Written submission from Classification Office

Te Mana Whakaatu on the Petition of Holly Brooker

6 September 2024

Introduction

1. The Petitions Committee has invited the Classification Office – Te Mana Whakaatu (the Office) to provide a submission on the Petition of Holly Brooker: *Mandate Internet Service Providers to block rape, bestiality and slavery porn* (the petition). The Office welcomes the opportunity to provide feedback on the petition.
2. This written submission:
    - Responds to the points raised in the petition; and
    - Provides background information on the role of the Office in classifying potentially objectionable content under the Films, Videos, and Publications Classification Act 1993 (the Classification Act).

Summary of key points

3. Under the current content regulatory system, New Zealanders cannot always be prevented from accessing objectionable content, even if that content has been classified. The petition raises valid concerns about access to harmful or objectionable material online, especially by children and young people.
4. The Office considers that content that is illegal under New Zealand law should not be available to the public in New Zealand, in keeping with the spirit of the Classification Act.
5. However, the inclusion of categories specified in the petition raise a number of issues. The categories of content described in the petition are not the same as categories of content in the classification criteria under the Classification Act. As such, determining content to filter based on these categories would not be straightforward, would exclude other categories of illegal content, and could prevent access to adults seeking legal content.
6. Under the Classification Act, Parliament determined the criteria and categories of content deemed to be objectionable. The Office holds an agnostic position in terms

of the type of content that could potentially be included in an expanded filtering system. We consider that any extension of the current filtering system needs to consider all of the criteria for objectionable content.

7. The petition calls for ISPs to be legally required to comply with a filtering system, rather than relying on voluntary uptake by ISPs as under the current Digital Child Exploitation System (DCEFS). A legal mandate for a filtering system would represent a substantive change to how enforcement of New Zealand's classification system operates. The Office considers this would require changes to the Classification Act, and would necessitate a full policy process, including public consultation.

8. Under our current classification system, objectionable content has a clear legal meaning with associated criminal sanctions. The view of the Office is that a mandatory filter would require a greater level of certainty that content being blocked was in fact objectionable under New Zealand law, and to minimise the risk of legal content being blocked. As such:

    - A mandated filter should apply to specific pieces of content, rather than categories of content.
    - Content added to a mandated block list would need to be classified and determined to be objectionable.

9. Under a voluntary system, a greater level of flexibility may be appropriate and justifiable in terms of determining content to be added to a list of blocked URLs. Implementation of a mandated filter would impose more stringent requirements, and may result in less content being included in a filter. There would need to be a clear justification for shifting from a voluntary to a mandated system, considering that the current DCEFS filter covers the great majority of internet users in New Zealand.

Details of the petition

10. The petition requests:

That the House of Representatives require Internet Service Providers to filter rape content, child sex abuse material (CSAM) and bestiality content.[1]

11. Reasons for petition:

Currently it is only voluntary for Internet Service Providers to filter CSAM content. I believe the technology is capable of filtering more genres, like those mentioned above (rape,

[1] Note that the initial wording of the petition included "slavery porn", which was removed in an update published on 26 July 2024.

bestiality, incest and slavery porn[2]). The internet provides free access to harmful content, which children across Aotearoa New Zealand can access by a simple google search.

12. The Office understands the key points of the petition to be:
    - Harmful or illegal content is easily accessible online, including by children and young people. The petition raises concerns about access to "rape porn" and bestiality content specifically and calls for action to address this.
    - The petition considers these categories of content to be objectionable (i.e. illegal) under the Classification Act[3].
    - The Digital Child Exploitation Filter System (DCEFS) currently blocks child sexual abuse material (CSAM) and should be expanded to include the additional categories of content specified ("rape porn" and bestiality content).
    - It should be a legal requirement for Internet Service Providers (ISPs) to use DCEFS (including additional categories of content). Use of the system is currently voluntary for ISPs.
    - ISPs should be encouraged to use additional filter systems or block lists, in addition to DCEFS[4].

Section 1: Background information

The role of the Office

13. The Office is an independent Crown entity and content regulator, which has been protecting the New Zealand public from harm for 30 years. Our roles and functions are set out in the Classification Act. Broadly, we:
    - Classify material that may need to be restricted or banned. This can include films, books, video games and online content. The Office is required to maintain a public register of all classification decisions.
    - Conduct research and produce evidence-based resources to promote media literacy and enable New Zealanders to make informed choices about what they watch.
    - Support streaming services to rate their content for New Zealand viewers.

[2] Our submission does not comment on "slavery porn", as this reference was removed in an update to the petition, as previously noted.
[3] Based on updated petition request of 26 July 2024.
[4] Based on updated petition request of 26 July 2024.

- Provide a complaints and inquiries service to the public.

