

Censorship, new technology and libraries

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Recent developments in entertainment and communications technology have created challenges for those who make classification decisions and who enforce censorship law. High speed private internet access, DVD technology, mobile telephony and advances in video gaming have all created challenges for censorship legislation originally designed to deal with films, videos and paper publications. The law has coped remarkably well with these new types of technology and was amended in 2005 to ensure it kept pace with emerging technology.

This paper outlines some of the more significant challenges faced and the ways in which they have been addressed in law and practice. It discusses the impact of these issues for libraries as they provide information that increasingly encompasses new technologies.

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Introduction

Since early colonial times New Zealand has had some form of official censorship. In 1858 New Zealand banned the importation of “indecent material” and it was left to law enforcement officials to determine what was “indecent”. However, New Zealand’s isolation from the rest of the world meant that material that might be considered indecent was not widely available and there was little further government attention given to the issue. The growing availability of pornography in the late 19th century led to a flurry of censorship law-making aimed at regulating the availability of books and photographs. The first film censorship law, the Cinematograph Films Act was passed in 1916. Concern in the early years of censorship centred around “danger to moral health”.¹ Our censorship system has evolved considerably since that time and now aims to balance the right to free expression with protecting the “public good”.

The Ministerial Inquiry into Pornography

Censorship law continued to focus on books, photographs and films until the early 1980s and the growth in the availability of videos. The unregulated availability of videos led to the passage of legislation to classify them like films. Public and government concerns over pornography also resulted in the 1987 Ministerial Inquiry into Pornography. The inquiry report made over 200 recommendations on reforming the censorship system including the establishment of a single censorship body able to classify a wide range of material under one set of standards. It also noted important developments in technology - that material stored on computers should be subject to classification and that the internet was likely to become available in New Zealand in the near future.²

Foundations of the modern classification system

Many of the recommendations of the inquiry were incorporated into the Films, Videos and Publications Classification Act 1993 which established the current system of censorship in New Zealand. The Office of Film and Literature Classification was established as the sole censorship body (though others enforce the law and issue film labels) and it was given jurisdiction over the films, videos and literature governed by previous censorship bodies. Provision was also made for the classification of a wide range of other material, collectively called “publications”. This included any word, image or representation recorded in any way that makes it capable of being reproduced.

A two-tier labelling system

The Films, Videos and Publications Classification Act 1993 introduced a two-tier system for the labelling of publications. Films, videos, DVDs and age restricted computer games must carry classification labels if they are to be supplied to the public. Other publications such as books, magazines, newspapers and music CDs may be submitted for classification and labelling but it is not mandatory to do so before they are supplied to the public.

Anyone may submit a publication to the Office of Film and Literature Classification. The most common submitters are the film industry (for commercial films), law enforcement agencies (for illegal, “objectionable” material) and the general public. In recent years a small number of library books have been submitted to the Office for classification.

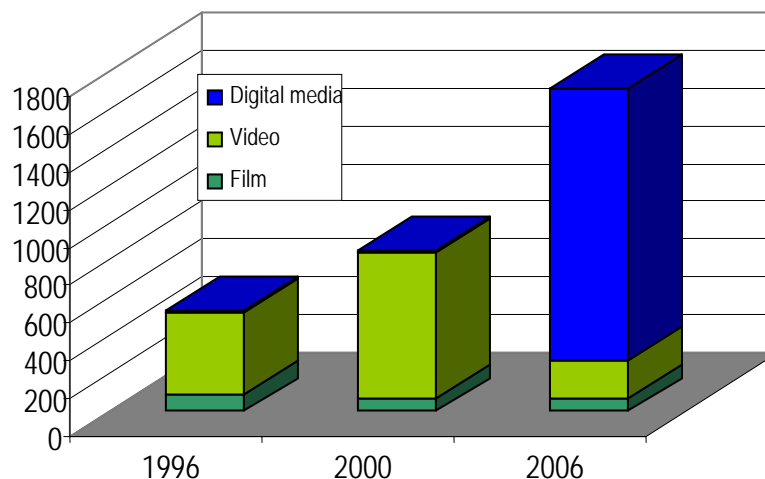
The challenges of new technology

Recent advances in technology have created a range of challenges for those involved in the classification and censorship system in New Zealand. The rapid growth in Internet use, the introduction of DVDs and the availability of low-cost digital recording technology raised policy and operational problems that did not exist when New Zealand’s current censorship laws were enacted.

