

[REPUBLIC ACT NO. 9775, November 17, 2009]

AN ACT DEFINING AND PENALIZING THE CRIME OF CHILD PORNOGRAPHY, PRESCRIBING PENALTIES THEREFOR AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short Title.* — This Act shall be known as the "Anti-Child Pornography Act of 2009."

SEC. 2. *Declaration of Policy.* — The State recognizes the vital role of the youth in nation building and shall promote and protect their physical, moral, spiritual, intellectual, emotional, psychological and social well-being. Towards this end, the State shall:

- a. Guarantee the fundamental rights of every child from all forms of neglect, cruelty and other conditions prejudicial to their development;
- b. Protect the child from all forms of exploitation and abuse including, but not limited to: (1) the use of a child in the pornographic performances and materials; and (2) the inducement or coercion of a child to engage or be involved in pornography through whatever means; and
- c. Comply with international treaties to which the Philippines is a signatory or a State party concerning the rights of children which include, but not limited to, the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, the International Labor Organization (ILO) Convention No. 182 on the Elimination of the Worst Forms of Child Labor and the Convention Against Transnational Organized Crime.

SEC. 3. *Definition of Terms.* —

- a. "Child" refers to persons below eighteen (18) years of age or over, but is unable to fully take care of himself/herself or protect himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

For the purpose of this Act, a child shall also refer to:

1. a person regardless of age who is presented, depicted or portrayed as a child as defined herein; and
2. a computer-generated, digitally or manually crafted images or graphics of a person who is represented or who is made to appear to be a child as

defined herein.

- b. "Child pornography" refers to any representation, whether visual, audio or written combination thereof, by electronic, mechanical, digital, optical, magnetic or any other means, of a child engaged or involved in real or simulated explicit sexual activities.
- c. "Explicit Sexual Activity" includes actual or stimulated —
 - 1. Sexual intercourse or lascivious act including, but not limited to, contact involving genital to genital, oral to genital, anal to genital or oral to anal, whether between persons of the same or opposite sex;
 - 2. bestiality;
 - 3. masturbation;
 - 4. sadistic or masochistic abuse;
 - 5. lascivious exhibition of the genitals, buttocks, breast, pubic area and/or anus; or
 - 6. use of any object or instrument for lascivious acts.
- d. "Internet address" refers to a website, bulletin board service, internet chat room or news group, or any other internet or shared network protocol address.
- e. "Internet café or kiosk" refers to an establishment that offers or proposes to offer services to the public for the use of its computer/s or computer system for the purpose of accessing the internet, computer games or related services.
- f. "Internet content host" refers to a person who hosts or who proposes to host Internet content in the Philippines.
- g. "Internet service provider (ISP)" refers to a person or entity that supplies, or proposes to supply, an Internet carriage service to the public.
- h. "Grooming" refers to the act of preparing a child or someone who the offender believes to be a child for a sexual activity or sexual relationship by communicating any form of child pornography. It includes online enticement, or enticement through any other means.
- i. "Luring" refers to the act of communicating, by means of a computer system, with a child or someone who the offender believes to be a child for the purpose of facilitating the commission of a sexual activity or production of any form of child pornography.
- j. "Pandering" refers to the act of offering, advertising, promoting, representing or distributing through any means any material or purported material that is intended to cause another to believe that the material or purported material contains any form of child pornography, regardless of the actual content of the material or purported material.
- k. "Person" refers to any natural or juridical entity.

SEC. 4. *Unlawful or Prohibited Acts.* — It shall be unlawful for a person to commit any of the following acts:

- a. To hire, employ, use, persuade, induce or coerce a child to perform in the creation or production of any form of child pornography;
- b. To produce, direct, manufacture or create any form of child pornography;

- c. To publish, offer, transmit, sell, distribute, broadcast, advertise, promote, export or import any form of child pornography;
- d. To possess any form of child pornography with the intent to sell, distribute, publish or broadcast: *Provided*, That possession of three (3) or more articles of child pornography of the same form shall be *prima facie* evidence of the intent to sell, distribute, publish or broadcast;
- e. To knowingly, willfully and intentionally provide a venue for the commission of prohibited acts such as, but not limited to, dens, private rooms, cubicles, cinemas, houses or in establishments purporting to be a legitimate business;
- f. For film distributors, theaters and telecommunication companies, by themselves or in cooperation with other entities, to distribute any form of child pornography;
- g. For a parent, legal guardian or person having custody or control of a child to knowingly permit the child to engage, participate or assist in any form of child pornography;
- h. To engage in the luring or grooming of a child;
 - i. To engage in pandering of any form of child pornography;
 - j. To willfully access any form of child pornography;
- k. To conspire to commit any of the prohibited acts stated in this section. Conspiracy to commit any form of child pornography shall be committed when two (2) or more persons come to an agreement concerning the commission of any of the said prohibited acts and decide to commit it; and
- l. To possess any form of child pornography.

SEC. 5. *Syndicated Child Pornography*. — The crime of child pornography is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another and shall be punished under Section 15(a) of this Act.

