

DISPUTE RESOLUTION ALERT

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MEDIA:

PARENTS MAY FACE DEVASTATING CONSEQUENCES BY POSTING SEEMINGLY INNOCENT PHOTOGRAPHS OF THEIR CHILDREN ON SOCIAL MEDIA

Parents should realise that there are potential consequences associated with posting photographs of their children on social media, particularly as paedophiles and child trafficking syndicates may access and use any such information that is publically accessible. South African parents are the legal guardians of their children until they are adults. Parents therefore have the responsibility to protect their children's privacy and security and must ensure that no harm is caused to their children, even if such harm may only result in the future.

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Worldwide, the average parent reportedly shares almost 1,500 photographs on social media of their child before they turn five years old (according to Parent Zone, a UK-based site about parenting in the digital age). What parents may not realise is that, in addition to causing potential future embarrassment, they may be infringing on their children's privacy and security and may face damages claims by their children.

In a case that is reportedly going to be heard by the Austrian Courts during November 2016, an 18-year old woman is reported to be seeking damages from her parents for posting over 500 "embarrassing and intimate" baby photographs of her since 2009 to approximately 700 of their Facebook friends without her consent. Whilst it could not be definitively confirmed upon further research whether this is in fact a real case or not, the potential consequences for social media users' remains relevant. This claimant is reported as saying that her parents have "made her life a misery" and they "knew no shame and no limit – and didn't care whether it was a picture of me sitting on the toilet or lying naked in my cot – every stage was photographed and then made public", and therefore wants the impugned posts removed. Her father has apparently refused to remove the photographs on the basis that, since he took the photographs in question, he has the right to publish them.

France's strict privacy laws make parents responsible for protecting images of their children and permit children to claim damages from their parents in court for breaching their privacy or endangering their security online when parents post and share photographs without their consent. The result is that, in terms of applicable French law, fines of up to €45,000 or imprisonment of up to one year may be imposed in severe cases.

Damages aside, there are other potential risks associated with publically posting photographs of children on social media platforms: criminals and sexual predators could steal or digitally manipulate such information for their own agenda. Highlighting this risk, France's national police force (the National Gendarmerie) posted a statement on their Facebook page on 23 February 2016 warning parents of the potential dangers of posting photographs of children on social media. The statement was made in response to the so-called "motherhood challenge" doing the rounds on Facebook, where, if they were "proud of their children", mothers were prompted to post three photographs of themselves and their children, and then tag ten other mothers who they knew would do the same. Similar warnings were also issued by the German Federal Police during October 2015.

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South African social media users are therefore encouraged to manage the security settings on their social media accounts proactively and to take caution when posting photographs and information.



At present, Facebook has no policy against sharing photographs of children, although it does require a user to be at least 13 years old before creating a profile. At a press conference held in London on 11 November 2015, in response to growing international pressure to implement security measures to protect children, Facebook's Vice President is reported to have said that Facebook may develop a notification system to warn parents against putting up pictures of their children online that would be publically viewable.

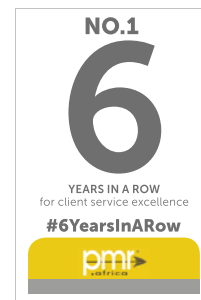
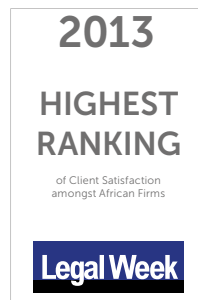
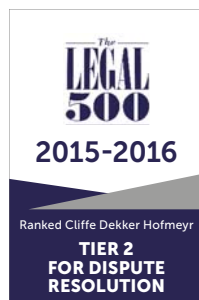
There are no reported cases in South Africa involving children taking their parents to court for posting photographs or sharing information concerning them on social media. In comparison to countries in

Europe, and the United States of America, South African privacy laws are relatively underdeveloped. Should the South African privacy laws follow in the footsteps of these countries, there is a possibility that South African parents may also be sued by their children. South African social media users are therefore encouraged to manage the security settings on their social media accounts proactively and to take caution when posting photographs and information. This precaution is particularly important because 'public' posts on social media platforms are searchable and remain publically accessible.

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(overseen by Pieter Conradie)*



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CHAMBERS GLOBAL 2011–2016 ranked us in Band 2 for dispute resolution.

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