Technological advances, such as pxt-capable and internet-capable cell phones, allow instantaneous and easy distribution of content covered by the Classification Act. Such content is capable of being easily distributed to a wide audience without reference to any censorship authority. Since the private use of content covered by the Act can affect the public good, the Classification Office must ensure it is technically capable of classifying any type of publication that may be submitted. We must also explore other means of limiting the potential of new technology to injure to the public good.

The mediums in which we receive publications to classify continues to change, as the chart below shows:

Figure 1: Publications Classified by Medium 1996-2006



Research by the Classification Office in 2006³ showed that public consumption of entertainment media had grown since the 1990s, particularly in the home, with most people watching a video or DVD at least once a month.

The Office has had to find new ways to deal with the upsurge in digital media. Prior to 2005, it was required to classify every version of a film as a new publication if it was not identical to an already- classified version. Because DVDs usually contain additional material such as deleted scenes, director’s commentaries, theatrical trailers and still images, many had to be classified again even through the additional material was

innocuous and unlikely to change the original classification. A law change enabled any subsequent version of a film to be given the same classification as the version originally classified if the additional material would not result in it being given a higher classification. Since the law change came into effect more than 1000 films, videos and DVDs that would otherwise have to have been viewed and classified by the Classification Office have been 'cross-classified'. This change saved the Classification Office time, and saved submitters money since cross-classification costs \$27 while a DVD classification costs \$1100.

Updated definitions

As well as classifying films and games intended for public supply, the Office classifies material submitted by law enforcement agencies and the courts. Most of this material is objectionable computer images, usually child pornography. New Zealand does not block access to any content available on the internet but specialist investigators at the Department of Internal Affairs and the Customs Service detect and prosecute those who download illegal material.

Although the Courts had recognised computer files as 'publications' which, like films, books, magazines, games and photographs, were able to be classified by the Office, legislation made no specific reference to digital media.⁴ Electronic files comprised 55 per cent of all the publications classified as objectionable by the Office in the year ended 30 June 2007. The 2005 law changes confirmed that 'electronic or computer files' are publications and, therefore, fall under the ambit of our censorship legislation.

Offenders have changed the way in which they locate and exchange such material and so the definition of 'distribution' of such material was updated to include delivering, giving, offering or providing access to it. The change was necessary to reflect the fact that most offenders do not supply objectionable material for monetary gain. Distribution of the material has increasingly become a 'passive' activity whereby one offender simply makes the material available to others to download, rather than actively sending it to them. Some organisations, particularly internet service providers, were concerned that 'providing access to' objectionable material could be taken to apply to businesses such as theirs that provide the networks through which material is distributed. Consequently, services and organisations that simply provide the physical means to access objectionable material were expressly excluded from legislation. This has an important implication for libraries, universities and other organisations that provide internet access to the public. In order to be held liable for the use of its computers to download illegal material, the organisation would have to know of the nature of the material and that it was being downloaded rather than simply provide the facilities that could be used to commit an offence.

Mobile phones

Mobile phones are becoming near-ubiquitous in New Zealand, with 98% of senior high school students owning one.⁵ While electronic files such as text messages and .pvt images are covered by censorship laws, movie clips that are streamed to a phone from overseas but are not capable of being stored on the phone are not. That is because New Zealand law can only apply to New Zealand content providers. The Office worked with the Telecommunications Carriers' Forum, an industry body representing telecommunications companies, to develop a code of conduct governing the provision of moving image content that is not governed by the Films, Videos, and Publications Classification Act 1993. It is likely that similar, non-legislative, solutions will continue to be developed as new

technology emerges and providers respond to customer expectations of good corporate citizenship.

