

Electronic Child Pornography in UAE Law: Crimes And Criminal Liability

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Abstract

The escalation of child sexual exploitation, particularly in the realm of digital advancements, has emerged as a critical concern for nations valuing human rights. This study delves into the complexities surrounding this issue within present criminal policies. The digital revolution and the ease of information access have amplified the challenge seen in the proliferation of cybercrimes like child pornography. As a result, the United Arab Emirates (UAE) has implemented extensive legislative safeguards to shield kids from abuse and exploitation. This study highlights the risk that explicit content poses for children by normalizing illegal behavior, and it also illuminates the UAE's proactive strategy against it. Furthermore, the UAE has put strong measures in place to stop child sexual exploitation, redefining minors as victims and enforcing heavier penalties on offenders in recognition of the seriousness of these crimes. To address this important issue, the study's conclusion acknowledges that electronic service providers, website administrators, and content authors now have greater legal obligations.

Introduction

In all human civilizations, some unethical actions not always be considered crimes. Sexual behaviors are regarded as having a significant impact even though they are not usually classified as crimes by the law. Social media's initial goals of encouraging free speech and making information easier to obtain have been contradicted by the content that now damages public morals, particularly through the mass circulation of pornography.

The continuous changes in the internet environment have created a wide field for serious offenses, specifically cyber offenses that present difficulties in their accurate description due to their complex character. Individuals exploit lax procedures for registering and monitoring social media to engage in unmentioned actions. Even though the platform's efforts to tackle prohibited substances, it often continues quickly before being removed extensively adding to the wide proliferation of adult material.

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This work shows a vital function in identifying the hazards of electronic sexual offenses that focus on adolescents, specifically those who are at hazard because of their intellectual incapacities. It highlights the pressing requirement to tackle the distinctive features of these offenses and investigate approaches for regulation, criminalization, and suitable penalties. It also recognizes the confronts in confirming these crimes due to the complicated processes used by the criminals. The target of this study is to realize the enormous threat presented by digital child pornography to the moralities of society. It examines the elements of this offense and estimates the efficiency of UAE acts in battling it, principally articles 33, 34, 35, and 36 of the Federal Rumors Law. The focus is on comprehending the profound impact of these offenses on children while identifying the shortcomings of traditional laws that ignore electronic crimes targeting them. The goal is to comprehend how the UAE Child Rights Law and Federal Law No. 34 of 2021 on Combatting Rumors and Cybercrimes both define child pornography and protect children from being exploited for sexual purposes through technology.

The research goes into two sections. Section I focuses on online assaults on children, section II examines crimes against public morals and ethics involving minors, and section three tackles the issue of criminal liability for crimes against minors.

Electronic Sexual Assaults on Children

The ominous spread and manifestation of e-crime is affecting as segment of the population that needs special social and legal protection and attention because of their young age and lack of life experience. This vulnerable segment is none other than the children in our society.

From a legal standpoint, A child is described as a person who hasn't attained the age of majority yet, set at eighteen years for both males and females according to national laws. However, variations in determining the age of majority exist in certain comparative legislations. Notably, the UAE legislature, in the law combating rumors, wisely replaced the term "adolescent" with "child," aligning with the legal concept of criminal protection under this law.

a. Incitement of Children to Sexual Acts

The internet harbors sites accessible to all, specializing in sexual content that provides enticing gateways and windows specifically designed for children. Most of these sites are freely accessible with utmost ease and minimal financial cost (Osama Ahmed Al-Mana'asah, 2010, p. 262).

Prostitution and debauchery, far beyond moral offenses, involve actively promoting immorality and sexual indulgence, facilitated by evolving technology, challenging to regulate online, emphasizing the need for instilling moral values

and proper upbringing to counter these manifestations despite inadvertent exposure (Jasim, 2018, p. 338).

Inciting crimes like prostitution through seductive information on online platforms constitutes formal offenses, even if no tangible result occurs (Musa, 2016, p. 298). These platforms spread content encouraging debauchery and prostitution, including sexual chats and email solicitations for illicit activities.

The law differentiates between incitement, assistance, and temptation under the Rumors Law. It emphasizes incitement as pushing others toward a crime, separate from participation, ensuring these acts are punishable whether or not the crime occurs. In cases of debauchery and prostitution, these actions persuade individuals through information networks, requiring intent and evidence, like confessions or witness accounts, to validate the instigator's deliberate aim (Al-Sagheer, 1998, p. 172).