14. Our role includes classifying potentially objectionable (illegal) material submitted by Crown agencies and the courts. The majority of this involves CSAM, followed by content promoting terrorism and violent extremism.

15. Our classification function is quasi-judicial. Classifications are legally enforceable, and the determination that a publication is objectionable can prove a large part of a criminal charge.

16. The Office is not responsible for investigations or enforcement of the Classification Act, which is carried out by the Department of Internal Affairs, NZ Police and NZ Customs. The Office has a dedicated unit with expertise in countering violent extremism to support domestic and international responses. The team focuses on research, education and outreach, supported by the regulatory powers of the Office to act quickly when extremist content is circulating online.

17. The legal status of our classification decisions means they have international impact, most notably in relation to violent extremist material. Our engagement with international organisations aligns with the Office's strategic objectives for maximising the impact of our work and minimising harm. For example:

    - We share classification decisions with international organisations working to prevent the spread of terrorist and extremist content online, such as Tech Against Terrorism and the Global Internet Forum to Counter Terrorism (GIFCT).
    - We work with the Canadian Centre for Child Protection (C3P) on its Project Arachnid programme to identify and remove CSAM from the internet.
    - We are currently developing the capability to use hashing technology, which provides an internationally recognised method for recording, searching for, and sharing information. This technology can be used to share information about material classified as objectionable (including CSAM and violent extremist content), without sharing the original publication.

Classification categories and the meaning of "objectionable"

18. In order to be classified as objectionable (meaning banned or illegal), a piece of content or 'publication' must be submitted to the Office for an assessment and classification decision. Publications in New Zealand are classified using the same

legal criteria set out in the Classification Act[5], balancing this with the right to freedom of expression as contained in section 14 of the Bill of Rights Act 1990[6].

19. A publication may be classified as objectionable if it "describes, depicts, expresses or otherwise deals with" sex, horror, crime, cruelty, or violence in "such a manner that the availability of the publication is likely to be injurious to the public good".

20. The Classification Office must give "particular weight" to the extent, degree and manner in which a publication deals with the following:

    - Torture, serious physical harm and acts of cruelty
    - Sexual violence, coercion, or conduct in which sexual satisfaction is derived from inflicting or suffering cruelty or pain
    - Conduct (sexual or otherwise) which is degrading, demeaning or dehumanising
    - Sexual conduct involving children or young people, or which exploits the nudity of children or young people
    - The promotion or encouragement of criminal acts or acts of terrorism
    - Representations of people who belong to a particular group, culture or community as inherently inferior due to a characteristic which is a prohibited ground of discrimination under section 21(1) of the Human Rights Act 1993[7].

21. The Classification Act states that a publication is deemed to be objectionable if it promotes or supports, or tends to promote or support, a specified list of activities:

- The exploitation of children, or young persons, or both, for sexual purposes[8]
- The use of violence or coercion to compel any person to participate in, or submit to, sexual conduct
- Sexual conduct with or upon the body of a dead person

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[5] See our website for more information about the classification criteria: https://www.classificationoffice.govt.nz/classification-info/the-classification-process/#The%20classification%20criteria. The full criteria can be viewed on the NZ government legislation website: https://www.legislation.govt.nz/act/public/1993/0094/latest/whole.html#DLM313407

[6] See NZ government legislation website: https://www.legislation.govt.nz/act/public/1990/0109/latest/DLM225513.html

[7] See NZ government legislation website: https://www.legislation.govt.nz/act/public/1993/0082/latest/DLM304475.html

[8] Note that the great majority of content we classify as objectionable comes under this category (sexual exploitation of children or young people). Classification of content under the other criteria listed here is relatively rare.

- The use of urine or excrement in association with degrading or dehumanising conduct or sexual conduct
- Bestiality
- Acts of torture or the infliction of extreme violence or extreme cruelty.

22. A publication that describes, depicts, or otherwise deals with these activities in some way does not automatically lead to a publication being classified as objectionable. In order to be deemed to be objectionable, a publication must meet the legal test of tending to promote or support these activities.
23. Under the Classification Act, determining whether a publication is classified as objectionable is a matter of expert judgement by the Classification Office[9].
24. Some of these criteria are relevant to the specified content categories raised in the petition, described as "rape content, child sex abuse material (CSAM) and bestiality content".
25. The petition describes these categories of content as objectionable material. Child sexual abuse material is often clearly objectionable, although it is important to note that this term is distinct from language used in the classification criteria, which is significantly broader in scope[10]. Classification of content depicting sexual activity involving humans and animals (ie "bestiality"), of a kind that may be found on more extreme pornographic websites, is in most cases straightforward and will lead to content being banned.
26. However, the scope or type of content that may be described or categorised as "rape porn" is unclear and could potentially include a wide range of content which may or may not meet the legal test of an objectionable classification.
27. For example, this may potentially include:
    - Publications recording real-world sexual assault, which may be uploaded on a pornographic website and would almost certainly be objectionable.
    - Commercial content involving performers that include themes of sexual assault or coercion, which may or may not reach the "promote or support" threshold of being deemed as objectionable depending on content and context.