SEC. 6. *Who May File a Complaint*. — Complaints on cases of any form of child pornography and other offenses punishable under this Act may be filed by the following:

- a. Offended party;
- b. Parents or guardians;
- c. Ascendant or collateral relative within the third degree of consanguinity;
- d. Officer, social worker or representative of a licensed child-caring institution;
- e. Officer or social worker of the Department of Social Welfare and Development (DSWD);
- f. Local social welfare development officer;
- g. Barangay chairman;
- h. Any law enforcement officer;
- i. At least three (3) concerned responsible citizens residing in the place where the violation occurred; or
- j. Any person who has personal knowledge of the circumstances of the commission of any offense under this Act.

SEC. 7. *Appointment of Special Prosecutors*. — The Department of Justice (DOJ) shall appoint or designate special prosecutors to prosecute cases for the violation of this Act.

SEC. 8. *Jurisdiction.* — Jurisdiction over cases for the violation of this Act shall be vested in the Family Court which has territorial jurisdiction over the place where the offense or any of its essential elements was committed pursuant to Republic Act No. 8369, otherwise known as "Family Courts Act of 1997".

SEC. 9. *Duties of an Internet Service Provider (ISP).* — All internet service providers (ISPs) shall notify the Philippine National Police (PNP) or the National Bureau of Investigation (NBI) within seven (7) days from obtaining facts and circumstances that any form of child pornography is being committed using its server or facility. Nothing in this section may be construed to require an ISP to engage in the monitoring of any user, subscriber or customer, or the consent of any communication of any such person: *Provided*, That no ISP shall be held civilly liable for damages on account of any notice given in good faith in compliance with this section.

Furthermore, an ISP shall preserve such evidence for purposes of investigation and prosecution by relevant authorities.

An ISP shall, upon the request of proper authorities, furnish the particulars of users who gained or attempted to gain access to an internet address which contains any form of child pornography.

All ISPs shall install available technology, program or software to ensure that access to or transmittal of any form of child pornography will be blocked or filtered.

An ISP who shall knowingly, willfully and intentionally violate this provision shall be subject to the penalty provided under Section 15(k) of this Act.

The National Telecommunications Commission (NTC) shall promulgate within ninety (90) days from the effectivity of this Act the necessary rules and regulations for the implementation of this provision which shall include, among others, the installation of filtering software that will block access to or transmission of any form of child pornography.

SEC. 10. *Responsibility of Mall Owners/Operators and Owners or Lessors of Other Business Establishments.* — All mall owners/operators and owners or lessors of other business establishments shall notify the PNP or the NBI within seven (7) days from obtaining facts and circumstances that child pornography is being committed in their premises: *Provided*, That public display of any form of child pornography within their premises is a conclusive presumption of the knowledge of the mall owners/operators and owners or lessors of other business establishments of the violation of this Act: *Provided, further*, That a disputable presumption of knowledge by mall owners/operators and owners or lessors of other business establishments is established if, through the exercise of ordinary diligence, mall owners/operators and owners or lessors of other business establishments should know or reasonably know that a violation of this Act is being committed in their premises.

Photo developers, information technology professionals, credit card companies and banks and any person who has direct knowledge of any form of child pornography activities shall have the duty to report any suspected child pornography materials or transactions to the proper authorities within seven (7) days from discovery thereof.

Any willful and intentional violation of this provision shall be subject to the penalty provided under Section 15(l) of this Act.

SEC. 11. *Duties of an Internet Content Host.* — An Internet content host shall:

- a. Not host any form of child pornography on its Internet address;
- b. Within seven (7) days, report the presence of any form of child pornography, as well as the particulars of the person maintaining, hosting, distributing or in any manner contributing to such internet address, to the proper authorities; and
- c. Preserve such evidence for purposes of investigation and prosecution by relevant authorities.

An Internet content host shall, upon the request of proper authorities, furnish the particulars of users who gained or attempted to gain access to an internet address that contains any form of child pornography.

An Internet content host who shall knowingly, willfully and intentionally violate this provision shall be subject to the penalty provided under Section 15(j) of this Act. Provided, That the failure of the internet content host to remove any form of child pornography within forty-eight (48) hours from receiving the notice that any form of child pornography is hitting its server shall be conclusive evidence of willfull and intentional violation thereof.

SEC. 12. *Authority to Regulate Internet Cafe or Kiosk.* — The local government unit (LGU) of the city or municipality where an internet cafe or kiosk is located shall have the authority to monitor and regulate the establishment and operation of the same or similar establishments in order to prevent violation of the provisions of this Act.

SEC. 13. *Confidentiality.* — The right to privacy of the child shall be ensured at any stage of the investigation, prosecution and trial of an offense under this Act. Towards this end, the following rules shall be observed:

- a. The judge, prosecutor or any officer of the law to whom the complaint has been referred to may, whenever necessary to ensure a fair and impartial proceeding and after considering all circumstances for the best interest of the child, conduct a closed-door investigation, prosecution or trial;
- b. The name and personal circumstances of the child or any other information tending to establish his/her identity shall not be disclosed to the public;
- c. Any record regarding a child shall be confidential and kept under seal. Except upon written request and order of the court, a record shall be released only to the following:
 1. Members of the court staff for administrative use;
 2. The prosecuting attorney;
 3. Defense counsel;
 4. The guardian *ad litem*;
 5. Agents of investigating law enforcement agencies; and
 6. Other persons as determined by the court;