

**Regulatory Practices**  
**in**  
**Australia, New Zealand, UK, Germany,**  
**US, Canada and France**

(Updated on 19 November 2008)

## Australia

### Legislation

The Australian National Classification Scheme is established by the Classification (Publications, Films and Computer Games) Act 1995 (the Classification Act). There is no reference to obscenity and indecency. Under the Classification Code, classification decisions are required to take account of community concerns about:

- (a) depictions that condone or incite violence, particularly sexual violence; and
- (b) the portrayal of persons in a demeaning manner.

### Classification

The Classification Act provides for different classification systems for films, computer games and publications respectively. There are four classification categories in respect of publications: Unrestricted, Category 1 Restricted, Category 2 Restricted, and Refused Classification (RC). Publication which is classified Category 1 Restricted or Category 2 Restricted is unsuitable for those under 18 years of age and is subject to certain sales conditions. For instance, publication classified Category 1 Restricted must be distributed in a sealed wrapper whilst publication classified Category 2 Restricted may not be publicly displayed and may only be displayed in premises that are restricted to adults. Publications which fall within the criteria for RC classification cannot be legally imported or sold in Australia.

Classification decisions are made by the Classification Board, which is an independent statutory body. It is a full-time body consisting of a Director, A Deputy Director, Senior Classifiers and other members. The Classification Act provides for a maximum of twenty Board members. All members are subject to a limitation on Board membership of seven years.

The Classification Review Board (the Review Board) is an independent statutory body established to review certain decisions of the Classification Board. The Review Board is a part-time body comprising a Convenor, a Deputy Convenor and three to eight other members. The Review Board members are also subject to membership limitation of seven years.

In making a classification decision, the Boards apply criteria in the Classification Act, the Classification Code and the Classification Guidelines (the Guidelines). The Classification Code contains the general principles which form the basis of the Guidelines. The Guidelines describes in more detail the scope and limits of material suitable for each classification category. Both the Code and the Guidelines are determined by the Australian Government, and may be revised from time to time to reflect changes in community standards.

## Enforcement

The enforcement of classification decisions is the responsibility of each Australian State and Territory under complementary classification enforcement legislation.

## Regulation of the Internet

Since January 2000, the Australian Communications and Media Authority (ACMA) has administered a co-regulatory scheme for Internet content. The scheme seeks to protect children from exposure to unsuitable online content and to restrict access to certain Internet content that is likely to cause offence to a reasonable adult.

Internet content is generally classified by applying the 7-tier film classification system. The following four categories of online content are prohibited:

- RC;
- Restricted – Contain Consensual Sexually Explicit Activity (X18+);
- Restricted (R18+) but without restricted access system; and
- Mature Accompanied (MA15+) but without restricted access system.

The co-regulatory scheme for Internet content is implemented through codes of practice developed by the Internet industry. The codes of practice are then registered under the Broadcasting Services Act (BSA). Where ACMA identifies prohibited Internet content that is hosted in Australia, a take-down notice is issued directing the content host to remove the content concerned. Failure to comply with a take-down notice may result in a penalty of AU\$11,000 per day for an individual and AU\$55,000 per day for a corporation. If Internet content is not hosted in Australia (ACMA only takes action against RC and X18+ for content hosted overseas) and is prohibited, or is likely to be prohibited, ACMA will notify the content to the suppliers of approved filters in accordance with the codes of practice, so that the content is blocked for users of that filtering software.

ACMA adopts a complaint-driven approach in dealing with the Internet. Under the BSA, civil proceedings do not lie against an ISP as long as they comply with the codes of practice.

Internet contents of R18+ and MA15+ are subject to restricted access system. Credit card check is one way of verifying that the age of a person is over 18 years. However, a content service provider may also choose to rely on other documents such as a valid drivers licence, proof-of-age card, passport or birth certificate in the name of the account holder. For access restricted to users over the age of 15 years, a self-declaration by the user is generally regarded as satisfactory as Australian residents under the age of 18 years do not carry easily verifiable identification.

The codes of practice also require ISPs to give customers information about the availability, use

and application of Internet filtering software and ensure that customers have the option of subscribing to a filtered internet carriage service.