Regarding incitement, the UAE Penal Code sees it as a form of secondary contribution (Article 46), but lacks a defined legal explanation, leaving interpretation to jurisprudence and the courts. In essence, it involves someone spreading the idea of a crime and reinforcing it in another, compelling them to commit it based on that promoted concept. The one directing criminal behavior towards another to push them into committing a crime is called the instigator (Al-Majdoub, 1970, p. 1970). The instigator only needs to undertake actions, make statements, convey messages, or share images through an information network that incite the target, propelling them to commit prostitution (Hattata, 1983, p. 230) or immorality (Fouda, 2005, p. 205). The instigator does not require authority over the instigated to incite them.

In brief, incitement, enticement, and assistance in immorality and prostitution aim at both genders, coercing victims to engage in these acts until they feel compelled to comply. For these crimes, the involvement of an information network or technology is a crucial element (Al-Sagheer, 1998, p. 172). As per Article 33 of the Law on Combating Rumors, inciting, enticing, or aiding in immorality or prostitution through technology can result in legal repercussions. These roles—inciter, enticer, or accomplice—are separate crimes, punishable whether or not the acts occur, as long as the intent is sparked through an information network (Jaber, 2009, p. 194).

An intermediary, such as a procurer, may facilitate the meeting of parties without necessarily focusing on the act of prostitution or immorality. This intermediary role can extend to chat rooms and communication tools associated with social media sites (Al-Shihi, 2014, p. 44). Enticement, a form of incitement, doesn't always require mutual knowledge between the instigator and the victim. It drives others, irrespective of gender or age, to commit a crime by creating or

reinforcing the criminal idea itself. It's about generating or enhancing the criminal concept rather than solely focusing on an individual. This can happen simultaneously among multiple people through social media, where enticing content reaches several simultaneously in various formats (Moussa, 2018, p. 376).

The UAE law treats incitement as a separate offense, focusing on the perpetrator's actions rather than the outcome, penalizing incitement and seduction, such as disseminating texts or images (Alrousan & Faqir, 2023). It imposes severe penalties, including imprisonment from five years to life and fines up to one million dirhams, particularly for acts involving minors or producing pornography, highlighting the legislature's emphasis on shielding children from electronic public morality violations in Article 35.

The Decree-Law on Combating Rumors and Electronic Crimes meticulously and Child Rights Law define both concepts of child and child pornography as the creation, distribution, or possession of explicit images involving children. Article 35 specifies inciting, assisting, or seducing a child to produce or share such content through technology, with penalties ranging from imprisonment to fines. This legislative commitment emphasizes penalties for offenders while safeguarding children from legal responsibility, with escalated penalties for cases involving the child.

The UAE's legislative stance prioritizes safeguarding exploited children, aligning with Child Rights Law like Article 37. Article 33 focuses on incitement, seduction, or assistance to a child, emphasizing the perpetrator's actions rather than specific outcomes, with penalties escalated to a felony when involving child pornography. The law remains committed to exempting child victims from consequences stemming from these coercive acts (Faqir, 2023).

b. The Production of Explicit Materials

The internet and computers enable various methods for creating explicit images of children. Perpetrators freely generate sexually explicit content involving both genders, some authentic and obtained illicitly, while others involve manipulated or fabricated images and videos. These materials are then exploited in the realm of child pornography.

Once explicit images or materials depicting events (According to the first article outlined in Decree-Law No. 34 of 2021 regarding the Prevention of Rumors and Electronic Offenses) are procured through production, the perpetrator progresses to exploitation-related aspects. The act of production is not an endpoint in itself; rather, it serves as a precursor to the online sexual exploitation of the child.

The exploitation of the child in these images can manifest in two primary forms:

- The child becomes the subject of sexual production, depicted through photographic images or video clips. These materials are subsequently disseminated to others through information technology networks. Such actions have been expressly incorporated as punishable offenses in the legislation combating information technology crimes, specifically under Article 34, when pornographic content involves minors.
- The child becomes the target of prior exploitation, and their material is utilized to entice other children. The outputs of films and images are directed toward children with the intent of luring them into engaging in sexual acts. This conduct is also subject to legal sanctions under the provisions of the legislation aimed at tackling rumors and electronic offenses, as per Article 34 (Law No. 34 of 2021).

c. Sexual Exploitation of Children

The initiation of the sexual exploitation of children hinges upon the possession of explicit content involving a minor, be it male or female, by the perpetrator. Articles 35 and 36 of Federal Law No. 34 of 2021 on Combatting Rumors and Cybercrimes stipulate that the explicit material must be directly linked to the child, positioning them as the central subject. This underscores the concerning surge in the illicit exploitation of children through information technology, where they are simultaneously regarded as both a means of assault and the primary subject.

