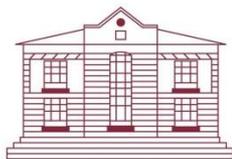


OUR CHILDREN AND SOCIAL MEDIA

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WHAT DOES THE LAW SAY?



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#Selfie



WHAT IS SOCIAL MEDIA?

Social media is any application which allows a discussion over the platform of the internet. It involves sharing, connecting, hashtagging, downloading and uploading. The platforms include Facebook, YouTube, Pinterest, Twitter, Instagram, Whatsapp, Snapchat, Flickr, BBM and Wechat as well as 600 000 other websites and applications.



“Digital Natives”

Definition of DIGITAL NATIVE –A digital native is a person who has been born in the digital age and who has interacted with digital technology from a young age.

- It is a fact that technology affords us an opportunity to do and say things that we would probably never say or do in person.
- Every parent must accept that our children's lives are forever connected with digital technology as it fundamentally impacts on the way our children communicate, form relationships and conduct business. The internet is our children's playground.

Social Media and the Law

- The online world is not separate from the offline world. There is NO set of different laws that apply online. The law which applies in our everyday lives applies ONLINE.
- South African law is clear that when publication occurs every single person who is directly or indirectly responsible for the publication can be held legally liable for it.

KEY WORD: PUBLICATION

Publication is making content available to another in any form – orally or in writing or otherwise

If you retweet defamatory content or share a post on Facebook, are tagged in a status or post a picture on Instagram, or even liking a photograph – these are all acts which result in publication.



**“WHAT HAPPENS ON
SOCIAL MEDIA STAYS
ON GOOGLE
FOREVER”**

BE CAREFUL:

What you say and do online has potentially serious and significant legal and disciplinary consequences that can cause you major reputational harm.



Like

Our Digital Children

- Tablet computers are a reality in education;
- Schools are en route to becoming paperless over time;
- Concerns have been expressed about children who spend too much time online – these children find it hard to concentrate in class, are permanently distracted and have very short attention spans.
- Schools internationally are complaining about our children's "tech" speak in their class work and projects.
Eg: 2moro, u, LOL, msg and gud.



What can parents do?

As parents you need to guide your children through the digital age and you need to be aware of the key risk areas facing your child in the digital era. I would also like to offer tips to educate you and protect your children.

- Take an active interest in your child's online life
- Talk to your children
- Build a relationship of trust and understanding
- Ensure that children guard their personal information properly, both online and offline
- Impress on your child to never share their login details with anyone
- Make sure that your child's telephone number and home address is not posted on these sites
- Warn your children against posting their location or "checking in" on social media sites

facebook[®]



But they are just children?

- Your young, innocent child can still get into serious legal trouble due to online activity;
- In South African law a child attains majority at 18 years, however if a child is found to have legal capacity he or she can be held legally responsible for his or her conduct;
- It is irrelevant whether you are an adult or not.



WHEN CAN A CHILD ENTER A VALID CONTRACT?

The Children's Act states that contractual capacity is acquired at 18 years.

BUT – a child under the age of 18 years does have contractual capacity in respect of contracts that grant only rights without any obligations;

AND – a child under the age of 18 years can enter into a contract in respect of which he acquires rights and responsibilities, if assisted by or represented by a guardian.



This means:

- If you consent to your under aged child going onto a website and signing up to **ANY** social media site, it means that the user (your child) is concluding a contractual relationship with the company that operates the website.
- So if you consent to the creation of the social media platform or you find out about it and do NOTHING – you can as parent be held to have given tacit consent to the child's contract with the website.

WHEN CAN A CHILD BE HELD LIABLE FOR A CRIME?

- Children under the age 10 years have no criminal capacity.
- Children over the age of 10 years, but younger than 14 years, may have criminal capacity.
- Children over the age of 14 years have full criminal capacity.

