

SAFE USE OF IMAGES:
Norfolk County Council
guidelines and recommendations

Revised March 2003

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1. Background

- 1.1 Increasingly, technology is making it easier to use pictures and images in news media, printed materials or on websites. Along with this increased freedom comes the responsibility to ensure that individual and parental rights are respected, and that vulnerable individuals are protected from risk or exploitation.
- 1.2 These guidelines are intended to apply to all forms of publication, in various print media, on film or video, and electronically on websites.
- 1.3 Throughout the document, photographs (both digital and film) and video are referred to as images.

2. Why is this document being issued?

- 2.1 The ease with which images can be captured and used offers many positive opportunities, but there are also risks and pitfalls which need to be avoided. At its worst, careless use of images can put vulnerable people, especially children, at risk, and can result in legal action against the Authority.
- 2.2 There needs to be particular care when obtaining and publishing images of children. Issues of child protection and parental consent cannot be ignored or taken for granted. In child protection terms, schools have found that parents' perception of risk varies enormously. Schools are as likely to come under fire for over-reaction as they are for any apparent lack of concern.
- 2.3 In schools there is a general lack of clarity and consistency about the use of photographs and the consent needed for filming or photography. This has caused problems and frustration both for the schools involved, and for the news media.
- 2.4 What is clear is that the consent of the head teacher is not sufficient – there may be reasons for a child's picture not being used that only a parent or guardian would know.
- 2.5 This document is intended to provide a clear and consistent approach that will be understood and accepted by all involved, and will ensure

there is proper regard to the law and the protection of vulnerable individuals.

- 2.6 The fundamental issue is that of consent, but this document also provides guidance on the suitability of images, and how to avoid pitfalls in using images inappropriately.

3. The Legal Framework

- 3.1 The 1998 Data Protection Act now covers the use of images, and there is Common Law and case law about the age at which young people can give consent.
- 3.2 Data Protection Act. In practical terms, the Data Protection provisions mean that you should be extremely careful about using old photographs or any sort of stored image for a new purpose. You will need the express permission of the individuals in the image to do so.
- 3.3 You will also need to allow access to stored images upon request, and make arrangements for the destruction of out of date images (section 8).
- 3.4 Common Law and case law. Common Law holds that a child lacks the legal capacity to give a valid consent and that capacity is generally vested in the parent or guardian of the child.
- 3.5 There is case law about when a young person has the capacity to give consent, but for practical purposes it should be regarded as being the age of 18.
- 3.6 **Children in Care** A complication is when a child is in the Care of the Local Authority and in such circumstances you should always contact the County Council's Communications team on 01603-222973 or the Social Services Communications Officer on 01603-223154.

4. Gaining valid consent - Adults

- 4.1 Consent will only be valid if the person agreeing to the use of their image has a clear understanding of what the image will be used for. This relies upon a clear and full explanation from the person asking for consent. For example, a person giving consent to appear on a health promotion leaflet might object if it turns out to be for sexually transmitted diseases.

Putting it in writing

- 4.2 Where possible, you should provide a written explanation of the purpose and final use of the images, and receive consent in writing. This is particularly important when sensitive issues are involved. A sample form (SU5) is in the Appendix.

Where written consent is not possible

- 4.3 Obtaining written consent is not always practical and most adults will be able to give valid consent at the time images are being taken. What is important is that the adults involved have a full and clear understanding of what the images will be used for.
- 4.4 Such circumstances can easily arise if the news media arrive at short notice to cover an event. In such circumstances, it is good practice to make sure that those being photographed/filmed know that this is for use in news media coverage. This gives them the opportunity to withdraw if they wish to do so.

5. Adults with Learning Difficulties

- 5.1 Adults with learning difficulties may not always be in a position to give immediate consent to the use of their image. Nevertheless, they should be given the opportunity to discuss the matter with a carer or supporter, and if they clearly understand the final purpose of the image, their decision should be respected.

6. Gaining Valid Consent - Children and anyone under 18

- 6.1 Always seek written consent from parent or guardian before the images of children and young people are published. As with adults, that consent must be based upon a full and clear understanding of what the images will, and will not, be used for.
- 6.2 For most purposes consent obtained in advance from parent or guardian will normally be sufficient. However, particular care is necessary when pictures are taken during PE or swimming. In such cases, parental consent in writing should be obtained for the use of the final images. This may not be possible for news media coverage, however.
- 6.3 Sample forms are attached in the Appendix covering:
- Annual consent for primary and high schools (SU1 & SU2 - see blanket consent, 6.4 below);
 - Consent for images to be taken of children for specific purposes or where no general consent exists (SU3);
 - Consent for the use of individual pictures/images that have already been taken (SU4).

