

RELEVANT LAWS

Online Sexual Exploitation of Children

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Presentation Outline

01 Terms to remember

02 Salient Features
of Relevant Laws

03 Problem Areas

What is Online Sexual Exploitation of Children or OSEC?

Sexual abuse of children viewed
and directed live over the Internet.

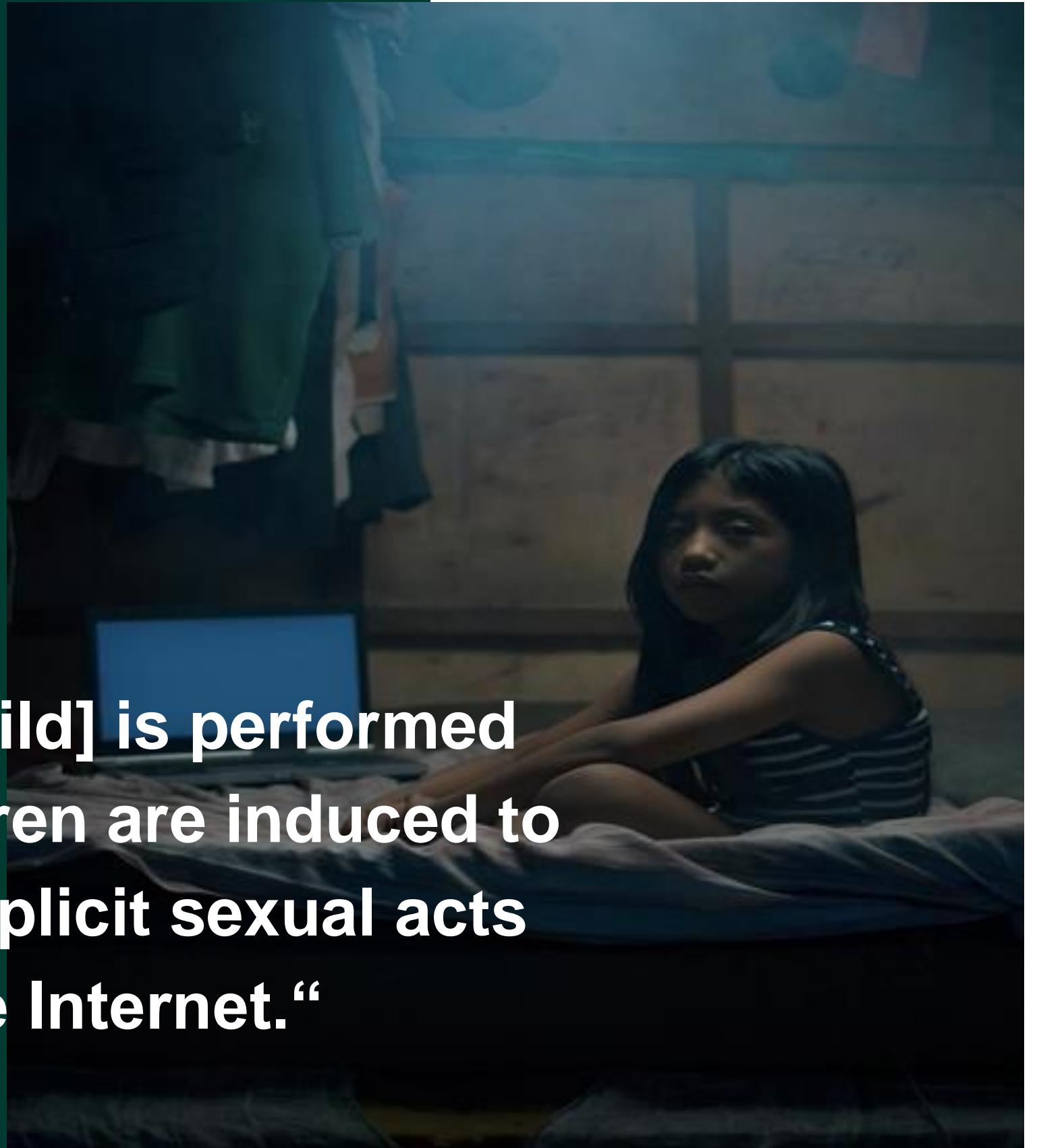


