



Right of images at school



INTRODUCTION

- I. What is the right of images?
- II. How to exercise your right?
- III. What are the exceptions?
- IV. Practical cases in School



What is the right of images?

- The right to image entitles each person to control what becomes of the photos or videos in which they appear.
- In other words, each person has the right to decide what happens to his or her image (i.e., the elements that allow to identify him/her regardless of the format or medium used).
- In order to exercise this right, the person must be recognizable (**identifiable**) by himself or herself or by another person:



Notes: Be aware that even if a person's face is not recognizable (blurred) in the photo, they can still be identified by other means. For example: by a post or by a very recognizable jumper or by a tattoo.

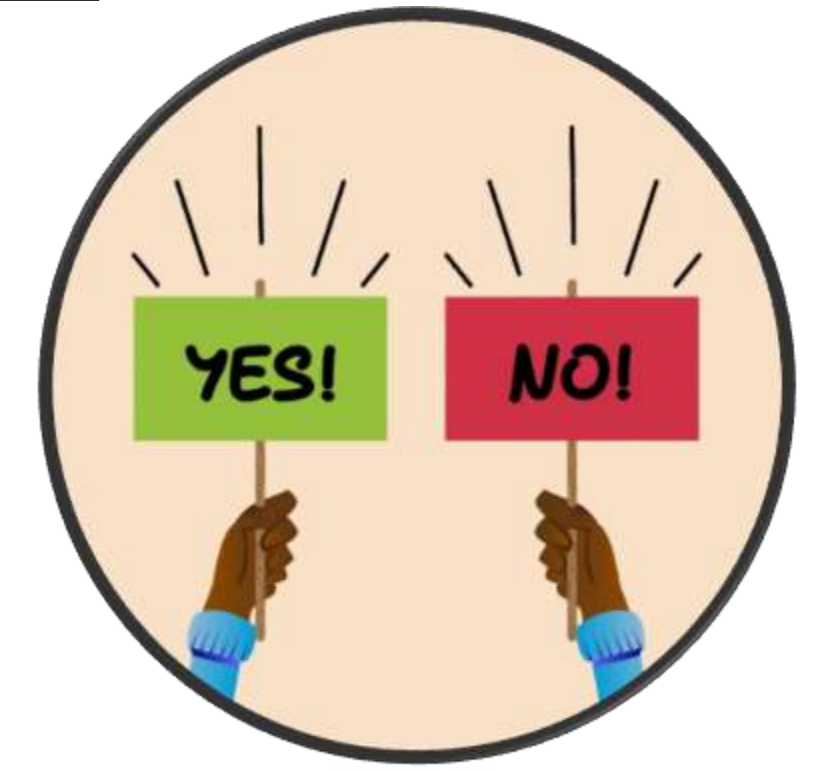
How to exercise your rights? Consent

Where a person is recognizable (**identifiable**), he/she must give prior consent to:

- **The taking of a photo/video:** If a person wants to take a picture of you, he/she have to obtain your consent.
- **The publishing of photo/video:** It is not because you have agreed to be photographed that you have agreed to have your photo published on the internet or in paper.

Vigilance is therefore required, as these two consents are distinct and must be obtained separately : You can consent to a photo being taken of you and not to its publication or vice versa. You can also consent to both if you like. The consent may be given explicitly or by posing on a picture.

Notes: In the case of minors **under the age of 14**, permission to take and share photos must be obtained from their parents/legal representatives.



What are the exceptions?

In certain exceptional cases, the consent of the identified person **may be presumed**.
This is the case for:

1. Pictures taken in public places (e.g., parks, exhibitions,): this is the situation where you appear as a secondary element in a photo taken in a public place by a tourist.

For example: you pass by the Eiffel tower on which appear other tourists.



2. Pictures of public figures (politicians, TV or sports stars, etc.) in the context of their public activities.

For example: *photos taken during a sports game or a concert.*



3. Pictures of a Crowd or ambient: these are photos that do not allow you to be specifically identified in a crowd of people.



What are the exceptions?

