



# 2020/21 Annual review of the Office of Film and Literature Classification

Report of the Governance and Administration  
Committee

March 2022

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Ian McKelvie  
Chairperson

## Office of Film and Literature Classification

### Recommendation

The Governance and Administration Committee has conducted the annual review of the Office of Film and Literature Classification for 2020/21, and recommends that the House take note of its report.

### About the Office of Film and Literature Classification—Te Mana Whakaatu

The Office of Film and Literature Classification—Te Mana Whakaatu is an independent Crown entity responsible for implementing the Films, Videos, and Publications Classification Act 1993 (the Classification Act). The Classification Act established the Office as New Zealand's independent media regulator. Its core activities include:

- classifying publications
- providing an inquiries and complaints service
- researching various media and information topics
- supporting the development of self-rating systems used by streaming providers.

The Classification Office is governed by a board consisting of the Chief Censor and Deputy Chief Censor. David Shanks is the Chief Censor. Rupert Ablett-Hampson was appointed as Deputy Chief Censor in October 2021.

As at 30 June 2021, the Office employed about 26 staff (24 full-time equivalents).

### Financial performance

In 2020/21, the Office's total revenue was \$3.66 million. Its total expenditure was \$4.13 million, resulting in a deficit of \$470,000. This compares with total revenue of \$3.79 million and total expenditure of \$3.54 million in 2019/20, resulting in a surplus of \$246,000. The 16.6 percent increase in total expenditure in 2020/21 was attributed to additional contractor and outsourcing costs. Contract staff were used to fill the Deputy Chief Censor vacancy and meet the specialist requirements for implementing the self-rating tool. The tool, which went live during the period under review, allows on-demand providers, like Netflix, to rate their own content. Revenue also declined due to COVID-19 restrictions, which affected cinemas, as well as the continued decline of the DVD market.

The following table provides a summary of the Office's financial performance over recent years.

	2017/18 \$	2018/19 \$	2019/20 \$	2020/21 \$	% change in 2020/21
<b>Revenue</b>	2.61 million	2.57 million	3.79 million	3.66 million	(3.43)
<b>Expenditure</b>	3.50 million	2.90 million	3.54 million	4.13 million	16.67
<b>Net surplus</b>	(892,000)	(328,000)	246,000	(470,000)	(291.06)

## Audit results

The Auditor-General issued an unmodified audit opinion. He assessed as "very good" the Office's management control environment and financial information and supporting systems and controls, with no recommended improvements. He assessed the Office's performance information and supporting systems and controls as "good", with some improvements included. The Auditor-General recommended that the Office develop a formal sampling methodology for third-party reviews of its decisions to ensure the reported results represent the entire population. He also recommended that the Office implement a tracking system for capturing all public survey requests and responses. We understand the importance of these improvements and look forward to seeing what progress the Office makes in the coming reporting period.

## The Office's observations about the year under review

The Chief Censor described 2020/21 as a busy year, characterised by change and challenge. During the year under review, the Office worked extensively to operationalise the change to the self-regulatory regime for commercial video-on-demand and streaming services.<sup>1</sup> It is also adapting to changes to the Classification Act that relate to countering the challenges of violent extremism. In June 2021, the Office published a research report and survey about misinformation,<sup>2</sup> which investigated New Zealanders' exposure to misinformation and their feelings about it.<sup>3</sup> It also continued its very busy classification workload.

The Office acknowledged that, like other countries, New Zealand is facing a situation where existing regulatory systems are unable to confront certain challenges given the proliferation of information in the digital age. It highlighted misinformation as one example. The Office referred to its misinformation survey that found that 84 percent of New Zealanders believe action should be taken about misinformation primarily spread digitally or on social media platforms. It pointed out, however, that most people were unclear about what action should be taken or who should be acting in response. The Chief Censor said he was clear when releasing the report that he does not believe criminalising misinformation is the solution. He

<sup>1</sup> The newly introduced commercial video-on-demand framework requires users to pay a standard charge in exchange for using the framework.

<sup>2</sup> The report, *The Edge of the Infodemic*, is available on the Office's website.

<sup>3</sup> Misinformation is defined as information that, while false, is not created with the intention of causing harm.

observed that the trend with international authorities is to consider the responsibility of platforms and content promoters to have standards and approaches to address misinformation.

## **Balancing freedom of expression and harmful digital communication**

We observed that, over the past year, MPs have received many complaints about censorship of opinion on digital platforms and in the media. People have also expressed concern that free speech is under threat in a climate of “cancel culture”. We asked how the Chief Censor responds to these views because we wanted to understand how he balances his role as regulator to address harmful digital content against the right to freedom of expression. The Chief Censor agreed that operating in this area requires a balance. He noted that freedom of speech cannot be unrestrained given the harms it can lead to. Conversely, the Chief Censor said, state censorship cannot impose heavy penalties that stifle freedom of speech and expression. He reiterated that a more constructive approach is for platforms to take responsibility for their algorithms. However, he noted that research from around the world shows that platforms “are not up to the task”.

