

**USK Additional Criteria
within the scope of the Youth Media Protection State
Agreement (JMStV)**

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1. Validity and scope of application

The USK offers review procedures for age certification both for computer and video games on data storage media and in the Internet as well as Apps and other content of telemedia and broadcasting. Computer and video games include all games which can be downloaded or used for a fee or free of cost, i.e. without the acquisition of physical data storage media (hereinafter: online games). The review process for telemedia and broadcasting content is conducted in accordance with the provisions of the Youth Media Protection State Agreement (JMStV) and without involvement from the State.

The "Guidance Criteria of the USK for the evaluation of computer and video games in accordance with the Legislation on Youth Protection" form the overarching basis for the assessment of such content. They apply to the work of the USK in accordance both with the Children and Young Persons Protection Act (JuSchG) and with the Youth Media Protection State Agreement (JMStV). Within the scope of the Youth Media Protection State Agreement these are extended by the current USK criteria for the scope of the Youth Media Protection State Agreement. They focus on telemedia and broadcasting content, in particular on the contents of computer games.

The USK.online Additional Criteria are to be applied for telemedia and broadcasting content such as online games, online games trailers, pop-up advertising, user-generated content, external links, Apps and online advertising and they regulate conduct in conformity with the Youth Media Protection State Agreement (JMStV). The latter includes, for instance, games which are instantly available in an internet browser as well as games which require the prior downloading of files from the Internet and the installation of the game on to the hard drive of a computer. This covers inter alia games using 2D or 3D graphics, flash games, single and multi player games, client-based games, games in peer-to-peer networks, PC and console games, games on mobile devices and mobile phones.

Online games can be offered free of cost, for a fee or by sale of virtual game items (hereinafter: item selling). Moreover, the USK.online Additional Criteria within the



scope of the Youth Media Protection State Agreement (JMStV) take into account the connection of games content with elements of user communication such as chat sites and forums, both in online advertising and external links. Thus the individual elements and the overall effect of the service are the evaluation unit of a telemedia service. The evaluation unit should be established in a given case and implemented and justified in the reason for review for clarification and limitation purposes.

2. Absolutely inadmissible content pursuant to Article 4 Section 1 of the Youth Media Protection State Agreement (JMStV).

In particular content relevant in terms of criminal law, which satisfies enacted facts pursuant to Article 4 Section 1 of the of the Youth Media Protection State Agreement (JMStV), media indexed in lists B and D by the Federal Department for Media Harmful to Young Persons (BPjM) and seized media is prohibited for distribution .

3. Relatively inadmissible content pursuant to Article 4 Section 2 of the Youth Media Protection State Agreement (JMStV).

Relatively inadmissible telemedia content pursuant to Article 4 Section 2 of the Youth Media Protection State Agreement (JMStV) may be made accessible only if it is guaranteed that access is limited to adults, i.e. if neither children nor adolescents are offered the service or given access to it. The provider must therefore ensure that content prejudicial to children and adolescents pursuant to Article 4 Section 2 of the Youth Media Protection State Agreement is made accessible in closed, age-controlled, exclusively adult user groups (Article 4 Section 2 Clause 2 of the Youth Media Protection State Agreement). This is to be ensured in two stages: Firstly by checking that users are adults, which must be carried out by personal contact (face to face control) and secondly by authentication at each individual user process. A simple enquiry as to the user's age on the entry page of the content (ID check) or the checking of a credit card number do not constitute adequate protection systems by reason of the risks of circumventing and abusing them within the meaning of Article 4 Section 2 Clause 2 of the Youth Media Protection State Agreement. The KJM has tested designs for closed user groups and under reserve has made a positive evaluation for their implementation in practice.



4. Content with prejudicial effects on development

If the service does lie beneath the threshold of Article 4 of the Youth Media Protection State Agreement (JMStV), but nonetheless there is a likelihood of developmental impairment, the provider must ensure that children and adolescents in the age ranges concerned cannot usually obtain these contents (Article 5 Section 1 of the Youth Media Protection State Agreement).

