Draft for a second law to amend the Youth Protection Act

Draft by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (consolidated version)

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Youth Protection Act (JuSchG)

Of 23 July 2002 (BGBl. I p. 2730)

Chapter 1 General Regulations

Sect. 1 Definitions

(1) For the purposes of this Act

1. Children are persons who are not yet 14 years old,

2. Adolescents are persons who are 14 but not yet 18 years old,

3. is Custodian a person who alone or together with another person has the right to care for a person according to the provisions of the German Civil Code,

4. is Person with Parental Authority any person over 18 years of age, as far as he/she permanently or temporarily performs parental duties on the basis of an agreement with a Custodian or as far as he/she looks after a Child or Adolescent in the context of education or youth welfare.

(1a) Media for the purpose of this Act are physical media and telemedia.

(2) Physical media within the meaning of this Act are media with texts, images or sounds on physical carriers that are suitable to be passed on, intended for direct perception or built into a demonstration or game device. The physical distribution, provision, offering or making available of physical media is tantamount to the electronic distribution, provision, offering or making available of such media, unless it is a matter of broadcasting within the meaning of Sec. 2 of the Interstate Broadcasting Treaty.

(3) Telemedia within the meaning of this Act are media that are transmitted or made accessible in accordance with the Telemedia Act. Transmission or making available within the meaning of sentence 1 is the provision of own or third-party content.

a Rundfunkstaatsvertrag
b Telemediengesetz
(4) Mail-order business within the meaning of this Act is any transaction against payment, which is carried out by ordering and sending goods by mail or electronically without any personal contact between the supplier and the customer or without technical or other precautions being taken to ensure that no delivery is made to Children and Adolescents.

(5) The provisions of Sect. 2 to 14 of this Act shall not apply to married Adolescents.

(6) Service providers within the meaning of this Act are service providers according to the Telemedia Act.

Sect. 2 Obligation to examine and provide evidence

(1) 1In so far as this Act requires the accompaniment of a Person with Parental Authority, the persons mentioned in Sect. 1(1) no. 4 shall, on request, provide evidence of their authority. 2Organisers and traders must check the authorisation in cases of doubt.

(2) 1Persons for whom age limits must be observed in accordance with this Act must provide appropriate proof of their age on request. 2Organisers and traders must check the age in cases of doubt.

Sect. 3 Publication of the regulations

(1) Organizers and traders must make known the regulations applicable to their operating facilities and events in accordance with Sect. 4 to 13 and, in the case of public film events, the age classification of the films or the provider’s labelling in accordance with Sect. 14(7) by means of clearly visible and legible notices.

(2) 1When announcing the age classification of films and film- and game programmes, organizers and traders shall only use the labels specified in Sect. 14(2). 2 Anyone who passes on a film for public film events shall inform the organizer of the age classification or the provider’s labelling in accordance with Sect. 14 paragraph 7 when passing on the film. 3In the case of films and game programmes that are labelled in accordance with Sect. 14(2) by the supreme authority of a Federal State or an organisation of voluntary self-regulation according to the procedure under Sect. 14(6), no reference may be made to content harmful to Adolescents in the announcement or advertising, nor may the announcement or advertising be made in a manner harmful to Adolescents.

Telemediengesetz

The term “supreme authority of a Federal State” („oberste Landesbehörde“) as used in the Act refers to the competent Supreme Youth Protection Authority of the respective state, usually the Ministry for Family Affairs.
Chapter 2 Protection of minors in public

Sect. 4 Restaurants

(1) Children and Adolescents under 16 years of age shall only be allowed to stay in restaurants\(^a\) if they are accompanied by a Custodian or a Person with Parental Authority or if they have a meal or drink between 5 a.m. and 11 p.m. Adolescents aged 16 and over shall not be allowed to stay in restaurants without the accompaniment of a Custodian or a Person with Parental Authority between midnight and 5 a.m.

(2) Paragraph 1 shall not apply where Children or Adolescents participate in an event organised by a recognised youth welfare body or are travelling.

(3) Children and Adolescents shall not be allowed to stay in restaurants that are run as night bars or nightclubs, or in comparable amusement facilities.

(4) The competent authority may grant exemptions from paragraph 1.

Sect. 5 Dance events

(1) Children and Adolescents under 16 years of age shall not be allowed to attend public dance events without the accompaniment of a Custodian or a Person with Parental Authority, and Adolescents from 16 years of age shall only be allowed to be present until midnight at the latest.

(2) Notwithstanding paragraph 1, the presence of Children may be permitted until 10 p.m. and Adolescents under the age of 16 until midnight if the dance event is organised by a recognised youth welfare organisation or serves artistic purposes or fostering local traditions.

(3) The competent authority may grant exemptions.

Sect. 6 Gambling halls, games of chance

(1) The presence of Children and Adolescents in public gaming halls\(^b\) or similar facilities primarily used for gaming shall not be permitted.

\(^{a}\) Gaststätte (this includes pubs, bars, taverns and other locations serving food and/or drinks).

\(^{b}\) Öffentliche Spielhalle
(2) Children and Adolescents shall only be allowed to participate in games with the possibility of winning in public at fun-fairs, marksmen's festivals, fairs, special markets or similar events and only on condition that the prize consists of goods of low value.

Sect. 7 Events and establishments harmful to young people

1 If a public event or a business poses a risk to the physical, mental or psychological well-being of Children or Adolescents, the competent authority may order that the organiser or trader shall not allow Children and Adolescents to attend. 2 The order may contain age limits, time limits or other provisions if these exclude or substantially reduce the risk.

Sect. 8 Locations endangering young people

1 If a child or adolescent is present at a location where he/she is in immediate danger of harm to his/her physical, mental or psychological well-being, the competent authority or body shall take the necessary measures to avert the danger. 2 If necessary, with regards to the child or adolescent it shall

1. ask him/her to leave the location,

2. bring him/her to his/her legal guardian in the sense of Sect. 7(1) no. 6 of the Eighth Book of the Social Security Code a or, if no legal guardian can be reached, to the custody of the Youth Welfare Office.

3 In difficult cases, the competent authority or body shall inform the Youth Welfare Office of the location that is a danger to young people.

Sect. 9 Alcoholic beverages

(1) In restaurants, sales outlets or otherwise in public

1. beer, wine, wine-like drinks or sparkling wine or mixtures of beer, wine, wine-like drinks or sparkling wine with non-alcoholic drinks shall not be supplied to or allowed to be consumed by Children and Adolescents under 16 years of age,

2. other alcoholic beverages or foods that contain other alcoholic beverages in not insignificant quantities shall not be supplied to or allowed to be consumed by Children and Adolescents.

a Achtes Buch Sozialgesetzbuch
(2) Subsection 1 no. 1 shall not apply where Adolescents are accompanied by a Custodian.

(3) 1In public, alcoholic beverages shall not be offered in vending machines. 2This does not apply if a vending machine

1. is installed in a place inaccessible to Children and Adolescents, or

2. is set up in a commercially used room and it is ensured by technical devices or by constant supervision that Children and Adolescents cannot take out alcoholic beverages.

2Sect. 20 no. 1 of the Restaurant Act remains unaffected.

(4) 1Alcoholic sweet beverages as laid down in Sect. 1(2) and (3) of the Alcopop Tax Act may only be placed on the market commercially with the notice "Sale to persons under 18 years prohibited, Sect. 9 Youth Protection Act". 2The notice shall be displayed on the prepackage in the same font and in the same size and colour as the trade marks or invented names or, in the absence thereof, as the sales name and, in the case of bottles, on the front label.

