

Websites and online hosts can obtain “safe harbour” under new cyber-bullying law

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Speed read

By following the right process, websites etc. can reduce their exposure under the new Harmful Digital Communications Act. Many websites don't yet realise that they are affected by the new law.

In this article, supplementing our general overview, [New cyber-bullying legislation may have unintended effects](#), we focus on the rights and responsibilities of online content hosts under the Act. In return for complying with specified requirements, the Act provides hosts with a “safe harbour” guarantee against liability from harmful, user-posted content.



The Detail

What websites and online hosts are affected?

Under the Act, an “online content host” includes any website or online application where users can post and access digital communication. This definition is very wide, and includes not only the likes of Facebook and Twitter, but any online community where users can express themselves, such as TradeMe, Stuff, and thousands of other websites and apps.

If you host a website or app that facilitates digital communication, you are an online content host.

If your online platform could be used to disseminate harmful digital communication, you now have responsibilities under this new legislation.

How does an online content host obtain “safe harbour” from liability?

The Act recognises that while online content hosts provide the digital environment in which cyber-bullying and online exploitation occurs, hosts should not automatically be liable for harmful digital content posted by users. We've been writing for years about the evolution of online liability for third party statements in other areas of the law, such as [here](#).

The Act also recognises that co-operation from online content hosts must be part of the solution to cyber-bullying. Accordingly, the Act includes a “safe harbour” exemption for online content hosts from civil or criminal proceedings for user-posted content.

But here's the catch - the “safe harbour” protection can only be claimed if the host fully complies with their responsibilities under the Act.

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Responsibilities of online content hosts

In order to obtain protection from the “safe harbour” provision, here’s a brief overview of what online contents hosts must do:

- **Have no connection with the harmful content.** If a user posts a harmful digital communication at the direction of, or on behalf of, an online content host, the “safe harbour” provision cannot apply.
- **Maintain a complaints mechanism.** Online content hosts must provide all users with an easily accessible means of contacting the host to report harmful content. The complaints mechanism must allow users to submit complaints that include the following information:
 - The complainant’s name, telephone number, physical address, and email.
 - Why the content is in breach of the Act, or otherwise unlawful.
 - The specific location of the content.
 - Whether the complainant consents to their identifying information being disclosed to the author of the content.
 - Any other information considered relevant by the complainant.
- **Protect privacy during the complaints process.** Online content hosts cannot disclose any personal information about complainants or

authors without (a) explicit consent, or (b) a court order.

- **Follow the legislated complaints process.** Upon receiving a notice of complaint, online content hosts must do the following:
 - Take reasonable steps to identify the author of the content.
 - Remove identifying information (unless consented to) from the notice of complaint.
 - Forward the edited complaint to the author of the content as soon as is practicable, but in no more than 48 hours.
 - Notify the author that they have a further 48 hours to submit a counter-notice.
 - If the author cannot be identified, does not respond in time, or consents to the removal of the content, the host must take down the specific content as soon as is practicable.
 - If the author refuses to consent to the content being removed, the host *must leave the content in place* and notify the complainant. If the author consents, the host can also provide the complainant with information identifying the author.

From here, the situation may be escalated by the complainant or Approved Agency to the District Court.

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What to do now

The owners of websites and apps should determine whether or not they have online content host obligations under the Act as soon as possible.

If in doubt, we recommend playing it safe and ensuring that users have access to a compliant complaints mechanism.

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