4.1. Content with prejudicial effects on children only

No protective measures are required for telemedia content causing developmental impairment (children up to 14 years of age), if they are offered separately from content directed at children. If the only thing to be feared from the service is developmental impairment affecting children only, the provider of telemedia content has fulfilled his duty if the service is offered or accessible separately from content directed solely at children (Article 5 of the Youth Media Protection State Agreement (JMStV)).

4.2. Content with prejudicial effects on adolescents

If account is to be taken of the prejudicial effect on the developmental impairment of adolescents, the provider may offer his content only by ensuring distribution within certain limitations of time or by means of other (recognised) technical limitations on distribution (cf. Article 5 Section 3 of the Youth Media Protection State Agreement (JMStV)).

4.3 Reasonable interest (Article 5 Section 6 of the Youth Media Protection State Agreement (JMStV))

By way of exception the duty of the provider pursuant to Article 5 Section 1 of the Youth Media Protection State Agreement (JMStV) does not subsist if his content concerns news broadcasts, broadcasts on political events and broadcasts with similar content and there is reasonable interest for the publication of this form of representation or reporting. Reasonable interest of exactly this form exists if there is



a high requirement for publishing the news item, because of its importance and the impossibility of an audio-visual coverage which is deemed inoffensive under the Children and Young Persons Protection Act (JuSchG).

5. Limitations on distribution within the meaning of Article 5 Section 3 of the Youth Media Protection State Agreement (JMStV)

The provider can satisfy his duty under Article 5 Section 3 of the Youth Media Protection State Agreement (JMStV) by making it impossible or extremely difficult by technical or other means for children or adolescents in the age-range concerned to become aware of the service or by choosing the time during which the content is accessible so that children or adolescents in the age-range concerned will not become aware of the content in the usual course of events. (Article 5 Section 3 of the Youth Media Protection State Agreement).

5.1. Technical means (Article 5 Section 3 of the Youth Media Protection State Agreement)

Technical and other means within the meaning of Article 5 Section 3 of the Youth Media Protection State Agreement (JMStV) for telemedia are first and foremost recognised youth protection programmes pursuant to Article 11 of the Youth Media Protection State Agreement. Providers may, however, comply with the provisions in other ways, if by doing so it can be achieved that awareness of content liable to cause developmental impairment of children and adolescents can be made difficult to an equivalent degree.

The KJM has tested technical means and has for instance adjudged as adequate - under reserve of its implementation in practice - designs which verify the age of a user by using his personal identification number (ID check).

As defined by Article 9 Section 2 JMStV a technical encryption or blocking for broadcasting content can be taken into account as well as other possibilities defined more in detail by the appropriate statute of the authority.

5.2. Time limitations (Article 5 Section 3 No. 2 of the Youth Media Protection State Agreement (JMStV))

If it is suspected that there will be developmental impairment of children or adolescents, the provider fulfils his duty if the service is made accessible only between 2300 hours and 0600 hours.

The same applies in case developmental impairment of children or adolescents under the age of 16 is to be feared, if the service is made accessible only between 2200 hours and 0600 hours. A timed access limitation in the telemedia works by slotting in technical precautionary measures and thus as an actual access barrier.

6. Youth protection programmes (Article 11 of the Youth Media Protection State Agreement (JMStV))

Providers can programme their content in accordance with Article 11 of the Youth Media Protection State Agreement (JMStV) both with a youth protection programme recognised by the KJM or can operate a similar programme that is to be slotted ahead of the actual content.

7. Requirement to label (Article 12 of the Youth Media Protection State Agreement (JMStV))

Providers of telemedia must clearly indicate an existing label in accordance with Article 12 Children and Young Persons Protection Act (JuSchG) in their service. If the contents of computer games which already received a USK age rating are sold online as part of mail-order selling, are stored online in playable form or if such contents are available for download, the provider is obliged to clearly refer to the existing age certification, either in the form of text or by showing an obvious depiction of the label on the web site itself.

8. Relevance of youth protection for particular contents.

It is not only the content made available by providers which is subject to evaluation under the Children and Young Persons Protection Act (JuSchG), but also contents external to the provider and of a particular nature, such as, for example, advertising, external links and user-generated content. These are subject to special legal



limitations directly connected to issues of liability and therefore require specialised treatment.