Sect. 10 Smoking in public, tobacco products

(1) Tobacco products and other products containing nicotine and their containers may not be sold to Children or Adolescents in restaurants, shops or other public places, nor may they be allowed to smoke or consume products containing nicotine.

(2) 1Tobacco products and other products containing nicotine and their containers may not be offered to the public in vending machines. 2This does not apply if a vending machine

1. is set up in a place inaccessible to Children and Adolescents, or

2. it is ensured by technical devices or by constant supervision that Children and Adolescents cannot take out tobacco products and other products containing nicotine and their containers.

(3) Tobacco products and other products containing nicotine and their containers may neither be offered to Children and Adolescents by mail order nor may they be sold to Children and Adolescents by mail order.

a Gaststättengesetz
b Alkopopsteuergesetz
c „Abgabe an Personen unter 18 Jahren verboten, § 9 Jugendschutzgesetz“
(4) Paragraphs 1 to 3 shall also apply to nicotine-free products, such as electronic cigarettes or electronic shishas in which liquid is vaporised by an electronic heating element and the resulting aerosols to be inhaled by mouth, as well as to their containers.

Chapter 3 Protection of minors in the field of media

Subchapter 1 Physical media

Sect. 10a Protection objectives regarding the protection of Children and Adolescents in the field of media

Protection in the field of media includes

1. protection against media that are likely to impair the development of Children or Adolescents or their upbringing into an independent and socially responsible personality (media unsuitable for certain age groups),

2. protection against media that are suitable to endanger the development of Children or Adolescents or their upbringing to an independent and socially responsible personality (media harmful to minors),

3. protection of the personal integrity of Children and Adolescents in their use of media; and

4. promoting orientation for Children, Adolescents, custodians as well as educational staff regarding media use and media education; the provisions of Eighth Book of the Social Security Code\(^a\) shall remain unaffected.

Sect. 10b Media unsuitable for certain age groups

\(^1\)Media unsuitable for certain age groups in accordance with Sect. 10a no. 1 include in particular media that are excessively frightening, advocate violence or impair social-ethical values. \(^2\)When assessing the potential impact on the development of minors, circumstances regarding the respective use that lie outside of the media content itself may also be taken into account if they are a permanent component of the medium and justify a different overall assessment. \(^3\)In particular, risks to the personal integrity of Children and Adolescents that may occur in the context of the use of the medium and that are classified as significant according to a concrete risk assessment must be taken into account appropriately.

\(^a\) _Achtes Buch Sozialgesetzbuch_
Sect. 11 Film events

(1) Children and Adolescents shall only be allowed to attend public film events if the films have been approved for screening in front of them by the supreme authority of a Federal State or an organisation of voluntary self-regulation pursuant to the procedure set out in Sect. 14 (6) or if they are informational, instructional or educational films that are labelled by the provider as "information programme"\textsuperscript{a} or "educational programme"\textsuperscript{b}.

(2) By way of derogation from subsection (1), attendance at public film events with films released and labelled for Children and Adolescents aged 12 years and over may also be permitted for Children aged six years and over if they are accompanied by a custodian.

(3) Without prejudice to the prerequisites laid down in subsection (1), attendance at public film events shall be allowed only if accompanied by a Custodian or a Person with Parental Authority

1. Children under the age of six,
2. Children aged six years and over if the performance ends after 8 pm,
3. Adolescents under the age of 16 if the performance ends after 10 p.m,
4. Adolescents aged 16 years and over, if the performance ends after midnight.

(4) \textsuperscript{1}Subsections (1) to (3) apply to the public screening of films irrespective of the method of recording and playback. \textsuperscript{2}They also apply to commercial credits and supporting programmes. \textsuperscript{3}They do not apply to films produced for non-commercial purposes as long as the films are not used for commercial purposes.

(5) Commercials or advertising programmes promoting tobacco products or alcoholic beverages may be shown only after 6 p.m., without prejudice to the conditions laid down in subsections (1) to (4).

Sect. 12 Image media with films or games

(1) \textit{Pre-recorded video cassettes and other}. Data carriers that are suitable for distribution and which are programmed with films or games for playback or playing on display devices (image media) may only be made available to a child or adolescent in public if the programmes have been approved and rated for their age group by the supreme authority of

\textsuperscript{a} "Infoprogramm"
\textsuperscript{b} "Lehrprogramm"
a Federal State or an organisation of voluntary self-regulation pursuant to the procedure set out in Sect. 14 (6) or if they are informational, instructional or educational films that are labelled by the provider as "information programme"\(^a\) or "educational programme"\(^b\).

(2) \(^1\)The ratings referred to in paragraph 1 must be shown on the image medium\(^c\) and on the cover by means of a clearly visible label. \(^2\)The label shall be placed on the front of the sleeve, in the lower left-hand corner, on an area of not less than 1 200 square millimetres and the image medium on an area of not less than 250 square millimetres. \(^3\) The supreme authority of a Federal State may

1. order details regarding the content, size, shape, colour and location of the characters; and

2. grant exemptions for the application on the image medium or sleeve.

\(^4\) Telemedia providers that distribute films as well as film and game programmes must include a clear notice to existing ratings in their offer.

(3) Image media without a rating or rated as “not approved for minors” pursuant to Sect. 14(2) by the supreme authority of a Federal State or an organisation of voluntary self-regulation pursuant to the procedure set out in Sect. 14 (6) and not labelled by the provider pursuant to Sect. 14(7) may

1. not be offered, provided or otherwise made available to a child or adolescent,

2. not be offered or made available in retail outside of business premises, in kiosks or other sales outlets that customers are not in the habit of entering, or offered or made available by mail order.

(4) Vending machines for distributing pre-recorded image media

1. in public locations accessible to Children or Adolescents,

2. outside of premises used for commercial or other professional or business purposes or

3. in their unattended entrances, vestibules or corridors

may only be set up if only image media rated in accordance with Sect. 14 (2) no. 1 to 4 are offered and it is ensured by technical precautions that they cannot be operated by Children

\(a\) “Infoprogramm”

\(b\) “Lehrprogramm”

\(c\) e.g. DVDs, Blu-ray, game modules etc.
and Adolescents for whose age group the respective programmes have not been approved in accordance with Sect. 14 (2) no. 1 to 4.

(5) Image media containing excerpts from film-films and game programmes may, by way of derogation from subsections (1) and (3), be distributed in conjunction with periodicals only if they are labelled with a notice from the provider that clearly indicates that a voluntary self-regulation organisation has established that these extracts do not contain any youth impairments. The notice shall be affixed both on the periodic publication and on the image media before distribution by means of a clearly visible label. Subsection (2) sentences 1 to 3 apply accordingly. The right granted under sentence 1 may be barred for individual providers by the supreme authority of a Federal State.

Sect. 13 Screen-based game devices

(1) Children and Adolescents shall be allowed to play on electronic screen-based game devices not offering the possibility to win prizes without the accompaniment of a Custodian or a Person with Parental Authority only if the programmes have been approved and rated for their respective age group by the supreme authority of a Federal State or an organisation of voluntary self-regulation pursuant to the procedure set out in Sect. 14 (6), or if they are informational, instructional or educational programmes that are labelled by the provider as "information programme" or "educational programme".

(2) Electronic screen-based game devices

- in public locations accessible to Children or Adolescents,
- outside of premises used for commercial or other professional or business purposes or
- in their unattended entrances, vestibules or corridors

may only be set up if their programmes are approved and rated for Children of six years or older or labelled with "information programme" or "educational programme" in accordance with Sect. 14(7).

(3) Sect. 12(2) sentences 1 to 3 shall apply accordingly to the affixing of labels on screen-based game devices.