Subsequently, this exploitation can manifest in various forms, including:

- Distributing explicit images through the internet.
- Selling and trading explicit images through the internet.
- Publishing explicit images on the internet.
- Broadcasting explicit images on the internet.

In this context, the perpetrator obtains explicit images of children for personal gain, whether for personal use, benefiting others, exploiting others non-personally, or even for investment purposes. It is imperative to note that the concept of child sexual exploitation extends beyond the conventional material aspects. While traditional forms of exploitation represent one facet, they do not encompass the entirety, especially considering the advent of information technology systems and the evolution of communication methods related to the global dissemination of electronically recorded materials.

d. Prostitution and Its Promotion:

Articles 33 and 33 of the UAE Federal Law No 34 of 2021 on Combatting Rumors and Cybercrimes deal with prostitution and its Promotion. The online sexual exploitation of children transcends the confines of merely producing,

disseminating, broadcasting, or trading pornographic images featuring minors. It extends to the depiction of minors engaging in prostitution through images or videos, showcasing them involved in various sexual acts, either with each other or with adults (Alrousan & Faqir, 2023).

Furthermore, the exploitation of minors in prostitution can encompass the targeting of children with adult pornographic films and images. These materials are channeled through specific communication platforms or internet technologies tailored for children, ensuring their exposure, whether consensual or involuntary. This may transpire via specialized websites or orchestrated breaches when minors access potentially unreliable platforms. Exploitation can also occur through the unauthorized access of a minor's email, followed by the transmission of sexually explicit files. The ambit of promotion broadens to encompass all forms of electronic image and video display, spanning publishing, distribution, production, purchase, sale, and importation of explicit adult content.

Criminal Liability for Crimes Against Minors

The proliferation of images that infringe upon public decency and morality, particularly those involving the exposure and sexual exploitation of children and minors, is a matter of profound concern for the UAE legislature. Safeguarding children from violations through information technology means is accorded paramount importance. The ensuing discussion elucidates the framework for assigning responsibility and the stringent penalties associated with these offenses.

a. Assigning Criminal Responsibility:

To establish criminal responsibility for crimes committed through social media, the requisite elements of the crime must be met (Al-Ibad, 2016, p. 37). The service provider serves as an intermediary between electronic media users and service providers, facilitating user access to desired websites (Hussein, 2002, p. 37). In the first article of the Decree-Law on Combating Rumors, the UAE legislator defines the service provider as "any natural or legal person, public or private, providing users with access services to the information network using information technology."

Questions have arisen concerning the responsibility of the service provider, also known as the "access provider," for the content broadcast and circulated on the Internet, particularly material that violates public decency. Some countries have instituted a "proxy" system by the internet service providing companies—an application acting as a firewall, restricting access to explicit websites without a specific password (Rizk, 2009, p. 39). There is debate over whether criminal responsibility is inherent in all cases (Al-Saghier, 2002, p. 121).

A hosting service provider is mandated to store and provide data solely through the internet, with no involvement in the content itself. Their responsibility is triggered in two scenarios: firstly, if they possess actual knowledge of the illegal nature of the content and fail to report it to the authorities or promptly take action to remove the data, or render access impossible; and secondly, if they do not retain data identifying the site editor and blogger (Mustafa, 2013, pp. 21-22).

Numerous countries have enacted legislation holding service providers or their providers criminally accountable for any breach of their obligations and duties. For instance, in the United States, the Communications Decency Act was promulgated on February 8, 1996, to combat the dissemination of pornography on communication channels, including the Internet. In France, the Remote Communication Act, issued on September 30, 1986, and amended in 1996, aims to empower competent authorities to issue appropriate recommendations ensuring the observance of professional ethics rules commensurate with the nature of services provided by communication service providers, including internet services. However, the French Constitutional Council deemed certain assignments and provisions unconstitutional for contravening Article 34 of the French Constitution, which safeguards citizens' guarantees and rights, particularly freedom of expression. Nonetheless, a paragraph of the same law was retained, mandating communication service providers to propose known technological methods, such as website filtering programs, enabling users to select the services and sites they wish to access. Additionally, they must suggest other similar methods to subscribers to prevent access to specific websites and services (Issa, 2001, p. 170).

The UAE legislator has taken proactive measures to ascribe criminal responsibility to individuals involved in creating, managing, or overseeing websites that publish explicit content, thereby committing offenses against public morals and decency. This transgression occurs through websites crafted, overseen, or managed by the offenders, employing data, programs, ideas, images, and films that have the potential to undermine public morals.