In certain exceptional cases, the consent of the identified person **may be presumed**. This is the case for:

4. Pictures for purely private purposes (e.g., family photos album): However, if these photos are published on the internet, they will be visible to an infinite number of people outside the family circle and you will have to comply with the data protection requirements.



5. Specific legislations may authorize the processing of images without the consent of the person. It is the case with the Camera Act



6. In some specific cases, **for journalistic purposes**. This exception does not apply on School premises. Journalist must obtain the school management's prior approval to film within the compound. Parent's consent is moreover sought given that this activity is not covered by the SMS consent form.

- I. SMS (School management system)**
- II. Social media**
- III. Pictures taken by parents at school**
- IV. Good behaviors**

SMS (School system management)

- Consent form available on SMS:

Consent	Status	Given by	On the
Yearbook	Given		22/08/2021 21:20:46
Newsletter/Gazette/Magazine	Given	Name and surname of the legal representative who makes the choices.	22/08/2021 21:20:46
Website	Given		22/08/2021 21:20:46
Communication to parents/Class activities	Given		22/08/2021 21:20:46
Communication to parents and teachers/ Joint activities	Given		22/08/2021 21:20:46
Association of name	Given		22/08/2021 21:20:46

3 different possible statuses

Given	Rejected	Missing
Authorisation given	Authorisation rejected	Status is filled in by default when a student profile is created and when moving from one cycle to another.

Failure to respond to a request for consent is equivalent to a refusal of consent.

SMS (School system management)

The consent form available on SMS authorises the School in particular to:

- Taking photographs as part of "[school activities](#)": a generic term allowing teachers, who wish to do so, to photograph pupils in class and not only during school trips, shows and/or other school events;
- [Sharing photos/videos](#) via tools authorised by the School such as Sharepoint, OneDrive, etc.
- Images must be kept for [a period of one \(1\) year](#): all photos from the previous school year must be deleted by 31 December at the latest;
- The consent given will be [valid for the cycle](#) (Nursery, Primary or Secondary) and must be renewed for the next cycle.

Note: It may be modified or withdrawn at any time by sending an email to the School's DPO.

Social Media

To promote the “[school's activities](#)”, photos of these events may be taken and posted on the school's social networks (Facebook, Instagram and/or LinkedIn).

- When photos are taken at these events, we ensure that pupils' faces are not visible or recognizable. Only these photos may then be published on social media.



Note: pupils' parents may ask the *PR & Communications Officer* to remove the photo from the social networks at any time by sending an email to pr@esmol.be

Pictures taken by parents at school

- The parents are authorised to take pictures/videos during school activities.
- Where parents take pictures/videos of their child during these events (i.e., Christmas party, Springfest, Concert, etc.), they realise a “household activity” under GDPR : *“processing of personal data by a natural person in the course of a purely or household activity with no connection to a professional, business or commercial activity”*.
- Such activity is an exception and **falls outside of the GDPR’s scope**.



Pictures taken by parents at school

- ✓ Recital 18 of the GDPR states “*Personal or household activities could include (...) **social networking and online activity** undertaken within the context of such activities*”.
- ✓ For example: Parents may take picture of their children during Springfest with other children in the picture/video. Afterwards, the parents can post the picture on social media (on the condition that the account is private).
- ✓ **The School cannot intervene** in the event of any problems relating to the sharing of pictures taken by parents during school activities, as the School is not the "Data Controller". Nevertheless, the pupils' parents still have the right the deletion of the picture to the parents directly.



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Good behaviors

- ❑ **Think before you take a photo:** Is it really necessary? Does it really illustrate a teaching situation?
- ❑ **Change of approach:** teachers were asked to focus more on the learning itself (photos of pupils' hands painting, for example) rather than the pupils. By reversing this relationship, they avoid the obstacles of image rights (double consent, deletion of photos at the end of the retention period, etc.) and the resulting formalities;
- ❑ **Sorting photos:** teachers are asked to keep only the most relevant photos in relation to their educational mission.



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Questions ?

Contact our Data Protection Officer :

mol-dpo-correspondent@eursc.eu