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a "Infoprogramm"
b "Lehrprogramm"
Sect. 14 Rating of films and game programmes

(1) Films and game programmes shall not be released for Children and Adolescents if they impair the development of Children and Adolescents in the respective age group.

(2) The supreme authority of a Federal State or an organization of voluntary self-regulation within the framework of the procedure pursuant to subsection (6) shall rate films as well as film and game programmes as

1. "Approved without age restriction",
2. "Approved for ages 6 and older",
3. "Approved for ages 12 and older",
4. "Approved for ages 16 and older",
5. "Not approved for minors."

(2a) The supreme authority of a Federal State or an organization of voluntary self-regulation shall, pursuant to the procedure set out in subsection (6), label films and programmes with symbols in addition to the age groups specified in subsection (2), indicating the main reasons for the age rating of the medium and its potential impairment of personal integrity.

(3) If the supreme authority of a Federal State or an organization of voluntary self-regulation believes during the procedure set out in subsection 6 that a film or a games programme includes any of the contents specified in Sect. 15 (2) no. 1 to 5 or if it is included on the list according to Sect. 18, it shall not be rated. The supreme authority of the Federal State must report facts that indicate a violation of Sect. 15 (1) to the competent law enforcement authority.

(4) If a film or a games programme is entirely or substantially identical in content to a medium included on the list according to Sect. 18, any rating is excluded. The assessment whether a content is identical is made by the Review Board for Media Harmful to Minors. Sentence 1 shall apply accordingly if the conditions for inclusion on the list are met. In cases of doubt, the supreme authority of a Federal State or an organization of voluntary self-regulation shall bring about a decision by the Review Board for Media Harmful to Minors within the procedure under subsection (6). If a programme for image media or screen-based game devices is entirely or substantially identical to a physical medium
included on the list according to Sect. 18, it will not be rated. 2 The same applies, if the conditions for inclusion on the list are met. 3 In cases of doubt, the supreme authority of a Federal State or an organisation of voluntary self-regulation shall bring about a decision by the Federal Review Board for Media Harmful to Minors pursuant to the procedure set out in subsection (6).

(4a) Subsection (4) shall not apply to rating decisions under Sect. 11(1).

(5) 1 The ratings for films shall also apply to screenings in public film events of films with the same content, unless and insofar as the supreme state authorities of the Federal States do not stipulate otherwise in the agreement laying down the procedure for subsection (6). 2 Film ratings for public film events may be transferred to films with the same content for image media, screen-based game devices and telemedia; subsection (4) applies accordingly. 3 The ratings for film programmes on image media and screen-based game devices also apply to screenings in public film events and for the films intended therefor with the same content. 4 The ratings for films for public film events may be transferred to film programmes with the same content for image media and screen-based game devices; subsection (4) applies accordingly.

(6) 1 The supreme authorities of the Federal States may agree on a common procedure for the approval and rating of films and film- and game programmes based on the results of reviews by voluntary self-regulatory organisations sponsored or supported by industry associations. 2 Within this agreement, it may be provided that the approvals and ratings issued by an organisation of voluntary self-regulation are deemed approvals and ratings issued by the supreme authorities of all the Federal States, unless a supreme authority of a Federal States decides otherwise for its area. 3 Organisations of voluntary self-regulation recognised under the Interstate Treaty on the Protection of Minors in the Media may conclude an agreement with the supreme authorities of the Federal States in accordance with sentences 1 and 2.

(6a) 1 The joint procedure set out under subsection (6) may provide that age ratings confirmed by the central supervisory authority of the Federal States for the protection of minors in the media in accordance with the Interstate Treaty on the Protection of Minors in the Media or age ratings by the broadcasters of public broadcasting shall be deemed approvals within the meaning of subsection (6) sentence 2, provided this is not incompatible with the ruling practice of the supreme authorities of the Federal States. 2 Subsections (3) and (4) remain unaffected.

\[\text{Jugendmedienschutz-Staatsvertrag}\]
\[\text{Zentrale Aufsichtsstelle der Länder für den Jugendmedienschutz}\]
(7) Films as well as film and game programmes for informational, instructional or educational purposes may only be labelled by the provider with "information programme"\(^a\) or "educational programme"\(^b\) if they obviously do not impair the development or education of Children and Adolescents. \(^2\)Subsections (1) to (5) do not apply. \(^3\)The supreme authority of a Federal State may ban individual providers or specific film- films and game programmes from the right to provider labelling and may revoke any labels made by a provider.

(8) If films, image media or screen-based game devices contain titles, additions or other representations in texts, images or sounds in addition to the films- or game programmes to be labelled that may impair the development or education of Children or Adolescents, these must be taken into account when deciding on the rating.

(9) Subsections (1) to (6) and (8) shall apply accordingly to the rating of films and game programmes intended for distribution via telemedia that are capable of being rated.

**Sect. 14a Ratings for film and game platforms**

(1) Film and game platforms that, as service providers, combine films or game programmes into an integrated offer and make them available – with the intention of making a profit – as their own content in accordance with Sect. 7 of the Telemedia Act\(^c\), for individual access at the user’s discretion at any time, must label the films and game programmes unsuitable for certain age groups that they make available on the platform in accordance with the age categories specified in Sect. 14(2) with a clear label that was provided

1. pursuant to the procedure set out in Sect. 14 (6) or by an organisation of voluntary self-regulation recognised under Sect. 19 of the Interstate Treaty on the Protection of Minors in the Media or

2. via an automated rating system recognised by the supreme authorities of the Federal States and provided by an organisation of voluntary self-regulation operating under an agreement in accordance with Sect. 14 (6), should there be no rating in accordance with no. 1.

\(^2\)Sect. 10b and Sect. 14(2a) apply accordingly.

(2) The service provider is exempted from the obligation pursuant to subsection (1) sentence 1 if the film or game platform has fewer than one million users in Germany.
Sect. 15 **Physical media harmful to minors**

(1) **Physical media** that have been included in the List of Media Harmful to Minors by public announcement pursuant to Sect. 24(3) Sentence 1 may not, as physical media, be

1. offered, provided or otherwise made available to a child or adolescent,

2. exhibited, displayed, demonstrated or otherwise made accessible at a location accessible to Children or Adolescents or that can be viewed by them,

3. offered or provided to another person in retail outside business premises, in kiosks or other sales outlets which customers are not in the habit of entering, by mail order or in commercial lending libraries or reading circles,

4. offered or provided to another person by way of commercial leasing or comparable commercial granting of use, except in retail shops that are not accessible to Children and Adolescents and cannot be viewed by them,

5. imported by mail order,

6. offered, announced or advertised publicly at a location accessible to Children or Adolescents or that can be viewed by them, or are offered, announced or advertised through the dissemination of image media or telemedia outside the business dealings with the relevant trade,

7. manufactured, purchased, supplied, held in stock or imported with the aim to use them or any of the pieces obtained from them within the meaning of nos. 1 to 6 or to enable another person to such a use.

(1a) Media that have been included on the List of Media Harmful to Minors by public announcement pursuant to Sect. 24 (3) sentence 1 may not be shown as telemedia at a location accessible to or viewable by Children or Adolescents.

(2) Subject to the restrictions of subsection (1), without requiring an inclusion on the list and a public announcement, are media which are seriously harmful to minors and which

1. have a content described in Sect. 86, Sect. 130, Sect. 130a, Sect. 131, Sect. 184, Sect. 184a, Sect. 184b or Sect. 184c of the German Criminal Code,

2. glorify war,

3. depict people dying or that are or have been subjected to serious physical or mental suffering, or depict events in a manner that violates human dignity and reflect actual
events without there being an overriding legitimate interest in this specific form of reporting,

3a. contain particularly realistic, cruel and sensational depictions of self-serving violence that dominate the events,

4. depict Children or Adolescents in unnatural, sexually explicit postures, or

5. are obviously capable of seriously endangering the development of Children or Adolescents or their upbringing as independent and socially responsible individuals.