In no uncertain terms, Article 34 within the Decree-Law addressing Rumors and Cybercrimes No. 34 of 2021 explicitly outlines that 'individuals involved in creating, overseeing, or running an online platform, accessible through computer networks, featuring explicit content, gambling, or anything that could undermine societal values, will face legal consequences.' As per Article 34, the core aspect of the offense requires the perpetrator to undertake actions mentioned, such as establishing or administering a website containing explicit material capable of challenging public ethics and standards (Abdulatif, 2014, p. 220).

The phrase 'anything that may compromise public morals' signifies that criminal consequences do not demand actual harm; the offense merely needs to

pose a potential threat to the legally protected interest. In this context, the harm is considered a legal consequence rather than a tangible one (Al-Attarqi, 2000, pp. 94–95). Consequently, the physical behavior outlined in Article 34 involves the perpetrator undertaking the mentioned actions, such as creating or managing a pornographic website.

The legislative objective is to criminalize individuals contributing to the preparation, production, and dissemination of explicit materials and gambling activities through electronic websites and computer networks, thereby safeguarding society members using the Internet (Al-Marzouqi, 2002).

Concerning the moral aspect of this crime (Abdulatif, 2014, p. 223), it is deemed an intentional offense, with the moral element manifesting as criminal intent. The perpetrator must be cognizant that they are involved in creating, managing, or supervising a website related to explicit content, gambling activities, or matters affecting public morals and ethics. The protected legal interest in this case is the preservation of public morals and ethics, a moral interest that supersedes private interests. This crime falls within the category of dangerous offenses, not harm offenses, as the offense occurs even without actual harm. The legal framework assumes that the perpetrator's conduct causes harm in the external world, a characteristic not applicable to dangerous offenses (Al-Hakimi, 2002, pp. 94–95).

Concerning the consequences of this offense, Article 34 stipulates potential imprisonment and fines between AED 250,000 to AED 500,000, or one of these penalties. The duration of imprisonment follows the customary regulations (as per Article 70 of the Penal Code, Law No. 34 of 2022), while the legislation specifically outlines the fine, setting a floor of AED 250,000 and a ceiling of AED 500,000—an exception to the usual fine regulations. Moreover, the judge holds discretionary authority to decide between imprisonment, a fine, or a combination of both penalties.

b. Penalty Enhancement Measures

The internet hosts websites readily accessible to the general public, specializing in explicit content, often luring children through enticing gateways and windows. What is particularly alarming is the widespread availability of these sites, which are not only free but also easily accessible, incurring no significant financial cost. Crimes involving prostitution and indecency are not mere transgressions against public morals and decency or the exploitation of individuals to gratify desires. They extend beyond that, involving individuals working for others, disseminating immorality, and facilitating it. Moreover, entities present themselves to cater to the desires of others. The legislator has criminalized such

deviant behaviors, escalating the punishment, especially when targeted or designed for children. Additionally, the legislature has tightened the punishment, emphasizing the protection of children, even for mere possession of child pornography.

Article 34 in the Decree-Law on Combating Rumors and Cybercrimes No. 34 of 2021 mandates harsher penalties for explicit content involving minors. Child pornography, as per Article 1, encompasses creating, sharing, or possessing sexual images of children online. This aims to protect victims and prevent the misuse of online platforms for sexual exploitation, upholding public morals (Nail, 2001, p. 10). The core of this offense includes the perpetrator partaking in activities described in Article 34, such as overseeing online platforms with explicit content aimed at minors (as per Article 1 of Decree-Law No. 34 of 2021 on Combating Rumors and Cybercrimes). This encompasses activities compromising public morals on the information network, as well as broadcasting, sending, publishing, or reposting. The perpetrator may create pornographic sites affecting minors, intending to either create the content or the site electronically. The legislation also considers supervision and management to include monitoring the opening and closing times of the site, monitoring the number of subscribers, identifying subscribers' identities, and controlling the addition or deletion of pornographic materials on these sites. The criminal behavior also includes broadcasting, which is presenting pornographic content to the public, either involving minors or designed to entice minors. Distinguishing between broadcasting and sending is crucial, as sending involves providing specific individuals or several people with the content, with the intended recipient being the child in this case. Broadcasting, on the other hand, involves disseminating content without specifying recipients and without discriminating against those who have access to pornographic content.

The act of displaying pornographic material, whether targeting minors or enticing them, constitutes a crime for the perpetrator. This includes filming explicit images, broadcasting them online, and exposing children to deviant content accessible to minors. The moral aspect involves intentional criminal intent, defined by Article 34, where the perpetrator knowingly engages in criminal behavior directed towards achieving a specific result.

