

# **Interim Guidelines for the taking and using of images of children and young people. (January 2016).**

## **Introduction**

These guidelines have been compiled using information from the Arts Council and Sports Council, Ireland. These guidelines are intended to provide support and guidance to any member, staff and volunteer who record and use images of children and young people.

These should be read in conjunction with:

- Policy & Procedures for Child Safeguarding, St. Patrick's Missionary Society 2014
- Children First, National Guidelines for the Protection & Welfare of Children ([www.dohc.ie/publications/children\\_first.html](http://www.dohc.ie/publications/children_first.html))
- Our Duty to Care ([www.dohc.ie/publications/our\\_duty\\_to\\_care.html](http://www.dohc.ie/publications/our_duty_to_care.html))
- The Data Protection Act 1998/2003 ([www.dataprotection.ie/documents/forms/NewAGuideForDataControllers.pdf](http://www.dataprotection.ie/documents/forms/NewAGuideForDataControllers.pdf))
- Data Protection Policy & Code of Practice 2016 ([www.spms.org](http://www.spms.org))

The use of images plays an important role in many aspects of work with children and young people. Images in many formats can be used to record, document, demonstrate, promote and celebrate activities and experiences. Increasingly, accessible and diverse technology has meant recording, sharing, disseminating and publicizing images are more widespread than ever before and this practice will undoubtedly continue and expand.

## **The legal context**

Other than the provision contained in the Child Trafficking and Pornography Acts 1998/2004, which contain specific provisions on the exploitation of children, there is no specific legal constraint on taking photographs or recording visual material with children and young people. Photographs and visual images are regarded as personal data under the Data Protection Acts 1998/2003. Personal data is defined as data related to a living individual who can be identified from the data in conjunction with other information in the possession of the data controller. It must be obtained fairly, accurate, kept up to date and should be kept and used only for one or more specified lawful purpose.

## **The right to privacy**

Children and young people, as well as adults, have a right to privacy and therefore their consent should be sought in relation to use of personal data, including images. In the case of children (up to 18 years of age) parental consent should be sought and information provided on how and for what purpose images will be used.

## **The child safeguarding context**

These guidelines have been prepared to provide information on good practice in work with children and young people, which involves taking, using and storing their images, and also in working with children and young people in the making of images. Unfortunately the making, displaying and storing of images of children and young people has become increasingly contentious in recent years with concerns being raised by parents and others about children's safety and welfare. These concerns include: protection of identity, prevention of exploitation of children or young people, ensuring that images of children or young people are not misappropriated or manipulated inappropriately and ensuring that children's rights to privacy and dignity are respected. Guidelines on good practice have been formulated to help those who use images in ways that respect privacy and do not expose children or young people to unnecessary risk.

Adults who work with children and young people, whether in a paid or voluntary capacity have a duty to care to ensure that children or young people are not exposed to harm, including exploitation,

embarrassment or distress. It is also considered good practice in terms of child protection to ensure that measures are taken to safeguard children and young people from misuse of images and that personal information such as identity and location are not made publicly available without their knowledge and informed consent.

## **Participation**

Children and young people have a right to participate in the social and cultural life of the society. Images of children and young people are one means of representing their participation. Therefore, a balance must be struck – the requirement to protect must be balanced with the right to participate.

These guidelines aim to provide clarity in terms of responsible practice and outline steps, which can be taken to ensure that children and young people's welfare is the paramount consideration.

## **Is it illegal to take photographs of children?**

No. There is no legal constraint on taking images of children or young people in public settings. However, photographs or images are defined as data and therefore come within the scope of the Data Protection Acts 1998/2003.

## **What is considered good practice?**

- Children, young people and their parents/carers should be informed in advance if and when images will be taken and their consent sought for image retention and use. This process is known as informed consent.
- Children, young people and parents should be informed as to how and where images will be used.
- Images should only be used for the purpose(s) agreed.
- Images should only be used in the intended context and should not be used out of context.
- In general, individual children should not be identified, avoid the use of the first name and surname of the individuals in the image. (This reduces the risk of inappropriate, unsolicited attention)
- Only use images of children or young people in suitable dress; ensure that images do not contribute to or expose children to embarrassment, distress or upset.
- Do not use images of children or young people who are considered vulnerable or whose identity may require protection.
- Where images are kept for future use, relevant names, dates and other contextual information should be stored with them as well as signed consent for use.
- Images should be carefully stored, with consent attached or cross-referenced.
- Images should only be passed to third parties for their use where this has been agreed as part of the consent.
- Do not allow photographers to be unsupervised or with individual access to children or young people.
- Refusal of consent to take images should not in anyway limit children or young people's participation in activities.
- All members, staff and volunteers should be aware of the report procedures in relation to inappropriate images.

## **What is 'informed consent'?**

Informed consent is a process whereby participants are informed and asked for their permission or agreement prior to taking photographs or recording images. Individuals should be informed of the purpose(s) the image will be used for and asked for their consent. Where images may be used for a variety of purposes (e.g., documenting, promoting or celebrating), consent for each purpose and/or in a variety of settings (e.g., reports, public media, or websites) should be obtained.

As a 'child' is defined as anyone under the age of 18 years, consent of parents is also required. In addition, the individual should be given any other information required to ensure fairness and transparency. For example, individuals should be informed if the image will be passed on or made available to a third party, used for marketing purposes or displayed on the Internet. This should be clearly explained as part of the process of informed consent. If this is not done, or if consent is refused, then images should not be passed on to third parties or put to any use not agreed. Informed consent includes being given the opportunity to opt out if desired.