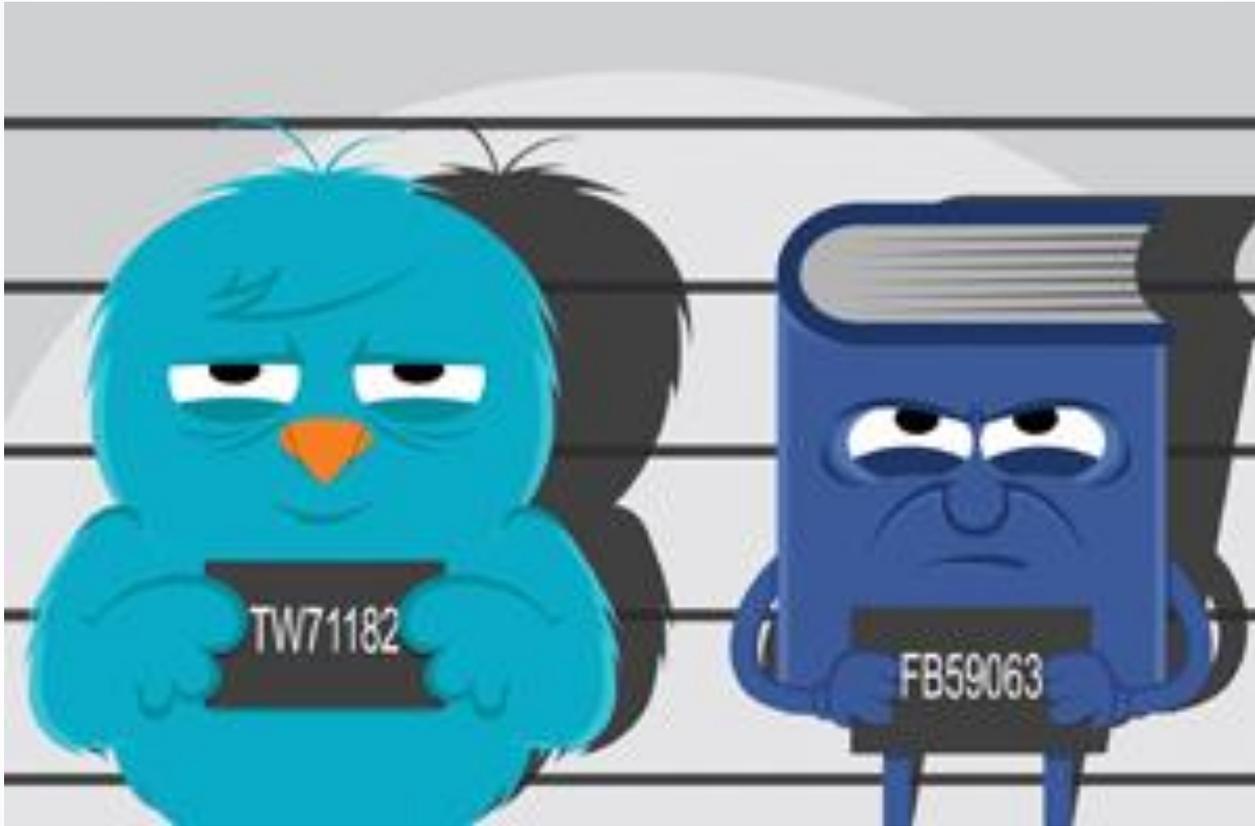
CAN A CHILD BE SUED CIVILLY?

- A child under the age of 7 years old may be sued, but the action would be in the name of the child's parents;
- A child between the age of 7 and 18 years old may be sued in his or her own name. Court papers must be served on the child's parent or guardian;
- A child over 18 years old has FULL capacity and can be sued in his or her own name.

Real World Example:

Johannesburg principal case

- In 2006 a 15 year old boy decided that it would be funny to photoshop the photograph of the principal and deputy principal's heads onto the bodies of 2 gay bodybuilders in a sexually suggestive position. He then also transposed the school badge over the teachers' genitals.
- He thought it was very funny and shared it with a friend. Even though he begged his friend not to share the picture it later was posted in living colour on the school notice board and widely circulated.
- Punishment – the boys were not allowed to assume leadership positions at school or wear honour's blazers for the remainder of the school year.
- The school laid criminal charges and the boys received a conviction and sentence of community service to clean up at the JHB zoo.
- The principal and Deputy principal also sued the boys for R600 000 for the injury to their dignity, good name and reputation.
- This case ended up in the Supreme Court and later the Constitutional Court.
- The Constitutional Court is the highest court in the land. The Constitutional Court found that the picture was embarrassing and disgraceful to society.
- The boys were ordered to pay R 25 000 to the principal and their legal costs.



PROTECT YOUR CHILD FROM ONLINE PREDATORS

- Educate yourself – be aware of what websites and applications your children are using;
- Read online privacy policies;
- Teach your children to guard their personal information;
- Work with your child in setting up their social media accounts;
- Not everyone online is who they say they are- instil a sense of caution;
- Children must NEVER meet someone face to face that they have met online without your knowledge and consent.



- Let your children know that they can speak up;
- Use the technology available on these sites to protect your children;
- Install software that blocks outgoing transmissions of personal information;
- Install tracking software on your child's cell phone or tablet through your service provider;
- Make sure that you know who your child is friends with on these sites.



What are the dangers of social media and the internet?