[9] The Classification Office may classify publications that are "objectionable" as "restricted" if it believes that that the harm from the publication can be managed by restricting the availability of the publication to those of a certain age or in a certain positon.

[10] For example, a publication can have the effect of promoting or supporting the sexual exploitation of children and young people, even if a person depicted is not in fact underage, or is depicted using illustration or computer-generated imagery.

- Depictions of consenting adults engaging in sexual fantasy scenarios or roleplay activity (which may include, for example BDSM content created for private use or shared online). This content may pose a serious risk of harm for children and young people, while being a legitimate and protected form of sexual expression for adults (again, depending on the content and context).

28. These examples could come under the category of 'rape porn' as used in the petition. However, the Office does not use this term, and we would not describe some of this content as 'porn' or 'pornography' – for example recordings of real-world sexual assault. Likewise, the Office does not use the term 'child porn' to describe depictions of child sexual abuse. Pornography is legal, adult entertainment content; objectionable content is not pornography.

29. The petition also raises concerns about how this content is presented or advertised on websites. Categorisation of pornographic content using terms such as "forced", or "rape" is highly problematic. However, this description or categorisation (whether as a description of content, inclusion in a URL, or in some other way) is not sufficient for the purposes of classifying a publication as objectionable.

30. In short, pornography that includes some kind of non-consensual elements or themes is not necessarily objectionable, while content that eroticises rape may be objectionable if it has the dominant effect of promoting or supporting sexual violence or coercion. As with any publication, the Office would need to take a number of factors into account when determining whether or not a specific publication is objectionable.

31. As such, the category of "rape porn" is problematic as a basis for legal interventions and is not a category or term used for the purposes of classification or enforcement.

How the Digital Child Exploitation Filtering System (DCEFS) functions

32. The Digital Child Exploitation Filtering System (DCEFS) is an internet filtering system that blocks access to specific website URLs containing CSAM content. The system is administered by the Department of Internal Affairs, which maintains and updates a 'block list' of URLs.

33. The system is employed by ISPs to block access to these URLs by internet users in New Zealand. Use of the DCEFS by ISPs is not required by law. As such, uptake of the system by ISPs is voluntary. However, the vast majority of internet users in New Zealand (95%) access the internet via ISPs using the DCEFS.

34. The primary purpose of DCEFS is to protect members of the public from unintentional exposure to CSAM, and to creates barriers to access for people seeking this material. It is not used for the purposes of enforcement or prosecution. Rather, internet users attempting to access URLs on the block list are provided information about why the content is blocked and directed to seek help from sexual harm prevention organisations such as WellStop.

35. Operation of the DCEFS is overseen by an Independent Reference Group (IRG) comprised of government agencies, ISPs and other organisations. The Chief Censor is a member of the IRG.

Section 2: Harm prevention and limiting access to objectionable content

What we know about access to pornography and other potentially harmful online material

36. The growth of the internet and social media has led to an explosion of content, much of which is user-generated. Engagement-maximising algorithms amplify harmful content, and bad actors can exploit these advancements to increase the reach and spread of harmful material, leading to real-world harm. Violent extremists, for instance, use these tools to promote their ideologies and recruit new members. Moreover, young people are often exposed to traumatising content without adequate resources to cope with the emotional impact.

37. Research into brain development from the Collaborative Trust[11] shows that tamariki and rangatahi are disproportionately susceptible to harm because of their general levels of emotional and intellectual development and maturity. They have not yet developed the cognitive capacity to critically evaluate certain information. Exposure to age-inappropriate content can impair their mental, emotional, and social development.

38. Our research[12] shows that New Zealanders find it difficult to protect tamariki and rangatahi online, and that most people support regulating harmful online content. 53% of respondents to our 2022 survey had seen online content that promotes or encourages harmful attitudes or behaviours (such as discrimination, terrorism, or suicide). 33% had seen content that directly promotes or encourages violence

[11] See Collaborative Trust website: https://www.collaborative.org.nz/

[12] What We're Watching: New Zealanders' views about what we see on screen and online (2022). Report available on the Classification Office website: https://www.classificationoffice.govt.nz/resources/research/what-were-watching/

towards others, and 20% had seen online content that encourages some form of self-harming behaviour.

