

Plain English guide to offence provisions in the Films, Videos, and Publications Classification Act 1993 and its Regulations (2015 update)

INTRODUCTION

DEFINITIONS

AGE RESTRICTIONS

Supplying/exhibiting in breach of classification *without knowledge* 3

Supplying/exhibiting in breach of classification or likely restriction *with knowledge* 3

OBJECTIONABLE MATERIAL

Possessing objectionable publications *without knowledge* 3

Possessing objectionable publications *with knowledge* 3

Making/distributing/exhibiting etc. objectionable publications *without knowledge* 4

Making/distributing/exhibiting etc. objectionable publications *with knowledge* 4

Displaying/exhibiting objectionable publications to under 18s *without knowledge* 4

Displaying/exhibiting objectionable publications to under 18s *with knowledge* 4

Publicly exhibiting/displaying objectionable publications 4

Publicly distributing objectionable publications 4

Exhibiting an objectionable *part* of a non-objectionable publication 4

Liability of employers and others in a role of authority 5

Aggravating factors in sentencing / presumption of imprisonment for repeat offenders 5

Offences committed in other countries 5

Exhibiting objectionable publications at the Classification Office not an offence 6

CLASSIFICATION LABELS

Non-compliance with labelling requirements for films 6

Non-compliance with labelling requirements for film advertising 6

Unlawful issue of labels 6

DISPLAY OF PUBLICATIONS / FILM ADVERTISING / CLASSIFICATION LABEL POSTERS

Breaching display conditions (restricted material) 6

Display of film advertising without approval or contrary to display conditions 6

Non-compliance with requirement to display classification label poster 6

SERIAL PUBLICATION / INTERIM RESTRICTION ORDERS

Contravention of serial publication order or interim restriction order 6

OBSTRUCTION OF INSPECTORS – PRIVATE PROSECUTIONS

Obstruction of Inspectors 7

Private prosecutions require Attorney-General's consent 7

INTRODUCTION

This document is a plain English guide to the offence provisions within the *Films, Videos, and Publications Classification Act 1993* to which penalties may apply, and includes some provisions which clarify when and how these offences and penalties may apply.

This guide does not include every offence provision within the legislation. The [Offence Provisions](#) in full can be read on the New Zealand Government's legislation website: www.legislation.govt.nz. For further information about the offence provisions, or about the Classification Act as a whole, please contact the [Information Unit](#) at the Office of Film and Literature Classification.

DEFINITIONS

Publication means:

- Any film, DVD, video recording or video game.
- Any sound recording.
- Anything that has images or words printed or written on it, including magazines, books, billboards, photographs and clothing.
- Computer files and devices capable of storing computer files (such as hard discs, USB storage devices, CDs and DVDs).
- *The definition of a publication **does not** include a television or radio broadcast.*
- *Read the full legal definition [here](#).*

Objectionable publication means:

- A publication containing banned material according to the classification criteria in [section 3](#) of the *Films, Videos and Publications Classification Act 1993*.
- A publication which has been banned by the Office of Film and Literature Classification (or a previous New Zealand censorship body).

Restricted publication means:

- A publication containing restricted material according to the classification criteria in [section 3](#), [section 3A](#), and [section 3B](#) of the *Films, Videos and Publications Classification Act 1993*.
- A publication which has been classified as restricted by the Office of Film and Literature Classification (or a previous New Zealand classification body) – eg. an R16 or R18 film.