### **What about spontaneous or unplanned images?**

It is recognised that on occasions spontaneous or unplanned photographs will be taken without the awareness or prior consent of the individual(s) involved. With the increased availability of digital recording media this is becoming increasingly common. Should this happen, the participant(s) should be informed of the purpose of the photograph as soon as it is taken and asked for their consent. If consent is refused, the image should not be published. Where consent is obtained it should be recorded on a consent form, dated and signed.

### **Can consent ever be obtained retrospectively?**

In some circumstances it may be necessary to obtain retrospective consent. For instance, where group photographs are taken, but only selected images are to be retained for future use, or where images are used for different purposes than originally intended. In situations where obtaining prior consent would not be practical e.g., at a public event where participants would not be known in advance, consent should be sought for images taken, to be used subsequently. The same process as that used for informed consent, outlined above, should be followed and noted.

### **Guidelines for images taken by children and young people**

In circumstances where children or young people take photographs or video clips of other children or young people, for their own use, similar ground rules should be agreed.

- Images should only be taken with the knowledge and consent of participants.
- No images should be taken which could give rise to embarrassment or distress.
- Supervising staff have a duty of care to challenge any inappropriate behaviour

### **Privacy**

Privacy is protected as a personal right under the European Convention on Human Rights, which is incorporated into Irish law. The Irish Constitution does not specifically state a right to privacy but the courts recognize that the personal rights in the Constitution imply the right to privacy.

Privacy applies to family life, home and correspondence. Sensitivity and discretion should be shown at all times in working with children or adults in terms of personal issues, for example, vulnerability, grief or distress. In publishing such information, the feelings of the people concerned should be taken into account.

The Press Council of Ireland Code of Practice notes that particular regard should be paid to the vulnerability of children, bearing in mind their age, the sensitivity of the subject matter and what circumstances, if any, are of public interest. Children and young people should be free to complete their

time at school without unnecessary intrusion. The fame, notoriety or position of a parent or guardian must not be used as sole justification for publishing details of a child's private life.

Public persons are also entitled to privacy. However, where a person holds public office, deals with public affairs, follows a public career, or has sought or obtained publicity for his or her activities, reasonable private information such as name, relevant activity or other data may be used.

### **Data protection**

Data protection is the means by which the privacy rights of individuals are safeguarded in relation to processing of personal data. These rights apply where the information is held on a computer or in manual form. These rights also apply to photography and video or audio recordings. (See: A Guide to Your Rights [www.dataprotection.ie](http://www.dataprotection.ie)).

### **Copyright**

Ownership of copyright rests with the artist/ photographer (or his/her employer). Images are not owned by the individual(s) whose image is recorded. Permission to use images owned by a photographer or agency is by prior agreement with the copyright holder.

### **Publishing images of children on websites**

The Internet is a public, accessible and largely unregulated media. Decisions to post information, including images, on websites should take account of this. Photographs set in a particular context (e.g., an social/family event) in an identified location reveal a substantial amount of information, through which children may be identified. For example, images accompanied by personal information - (name) is a member of (local school/group) and recently took part in xxx) - could be used by an individual to learn more about a child or young person and used to form a relationship with them or engage in a process of 'grooming' them for abuse.

The Society will make decisions about the type of images that represent the Society and its activities appropriately and ensure parents support the policy.

When assessing risk, the most important factor is the potential of inappropriate use of the images. You should take the following steps to reduce the potential for misuse:

- Avoid using children's names (first name or surname) in photograph captions.
- Use a parental permission form to request and record parental permission to use an image of their child. This ensures that parents know that an image of their child is being used to represent the Society or activity.
- Ask for children's permission to use their image. This ensures that they are aware of the way their image is being used to represent the Society.
- Only use images of children in suitable dress to reduce the risk of inappropriate use.
- Certain activities present a much greater risk of potential misuse. It is preferable to use images that depict an activity or group context, rather than a particular child.
- Consider the age of children when deciding what is appropriate.
- Develop a procedure for reporting the use of inappropriate content or images to help reduce the risks to children and young people. (See: Irish Internet Advisory Board [www.iab.ie](http://www.iab.ie)).

## **Glossary and Definitions**

## **Children**

In Irish law a 'child' is anyone under the age of 18 who is not or has not been married. For the purpose of this document, the terms 'children and young people' are used to reflect the differences in age and self identification within this broad definition.

## **Duty of care**

A duty of care identifies the relationship that exists between two persons (or a person and an organisation) and establishes the obligation to exercise reasonable care with respect to the interests of the other, including protection from harm.

## **Position of trust**

A position of trust relates to a setting or situation where someone is placed in a position of authority over another person in an ongoing relationship. A position of trust implies that someone has some degree of power or influence over another (by virtue of age, position, knowledge/ information) and that the relationship is unequal. Individuals in positions of trust may be family members, carers, volunteers or employees. A position of trust depends on the relationship and on the degree of authority, reliance and dependence on it. It is not necessarily related to, e.g., formal position or salary.

## **Negligence**

To be liable for negligence, a set of components must be present - a duty of care, a breach of that duty of care, damage or harm to the client owed a duty of care, a causal link between the action of the person owing a duty of care and the harm done to the person owed a duty of care.

## **Risk**

Risk means the possibility of exposure to harm, injury or danger. Risk assessment is the measure of the extent of possible risk against the likelihood of its occurrence.

## **Vulnerability**

Children, young people or adults may be considered vulnerable for a number of reasons. These can include ill-health or disability, minority status, poverty, homelessness, displacement. Children may be vulnerable by virtue of age, or because of some specific circumstances in their lives, e.g., abuse, minority status.