39. Children and young people's access to pornography is subject to widespread concerns amongst young people, parents, educators and the wider community. Access to online pornography has become normalised for young people, regardless of whether they watch it or not. Our 2018 research *NZ Youth and Porn* showed that three out of four young New Zealanders had seen porn by the age of 17 and one in four by the age of 12. For younger children the first time they see porn is likely to be accidental (71% saw porn for the first time accidentally), while teens are more likely to seek it out. Young people acknowledged the potential harms of pornography, and 71% of 14–17-year-olds thought that children and young people's access to online pornography should be restricted in some way.

40. Of those who reported viewing pornography regularly, 69% had viewed violence or aggression in pornography, and 72% had seen non-consensual sexual behaviour. However, we do not have survey evidence around the prevalence of seeing objectionable content as such, or content relating to specific categories included in the petition.

41. In interviews with young people for our 2020 research *Growing Up With Porn*, content perceived by young people as violent, 'extreme' or illegal tended to be seen as less common yet potentially of higher impact on a person. This was a concern for a number of young people we spoke with regardless of whether they had personally seen it.

Access to objectionable content online

42. Changes to technology and the way people communicate and consume content has exposed New Zealanders to greater risks of harm. The petition raises valid concerns about access to harmful or objectionable material online, especially by children and young people.

43. Under the current content regulatory system, New Zealanders cannot always be prevented from accessing objectionable content, even if that content has been classified. This content is harmful to New Zealanders. Accessing, viewing or sharing objectionable content is a criminal offence, and therefore represents a risk for New Zealanders who view objectionable content even if this is unintentional, or if they are unaware this content is illegal.

44. The Office considers that content that is illegal under New Zealand law should not be available to the public in New Zealand, in keeping with the spirit of the Classification Act. As such, it is logical to take preventative measures that may support this outcome, if such measures:
    - are evidence-based,
    - likely to be effective in practice,
    - consistent with New Zealand law, including rights to freedom of expression.

Section 3: Response to points raised in the petition

Expanding types of content included in a filtering system

45. As stated in the previous (see para 43), the Office considers that objectionable content – of any type – should not be available to the public in New Zealand.
46. However, the inclusion of categories specified in the petition raise a number of issues. As noted earlier (see paras 24-30), the categories of content described in the petition are not the same as categories of content in the classification criteria under the Classification Act. As such, determining content to filter based on these categories would not be a straightforward, and there is a risk that expanding a filter could block access by adults seeking legal content, and would exclude other categories of illegal content.
47. Parliament determined the legal criteria used to classify content under the Classification Act. We consider that any extension of the current filtering system needs to consider all of the criteria used for determining if content is objectionable. For example, violent extremist and terror related content is arguably just as, or potentially more harmful than potentially objectionable categories of content identified in the petition.

Creating a legal mandate for a filtering system

48. The petition calls for ISPs to be legally required to comply with a filtering system, rather than relying on voluntary uptake by ISPs as under the current DCEFS system.
49. The petition states that such a change would not require legislative change. The Office does not share this view and considers that a legal mandate for blocking access to content would require changes to the Classification Act.

50. A legal mandate for a filtering system would represent a substantive change to how enforcement of New Zealand's classification system operates. Creating new legal requirements and obligations for ISPs or content providers, and associated enforcement, offences and penalties, would mean significant changes to the current system and implications for freedom of expression that we believe would necessitate a full policy process, including public consultation.

51. The classification system balances harms arising from content and the rights of producers and consumers of media, in particular freedom of expression. Under the Bill of Rights Act 1990, New Zealanders are entitled to seek and receive content containing "information and opinions of any kind in any form", subject to lawful and reasonable limits. This means that New Zealanders have the right to access legitimate content they want to see, hear, or read.

52. Under our current classification system, objectionable content has a clear legal meaning with associated criminal sanctions. This is a key aspect of balancing freedom of expression and harm prevention, ensuring the integrity of the content regulatory system, and maintaining New Zealanders trust in this system. The view of the Office is that a mandatory filter would require a greater level of certainty that content being blocked was in fact objectionable under New Zealand law, and to minimise the risk of legal content being blocked. As such:

    - A mandated filter should apply to specific pieces of content, rather than categories of content.
    - Content added to a mandated block list would need to be classified and determined to be objectionable.

53. Under a voluntary system, a greater level of flexibility may be reasonable and justifiable in terms of determining content to be added to a list of blocked URLs. Implementation of a mandated filter would impose more stringent requirements, and as such may result in less content being included in a filter. There would need to be a clear justification for shifting from a voluntary to a mandated system, considering that the current DCEFS filter covers the great majority of internet users in New Zealand.

Further support to the Committee

The Chief Censor is available to answer any questions the committee may have about the work of the Classification Office, or matters raised in this submission.