Link to section	Subject	Offence	Penalty
AGE RESTRICTIONS			
125	Supplying/exhibiting in breach of classification <i>without knowledge</i>	It is an offence to supply, distribute, exhibit, or display a publication contrary to its classification, or to allow another person to do this. <i>These penalties apply when someone is unaware it's restricted</i>	Individual: fine up to \$3,000 Organisation: fine up to \$10,000
126	Supplying/exhibiting in breach of classification or likely restriction <i>with knowledge</i>	It is an offence to supply, distribute, exhibit, or display a publication contrary to its classification <i>or likely restriction</i> (e.g. dairy owner selling explicit magazine to under 18s); or to allow another person to do this (e.g. retailer selling a restricted game to a parent knowing the parent will give it to children). <i>These penalties apply when someone is aware it's restricted</i>	Individual: imprisonment up to 3 months or fine up to \$10,000 Organisation: fine up to \$25,000
OBJECTIONABLE MATERIAL			
131	Possessing objectionable publications <i>without knowledge</i>	It is an offence to possess* an objectionable publication. <i>These penalties apply when someone is unaware it's objectionable</i> * 'Possession' includes viewing an objectionable computer file, even if someone does not intentionally save/download a copy of the file. (Specific exemptions apply for officials in relation to official duties.)	Individual: fine up to \$2,000 Organisation: fine up to \$5,000
131A	Possessing objectionable publications <i>with knowledge</i>	It is an offence to possess* an objectionable publication. <i>These penalties apply when someone is aware it's objectionable</i> * 'Possession' includes viewing an objectionable computer file, even if someone does not intentionally save/download a copy of the file. (Specific exemptions apply for officials in relation to official duties.)	Individual: imprisonment up to 10 years or fine up to \$50,000 Organisation: fine up to \$100,000 <i>(Updated May 2015)</i>

Link to section	Subject	Offence	Penalty
123	Making/distributing/exhibiting etc. objectionable publications <i>without knowledge</i>	It is an offence to make, supply or distribute an objectionable publication; or to import, export, copy or possess such a publication for the purpose of supply or distribution. It is also an offence to display or exhibit an objectionable publication in expectation of payment or other gain. <i>These penalties apply when someone is unaware it's objectionable</i> (Specific exemptions apply for officials in relation to official duties: 124A .)	Individual: fine up to \$10,000 Organisation: fine up to \$30,000
124	Making/distributing/exhibiting etc. objectionable publications <i>with knowledge</i>	It is an offence to make, supply or distribute an objectionable publication; or to import, export, copy or possess such a publication for the purpose of supply or distribution. It is also an offence to display or exhibit an objectionable publication in expectation of payment or other gain. <i>These penalties apply when someone is aware it's objectionable</i> (Specific exemptions apply for officials in relation to official duties: 124A .)	Individual: imprisonment up to 14 years Organisation: fine up to \$200,000 <i>(Updated May 2015)</i>
127 (1)-(3)	Displaying/exhibiting objectionable publications to under 18s <i>without knowledge</i>	It is an offence to display or exhibit an objectionable publication to someone under 18. <i>These penalties apply when someone is unaware it's objectionable</i>	Individual: fine up to \$10,000 Organisation: fine up to \$30,000
127 (4)-(5)	Displaying/exhibiting objectionable publications to under 18s <i>with knowledge</i>	It is an offence to display or exhibit an objectionable publication to someone under 18. <i>These penalties apply when someone is aware it's objectionable</i>	Individual: imprisonment up to 10 years Organisation: fine up to \$200,000
129 (1)- (2A)	Publicly exhibiting/displaying objectionable publications	It is an offence to exhibit or display an objectionable publication in or within view of a public place. <i>These penalties apply whether or not someone is aware it's objectionable</i>	Individual: fine up to \$10,000 Organisation: fine up to \$30,000
129 (3)-(4)	Publicly distributing objectionable publications	It is an offence to distribute an objectionable publication to people in a public place. <i>These penalties apply when someone is aware it's objectionable</i>	Individual: imprisonment up to 1 year or fine up to \$20,000 Organisation: fine up to \$50,000
132	Exhibiting an objectionable <i>part</i> of a non-objectionable publication	It is an offence to exhibit only part of a non-objectionable or restricted publication if that part would be objectionable in itself when taken out of context. <i>Penalties in the following offence provisions may apply: 123, 124, 127, 129</i>	