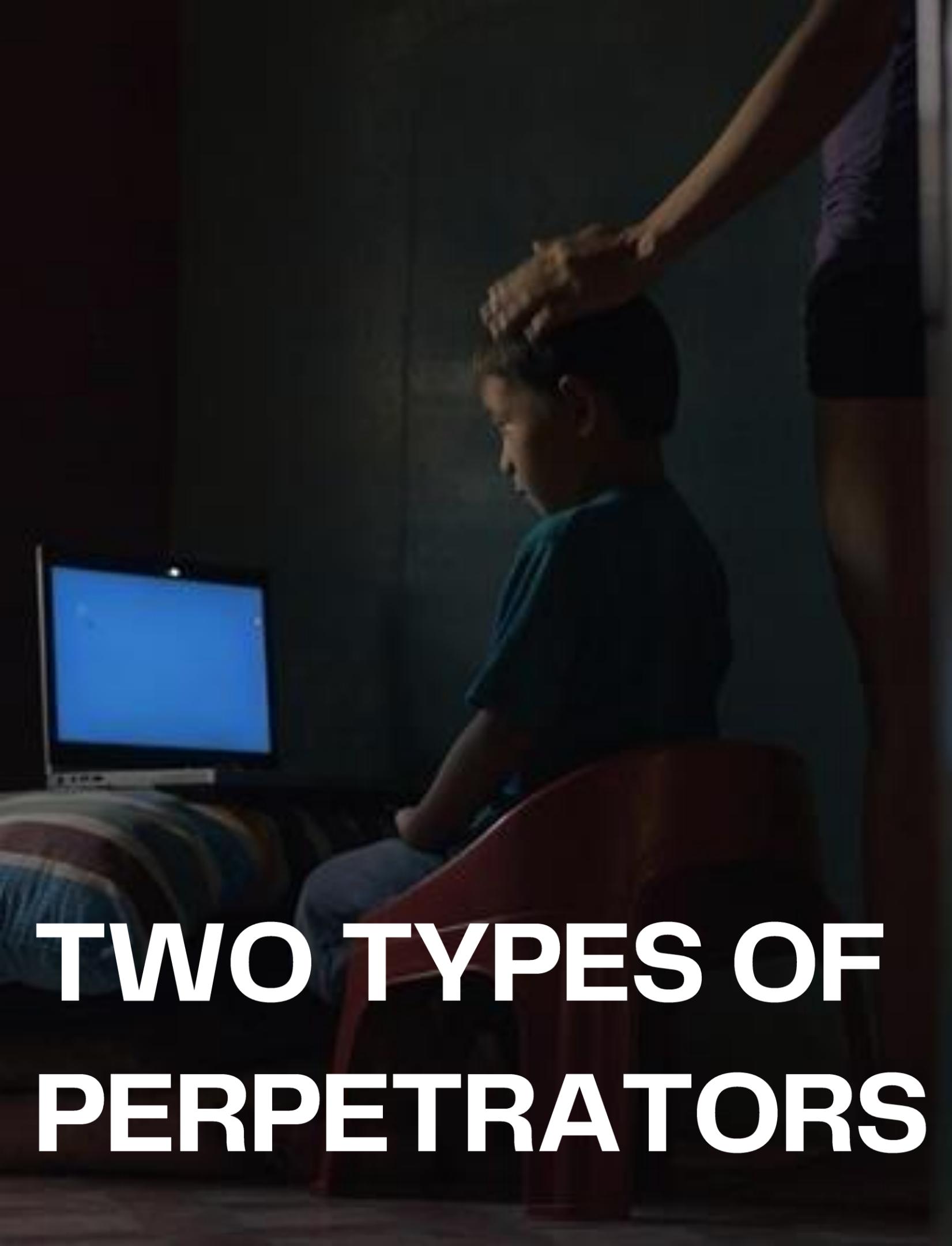
Online Sexual Exploitation

Of Children as defined by the Child

Protection Compact signed between the US and
Philippine Governments:

"When the abuse or exploitation [of a child] is performed through the use of live webcam and children are induced to perform commercial sex acts or other explicit sexual acts that are then broadcasted over the Internet."