Availability of sample forms

These forms are available electronically from the Communications team.
Telephone 01603-222972 or e-mail John Birchall, Media Officer, on
john.birchall.cex@norfolk.gov.uk)

6.4 Annual 'blanket' consent

Some schools have at the start of the school year asked parents to consent to images of their children being taken in the year ahead. While this may be useful in alerting the school to children whose parents object, it needs to be used carefully and with safeguards.

- 6.5 It should be as specific as possible about the images that are covered, For example:
- Reception Year photographs for publication in the local media;
 - Media photography of school drama, music and sporting events;
 - Photographs for use in school brochures and publicity material.

- 6.6 Not all children join a school at the start of a school year. Schools should ensure that the parents of such children are given the same opportunity to consent or object.
- 6.7 Sample forms for schools (SU1 & SU2) are included in the Appendix.
- 6.8 Limitations of annual ‘blanket’ consent**
- It is not reasonable to expect such consent to cover all eventualities. For example, parents might object to their children appearing alongside a visiting politician or celebrity. In such circumstances, parents should be warned in advance and given the opportunity to object.
- 6.9 Renewal and opportunities to withdraw consent**
- It is not reasonable to expect such blanket consent to last for a whole year. Family circumstances change, and schools should ensure that parents or guardians have the opportunity to withdraw this general consent. A termly reminder in regular communications with parents is a simple way of achieving this.
- 6.10 Where obtaining consent is not possible**
- Where there is no opportunity to gain consent – if the media want to film or photograph in school at very short notice, for example – it may be possible to arrange shots which do not identify individual pupils.
- 6.11 If in any doubt, contact the County Council’s Communications team on 01603-222973.
- 6.12 Photography or filming by parents**
- It is natural for parents to want to record their children’s time at school, especially when they take part in activities such as sports, concerts, nativity plays or other types of show.
- 6.13 Issues can arise when photography/video recording/filming takes place at such events. These can include:
- Disturbance to other members of an audience;
 - Distraction to those taking part;
 - Copyright restrictions;
 - Parental objection;

- Child protection concerns.
- 6.14 A decision on whether or not to allow photography or recording rests with the Head in consultation with Governors. The decision should be taken and communicated to parents in writing well in advance of the event or performance.
- 6.15 If filming or photography is to be allowed**
- If the decision of the Head and Governors is to allow photography or filming, parents should be given an opportunity to object (Sample Letter 1, Appendix).
- 6.16 If an objection is raised, the school will need to consider ways in which the difficulties this causes can be overcome. It may be possible to achieve this without having to reverse the original decision. If a ban has to be imposed, other steps can be taken to reduce the disappointment of parents who wanted to photograph or record the event (see below).
- 6.17 If filming or photography is not to be allowed**
- If the decision is not to allow filming or photography, some parents are likely to be disappointed. It is important that schools explain that there are a number of reasons for this decision – disturbance and distraction are the main reasons given where bans are already in place. (See Sample Letter 2, Appendix.)
- 6.18 Parents will generally be willing to accept these practical reasons, but experience has shown that many do not see general child protection issues as being sufficient justification for a ban.
- 6.19 However, schools may have to ban photography or filming/video recording at an event because of objections raised by parents. (See sample Letter 3, Appendix.)
- 6.20 Where photography or recording of an event or performance is not allowed, schools should consider alternative arrangements such as:
- Professional photography arranged by the school. Parents will need to be given the usual opportunity to object, but it provides a means for the school to retain control of images in a way that may be acceptable to

objectors. Only acceptable images would be made available for parents to order.

- Allowing parents an opportunity to photograph or film before or after the event itself, when an objector would be able to withdraw their child without affecting the actual event or performance. For example, bringing together the cast after a school play, or prize-winners after school sports. (Sample letters 3 & 4, Appendix.)

6.21 Children in the Care of Social Services

For children in Care, always contact the Communications team on 01603-222973 or the Social Services Communications Officer on 01603-223154.

6.22 Naming Children

Unless there is a particular reason for a child to be named (eg a prize winner), primary school children should generally not be named.

This is the approach now adopted by organisations such as the Child Protection in Sport Unit (www.sportprotects.org.uk) and is accepted by some news organisations. Instead, children can be identified by first name only – ‘John in Year X’, or by class – ‘children from Class/Year X, XX School’.

6.23 However, some newspapers are strongly of the view that there is no reason to change their existing practice of naming the children shown in the photographs they publish.

6.24 If schools are of a similar view, they must have the consent of parents before names are released for publication. Whatever the decision, it is important that the newspaper (or other news organisation) is informed before a photographer is sent out.