(3) The restrictions of subsection (1) shall also apply, without requiring an inclusion on the list and a public announcement, to media that are entirely or substantially identical in content to a physical medium that has been listed by public announcement.

(4) The List of Media Harmful to Minors may not be printed or published for the purpose of commercial advertising.

(5) In the case of commercial advertising no reference may be made to the fact that a procedure for the inclusion of the physical medium or a telemedium with the same content on the list is or has been pending.

(6) Insofar as delivery is possible, traders must inform sellers of the distribution restrictions in accordance with subsection 1, no. 1 to 6, prior to delivery to the trade.

Subchapter 2 Telemedia

Sect. 16 Specific rules on telemedia

Rules regarding telemedia that have been included on the list of media harmful to minors in accordance with Sect. 18 are reserved to legislation by the Federal States.

Sect. 16 Legislation by the Federal States

For telemedia, the Federal States can issue legislation regarding the protection of minors that go beyond this Act.
Chapter 4 Federal Central Office for the Protection of Children and Adolescents in the Media

Federal Review Board for Media Harmful to Minors

Sect. 17 Name and Area of Responsibility

(1) The Federal Review Board shall be established by the Federal Government. It carries the name "Federal Review Board for Media Harmful to Minors".

(2) The Federal Review Board for Media Harmful to Minors decides on inclusion on the list of media harmful to minors and on deletions from this list.

Sect. 17 Competent Federal Authority and Management

(1) The Federal Review Board for Media Harmful to Minors shall be responsible for the performance of the tasks performed under this Act in form of direct federal administration; it shall be known as the "Federal Central Office for the Protection of Children and Adolescents in the Media" (Federal Central Office) and shall be subordinate to the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth.

(2) The Federal Central Office shall be headed by a Director (Agency Management).

Sect. 17a Responsibilities

(1) The Federal Central Office maintains a Review Board for Media Harmful to Minors that decides on the inclusion of media in the List of Media Harmful to Minors pursuant to Sect. 18 and on deletions from this List.

(2) The Federal Central Office shall promote the further development of the protection of Children and Adolescents from harmful media by taking appropriate measures. This includes in particular

1. promoting a joint assumption of responsibility by the state, business and civil society to coordinate an overall strategy to achieve the protection objectives of Sect. 10a,

2. the development and further advancement of the findings derived from the entirety of the Boards’s rulings with regard to media-induced socio-ethical disorientation of Children and Adolescents, in particular by providing guidance for Children and Adolescents, custodians, experts and by promoting public discourse, and

3. a regular exchange of information with the institutions active in the field of the protection of Children and Adolescents in the media with regard to the respective review practice.
(3) The Federal Central Office shall review the precautionary measures to be put in place by service providers pursuant to Sect. 24a.

(4) In order to fulfil its task under subsection (2), the Federal Central Office may promote measures of supra-regional importance or carry them out itself.

Sect. 18 List of media harmful to minors

(1) Media that are likely to endanger the development of Children or Adolescents or their upbringing as independent and socially responsible personalities shall be included on a list (List of Media Harmful to Minors) by the Federal Central Office following a decision by the Review Board. The Federal Review Board for Media Harmful to Minors shall include in a list of media harmful to minors physical media and telemedia that are likely to endanger the development of children or adolescents or their upbringing into an independent and socially responsible personality. This includes in particular immoral or brutalizing media, media inciting violence, crime or racial hate as well as media in which

1. acts of violence such as murder and slaughter scenes are portrayed in detail and merely as an end in itself, or

2. that vigilante justice is suggested as the only proven means of enforcing alleged justice.

(2) The list shall be kept in four parts.

1. Part A (public list of physical media) shall include all media, unless they are assigned to Parts B, C or D;

2. Part B (public list of media subject to an absolute prohibition of distribution) shall include all media that, according to the Review Board, have a content described in Sect. 86, Sect. 130, Sect. 130a, Sect. 131, Sect. 184, Sect. 184a, Sect. 184b or Sect. 184c of the German Criminal Code;

3. Part C (non-public list of media) shall include those media that are not to be included in Part A solely because their inclusion in the list is not to be publicly announced pursuant to Sect. 24(3) sentence 2 as well as all telemedia insofar as they are not to be assigned to Part D;

4. Part D (non-public list of media subject to an absolute prohibition of distribution) shall include those media that are not to be included in Part B solely because their inclusion in the list is not to be publicly announced pursuant to Sect. 24(3) sentence 2 as well as those telemedia that, according to the Review Board, have a content described in Sect. 86, Sect. 130, Sect. 130a, Sect. 131, Sect. 184, Sect. 184a, Sect. 184b or Sect. 184c of the German Criminal Code.
(3) A medium may not be included on the list

1. solely because of its political, social, religious or ideological content,

2. if it serves the arts or science, research or teaching,

3. if it is in the public interest, unless the nature of the representation is objectionable.

(4) In cases of minor importance, it may be refrained from including a medium on the list.

(5) Media shall be included on the list if a court has determined in a legally binding decision that the medium has one of the contents described in Sect. 86, Sect. 130, Sect. 130a, Sect. 131, Sect. 184, Sect. 184a, Sect. 184b or Sect. 184c of the German Criminal Code. Sect. 21(5) no. 2 remains unaffected.

(5a) If the Review Board for Media Harmful to Minors becomes aware of the fact that a decision triggering the entry on the list pursuant to subsection (5) sentence 1 has been revoked, it must immediately examine ex officio whether the prerequisites for the medium to remain on the list still apply.

(6) In its assessments, the Review Board for Media Harmful to Minors shall evaluate whether a medium has any of the contents listed in Sect. 86, 130, 130a, 131, 184, 184a, 184b or 184c of the German Criminal Code. If the answer is in the affirmative, it must pass on its decision to the competent law enforcement authority, which must also be justified in this respect. Telemedia shall be included on the list if the central supervisory authority of the Federal States for the protection of minors in the media has applied for an inclusion, unless the application is obviously unfounded or unjustifiable with regard to the review practice of the Review Board for Media Harmful to Minors.

(7) Media must be removed from the list if the conditions for the inclusion are no longer fulfilled. After 25 years, inclusion on the list ceases to have effect.

(8) Subsection (1) shall not apply to films as well as film and game programmes that are labelled in accordance with Sect. 14(2) no. 1 to 5, also in conjunction with Sect. 14(9). Paragraph 1 shall also not apply if the central supervisory authority of the Federal States for the protection of minors in the media has previously taken a decision on the telemedium to the effect that the prerequisites for inclusion in the List of Media Harmful to Minors pursuant to paragraph 1 do not exist. If a recognised self-regulatory body has previously evaluated the telemedium, subsection (1) shall only apply if the central supervisory authority of the Federal States for the protection of minors in the media considers the prerequisites for inclusion in the List of Media Harmful to Minors in accordance with subsection 1 to be fulfilled, or if a decision by the central supervisory authority of the Federal States for the protection of minors in the media has not been made.
Sect. 19 Staffing of the Review Board for Media Harmful to Minors

(1) The Review Board for Media Harmful to Minors consists of a chairperson appointed by the Federal Ministry for Family, Senior Citizens, Women and Youth, one observer appointed by the government of each Federal State and additional observers appointed by the Federal Ministry for Family, Senior Citizens, Women and Youth. At least one deputy shall be appointed for the chairperson and for each of the observers. The government of the respective Federal State may transfer its right of appointment to a supreme State authority.