## New Zealand

### Legislation

Under the Films, Videos, and Publications Classification Act 1993 (the FVPC Act), a publication is objectionable if it “describes, depicts, expresses, or otherwise deals with matters such as 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”.

### Classification

A publication can be classified as:

- Unrestricted;
- Objectionable except in the following circumstances (i.e., restricted):
  - Restricted to persons who are aged 18 years or above; or
  - Restricted to specified persons or classes of persons; or
  - For one or more specified purposes.
- Objectionable (i.e., banned).

Classification decision is made by the Office of Film and Literature Classification (the OFLC), which is a statutory Government body. It consists of a Chief Censor, a Deputy Chief Censor and classification officers. There are about fifteen classification officers. Members of the OFLC work full-time. A member may be appointed for three years and reappointed for another three years.

Classification made by the OFLC may be reviewed by the Film and Literature Board of Review (the Board of Review), which is a statutory independent body. The Board of Review consists of nine members. One of them is appointed the President and another the Deputy President. All members work part-time. Like the OFLC, a member may be appointed for three years and reappointed for another three years.

Statutory guidelines are provided in the FVPC Act. Both the OFLC and the Board of Review are required under the FVPC Act to give reasons for classification decisions.

### Enforcement

Inspectors of the Department of Internal Affairs (DIA) proactively monitor compliance of publications and make prosecution. The Customs and the Police are also enforcement agencies.

### Regulation of the Internet

The DIA adopts a complaint-driven approach and focuses almost entirely on online child pornography. Adult obscenity is self-regulated via a voluntary code of practice, which is without sanction. The code of practice requires adult content to be accompanied by on-screen

warnings on the home or title page before the adult content is viewed; and / or managed by subscription enrollment to exclude under-age subscribers. It also encourages industry players to provide information on availability of filtering software.

## UK

### Legislation

Under the Obscene Publications Act 1959 and 1964 (the OPA), an article shall be deemed obscene if its effect is to deprave and corrupt persons who are likely to read, see or hear the matter contained or embodied in it.

There is no classification system for publications and Internet content in the UK, but there are classification/rating systems for films and video games.

### Enforcement

The OPA makes it an offence to (1) publish an obscene article whether for gain or not; or (2) have an obscene article for publication for gain (whether gain to himself or gain to another).

The Police is responsible for enforcement related to publications, and adopts a proactive approach.

### Regulation of the Internet

In 1996, the Internet Watch Foundation (IWF) was formed consequential to an agreement between the UK Government, the Police and the Internet industry. The IWF is an independent charity tasked to receive complaints on online illegality, the majority of which entails child pornography.

The IWF establishes a “notice and take down” mechanism in its voluntary code of practice. If the content is hosted in the UK, the IWF notifies UK Internet Service Providers (ISPs) / hosting companies of any illegal content found on their servers, and requests the content to be removed. It will pass the information to the Police, who may seek to bring criminal charges against the person responsible for the content. If the content is not hosted in the UK, notification will be sent to the National Criminal Intelligence Service and then disseminated to Interpol.

In addition, some ISPs joined the “Cleanfeed” scheme voluntarily and block access to certain overseas websites. For examples, British Telecom employs the blacklist maintained by IWF to fend off illegal overseas websites.

The e-Commerce Regulations 2002, which was introduced after the EU e-Commerce Directive, absolve an ISP from any criminal or civil liability for the material it transmits provided that it acts expeditiously to remove or render inaccessible any material that might give rise to such liability as soon as it becomes aware of its presence.

To further protect children from online risk, the UK Government has commissioned an independent review. A report was released in March 2008. It recommends to set up a UK Council on Child Internet Safety to provide better regulation via voluntary codes of practice and to provide better information and education.

## Germany

### Legislation

Obscenity is regulated under Section 184 of the German Criminal Code. The law mainly governs distribution of pornographic writings to minors and of child pornography. "Writings" also include audio and visual recording media, data storage media, illustrations and other images. The law is enforced by public prosecutor's offices and local police.

### Regulation of the Internet

The Youth Protection Act 2002 and the Interstate Treaty on the Protection of Minors and Human Dignity in Broadcasting and Telemedia (the Interstate Treaty) set out the framework on Internet regulation. A government body, KJM (The Commission for the Protection of Minors and Human Dignity), was established to accredit self-regulatory agencies to carry out regulatory work. FSM (The Association for the Voluntary Self-Monitoring of Multimedia Service Providers) has been authorized as the self-regulatory agency.