Link to section	Subject	Offence	Penalty
138	Liability of employers and others in a role of authority	<p>An employer (or other person in a role of authority using someone an agent) may be held liable if their employee or agent supplies, distributes, displays, exhibits, or makes available an objectionable publication.</p> <p><i>Penalties in the following offence provisions may apply whether or not an employer/other person is aware of the illegal action of an employee/agent, unless they can prove reasonable steps were taken to prevent the illegal action taking place:</i></p> <p>123, 124, 127, 129, (132)</p>	
132A & 132B	Aggravating factors in sentencing / presumption of imprisonment for repeat offenders	<p>When sentencing for offences involving objectionable publications, Courts must take into account as an aggravating factor* whether and to what extent the objectionable publications deal with sexual material involving children or young people. There is to be a presumption of imprisonment when sentencing for repeat offences involving objectionable publications that deal with sexual material involving children or young people. In these cases the Courts must refer to OFLC decisions and reports of findings, and to Board of Review decisions.</p> <p><i>These sentencing provisions apply to the following offences (when someone is aware it's objectionable):</i></p> <p>124(1), 127(4), 129(3), 131A(1) of the Classification Act and 209(1A) of the Customs and Excise Act 1996</p> <p>* An 'aggravating factor' is something that may increase a sentence.</p>	
145A	Offences committed in other countries	<p>New Zealanders who commit offences relating to child sexual material overseas can be charged in New Zealand.</p> <p><i>Penalties in the following offence provisions may apply (when someone is aware it's objectionable):</i></p> <p>124(1), 127(4), 129(3), 131A(1) of the Classification Act and 209(1A) of the Customs and Excise Act 1996</p>	

Link to section	Subject	Offence	Penalty
128	<i>Exhibiting objectionable publications at the Classification Office not an offence</i>	ss123-124 do not apply if an objectionable publication is displayed/exhibited for educational/professional purposes at the Classification Office and at the direction of the Chief Censor.	
CLASSIFICATION LABELS			
120	Non-compliance with labelling requirements for films	It is an offence to supply or exhibit a film without a classification label or with an incorrect classification label. It is an offence to exhibit a film without publicly displaying the contents of its classification label in the place where the film is being screened.	Individual: fine up to \$3,000 Organisation: fine up to \$10,000
120	Non-compliance with labelling requirements for film advertising	Once a film has been labelled, it is an offence to advertise that film to the public without displaying the contents of its label. This includes advertising on trailers, radio, television, newspapers, brochures, film posters etc.	Individual: fine up to \$3,000 Organisation: fine up to \$10,000
121	Unlawful issue of labels	It is an offence to issue your own labels intending to make someone believe they were legitimate labels from the FVLB.	Individual: fine up to \$3,000 Organisation: fine up to \$10,000
DISPLAY OF PUBLICATIONS /FILM ADVERTISING/CLASSIFICATION LABEL POSTERS			
130	Breaching display conditions (restricted material)	It is an offence to display in public a restricted publication, or advertising material for a restricted publication contrary to display conditions.	Individual: fine up to \$5,000 Organisation: fine up to \$15,000
Reg 46	Display of film advertising without approval or contrary to display conditions	It is an offence to publicly display film posters, video slicks and similar material if this advertising material has not been approved. When it has been approved, it is an offence to publicly display this advertising material contrary to display conditions.	Individual: fine up to \$2,000
Reg 46	Non-compliance with requirement to display classification label poster	It is an offence to supply or exhibit films to the public without displaying information which explains the meaning of classification labels (eg., an official classification label poster).	Occupier of premises: fine up to \$2,000
SERIAL PUBLICATION/INTERIM RESTRICTION ORDERS			
133	Contravention of serial publication order or interim restriction order	It is an offence not to comply with the classification and/or display conditions of a serial publication order; or the conditions of an interim restriction order.	Occupier of premises: fine up to \$3,000 Organisation: fine up to \$10,000

Link to section	Subject	Offence	Penalty
OBSTRUCTION OF INSPECTORS – PRIVATE PROSECUTIONS			
134	Obstruction of Inspectors	<p>It is an offence to obstruct Inspectors of Publications* performing official duties.</p> <p>Inspectors may enter and inspect premises supplying or exhibiting films to the public, enter and search <i>any</i> premises if in possession of a search warrant, see documents relating to an investigation/inspection, and seize publications.</p> <p><i>Powers of enforcement officials are outlined in Part 7 of the Classification Act</i></p> <p>*Under the Classification Act, Inspectors of Publications are Censorship Compliance Unit Inspectors from the Department of Internal Affairs and police officers.</p>	Individual: fine up to \$1,000
144	<i>Private prosecutions require Attorney-General's consent</i>	<p>Commencing a private prosecution* requires the consent of the Attorney-General for offences under sections 123 to 129 (involving objectionable or restricted publications), sections 131 and 131A (possession of objectionable publications) & section 133 (Contravention of serial publication order or interim restriction order).</p> <p><i>*'Private prosecution' is defined in s5 of the Criminal Procedure Act 2011</i></p>	