(1) The Review Board for Media Harmful to Minors consists of

1. the chairperson,
2. one observer to be appointed by the government of each Federal State and
3. further observers to be appointed by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth.

The chairperson shall be appointed by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. For this office, the head of the Federal Central Office shall propose a person employed by the Federal Central Office who is qualified to hold the office of judge in accordance with the German Judges Act. The head of the Federal Central Office may also exercise the office of the chairperson him- or herself. At least one deputy shall be appointed for the chairperson and for each of the observers. The government of the respective Federal State may transfer its right of appointment under sentence 1 no. 2 to a supreme State authority.

(2) The observers to be appointed by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth are to be selected from the following circles:

1. art,
2. literature,
3. book vendors and publishers,
4. suppliers of image media and of telemedia,
5. providers of independent youth welfare services,

a Deutsches Richtergesetz
6. providers of public youth welfare services,
7. teachers and
8. the churches, Jewish religious communities and other religious communities that have
   the status of public corporations,

upon proposal by the aforementioned groups. 2The book vendors, publishers and suppliers
of image media and telemedia shall be treated equally to those who carry out a comparable
activity in the context of exploiting and distributing media, irrespective of the method of
recording and reproduction.

(3) 1The chairperson and the observers shall be appointed for a period of three years. 2They
may be prematurely dismissed by the body that appointed them if they fail to comply with
the obligation to cooperate in the Federal Review Board for Media Harmful to Minors.

(4) The members of the Federal Review Board for Media Harmful to Minors are not bound by
instructions in their decisions.

(5) 1The Federal Review Board for Media Harmful to Minors shall make its decisions in a setting
of twelve members consisting of the chairperson, three observers from the Federal States
and one observer from each of the groups mentioned in subsection (2). 2If invited observers
or their deputies do not appear at the meeting, the Federal Review Board for Media Harmful
to Minors shall still be able to take a decision if at least nine members are present, at least
two of whom must belong to the groups mentioned in subsection (2) nos. 1 to 4.

(6) 1A majority of two thirds of the members of the Federal Review Board for Media Harmful to
Minors participating in the decision is required to order inclusion in the list. 2In the setting
described in subsection (5) sentence 2, a minimum of seven votes is required to order
inclusion in the list.

Sect. 20 Associations entitled to make proposals

(1) 1The right of nomination under Sect. 19(2) shall be exercised within the following circles by
the following organisations for one observer and one deputy observer, respectively:

1. for the circles of art by:
   Deutscher Kulturrat,
   Bund Deutscher Kunsterzieher e.V.,
   Künstlergilde e.V.,
Bund Deutscher Grafik-Designer,

2. for the circles of literature by

Verband deutscher Schriftsteller,

Freier Deutscher Autorenverband,

Deutscher Autorenverband e.V.,

PEN-Zentrum,

3. for the circles of book vendors and publishers by

Börsenverein des Deutschen Buchhandels e.V.,

Verband Deutscher Bahnhofsbuchhändler,

Bundesverband Deutscher Buch-, Zeitungs- und Zeitschriftengrossisten e.V.,

Bundesverband Deutscher Zeitungsverleger e.V.,

Verband Deutscher Zeitschriftenverleger e.V.,

Börsenverein des Deutschen Buchhandels e.V. – Verlegerausschuss,

Arbeitsgemeinschaft der Zeitschriftenverlage (AGZV) im Börsenverein des Deutschen Buchhandels,

4. for the circles of suppliers of image media and of telemedia by

Bundesverband Video,

Verband der Unterhaltungssoftware Deutschland e.V.,

Spitzenorganisation der Filmwirtschaft e.V.,

Bundesverband Informationswirtschaft, Telekommunikation und neue Medien e.V.,

Deutscher Multimedia Verband e.V.,

Electronic Commerce Organisation e.V.,
Verband der Deutschen Automatenindustrie e.V.,
IVD Interessengemeinschaft der Videothekare Deutschlands e.V.,
5. for the circles of providers of independent youth welfare services by
Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege,
Deutscher Bundesjugendring,
Deutsche Sportjugend,
Bundesarbeitsgemeinschaft Kinder- und Jugendschutz (BAJ) e.V.,
6. for the circles of providers of public youth welfare services by
Deutscher Landkreistag,
Deutscher Städtetag,
Deutscher Städte- und Gemeindebund,
7. for the circles of teachers by
Gewerkschaft Erziehung u. Wissenschaft im Deutschen Gewerkschaftsbund,
Deutscher Lehrerverband,
Verband Bildung und Erziehung,
Verein Katholischer deutscher Lehrerinnen und
8. for the circles of the public corporations mentioned in Sect. 19(2) no. 8 by
Bevollmächtigter des Rates der EKD am Sitz der Bundesrepublik Deutschland,
Kommissariat der deutschen Bischöfe – Katholisches Büro in Berlin,
Zentralrat der Juden in Deutschland.

²For each organisation exercising its right of nomination, an observer and a deputy observer shall be appointed. ³If one of the organisations mentioned in sentence 1 submits more than
one nomination, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth shall select an observer.

(2) ¹For the groups mentioned in Article 19(2), observers and deputy observers may also be nominated by organisations not specifically identified by name. ²In January of each year, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth shall issue a call for such nominations in the Federal Gazette, to be submitted within six weeks. ³It shall appoint one additional observer and one deputy observer per group from among the nominations received by the deadline. ⁴Proposals from organisations that do not have any weight of their own or that are not expected to be active on a permanent basis are not to be considered. ⁵In the event that several interested parties fail to agree on a proposal, the decision shall be taken by lot; subsection (1) sentence 3 shall apply accordingly. ⁶If it appears necessary, taking into account the workload of the Review Board, and if the number of proposals submitted by the organisations identified by name within a group is insufficient, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth may also appoint several observers and deputy observers; sentence 5 shall apply accordingly.

Sect. 21 Procedure of the Review Board for Media Harmful to Minors

(1) As a rule, the Federal Review Board for Media Harmful to Minors takes action upon application.

(2) The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, the supreme State authorities for youth, the central supervisory authority of the Federal States for the protection of minors in the media, the State youth welfare offices, the youth welfare offices, the recognised institutions of voluntary self-regulation, the internet complaint portals funded by the Federal Government, the Federal States or the State media authorities shall have the competence for such applications; this competence extends to the persons mentioned in subsection (7) with regard to applications for the removal from the List of Media Harmful to Minors and to applications for a declaration that a medium is not entirely or substantially identical in content to a medium already included on the list.

(3) Where inclusion on or removal from the list can obviously not be considered, the chairperson may stop the procedure.

(4) The Federal Review Board for Media Harmful to Minors shall take action ex officio if an authority not mentioned in subsection (2) or a recognised provider of youth welfare so requests and if the chairperson of the Federal Review Board for Media Harmful to Minors deems it necessary to conduct the proceedings in the interest of the protection of minors.

(4a) Priority may be given to applications and suggestions relating to media that are particularly widespread among Children and Adolescents or which appear to be of particular importance for the interests of the protection of minors.
(5) The **Federal Review Board for Media Harmful to Minors** shall act ex officio upon the initiative of the chairperson,

1. if it is doubtful whether a medium is entirely or substantially identical in content to a medium already included on the list,

2. if it becomes known that the prerequisites for the inclusion of a medium on the list pursuant to Sect. 18(7) sentence 1 no longer exist, or

3. if the inclusion on the list pursuant to Sect. 18(7) sentence 2 becomes ineffective and the prerequisites for inclusion in the list continue to exist.

