

CONTENTS

Introduction	3
What is the image of a child and how is it protected	<u>5</u>
The publication of content involving children on the internet	10
Background and scale	10
The risks of sharing images of children on the internet	13
To publish or not to publish a child's image online? What is the to consider	ere 19
Additional resources	25

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INTRODUCTION

These days, memories are not just collected in family albums or school yearbooks. It is estimated that around 500 million photos are published on the internet every day, mainly on social networks. Videos are also becoming increasingly popular online.

These include content involving children, whose images are shared by adults before they become active on the internet themselves. Cute photos from holidays, kindergarten or school celebrations, videos of their first steps, memories of important moments, but also "snapshots" of ordinary everyday situations. This may sound harmless, especially as they are often shared with good intentions. Unfortunately, the consequences of sharing such content online can be dramatic. It can be used by hackers, mememakers, scammers and even by those with paedophilic tendencies. Adults should be aware of both the legal obligations arising from regulations on the processing and dissemination of images of children and the possible consequences and risks of publishing this type of content online. It is therefore worth considering both the ethical and the legal aspects when discussing this issue.

We are witnessing a growing problem of neglect and lack of awareness, both from a legal point of view and in terms of the subjective treatment of children whose images are captured in content shared over the internet. This publication aims to support adults in ensuring that children's right to privacy is respected. In particular, it is aimed at those who work in various institutions, organisations and bodies concerned with the welfare and safety of children, especially as it is the new duty of schools, kindergartens, sports clubs, community centres, etc. in Poland to implement standards for the protection of minors. They provide an opportunity to regulate a range of issues related to the prevention of child abuse and neglect, including in the digital environment.

We are the first generation to face entirely new social challenges brought about by the dynamic development of technology. With this publication, we invite the readers to reflect and make informed decisions about one of these challenges - the posting of children's images online.

Together we can look for more ethical and empathetic ways to respect children's rights and subjectivity in the smartphone era. It is vital that the trend of sharing everything online does not overshadow our concern for the safety, well-being and future of children. We also have an opportunity to create a digital savoir-vivre that promotes caring for one another, while helping the younger generation not to lose their human, empathetic reflexes in the pursuit of online reach and popularity.



An image is subject to legal protection. It is considered both a personality right and personal data. It is important that adults handle images of children with care and responsibility.

The image of a natural person is not defined in Polish law.

In order to determine the meaning of the term, we need to rely on the definitions proposed by court doctrine and case law. Contrary to popular belief, the image of an individual consists of more than their head

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face. It is the representation of a person (i.e. the various physical features that make up their appearance, including both the face and, for example, a characteristic physique) that has been recorded in some way (in a photograph, on film, etc.). An image makes it possible to recognise and identify a person. According to some Polish courts, additional features such as clothing, glasses or hairstyle may also be considered part of an image.

Dissemination of an image refers to the various forms of making the image available to the public, allowing it to be seen by a potentially unlimited number of people. This includes, for example, publishing the image on social media, websites, posters or leaflets. It does not matter whether such dissemination involves financial gain or serves other purposes, such as promoting the activities of an NGO, sports club, school or kindergarten.

An image is a personality right and is therefore protected by the provisions of the Civil Code.¹ It is a non-material, non-transferable right to which every person is entitled. The unauthorised dissemination of an image may give rise to civil claims for infringement of personality rights. According to the law, the person whose personality rights have been infringed may demand the cessation of the infringement (e.g. removal of the photograph from the internet), the removal of its effects (e.g. submission of a statement containing an apology), as well as compensation and reparation for the damage caused.

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In principle, the dissemination of a person's image (which includes its publication on the internet) requires the person's consent - this area is also regulated by the Act on Copyright and Related Rights.²

Additionally, an image of a child constitutes personal data and is subject to pro-tection under the provisions of the GDPR³ and the Act on the Protection of Personal Data. The processing of personal data in the form of an image includes its dissemination (e.g. publication on social media), but also recording (e.g. taking a photograph), storage (e.g. on a computer disk) or alteration (e.g. using facial enhancement applications), etc. Under the GDPR, the processor has information and security obligations in relation to the data processed. Recital 38 of the GDPR emphasises that children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences, safeguards and their rights in relation to the processing of personal data. Recital 58 includes a guideline that when processing a child's data, clear and simple communication should be used so that the child can easily understand the content.

Articles 23 and 24 of the Act of 23 April 1964 - Civil Code (Journal of Laws of 2023, item 1610, as amended).

