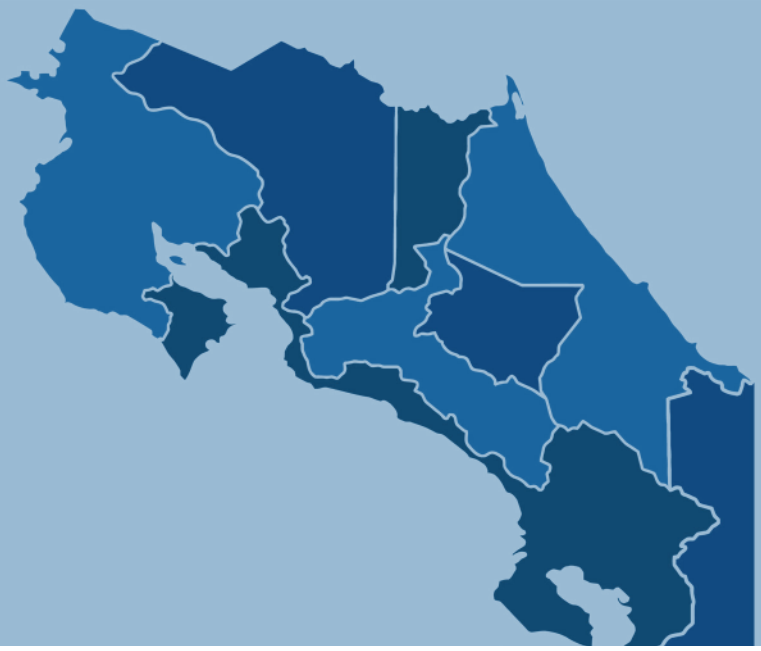
Separate terminology: No—All falls under "CSAEM"; statutory language explicitly includes "written" and "visual representations."

Treaty reservations: No—Canada ratified both the Budapest and Lanzarote Conventions without limiting reservations relevant here.

Penalty range (possession): min. 6 months, max. 5 years.

Penalty range (distribution/production): min. 1 year, max. 14 years.

Enforcement intensity: Moderate—Law is broad enough to cover written/drawn content, and there have been occasional prosecutions, but enforcement focus is overwhelmingly on real-CSAM; fictional cases are infrequent.



Costa Rica

Costa Rica has adopted some of the most hardline provisions in Latin America conflating depictions of real child sexual abuse with entirely fictional or simulated material. These provisions did not emerge organically, but were the result of sustained international lobbying, with Costa Rica serving as a showcase for the expansive criminalization agenda promoted by advocacy NGOs.

Legislative Reform

In November 2013, Costa Rica's Legislative Assembly passed Law No. 9177, amending the Criminal Code (Law No. 4573). Among other changes, it introduced Article 174 bis, criminalizing "virtual pornography" and "pseudopornography." Before this reform, the Penal Code did not clearly prohibit depictions that were purely simulated or fictional and did not involve real minors. The 2013 amendments also removed language requiring materials to contain the image and/or voice of a child, thus broadening its scope beyond visual or audiovisual materials to include written depictions.

The legislative history reveals the central role of Alianza por tus Derechos, a nonprofit founded in 2005 that effectively inherited the local staff and mandate of Casa Alianza (Covenant House), a New York–based Catholic charity (La Nación, 2005). Alianza por tus Derechos presented a draft bill to the Legislative Assembly in 2012, which was adopted without significant changes the following year (ECPAT, 2014, p. 59).

Casa Alianza itself had long worked in coalition with international NGOs such as ECPAT. Founded in 1990 by a coalition of religious and secular groups, ECPAT had assumed for itself a global monitoring role, assessing states' compliance with their obligations under the Convention on the Rights of the Child (CRC) and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC). Through this role, it has consistently pressed for the inclusion of fictional or virtual content in national CSAM laws.

International Pressure

As explained in the Human Rights Framework section above, the text of the OPSC itself is ambiguous. Article 2(c) defines child pornography as "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." While ECPAT insists that this obliges states to prohibit fictional or virtual depictions such as cartoons or CGI, many countries interpret it more narrowly, limiting criminalization to depictions involving real children or realistic simulations that could be mistaken for them.

Nonetheless, ECPAT has pressed its expansive interpretation through country reviews, soft law instruments, and advocacy at international fora. At the Third World Congress against Commercial Sexual Exploitation of Children in Rio de Janeiro (2008), co-organized by ECPAT, participants called on states to "criminalize the intentional production, distribution, receipt and possession of child pornography, including virtual images and the sexually exploitative representation of children."

ECPAT's Country Monitoring Reports regularly castigate states, including the Philippines, Japan, and Moldova, for failing to meet this standard.

Over the next decade, ECPAT promoted its expansive reading through successive instruments: a 2012 "good practice" paper (Lucchi, 2012, p. 20), a recommended terminology guide called the Luxembourg Guidelines (2016), the OPSC implementation guidelines adopted by the CRC Committee (2019), and finally a 2025 revision of the Luxembourg Guidelines, which cited those earlier instruments to endorse the inclusion of fictional works such as comics and manga (ECPAT, 2025, p. 67). Each step reinforced the previous, without new evidence of harm.

Enforcement and Controversy

The adoption of Article 174 bis was thus driven by a consistent narrative—advanced by ECPAT and its local allies—that Costa Rican law was "deficient" unless it criminalized virtual depictions. Yet scholars have challenged this assertion. Cortés Sandí (2020, p. 3) argues that Article 174 bis is constitutionally defective, departing from the criminal law principles of legality and harm.

Costa Rica's vulnerability to maximalist lobbying is part of a wider pattern in international relations. Developing countries, often under-resourced, may adopt sweeping obligations urged by international NGOs, as seen in other domains such as intellectual property, where countries like Mexico now have copyright terms longer than the United States (Yu, 2007). Normally, weak enforcement tempers such overbreadth. But Costa Rica demonstrates how international pressure can extend to enforcement itself.

The first person arrested under Article 174 bis was not a predator but a 17-year-old girl, detained in May 2019 for posting 146 sexually explicit drawings to her blog. The arrest followed a report from Canadian authorities. When questioned, the Canadian Centre for Child Protection washed its hands of responsibility, stating that although reports made through its hotline Cybertip.ca are passed on to local authorities, it is they who determine whether to investigate (Malcolm, 2019a). This episode illustrates not only the overbreadth of Article 174 bis, but the way it has been deployed against minors themselves for self-produced, non-exploitative content in which no adults were involved.

Scholars have criticized the ideological assumptions underlying such applications of the law. Cortés Sandí (2020, p. 5) argues that it rests on a moralistic discourse in which children are imagined as innocent and asexual beings, requiring obsessive protection. This construction both mystifies and disempowers children's own sexuality. Bhana and Lucke (2025) extend this critique by showing how dominant narratives of sexual danger suppress recognition of young people's desires and pleasures, reinforcing adultist, Global North, and heteronormative perspectives while erasing children's own negotiations of meaning and agency. From this standpoint, Costa Rica's conflation of fictional images with actual abuse reproduces the silencing of childhood erotic capacities rather than addressing real harms. As Angelides (2019) also points out, campaigns framed as "child protection" often serve less to confront perpetrators of abuse than to police the very idea of children's sexuality. Taken together, these critiques underscore that laws like Article 174 bis are not neutral instruments of protection, but embodiments of a moral and cultural project that may end up punishing youth instead of safeguarding them.

Penalties

The 2013 law also increased penalties, without distinguishing between real and virtual material. The punishment for the production and commercialization of CSAM (Article 173) was raised from five to fifteen years. The penalty for possessing such material (Article 173 bis) increased from four to eight years. And the sentence for the distribution and dissemination of pornographic material (Article 174) rose from five to ten years. Cases are prosecuted by the Attorney General's Office and investigated by the Organismo de Investigación Judicial (OIJ). Initial reports often come through the Patronato Nacional de la Infancia (PANI), Costa Rica's National Child Welfare Agency. PANI has a statutory mandate to protect minors' rights, and it refers CSAM cases to prosecutors while also providing protective measures and victim support.

Conclusion

Costa Rica's experience illustrates how international advocacy can transform domestic law from instruments designed to protect children from real exploitation into blunt prohibitions on fiction, enforced against youth themselves. Unlike in the U.S., where constitutional safeguards prevented such overreach, or in Canada, where courts have drawn limits on virtual depictions, Costa Rica's wholesale adoption of ECPAT's maximalist agenda shows how international pressure can lead developing countries into overbroad laws with paradoxically harmful

Costa Rica—Summary

Separate laws: No—Real and fictional works are criminalized under the same Penal Code provisions (notably Articles 173–174, amended by Law No. 9177 of 2013). "Pornographic images or representations" of minors are prohibited without carve-out for fictional or virtual material.

Separate agencies: No—Cases are prosecuted by the *Fiscalía Adjunta contra la Trata y Tráfico Ilícito de Migrantes* (Attorney General's Office) and investigated by the *Organismo de Investigación Judicial (OIJ);* fictional and real material are handled identically.

Separate statistics: No—Available judicial data aggregates CSAM cases; no breakdown for fictional/real.

Separate terminology: No—The law uses "pornografía infantil" broadly, covering visual, audio, or textual content.

Treaty reservations: No—Costa Rica ratified both the Budapest Convention (2014) and the Lanzarote Convention (2020) without reservations narrowing the scope.

Penalty range (possession): Up to 3 years imprisonment for possession, whether real CSAM or fictional works (Article 173 bis).

Penalty range (production/distribution): From 5 to 15 years imprisonment for production, distribution, and commercialization (Article 173), with aggravated penalties in some circumstances.

Enforcement intensity: Low: Statute is broad, but in practice almost all prosecutions relate to real-CSAM; no evidence of regular enforcement against fictional works.

United Kingdom

Although the United Kingdom's framework for regulating child sexual abuse material has developed in parallel with that of other common-law countries, its current form reflects a particularly strong cultural and institutional sensitivity to moral panic. The legal framework distinguishes between offences involving real children—called *indecent images of children* (IIOC)—and those involving fictional or wholly artificial depictions, termed *prohibited images of children* (PIOC). The latter offence, introduced in 2009, is among the broadest of its kind in the democratic world, criminalizing possession of material that does not involve or even purport to involve a real child.

Coroners and Justice Act

The UK's original offences, covering real imagery, are long-standing. *The Protection of Children Act 1978* (PCA) criminalizes the creation or distribution of indecent photographs or pseudo-photographs of children under section 1, while possession of such images was added by section 160 of the *Criminal Justice Act 1988* (CJA). These offences apply only to photographic or photo-realistic imagery—"pseudo-photographs"—but they laid the groundwork for later extensions.

The decisive expansion came with the *Coroners and Justice Act 2009* (CJA 2009), which added section 62: possession of a prohibited image of a child. This provision was designed to capture computer-generated imagery, cartoons, manga, or drawings depicting children engaged in sexual acts or displaying genitals. For an image to qualify as "prohibited," it must satisfy three cumulative criteria: it must be pornographic, "grossly offensive, disgusting or otherwise of an obscene character," and either focus on genitals or depict sexual activity, bestiality, or similar acts involving a child. Maximum penalty on indictment is three years' imprisonment—lower than the five-year maximum for possession of real images, but still a custodial offence.

This new possession offence represented a significant departure from previous law, which had always been linked, even indirectly, to the protection of actual children. The justification advanced by ministers was that technological change had created a "loophole" allowing non-photographic but sexually explicit depictions of children to escape the PCA framework, and that such material could be used to groom children or desensitize potential offenders. Yet no empirical evidence was produced to support either of these assertions. The Joint Committee on Human Rights (JCHR), in its legislative scrutiny of the Bill, questioned the measure's legal certainty, proportionality, and evidential basis, expressing concern "at the broad definition of the offence and, as a result, its potential application beyond the people whom the Government is seeking to target" (Joint Committee on Human Rights, 2009, p. 52).

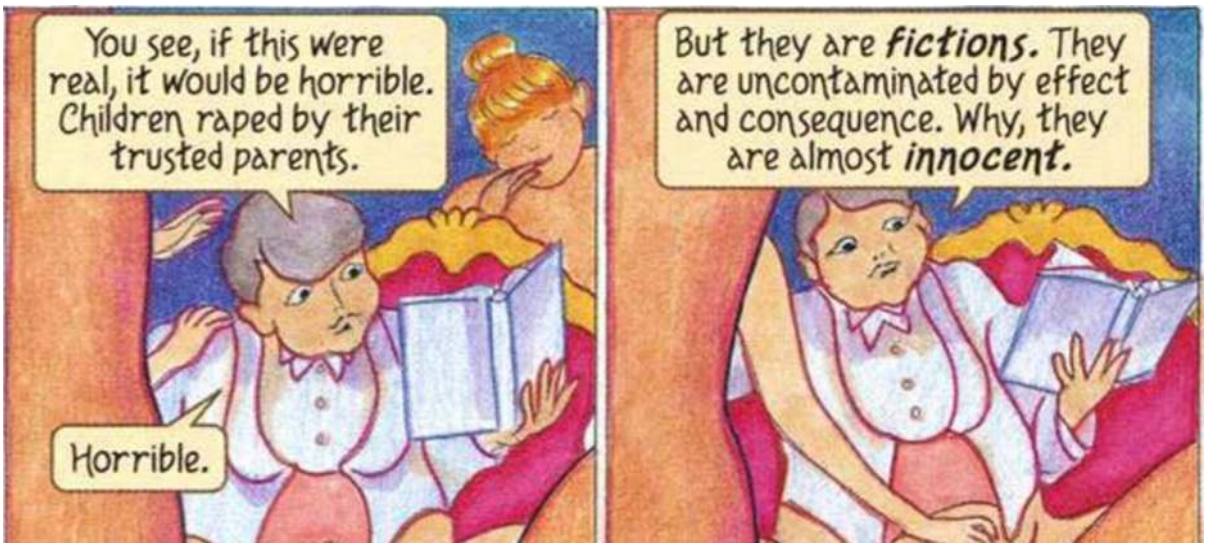
Parliamentary debate gave these concerns little space. The Coroners and Justice Bill was an enormous "portmanteau" bill encompassing coronial reform, homicide defences, assisted suicide, and witness anonymity. Its consideration was tightly timetabled. On 23 March 2009, the Government imposed a "Programme Motion No. 3" giving only two days for the Bill's report and third

reading stages. Opposition members condemned the motion as a cynical effort to compress debate. As a result, several major provisions were never reached on report, including parts of Chapter 2, where section 62 was located.