6.25 Children’s addresses or other contact details, such as e-mail, should not be supplied or published.

6.26 Older children

When children reach high school age, the reasons for withholding surnames diminish. It is suggested that paragraph 6.12 should apply to Years 7 and 8, but that a more relaxed approach is appropriate for older

pupils. However, do not supply or publish home or e-mail addresses of any pupils.

6.27 Portrait photography in schools

Many schools allow professional photographers to come into school to take portrait photographs of individual children, groups or classes.

These are then offered for sale to parents.

6.28 Schools should make it clear to parents that this is essentially an arrangement between the photographer and parents (Sample Letter 4, Appendix). Schools may facilitate this arrangement, but cannot take responsibility for issues such as copyright and the use of images held by the photographer.

6.29 Nevertheless, as a matter of good practice schools should:

- Take reasonable steps to ensure the bona fides of the photographer;
- Ensure that parents know about the photo sessions BEFORE they take place and have an opportunity to withdraw their children;
- Ensure that children whose parents have objected are not photographed;
- Provide reasonable supervision during the photo sessions.

Remember

There can be sound reasons why parents or guardians would not want some children's images published.

No consent = no filming or photography that identifies individual children.

7. Other areas where consent may be necessary

7.1 Corporate Images

Consent is not just necessary for images of people. It may also be necessary for corporate images – e.g. a picture of a business or a factory. Avoid problems later by approaching the organisation or company before you use such an image.

8. Pitfalls and how to overcome them:

8.1 Re-using old images

Some of the most serious problems have arisen when images taken for one purpose have been used for something entirely different.

Remember, **new use requires new consent**. This can be difficult to obtain for pictures that have been stored for some time. It may be easier and safer to use a new image obtained and cleared to illustrate the subject in hand. If this is not possible, choose an image from a photographic library (see next paragraph) – particularly useful when time is short.

8.2 Sensitive issues

If you need pictures for purposes that might be sensitive or controversial, contact the Communications team about using images from a photographic library. These libraries have images that are cleared for use, although care is still needed because images can have different levels of use restriction. These can relate to the subject matter, or even the size of the final image. Contact the Communications team on 01603-222843 for advice.

8.3 Storage of images

Whether your images are stored as photographs or electronically, you must ensure that they are secure and are clearly labelled and dated so that they cannot be used without proper consent.

8.4 Rights of access to stored images

You must (under the Data Protection Act) ensure that parents or individuals have access upon request to stored images of their children or themselves.

8.5 Destruction of images

Images should not be held for an unreasonable length of time. The attached consent forms specify a two-year period before they will be destroyed. Clear labelling and dating will allow out of date images to be readily identified and destroyed.

Unauthorised Use

If you find that someone has used one of your images without clearance, you should seek removal of the offending image(s) and contact the Communications Team on 01603-222973 or Data Protection Officer John Brock on 01603 222170.

8.6 Web images

It is very easy to download images from the internet, but this does not mean that it has been cleared for general use. Unless you know that an image has been cleared, do not use it.

Comments

We welcome any comments on suggestions on these guidelines. Contact John Birchall, Media Officer, on 01603-222972, e-mail john.birchall.cex@norfolk.gov.uk

Other resources which may be of use

Data Protection Act 1998

www.hmso.gov.uk/acts/acts1998/19980029.htm

Office of the Information Commissioner

www.dataprotection.gov.uk

Child Protection in Sport Unit

www.sportprotects.org.uk

Appendices

These sample forms and letters can be adapted to suit your own policies and circumstances. They are available electronically on the Intranet or by contacting John Birchall, Media Officer, on 01603-222972, e-mail john.birchall.cex@norfolk.gov.uk.

Form

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|------------|---|
| SU1 | PRIMARY SCHOOL ANNUAL CONSENT FORM 2002/03
Photography and the use of images |
| SU2 | HIGH SCHOOL ANNUAL CONSENT FORM 2002/03
Photography and the use of images |
| SU3 | CONSENT TO TAKE AND USE PHOTOGRAPHS OR OTHER
IMAGES OF A CHILD |
| SU4 | CONSENT TO USE IMAGES OF A CHILD
(After they have been taken) |
| SU5 | CONSENT FORM TO USE AN IMAGE OF ANYONE AGED 18 YEARS
OR OVER |

Letter

- | | |
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| 1 | Where a school proposes to place no restrictions on photography at a school event. |
| 2 | Where restrictions are proposed at a school performance. |
| 3 | Where restrictions are proposed at a sports event. |
| 4 | Portrait photography by a professional photographer in school. |