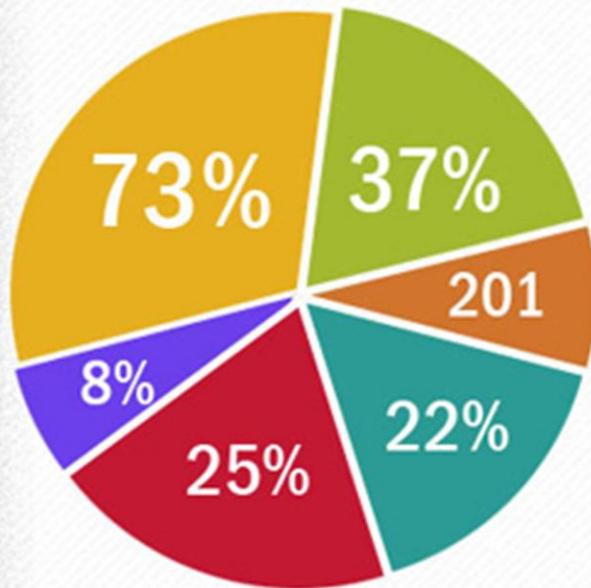
Violence. Pornography. Hate Speech. Nudity. These are all things that you would not want your child to be exposed to. But these are all things that are freely and readily available on the internet, and which are all legal.

It is YOUR responsibility as a parent to limit your child's exposure to adult content.

Technological Tools

- Activate your computer's filtering tools to block certain content and to track usage;
- GOOGLE allows you to filter certain content via the "Search settings" function;
- You can also block pornographic content via your child's service provider or disable internet completely;
- You have many options – including web blocking / email blocking / online usage reports / set up alerts / Instant messages features to record inappropriate dialogue (Screen munches)

Teen Social Networking Stats



- 73% of teens are on social networks
- 37% send messages to friends every day
- 8% of American teens use Twitter
- 22% of teenagers log on to Facebook over 10 times per day
- 25% of Facebook users are under the age of 10
- The average teen has 201 Facebook friends

Your child's right to privacy VS your responsibility to keep your child safe

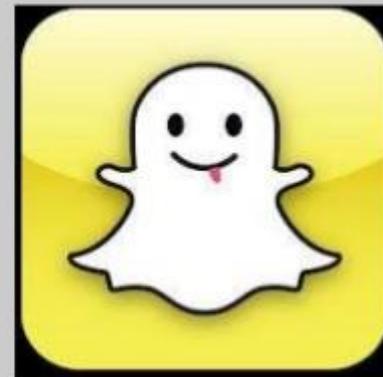
- A child who is afforded the privilege (**YES – PRIVILEGE – NOT RIGHT**) of using a device supplied by their parent, in their parent's home, using their parents' network, that child does not have a reasonable expectation of PRIVACY.
- Your child's safety will always TRUMPS their right to privacy.

Underage Sexual Offences

- The ease and immediacy of the internet has created a new trend amongst our teenagers – “**SEXTING**”;
- Sexting is the sending of sexually explicit messages, photos or videos, normally via cell phones;
- The popular application SNAPCHAT allows users to send photos and videos to a controlled list of recipients. It is displayed for 10 seconds and then “disappears.”
- Young children are sending highly inappropriate content to each other thinking it is being deleted. It is NOT being deleted;
- The content is only HIDDEN not deleted;
- A screen shot can be taken and this content can be retrieved.
- As at May 2014 SNAPCHAT reported that **700 million** photos and videos are sent using SNAPCHAT every day!

SnapChat

- Mobile messaging app that destroys photo's and text messages within 10 seconds of them being opened.
- Often referred to as the "safe sexting app".
- User sets the amount of time the recipient can view their photo (range of 1-10 seconds) before it self-destructs.
- **Dangers:** Youth think the pictures they are sending are gone for good. But people can still grab screenshots of your photo. You will be alerted the recipient has made a copy, but you can't retrieve your photo.





If you are under the age of 18 and you do the following – you have committed a criminal offence – there is NO defence.

- taking a sexually explicit picture of yourself;
- sending a sexually explicit picture of yourself to another person;
- having a sexually explicit picture of yourself or another teen on your phone or computer;
- asking another teen under the age of 18 to send a sexually explicit picture to you or another person.

86% OF TEENAGE GIRLS SEXT 17%
OF SEXTERS SHARE THE MESSAGES
THEY RECEIVE 61%
OF ALL SEXTERS
WERE PRESSURED
TO DO IT AT LEAST
ONCE 22% OF TEEN
GIRLS AND 18%
OF TEEN BOYS
SEND NUDE PHOTOS
15% OF TEENS
DON'T KNOW THE
PEOPLE THEY
SEXT.



DON'T DO IT.



Child Pornography

The Films and Publications Act 1996 makes it clear that anything to do with child pornography is a crime.

