



CROWN OFFICE
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FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

Andrew Richardson
Procurator Fiscal
High Court Division

Crown Office
25 Chambers Street
Edinburgh EH1 1LA

Chris Hughes
Internet Watch Foundation

Tel: 0300 020 3352 (PA)
Text Relay prefix: 18001

By E-mail

Your ref:
Our ref:

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Dear Chris

INTERNET WATCH FOUNDATION

You asked for an update on the potential exposure of Scottish based hosting companies or their members to potential prosecution when acting in a professional capacity. The position remains that as outlined in my letter from January 2015.

For any indecent images charge we require to show *mens rea*. *Mens rea* is the intention or knowledge of wrong doing that constitutes part of the crime. Where an accused doesn't have the necessary *mens rea* for the offence then the police should not report a case to us as there is not a sufficiency of evidence for an offence to have been committed. Where organisations take steps to "seize" evidential copies the Police or any other relevant investigating agency should be contacted and they will take those evidential copies and commence an investigation before considering whether to report the case to COPFS. In such circumstances we would not expect the police to report any offence to us committed by the organisation. We would however prosecute if someone from the organisation created images in the course of their employment and then misused them either for themselves or for others, so we would want to keep that option open to us.

In addition to this we have to meet the public interest test before we would commence any prosecution. Clearly it wouldn't be in the public interest to prosecute someone who was involved with the images during the course of their work when that work involved assisting a criminal investigation.




www.copfs.gov.uk



I hope this information is of reassurance to you and your members.

Yours sincerely,



Andrew Richardson
National Cybercrime Lead