

## Chapter 16

# The New Zealand Response to Internet Child Pornography

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### ABSTRACT

*New Zealand's approach to regulating illegal material on the Internet varies from other comparable countries. A single law governs the legal classification of Internet content, commercial films, printed material and a wide variety of other media and covers legal and illegal content. A Crown agency rather than the judiciary determines the legality of material. A specialist, non-police, enforcement agency deals those who possess or distribute illegal material, particularly child pornography. This agency actively seeks out child pornographers and has a high success rate in prosecuting them. This chapter describes the history, development and operation of the New Zealand censorship system, as it applies to Internet content. It is likely to be of interest to policy-makers, law enforcement officers and media regulators in other countries.*

### COUNTRY PROFILE

New Zealand is a parliamentary democracy located in the South Pacific Ocean, some 2000 kilometres east of Australia. It is composed of two main islands and has a similar land size to the United Kingdom or Italy. New Zealand's population of four million people is primarily descended from mid-19th century British and Irish settlers, though there are significant numbers of indigenous Maori

(15 percent), and later immigrants from the Pacific Islands and Asia. A former British colony, New Zealand is a member of the Commonwealth. New Zealand ranks highly on the Human Development Index (Human Development Report Office, 2008) and consistently is measured as having the lowest levels of perceived corruption in the world (Transparency International, 2008). New Zealand has a high rate of Internet use with 3.36 million users (79 percent of the total population) and a high rate of Internet connectivity – being ranked 31<sup>st</sup> in the world despite being ranked 122<sup>nd</sup> for population

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size. Young New Zealand adults have one of the highest Internet usage rates in the world, on a par with Canada, Sweden, Netherlands, Norway and Barbados (UNICEF, 2008).

This high level of Internet use brings with it New Zealand's share of online criminals. One area in which the nation has been innovative in responding to changing technology is in addressing the distribution of child pornography on the Internet. This chapter examines how New Zealand's censorship laws have responded to the challenges of the Internet and identifies particular features of the New Zealand system likely to be of interest to policy makers, academics and law enforcement officials in other countries.

## **NEW ZEALAND'S APPROACH TO CHILD PORNOGRAPHY**

The creation, possession, distribution, importation and provision of access to child pornography are illegal in New Zealand. Child pornography is broadly defined as material that promotes or supports the sexual exploitation of children or young people or that exploits their nudity. A child or young person is considered to be someone 16 years of age or less. Decisions about the legal status of material alleged to be child pornography are made by a specialist, non-judicial classification body, the Office of Film and Literature Classification. The Censorship Compliance Unit of the Department of Internal Affairs (an organisation separate from the New Zealand Police) is primarily responsible for investigating and prosecuting offenders within New Zealand.

The New Zealand approach to child pornography will be detailed in this chapter. But before it does so, it is useful to consider approaches taken in other developed nations.

## **OVERSEAS APPROACHES TO CHILD PORNOGRAPHY**

New Zealand's approach to the detection and legal classification of objectionable material differs from other comparable countries. In Australia state laws prohibit making, possessing or distributing material that describes or depicts a person who is, or appears to be, under 16 years of age in a manner that would offend a reasonable adult (Krone, 2005). Fictitious depictions of the sexual abuse of children or young people are covered, in addition to depictions of real people and the laws apply to a wide variety of media, including electronic material. The state and federal police investigate child pornography offences and the courts determine the legal status of material alleged to be child pornography. Material may be submitted for classification to the Office of Film and Literature Classification and the Office's decision may be used in evidence (Office of Film and Literature Classification, 2006). The legislation governing child pornography and other illegal material is the federal Classification (Publications, Films and Computer Games) Act 1995 and censorship or general criminal law in the eight states and territories.

In England and Wales the law relating to child pornography is spread across five statutes (Gillispie, 2005). It is illegal to make, distribute or possess an indecent image of a child less than 18 years of age. The police investigate and prosecute cases involving 'obscene' material and the courts determine whether material meets the obscenity test (Andrews, 2003). The British Board of Film Classification may classify obscene films and DVDs but it does so in consultation with the Crown Prosecution Service and the police (Perkins, 2009).

In Germany it is illegal to offer, transmit, procure or possess child pornography under the Strafgesetzbuch (German Penal Code). The penal code defines child pornography as pornographic publications that deal with the sexual abuse of children less than 18 years of age. The criminal courts

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