Article 81 of the Act of 4 February 1994 on Copyright and Related Rights (Journal of Laws of 2022, item 2509).

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) of 27 April, 2016 (Official Journal of the European Union, L 119/1, 4 May 2016, p. 1).

The Act of 10 May 2018 on the Protection of Personal Data (Journal of Laws 2019, item 1781).

In the case of a child, the provisions of the Family and Guardianship Code⁵ also play an important protective role. Parents have parental authority, which should be exercised in accordance with certain rules.

Consent to the dissemination of a child's image is given by the parents or legal guardians on behalf of the child. However, they do not have an unlimited right to dispose of the image of their offspring. It is their duty to bring up the child with respect for his or her dignity and rights and to look after his or her best interests. The Family and Guardianship Code (as well as the Convention on the Rights of the Child⁶) states that before making important decisions concerning children, parents should listen to them (taking into account, among other things, the child's degree of maturity) and, as far as possible, take into account their reasonable wishes. In practice, this may mean that the child needs to be consulted about the publication or consent to the dissemination of his or her image.

Parents have an obligation to exercise parental responsibility in a way that is in the best interest of the child. Irresponsible online publication of photographs or films that present the image of a person in a way that violates his or her dignity, or that have been recorded in an intimate situation, may violate this principle and be contrary to the best interests of the child, which may result in civil liability of the parent towards the child in the future when the child reaches the age of majority. In extreme cases involving the dissemination of a nude image of a child, criminal law provisions may also apply.⁷

In the context of the right to the protection of one's image, it is impossible not to mention the fundamental right of every individual to privacy, derived, in particular, from Article 47 of the Polish Constitution⁸, as well as from the catalogue of human rights and the rights of the child.

Articles 92 and 95 of the Act of 25 February 1964 - Family and Guardianship Code (Journal of Laws of 2023, item 2809).

Article 12 of the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989 (Journal of Laws of 1991, No. 120, item 526).

Article 191a of the Act of 6 June 1997 - Penal Code (Journal of Laws of 2024, item 17).

⁸ Article 47 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483).

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How should a publicity release consent for a child be structured?

A publicity release consent for a child should:

- Be freely given; the parent/guardian cannot be pressured to give consent;
- Be as precise and clear as possible;
- Specify the purpose for which the image will be used, e.g. to promote the activities of the organisation or institution, a social campaign;
- Provide a detailed explanation of how the image will be used,
 e.g. publication on a social media profile (specifying which social media platforms), publication on the organisation's website;
- Specify the conditions under which the image will be used,
 e.g. the photo will be signed with the child's name or accompanied
 by a comment, the photo will be cropped, the photo will be edited;
- Be written in a language that both the parent and an older child can understand;
- Be given to a specific entity;
- Be given for a specific period of time;
- Be given in advance, i.e. before the photograph/recording is published.

This type of document can take any form but it is important to remember that for evidential purposes it would be best to have it recorded in some way - in writing, electronically, e.g. email, text message. It is also not possible to prohibit the withdrawal of consent and the publisher should be prepared for the consequences of such a withdrawal, for example the removal of the photo from your social media profile.

Is it always necessary to obtain a publicity release consent?

No consent is required for the dissemination of an image of a person that is only a detail of a whole, such as a gathering, a landscape, or a public event. If the image is only one element, a small part of a photograph, and if removing it would not change the subject and nature of what is shown, the current legislation does not require obtaining a publicity release consent. Thus, if the purpose of a photograph is to depict a particular event (e.g., a sports event, a school picnic, or a workshop) and its participants are not the dominant element of the photograph, and the photograph is taken without close-ups of a particular person or a small group of people, the above exception may be invoked.

However, it should always be remembered that, although a publicity release consent is not required, if the person depicted in the photograph can be identified, the image will constitute personal data and the rules on the processing of personal data apply.

Standards for the protection of minors as an opportunity to regulate the publication of images of children

The work on standards for the protection of minors, which all institutions working with children in Poland (schools, kindergartens, nurseries, sports clubs, hotels, hospitals, libraries, etc.) are obliged to implement, seems to be an excellent opportunity to rethink and regulate not only issues related to children's access to the internet, protection against harm, dangerous content or online interactions, but also the publication of their images - whether and under what conditions they are disseminated by a given institution.

In a world driven by digital developments that are sometimes difficult to keep up with, there are new challenges and choices to be made that no previous generation has had to face. We simply need to learn many things and come up with new solutions. However, it is always worthwhile to be guided by the interests of the child, concern for his or her rights and future, and in a screen- filled world, it is even more imperative to develop an empathetic approach and respect for privacy.