Legal Issues

▶ CHILD PORNOGRAPHY AND THE LAW IN SOUTH AFRICA

- ▶ The creation, production, distribution, use and possession of child pornography are offences in terms
- ▶ of both the *Films and Publications Act, No 65 of 1996 (FPAAct)* and the *Criminal Law (Sexual Offences and Related Matters) Amendment Act, No 32 of 2007 (SOAct)*.
- ▶ “Child pornography”, if one is to combine the definitions in the FPAAct and the SOAct with specific
- ▶ relevance to “sexting”:

is any image, however created, or any description or representation of a person, real or simulated, who is depicted, made to appear, look like, represented 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 sexual conduct

(b) engaged in an act that constitutes a sexual offence

(c) participating in or assisting another person to participate in sexual conduct

(d) engaged in an act of sexual penetration

(e) engaged in an act of sexual violation

(f) engaged in an act of self-masturbation

- The Films and Publications Act also **OBLIGES** any person who has knowledge or suspicion that a child pornography offence has been committed to inform the SAPS, failing which they are **GUILTY** of an offence.
- Parents, educators, social workers and psychologists who become aware of **SEXTING** whether consensual or **NOT**, have **NO** choice and **MUST** report the matter to the SAPS.
- Do not post intimate photos of your children online as **ANY** image of a naked child is **CHILD PORNOGRAPHY**.

IMPORTANT TIPS FOR PARENTS

- Encourage your children to come to you if they are feeling pressured to engage in SEXTING;
- Recognise the maturity and courage it takes for your child to tell you about SEXTING;
- Don't ban your child from the internet or take away their cell phone if they do come to you. This will discourage openness and honesty;
- Teach your child to take screenshots of abusive messages;
- Social media sites have mechanisms to report bullying or harassment;
- Serious threats must be reports to the SAPS or your child's school;
- Explain to your child NOT to log into another child's account or use someone else's phone to post offensive or harassing messages, tweets or status updates.

Implement Device Management

- Manage time spent by your child online;
- Keep tabs on your children's use of devices after dark;
- Have a family charging station at night. DO NOT ALLOW charging of their devices next to their beds at night.

Setting Boundaries with Kids On the Internet



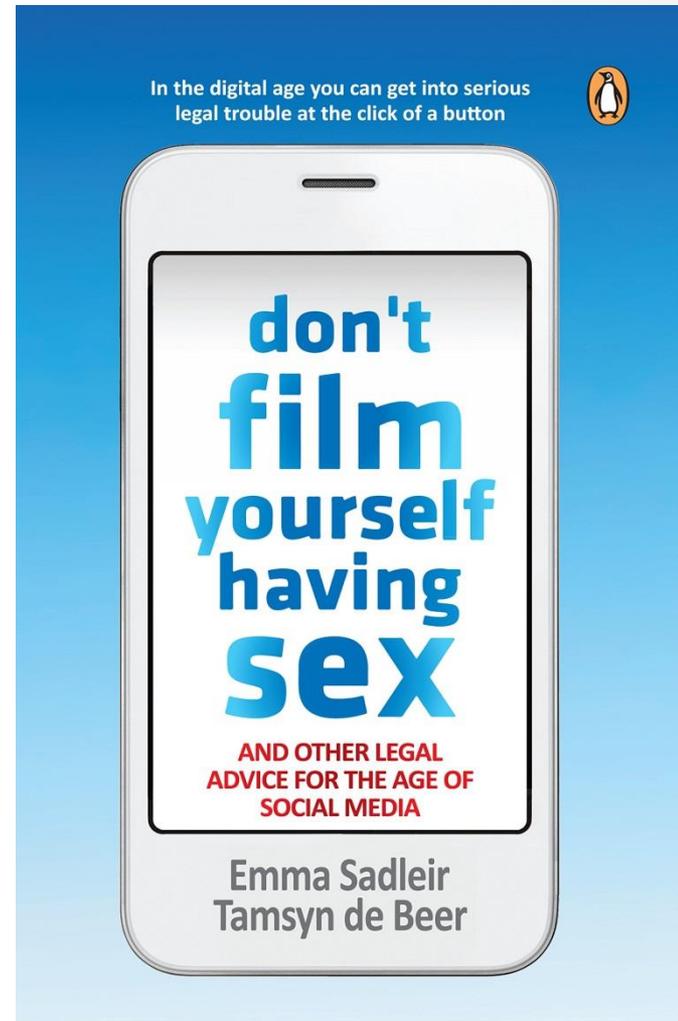
The American Academy of Paediatrics and the Canadian Society of Paediatrics advise that:

- Infants age 0 – 2 years should have NO exposure to technology;
- Children age 3 – 5 years should be restricted to 1 hour per day;
- Children age 6 – 18 years should be restricted to 2 hours per day.



Advice from Social Media Lawyers

Emma Sadleir and Tamsyn De Beer, Social Media Lawyers and authors of “Don’t Film Yourself Having Sex” advise that our children today are all “digital citizens”. Just as you would teach your children to be responsible citizens in everyday life, so too are you expected to teach them to be responsible digital citizens.



Thank you for your time

For further assistance or advice on this issue, please do not hesitate to contact me.

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