

# Crown Office and Procurator Fiscal Service

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Dear Fred,

## **INTERNET WATCH FOUNDATION**

Thank you for your letter dated the 26<sup>th</sup> November 2015 which was addressed to the Lord Advocate and was passed to me in my role as National Cybercrime Lead for the Crown Office and Procurator Fiscal Service (COPFS). In your letter you asked for guidance on the potential exposure of Scottish based hosting companies or their members to potential prosecution when acting in a professional capacity.

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.



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

Yours sincerely,



Andrew Richardson

National Cybercrime Lead