(6) Before deciding on the inclusion of a telemedium in the List, the **Federal Review Board for Media Harmful to Minors** must give the central supervisory authority of the Federal States for the protection of minors in the media the opportunity to comment on the telemedium without delay. The **Federal Review Board for Media Harmful to Minors** must give a decisive role in its decision to these comments. The **Review Board for Media Harmful to Minors** must give a decisive role in its decision to opinions and applications of the central supervisory authority of the Federal States for the protection of minors in the media. If the **Federal Review Board for Media Harmful to Minors** does not receive a statement from the central supervisory authority of the Federal States for the protection of minors in the media within five working days of being requested to do so, it may decide without this statement.

(7) The author, the holder of the rights of use and, in the case of telemedia, the provider shall be given the opportunity to comment, provided that their addresses are known to the **Review Board for Media Harmful to Minors** or the Review Board for Media Harmful to Minors can determine the addresses via information connected to the medium at reasonable expense from publicly accessible sources.

(8) The decisions

1. in the case of physical media, the author and the holder of the rights of use,

2. in the case of telemedia, the author and the provider and,

3. the applicant authority,

4. dem Bundesministerium für Familie, Senioren, Frauen und Jugend, den obersten Landesjugendbehörden und der zentralen Aufsichtsstelle der Länder für den Jugendmedienschutz

must be formally served. The decision must indicate in detail the restrictions on dissemination and advertising resulting from the decision. The reasons must be enclosed
or submitted within one week by formal service. The decision shall be forwarded to the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, the supreme State authorities for youth, the central supervisory authority of the Federal States for the protection of minors in the media and the authority or institution initiating the procedure or the institution initiating the procedure pursuant to subsection 4.

(9) The Federal Review Board for Media Harmful to Minors is to cooperate with the central supervisory authority of the Federal States for the protection of minors in the media and maintain a regular exchange of information.

(10) As of 1 January 2004, the Federal Review Board for Media Harmful to Minors may, for proceedings which are initiated at the request of the persons mentioned in subsection (7) and which are aimed at deciding that a medium

1. is not entirely or substantially identical in content to a medium already included in the List of Media Harmful to Minors, or

2. should be removed from the List of Media Harmful to Minors,

charge fees and expenses. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth is authorised, with the consent of the Federal Council, to specify in more detail by means of a statutory ordinance the offences subject to fees and the fee rates.

Sect. 22 Inclusion of periodically appearing media in the List of Media Harmful to Minors

Inclusion of periodically appearing physical media and telemedia

(1) Periodically appearing physical media may be included in the List of Media Harmful to Minors for a period of three to twelve months if more than two of their issues have been included in the list within twelve months. This does not apply to daily newspapers and political magazines as well as their digital editions.

(2) Telemedia can be included in the list of media harmful to minors for a period of three to twelve months if more than two of their issues have been included in the List within twelve months. Subsection (1) sentence 2 applies accordingly.

Sect. 23 Simplified procedure

(1) The Review Board may decide unanimously in a simplified procedure with the chairperson and two other members, one of whom must belong to the groups mentioned in Sect. 19(2), nos. 1 to 4, if the medium is obviously suitable to endanger the development of children or adolescents or their upbringing to a self-responsible and socially capable personality. If a unanimous decision cannot be reached, the Federal Review Board for Media Harmful to Minors shall decide in full (Sect. 19(5)).
(1) The Review Board for Media Harmful to Minors may decide on the inclusion of media on the List of Media Harmful to Minors in a simplified procedure if

1. the medium is evidently suitable to endanger the development of Children or Adolescents or their upbringing to a self-responsible and socially capable personality, or

2. in the case of a telemedium, a decision is made upon application or after an opinion of the central supervisory authority of the Federal States for the protection of minors in the media.

(2) Inclusion on the list pursuant to Sect. 22 is not possible in the simplified procedure.

(3) The persons concerned (Sect. 21(7)) may appeal against the decision within one month of the notification and request a decision by the Federal Review Board for Media Harmful to Minors in its entirety.

(4) After ten years have elapsed since a medium has been included in the list, the Federal Review Board for Media Harmful to Minors may decide to delete the medium from the list in a simplified procedure, subject to the conditions set out in Sect. 21(5) no. 2.

(5) If there is a risk that a physical medium or tele medium will be distributed, disseminated or made available on a large scale in the short term and a final listing is to be evidently expected, inclusion on the list may be ordered provisionally by simplified procedure. Paragraph 2 shall apply accordingly.

(6) The provisional order must be removed from the list upon the final decision of the Federal Review Board for Media Harmful to Minors, but at the latest after one month has elapsed. The period of time in sentence 1 may be extended before its expiry by a maximum of one month. Subsection 3(1) shall apply accordingly. To the extent that the provisional order is to be published in the Federal Gazette, this also applies to the extension.
Sect. 24 Maintenance of the list of media harmful to young persons

(1) The list of media harmful to minors is maintained by the head of the Federal Review Board for Media Harmful to Minors. The Federal Central Office shall maintain the List of Media Harmful to Minors pursuant to Sect. 17a(1).

(2) 1 Decisions on inclusion in the list or removal from the list must be implemented immediately. 2 The list must be corrected immediately if decisions by the Federal Review Board for Media Harmful to Minors are revoked or become invalid.

(2a) 1The List of Media Harmful to Minors must be maintained as a public list. 2 However, if the publication of a medium on the public list would be detrimental to the protection of Children or minors, this medium must be listed in a non-public part of the list. 3 Such damage is to be assumed in particular if the medium can only be designated in the public list in such a way that Children and Adolescents would gain direct access to it.

(3) If a medium is included on the public part of the list or removed from it, this must be announced in the Federal Gazette with reference to the underlying decision. 1 If a physical medium is added to or deleted from the list, this must be announced in the Federal Gazette with reference to the underlying decision. 2 The announcement shall not be made if the medium is disseminated solely by telemedia or if it is to be assumed that the announcement would be detrimental to the protection of minors.

(4) 1 If a medium is included in Part B or D of the list of media harmful to young persons, the chairperson must inform the competent prosecution authority. 2 If it is established by a final judgment that its content does not meet the criteria of the German Criminal Code, the medium must be included in Part A or C of the List. 3 The chairperson shall initiate a new decision by the Review Board if it is possible that the medium is to be removed from the list.

(4a) 1 The Federal Central Office may communicate the list to the central supervisory authority of the Federal States for the protection of minors in the media, to the recognised organisations of voluntary self-regulation, the internet complaint portals funded by the Federal Government, the Federal States or the State media authorities in a suitable form so that the content of the list can be used to compare offerings in telemedia with media included in the list, in order to provide Children and Adolescents with the safest possible access to content and to simplify the processing of notices regarding content that is harmful to minors. 2 The notification shall include a reference to assessments under Sect. 18(6). 3 If a telemedium is included in the list of media harmful to minors and if the offence has been committed abroad, the chairperson shall inform the recognised institutions of voluntary self-regulation of this fact for the purpose of inclusion in user-autonomous filter programmes. 2 The notification may only be used for the purpose of inclusion in user-autonomous filter programmes.
(5) With regard to the physical media and telemedia included in the List of Media Harmful to Minors before the expiry of [insert: date of the day before the entry into force in accordance with Article 3 of this Act], Sect. 18(2) and Sect. 24(2) in the version applicable up to that day shall continue to apply. The physical media whose inclusion in the list of media harmful to young persons has been announced by [insert: date of the day before the entry into force in accordance with Article 3 of this Act] may be transferred into a joint list structure with the list to be maintained from that date on, by Designating list parts A or B.

