

Films, Videos, and Publications Classification (Urgent Interim Classification of Publications and Prevention of Online Harm) Amendment Bill.

**The Domain Name Commission's
submission.**

March 2021

Introduction

1. The Domain Name Commission Limited (DNCL) is a subsidiary of InternetNZ. The .nz domain space is governed by .nz policies which are developed and approved by InternetNZ.
2. InternetNZ is a not-for-profit-organisation, that is recognised officially by the Internet Corporation for Assigned Names and Numbers (ICANN) as the sole authority for the administration and management of the .nz Domain Name Space.
3. InternetNZ is delegated to be the country-code top level domain (ccTLD) operator and is the stakeholder / owner to which the Commission is accountable.
4. The functions and powers vested in DNCL and the Domain Name Commissioner are:
 - a. enforcement of the .nz policies and contractual framework in relation to the .nz Domain Name Space, and
 - b. provision of a .nz Dispute Resolution Service.
5. DNCL appreciates the constructive relationship it has with the Office of the Chief Censor related to online safety and harm minimisation and supports the objective of increasing online safety.

Offence Liability issues

6. The Bill confers on 'online content hosts' an immunity from criminal or civil liability but that applies only where the online content host takes specific steps to prevent access to material that has been the subject of a take-down notice (proposed s 119G).
7. It is problematic that the scope of liability of content hosts for FVPC offences has not been addressed in this Bill. Despite certainty being an essential requirement when drafting offences, providers remain in an uncertain position vis-à-vis FVPC offence liability. DNCL notes that this uncertainty has been acknowledged by officials, but is disappointed to note that this Bill does not resolve the issue.
8. The DIA's Regulatory Impact Statement on countering violent extremism online records (at para 2.3) that:

“Following the Terror Attacks, the Government could not point to clear legislation stating that online content hosts’ failure to remove video was illegal.....”

but also records that-

“The current process for requesting the removal of objectionable content is to advise online content hosts that they may be committing an offence under New Zealand law if they do not remove the content.”

9. It is noted that the immunity in proposed s 191G does not resolve the issue of exposure to civil and criminal liability as the immunity is of limited scope in that it only applies where a take-down notice has been issued.
10. It appears that the uncertainty regarding liability is not only *not* addressed by the Bill, but the risk related to liability (for the FVPC offences) is exacerbated by this Bill because it removes the safe harbour provisions in the Harmful Digital Communications Act 2015.
11. It is submitted that the removal of the safe harbour provision could only be warranted where those safe harbour provisions defeat the obligation for online content hosts to meet their new obligations to act on take-down notices. Any change to safe harbour provision should be of limited application so as to ensure the take-down notices can be given effect.

Immunity for voluntary actions in an emergency

12. Proposed section 22D provides immunity from civil or criminal liability to service providers and online content hosts who remove or prevent access to an online publication that is the subject of an interim assessment. (Noting that the interim orders are made where there is an urgent need to limit harm.)
13. DNCL supports the provision of this immunity so that entities can respond in a true emergency. It is noted that there is uncertainty in the internet community as to the exact scope of the term ‘service provider’. It is submitted that private companies need more guidance and certainty regarding what is a ‘service provider’. In particular, DNCL seeks clarification as to whether a Domain Name System operator is a service provider.



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