## **The Office’s work to counter violent extremism**

In 2020/21, the Office received additional funding to establish a team to understand how to counter violent extremism. The team explored how to respond to online content promoting terrorism and violence and identified links between misinformation, disinformation, malinformation, and violent extremism.<sup>4</sup> We asked at what point the Office would intervene to censor these types of information. The Chief Censor explained that when the pandemic started in early 2020, he began talking to agencies involved with online harm and online responses. The discussions were about the potential for a “tsunami” of misinformation and conspiracy theories. The Office said it became interested when people began posting videos on social media of them attacking cell phone towers and potentially showing people how to do so. This was because the promotion of crime triggers the classification criteria in the Classification Act.

We heard that the Act is not activated if a person is not promoting crime or representing harm or violence. However, the Office said it is interested because it can see where conspiracy theories lead. It considers that more needs to be done in the “pre-criminal space” regarding the responsibility of platforms and the people who are actively promoting these theories.

We note that many platforms operating in New Zealand have head offices based overseas, making engagement with them challenging. We asked whether the Office is engaging with its international counterparts and considering the available options to counter the misinformation. The Office pointed out that these matters are global, with New Zealand connected to, and instantaneously affected by, events on the other side of the world. It recognises that international engagement is critical to achieving any type of traction and

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<sup>4</sup> Disinformation is information that is false and has been deliberately created to cause harm. Malinformation is information that is based on reality and is used to inflict harm.

success, and it is connected with its equivalent authorities and regulators internationally. For example, the Chief Censor expects to be involved in a conference in Washington hosted by the Center for Countering Digital Hate. He also planned to attend a global internet forum to counter terrorism as a New Zealand representative. We were told that the forum will discuss some of the challenges of legal structures and algorithms.

We agree that this is an area that we should continue to engage with the Office on given that it is topical and constantly changing. We look forward to working with the Office during the coming year, including understanding how the Office will report its performance, given it is rolling out a series of new performance measures.

## **New Zealand National Party differing view**

National members thank the Office of Film and Literature Classification for their candid and honest comments about the issues facing New Zealand in relation to misinformation, online harm, and the balance of the freedom of expression and free speech with dealing with language and content that is violent and illegal.

National members agree with the broad comments of the annual review and also recognise that the role of the Chief Censor in the 2020s is not necessarily fit for purpose in a multi-platform environment and welcomes further work to see a platform agnostic censorship and content regulation regime that can be agile and adapt to a globalised media and content market.

It is clear a better balance is needed between the roles of the state, the individual, and the platforms that provide and/or offer access to content to ensure that the free flow of information is retained while tackling the ongoing blight of information that may threaten our democracy and content that causes direct harm to consumers. The pipeline from free-speech where uncomfortable or offensive things are said into mis, dis and malinformation that may become criminal or encourage violent criminal activities is not always clear as recent protests, led largely via digital platform messaging services, have shown New Zealand and it is important that more research is undertaken by our content regulators to help determine these activities.

In addressing this National members particularly agree with the Classification Office in their view that “...misinformation is not in and of itself illegal – and that it would likely be impractical and counterproductive to make it so. It should not be unlawful to express a view or belief that is wrong, or that is contrary to prevailing evidence and opinion. Prohibitions on beliefs can have potentially serious implications on human rights (as appears to be playing out currently with Russia’s outlawing of misinformation about the Ukraine War, where even stating that Russia is engaged in a war can apparently incur serious criminal penalties).”<sup>5</sup>

National members note the substantial drop from 2016 to 2022 in excised or banned publications from 720 to only 137 publications and recognise that this situation may in part be due to the continuing growth of online “darknet” opportunities for the purveyors of objectionable content to disseminate and promote illicit materials. This is an issue that will be

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<sup>5</sup> You can read this in the Office’s response to post-hearing question 175 here: [https://www.parliament.nz/en/pb/sc/submissions-and-advice/all?custom=FINS\\_118632](https://www.parliament.nz/en/pb/sc/submissions-and-advice/all?custom=FINS_118632).

important for all democratic nations to address in the coming years and fewer materials are distributed in physical copies.

National members look forward to the committee opening an ongoing inquiry or briefing into content regulation as a result of the positive engagement from the Classification Office and see this as an important issue for all New Zealand citizens and their families.

## **Appendix**

### **Committee procedure**

We met on 9 February and 16 March 2022 to consider the annual review of the Office of Film and Literature Classification. We heard evidence from the Office of Film and Literature Classification and received advice from the Office of the Auditor-General.

### **Committee members**

Ian McKelvie (Chairperson)  
Rachel Boyack  
Naisi Chen  
Dr Deborah Russell  
Hon Michael Woodhouse

Melissa Lee took part in the consideration of this item of business.

### **Advice and evidence received**

We received the following documents as advice and evidence for this annual review. They are available on the Parliament website, [www.parliament.nz](http://www.parliament.nz), along with a transcript of our hearing.

Office of the Auditor-General (Briefing on the Office of Film and Literature Classification).

Office of Film and Literature Classification (Responses to written questions).