Labelling of non-film publications

One other significant change in 2005 was made in relation to books, magazines and other publications other than films. For many years, print publications that were classified and restricted had undergone a variety of ad hoc labelling to inform readers of the classification. When the Indecent Publications Tribunal classified the book *American Psycho* as R18 in 1991 it was on the understanding that the importer would prominently label each book with the classification. The Tribunal had no authority to require labelling or place special display conditions on the book.⁶

The same 2005 legislation that addressed new advances in digital technology also provided for a unified labelling system for much older forms of communication such as books. Now, when these are given a restricted classification (such as R16 or R18) they are required to carry a classification label similar to those applied to videos and DVDs. In addition to labelling restricted material, libraries and other information providers must ensure that restricted material is not provided to people under the specified age. Book classifications are relatively rare in modern times. In 1987, the Indecent Publications Tribunal classified 57 books. In 2007, the Office of Film and Literature Classification classified only three. This is a reflection of a changed focus of our censorship laws, the growing prominence of the internet as a source of information and, perhaps, more tolerant public attitudes.

Future challenges

Technology will continue to develop at a rate faster than legislation can be passed. New Zealand's censorship laws have a broad scope in terms of the mediums that they cover though they regulate only a small range of illegal and subject matter. This broad scope is likely to allow the Office to continue to classify new and emerging mediums.

One medium that has grown readily in the last decade is video games. The Office currently classifies computer games that are likely to be restricted or banned. They are deemed to be films under the Classification Act. Unlike other types of films, such as videos, DVDs or cinematographic films, unrestricted video games are not required to be labelled before they are supplied to the public. As a result, approximately 90 per cent of all video games available in New Zealand carry foreign classification labels. Research conducted by the Office found that the presence of foreign rating labels on unrestricted computer games was a source of confusion for the public.⁷

The Office considers that unrestricted computer games should also be brought into the unified labelling regime to reduce public, and particularly parental, confusion. The 2005 amendments to the Act required non-film publications restricted by the Office to carry classification labels and aimed to ensure that the classification regime was up to date and able to cover emerging technology. Unrestricted video games, which have existed as an entertainment medium since before the 1993 Act was passed, remain beyond the reach of censorship laws. Remedying this anomaly would lead to a more comprehensive and cohesive system of classification and provision of consumer information.

Conclusion

In recent years Parliament has passed laws to deal with a variety of misuses to which internet technology can be put. Legislation has been enacted to prohibit spam⁸, unauthorised access to computers⁹, covert filming¹⁰, copyright infringement¹¹ and other online offending. The best of those measures, such as the amendments made to New Zealand's censorship laws, enable regulatory bodies to deal with new technology but avoid limiting themselves to the technology of the moment. Non-legislative agreements with the communications and entertainment industries are also likely to be an ongoing feature of media regulation in New Zealand. Regulatory bodies will have to continue to monitor emerging technology to ensure that their procedures and legal authority are not outstripped by the pace of change.

Notes

¹ Christoffel, P. (1989). *Censored: A short history of censorship in New Zealand*. Wellington: Department of Internal Affairs.

² Morris, J., Haines, H., Shallcrass, J. (1989). *Report of the Ministerial Inquiry into Pornography*. Wellington: New Zealand Government.

³ Office of Film and Literature Classification & UMR Research Ltd (2007). *Public Understanding of Censorship*. Wellington: Office of Film and Literature Classification.

⁴ *Goodin v Department of Internal Affairs*, 24 July 2002, (AP 11/01).

⁵ Office of Film and Literature Classification & UMR Research Ltd (2006). *Young People's Use of Entertainment Mediums*. Wellington: Office of Film and Literature Classification.

⁶ Indecent Publications Tribunal, 19 August 1991 (Decision No: 42/91).

⁷ Office of Film and Literature Classification & UMR Research Ltd (2005). *Underage Gaming Research*. Wellington: Office of Film and Literature Classification.

⁸ Unsolicited Electronic Messages Act 2007

⁹ Crimes Amendment Act 2003

¹⁰ Crimes (Intimate Covert Filming) Act 2006

¹¹ Copyright (New Technologies and Performers' Rights) Amendment Bill.