8.1. Advertising

Article 6 of the Youth Media Protection State Agreement (JMStV) governs the prohibitions and requirements for the organisation of advertising on radio and in telemedia. There exist in particular standardised limitations on advertising for indexed content, special regulations for the protection of children and adolescents from advertising and the advertising of alcoholic drinks. Moreover, Article 6 of the Youth Media Protection State Agreement contains regulations for teleshopping and sponsoring. The rules for youth protection specified in Article 6 of the Youth Media Protection State Agreement must therefore also be obeyed in the advertising contained within a game. If online games around advertising universes with immediate opportunities to purchase are concerned, these also must be taken into account.

8.1.1. Prohibition on advertising for indexed content

Advertising for indexed content according to Article 6 Section 1 Clause 1 of the Youth Media Protection State Agreement (JMStV) is permitted only under the same conditions that also apply to the distribution of the content itself. Advertising for indexed games with a relative prohibition of distribution, meaning content which is included in parts A and C of the index lists for the liability to corrupt the young, may therefore be accessible solely to adults via closed user groups. Notifications of indexing procedures as part of editorial reporting or purely for information purposes are only permissible as part of factual and non-sensational reporting. No advertising whatsoever is permitted for games with an absolute prohibition on distribution.

8.1.2. Prohibition on advertising in cases of adverse effect

In accordance with Article 6 Section 2 of the Youth Media Protection State Agreement (JMStV) advertising must not adversely affect children and adolescents



either physically or emotionally. This general prohibition concerns advertising which is likely to damage children and adolescents by its content or its nature (e. g. shock advertising), however, it does not concern damage which can be occasioned by the actual advertised content. Moreover, in Article 6 Section 2 Nos. 1 to 4 of the Youth Media Protection State Agreement examples of advertising with adverse effects are cited.

8.1.3. Limitations on advertising

Pursuant to Article 6 Section 3 of the Youth Media Protection State Agreement (JMStV) advertising in radio and the telemedia must be separated from content for children and adolescents independent from the purpose of the advertising, if there is a danger of developmental impairment. Such a separation is to be maintained even if the advertising content does not directly precede content which is directed at children or adolescents, is not accessible during the advertisement and is not placed end-to-end with it. Advertising of alcoholic drinks must not be directed at children and adolescents, must not be especially appealing to them or show children or adolescents enjoying alcoholic drinks, see Article 6 Section 5 of the Youth Media Protection State Agreement.

8.2. External links

External links are of relevance if the provider makes these accessible and/or makes them his own. In the appraisal, therefore, linked content on the first linking level, i.e. if only one mouse click is needed, is to be included. Further linking levels must be included, if it is already apparent on the first linking level that content problematic for children and adolescents is becoming accessible or transit pages are being interconnected, in order to evade a possible liability (e.g. one-dimensional click paths).

8.3. User-generated content/communication

Under Article 7 Section 1 of the Telemedia Act (TMG) service providers are liable under general law for the information they keep available for their own use. However,



there exists a limitation of liability (under Article 10 of the Telemedia Act), whereby service providers are not liable for information from external sources which they save for their users insofar as they have no knowledge of the illegal traffic and information and no facts or circumstances are known to them in the event of claims for damages which make the illegal traffic or information apparent. The limitation of liability also applies, if the service provider has taken immediate measures to remove the information or to block the access to it, as soon as he became aware of the problem.

User-generated content is content which is not produced by the provider of online content himself, but by the users of his site and is characterised by "creative personal contribution, publicised content and creations outside professional routines".¹ They take various forms, e.g. blogs, video portals, web forums, podcasting and direct and/or indirect communication services (Chat, Instant Messenger). Chat is electronic communication in the internet (chat rooms) between at least two persons in real time; Pre-vetting of individual contributions to chat rooms is not required. Technical provisions on the part of the providers who encourage the acquisition of knowledge about non-standard contents are to be welcomed.

8.4. Economic framework

If the content or game uses the prospect of winning money or play value advantages, this can serve as incitement to gamble. If such actual money prizes are possible through special content, this can indicate the potential for an adverse effect.

¹ Organisation for Economic Cooperation and Development (OECD)