TWO TYPES OF PERPETRATORS

I. LOCAL TRAFFICKER (SUPPLIER)

Lives in the Philippines and provides children to be sexually abused for live online streaming.

Often someone the child knows (e.g. parent, extended family member, or neighbor)

II. FOREIGN OSEC BUYER (CUSTOMER)

Typically lives outside of the Philippines and purchases live depictions of child sexual abuse or child pornography over the Internet.



WHO IS THE CHILD?

Any person below 18 years or over who is unable to fully protect her/himself from abuse or exploitation because of a physical or mental disability or condition.

WHO IS THE CHILD UNDER RA 9775?

CHILD

A ~~person~~ regardless of age who is presented, depicted or portrayed as a child.

VIRTUAL CHILD

A ~~computer generated~~, digitally or manually crafted image of a child.



IMPORTANT TERMINOLOGIES



- **Child Abuse Materials**
- **Child exploited in prostitution**
- **Sexual exploitation of children in travel and tourism**
- **Live online child sexual abuse / Live streaming of child sexual abuse**
- **Child Pornography (unless it is in legal context)**
- **Child prostitute / child sex worker**
- **Child sex tourism**
- **Webcam child sex tourism**

SPECIAL PENAL LAWS PROMOTING CHILD PROTECTION

**RA 9208 as
amended by RA
10364**
Expand Anti-
Trafficking in Persons
Act of 2012

RA 9775
Anti-Child
Pornography Act

RA 10175
Cybercrime
Prevention Act of
2012

**RA 7610 as
amended by RA
9231**

Special Protection of
~~Abuse, Exploitation, Child~~
and Discrimination Act



**RA 9208
as amended by
RA 10364**

**EXPANDED ANTI-TRAFFICKING
IN
PERSONS ACT OF 2012**

3 ELEMENTS OF TIP

WHAT DO HUMAN TRAFFICKERS DO?

10 ACTS

- 01 RECRUIT
- 02 TRANSPORT
- 03 TRANSFER
- 04 HARBOUR
- 05 RECEIV E
- 06 OBTAIN
- 07 HIRE
- 08 PROVIDE
- 09 OFFER
- 10 MAINTAIN

HOW THEY DO IT?

MEANS

- NON-VIOLENT
 - FRAUD
 - DECEPTION
 - ABUSE OF POSITION OF VULNERABILITY
 - GIVING OR RECEIVING PAYMENTS OR BENEFITS
- VIOLENT MEANS
 - THREAT
 - FORCE
 - OTHER FORMS OF COERCION ABDUCTION

WHY THEY DO IT?

PURPOSE

- SEXUAL
 - PROSTITUTION
 - PORNOGRAPHY
 - SEX TOURISM
- LABOR EXPLOITATION
 - FORCED LABOR
 - SLAVERY
 - DEBT BONDAGE
 - INVOLUNTARY SERVITUDE
- ORGAN EXPLOITATION
 - REMOVAL OR SALE OF ORGAN

Qualified Trafficking

- *The victim is a child*
- Syndicated or Large Scale
- Adoption through Inter-Country Adoption Act
- *Offender is an descendant, parent, sibling, guardian, spouse, public officer or employee, military or law enforcer*
- The victim dies, become insane, suffers mutilation or is afflicted with HIV or AIDS
- Multiple violations
- Direct management