Still, some objections did surface. In the Public Bill Committee, Jenny Willott MP elaborated that the definitions were "incredibly broad," potentially encompassing "a drawing, or chalk on a board." She warned that the provision risked "criminalising people who are not doing any harm." The Government rejected her amendments, doubling down on the argument that such images might be used as grooming tools (Coroners and Justice Bill, 2009).

From Literature to Prosecution

Objections to the new offence were also raised outside of Parliament. When the erotic graphic novel *Lost Girls*—by Alan Moore and Melinda Gebbie—was published in 2009, British media commentators questioned whether it might fall foul of the law, a question that had also been raised in Canada (Hudson, 2010). The book, which includes fantastical depictions of underage sex and bestiality, explicitly explores the line between fiction and crime. One character, reading a story within the story, muses: "Incest, c'est vrai, it is a crime, but this? This is the idea of incest... except that they are fictions, as old as the page they appear upon... only madmen and magistrates cannot distinguish between them." The remark became a prescient commentary on the blurred boundaries the new law introduced.



Panels from Alan Moore and Melinda Gebbie's Lost Girls

While *Lost Girls* ultimately circulated without interference, others have not been so lucky. In 2014, Robul Hoque, an anime and manga collector, was convicted under section 62 for possessing cartoon images depicting sexual acts involving fictional minors. No real children were involved. Press coverage branded him a "pervert" and "cartoon porn collector," echoing tabloid tropes long used against sex offenders (Mirror.co.uk, 2008).

In another case in November 2019, the UK-based host of an art blog was arrested for hosting content that included two panels of comic strips in a long and academic discussion about the line between legitimate art and child pornography. The panels in question were from a semi-autobiographical comic *Daddy's Girl* by Ignatz Award-nominee Debbie Dreschler, and they depict her own experiences of incestual child sexual abuse, not intended to be arousing, but horrifying (Malcolm, 2019a).

Classification and Censorship

Beyond criminal law, the UK maintains a formal content-classification regime through the British Board of Film Classification (BBFC), founded in 1912 and recognised under the *Video Recordings Act 1984* and its successors. Although the BBFC operates as an independent body, its decisions carry statutory force: films and physical video releases must receive a certificate before public exhibition or sale, and local authorities can override those classifications or ban works entirely.

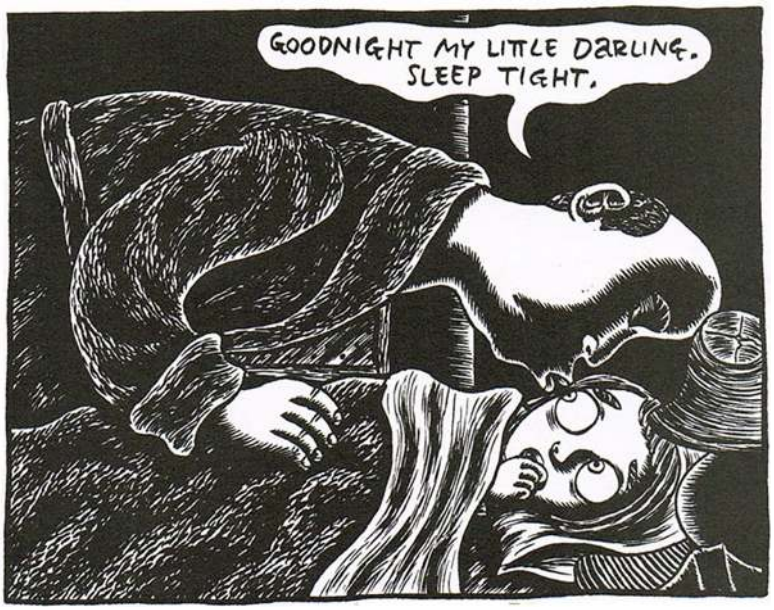
The BBFC's guidelines frame its mission around protecting children and "preventing harm," a rationale closely aligned with the moral justifications used for criminal legislation. Sexual depictions involving minors—even in animated or artistic form—are automatically refused classification. Its R-18 category for explicit content between consenting adults excludes "material (including dialogue) likely to encourage an interest in abusive sexual activity (eg paedophilia, incest) which may include depictions involving adults role-playing as non-adults" (BBFC, 2002).

Digital distribution falls under Ofcom's remit via the *Online Safety Act 2023*, which extends "harmful content" standards to online services. While the BBFC continues to rate films, Ofcom now supervises major platforms, empowered to impose fines for hosting "pornographic content" accessible to minors—including cartoons and computer-generated imagery.

This dual structure—classification for permissible media and prosecution for unclassified or user-generated material—creates a grey zone in which the same image can be legal in one context and criminal in another. Artists and publishers may seek BBFC approval for protection, but individual possession or online sharing outside that framework can still trigger investigation under section 62.

Media Influence

The UK press has been a powerful engine for sexual moral panic. For a media culture that until the early 1990s still printed topless photographs of sixteen-year-old "Page 3 girls," it has been notably unforgiving of any perceived tolerance toward sexual deviance. Reporting on child sexual abuse, both real and imagined, routinely employs dehumanizing rhetoric—*"monster," "beast,"*



Panel from Debbie Dreschler's Daddy's Girl

"pervert"—and casts offenders as irredeemable outsiders. Scholars such as Anna Wilczynski (1999) have shown that this language shapes policy responses by making prevention or rehabilitation appear impossible.

The tabloid habit of demonization also extends to those who question that very tendency. In January 2022, Scottish MP Karen Adam observed publicly that abusers are "people—often people known to victims—not monsters." She received death threats and police protection for her remarks (Davidson, 2022). Her experience shows how politically perilous it is to advocate a humanizing discourse, even when doing so might promote prevention or rehabilitation objectives.

NGOs have likewise operated within this culture of moral escalation. In the early 1990s, the National Society for the Prevention of Cruelty to Children (NSPCC) lent institutional legitimacy to the Satanic ritual abuse panic by publicizing unsubstantiated claims of occult child abuse (Starza, 2016). Subsequent government-commissioned research by Jean La Fontaine (1994) found no evidence of such ritual networks, concluding that the panic itself had been fuelled by "well-meaning professionals acting on sincerely held but mistaken beliefs." Yet the episode established a pattern of overreach that persists decades later.

In 2017, the organization StopSO—a clinical network offering therapy to individuals concerned about their sexual thoughts toward children—

became embroiled in controversy after one representative mentioned research on the potential therapeutic use of child-like sex dolls. Although these are a real topic of expert discussion (Sadler, 2017), the remark provoked a media storm (Diebelius, 2017). The NSPCC publicly denounced the organization, prompting StopSO to issue a retraction. The incident revealed how, in the prevailing climate, even theoretical discussion of harm-reduction strategies can trigger reputational destruction.

Thus the UK is a paradigm example of child protection law being focused not on the prevention of harm and the punishment of abusive actions, but rather on the direct punishment of perceived sexual deviance. In a recent illustration of this, in July 2025 Jess Phillips MP, Minister for Safeguarding and Violence Against Women and Girls, declared that those who disseminate AI art are "just as disgusting as those who pose a threat to children in real life", as if the laws were justified by how disgusting the offender is, rather than the harm that they do (Internet Watch Foundation, 2025).

Scholarly and Doctrinal Critique

Academic commentary on section 62 has been overwhelmingly critical. Legal scholar Suzanne Ost (2010) argues that it is "extremely difficult to find a legitimate basis for prohibiting the possession of fantasy, completely fabricated images… through a reasoned application of the harm principle," and that criminalization of such material "cannot be justified" on harm grounds. Anna Antoniou (2013) similarly observed that no research was cited by lawmakers linking fantasy imagery to contact offending, nor any evidence that groomers tend to rely on fantasy material to aid their crimes. Anna Madill (2015, p. 285) extended this critique to gender and sexuality, warning that the prohibition of fictional sexual depictions of minors also captures the creative output of adolescents and young women themselves—particularly in online communities that use manga and fan-art conventions to explore emerging sexuality. Well-meaning efforts to "protect children," she writes, risk criminalizing a sexually benign youth demographic literate in romantic fantasy.

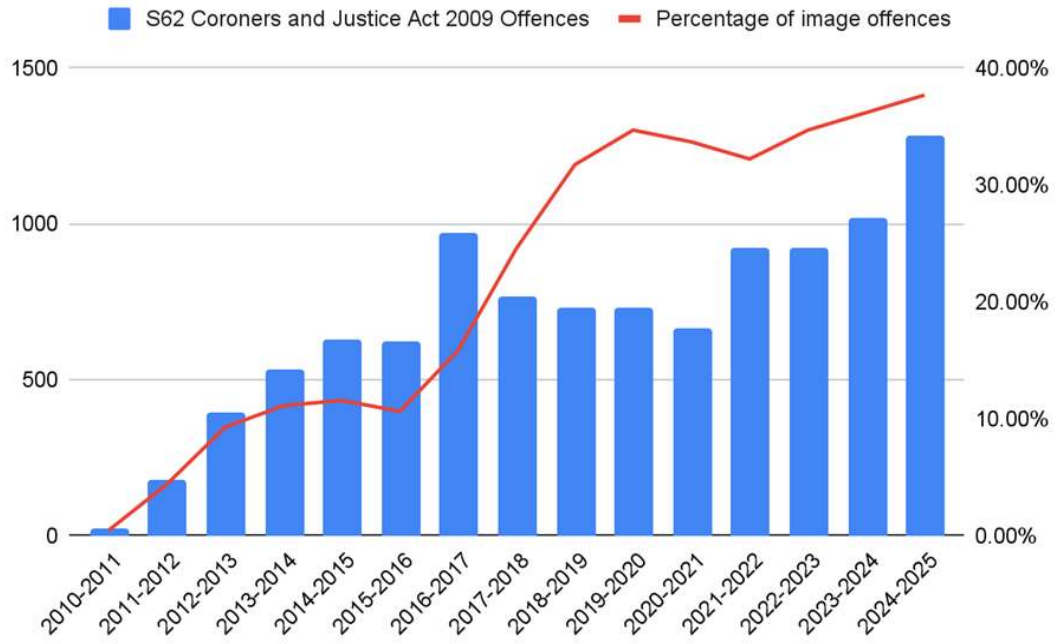
Penalties and Enforcement

Although prosecutions under section 62 remain few, they are taken seriously by courts when they occur. Custodial sentences—usually suspended—are common even where no real child was involved, and offenders may be subject to Sexual Harm Prevention Orders or sex-offender notification requirements. The Crown Prosecution Service treats PIOC offences as child-abuse material, and the Internet Watch Foundation (IWF) has since 2010 included non-photographic images within its reporting and takedown remit. Sentencing Council guidelines mirror those for indecent images of real children while noting the lower statutory maximum of three years.

Because they are prosecuted under separate provisions, separate statistics are maintained for IIOC (real) and PIOC (virtual) offences. From FOIA data received by COSL (Crown Prosecution Service, 2025), these reveal that over 2010-2025, the number of PIOC offences being prosecuted has exploded, both in absolute terms and in a percentage of combined IIOC and PIOC prosecutions. As shown in the diagram below, PIOC offences are now approaching 40% of all image offence prosecutions, and continuing to rise.

Alongside this, prosecutions of IIOC offences have actually significantly fallen over the same period that PIOC prosecutions have been rising: from an average of 4536 prosecutions per year during the period 2010-2017, to an average of only 1775 prosecutions per year during the succeeding years until 2025.

The contrasting trajectories suggest a striking displacement of enforcement effort: while cases involving actual victims are declining, resources are increasingly directed toward the policing of victimless fictional works.



Continuing Law Reform

The UK's regulatory architecture continues to widen. The Serious Crime Act 2015 introduced an offence of possessing a "paedophile manual," criminalizing written text that provides advice or guidance about abusing children sexually. Although the term "manual" conjures up the idea of a how-to guide for child abusers, the wording is broad enough to include providing safer sex information for teenagers who are under the age of consent.

The Online Safety Act 2023 now also requires platforms to prevent users from encountering "illegal content," explicitly including both indecent and prohibited images, as well as AI-generated material that may fall into either category depending on realism.

The Home Office has proposed further measures under the forthcoming Crime and Policing Bill to strengthen digital-offence enforcement, without differentiating between real and fictional works. These measures would make it illegal to adapt, possess, supply or offer to supply AI tools, algorithms, or models that are optimized to produce prohibited images of children (UK Home Office, 2025).

Conclusion

In the United Kingdom, the separation between real and fictional depictions of child sexuality exists in statute but not in stigma. Both are pursued by the same agencies—the National Crime Agency and local police—and both are treated as forms of child sexual exploitation. Yet only one involves an actual victim. The legislative record shows that Parliament was warned about the dangers of over-breadth and legal uncertainty but chose expedience and public reassurance over deliberation. The resulting framework criminalizes possession of certain imaginative works, from survivor biographies to manga art, in a system already primed by decades of media-driven moral panic and institutional overreach.

United Kingdom—Summary

Separate laws: Yes—Real CSAM criminalized under the Protection of Children Act 1978 and Criminal Justice Act 1988. Fictional/"prohibited" images of children are covered separately under the Coroners and Justice Act 2009 (s.62).

Separate agencies: Partial—National Crime Agency (NCA), CEOP, and local police handle both CSAM and fictional works. For audiovisual media, the BBFC can refuse classification for fictional content that would not otherwise be criminalized.

Separate statistics: Yes—Separate statistical data are tracked for prosecutions, but not for convictions, which would require manual analysis of cases.

