

Prevention of Child Pornography Bill

Liability of Internet Service Providers and Courier Service Operators

At the meeting held on 9 January 2003, Members asked the Administration to consider exempting Internet service providers (ISPs) and courier service operators which had complied with a code of practice on materials deposited by their users from the offence of possession of child pornography.

2. The Administration has since considered the proposal carefully and concluded that it is not necessary to incorporate an express provision in the Prevention of Child Pornography Bill to exempt the liability of ISPs and courier service operators from the relevant offence in relation to child pornography.

3. Under the existing law, there are various offences of possession, for example, possession of dangerous drugs, controlled chemicals, wild protected animals, explosives, arms and ammunitions. With the new offence of possession of child pornography, the liability of the courier will depend on the extent of the courier's knowledge of the thing they deliver, just as in the case of other existing possession offences. There is no need to treat child pornography material differently from other goods delivered by the courier.

4. Given the enormous amount of information on the web pages posted or messages transmitted by clients of an ISP, in the absence of evidence to the contrary, ISPs are not taken to have knowledge of the specifics of the web pages or messages nor held responsible for the contents.

5. With the input and comments made by Members at previous meetings, the Administration has agreed to move CSAs to improve the defence provisions under Clause 4. With these amendments, the defence provisions are very comprehensive and they will be available to all defendants, including ISPs and courier service operators in case questions are raised on their liability. Therefore, proper protection is given to any person who unwittingly comes across child pornography. An express provision in the Bill to exempt the liability of ISPs and courier service operators is therefore not considered necessary.

Security Bureau

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