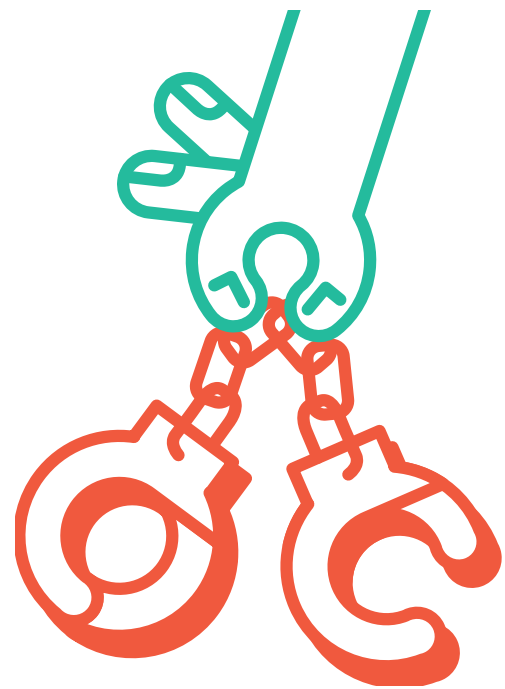


Legal Framework

The online sexual coercion and extortion of children in Ireland are offences under the Child Trafficking and Pornography Act 1998 and the Criminal Justice (Public Order) Act 1994. The Child Trafficking and Pornography Act 1998 has been recently amended by the Criminal Law (Sexual Offences) Act 2017.

Child Trafficking and Pornography Act 1998 (as amended by the Criminal Law (Sexual Offences) Act 2017)

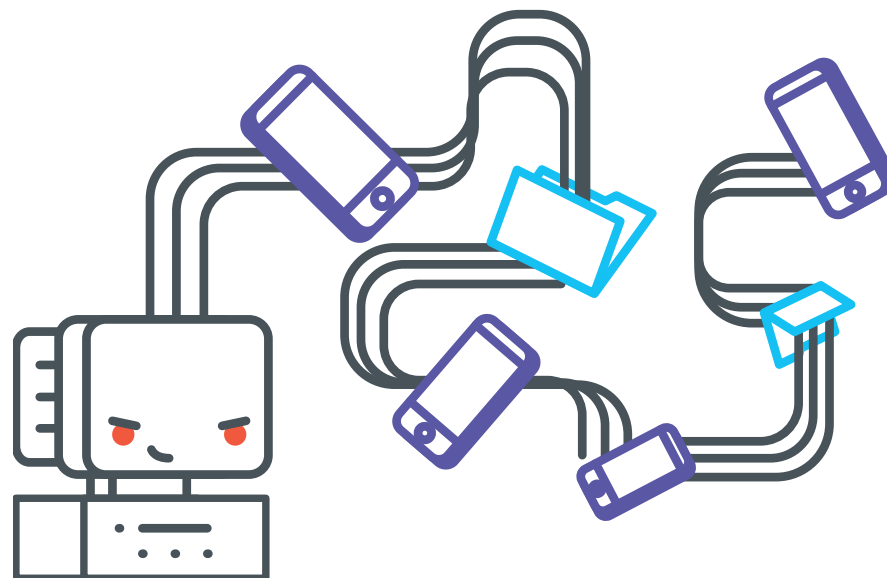
The sharing of explicit images of minors is captured by the Child Trafficking and Pornography Act 1998. This act is designed to protect children from exploitation. The Act defines “child” as: “a person under the age of 18 years”. If sexual images or videos of a child are shared or stored on a device the act can be invoked, provided the content meets the definition of child pornography. Self-produced explicit images exchanged by adolescents, under the age of 18, could be considered as child pornography.



The Act defines child pornography as:

- (a) Any visual representation –
 - (i) that shows, or in the case of a document relates to, a person who is or is depicted as being a child and who is engaged in or is depicted as being engaged in real or simulated sexually explicit activity,
 - (ii) that shows, or in the case of a document relates to, a person who is or is depicted as being a child and who is or is depicted as witnessing any such activity by any person or persons, or
 - (iii) that shows, for a sexual purpose, the genital or anal region of a child or of a person depicted as being a child,
- (b) Any audio representation of a person who is or is represented as being a child and who is engaged in or is represented as being engaged in explicit sexual activity,
- (c) Any visual or audio representation that advocates, encourages or counsels any sexual activity with children which is an offence under any enactment, or
- (d) Any visual representation or description of, or information relating to, a child that indicates or implies that the child is available to be used for the purpose of sexual exploitation within the meaning of section 3.

Under section 3 it is an offence to use a child for the purpose of his or her sexual exploitation. As section 3(2) provides: a person who – (a) sexually exploits a child, or (b) takes, detains, or restricts the personal liberty of, a child for the purpose of his or her sexual exploitation, shall be guilty of an offence and shall be liable upon conviction on indictment.



Sexual exploitation is defined as: “inducing or coercing ... inviting the child to engage or participate in any sexual, indecent or obscene act which, if done, would involve the commission of an offence against the child, or inviting, inducing or coercing the child to observe any sexual, indecent or obscene act, for the purpose of corrupting or depraving the child”

In respect of the production of child pornography: a person who recruits, coerces or directs a child to engage or participate in child prostitution or the production of child pornography and knowingly gains from these activities shall be guilty of an offence. Furthermore, section 5A states that a person who knowingly attends a pornographic performance is guilty of an offence. Attending a pornographic performance includes using digital technologies to view recorded or live streaming videos that show a child engaged in sexual activity, or that focuses specifically on the genital region of the child. Therefore, in a case of online sexual extortion or coercion, serious offences are committed under the existing amended legislation.

In short, all cases involving the creation, distribution or possession of explicit images of children are potentially criminal and should be reported to the An Garda Síochána. The duty to notify the Gardaí in these cases is required by the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012. **The Children First Act 2015 also outlines the reporting requirements that are placed on teachers (and other “mandated persons” who work with children) to file a report to Tusla, the Child and Family Agency.**

What are the punishments?

It is important to note that in cases of self-generated explicit content or ‘nude selfies’, the person him/herself can be the creator, distributor and possessor of illegal content. The law in this area was designed to protect children from exploitation and not criminalise their reckless acts. That said, approaches will differ from Garda Station to Garda Station. There is currently no protocol on how to deal with ‘nude selfies’ created by adolescents for the Gardaí to follow.

As the act was not originally intended to deal with ‘nude selfies’ of teens, but rather for people guilty of trading in child abuse images, the punishments for people found guilty under the act are harsh. Punishments include imprisonment, a fine and also placement on the sex offenders register.

With certain offences there is a discretion as to whether an individual is placed on the register (for example, where the two persons involved are similar in age). However, for the offences of creation, distribution and possession of child pornography no such discretion exists. Therefore if a person is convicted of such an offence, that person will automatically be placed on the register for at least 2½ years.

Criminal Law (Sexual Offences) Act 2017

The recently passed Criminal Law (Sexual Offences) Act 2017 creates new offences as well as amending existing legislation (as set above).

Section 6 makes it an offence to intentionally cause a child to watch sexual activity. A person found guilty of this offence shall be liable on conviction to imprisonment for a term not exceeding 10 years.

Section 8 creates an offence of the “Use of information and communication technology to facilitate sexual exploitation of child”. It provides:

No.1 A person who by means of information and communication technology communicates with another person (including a child) for the purpose of facilitating the sexual exploitation of a child by that person or any other person shall be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding 14 years.