



Te Tari Taiwhenua
Internal Affairs

Take-down Notice Guidance

Te Kāwanatanga o Aotearoa
New Zealand Government

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Introduction

Te Tari Taiwhenua, The Department of Internal Affairs is committed to making the online world safer for all New Zealanders.

Objectionable material is illegal. Those who make, possess, supply, or distribute objectionable material are committing an offence under the Films, Videos, and Publications Classification Act 1993. Objectionable material is injurious to the public good, particularly tamariki (children) and rangatahi (young people).

The 1 February 2022 updates to the Films, Videos, and Publications Classification Act 1993 allow for urgent prevention and mitigation of harms caused by objectionable material and provides additional regulatory tools to manage harms caused by content that is live streamed and/or hosted online.

Take-down notices are a regulatory tool that enables the Department of Internal Affairs (the Department) to remove objectionable content from online platforms.

This document has been created to provide guidance to online content hosts on the key aspects of the take-down notice process.

Definitions

Copies refers to the proliferation of the objectionable online publication, that contains the objectionable content without variation, whether that be by the original maker of the content or imported, supplied or distributed by another party.

Inspectors of Publications refers to persons appointed under 103(1) of the Films, Videos, and Publications Classification Act 1993. They are authorised to exercise powers under sections 106 and 108 of the Act. Throughout this document we will refer to them as Inspectors.

Objectionable is defined under Section 3 of the Films, Videos, and Publications Classification Act 1993. 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. Objectionable material is illegal to make, possess, supply and distribute.

Publication, for the purposes of the take-down notices, is online material deemed to be an objectionable publication. It may include content such as: images, videos, text, gifs, sound files, electronic files etc.

Variations refer to the proliferation of the objectionable online publication but where the content may be altered in some way e.g. shorter versions, GIFs, edits to sound or wording.

The Classification System

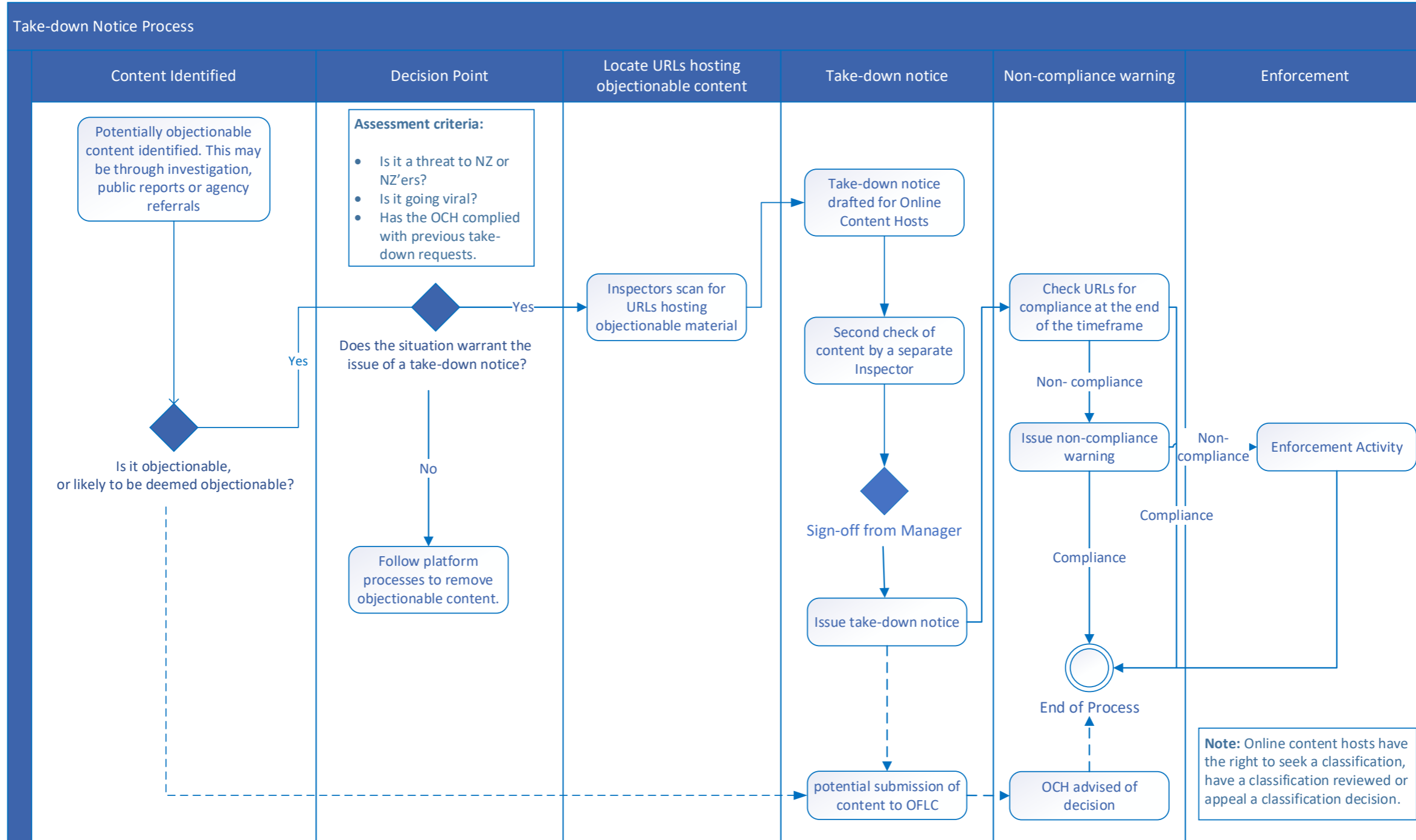
New Zealand's classification system seeks to prevent harm to online users from being exposed to harmful material (also referred to as content), whilst ensuring everyone has freedom of expression including the freedom to seek, receive, and impart information and opinions, of any kind, in any form, within the reasonable limits prescribed by law. It does this by providing a framework for classifying films, videos, and publications, and for restricting or prohibiting the supply of restricted or objectionable material that is injurious to the public good. The Classification system also underpins the Government's work to protect tamariki from extreme harm, and all New Zealanders from harm related to violent extremist content.

