

POSTING NAKED IMAGES OF CHILDREN ONLINE NOW ILLEGAL

Category: Commercial Law, Dispute Resolution, Media and OTT, Privacy Law, Infosec, and POPIA
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So you just gave birth to a new adorable bundle of joy and you want to show him/her off to the world. What better way to do so than to upload an image on to your favourite social media page? All the cute things she/he may get up to must be shared with your closest friends and family, and if the world at large has opportunity to see it too then why not? It shouldn't be an issue – right? WRONG!!! What may be considered a sweet and innocent gesture to all budding parents out there has now received some legal attention with some drastic implications.

So what does the law say? Nude pictures of your child placed online are not only unwise but have now become illegal. The National Prosecuting Authority (“**the NPA**”) views such actions as a form of child pornography^[1] which is deemed a criminal offence in South Africa. During a recent dialogue in Cape Town as part of Child Protection Week, the NPA came to this conclusion and have warned parents against committing this illegality; notwithstanding, the fact that many parents find no fault in their actions. Advocate Bonnie Currie-Gamwo stated that: *“It’s irrelevant what the purpose was for taking the picture. But any image of a naked child is child pornography and the reason for that is quite simple; it can be abused. What you do innocently, others take and they abuse it.”* Therefore, the NPA determines that the publication of these “pornographic” images is an offence punishable by law.

Does this mean that all pictures of your children are prohibited? No. Simply put, if your child appears naked in an image then you are not allowed to upload such image. However, if you simply want to upload your child’s crèche graduation (for example), you are perfectly at liberty to do so.

The reasoning behind this (un)warranted legal attention is simply the overwhelming presence of paedophiles out there which is an unfortunate reality of all social media networks. In addition, despite this sad fact a lot of parents still fail to place security measures^[2] on their social media pages which are easily accessible by unscrupulous figures. In essence, regardless of whether parents believe that there is merit in the NPA’s interpretation of the law, they at least ought to be aware of the dangers that are a result of social media networks and the consequences that may fall upon them should they so choose to succumb to the urge of placing a naked image of their child online. After all, the best interest of our children should remain paramount and keeping them safe from social predators should be of the utmost importance.

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[1] The Films and Publications Act states that “child pornography” is includes any image, however created or any description of a person, real or simulated, who is, or who is depicted, made to appear, look like. Represented or describe as being under the age of 18 years – (i) engaged in sexual conduct; (ii) participating in, or assisting another person to participate in, sexual conduct; or (ii) showing or describing the body, or parts of the body, of such a person in a manner or in circumstance which, within the context, amounts to sexual exploitation, or in such a manner that it is capable of being used for the purposes of sexual exploitation.

[2] For example, placing security measures on personal profiles/albums/images etc.