Procuring children for Pornography Section 4 K (2)

- *(2) The use, procuring or offering of a child for prostitution, for the production of pornography, or for pornographic performances”*



LIFE IMPRISONMENT + FINE PHP 2M-
5M



RA 9775

**ANTI-CHILD
PORNOGRAPHY
ACT OF 2009**



Prohibited Acts

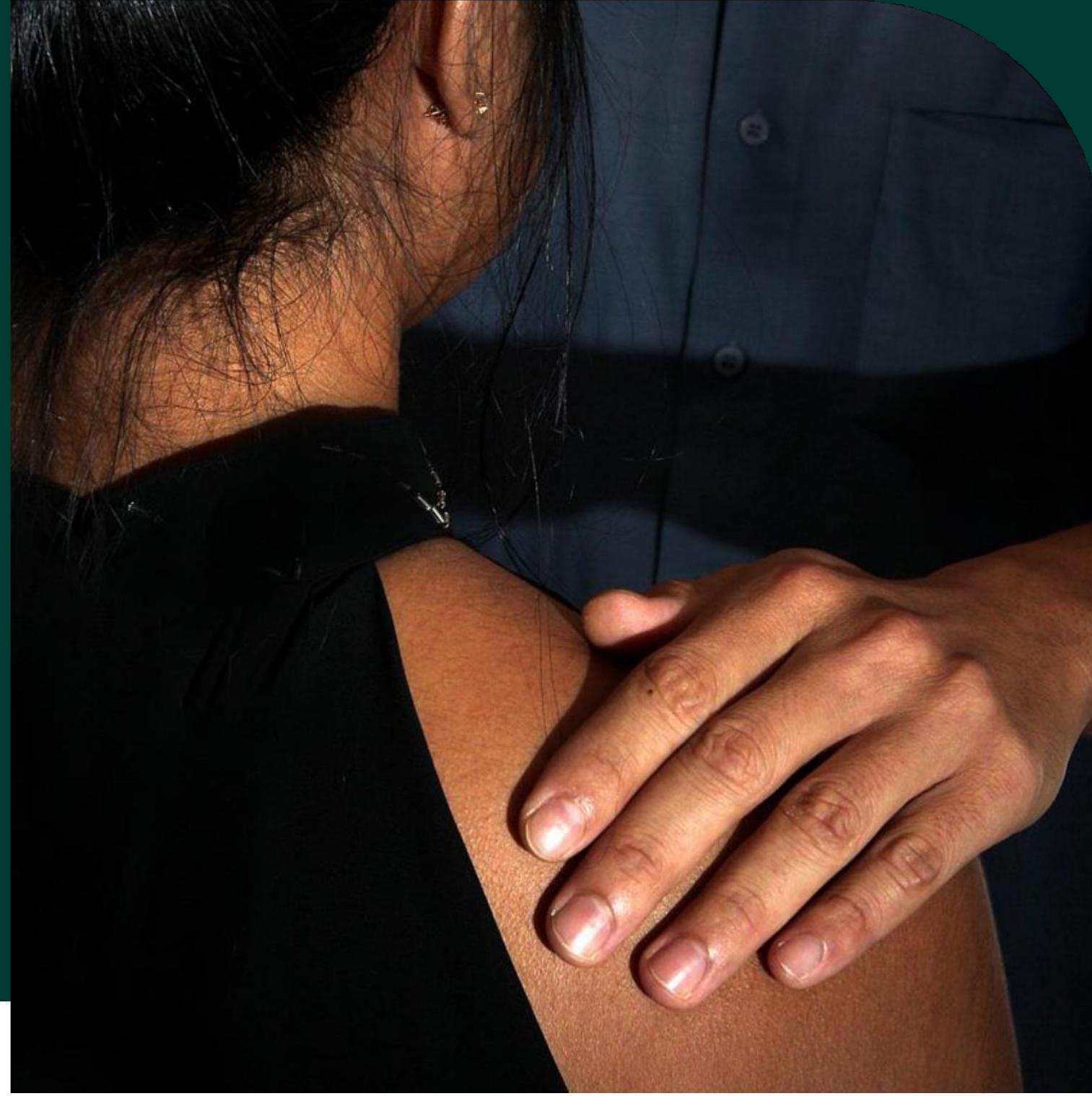
Sec.