The Classification Office is the independent Crown entity responsible for deciding if a publication is to be classified as restricted or banned as objectionable under the Films, Videos, and Publications Classification Act 1993 (the Act). The Chief Censor is the chief executive of the Classification Office and is responsible for allocating duties and responsibilities amongst staff. The Chief Censor has the power to: make an interim assessment as to whether content is, or is likely to be, objectionable, and 'call in' an unclassified publication in order for it to be classified.

The Act provides the Department, New Zealand Police (Police) and Customs Inspectors with enforcement powers to investigate and prosecute offences relating to objectionable material.

High-Level Process Flow

Note: The Classification Office is shortened to OFLC in this process flow. Dashed arrows represent potential steps.



The issuing of take-down notices

New Zealand is part of the global effort to reduce online harm by limiting the proliferation of objectionable content. We work with online content hosts via the Christchurch Call and Global Internet Forum to Counter Terrorism to drive holistic change, and we recognise that many companies are also taking meaningful action in his space.

Take-down notices are one mechanism that the Department will use to remove objectionable content when a regulatory approach is required.

The Department values working with industry, and where possible will leverage existing relationships to develop a collaborative approach to reducing online harm. We will continue to use an online content host's trusted flagger programmes, or in-platform reporting systems where we have had success with this method in the past, and when less urgency is required (e.g. the content is not proliferating rapidly across multiple platforms). However, if these mechanisms are utilised without result, then the Department reserves the right as the regulator to use email to serve a formal take-down notices.

New Zealand's Online Crisis Response

There are times where a regulatory or enforcement approach is required to protect New Zealanders from harm and ensure illegal content is swiftly removed. In situations where there is a crisis, e.g. a terrorist attack in New Zealand, the Department will activate New Zealand's Online Crisis Response Process (OCRP). This process aims to facilitate the rapid assessment and coordinated response to an online crisis, and the sharing of intelligence and information in a secure and timely manner between all government, non-governmental organisations, and online content hosts involved.

An online crisis for the purpose of this process is described as:

'A piece of significantly harmful (likely to be 'objectionable') online content that has broad spread both geographically and/or across multiple platforms, and is likely to create significant harm for New Zealanders who are exposed to it'

Assessing the harm of an online crisis:

There are a number of key questions that guide the Department's decision to activate the OCRP. These questions fit under the below categories:

1. Is an online publication objectionable (or likely to be deemed objectionable)?
 - a. As defined under section 3 of the Films, Videos, and Publications Classification Act 1993.
2. Is there a New Zealand nexus?
 - a. Based on its impact or threat to New Zealand or New Zealanders.
3. How many people are likely to be exposed to it?
 - a. Based on the virality of the content.
 - b. The type of platform where the content is proliferating.