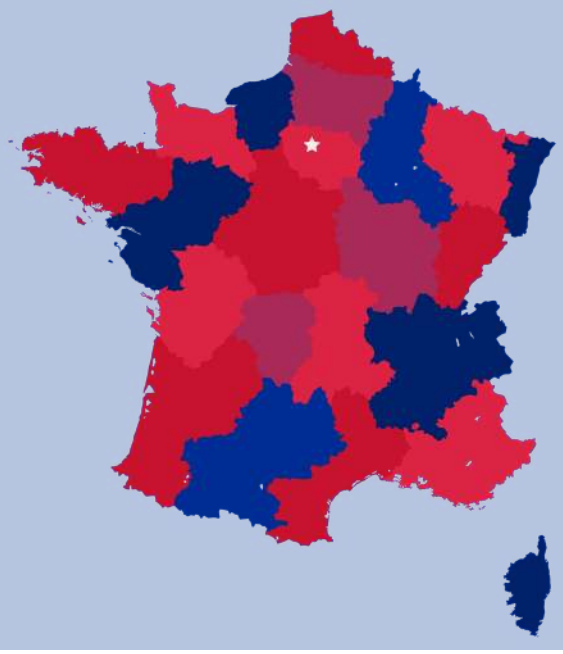
Separate terminology: Yes—"Indecent images of children" (real) vs. "prohibited images of children" (fictional/animated/cartoon).

Treaty reservations: No—UK ratified Budapest and Lanzarote Conventions without reservations restricting criminalization of fictional works.

Penalty range (fictional): Up to 3 years imprisonment (Coroners and Justice Act 2009, s.62).

Penalty range (real): Up to 5 years imprisonment for possession of indecent images (Criminal Justice Act 1988, s.160).

Enforcement intensity: High—Prosecutions under s.62 CJA 2009 have been steadily increasing, and those brought are pursued and sentenced with seriousness; convictions can carry custodial or suspended terms, and ancillary orders such as sex-offender registration are commonly imposed.



France

Unlike the other countries surveyed so far, French law lacks a general obscenity offence. Instead, the French Penal Code criminalizes a broadly defined category of child pornography that includes virtual representations as well as representations of adults with the appearance of a minor. These restrictions are paired with a robust system of government website blocking, which raises proportionality concerns for blocked sites that contain only fictional works

Penal Code

French Penal Code article 227-23 criminalizes the production, distribution, or possession of "the image or representation of a minor" of a pornographic nature. However because 227-23 is broadly defined to include any "image or representation," French prosecutors have treated drawn material that sexualizes minors as potentially criminal on the same basis as real abuse material.

Apart from drawings, the statute also extends to representations of a "person whose physical aspect is that of a minor," unless it can be proven the person was 18 at the time the image was fixed. In other words, France not only criminalizes virtual or drawn material, but also sexualized depictions using adult performers who convincingly appear underage, such as in fetish photoshoots, and potentially even mainstream film and TV media.

Case Law

The first and leading case on the prosecution of drawn material under France's child pornography law is the 2007 criminal chamber ruling upholding the conviction of the French distributor of the anime *Twin Angels–Le retour des bêtes célestes*—Vol. 3. The court held that article 227-23 covers a representation of a minor even when the figure is imaginary or stylized. It rejected the defense that a boy character depicted in the anime ("Prince Onimaro") was merely portrayed in a manga style called "super deformed" that might not be understood as a child.

More recently in 2025, proceedings were brought under 227-23 against the comics author Bastien Vivès over two books alleged to depict sexualized minors. The complaint that led to the prosecution was filed by two child protection organizations, Innocence en danger (Innocence in Danger) and Fondation pour l'enfance (Foundation for Children). The case ended on a territorial-competence issue rather than a merits ruling, and the prosecution did not appeal its dismissal (franceinfo & AFP, 2025).

A civil-liberties coalition (LDH's Observatoire de la liberté de création or Observatory for Creative Freedom) explicitly criticized the legal theory advanced in those complaints and has urged reform of Penal Code article 227-23 to avoid conflating fiction with criminal material (LDH, 2024).

Content Classification

While these cases suggest heavy-handed enforcement, prosecution has historically been quite uneven. France's present-day approach—criminalizing any "image or representation" of a minor of a pornographic nature and even adults with the "appearance" of minority—sits uneasily

beside earlier tolerance for art-house depictions of adolescent sexuality. In Catherine Breillat's films, either real minors *(À ma sœur! (Fat Girl)*, 2001, *Anatomy of Hell (Anatomie de l'enfer)*, 2004), or adults cast as minors *(Une vraie jeune fille (A Real Young Girl),* 2000), are shown in sexually explicit nude scenes. In only the few short years since these films were released, the line has shifted: works once handled by the classification system may be more legally precarious today.

France's content classification system operates separately from criminal law. All films require a visa d'exploitation issued by the Ministry of Culture on the recommendation of the CNC's Commission de classification des œuvres cinématographiques, which may rate them *tous publics, -12, -16, or -18*, or exceptionally classify them as "X" when pornographic or inciting violence. Comparable age-based categories *(-10, -12, -16, -18)* are used for television under ARCOM's youth-rating scheme (signalétique jeunesse), which governs scheduling and viewer advisories. Publications for minors fall under the Loi du 16 juillet 1949, enforced by the Commission de surveillance et de contrôle des publications destinées à l'enfance et à l'adolescence, which can order restrictions on sale or display of magazines, comics, or manga deemed harmful to young readers. Video games are classified through the PEGI system, recognized by the Interior Ministry.

Penalties and Enforcement

Base penalties for violation of article 227-23 are 5 years' imprisonment and a €75,000 fine, normally accompanied by sex offender registration. Penalties rise with aggravating factors (e.g., digital diffusion to an undetermined public via an electronic network), and for corporate offenders which face penalties five times higher than natural persons. No differentiation is made between real and virtual representations.

Criminal enforcement is carried out by specialized police and gendarmerie units, supported by the Centre national d'analyse des images pédopornographiques (CNAIP), which maintains a massive hashed database (Caliope) to triage images and identify victims. PHAROS is the Interior Ministry's public reporting portal for illegal online content, equivalent to the portals hosted by the USA's NCMEC and Canada's Cybertip.ca.

Since 2015, the Interior Ministry (through the police's OCLCTIC unit) can order ISPs to block, and search engines to de-reference, sites hosting child pornographic content. Although no judicial order is required, the orders are subject to ex post oversight by an independent reviewer housed at ARCOM, France's independent regulator for audiovisual and digital communication. Its oversight reports show the scale of the operation: in 2021, 137,953 items were reviewed across terrorism and child pornography categories.

France has used these administrative blocking powers against sites hosting virtual content such as Japanese erotic cartoons (hentai). Since November 2020, attempts by French users to access the website nhentai have been redirected to a Ministry of Interior warning page stating the site contains child-pornographic images (Baculi, 2020).

This regime sits uncomfortably with European and international human rights law. As detailed in the Human Rights Framework section above, the European Court of Human Rights has condemned wholesale or blanket website blocking as a disproportionate interference with Article 10 ECHR—striking down site- or platform-wide bans that catch vast amounts of lawful material. In the case of *Vladimir Kharitonov v. Russia*, the blocking of an entire website was characterized as an "extreme measure comparable to banning a newspaper or television station" that demands stringent safeguards and individualized assessment (Güngördü, 2020). It is difficult to suggest that this standard was met in the blocking of nhentai, when even a cursory survey of the site reveals that a clear majority of the materials hosted there do not contain materials that would be illegal in France, and none of them depict real persons.

Conclusion

France's framework is coherent on paper—protect minors by targeting production, circulation, and handling of pornographic images—yet its reach into depictions of virtual subjects and adults with the appearance of minors creates a wide zone of legal uncertainty. The Twin Angels precedent and high-profile investigations against comics underline how easily fiction can be subsumed under child abuse offences, while administrative blocking powers amplify that effect at the network layer. This sits uneasily with European speech standards that require narrow tailoring and robust safeguards, and it contrasts with earlier periods when portrayals of adolescent sexuality were primarily managed through age ratings rather than criminal law.

A rights-respecting path would tighten statutory definitions (especially around "appearance of a minor"), reserve the harshest responses for material involving real victims, and constrain administrative measures to targeted, reviewable interventions—so that protecting children does not come at the expense of legality, foreseeability, and proportionality.

France—Summary

Separate laws: No—Real CSAM and fictional works (drawings, cartoons, etc.) are explicitly included under the same Code pénal Article 227-23.

Separate agencies: Partial—Investigations handled by Police nationale, Gendarmerie nationale, and prosecuted by parquets. Wihle there is no special agency for fictional works, classification is used to rate films, television, publications, and games.

Separate statistics: No—Ministry of Justice data aggregates CSAM cases; no separation of fictional works.

Separate terminology: Partial—Statute uses "images or representations of a minor" (real or fictitious). Some jurisprudence and doctrine distinguish "représentations à caractère pornographique d'un mineur réel" vs. "fictif."

Treaty reservations: No—France ratified Budapest and Lanzarote Conventions without reservations narrowing scope.

Penalty range (possession / acquisition / consultation)—Up to 5 years' imprisonment and €75,000 fine (incl. habitual consultation or paid single access; acquisition/possession); higher in organized-group scenarios.

Penalty range (creation / distribution / making available): 5 years/€75,000 baseline (fixing/recording/transmitting/offering/making available/import/export), increased (e.g., 7 years/€100,000 for electronic diffusion to an undetermined public; 10 years/€500,000 in organized groups); corporate fines up to 5× individual maxima.

Enforcement intensity: Moderate—although criminal prosecutions are unusual, France actively uses LCEN art. 6-1 for site blocking/de-referencing with hundreds of measures annually, and ~100k+ items reviewed each year.

Denmark

Denmark occupies a distinctive position in the global debate over fictional sexual material involving minors. While many European countries have extended their CSAM laws to encompass both real and realistic fictional depictions of minors, Denmark maintained a narrower approach for many years, restricting its criminal law to material depicting real children. This reflected a pragmatic and empirically grounded orientation within Danish policymaking—one that emphasized the absence of evidence linking fictional works to real-world harm.

That equilibrium began to shift in the early 2020s, with a Danish-led INTERPOL operation cracking down on AI-generated imagery becoming a watershed moment. The current Danish presidency of the Council of the European Union initially appeared to extend this trajectory by advancing the so-called "Chat Control" proposal, which would have required Internet platforms to scan all private communications for both CSAM and fictional sexual materials. However, following sustained criticism from Member States and civil-society groups, Denmark has since reversed course, announcing in late October 2025 that it now supports a voluntary detection framework rather than mandatory scanning orders (Moreau, 2025).

Legal Provisions and Penalties

The central provision governing both CSAM and fictional child sexual material is §235 of the Danish Penal Code (Straffeloven). Paragraph 1 criminalizes the production, distribution, and possession with intent to distribute of "pictures, films, or other sexual depictions of persons under eighteen years of age," while paragraph 2 covers simple possession.

Prior to 2003, §235 referred only to "photographs or films," but amendments that year replaced this with "pictures or other depictions." Although apparently broad enough to include digital, animated, or drawn imagery, the law's commentary (Lovforslag nr. L 110, 2002-03) is explicit that the expansion was intended to cover depictions "which appear to be photographs or film," i.e. realistic representations, but not "obviously fictional drawings or artistic works."

Following 2025 amendments under Bill L 184, introduced in the wake of the prosecution of AI artist Barry Coty that is discussed below, the definition has been broadened again. Under the latest amendments, computer-generated material—including AI-produced depictions regardless of realism—fall within the same offense. There is no separate section or lesser offense for fictional works: once a depiction is deemed to represent a minor sexually, it is prosecuted under §235 on the same terms as real CSAM.

The penalty range for possession under §235(2) is a fine or up to one year of imprisonment. For production, distribution, or possession with intent to distribute under §235(1), the penalty rises to up to two years' imprisonment, or up to six years in aggravated cases involving organized or commercial

exploitation. For especially serious cases involving coercion, trafficking, or repeated offenses, prosecutors may also invoke §§210–216 (sexual offenses) or §232 (indecency). There is no statutory distinction in sentencing guidelines between real and fictional works.

Historical Background

Denmark's historical position of leniency towards fictional works can be traced directly to the 2010 opinion of the Sexological Clinic at Copenhagen University Hospital, in response to a new proposal under consideration to amend the 2003 law and criminalize *all* fictional sexual materials depicting minors, including non-realistic cartoons and drawings. The Ministry of Justice had requested the Clinic's view on whether possession of fictional child sexual material—defined as depictions that were not realistic or photographic—could lead individuals to commit hands-on offenses.

In response, the Clinic and the Visitation and Treatment Network conducted a literature review, consulted with experts abroad, and attended the 2010 International Association for the Treatment of Sexual Offenders (IATSO) congress in Oslo. Their conclusion was unequivocal: there was *no scientific evidence* that viewing or possessing fictional images alone caused people to commit child sexual abuse. They cited several empirical studies concerning consumers of real abusive imagery, such as Endrass et al. (2009), Seto and Eke (2005), and Kingston et al. (2008), which found that most offenders convicted solely for possession of child sexual abuse images did not go on to commit contact offenses. A Swiss follow-up presented in Oslo reported that after six years of observation, none of 231 men convicted of possessing such images had been convicted of hands-on abuse. The Clinic concluded that "documentation that possession of fictitious child pornography which is not realistic can lead people to commit child sexual abuse does not appear to exist at the current time." On that evidentiary basis, Denmark declined to criminalize fictional or artistic depictions, preserving a clear line between imaginary and real harms.

Barry Coty Prosecution

In 2023, a Danish AI artist known by the pseudonym Barry Coty was arrested in connection with *Operation Cumberland*, a Danish-led INTERPOL operation that targeted creators and distributors of AI-generated sexual depictions of minors on paid subscription platforms. Although no real children were involved, prosecutors argued that such material posed the same social danger as photographic CSAM. In January 2025, Coty pled guilty and received a sentence of one year and three months, partly suspended, along with two hundred hours of community service. The prosecution appealed, seeking to establish a harsher precedent for synthetic material, and on 12 June 2025 the High Court increased the sentence to eighteen months of actual imprisonment. Coty has announced an intention to appeal to Denmark's Supreme Court, which will likely be the country's first opportunity to delineate the boundaries of criminal liability for AI-generated sexual content (Malcolm, 2025).