***4(a) Hire, Employ, Use, Persuade,
Induce, or Coerce a child***

- To perform in the creation or
production of Child
Pornography***



RECLUSION TEMPORAL MAX + FINE PHP 1M-2M



Prohibited Acts

Sec.
***4(b) Produce, Direct, Manufacture,
or Create any form of Child
Pornography***



RECLUSION TEMPORAL MAX + FINE PHP 1M-
2M



Prohibited Acts

**Sec.
4(c) Publish, Offer, Transmit, Sell,
Distribute, Broadcast,
Advertise, Promote, Export, or
Import any form of Child
Pornography**



RECLUSION TEMPORAL MAX + FINE PHP 1M-2M



Prohibited Acts

Sec.

***4(d) Possess any form of Child
Pornography with the intent
to sell, distribute, publish,
or broadcast***

N.B. 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.



RECLUSION TEMPORAL MEDIUM + FINE PHP 750K-
1M



Prohibited Acts

Sec.
4(e) *Knowingly, Willfully,*
Intentionally provide a venue
for the commission of
prohibited acts



RECLUSION TEMPORAL MAX + FINE PHP 750K-
1M



Prohibited Acts

Sec.

4(g) Parent, legal guardian, or person having custody or control of a child to knowingly permit a child to engage, participate or assist in any form of Child Pornography



RECLUSION TEMPORAL MAX + FINE PHP 500K-700K

Prohibited Acts

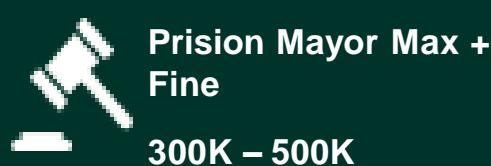
ELEMENTS

Luring Section 3(i)



Prision Mayor Max +
Fine
300K – 500K

Grooming Section 3(h)



Prision Mayor Max +
Fine
300K – 500K

ACT

PURPOSE

MEANS

- Communicating with a child or someone who the offender believes to be a child;

- For facilitating sexual activity or production of child pornography

- By a computer system

- Preparing a child or someone the offender believes to be a child;

- For facilitating sexual activity or production of child pornography

- By communicating any form of child pornography

Prohibited Acts

ELEMENTS	ACT	PURPOSE	MEANS
<p>Pandering Section 3(j) in relation to Section 4(i)</p> <p> Prision Mayor Max + Fine 300K – 500K</p>	<ul style="list-style-type: none">• Offering, Advertising, Promoting, Representing, Distributing	<ul style="list-style-type: none">• To cause another to believe that the material or purported material contains child pornography	<ul style="list-style-type: none">• AN Y