The severity of the punishment is evident in the legislator setting a minimum term of imprisonment, not less than one year, and leaving the maximum term to general rules. The legislator also established a minimum fine of not less than AED 50,000. In our view, it would be more appropriate for the minimum fine to be the same as the minimum fine in the first and second paragraphs of Article 34, which is not less than AED 250,000, considering the gravity of this act.

Additionally, the legislator set a maximum fine not exceeding AED 150,000, and in our opinion, it should be similar to the maximum fine in the first and second paragraphs of the same article, not exceeding AED 500,000.

An aspect of the severity is that the legislator did not grant the judge the freedom to impose either of the two punishments but made both punishments mandatory. The crime is accompanied by subsidiary penalties, such as confiscation, erasure, and the execution of information or data, as well as the closure of the premises or site where the crime is committed (Articles 56 and 59 in Decree-Law No. 34 of 2021 on Combating Rumors and Cybercrimes).

c. The Offense of Electronically Possessing Child Pornography

Article 36 in Decree-Law No. 34 of 2021 on Combating Rumors and Electronic Crimes outlines penalties for purposefully possessing child pornography via electronic systems or information technology means. This provision targets the intentional possession of child pornography in the digital sphere. Child pornography, as defined in Article 1 of the same law, involves creating, displaying, possessing, or circulating images depicting a child in explicit sexual acts or simulations. This offense specifically relates to child pornography within electronic platforms or technology, emphasizing the violation of public morals and ethics, particularly in safeguarding children, as legislated for protection.

In contrast to Article 34, particularly its third paragraph, where the material element involves possession with the intent to exploit and the pornographic content is either focused on minors or designed to entice minors, Article 36 only requires the possession of child pornography, without necessitating the perpetrator's intent to exploit. This underscores the UAE legislator's dedication to protecting this vulnerable age group in society.

The criminal activity in this offense is the act of possession. While the UAE legislator has not defined criminal possession in the criminal law, it can be construed as "authority or material control based on certain actions and behaviors that a person performs on a movable object, regardless of its type, to act on it for his own benefit" (Ghanem Mohammad Ghanem, p. 112). Possession is established when the possessor exercises control over the object, which, in this case, is child pornography. This control may involve full authority, enabling the possessor to modify, use, or destroy it, or it may be partial control, merely enjoying or exploiting the acquired material. According to this article, the legislator penalizes mere possession alone, even in the absence of any other criminal activity. The act of possession constitutes the complete crime, warranting punishment for the possession itself, with all its elements.

The proprietorship of adolescent pornography is classified as a deliberate crime under art—36, involving intentional concentrating as per the legislation. The law punishes mere ownership, regardless of whether additional behaviors like distributing or broadcasting happen. Art. 36 indicates punishments: a slight confinement six-month confinement term and a fine varying from AED 150,000 to AED 1 million for lawbreakers. The bare minimum confinement period is tightly founded at six months, line up with specification standards, while the extreme term remains to overall guidelines. A statutory fine between 150,000 and a maximum of AED 1 million is specified by law. Judiciaries have no option when it extends to penalizing; they must pursue the lawfully assigned minimums for both confinement time and fines, and they cannot enforce judgments that are less than these durations.

Conclusion

The expanded scale of illegalization, which now incorporates a diversity of e-sexual crimes, is revealing the increasing of lawful securities for children. These involve occurrences like utilizing technology to stage prostitution and decadence and diffusion of invasive pictures or movies displaying the sensual manipulation of toddlers and teenagers. The change in language from "victim" to "child" in the statute is in harmony with present occurrences in criminal justice systems. This adjustment fulfills international treaties and agreements.

The Federal legislation on combating Rumors expresses how devoted the government is to shielding adolescents who have been the targets of offenses against public respectability. One of the most considerable modifications to this statute is the exact insertion of a paragraph attending to children's participation in the manufacturing of pornographic merchandise. It is significant that in the statute on Combating Rumors, the lawmaker selected to retain the occurring criminal justice for those found guilty of crimes against community ethics. This verdict ensures reliability with the fines defined in the same.

Recommendations

- Emphasize the importance of imposing hardened penalties, such as imprisonment, for crimes against juveniles, in keeping with the policymaker's plan to raise fines.
- Encourage the enclosure of sexual abuse of persons with psychological or mental syndromes in criminal lawsuits as a vexing condition.
- Press the lawmaker to take into consideration drafting a special law addressing the ownership of pornographic materials without planning to use them for profit, display them, or advertise them.

- It is necessary to make legal amendments to exclude child pornography from the implementation of the pension rule, as well as the necessity to find a public prosecutor's office and a judge specializing in children's issues.

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