If the OCRP is activated, the Department will immediately communicate with online content hosts and enforcement agencies whom are members of the OCRP by email. The email group is made aware of the situation, our plan, and any updates to the situation or plan.



Content of the notice

The take-down notices contain all the information listed under section 119D, including the description of the online publication, the required period to comply and the online content host's right to review.

The notice will ask online content hosts to do one of two things:

1. remove or prevent access by the public to the online publication.
2. remove or prevent access by the public to the online publication, and preserve a copy of the online publication for the purpose of an investigation or proceedings.

Schedule A will contain all the URLs that the Department has identified. Another take-down notice may be issued if further URLs hosting the objectionable content are identified.

Delivery method

Take-down notices will be sent from an official email address and contain a means to verify the content of the notice. The email will be sent to the group inbox the online content host has provided the Department. Any nominated contacts that the online content host has provided will be cc'd in to ensure that the message is received in a timely manner. It will be issued as a PDF with clickable links to relevant parts of the legislation.

Effect of the take-down notice

An online content host who or that receives a take-down notice must remove, or prevent access by the public to the objectionable content as soon as is reasonably practicable after receipt of the notice but no later than the end of the required period.

Section 119E states:

A take-down notice continues to have effect, even if the publication that is the subject of the notice is received by the Classification Office under section 13 for a classification decision:

- a. until the classification decision is made; and
- b. until, if the publication is classified as objectionable, the completion of any review and related appeal.
- c. If an online publication is confirmed as objectionable after the processes listed in subsection (5) have been completed or are no longer available, the relevant take-down notice then has permanent effect.

Timeframes

The online content host will be given 24 hours to remove the objectionable content in most cases. The timeframe given will depend on the level of harm to New Zealand or New Zealanders, the virality of the content and the platforms it is being proliferated on.

We will date the notice and will provide both a date and time (in NZST) that the online content host must comply to.

The Department will start the timeframe from when we send the email. There will be exceptions if we become aware that the message hasn't been received e.g. bounce back emails.

The accompanying email will advise online content hosts to contact us if they reasonably believe they will not be able to comply within the timeframe.

The decision to issue a new notice, or extend the timeframe sits with the Department. If the notice is incorrect or incomplete, the Department will issue a new notice with a new timeframe.

The timeframe on the notice will reflect the provision in the legislation, section 119E (1): ‘An online content host who or that receives a take-down notice must remove, or prevent access by the public to, all copies of the online publication that is the subject of the notice to or over which it has access or control as soon as is reasonably practicable after receipt of the notice but no later than the end of the required period.’

The timeframe is determined by the Inspector as stated, under section 119D (2): ‘When deciding on the length of the required period in a particular case, an Inspector must consider what period is likely to be reasonably practicable for the online content host to comply with the notice.’

International Context

In Australia the [Online Safety Bill \(2021\)](#) requires platforms to remove terrorist and violent extremist content (TVEC) within 24 hours.

In Europe, regulation [2021/784](#) requires platforms to remove or disable access by member states to within one hour.

Enforcement of the notice and liability

The Department’s main priority is the swift removal of the objectionable content. We expect that most online content hosts will be willing to comply with the take-down notice as in many cases the objectionable content will also breach a platform’s terms of use.

However, if the online content host fails, or is unwilling, to comply with the issued take-down notice, the Department is able to undertake enforcement proceedings through the District Court. Before we pursue enforcement action, the Department will send the online content host a non-compliance warning.

Online content hosts who do not comply with the take-down notice may be ordered to pay a pecuniary penalty of up to \$200,000 NZD to the Crown.

Below are the sections of the Act relating to the liability of the online content host and the enforcement of take-down notices:



No action to lie against online content host

Section 119G states that:

An online content host is immune from criminal or civil liability

- a. if they remove or prevent access by the public to an online publication that is subject to a take-down notice:
- b. if they preserve a copy of an online publication for the reasons listed in section 119E (3) and hold it securely.

Enforcement of take-down notices

Section 119H states:

1. An Inspector may take enforcement proceedings in the District Court if an online content host fails or refuses to comply with take-down notice within the required period.
2. In proceedings under this section, the court
 - c. must not examine or make any determination about the issuing or merits of a take-down notice:
 - d. may determine whether the online content host had a reasonable justification for failing or refusing to comply with the notice within the required period or for any further delay after that period:
 - e. may permit the Inspector, the order of the court, to obtain discovery and administer interrogatories:
 - f. may order a remedy or costs under [section 119I](#).