Only weeks earlier, on 27 May 2025, the Danish Parliament adopted Bill L 184, formally titled *Act to Amend the Criminal Code, the Administration of Justice Act*, and the Victims' Fund Act. The law, heavily influenced by policy proposals from Save the Children Denmark, marked a decisive turn away from the empirically cautious stance of 2010. It introduced three key changes. First, the definition of "sexual material involving persons under eighteen" was expanded to include "posing" photographs and videos, even if not explicitly sexual, when shared in sexualized contexts. Second, it extended the same provisions to computer-generated sexual material, including imagery created with artificial intelligence. Third, the law clarified that the sharing of ordinary or everyday images of minors in sexualized contexts could constitute a criminal indecent-assault offense.

Strikingly, the law also authorized police to create and disseminate fake sexual material depicting minors for undercover investigations, a power defended by the Ministry of Justice as necessary for online infiltration but that highlights a sharp double standard. Citizens are criminalized for producing synthetic imagery with no real victims, even as the state is authorized to fabricate similar material for investigative purposes, collapsing the very moral distinction on which the prohibition rests, and potentially complicating evidentiary integrity when fabricated images are introduced in criminal proceedings.

Enforcement and Institutions

Responsibility for investigating and prosecuting offenses under §235 lies within Denmark's National Cyber Crime Center (NC3), part of the National Special Crime Unit (NSK) under the Danish Police. NC3 coordinates with the Danish Prosecution Service (Anklagemyndigheden) and with INTERPOL and Europol through the European Financial and Cybercrime Centre (EC3).

Denmark does not maintain a distinct unit for fictional works; such cases are treated within the broader cybercrime and online child exploitation portfolio. Investigative capacity is centralized at the national level, but operational policing remains with local districts that refer major or cross-border cases to NC3. Publicly available crime statistics from the Danish Crime Prevention Council and Statistics Denmark do not disaggregate between real CSAM and fictional works.

With that said, Denmark has entered a reservation under Article 20(3) of the *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201)* (the Lanzarote Convention). But rather than excluding simulated representations from its obligations under the Convention, Denmark's reservation excludes sexual images that were consensually self-generated by minors for private use.

Denmark also maintains a distinct content classification system administered by the *Media Council for Children and Young People (Medierådet for Børn og Unge)* under the Danish Film Institute. The Council rates films, television programs, and domestic video-on-demand services using age categories of 7, 11, and 15, based on the level of realism, violence, and potential to distress younger viewers. Works not submitted for classification are automatically restricted to viewers aged fifteen and over. The system is advisory for home media but legally binding for theatrical exhibition.

Denmark's EU Presidency and the "Chat Control" Debate

Denmark's assumption of the Presidency of the Council of the European Union in July 2025 gave it a pivotal role in steering negotiations on the long-delayed Regulation to Prevent and Combat Child Sexual Abuse (CSA Regulation)—popularly known as "Chat Control" (POLITICO, 2025) The file had been stalled for over two years amid fierce resistance to provisions that would require online platforms, including encrypted services, to scan private messages for potential CSAM using automated detection tools.

In 2014 the European Parliament had sought to narrow the scope of these detection mandates, limiting them to the identification of *previously known* CSAM—that is, material already hashed and verified as depicting real victims (Malcolm, 2023). The Parliament explicitly rejected Commission language that would have permitted "detection of newly identified material," on the ground that such open-ended scanning could sweep in lawful erotic or artistic content, given the unreliability of automated classifiers. The narrower formulation was intended to confine scanning to existing, confirmed abuse material and thereby avoid breaching the EU Charter's guarantees of privacy and freedom of expression.

Under Denmark's Council Presidency, a July 2025 draft compromise initially re-opened the prospect of mandatory detection orders, including for "newly identified" material that could have encompassed fictional works (EDRi, 2025), mirroring Denmark's recent domestic shift toward treating fictional and real material as legally equivalent. But within months the Presidency retreated from that stance, instead endorsing a plan that would allow platforms to deploy detection tools if they choose, but without any obligation to do so (Moreau, 2025).

Conclusion

Denmark's evolution charts a striking trajectory—from early empirical restraint grounded in clinical research to a sweeping legislative expansion driven by technological change and by broader European trends that treat fictional and real sexual depictions of minors alike under criminal law.

Yet this convergence remains uneasy. Denmark's late-stage reversal on the Chat Control regulation—from championing mandatory scanning to endorsing a voluntary regime—suggests an ambivalence towards broad surveillance mandates that would sweep in fictional works alongside CSAM. Denmark's leadership of the EU Council Presidency provides it with an outsized role in defining how Europe balances technological precaution with fundamental rights, and its recent course correction may signal a renewed sensitivity to privacy and expression concerns.

Denmark - Summary

Separate laws: No—Both real and (realistic) fictional/AI depictions are handled under *Straffeloven* §235; 2003 amendments broadened the scope beyond purely photographic images.

Separate agencies: No—Investigations and prosecutions are handled within national police structures (including NC3/NSK's cybercrime capacity), not by a distinct "fictional" unit.

Separate statistics: No—Public data do not disaggregate real vs. fictional CSAM; recent Council of Europe monitoring notes definitional gaps.

Separate terminology: No (statute) / Yes (practice)—The statute refers generically to "seksuelt materiale … af personer under 18 år," while internal policy sometimes distinguishes *fiktiv* or animeret material for evidentiary purposes.

Treaty reservations: Yes—Lanzarote (CETS 201): Denmark reserves under Art. 20(3) not to apply Art. 20(1)(a) & (e) to self-generated/consensual images by minors (private use).

Penalty range—possession: Fine or up to 1 year's imprisonment (§235(2)).

Penalty range—production/distribution: Up to 2 years, or up to 6 years in aggravated cases (§235(1)).

Enforcement intensity: Moderate—centralized national investigations, increased focus since 2023 on AI-generated material through Operation Cumberland.

Iran

Iran represents an archetypal fusion of sexual, moral, and political censorship. Under the theocratic system established after the 1979 Revolution, the state's authority to regulate speech and sexuality is derived not from secular conceptions of public morality but from *Shari'a* principles embedded in law. This integration of religious and civil power ensures that depictions of the body, gender, or intimacy are treated not merely as matters of taste or harm, but as potential threats to the political order itself. The result is a regime in which the same legal and moral framework that governs sexual conduct also suppresses artistic dissent and political deviation.

Legal Framework

The foundation of Iran's censorship regime lies in the *Islamic Penal Code* (IPC), particularly Book Five, which governs ***taʿzīr*** (discretionary) and deterrent punishments. Articles 638–640 prohibit acts of "indecency," "encouraging immorality," or producing and distributing "obscene" materials, with penalties ranging from fines and lashes to imprisonment and even execution. These provisions make no distinction between depictions of real sexual acts and fictional or artistic representations. Terms such as ***fasād*** (corruption) and *fisq* (depravity) are undefined, granting prosecutors and judges wide latitude to classify creative expression as immoral or obscene.

Complementary statutes extend these restrictions across all media. The Press Law (1986, Arts 1 and 9) requires that publications uphold "Islamic and public interests" and forbids any material that "violates Islamic principles or propagates acts forbidden by religion." The *Computer Crimes Law* (2009) (CCL) criminalizes dissemination of material "contrary to public decency" or "encouraging moral deviation," enabling prosecution of online speech and digital art (Article 19, 2012, p. 19).

Enforcement and Practice

Because these moral laws are framed in broad and indeterminate terms, their enforcement is discretionary and often strategic. Accusations of "immorality" or "corruption" are routinely deployed against artists, writers, and activists whose work challenges state narratives. The poet Fatemeh Ekhtesari was sentenced to eleven and a half years in prison and ninety-nine lashes in 2015 for "immoral behavior" and "publishing indecent photos" (OutRight Action International et al., 2019). Human-rights lawyer Nasrin Sotoudeh received a thirty-three-year sentence and 148 lashes for charges including "encouraging corruption and prostitution" and appearing in public without a veil (Amnesty International, 2019).

Queer expression is especially targeted. The Penal Code punishes same-sex intimacy with lashings or death depending on the circumstances, and the mere depiction or advocacy of LGBTQ+ themes is prosecuted as obscenity (Sanei, 2012). At the same time, the *Gasht-e Ershad* ("Guidance Patrols") enforce compulsory veiling and public modesty codes, closing galleries, detaining women, and monitoring online content (UN Office of the High Commissioner for Human Rights, 2023). The effect is a comprehensive apparatus of moral control encompassing law, policing, and digital surveillance.

There is no content classification system as such. Films are either permitted, conditionally edited, or banned. Depiction of unveiled women, physical intimacy, alcohol, non-heteronormative themes, and criticism of religion or state institutions are prohibited, and filmmakers must also avoid "hopelessness," "nihilism," or "promotion of Western culture." Foreign films are routinely edited or dubbed to remove "immoral" content before release. Books and music also require publication licenses and are censored for content.

Despite these constraints, an underground culture of

artistic resistance persists. Independent filmmakers and writers often work semi-clandestinely, producing films or graphic works that circulate in limited editions or via encrypted networks. Censorship functions less through systematic prosecution than through deterrence: artists internalize the limits imposed by the state, shaping their aesthetic around allusion, silence, and absence. In this respect, Iran's creative community mirrors the logic of repression itself—the unsaid becomes both a symptom of fear and a language of defiance.

Case Studies: *Persepolis and Women Without Men*

Marjane Satrapi's *Persepolis* (2000–2004) provides a striking example of how Iranian censorship conflates moral, sexual, and political control. The autobiographical graphic novel chronicles the author's childhood and adolescence during and after the Revolution, depicting how state ideology invades private life. Although *Persepolis* contains no explicit sexual imagery, its frank portrayal of puberty, bodily self-awareness, and female autonomy was sufficient to have it banned in Iran.

Another illustrative work is *Women Without Men* (Pārsīʾpūr, 1989), a novel that became a 2009 film by Shirin Neshat. The story interweaves the stories of five women in 1950s Tehran who, each in her own way, flee patriarchal domination and sexual violence. Its frank depictions of child sexual abuse, adultery, prostitution, and female desire transgress multiple taboos at once: not only the representation of sex itself but the suggestion that women might reclaim sexual agency outside marriage or religion. Parsipur was imprisoned for several months following the book's publication under the same provisions of the Islamic Penal Code that criminalize "obscenity" and "encouraging immorality" (Frouzesh, 2019).

Conclusion

In Iran, the convergence of sexual and political censorship exposes the extremes of what elsewhere are separate rationales—protecting morality, safeguarding children, or maintaining public order—here fused into a single, theocratic logic of control. The same legal vocabulary—"immorality," "indecency," "corruption"—is applied to erotic expression, women's rights activism, and political critique. Unlike the liberal democracies examined elsewhere in this study, where moral restrictions are justified in terms of protecting minors or public sensibility, Iran's theocratic framework treats control over the body as an existential pillar of state power. The result is a system in which art that articulates bodily autonomy or female subjectivity is not merely indecent but heretical.

Iran - Summary

Separate laws: No—Obscenity and immorality offences under the *Islamic Penal Code apply* to both real and fictional works without distinction.

Separate agencies: No—Censorship and enforcement are shared among the Ministry of Culture and Islamic Guidance, the Judiciary, the Cyber Police *(FATA)*, and the *Gasht-e Ershad* (Guidance Patrols).

Separate statistics: No—No official data distinguish prosecutions involving real abuse from those involving fictional or artistic material.

Separate terminology: No—Terms such as *fasād* (corruption), fisq (depravity), and *bihijābī* (improper veiling) serve as catch-alls for both sexual and political deviance.

Treaty reservations: Yes—Iran is a party to the *Convention on the Rights of the Child* but entered broad reservations subordinating it to Islamic law; it is also a party to the *ICCPR* but has not implemented its guarantees on freedom of expression.

Penalty range—possession: Up to two years' imprisonment and/or fines or lashes for possessing "obscene material" (IPC Art. 640 and CCL Art. 14).

Penalty range—production/distribution: Same as possession, but with possible enhancement even up to the death penalty in cases amounting to "corruption on earth" *(mofsed-e fel-arz)*.

Enforcement intensity: High. Censorship is pervasive across print, film, and digital media; arrests and lash sentences are common; moral policing is institutionalized.

Japan

Japan occupies a distinctive—and controversial—place in the global conversation on sexual depictions of minors, owing to the prominence of its manga and anime industries and their often ambiguous treatment of age, sexuality, and fantasy. Notably, Japan did not prohibit simple possession of real CSAM until 2014, and even then, the maximum penalty imposed was only one year's imprisonment or a fine of one million yen. This makes Japan the only developed country where the obscenity offence covering fictional works carries higher potential penalties than real CSAM possession. Yet in practice, obscenity prosecutions are rare and largely symbolic, reflecting a social and judicial preference for tolerance toward fictional and artistic expression that has also carried through into Japan's foreign policy.

Legal Framework

Japanese law makes the separation between real CSAM and fictional works explicit. CSAM is governed by the *Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children* (Act No. 52 of 1999). The statute focuses on the exploitation of actual minors and defines "child pornography" *(jidō poruno)* narrowly to include only images of real persons under eighteen engaged in sexual acts or posed for sexual purposes.

Fictional works fall instead under the Penal Code's Article 175, which criminalizes the distribution or public display of "obscene" *(waisetsu)* materials. The provision, dating to the Meiji era, has no statutory definition of obscenity; its contours have instead been shaped through case law. The Supreme Court's 1957 *Lady Chatterley's Lover* decision established the enduring test: material is "obscene" when it "arouses sexual desire, offends a sense of shame, and violates proper concepts of sexual morality." Yet even as the Court affirmed the conviction of translator Sei Itō for his unexpurgated edition of D. H. Lawrence's novel, it stressed that the assessment must be made in light of social norms and artistic purpose—a caveat that later decisions would expand upon.