RA 10175

**CYBERCRIME
PREVENTION
ACT OF 2012**

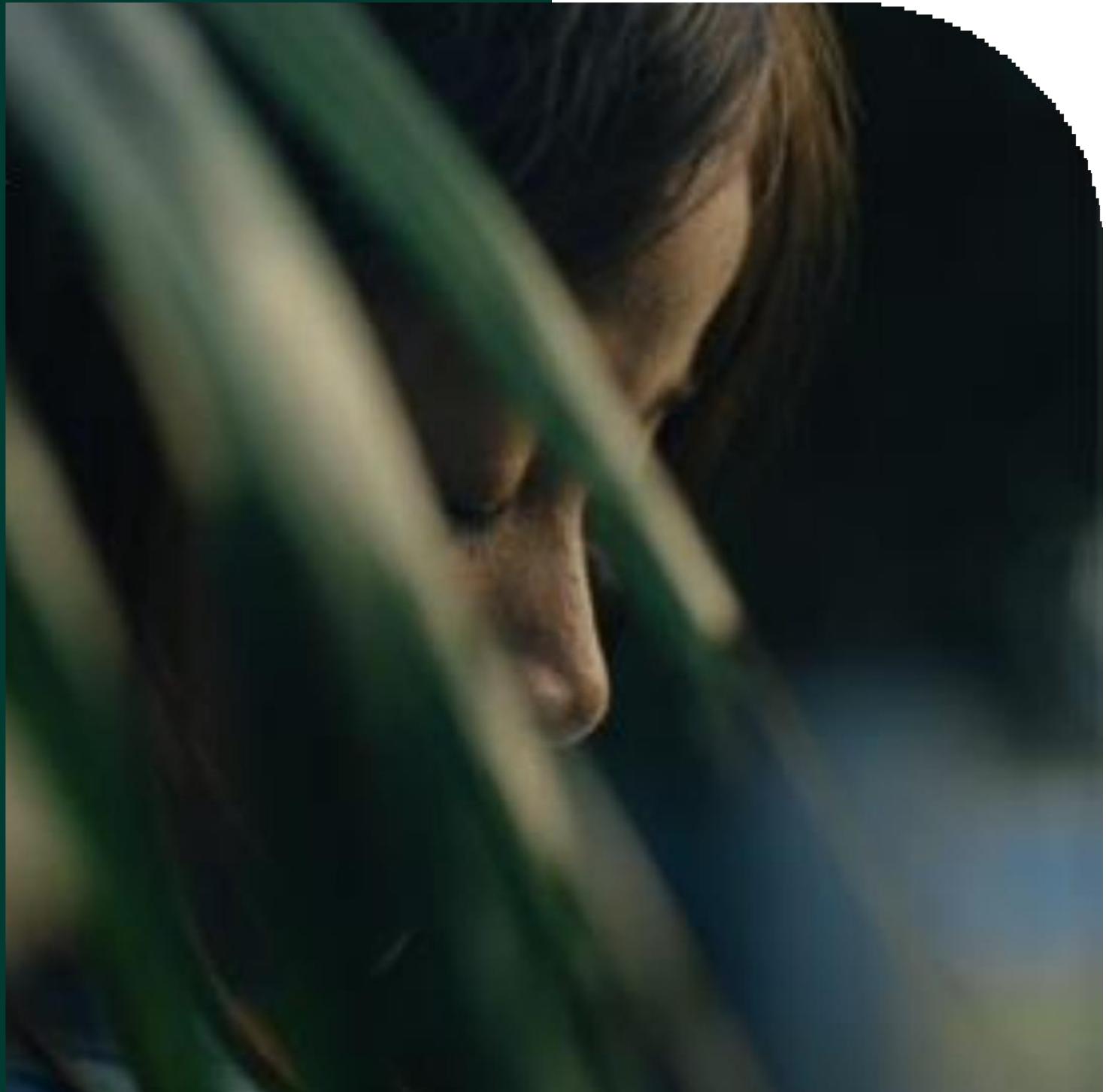
Cybersex

Section 4c(1)

- *Willful Engagement, Maintenance, Control, or Operation – directly or indirectly of any Lascivious Exhibition of Sexual Organs or Sexual Activity with the Aid of a Computer System for Favor or Consideration that is engaging in Business*