Sect. 24a Precautionary measures

(1) Service providers who store or make available third-party information for users with the intention of making a profit shall, without prejudice to Sect. 10 of the Telemedia Act, ensure by means of appropriate and effective structural precautionary measures that the protective objectives of Sect. 10a nos. 1 to 3 are safeguarded. The obligation under sentence 1 does not apply to service providers whose offer is not aimed at Children and Adolescents and is not normally used by them, nor to journalistically and editorially designed content for which the service provider is responsible.

(2) Precautionary measures include in particular

1. the provision of a notification and redress procedure in accordance with the provisions of Sect. 10a(1) and (2) and 10b(1) to (3) sentence 2 of the German Telemedia Act (Telemediengesetz) by which users can report the following complaints:

   a) offers violating Sect. 4 of the Interstate Treaty on the Protection of Minors in the Media,

   or

   b) offers affecting the development pursuant to Sect. 5(1) and (2) of the Interstate Treaty on the Protection of Minors in the Media that the service provider makes available to the general public without complying with its obligation under Sect. 5(1) of the Interstate Treaty on the Protection of Minors in the Media by measures pursuant to Sect. 5(3) to (5) of the Interstate Treaty on the Protection of Minors in the Media.

2. the provision of a notification and redress procedure with a user interface suitable for Children and Adolescents, through which underage users in particular can report impairments to their personal integrity caused by user-generated information to the service provider.

3. the provision of a rating system for user-generated audiovisual content, which, by default, specifically asks users in connection with the generation process to rate the

a Jugendmedienschutz-Staatsvertrag.
suitability of content according to the age group “18 years and over” as being for adults only.

4. the provision of technical means of age verification for user-generated audiovisual content which the user has assessed in connection with the generation process according to the age group “18 years and over” as being for adults only.

5. the easily found reference to provider-independent advice, assistance and reporting facilities.

6. the provision of technical means to control and accompany the use of the services for Custodians.

7. the establishment of pre-settings which limit the risks of use for Children and Adolescents in view of their age, in particular by, without express consent to the contrary,

a) user profiles not being findable for search engines and not being visible to non-registered persons,

b) location and contact details and communication with other users not being published,

c) communication with other users being restricted to a group of users who have been selected by the users in advance,

d) the use being anonymous or under a pseudonym and

e) usage data not being passed on to third parties.

8. the use of provisions in the General Terms and Conditions that comply with the requirements of Sect. 10c(1) of the Telemedia Act and which represent the provisions of the General Terms and Conditions that are essential for use in a manner suitable for Children.

(3) The service provider shall be exempted from the obligation pursuant to paragraphs 1 and 2 if the offer has less than one million users within Germany.

(4) The provisions of the Network Enforcement Act of 1 September 2017 (BGBl. I p. 3352) and the Telemedia Act [of (BGBl.)] shall remain unaffected.
**Sect. 24b Review of precautionary measures**

(1) The Federal Central Office shall review the implementation, the concrete form and the appropriateness of the precautionary measures to be taken by service providers in accordance with Sect. 24a(1) and (2). The joint competence center for the protection of minors on the internet at federal and state level, “jugendschutz.net”, shall make initial assessments of the precautionary measures taken by the service providers. “jugendschutz.net” shall inform the Federal Central Office of its initial assessments pursuant to sentence 2. Within the framework of the examination in accordance with sentence 1, the Federal Central Office shall give the central supervisory authority of the Federal States for the protection of minors in the media the opportunity to comment.

(2) The obligation under Sect. 24a(1) and (2) shall be deemed to be fulfilled if specific measures have been transposed into a directive and the directive

1. has been jointly agreed within the framework of membership in an institution of voluntary self-regulation recognised under the provisions of the Interstate Treaty on the Protection of Minors in the Media,

2. has been submitted to the Federal Central Office and assessed by the latter as appropriate pursuant to Sect. 24a(1) and (2), and

3. has been published in accordance with Sect. 24c(2).

(3) If the Federal Central Office establishes that a service provider does not fulfil an obligation under Sect. 24a(1) and (2) or does not fulfil it adequately, it shall invite the service provider to submit comments and shall first advise the service provider on the precautionary measures to be taken under Article 24a (1) and (2). If obligations identified as a result are not fulfilled, the Federal Central Office shall request the service provider to remedy the situation within a reasonable period of time.

(4) If the service provider fails to remedy the situation within the period set in accordance with subsection (3) sentence 2, the Federal Central Office may order the precautionary measures required for remedying the situation and complying with the obligation in accordance with Sect. 24a(1), setting a further reasonable period of time. Before this, the Federal Central Office shall give the central supervisory authority of the Federal States for the protection of minors in the media the opportunity to comment.

(5) If a recognised organisation of voluntary self-regulation has excluded an obligation on the part of the service provider pursuant to Section 24a(1) and (2), the scope of the examination by the Federal Central Office shall be limited to a potential excess of the limits of its scope of assessment by the organisation of voluntary self-regulation.
Sect. 24c Guidelines for voluntary self-regulation

(1) When drafting a guideline pursuant to Sect. 24b(2) sentence 1, the views of Children and Adolescents and their concerns shall be taken into account in an appropriate manner.

(2) 1The agreed guideline must be published in German in the Federal Gazette, on the website of the service provider and on the website of the organisation of voluntary self-regulation no later than one month after the end of the quarter in which the agreement was deemed appropriate by the Federal Central Office. 2The directive published on the website must be easily recognisable, immediately accessible and permanently available.

Sect. 24d Authorized Recipient of Service in Germany

1Service providers within the meaning of Sect. 24a(1) must designate an authorised recipient of service in Germany and indicate this person in their offer in an easily recognisable and directly accessible manner. 2Notifications may be effected to the authorised domestic service agent in accordance with Sect. 24a(4) in procedures in accordance with Sect. 24b(3) and (4). 3This also applies to the service of documents initiating or preparing such proceedings.

Sect. 25 Legal recourse

(1) Actions to appeal a decision of the Federal Review Board for Media Harmful to Minors to include a medium in the List of Media Harmful to Minors or to reject an application for removal from the list may be filed in the administrative courts.

(2) The applicant authority may file an administrative lawsuit against a decision of the Federal Review Board for Media Harmful to Minors not to include a medium in the list of media harmful to young persons and against a discontinuation of the proceedings.

(3) The action is to be brought against the Federal Government, represented by the Federal Agency for the Protection of Children and Adolescents in the Media Federal Review Board for Media Harmful to Minors.

(4) 1The action has no suspensive effect. 2Before filing the action, no review in preliminary proceedings is required; however, in the case of a decision in the simplified procedure under Sect. 23, a decision by the Federal Review Board for Media Harmful to Minors in the composition pursuant to Sect. 19(5) must first be obtained.
Chapter 5 Authorisation by decree

Sect. 26 Authorisation by decree

The Federal Government is authorised to regulate details of the seat and procedure of the Federal Review Board for Media Harmful to Minors and the maintenance of the list of media harmful to minors by means of a statutory instrument with the consent of the Federal Council.

Chapter 6 Punishment of infringements

Sect. 27 Penal provisions

(1) Anyone who is guilty of the following shall be punished by imprisonment of up to one year or a fine:

1. offering, providing, making available, making accessible, exhibiting, displaying, presenting, introducing, announcing or advertising a physical medium in violation of Sect. 15(1) nos. 1 to 5 or 6, in each case also in conjunction with subsection (2),

2. manufacturing, procuring, supplying, holding in stock or importing a physical medium in violation of Sect. 15(1) no. 7, also in conjunction with subsection(2),

3. printing or publishing the List of Media Harmful to Minors in violation of Sect. 15(4),

4. making a reference mentioned in Sect. 15(5) in the case of commercial advertising in violation of that provision,

5. contravening an enforceable decision pursuant to Sect. 21(8) sentence 1 no. 1, or.