THE PUBLICATION OF CONTENT INVOLVING CHILDREN ON THE INTERNET

BACKGROUND AND SCALE

Leaving aside formal and legal issues and the protection of a child's image, it is worth considering how and to what extent content involving children is presented online, how young people feel about it and what risks adults should take into account before publishing such material.

As it turns out:

23%

23% of children already have a digital footprint before birth in the form of pregnancy ultrasound images circulating online.⁹ Although this phenomenon has not been widely researched, the available data suggests that this percentage is lower in Europe, at around 15%, with 10% of parents in Poland

posting such images.10

81%

81% of children under the age of two have a digital footprint in the form of photos posted online by their parents, and 5% have a social media profile.¹¹

75%

The majority - up to 75% - of UK parents who use the internet regularly share photos or videos of their children.¹²



In Poland, 40% of parents use social media to document how their children are growing up. On average, they post 72 photos and 24 videos online each year. It is worth noting that when reporting on their child's life, parents do not place any restrictions on who can see the published material. In fact, 42% share it with larger groups of friends, up to 200 people. 25% of parents say that they ask their child(ren) for permission before uploading a photo or video, if possible (e.g. depending on the age of the child).¹³

SHARENTING

The term, which is a combination of the English words 'share' and 'parenting', refers to the practice of parents posting content involving their children online - frequently and without due consideration. Sometimes without even asking for or respecting their views on the matter. Such content can include photos, videos, but also information about their activities or even snippets of conversations. This trend, popular with today's parents, is also referred to as 'oversharenting' to emphasise its excessive nature.

According to the Teenagers 3.0 report, 45.5% of teenagers in Poland say that their parents or guardians have made their image public, with 23.8% of them feeling embarrassed and 18.8% being unhappy about this.¹⁴

Negative or offensive comments resulting from content posted online by their parents were reported by 7% of teenage participants in the EU Kids Online 2018 survey.¹⁵



On the other hand, according to the EU Kids Online survey, almost one in ten young people between the ages of 11 and 17 (9.5% of all respondents) are aware that their parents sometimes post content about them online without asking for their permission. Of these, one in two (51.3%) have felt upset and around two in five (41.6%) have received unpleasant result comments as a something their parents posted online.16

Qualitative research conducted by the "Ciekawość" research centre for the Orange Foundation in Poland in 2023 also shows that young respondents are worried about being recorded or photographed in a situation they would not want to be seen by others. They are also concerned about being ridiculed. teased and cyberbullied by their peers as a result of content featuring them, especially with unwanted changes.17

THE RISKS OF SHARING IMAGES OF CHILDREN ON THE INTERNET



Nothing ever truly disappears from the internet

Once posted, content can remain online forever. Shared by thousands of users, it can spread quickly, making it difficult, if not impossible, to remove.

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Photos or videos posted online no longer belong to the person who posted them

A lot can happen to content once it is shared online - beyond the control and authority of the publisher. A photo or video can be downloaded, modified, used or shared by other internet users (including fraudsters) for purposes very different from those intended by the publisher. And even if the content in question cannot be downloaded, virtually any device can be used to take a screenshot and make a copy.

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Cyberbullying

Posting photos or videos of children can expose them to hate speech, ridicule and hurtful comments - online and in real life. All of this can affect their self- esteem and mood, making them feel angry, sad and helpless. Content that falls into the hands of a child's peers or friends can be used against them - including in an act of cyberbullying - to harass, taunt, challenge or blackmail them. Particularly in their teenage years, children use such content to get back at someone or to tease - sometimes as a joke, sometimes under the influence of emotion, and often because they have not yet developed empathy or are unable to anticipate the impact of their own actions on others.



Misuse of content involving children for criminal, including sexual, purposes

Much of the content that is readily available on the internet ends up in the wrong hands of fraudsters or even paedophiles. There are cases of digital identity theft, where a picture of a random child is used to raise money for a 'sick' child, or a stolen image is used to fulfil various fantasies, possibly involving violent or sexual behaviour. In September 2023, there was a high- profile story about how photographs of 28 Spanish teenage girls downloaded from social media were used to create nude deepfakes (so-called 'deepnudes') using an Al-based application. Photos showing the teenage girls' faces with images of naked bodies rendered over them found their way onto the internet without their knowledge or consent. The case is also being investigated for blackmail and extortion of one of the girls whose photo had been used.