The Interstate Treaty provides three distinct categories of Internet content:

- Illegal content: forbidden in all circumstances (e.g. child pornography, bestiality).
- Restricted content: adult content (e.g. pornography and gambling) to be restricted behind a strict age verification system.
- Harmful content: content which may harm minors (e.g. violent games) and should be made available only in a way that prevents children's access via a basic age verification system through ID card, credit card, or sometimes web cam checks.

Both KJM and FSM may issue take-down notices to domestically-hosted illegal content. In addition, KJM may impose financial sanctions on persistent offenders. Information about Internationally hosted content is passed to INHOPE (The Association of Internet Hotline Providers in Europe).

In Germany, people under 18 are not allowed access to restricted content. Providers of such content must use a strict age verification system to ensure children cannot gain access. Strict age verification implies a one-time physical identification, where the identity is checked against a valid identity card, either at the post office, at the point of sale in mobile phone shops, or at lottery offices.

## US

### Legislation

Obscenity is regulated under US Code Title 18 Chapter 71. There is no definition of obscenity and indecency. The court applies the Miller test to determine whether a work is obscene:

- Whether an average person would find it appeals to the prurient interest;
- Whether it depicts or describes sexual conduct in a patently offensive way; and
- Whether it lacks serious literary, artistic, political or scientific value.

There is no classification system for publications and Internet content, but there are classification/rating systems for films and video games.

### Enforcement

The US Attorneys are tasked with enforcement of the Federal obscene law. They work with the Federal Bureau of Investigation (FBI), Postal inspectors and Customs officers to enforce the law.

### Regulation of the Internet

There have been some legislative activities to address online child safety and access to objectionable materials on the Internet. The Children's Internet Protection Act 2000 requires schools and public libraries receiving federal funds on communications and technology to install Internet filtering software. Failure in doing so may render further funds being withheld. Nevertheless, this law allows libraries to disable filters for an adult library user when requested to do so by the user.

The Communications Decency Act 1996 (CDA) requires ISPs to provide information on availability of filtering software to subscribers. Some ISPs also voluntarily provide filtering services to subscribers.

It was reported that the US Government places their online focus on child pornography.

## Canada

### Legislation

Obscene matters are regulated under S.163 of the Criminal Code. Obscene publication is “any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely crime, horror, cruelty and violence”.

There is no classification system for publications and Internet content, but there are classification/rating systems for films and video games.

### Enforcement

The Police and the Customs are responsible for enforcement, which is generally complaint-driven.

### Regulation of the Internet

Canada seeks to promote self-regulation of the Internet and adopts a complaint-driven approach regarding online obscenity. The main focus is on child pornography. The industry has developed and adheres to a code of conduct. The focus is primarily on forging public awareness, educating consumers and empowering Internet users with tools like filtering software. The court may issue take-down order to mandate ISPs to take down child pornography content. That apart, though ISPs are not liable for transmitting unlawful content, some of them voluntarily implement “Project Cleanfeed Canada” to block access to a list of overseas child pornographic sites.

## **France**

### Legislation

The Penal Code establishes a general prohibition to produce or distribute content which is violent, pornographic or which seriously violates human dignity, whatever the means, where the message may be seen or perceived by a minor.

### Regulation of the Internet

The French Internet Service Providers Association (AFA) created the “Point de Contact” in 1998 to offer advice to parents and children on Internet protection issues and on using filtering software. It works in partnership with the industry, the Police and the Government. For domestically hosted content, depending on the characteristics of the content, it will inform the content hosts and / or the enforcement authorities. Content hosts may be required to take down content. Internationally hosted content is dealt with by the use of filtering software.

The French Government legally obliged ISPs to provide their customers with filtering software (at a charge or simply to provide information on where filtering software may be available). The law was thereafter reinforced by an agreement between the Ministry of Family Affairs and the AFA, committing ISPs to supply their subscribers with filtering software for free, if so requested by subscribers. As a result of this agreement, ISPs have offered free parental control software with three different profiles - one for children, one for teenagers, and one for adults since April 2006.