In subsequent decades, courts have wrestled with the tension between moral protectionism and artistic freedom. In the 2002 *Mapplethorpe* decision, for example, the Tokyo High Court overturned an obscenity ruling against an exhibition of the American photographer's homoerotic works, holding that their artistic value outweighed any prurient effect. This reasoning has come to characterize Japan's modern obscenity jurisprudence: the law remains on the books, but enforcement is sporadic and highly contextual.

Perhaps the most emblematic modern case is that of artist Megumi Igarashi *(Rokudenashi-ko)*, arrested in 2014 for distributing 3D data derived from scans of her genitals, which she used to create a kayak in the shape of a vulva. Igarashi's prosecution—technically under Article 175—was widely criticized as anachronistic and gendered. The Tokyo District Court ultimately acquitted her on the charge relating to the kayak itself, recognizing its artistic and humorous intent, but upheld a conviction for distributing the 3D data online, imposing a fine of ¥400,000 (McCurry, 2016). The case underscored the law's continuing reach, even as public sentiment viewed her work as satire rather than obscenity.

In practice, prosecutions are rare and often symbolic, reflecting what scholars have called a "managed ambiguity": a system that preserves moral authority over sexuality while tacitly allowing

a vast landscape of explicit expression to flourish (Allison, 2006). Thus most manga, anime, and games remain outside the reach of Article 175 unless they are both graphically explicit and devoid of discernible narrative or artistic purpose.

Content Classification

Japan maintains an extensive system of industry self-regulation backed by administrative guidance from police and local authorities. Organizations such as Eirin (for film) and various ethics review boards for adult video, manga, and games classify and censor works to avoid prosecution under Article 175. Although not statutory, this framework operates with quasi-official authority, making it one of the world's most entrenched forms of institutionalised self-censorship.

One of the most visible outcomes of this system is the industry-wide use of pixelation or black-line "mosaics" over depictions of genitalia. This convention, standardized by self-regulatory groups like the Nihon Ethics of Video Association, is less about prudery than legal risk management. Under the prevailing interpretation of Article 175, the visible portrayal of the penis or vagina—no matter how stylized or fictional—is enough to trigger obscenity liability, whereas partial concealment generally suffices to avoid prosecution. Thus, the formal act of censoring the genitals has become a ritual gesture, maintaining the letter of the law while hollowing out its substance.

Legislative and Political Developments

Japan's resistance to banning fictional works has been the subject of intense domestic and international scrutiny. At the time when amendments to the 1999 Act were made in 2014 to prohibit the possession of real CSAM, Parliament declined to extend the ban to drawn, animated, or digital representations (Kurtenbach, 2014). Advocacy groups such as ECPAT Japan, alongside some Diet members and international NGOs, pressed for inclusion of "virtual" depictions, but were opposed by a coalition of artists, publishers, and civil libertarians who argued that such a step would imperil freedom of expression protected under Article 21 of Japan's Constitution.

Within the Diet, debates were marked by appeals to Japan's cultural particularity: the view that manga and anime constitute legitimate art forms reflecting a wide range of human experience, including adolescent sexuality, without implying exploitation. The Japan Cartoonists Association, the Japan Pen Club, and numerous academics submitted opinions cautioning that prohibiting such works would criminalize internationally acclaimed literature and visual art.

Japan in International Fora

Japan's stance has repeatedly surfaced in international policymaking, particularly in the deliberations of the United Nations Committee on the Rights of the Child (CRC) and the Council of Europe's Cybercrime Convention process.

In submissions to the United Nations Committee on the Rights of the Child, during consultations on its Guidelines for the Implementation of the OPSC (CRC/C/156, 2019), Japanese stakeholders sought to explain why certain depictions in manga and anime cannot be equated with real abuse. For example, the Japan Society for Studies in Cartoons and Comics (JSSCC) cited Keiko Takemiya's *Kaze to Ki no Uta* as an example of a critically acclaimed work that realistically portrays adolescent sexuality and trauma, warning that overly broad restrictions could criminalize legitimate art. Reflecting such concerns, Japan's official delegation urged the Committee to confine the scope of "child pornography" to visual representations of actual children and to avoid including text, audio, or purely fictional works (Malcolm, 2019b).

Japan's approach also played a moderating role in negotiations surrounding the Budapest Convention on Cybercrime and its Second Additional Protocol (2021). Although Japan was not among the original signatories in 2001, it participated as an observer during drafting and later acceded in 2012 after confirming that the Convention would not require the criminalization of purely fictional works. This position left a clear imprint on Article 9, which defines "child pornography" for the purposes of the treaty and allows reservations limiting criminalization to depictions of real children.

Taken together, these interventions have made Japan an important counterweight to the expansionary approach championed by European and North American states. Its positions have contributed to a more nuanced recognition within international policy debates that depictions of fictional minors, while sometimes offensive, do not

always entail exploitation and that responses must remain consistent with human rights obligations.

Cultural and Artistic Context

The examples cited in these debates are not marginal or pornographic curiosities—they are central works of Japan's postwar artistic canon. Beyond *Kaze to Ki no Uta*, examples include Osamu Tezuka's *Buddha* (1972–83), which depicts youthful nudity within a religious and humanistic framework; Toshio Saeki's erotic surrealist prints, which juxtapose innocence and grotesque sexuality in a critique of repression; Eiji Mikage's *The Empty Box and Zeroth Maria*, a novel exploring adolescent desire and guilt through speculative fiction; and Eisner Award nominee Inio Asano's *A Girl on the Shore* (2011), an manga which includes frank depictions of sexual experimentation between two teenagers. These works employ the depiction of youthful sexuality as a vehicle for empathy, moral inquiry, or aesthetic exploration—not exploitation. Yet some would likely fall afoul of broad definitions of "child pornography" proposed by international advocates.

Panel from Inio Asano's A Girl on the Shore

Japanese and international scholars have examined these issues through diverse lenses of cultural studies, legal analysis, and feminist critique. Patrick W. Galbraith, in *The Moe Manifesto* (2017) and subsequent works, describes the phenomenon of "affective play" around fictional youth as a socially embedded fantasy space—one that enables emotional expression and empathy, rather than predation. Galbraith argues that *moe* operates within a semiotic system detached from real bodies, allowing for exploration of vulnerability and care in symbolic form.

From a sex-positive feminist perspective, critics such as Mari Kotani (2006) and Kazumi Nagaike (2015) have argued that the genres of *yaoi* and *shōjo* manga—often mischaracterized as exploitative—have historically served as outlets for female and queer desire in a patriarchal society that otherwise marginalized such expression. Nagaike's analysis of "male–male romance" in *Boys' Love* underscores how depictions of adolescent male characters are not about boys per se, but about imaginative freedom from conventional gender and sexual norms.

Collectively, this body of scholarship situates Japan's approach within a broader discourse of expressive autonomy and cultural specificity, emphasizing that fictional sexuality in visual media cannot be equated with real abuse.

Conclusion

Japan's legal and cultural approach to sexual depictions of minors is defined by contrast and continuity: contrast with the sweeping prohibitions adopted elsewhere, and continuity in its insistence that imagination and reality belong to separate moral and legal realms. Its laws draw a bright line between the protection of actual children under the 1999 Act and the regulation of obscenity under Article 175—a line maintained even as technological and social changes have blurred it elsewhere. This distinction, grounded in Japan's constitutional commitment to freedom of expression, has allowed an extraordinary diversity of artistic production to flourish, even while sustaining periodic moral panic and symbolic prosecutions such as that of Megumi Igarashi.

Internationally, Japan has stood almost alone among advanced democracies in articulating a coherent defence of this position, arguing in UN and Council of Europe forums that criminal law should concern itself only with real exploitation. Whether this stance will remain sustainable amid pressure for global harmonization—and the rise of AI-generated imagery—remains uncertain. But Japan's example demonstrates that it is possible for a society to condemn child abuse without extinguishing the creative exploration of youth and sexuality that has long been a vital part of its cultural imagination.

Summary - Japan

Separate laws: Yes—Real CSAM is criminalized under the *Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children* (Act No. 52 of 1999, esp. Art. 7 for possession). Fictional works are addressed separately under the Penal Code obscenity provisions (Art. 175) when they are deemed "obscene," but not under the child-pornography law.

Separate agencies: Partial—National Police Agency and local prefectural police investigate both child pornography and obscenity. While there is no dedicated body for fictional works, the classification and self-censorship of such works is handled through industry self-regulation.

Separate statistics: Yes—Official statistics track CSAM cases (real). Fictional/obscene manga-anime cases are not systematically reported.

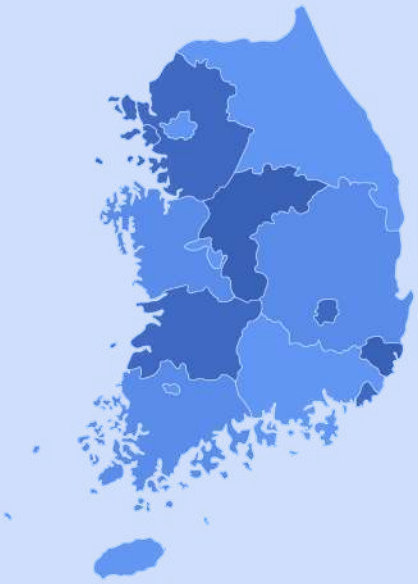
Separate terminology: Yes—*Jidō poruno* ("child pornography") for real material; *waisetsu* ("obscenity") for fictional works under Penal Code Art. 175.

Treaty reservations: Yes—Japan ratified the Optional Protocol on the Sale of Children (2005) and the Budapest Convention (2012), but has historically taken a narrow view of "child pornography," excluding purely fictional works; not party to the Lanzarote Convention.

Penalty range (fictional): Up to 2 years' imprisonment and/or fine up to ¥2.5 million (Penal Code Art. 175).

Penalty range (real): Up to 1 year's imprisonment or fine up to ¥1 million for simple possession (Act No. 52 of 1999, Art. 7).

Enforcement intensity: Low. Enforcement against real CSAM focuses on production and distribution. Obscenity prosecutions under Article 175 are rare and largely symbolic, rather than routine policing of manga or animation.



South Korea

South Korea offers one of the most striking examples of how anxieties over sexual morality, feminism, and technology can converge to shape punitive laws on fictional sexual expression. While Japan has maintained a permissive boundary around fictional works, Korea has steadily expanded criminal law to cover even drawn, written, or digital materials depicting minors. This trajectory has unfolded within a broader cultural landscape marked by intense gender conflict, recurring moral panics, and the state's expansive role in regulating online content.

Legal Framework

The core provisions governing sexual expression in South Korea are found in the *Criminal Act* (Articles 243–245), which prohibit the distribution and sale of "obscene materials," and in the *Act on the Protection of Children and Juveniles from Sexual Abuse* (1999, as amended). The latter defines "child or juvenile pornography" broadly to include any visual representation—realistic or not—that depicts a person under the age of 19 engaging in sexual acts. (The statutory threshold of nineteen reflects Korea's historical age-reckoning system that started counting at 1; although ages now start at 0, the text of the statute remains unchanged.) This wording, reinforced by major amendments in 2011 and 2020, criminalizes purely fictional or computer-generated imagery that "appears to involve" a minor.

The 2011 amendment marked a watershed. Before that, the Act targeted only depictions of *actual* minors. The revised definition was expanded to include "the depiction of children or youth, or persons or representations that can be perceived as children or youth" engaged in sexual activity, thus encompassing cartoons, animations, and written or computer-generated works.

Although previously only production and distribution were criminalized, the 2020 amendment also criminalized the possession or viewing of child sexual abuse material—but once again, made no distinction between real and virtual. This revision, which imposed a statutory maximum of three years' imprisonment (Yonhap, 2020), brought Korea closer to the model of strict liability regimes found in the United Kingdom and Australia.

Adult Pornography

Overlaid over this, the general prohibitions on "obscene materials" under Articles 243–245 of the *Criminal Act* complicate the picture further. South Korea has never formally legalized adult pornography in the Western sense: the production or commercial distribution of explicit sexual material remains prohibited, but private consumption of online pornography is widespread and only sporadically prosecuted. Rather than a total ban, what exists is a regime of formal prohibition with selective tolerance, granting authorities wide discretion to suppress sexual expression when it intersects with public controversy or gender politics. This system blurs the boundary between the protection of minors and the regulation of adult sexuality, framing both under a rhetoric of moral hygiene. South Korea's Constitutional Court has occasionally tempered the scope of these provisions, affirming that "obscenity" must be assessed in context and balanced against freedom of expression. Yet, the judiciary has largely deferred to administrative determinations by the Korea Communications Standards Commission, producing

a system where art, literature, and fan culture remain under a cloud of censorship (Moon, 2003).

Among the jurisdictions examined in this report, only South Korea and Iran maintain a general criminal ban on pornography. Yet the motivations diverge sharply: in Iran, prohibition rests on religious doctrine and the enforcement of sharia-based morality, while in Korea it derives from a secular but deeply paternalistic conception of social order. Both systems rely on moral purity as a ground for restricting sexual expression, though Korea's operates within a democratic and constitutional framework that nominally guarantees freedom of expression.

Content Classification

South Korea maintains a statutory, centralised content-classification system that covers virtually all forms of visual media. It is overseen by two bodies created under the *Motion Pictures and Video Products Act and the Game Industry Promotion Act:*

- Korea Media Rating Board (KMRB)—responsible for rating and, in some cases, banning films, videos, and online video content.
- Game Rating and Administration Committee (GRAC)—rates video and online games.

Both are nominally independent but operate under the Ministry of Culture, Sports and Tourism, giving them formal legal authority to prohibit works that "undermine public morals" or "harm the sound development of youth." Distributors must submit materials for review before release; unclassified or "restricted" works cannot be legally sold or screened. Online service providers are likewise obliged under the *Information and Communications Network Act* to block or remove unclassified or "harmful" material designated by these agencies or by the Korea Communications Standards Commission (KCSC).