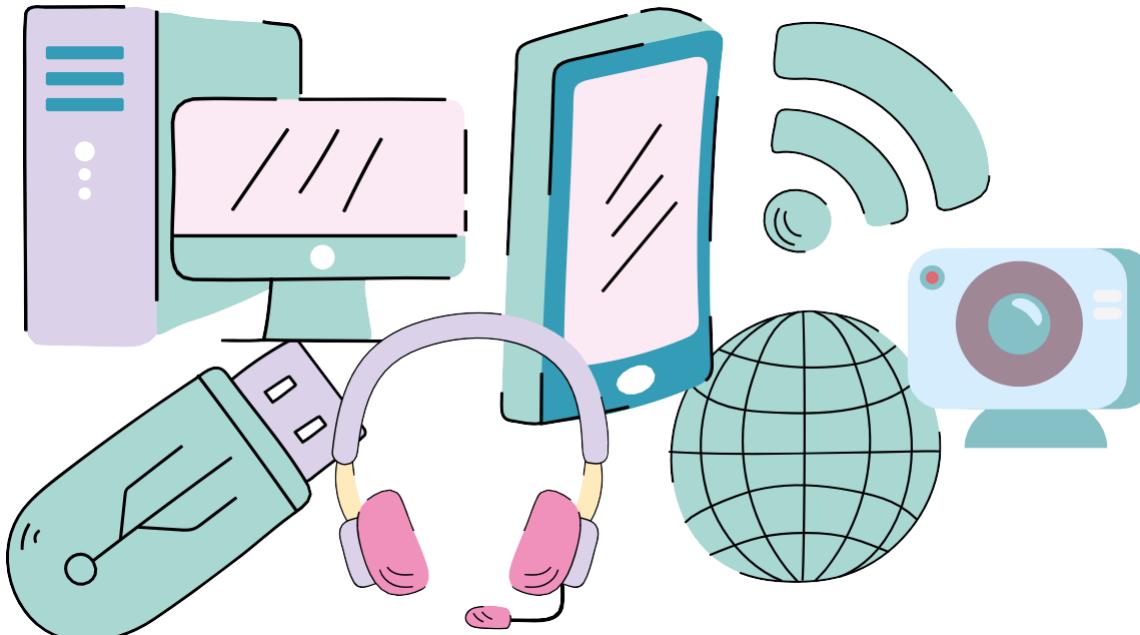


PRISION MAYOR OR FINE PHP 200K-1M OR BOTH



CHILD PORNOGRAPHY

Section 4 (c) (2)



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The Unlawful Acts of RA 9775: Anti-Child Pornography Act of 2009

- Hire, Coerce, Employ, Use, Persuade, Induce child to perform
- Create, Direct, Manufacture, Produce
- Distribute, Publish, Offer, Sell, Import, Export, Broadcast, Advertise, Promote
- Possession with intent to sell, Distribute, Publish, Broadcast
- Possession
- Willfully or Intentionally Provide a Venue
- Willful Access



ONE DEGREE HIGHER THAN PROVIDED IN RA 9775



ONE DEGREE HIGHER THAN THE PENALTY PROVIDED UNDER RPC



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INTERNATIONAL JUSTICE MISSION



**RA 7610
as amended by
RA 9231**

**SPECIAL PROTECTION OF
CHILDREN AGAINST ABUSE,
EXPLOITATION AND
DISCRIMINATION ACT**

Section 9

Obscene Publications & Indecent Shows

ACTS

- *Hire*
- *Employ*
- *Use*
- *Persuade*
- *Induce*
- *Coerce*

VICTIM

- *Child*

PURPOSES

- *Obscene exhibitions & indecent shows live or video*
- *Obscene publications or pornographic materials*
- *Sell or distribute the said materials*



PRISION MAYOR MEDIUM 8 YRS 1 DAY-10 YRS

Section 10(a) Other Acts of Abuse

- *Any Other Acts Of Child Abuse*
- *Cruelty*
- *Exploitation*
- *Other Conditions*

Prejudicial To The Child's Development



Section 12-D (2)

Prohibition Against Worst Forms of Child Labor

ACT

S. Use

- *Procuring*
- *Offering*
- *Exposing*

VICTIM

- *Child*

PURPOSE

S

- *Prostitution*
- *Production of*

*Pornography &
Pornographic*



Documentary Evidence



- *Affidavit of victim/s*
- *Affidavit of child forensic interviewer*
- *Affidavit of arrest and decoy*
- *Affidavit of Witness (Social Worker)*
- *Medico-Legal Certificate*
- *Psychological Evaluation Report*
- *Hotel Booking , Airline, boat, bus tickets if relevant*