6. presenting telemedia at a place that is accessible to Children or Adolescents or can be viewed by them in violation of Sect. 15(1a).

(2) Anyone who is guilty of the following as an organiser or trader shall be similarly punished:

1. committing a wilful act as defined in Sect. 28(1) nos. 4 to 18 or 19 and thereby, at least recklessly, seriously endangering a child or adolescent in their physical, mental or moral development, or

2. committing or persistently repeating an intentional act described in Sect. 28(1) nos. 4 to 18 or 19 for the purpose of profit.

(3) If the offence is committed in the cases
1. of subsection (1) no. 1 or
2. of subsection (1) nos. 3, 4 or 5

is committed negligently, the penalty is imprisonment for up to six months or a fine of up to one hundred and eighty daily rates.

(4) Subsection (1) nos. 1, 2 and 6 and subsection (3) no. 1 shall not apply if a Custodian or a person acting in agreement with a Custodian offers, leaves, makes accessible or presents the medium to a child or adolescent. Subsection (1) nos. 1 and 2 and subsection (3) no. 1 shall not apply if a person having custody of a person offers, leaves or makes accessible the medium to a child or adolescent. This does not apply if the Custodian grossly violates his or her duty to educate by giving his or her consent to the offering, leaving, making accessible or presenting.

Sect. 28 Fines regulations

(1) It is an offence, as an organiser or trader, to intentionally or negligently

1. fail to publicise, to publicise correctly, or to publicise in the prescribed manner the regulations applicable to his or her business or event in violation of Sect. 3(1),

2. use a label in violation of Sect. 3(2) sentence 1,

3. fail to give notice, to give notice correctly or to give notice in time in violation of Sect. 3(2) sentence 2,

4. give notice, announce a film or a film or game programme or advertise a film or a film or game programme in violation of Sect. 3(2) sentence 3,

5. allow a child or adolescent to stay in a restaurant in violation of Sect. 4(1) or (3),

6. allow a child or adolescent to attend a public dance event in violation of Sect. 5(1),

7. allow a child or adolescent to be present in a public amusement arcade or a room named in Sect. 6(1) in violation of that provision,

8. allow a child or adolescent to participate in a game with a chance of winning in violation of Sect. 6(2),

9. contravene an enforceable order pursuant to Sect. 7(1),
10. supply an alcoholic beverage to a child or adolescent, or allow him or her to consume it, in violation of Sect. 9(1),

11. offer an alcoholic beverage in a vending machine in violation of Sect. 9(3) sentence 1,

11a. put sweet drinks containing alcohol on the market in violation of Sect. 9(4),

12. supply a product referred to in Sect. 10(1) to a child or adolescent, or permit a child or adolescent to smoke or consume it, in violation of that provision, also in conjunction with subsection (4),

13. offer or sell a product referred to in Sect. 10(2) sentence 1 or subsection (3) in violation of that provision, also in conjunction with subsection (4),

14. allow a child or adolescent to be present at a public film event, an advertising or supporting programme in violation of Sect. 11(1) or (3), in each case also in conjunction with subsection (4) sentence 2,

14a. present an advertising film or advertising programme in violation of Sect. 11(5),

15. make a physical medium accessible to a child or adolescent,

16. offer or transfer a physical medium in violation of Sect. 12(3) no. 2,

17. set up a vending machine or a video game machine in violation of Sect. 12(4) or Sect. 13(2),

18. distribute a physical medium in violation of Sect. 12(5) sentence 1,

19. allow a child or adolescent to play on a video game machine in violation of Sect. 13(1), or

20. fail to give notice, to correctly give notice, or to give notice in time in violation of Sect. 15(6).

(2) It is an administrative offence as a provider to deliberately or negligently

1. fail to make a reference, to correctly make a reference, or to make a reference in the prescribed manner in violation of Sect. 12(2) sentences 1 and 2, also in conjunction with subsection (5) sentence 3 or Sect. 13(3),
2. contravene an enforceable order pursuant to Sect. 12(2) sentence 3 no. 1, also in conjunction with subsection (5) sentence 3 or Sect. 13(3), or pursuant to Sect. 14(7) sentence 3

3. fail to affix a notice, to correctly affix a notice, to affix a notice in the prescribed manner, or to affix a notice in time in violation of section 12(5) sentence 2, or

4. label a film or a film-or-game programme as “information programme” or “educational programme” in violation of Sect. 14(7) sentence 1.

(3) It is an administrative offence to intentionally or negligently

1. fail to give notice, to correctly give notice, or to give notice in the prescribed manner in violation of Sect. 12(2) sentence 4, or,

2. make available a film or a game programme without the required label in violation of Sect. 14a(1) sentence 1,

3. use a notice contrary to Section 24(5) sentence 2, or

4. infringe an enforceable order pursuant to Sect. 24b(4), or

5. fail to appoint an authorised recipient of service in Germany in violation of Sect. 24d.

(4) 1It is an administrative offence, as a person above the age of 18, to induce or encourage a conduct by a child or adolescent which is intended to be prevented by a prohibition specified in subsection (1) nos. 5 to 8, 10, 12, 14 to 16 or 19 or in Sect. 27(1) nos. 1 or 2 or contained in Sect. 12(3) no. 1 or by an enforceable order pursuant to Sect. 7(1). 2With regard to the prohibition in Article 12(3) no. 1, this does not apply to the Custodian and to a person acting in agreement with the Custodian.

(5) The administrative offence may be punished by a fine of up to fifty thousand euros.

(6) In the case of Sect. 3(4), the administrative offence may be punishable by a fine of up to five million euros. Sect. 30(2) sentence 3 of the Administrative Offences Act applies.

(7) In the cases referred to in subsections (3) nos. 2, 4 and 5, the administrative offence may be punished even if it is not committed within the scope of this Act.

(8) The administrative authority within the meaning of Sect. 36(1) no. 1 of the Administrative Offences Act shall be the Federal Agency for the Protection of Children and Adolescents in the Media in the cases referred to in subsection (3) nos. 2, 4 and 5.
Chapter 7 Final provisions

Sect. 29 Transitional provisions

Sect. 18(8) sentence 1 shall apply to the film programmes for image media labelled “Not released for viewers under eighteen years of age” under the previous law with the proviso that “Sect. 14(2) nos. 1 to 5” shall be replaced by “Sect. 14(2) nos. 1 to 4”.

Sect. 29a Further transitional arrangement

Observers of the Review Board for Media Harmful to Minors and their deputies who are in office on [insert: date of entry into force pursuant to Article 2] may be appointed as observers or deputies for a maximum of two more times, irrespective of their previous membership in the Review Board. Physical media with labels according to Sect. 12(1) whose labels meet the requirements of Sect. 12(2) sentence 1, but not the requirements of Sect. 12(2) sentence 2, may be placed on the market until 31 August 2008.

Sect. 30 Entry into force, abrogation


(2) Notwithstanding the first sentence of subsection (1) sentence 1, Sect. 10(2) and Sect. 28(1) no. 13 shall enter into force on 1 January 2007.
About Osborne Clarke

Your contacts for questions related to the protection of minors in the media

**Felix Hilgert, LL.M. (Cologne / Paris I)**  
Partner  
T +49 221 5108 4434  
E felix.hilgert@osborneclarke.com

**Philipp Sümmermann, LL.M. (Cologne / Paris I)**  
Associate  
T +49 221 5108 4434  
E philipp.suemmermann@osborneclarke.com

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