In practice, this framework functions as a system of administrative censorship. Works that include sexual depictions of minors, simulated or animated child sex, incest, or extreme pornography are automatically refused classification by the KMRB and thus cannot be legally distributed. The ban extends to hentai-style animation and manga, which are routinely deemed "harmful to juveniles" under the *Juvenile Protection Act* and subject to seizure or online blocking.

Enforcement and Controversies

The passage of the 2011 amendment that first expanded Korean child pornography law to include fictional works resulted in a 22 times increase in prosecutions between 2011 and 2012, many of them against women (Park, 2013). Recognizing this as a problem, lawmakers made a very minor tweak to the definition again in 2012 to limit it to "representations that can be *obviously* perceived as children or youth," apparently in an attempt to target more realistic depictions. Over time some judges began to interpret this text more narrowly to avoid making findings of liability over fictional images, and a practice emerged of requesting prosecutors to substitute child pornography charges for less serious obscenity charges (Open Net Korea, 2019).

Customs officials and police have also repeatedly seized imported sex dolls, on the grounds that they corrupt public morals or objectify women. In 2022, the Supreme Court finally struck down a blanket import ban, holding that adult dolls fall within the sphere of personal autonomy, unless they are modeled on minors (BBC, 2022). (The topic of sex doll laws will be revisited in the section on Australia.)

Sociocultural Context

South Korea's expansive legal framework governing sexual expression cannot be understood apart from its cultural polarization around gender and sexuality (Jung, 2024). The 2010s and 2020s witnessed a powerful feminist revival, fueled by outrage over sextortion, deepfake, and spycam *(molka)* crimes. A turning point was the *Nth Room* scandal, uncovered in 2019–2020, which involved a network of encrypted Telegram chatrooms where men shared and sold sexually exploitative videos of women and girls, many of whom had been blackmailed into producing the material. Victims were coerced through threats of doxxing and exposure, and some of the exploited individuals were minors.

In response, feminist movements successfully pushed for stronger laws on digital sex crimes, but these campaigns also provoked a fierce anti-feminist backlash—especially among young men who viewed gender equality policies as oppressive (Schwartz, 2025). The Ministry of Gender Equality and Family became a lightning rod for this conflict, accused by conservatives of promoting

"man-hating" feminism and by feminists of moral paternalism. Caught between these poles, the state has oscillated between punitive morality and populist misogyny, often defaulting to censorship as a politically safe response. The legal system thus reflects an obsession with controlling sexual fantasy as a proxy for controlling social disorder.

Conclusion

South Korea's regime of sexual expression control illustrates the convergence of paternalism and populism in a digital age. The blurring of boundaries between "juvenile protection" and "obscenity," and between moral purity and gender politics, has produced a system in which both real and imaginary sexuality are subject to state intervention.

As touched on in the section on Japan, the definitional expansion of child pornography has resulted in the criminalization of some treasured cultural and pop cultural artifacts, mostly in the form of manga and anime. Nevertheless in South Korea unlike in Japan, the pendulum has swung against creators and fans of these artworks. While these developments were driven by public outrage at real exploitation scandals, they have simultaneously enabled the surveillance and punishment within the realm of fantasy and creative expression.

This dual moral panic—where the rhetoric of protecting children underwrites the censorship of adults—represents a cautionary case for comparative analysis. It demonstrates how even democratic societies, under pressure from social media outrage and gender polarization, can erode freedom of expression through well-intentioned but overbroad laws.

Summary - South Korea

Separate laws: No—*Act on the Protection of Children and Juveniles from Sexual Abuse* on child pornography includes fictional works.

Separate agencies: Partial—police and prosecutors handle criminal cases. The Korea Media Rating Board (KMRB) and Game Rating and Administration Committee (GRAC) supplement this through pre-publication censorship, while the Korea Communications Standards Commission (KCSC) censors online content.

Separate statistics: Yes—prosecutions of fictional works are identified by means of an "Other" designation for the victim.

Separate terminology: No—"Child or juvenile pornography" *(ahdong cheongsonyeon seongchajaeyongmul)* encompasses all depictions, real or simulated.

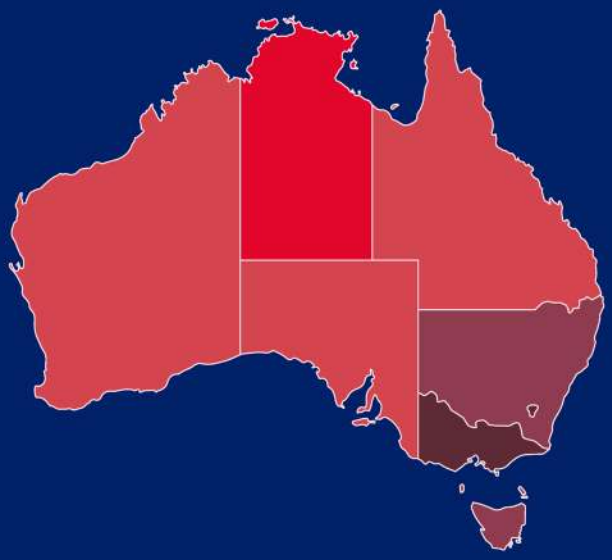
Treaty reservations: None to the CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (ratified 2008).

Penalty range (possession): Up to 3 years' imprisonment or fine up to ₩20 million (Art. 11-2, 2020 amendment).

Penalty range (production/distribution): Up to 7 years' imprisonment (Art. 8(1)); aggravated to 10 years if committed for profit or by means of information networks.

Enforcement severity: High—frequent seizures, arrests, and website takedowns; Customs bans on sex dolls until 2022.

Australia



Australia presents one of the most expansive and punitive regulatory frameworks for sexual expression in the democratic world. Its legal system conflates real child sexual abuse material with fictional works, cartoons, and inanimate objects such as dolls, subjecting all to the same severe criminal penalties. This conflation is rooted in colonial-era obscenity doctrines that have survived largely intact into the twenty-first century, producing a regime marked by legal moralism, enforcement zeal, and an indifference to the distinction between imaginary harms and the exploitation of actual children.

Historical Foundations in Obscenity Law

Australia's approach is deeply shaped by its colonial inheritance of British obscenity law. The foundational precedent, *R v Hicklin* (1868) 3 QB 360, defined obscenity by a work's "tendency to deprave and corrupt" those exposed to it. That elastic, paternalistic formula underwrote sweeping censorship throughout the twentieth century, reaching far beyond pornography to canonical literature. As late as 1963, Senator Henty, then Minister for Customs, defended bans on D.H. Lawrence's *Lady Chatterley's Lover* and Henry Miller's *Tropic of Cancer* by declaring that "normal healthy Australians would not be interested" in such works (Whitmore, 1964)—a stance that treated artistic merit as largely irrelevant.

In *Crowe v Graham* (1968) 121 CLR 375, Windeyer J explained (at 392–93) that courts had not, in practice, tested whether a publication actually had a corrupting tendency; rather, once a work was judged indecent, its harmful tendency was presumed. However, he also noted that audience and circulation could be relevant (at 397): a picture might be indecent in one setting but not in another. Taken seriously, that principle would shield private possession of obscene content that no one is exposed to. The United States eventually adopted that view in Stanley v Georgia, 394 U.S. 557 (1969). Australia did not; mere possession of obscene material remains criminalized under state law, underscoring the durability of a moral-protective, rather than victim-centred, frame.

The Criminal Code's Expansive Definition

The federal definition of "child abuse material" (CAM) in s 473.1 of the *Criminal Code Act 1995* (Cth) includes depictions or descriptions of a person who is, or appears to be, under eighteen in sexual poses or activity, or in contexts that reasonable persons would regard as offensive in all the circumstances. The definition is deliberately medium-agnostic, encompassing purely textual stories with no visual component, hand-drawn or animated characters bearing no resemblance to real children, computer-generated or AI imagery that depicts no actual person, and sexualized portrayals of adults who merely appear to be under eighteen. It even includes "a doll or other object" that resembles a person who is, or appears to be, under eighteen if a reasonable person would consider it likely that the object is intended to be used to simulate intercourse.

Section 473.4 directs courts to assess offensiveness by reference to "the standards of morality, decency and propriety generally accepted by reasonable adults," any literary, artistic or educational merit, and the general character of the material. Notably absent is any codified consideration of the circumstances of publication, a factor that the common law recognizes, as explained above. Thus under the CAM offences, it generally makes no legal difference whether the material is sold at an adults-only convention, shared within a private online forum, or kept entirely to oneself.

The Inclusion of Dolls

A striking feature of Australia's definition is its inclusion of dolls and other inanimate objects. Although rare, Australia is not entirely alone in this approach. The United Kingdom also treats child-like sex dolls as "obscene" or "indecent" articles under its customs and postal laws, and prosecutions have also been made over dolls as child pornography under Canada's Criminal Code. However, among the jurisdictions surveyed in this report, only Australia and South Korea have enacted an explicit, nationwide statutory ban that classifies child-like dolls themselves as child abuse material. Australia's explicit prohibition was enacted following a cursory report from the Australian Institute of Criminology, which acknowledged a lack of empirical evidence but nonetheless recommended criminalization on precautionary grounds (Australian Institute of Criminology, 2019).

This approach has been criticized by researchers who note that it exemplifies a pattern of "explicitly highlighting a lack of available empirical evidence about the utility of some forms of FSM, but which then call for their avoidance in practice due to potential risks (while ignoring potential benefits)" (Lievesley et al., 2023, p. 401). Current studies indicate that although sex doll owners exhibit certain interpersonal vulnerabilities—such as lower sexual self-esteem and insecure attachment—these do not translate to elevated risk of sexual offending, and indeed that doll owners may be less sexually aggressive compared to non-owners (Harper et al., 2023).

The criminalization of dolls thus rests not on evidence of harm but on moral disapproval of the desires attributed to their users. It exemplifies the displacement of harm-based justifications by a logic of pre-emptive punishment: individuals are criminalized not for what they have done, but for what their possessions are presumed to reveal about their inner lives.

The National Classification Scheme

A parallel regulatory track, the National Classification Scheme, operates alongside criminal law. The *Classification (Publications, Films and Computer Games) Act 1995* and the National Classification Code (amended 2013) instruct decision-makers to balance adult freedom "to read, hear, see and play" against protections for minors and the public from unsolicited offense, while considering community standards of "morality, decency and propriety" and any artistic or educational merit. In operation, the Scheme escalates from unrestricted categories (G, PG, M) through restricted (MA 15+, R 18+, X 18+) to Refused Classification (RC). RC material may not be distributed or imported, and, in some states, simple possession is an offence.

The grounds for RC are broad. In addition to incitement of crime or violence, the Code and Guidelines refuse classification to depictions "likely to cause offence to a reasonable adult" where a person "is, or appears to be," under eighteen—regardless of sexual activity—and to sexual material that is "gratuitous, exploitative or offensive," including lists of "revolting or abhorrent" practices that, in practice, sweep in commonplace fetishes such as spanking.

Under the *Online Safety Act 2021,* the eSafety Commissioner may direct internet and hosting services to remove or block access to content that has been, or would be, Refused Classification under the Scheme. These administrative removal powers operate outside the safeguards of criminal process; determinations are typically subject only to internal review and the possibility of judicial review on narrow administrative-law grounds. The Act does not distinguish between depictions of real abuse and fictional or artistic content. All RC-level material is subject to the same takedown regime, again collapsing the distinction between harm and offense and between protection and paternalism.

RC material is also prohibited from import under the *Customs Act 1901* and reg 4A of the *Customs (Prohibited Imports) Regulations 1956.* Notably these laws treats CAM (under the Criminal Code's expansive definition, which is duplicated

in s 233BAB) and Refused Classification (RC) publications on the same footing. The duplication creates a hybrid border regime that draws simultaneously on criminal-law "offensiveness" and classification concepts to produce the broadest possible set of prohibited materials at the point of entry. In practice, prosecutions have been brought over manga, anime, and erotic literature lawfully acquired overseas.

Penalties and Offence Architecture

The core online and communications offences sit in Division 474 of the Criminal Code. Using a carriage service to access CAM (s 474.22) and possessing CAM obtained via a carriage service (s 474.22A) carry severe maximum penalties—up to 15 years' imprisonment. Distribution and transmission offences are aligned at the same order of severity. Postal offences appear in Division 471, and Division 273 covers certain extraterritorial conduct. None of these provisions draws any formal distinction between CSAM and fictional works once the threshold definition of CAM is met. The effect is to collapse fundamentally different categories—documented abuse of real children, on the one hand, and imaginary depictions, on the other—into a single offence framework.

The most noted example is *McEwen v Simmons & Anor* [2008] NSWSC 1292, upholding liability for a pornographic *Simpsons* parody and confirming that cartoons can "depict a person" for CAM purposes. Tellingly, Adams J acknowledged the "fundamental difference in kind" between depictions of actual human beings and imaginary persons, warning that treating the distinction as merely one of degree would either trivialise real-victim abuse or over-criminalise fiction; yet he felt constrained by the law to record a conviction.

In 2025, author Lauren Tesolin-Mastrosa (pen name Tori Woods) was charged over an erotic novel, *Daddy's Little Toy*, centred on an eighteen-year-old protagonist in a consensual DD/lg dynamic with her father's friend; the allegation turns on suggestive backstory references implying the friend's attraction towards her before she turned eighteen. Tesolin-Mastrosa has pleaded not guilty (Beazley, 2025). Both matters illustrate a system ready to escalate purely fictional works into the same offence category as documented child abuse.

As in Canada and the United States, artists have also been targeted with criminalization and censorship. In May 2008 the Roslyn Oxley9 Gallery in Sydney was raided by police, and photographic nudes by artist Bill Henson's were seized—though no charges were eventually laid (Marr, 2008). In June 2013, police raided the Linden Centre for Contemporary Art, seizing works by Paul Yore and arresting him on charges that were later dismissed (Holsworth, 2014).

