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By email: Lloyd.Bezett@dia.govt.nz

Dear Lloyd,

Submission: Digital Child Exploitation Filtering System Code of Practice

Introduction

This letter is InternetNZ's response to the Department's call for submissions on the draft Code of Practice that is intended to govern the operation of the Department's child abuse material filtering scheme.

InternetNZ has not yet had the opportunity to fully evaluate the filtering system. This submission therefore is very narrowly drawn: it responds only to the material in the draft Code.

Within the next few weeks, InternetNZ aims to complete a robust assessment of the Department's system and will publish (and submit to you) a statement of the principles we believe should underpin consideration of filtering systems, a high level look at the costs and benefits of the Department's system, and a technical analysis and critique of the system.

We regret that this input cannot be completed by the due date for submissions on the Code, but the matters that we will cover go well beyond its scope and we hope they will be of interest to the Department notwithstanding the delay.

This response is predicated on the assumption that the Department will continue to operate the filter and make it available to ISPs on a voluntary basis. InternetNZ does not at this point express an opinion as to whether it supports or opposes the operation of the system on that basis or not. Comments on that matter will be contained in the further input referred to above.

Finally, by way of introduction, this response focuses on the proposed arrangements to govern the system and also makes some broad comments about the Code text.

General comments

InternetNZ is not against censorship and supports consideration of all avenues in the effort to stamp out the scourge of child abuse.

InternetNZ notes that the text of the Code is a mixture of explanation of how the Department's system works, how the list of filtered sites is managed, a description of the problem of child abuse material online, emotive language and the treatment of data. In some respects the document appears to be an Operating Manual for the filter and if that is the intention, it should be re-titled as such.

If the document is intended to be a code setting out the governance of the filtering system, then as a general matter of principle InternetNZ would support it being re-drafted so that it sets out clearly the following matters:

- The purpose of the system
- The way the list is developed and maintained
- The treatment of data created by the system
- The role and composition of an Independent Reference Group

The other descriptive material (explaining the problem of child abuse material, the user experience of the filter, the way the filter works on a technical level and so on) does not belong in the Code in our view. These things can all be documented elsewhere, but they are not material to a Code that seeks to transparently govern the filtering system. The matters mentioned above are the key ones that need to be transparently and accountably dealt with.

Scope

Integral to public confidence in the scheme is the need for a clearly stated assurance that it is only used for what it says it is used for: that it only filters child abuse material.

Independent oversight

InternetNZ welcomes the Department's commitment to transparently and accountably oversee the system, and in particular believes that the idea of an Independent Reference Group (IRG) is a good way to build public confidence.

The Code is not clear about what the purpose of the IRG is. InternetNZ suggests that its defined purpose be to oversee and monitor the operation of the Department's filtering system.

The Code is very light on the detail as to how the IRG might be composed. InternetNZ suggests the following for the Department's consideration:

- The IRG must have membership that is appointed through a public process and that includes independent organisations and individuals. These could usefully include industry and consumer representatives. In protecting the public interest it is worth ensuring a balanced and credible group, and including a wide range of representatives from law enforcement, government, ISP and

consumer groups as well as individuals who could provide a detached citizen's point of view.

- The IRG must have published terms of reference, powers and resources that are extensive and comprehensive enough to give it the ability to provide confidence that the system is being operated in line with the Code. For example, access to statistics, correspondence and appeals information.
- Reports of the IRGs proceedings must be publicly available.

Another oversight measure that the Department should consider would be an occasional independent audit of the list of filtered objects. An independent and reputable entity such as the Auditor General, perhaps working with the Chief Censor, should conduct random spot audits of the list. Should any inconsistencies be found between the published basis of the list and what it actually contains, a complete review of the list would be required.

Conclusion

InternetNZ stresses that the comments in this letter are intended to help the Department improve the draft Code of Practice. They are not intended to endorse or support the Department's filtering system or filtering in general, nor to oppose these things.

InternetNZ's full statement on such matters will be provided as soon as possible.

With many thanks for your consideration,

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jordan Carter', with a stylized flourish at the end.

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