Documentary Evidence

- ***Birth certificate, baptismal certificate, other authentic documents or dental aging of child***
- ***Financial record from Money Transfer Agencies***
- ***Money remittance Receipts***
- ***Forensic Report***
- ***Chat logs or Text Messages***

Object Evidence



- ***Computer System, i.e., computer, laptop, tablet, phone, wifi or LAN gadgets, hard drive, flash drives other storage devices***
- ***Photographs/videos of CSA***
- ***Video- entrapment, screen recording***
- ***Sex aids/toys/lubricants***
- ***Undergarment/sexy costumes***
- ***CCTV footage***

WHAT TO SEIZE & NOT?

SEARCH WARRANT / CYBER WARRANT

- Anything covered by the warrant issued by the court
- Within the premises stated in the warrant and in the possession of within the area of immediate control by the respondent.

WARRANTLESS ARREST

- Search incidental to a lawful arrest
- Item was used in the commission of the offense
- Item constitute a proof of the commission of the offense
- Dangerous weapons

A dark, moody photograph of a man in a suit jacket and tie holding a small child. The man's face is partially visible, looking down at the child. The child has curly hair and is looking towards the camera. The lighting is dramatic, with strong shadows.

PROBLEM AREAS

PROBLEM AREA 1

Can a case for violation of RA 9995 be
filed?

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Yes, it is possible to file under RA 9995 but the law does not provide an exception for children re consent.

PROBLEM AREA 2

Can the perpetrator be charged under
different laws?

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Yes, the perpetrator can be simultaneously prosecuted under different laws for as long as the elements are not the same.

PROBLEM AREA 3

Can the perpetrator be simultaneously charged under Sec. 4 (c) 2 of RA 10175 and RA 9775?

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“Section 4(c)(2)[child pornography] merely expands the ACPA’s scope so as to include identical activities in cyberspace...Thus, charging the offender under both Section 4(c)(2) and ACPA would likewise be tantamount to a violation of the constitutional prohibition against double jeopardy.”

Disini vs Sec. of Justice

PROBLEM AREA 4

Can the perpetrator be simultaneously charged under RA 9208 as amended and RA 9231?

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Sec. 6 of RA 9231 provides that any person who violates Sec. 12 D (2) –use, procure, offer, expose a child for pornography- shall be prosecuted and penalized in accordance with the penalty provided under RA 9208.

PROBLEM AREA 5

**Can the perpetrator be simultaneously charged
with cybersex and child pornography both under
RA 10175?**

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**Sec. 5.2 of the IRR of RA 10175 provides–
Cybersex involving a child shall be punished
in accordance with the provision on Child
Pornography of the Act.**

PROBLEM AREA 6

Can the perpetrator be simultaneously charged under different provisions of RA 9775?



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PROBLEM AREA 6

Can the perpetrator be simultaneously charged under different provisions of RA 9775?

Yes, as the law punishes different prohibited acts.

PROBLEM AREA 7

Can the perpetrator be simultaneously charged under Sec. 4 (a) of RA 9775 and Sec. 9 RA 7610?

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Can the perpetrator be simultaneously charged under Sec. 4 (a) of RA 9775 and Sec. 9 RA 7610?

Yes, it is possible but examine closely the provisions of the two provisions.

Sec. 9 RA 7610

Obscene Publications & Indecent Shows

Any person who shall hire, employ, use, persuade, induce, coerce a child to perform in obscene publications and indecent shows whether live or in video (Sec. 9 RA 7610)

Sec. 4 (a) RA 9775

It shall be unlawful for any person to hire, employ, use, persuade, induce or coerce a child to perform in the creation or production of any form of child pornography.



Thank you!