Despite the severity and breadth of CAM law, neither the Australian Federal Police nor the Commonwealth Director of Public Prosecutions separates statistics for real-victim CSAM and fictional material. Freedom of Information responses from May and June 2024 indicate that no such disaggregation is maintained. That opacity obscures whether child protection resources are being diverted into victimless prosecutions, as in the United Kingdom. The CDPP's prosecution manual reportedly includes guidance on "written and drawn child pornography material," but the agency has resisted releasing it under FOI, with an appeal pending before the Office of the Australian Information Commissioner.

Police Complicity in Child Exploitation

Questions about proportionality are also raised by policing methods themselves. From 2016, Queensland's Taskforce Argos covertly operated the "Childs Play" darknet child abuse website for roughly eleven months, periodically posting CSAM to preserve their cover. UNICEF and Amnesty condemned the operation as violating children's rights (Høydal et al., 2017; Vigsnæs et al., 2017).

Legislation currently before Parliament would formalize an immunity for such conduct. The *Telecommunications* and Other Legislation Amendment Bill 2025, introduced in August 2025, would authorize and protect law-enforcement possession, sharing, and distribution of CSAM inside approved "controlled operations," including in encrypted environments. The Parliamentary Joint Committee on Intelligence and Security has endorsed the bill (Dick & Tolhurst, 2025).

Conclusion

Australia's framework collapses real harm and imaginary transgression into a single offence category policed through an "offensiveness" lens. It treats cartoons, stories, dolls, and adult role-play adjacent fiction as equivalent to material documenting the abuse of actual children, and does not recognize harm as a relevant factor in determining criminal liability. This conflation is not grounded in a strong evidence base, but rather reflects a tradition of legal moralism that has seen books banned, artworks seized from galleries, and artists and authors arrested.

The enforcement record shows a system functioning primarily as an obscenity regime—targeting those deemed to harbor deviant desires—while simultaneously operating or immunizing tactics that themselves perpetuate the circulation of real CSAM. If child protection is the lodestar, the urgent reforms are a harm-differentiated legal framework and transparent statistics that distinguish real-victim cases from fictional or simulated material, ensuring that enforcement resources are directed toward lived abuse rather than personal expression.

Australia - Summary

Separate laws: No—The *Criminal Code Act* 1995 (Cth) s.473.1 defines "child abuse material" to include both real and fictional works (cartoons, drawings, written descriptions, computer-generated images, and dolls) without distinction.

Separate agencies: Partial—The Australian Federal Police and Commonwealth Director of Public Prosecutions handle both real CSAM and fictional works under the same investigative and prosecutorial framework. However, there is a parallel content classification system under the National Classification Scheme that handles works that fall short of criminality.

Separate statistics: No—Neither the AFP nor the CDPP tracks whether charges relate to real CSAM or fictional works. FOI requests confirmed no disaggregated data is maintained.

Separate terminology: No—All material falling within the statutory definition is termed "child abuse material," regardless of whether it depicts real children or purely imaginary representations.

Treaty reservations: No—Australia ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2007) without reservations limiting its application to real children.

Penalty range (possession): Up to 15 years' imprisonment for possession of child abuse material obtained or accessed through a carriage service (Criminal Code s.474.22A).

Penalty range (creation/distribution): Up to 15 years' imprisonment for producing, supplying, or transmitting child abuse material, including purely fictional or simulated depictions (Criminal Code ss.474.22, 474.23).

Enforcement intensity: High—Vigorous enforcement at borders and domestically; frequent prosecutions of travelers with manga/anime; charges laid over cartoons, written fiction, and even private family videos, including deleted images recovered forensically.

Comparative Legal Analysis

The ten national case studies examined above reveal a wide range of legal approaches to fictional sexual material. In most countries, such material is regulated—at least in part—under the same child protection framework that governs real child sexual abuse. This convergence is typically justified by a logic of *risk prevention*: the belief that fictional works may normalize or desensitize audiences to abuse. Yet this "precautionary turn" in criminal law has blurred the line between the protection of actual children and the policing of fantasy, producing regimes that punish expression on the basis of its perceived symbolic danger rather than demonstrable harm.

That this logic prevails despite the absence of credible evidence of causation (Bailey et al., 2016; Paul & Linz, 2008), and even in the face of contrary findings (Diamond et al., 2011; Lievesley et al., 2023), suggests that its true foundation is ideological, not empirical. Across jurisdictions, the suppression of fictional sexual expression functions less as child protection than as a form of moral regulation. Legislators and enforcement agencies frequently frame such laws as ethical imperatives, reviving the logic of nineteenth-century obscenity under the modern banner of safeguarding children. The result is an erosion of the evidentiary threshold for criminalization and a corrosion of the principle that human rights apply even—and especially—to the unpopular or unsettling margins of expression.

Jurisdictions diverge sharply in how far they allow moralistic logic to erode classical safeguards, largely depending on the strength of their constitutional and institutional protections for expression. In countries with entrenched constitutional guarantees—such as the United States and Japan—courts have imposed meaningful limits on the reach of criminal law into fantasy and fiction. Continental Europe, together with Canada, Costa Rica, and South Korea, occupies an intermediate position: these systems enshrine freedom of expression in constitutional or supranational law, yet in practice their courts have been reluctant to extend such protections to sexual expression, particularly where child-protection rationales are invoked. At the other end of the spectrum, jurisdictions lacking robust constitutional speech protections—including the United Kingdom, Australia, and Iran—depend heavily on legislative and prosecutorial discretion, which tends to expand over time under public and media pressure.

Beyond domestic constitutions, international human rights law also constrains the conflation of real and imaginary harm. As discussed in the Human Rights Framework section above, the international regime—embodied in the ICCPR, CRC, and regional instruments—affirms both the gravity of child sexual exploitation and the necessity of distinguishing it from fictional or artistic expression. Efforts by child-safety advocates to narrow this distinction through soft-law initiatives and optional treaty language have not changed the core principle: under international law, the measures justified to combat lived abuse cannot lawfully be applied in equal form or degree to the regulation of personal expression. Criminalization, blanket censorship, and mass surveillance directed at fictional works therefore fail the fundamental tests of legality, necessity, and proportionality.

These theoretical distinctions are borne out—though unevenly—across the ten jurisdictions studied. The following summary table distills key structural features of their legal frameworks, highlighting whether each country differentiates

fictional from real material through separate laws, agencies, terminology, penalties, or statistical reporting. It also provides a rough indication of enforcement intensity. Taken together, these indicators offer a comparative snapshot of how effectively, or ineffectively, national systems maintain the boundary between imagined expression and real exploitation.

	USA	Canada	Costa Rica	UK	France	Denmark	Iran	Japan	South Korea	Australia
Separate laws	Yes	No	No	Yes	No	No	No	Yes	No	No
Separate agencies	No	No	No	Partial	Partial	Partial	No	Partial	Partial	Partial
Separate statistics	Partial	No	No	Yes	No	No	No	Yes	Yes	No
Separate terminology	Yes	No	No	Yes	Partial	No	No	Yes	No	No
Separate penalties	No	No	No	Yes	No	No	No	Yes	No	No
Enforcement severity	Moderate	Moderate	Low	High	Moderate	Moderate	High	Low	High	High

As shown in the summary table, only a handful of countries—principally the United States, United Kingdom, and Japan—maintain any formal differentiation between fictional and real materials, whether through distinct terminology, penalties, or statistical tracking. Even in those cases, the distinctions are often partial or inconsistently applied. The majority of jurisdictions—including Canada, Costa Rica, France, Denmark, South Korea, and especially Australia—subordinate fictional works to the same legal regime as real child sexual abuse material, effectively collapsing two conceptually distinct categories into one.

Institutional separation is also virtually nonexistent. The only exceptions are the formal content classification systems with statutory or quasi-statutory authority in six of the ten jurisdictions reviewed. These systems occupy the ambiguous middle ground between free expression and criminalisation, often functioning as soft censorship regimes that pre-emptively suppress controversial fictional content before it ever reaches the courts. However, even in those countries, fictional works are also treated criminally by the same law enforcement authorities who prosecute CSAM cases. This administrative fusion mirrors the conceptual one, reinforcing the idea that both forms of material present comparable threats and warrant identical responses. The absence of separate data collection also makes it difficult to evaluate the actual social or criminological impact of laws against fictional works—a gap that perpetuates policymaking driven by moral panic rather than evidence.

The enforcement column reveals an equally striking asymmetry. Most democratic systems exhibit moderate enforcement intensity, suggesting periodic but selective prosecutions. By contrast, the United Kingdom, South Korea, Iran, and Australia record consistently high enforcement, though for different reasons: in the United Kingdom and Australia, due to active policing and prosecutorial zeal; in South Korea, due to expansive cybercrime operations; and in Iran, due to the broader suppression of sexual expression. Japan sits at the opposite end of the spectrum, with low enforcement reflecting both prosecutorial restraint and strong informal tolerance for fictional erotic media.

Taken together, the table underscores that genuine differentiation between personal expression and lived abuse—across law, policy, and practice—remains the exception rather than the norm. Most systems still conflate fantasy with harm, treating fictional sexual expression as an extension of real-world exploitation rather than a distinct phenomenon requiring a distinct policy approach. This pattern provides the backdrop for the recommendations that follow, which seek to realign national laws with the human rights principles of necessity, proportionality, and evidentiary grounding.

Recommendations

Across the jurisdictions surveyed, the regulation of sexual expression—particularly when it involves fictional works—reveals a pattern of overreach and inconsistency. Laws conceived to protect children from sexual abuse have too often strayed into the realm of moral enforcement, punishing depictions that involve no real victims and criminalizing forms of fantasy, art, and storytelling. Despite the severity of these measures, there is little evidence that they prevent actual abuse or contribute meaningfully to child protection.

The recommendations made here are intended to address that tendency, by drawing a clear line between personal expression and lived abuse. They are grounded in the Guiding Principles developed by the Advisory Board of COSL's *Drawing the Line* project, which in turn reflect the normative standards of international human rights law (COSL, 2025b). The aim is to provide legislators, policymakers, and civil society with a roadmap for reform anchored in the principles of legality, necessity, proportionality, and respect for human dignity.

1. **Codify a clear distinction between real and fictional works.**

   Statutes should explicitly differentiate CSAM that directly harms real victims from fictional works that do not.

The starting point is to acknowledge that the direct sexual abuse of children, and the broader social challenges of managing offensive personal expression, are distinct issues which demand different responses. Conflating them not only weakens the legal framework against real abuse but also undermines freedom of expression and the credibility of child protection efforts. When fictional or artistic works are treated as equivalent to exploitative material involving real victims, the law loses both moral clarity and practical focus.

Codifying a clear statutory distinction between real and fictional materials would restore that focus. It would ensure that criminal law is reserved for conduct that directly causes harm, while concerns about taste, offense, or social impact are addressed through proportionate civil, educational, regulatory, or self-regulatory means. Such differentiation is not permissive—it is principled, reflecting the foundational requirement under human rights law that restrictions on expression must respond to a demonstrable harm, not to moral disapproval alone.

2. **Standardize terminology while distinguishing real-world harm.**

   The term child sexual abuse material (CSAM) should refer exclusively to depictions that involve or replicate real abuse.

Clear language is the foundation of coherent law and policy. The purpose of adopting the term child sexual abuse material (CSAM) was to centre the reality of abuse—to name what was once obscured by euphemisms such as "child pornography." Where no child is harmed, continuing to apply the same term distorts that purpose. Fictional works that do not depict identifiable individuals or real acts of abuse, but that do represent or reference child nudity or sexuality, should instead be described and managed through content warnings and classification labels, rather than through language that implies victimization or criminality. Where relevant, they may also be referred to using neutral academic terminology such as fantasy sexual materials (FSM).

A necessary qualification is that certain digitally generated depictions can indeed constitute or perpetuate real harm. Realistic "deepfakes" or "morphs" that depict identifiable minors in sexual acts are functionally equivalent to CSAM, even if algorithmically generated, and may appropriately be referred to as such, since they violate the dignity and privacy of real individuals. Beyond this, avoiding hybrid or misleading labels such as "AI-CSAM" or "CSAEM" prevents conceptual confusion and safeguards both accurate data and principled lawmaking.

3. Assign distinct enforcement responsibility.

Agencies tasked with investigating and prosecuting child sexual abuse should not also be responsible for regulating fictional or expressive materials.

The sexual abuse of children is a crime of exceptional gravity, demanding specialist expertise, victim-centred approaches, and the full attention of law enforcement resources. Yet when the same authorities are also charged with policing fictional depictions, enforcement priorities become distorted. Prosecutions for possession of art, writing, or fantasy material are often simpler, cheaper, and less confronting than the complex, victim-involved investigations that real abuse cases require. This dynamic not only diverts resources from genuine child protection but also fosters a culture of moral surveillance rather than public safety.

The management of fictional or expressive materials that raise social concerns belongs elsewhere—within systems equipped to apply evidence-based, proportionate, and non-criminal responses. Classification boards, communications regulators, and public health agencies are better positioned to address such issues through education, age-rating, therapeutic support, or civil remedies. Separating these mandates would clarify institutional priorities and help restore public trust that criminal enforcement is focused where it belongs: on the protection of real children from real harm.

4. Apply proportionate, harm-based penalties.

Criminal sanctions should be reserved for offences involving demonstrable harm to real victims.

The principle of proportionality lies at the core of human rights law and of sound criminal justice. Where no real child has been harmed, the rationale for severe criminal penalties collapses. Yet many jurisdictions impose the same sentences for possession or creation of fictional sexual material as for documented acts of abuse—an approach that offends both logic and justice. Treating imaginary expression as morally equivalent to exploitation trivializes the suffering of actual victims while inflicting needless punishment on those who have harmed no one.

A harm-based approach restores coherence. It calibrates sanctions according to the presence and degree of real-world injury rather than symbolic offense. Fictional or consensual adult materials that cause no direct victimization should fall, if regulated at all, under civil or administrative regimes focused on rehabilitation, education, or moderation of risk—not incarceration. Criminal law is society's strongest instrument; it must be wielded only where the evidence of harm justifies its force.

5. Maintain separate statistical reporting.

Crime statistics should distinguish between cases involving CSAM and those involving fictional works.

