

AN OVERVIEW ON THE LAW ON CHILD PORNOGRAPHY IN SOUTH AFRICA

Category: Administrative and Procurement Law, Commercial Law, Dispute Resolution, Media and OTT
written by Zandile Mthabela | June 24, 2019



I recently had an interview with Ligwalagwala FM on the dangers of posting nude photographs of children online.

Who is considered a child in South Africa? Section 18 of the Children's Act, 2005 provides that a child is anyone under the age of 18 years old. A child becomes a major / adult upon reaching the age of 18.

Posting nude photographs of children online can constitute child pornography, irrespective of what the purpose for taking the picture is, because such nude photograph can be abused.

The Films and Publications Act, 1996 defines "**child pornography**" as any image, real or simulated, however created, depicting a person who is or who is shown as being under the age of 18 years, engaged in sexual conduct or a display of genitals which amounts to sexual exploitation, or participating in, or assisting another person to engage in sexual conduct which amounts to sexual exploitation or degradation of children.

There are different types of classification of publications. Focusing exclusively on "**refused classification**" which is the publication that contains child pornography, the law prohibits any person who knowingly broadcasts, distributes, exhibits in public, offers for sale hire or advertises for exhibition, sale or hire any film, game or a publication which has been classified as a refused classification and impose, upon conviction a fine or imprisonment for a period not exceeding five years or both a fine and such imprisonment.

What are the dangers of posting nude pictures of a child online?

- photographs can be stolen and improperly used by paedophiles / perpetrators, for explicit purposes;
- posting photographs of children create a digital footprint thus anyone could easily copy the

photo, tag it, save it, or otherwise use it and you might never know; and

- **you may be sharing your child's location without knowing**

GPS-enabled phones and location tracking integrated into photos by your camera or smartphone

Why do people think it is acceptable to post nude photographs of children on social networks?

It may be some form of peer pressure, although some people are unaware of the dangers associated with such conduct. A person cannot use lack of knowledge as a defence if charged with such an offence.

What if somebody else (a relative) posts nude photographs of your children on social media and you find out about it?

According to the Films and Publications Act, 1996 and Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, any person who unlawfully and intentionally expose or display or cause the exposure or display of any image, publication, depiction, description or sequence of child pornography or pornography; or any image, publication, depiction, description or sequence containing a visual presentation, description or representation of a sexual nature of a child, which may be disturbing or harmful to, or age-inappropriate for children, with or without the consent of a child is guilty of the offence of exposing or displaying or causing the exposure or display of child pornography or pornography to a child.

Section 18(1)(c)(ii) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (“**Criminal Law**”) provides that a person who supplies, exposes or displays to a third person child pornography or pornography; or a publication or film with the intention to encourage, enable, instruct or persuade a third person to perform a sexual act with a child is guilty of the offence of promoting the sexual grooming of a child.

Section 19 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 provides that a person who unlawfully and intentionally exposes or displays or causes the exposure or display of:

- (a) any image, publication, depiction, description or sequence of child pornography or pornography;
- (b) any image, publication, depiction, description or sequence containing a visual presentation, description or representation of a sexual nature of a child, which may be disturbing or harmful to, or age-inappropriate for children, as contemplated in the Films and Publications Act, 1996, or in terms of any other legislation; or
- (c) any image, publication, depiction, description or sequence containing a visual presentation, description or representation of pornography or an act of an explicit sexual nature of a person 18 years or older, which may be disturbing or harmful to, or age-inappropriate, for children, as contemplated in the Films and Publications Act, 1996, or in terms of any other law,

to a child, with or without the consent of B, is guilty of the offence of exposing or displaying or causing the exposure or display of child pornography or pornography to a child.

The Films and Publications Amendment Bill [B37B-2015] currently sitting the National Council of Provinces seeks to substitute the definition of "**child pornography**" as stipulated in the Films and Publications Act, 1996 with that [\[1\]](#) in the Criminal Law.

The Bill repeals sections 18A (Display of classification decisions) and 18B (Reclassification) of the principal Act and includes sections:

18C "Self-classification"

18D "Approval of accredited foreign or international classification systems by the Council"

18E "Complaints against prohibited content"

18F "Prohibition against distribution of private sexual photographs and films"

18G "Prohibition against filming and distribution of films and photographs depicting sexual violence and violence against children"

18H "Prohibition against propaganda for war; incitement of imminent violence and advocacy of hatred that is based on identifiable group characteristics, and that constitutes incitement to cause harm"

18I "Display of classification decisions"

Section 20 which previously provided for appeals to Appeal Tribunal, now confers a right to appear and to appeal to Appeal Tribunal and Supreme Court for appeal purposes.

Section 24 of the Bill substitutes section 24A of the principal Act with "Prohibitions, offences and penalties on possession of films, games and publication" which stipulates that any person who knowingly distributes or exhibits in public a film or game without first having been registered with the Board as a distributor or exhibitor of films or games shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R150 000 or to imprisonment for a period not exceeding eight months or to both a fine and such imprisonment. The period of imprisonment has been increased from that previously stated on the repealed section 24A i.e. six months imprisonment to eight months.

If you feel that a child's rights have been violated, report such conduct to any member of the South African Police Services.

If you would like more information on this topic, please contact us for more good, clear, precise advice.

[\[1\]](#) "**Child pornography**" means any image, however created, or any description or presentation of a person, real or simulated, who is, or who is depicted or described or presented as being, under the age of 18 years, of an explicit or sexual nature, whether such image or description or presentation is intended to stimulate erotic or aesthetic feelings or not, including any such image or description of such person

- (a) engaged in an act that constitutes a sexual offence;
- (b) engaged in an act of sexual penetration;

- (c) engaged in an act of sexual violation;
- (d) engaged in an act of self-masturbation;
- (e) displaying the genital organs of such person in a state of arousal or stimulation;
- (f) unduly displaying the genital organs or anus of such person;
- (g) displaying any form of stimulation of a sexual nature of such person's breasts;
- (h) engaged in sexually suggestive or lewd acts;
- (i) engaged in or as the subject of sadistic or masochistic acts of a sexual nature;
- (j) engaged in any conduct or activity characteristically associated with sexual intercourse;
- (k) showing or describing such person-
 - (i) participating in, or assisting or facilitating another person to participate in; or
 - (ii) being in the presence of another person who commits or in any other manner being involved in, any act contemplated in paragraphs (a) to (j); or
 - (l) showing or describing the body, or parts of the body, of such person in a manner or in circumstances which, within the context, violate or offend the sexual integrity or dignity of that person or any category of persons under 18 or is capable of being used for the purposes of violating or offending the sexual integrity or dignity of that person, any person or group or categories of persons.