It is also possible for images or recordings to end up on forums with pornographic content¹⁸ involving children. In order to be admitted to a closed forum with access to this type of material, offenders need to share new content. For example, many photos and videos of children posted on social media are used to feed closed online forums for people with paedophilic tendencies. Unfortunately, in extreme cases, the publication of this type of material can encourage individuals who are dangerous to children to contact them and exploit them in some way, including sexually.

Academic and journalistic sources suggest that a large proportion of the images of children found on paedophile pornography websites come from adults close to them who share their images on social media, unaware of the consequences of their actions.¹⁹ In 2015, Australia's Children's E-Safety Commissioner warned that images of minors originally posted on social media and family blogs accounted for up to half of the material found on some child pornography sharing sites.²⁰

Unintentional disclosure of a wide range of information

Very often, a photo or video (unintentionally) provides much more information than the image itself. Such content is usually accompanied by a commentary and placed in a specific context, being linked to a particular event or moment in time. Nowadays, people are increasingly cautious about sharing information about themselves, without thinking about how much information about the child will be shared online when posting a photo, or consenting to its publication, e.g. by the school. An image taken in a specific context (e.g. a geography lesson presentation about a place where a student spent their summer holidays), combined with information about the school, year and name of the child, provides an outsider with information that can be used in any way they wish, including for harmful purposes.

"If we were to go to Instagram now and randomly choose a photo with a child we know nothing about, we would probably easily find out their name and the names of their parents, where they live (location is often given with posts), when they were born (adorable candle-blowing videos posted on their birthdays), we could even deduce their second name, find out what they like, what their talents are, where they spend their holidays and where they go to kindergarten"²¹ - writes Magdalena Bigaj, President of the Digital Citizenship Institute, in her book "Wychowanie przy ekranie" (Screen Education. How to Support Your Child in the Digital World). All this helps to create a basis for unsafe interactions and can be used to gain a child's trust by someone who may want to exploit them.



6

Using children's images for profit and commercial purposes

Sometimes a child's image is used for commercial purposes without their consent or awareness. When promoting various services and products, many influencers use photos and videos of children - both their own and others'. Such activities are increasingly being scrutinised by various experts and considered as unlawful use of a child's image for commercial purposes. In France and Norway, there is even a debate about a ban on the commercial use of images of children by their parents.²² In some cases, meetings, workshops or events organised for children in schools or other institutions are photographed or filmed by companies and the resulting footage of participants is used to promote these businesses, their products or services, or the image of a public figure. The children are unknowingly (and without compensation) involved in this kind of promotion.



Violation of dignity

There is a lot of content online showing children in embarrassing situations, underdressed or naked. Photos taken on the beach, in the swimming pool, in the bathroom (or even on the toilet) are shared online, embarrassing and humiliating the persons depicted and ridiculing their reactions and emotions. One example is the 'egg challenge', a once-popular Instagram challenge that involved adults breaking eggs on the foreheads of young children for 'fun', and filming their reactions. The videos, accompanied by 'witty' comments from adults, showed children in tears, helpless and struggling with difficult emotions.

TROLL PARENTING

A trend where parents thoughtlessly post content online that embarrasses, ridicules and humiliates their child (even if unintentionally and as a 'joke'). This includes popular online videos of, for example, babies reacting to being splashed with water, children waking up from anaesthesia or crying over a burst balloon. Or images of children eating out of dog bowls or getting dirty after going to the toilet - accompanied by 'witty' comments. Often the situations depicted involve fear, surprise, crying or other difficult emotions experienced by children who are made fun of by adults on the internet. Such behaviour undermines the children's dignity, turns them into a mere object for the sake of a 'joke' and lowers their status in society as someone who can be laughed at without any consequences.



Depriving children of the right to tell their own story

Everyone should be able to shape their own identity and image, including in the digital world, and decide what to publish and what to keep private. For children whose lives have been over-documented online by adults without consulting them, this process can be disrupted. Their digital footprint is built up before they can decide what information about themselves they want to make public. All of this can have implications for young people's safety, wellbeing and future, including their professional future (there are cases of recruiters and hiring managers checking candidates' stories online, including on social media).

9

Not treating children subjectively

As well as being aware of the unpleasant consequences, let's not forget that children need to be treated subjectively. Young people are still not sufficiently involved in decisions that affect them, and yet managing their own image is part of their right to privacy, their right to tell their story on the internet as they wish. We should ask them for permission to publish their images, talk to them about the benefits and risks of such decisions, ask them how they feel today and how they see the future.