Preservation of a copy

The preservation of a copy may be required for evidential purposes. For example, there have been occasions when the medium posted provides evidence about the offenders of a criminal act, the maker of the content or those involved in its distribution. In certain situations, the metadata associated with the online publication may need to be kept in order to prosecute the offender/s.

If the preservation of a copy is required, the Department will advise the online content host in the body of the notice that a copy must be stored securely, and away from public view, until the Department can obtain the correct legal instruments to access the material.

The Department will use the necessary legal instruments such as going to court to obtain a production order or a search warrant. In some cases, action under a Mutual Legal Assistance Treaty (MLAT) may be required because the online content host is located overseas. This process could take over six months, as it is dependent on Law Enforcement Agencies or Regulators in another country seeking the necessary subpoenas, search warrants or production orders.

Under [section 119E](#) of the Act:

An online content host may also preserve a copy of the online publication if they intend to lodge or have lodged:

- a. a submission under [section 13\(1\)\(ba\)](#) for a classification decision for the relevant online publication;
- b. an application for a review under [Part 4](#) against the classification decision for the relevant online publication;
- c. a notice of [appeal](#) related to that application for review.

The online content host may preserve a copy of the online publication for as long as it is needed to complete the relevant process but must hold it securely.

Note: Online content hosts must still remove or prevent access to the publication even if they do preserve a copy for any reason under section [119E](#).

Copies and variations of content

We understand that online content hosts cannot always track copies or modified versions of objectionable material. All URLs identified by the Department will be included in Schedule A of the notice. Depending on the proliferation of this content we may need to send additional take-down notices for variations and copies of the content.

The take-down notices are specific to the content described in Schedule A. The Department maintains the National Image Data Base of content that is objectionable in New Zealand and that Customs, Police and DIA have actioned. This makes detections of copies and variations more effective.

Actions online content hosts can take to reduce online harm

Many online content hosts are also involved in the hashing of content that has been deemed to be terrorist and violent extremist content (TVEC). Some online content hosts can share these hashes via the Global Internet Forum for Counter Terrorism (GIFCT Hash Sharing Database); Tech Against Terrorism – Terrorist Content Analytics Platform (TCAP) and the National Centre for Missing and Exploited Children; Internet Watch Foundation hash-sharing databases.

These are effective mechanisms available to online content hosts to ensure copies of objectionable publications are located, removed and not reposted to their domain.

Safeguards

Take-down notices will only be issued by an Inspector under one of three situations outlined under [section 119C](#) of the Act:

1. An interim classification assessment has been made under [section 22A](#) that the online publication is likely to be objectionable.
2. The online publication has been classified as objectionable under [section 23](#).
3. The Inspector believes, on reasonable grounds, that the online publication is objectionable.
 - a. In this instance the Department will also submit the online publication to the Classification Office for a classification.

Internal processes, including peer review and managerial approval, will be put in place to ensure that any take-down notice is issued according to the process outlined in regulations and [section 119C](#).



The Classification Office

Classification decisions made by the Classification Office are published in a [public register](#).

The Classification Office processes enable online content hosts to request a review or appeal a classification decision. These processes require the online content host to complete and application form and pay a prescribed fee. See the [Classification Office website](#) for further information.

Submissions of publications

If an online content host disagrees that the content is objectionable, they are able to submit the publication named in the notice to the Classification Office. See: [section 13](#) of the Act.

A submission by an online content host under subsection (1)(ba) must be submitted within 20 working days after they receive the take-down notice.

The Chief Censor may determine that an online publication submitted to the Classification Office under subsection (1)(ba) will not be examined or classified by the office if:

- a. the online publication has already been submitted to the Classification Office under this section; or
- b. the online publication has already been the subject of a classification decision; or
- c. the Chief Censor considers that the submitting of the online publication to the Classification Office is frivolous or vexatious.

Note: The Department may request a classification decision for objectionable content that has not already been classified. Online content hosts will be advised of this in the accompanying email.

Reviews by the board

If the online content host is dissatisfied with any decision of the Classification Office with respect to the publication subject to this notice shall be entitled, on application, to have the publication reviewed by the Board. See: [Part 4](#)

Applications for review must be submitted within [30 working days](#) of the of the classification decision being published in the register.

Note: This process only applies once a decision has been made on the publication by the Classification Office.

See the Classification Office website for more information on this process: [Getting a classification decision reviewed : Information for Industry : OFLC \(classificationoffice.govt.nz\)](#)



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