Reliable data is indispensable to effective child protection policy. When official statistics merge cases involving real child sexual abuse material with those concerning fictional or artistic works, the result is a misleading picture of both prevalence and enforcement. Policymakers, the media, and the public are left with inflated figures that appear to signal a growing epidemic of child exploitation, when in fact many prosecutions concern drawings, stories, or digital creations with no real victims.

Maintaining separate statistical categories would restore transparency and integrity to public discourse. It would enable legislators to allocate resources according to actual patterns of harm, rather than moral panic or media pressure. It would also support evidence-based evaluation of whether criminalization of fictional material serves any protective function at all. Accurate reporting is not a mere technicality—it is the foundation of rational policymaking and the antidote to fear-driven lawmaking.

Conclusion

The ten country studies examined in this report reveal a legal landscape marked by profound confusion about the boundaries between imagination and exploitation. From the aggressive prosecutions of fictional works in the United Kingdom and Australia to the expansive definitions adopted in Canada, France, Denmark, South Korea, and Costa Rica, most jurisdictions have collapsed the distinction between materials that document real abuse and those that exist purely in fantasy. Only the United States, the United Kingdom, and Japan maintain meaningful legal separation, and even there, the boundaries are contested and eroding.

This conflation is not merely a technical legal problem—it represents a fundamental category error with far-reaching consequences for child protection, human rights, and the integrity of criminal justice systems.

The Nature of the Conflation

Child sexual abuse material is rightly prohibited because it documents or facilitates real harm to a child. Every image of actual abuse represents a crime scene, a violation captured and perpetuated through its circulation. The child depicted is identifiable, exploited, and revictimized with each viewing. The harm is direct, demonstrable, and unambiguous.

Fictional material, by contrast, is prohibited on an entirely different theory: that tolerance for it might corrode public morals or normalize abuse. This assumption rests on a kind of magical thinking—the belief that imagined depictions of child sexuality possess a unique power to foster acceptance of real abuse, when no comparable assumption is made about violence, horror, or other transgressive art. We do not presume that crime fiction normalizes murder, that horror films desensitize us to torture, or that war games make us killers. Yet when the subject is child sexuality, these ordinary distinctions collapse into moral panic.

This collapse reflects a deeper problem of framing. As Kohm (2020, p. 134) observes, the way that a problem is defined shapes the possible policy responses. When fictional sexual material is framed as evidence of "sexual deviance" rather than as expression, the solution becomes preordained: its eradication. The result is an undiscriminating crusade against people and materials labeled deviant—disproportionately targeting women, LGBTQ+ communities, and other marginalized groups—instead of policies that address actual harms to children. It is, in effect, the criminalization of thought.

This deviance framework also sustains a dangerous stereotype: that child abusers are a small, monstrous group whose deviance can be detected by the media they create or consume. But this is false. Most child sexual abuse is a crime of opportunity, not attraction—seldom committed by deviant strangers, but more commonly by family members and trusted adults. Meanwhile, artists, writers, and even young people themselves can be wrongly stigmatized for exploring taboo topics.

This report therefore argues for a course correction: to refocus the law on preventing direct harms rather than policing offense. The distinction between offense and harm—between personal expression and lived abuse—is not only morally necessary

but scientifically sound. Research increasingly undermines the assumption that exposure to offensive materials causes real-world harm—an assumption rooted more in dogma than in science.

The empirical research cited throughout this report—from Denmark's clinical literature review to longitudinal studies on recidivism—consistently fails to support the claim that fictional sexual material causes contact offending. Where evidence exists, it often points in the opposite direction, suggesting that access to fantasy materials may function as a harm-reduction outlet rather than a gateway to abuse. Yet policy continues to be driven by intuition, outrage, and the political imperatives of appearing tough on child protection, rather than by what the evidence actually shows.

Consequences of Conflation

The consequences of treating imagination as equivalent to exploitation are now empirically visible:

Resource displacement: The United Kingdom provides the clearest evidence. As prosecutions for fictional works have surged to nearly 40% of all image offences, prosecutions for real child sexual abuse images have fallen by more than half. Law enforcement resources are finite; when they are directed toward cartoons, manga, and stories, they are not directed toward the rescue of actual victims or the investigation of contact abuse.

Statistical erasure: In Australia, Canada, and most other jurisdictions, no distinction is maintained between real and fictional cases in official crime statistics. This opacity prevents accountability, masks resource misallocation, and perpetuates policymaking based on inflated figures that conflate victimless expression with documented exploitation.

Criminalization of survivors and youth: Laws intended to protect children are being used to prosecute them. A teenage artist in Costa Rica. Novelists in Canada and Australia. Artists whose work explores trauma, sexuality, or the darker corners of human experience. When the law criminalizes fictional depictions on the same terms as real abuse, it sweeps far beyond its stated purpose, punishing expression, stifling art, and treating survivors' own narratives as contraband.

Erosion of human rights protections: The expansion of child protection law into the realm of fiction has provided cover for surveillance regimes, website blocking, and content scanning that would be politically untenable under any other justification. Europe's proposed "Chat Control" regulation, championed by Denmark during its EU Council Presidency, would mandate the scanning of private communications for "newly identified" material—a formulation broad enough to encompass fictional works, journal entries, and personal photos. What begins as child protection ends as mass surveillance.

Inversion of moral logic: Perhaps most perversely, the same systems that criminalize possession of fictional works have authorized police to operate child abuse websites and distribute real CSAM to maintain operational cover. In Australia, this practice—condemned by UNICEF as a violation of children's rights—is now being codified in legislation. The state claims the power to revictimize actual children in the name of enforcement, while prosecuting citizens for possessing drawings that harm no one.

Drawing the Line

As articulated in the Preface to this report, the challenge is to draw the line between personal expression and lived abuse with honesty and precision. That line is not arbitrary, nor is it merely a matter of taste or cultural tradition. It is grounded in the most fundamental principle of liberal criminal law: that the state's coercive power must be reserved for conduct that causes demonstrable harm to others.

International human rights law reflects this principle. The ICCPR, CRC, and regional instruments affirm that restrictions on expression must be provided by law, necessary to achieve a legitimate aim, and proportionate—representing the least intrusive means available. Criminalization of fictional works fails all three tests. It is often vague and overbroad, capturing materials far beyond any plausible connection to abuse. It is not necessary, since concerns about offense, taste, or social impact can be addressed through education, classification, and harm-reduction strategies. And it is grossly disproportionate, imposing severe criminal penalties—often matching or exceeding those for contact offenses—on conduct that produces no identifiable victim.

The way forward requires a fundamental reorientation of law and policy. Our approach must be apolitical, inclusive, and public-health-based—grounded in empathy, research, and prevention

rather than in culture wars, criminal justice theatrics, or national security narratives. Child protection is too important to be left to moral entrepreneurs, media-driven panic, or the political convenience of appearing maximally punitive.

Recommendations Restated

The five core recommendations of this report, detailed in the Recommendations section above, chart a path toward that reorientation:

1. **Codify a clear distinction** between real CSAM (involving identifiable victims) and fictional works in statutory definitions and legal frameworks.
2. **Standardize terminology**, reserving the term "child sexual abuse material" exclusively for depictions of real abuse, and using neutral, descriptive language for fictional or fantasy content.
3. **Assign distinct enforcement responsibility**, removing fictional material from the mandate of agencies and units tasked with combating child sexual exploitation.
4. **Apply proportionate, harm-based penalties**, reserving criminal sanctions for offenses that involve demonstrable harm to real children, and addressing fictional works—if at all—through civil, educational, or public-health measures.
5. **Maintain separate statistical reporting** to enable transparent evaluation of enforcement priorities, resource allocation, and the true scale of abuse versus victimless prosecutions.

These recommendations are not radical. They simply ask that child protection law remain faithful to its purpose: to protect children from harm, not to police the boundaries of acceptable fantasy or enforce ideological conformity.

Forward Directions

The Drawing the Line project will continue to monitor developments in law, policy, and enforcement across jurisdictions, updating this Watchlist as new data and cases emerge. Future editions will expand coverage to additional countries, track the impact of AI-generated imagery on legal frameworks, and document the outcomes of ongoing test cases in courts around the world.

We will also work to support evidence-based advocacy, providing resources for legislators, civil society organizations, and affected communities. The goal is not to minimize the gravity of child sexual abuse—it is to ensure that our responses to it are effective, proportionate, and grounded in the protection of actual children rather than the policing of imagination.

Ultimately, the question is one of clarity and courage. Can we distinguish between acts that harm children and expressions that merely disturb adults? Can we allocate resources according to evidence rather than outrage? Can we defend freedom of expression even—and especially—at its most uncomfortable edges, while remaining uncompromising in our opposition to exploitation?

The integrity of child protection law depends on our ability to answer yes. So does the integrity of the international human rights system, built on the principle that even the most compelling moral causes must be pursued within the rule of law and without eroding the freedoms that define a democratic society.

Drawing the line between personal expression and lived abuse requires precision and a consistent moral framework. It asks us to see clearly, to act justly, and to remember that the protection of children begins with the courage to distinguish between what harms them and what merely offends us. This report exists to defend that distinction, and to insist that justice depends on where—and how—we draw the line.

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About COSL

The Center for Online Safety and Liberty (COSL) is a nonprofit dedicated to empowering individuals and communities to thrive online by building safer digital spaces, fostering creativity, combating harm, and championing digital rights. COSL serves as an incubator for independent projects that tackle pressing issues such as age verification mandates, Section 230 rollbacks, encryption battles, and content-scanning overreach, while also developing open source trust-and-safety tools and nurturing inclusive online communities.

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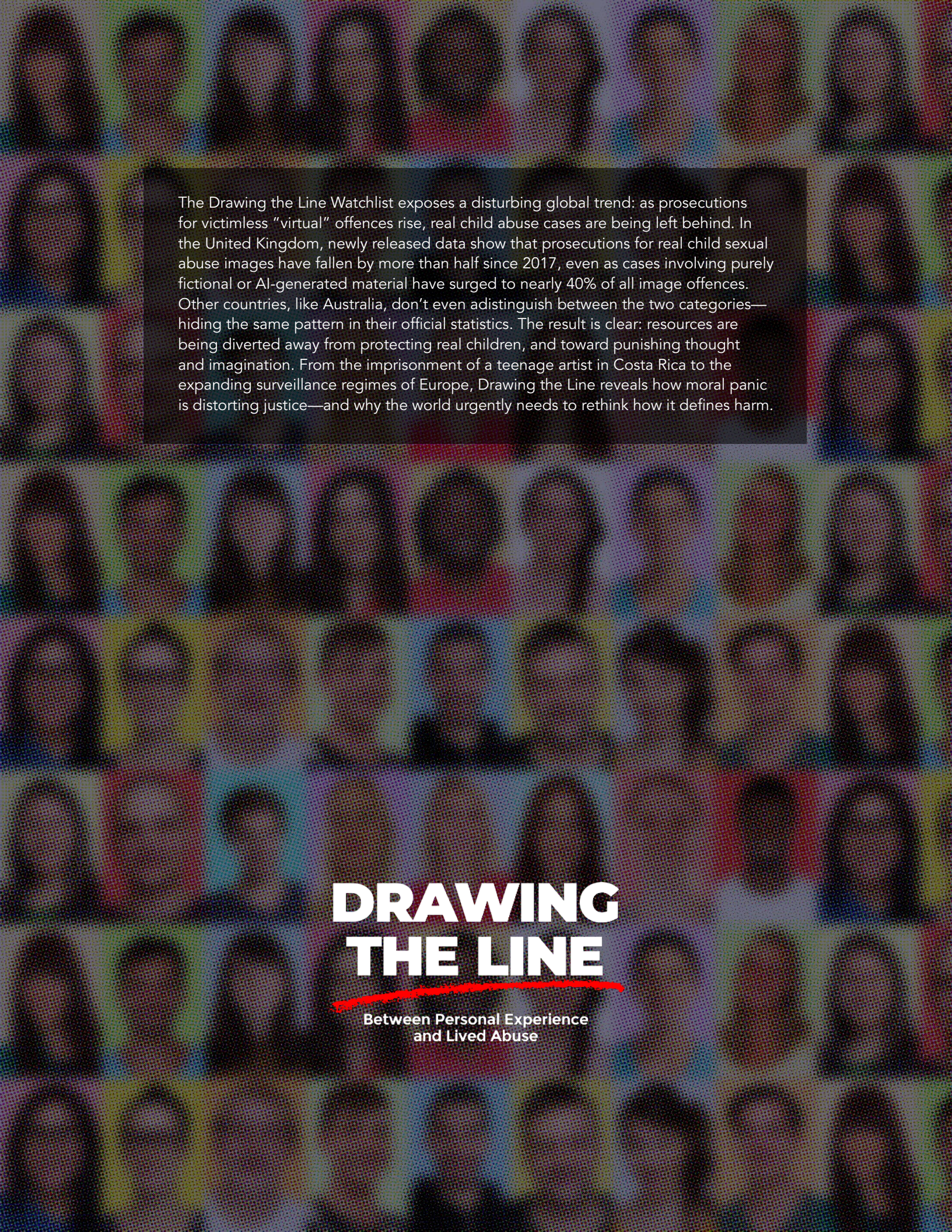

The Drawing the Line Watchlist exposes a disturbing global trend: as prosecutions for victimless "virtual" offences rise, real child abuse cases are being left behind. In the United Kingdom, newly released data show that prosecutions for real child sexual abuse images have fallen by more than half since 2017, even as cases involving purely fictional or AI-generated material have surged to nearly 40% of all image offences. Other countries, like Australia, don't even adistinguish between the two categories—hiding the same pattern in their official statistics. The result is clear: resources are being diverted away from protecting real children, and toward punishing thought and imagination. From the imprisonment of a teenage artist in Costa Rica to the expanding surveillance regimes of Europe, Drawing the Line reveals how moral panic is distorting justice—and why the world urgently needs to rethink how it defines harm.

DRAWING THE LINE

Between Personal Experience and Lived Abuse