But there is an important question to be asked here:



IS IT POSSIBLE FOR A CHILD TO GIVE FULLY INFORMED CONSENT TO THE PUBLICATION OF THEIR IMAGE?

Is a 6-10 year old (or older child) able to understand the reality of posting content online and the consequences of such exposure?

Given the child's age and developmental stage, there is a significant risk that they are not. Also, when asking for permission to publish an image, we should bear in mind that the child is often emotionally dependent on a (trusted) adult and is likely to agree to more than they would in a relationship with a complete stranger.

The responsibility for protecting the child's privacy therefore lies primarily with adults.



TO PUBLISH OR NOT TO PUBLISH A CHILD'S IMAGE ONLINE? WHAT IS THERE TO CONSIDER

What should institutions working with children and young people consider before publishing images of children in their care?

We should not frighten children, especially the youngest, with information online fraud, digital identity theft about and other possible unpleasant consequences of publishing content containing their image. Instead, it is important to support them in their belief that they have a right to privacy and control over their image. It is also essential to ensure that every adult is aware of the potential consequences of disseminating images of children. And while the issue of sharenting mainly concerns parents, institutions that work with children have a special responsibility. They are trusted by the youngest and their guardians, and through their decisions, they can play a key role in raising public awareness of children's right to privacy. Especially as a great deal of content involving children is published online in an excessive, unthinking, sometimes unnecessary manner, or even without respect for children's subjectivity or dignity.

Institutions that work with children have a special responsibility to protect children's images. Through their decisions, they can play a key role in raising public awareness of children's right to privacy.

What should be considered before deciding to publish an image of a child?

- Why do you want to publish the child's image? Do you need to show the child to fulfil the purpose?
- Is there another way to fulfil the purpose without publishing the image?
- What will happen if you do not publish the child's image?
- Who is following your profile or any other channel where you intend to post content featuring the child?
- Do you have a publicity release consent form, voluntarily signed by the child's parent or guardian, with a clear purpose and specific method of dissemination?
- Are the children forced in any way to appear in the photo or video? Do they feel comfortable, safe and at ease with being photographed or filmed at the moment?
- Is a child whose parent or guardian has not consented to their image being published excluded from the photographed activities for that reason?
- Does the photo or video show the child in an embarrassing or intimate situation? Is the child fully clothed (not in underwear, swimwear or naked)?
- How might the child feel seeing this content in the future?
- How might the child's future employer react to such a publication, what might they think of him or her?
- Does the publication in any way violate the child's dignity, embarrass, ridicule or expose them to ridicule?
- Will publication of the image violate the child's privacy? Will it disclose information that should be kept confidential?
- Will it get them in trouble or negatively affect their relations with someone?

- How would you feel if someone published similar content featuring you?
- Is the situation or event you are photographing or recording commercial in nature - does it promote the services or products of a company or person?
- In your institution, do you talk to children about internet safety, privacy and trust?
- Are the children in your institution in a difficult situation? By publishing photos or videos of them on your profiles, are you stigmatising them or labelling them for the rest of their lives as children from difficult backgrounds?
- If you are a children's home, community centre, centre for children with disabilities, etc., will a publication featuring children in your care have unpleasant consequences for their future?

Institutions working with children and young people need to be very careful about how they share images, and they need to consider not only the legal, but also the ethical and human aspects of their decisions.











How can we think differently about publishing images and videos of children?

There are a number of ways to show young people, emotions or precious moments from an institution's activities without sharing identifiable images of children.

The golden standard for sharing these precious moments could involve:

- Publishing photographs or videos that convey emotions but do not show the physical features of children so that they cannot be identified;
- Publishing content that shows the results of children's activities, traces of their presence or contributions (e.g. drawings);
- Covering the faces of the children in the photo with graphic elements, so-called stickers, or blurring the image, bearing in mind that such changes are best made with image editing software, no matter how simple, and not with the tools provided by social networking sites. This ensures that the image is uploaded to the site in a form that makes it impossible to identify the person depicted;
- Using a closed parents' group to publish photos intended to keep parents informed about their children's progress and activities;
- Al-generated photos are an alternative, but it is important to note that
 there are risks associated with this solution, as artificial intelligence
 may rely on data and content already published online, and the end
 result may be confusingly similar to a real person;
- A space to share your ideas

• The most valuable thing you can do, however, is to talk to children about their right to control their own image and the need to respect the right of others to do so.

Examples of photos:





ADDITIONAL RESOURCES

- Child Protection Policy of the Orange Foundation, The Orange Foundation.
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