



Kommission für Jugendmedienschutz  
der Landesmedienanstalten

**Interstate Treaty  
on the Protection of Human Dignity and the Protection of Minors  
in Broadcasting and in Telemedia  
(Interstate Treaty on the protection of minors – JMStV)**

dating from 10 – 27 September 2002

in the version of the 11<sup>th</sup> Treaty for amending the Interstate Treaties  
with regard to broadcasting law

(13<sup>h</sup> Interstate Broadcasting Treaty)

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The State of Baden-Württemberg,  
the Free State of Bavaria,  
the State of Berlin,  
the State of Brandenburg,  
the Free Hanseatic City of Bremen,  
the Free and Hanseatic City of Hamburg,  
the State of Hesse,  
the State of Mecklenburg-Western Pomerania,  
the State of Lower Saxony,  
the State of North Rhine-Westphalia,  
the State of Rhineland-Palatinate,  
the Saarland,  
the Free State of Saxony,  
the State of Saxony-Anhalt,  
the State of Schleswig-Holstein, and  
the Free State of Thuringia

conclude the following Interstate Treaty:

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## **Section I General Provisions**

### **Article 1 Objective of the Treaty**

This Interstate Treaty provides for the consistent protection of children and adolescents against content in electronic information and communication media which impairs or harms their development or education, and for the protection against content in electronic information and communication media which violate human dignity or other legal goods protected under the German Criminal Code<sup>1</sup>.

### **Article 2 Scope of application**

(1) This Interstate Treaty shall apply to electronic information and communication media (broadcast and telemedia services).

(2) This Interstate Treaty shall not apply to electronic information and communication services insofar as they are telecommunications services as defined in Article 3 no. 24 of the Telecommunications Act<sup>2</sup> which consist entirely in the transmission of signals through telecommunications networks, nor to telecommunications-supported services as defined in Article 3 no. 25 of the Telecommunications Act.

(3) This provision shall be without prejudice to the Telemedia Act<sup>3</sup> and to the provisions of the Interstate Broadcasting Treaty<sup>4</sup> applicable for telemedia.

### **Article 3 Definitions**

(1) For the purpose of this Interstate Treaty, children are persons below the age of 14 years; adolescents are persons as of 14, but below the age of 18 years.

(2) For the purpose of this Interstate Treaty:

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<sup>1</sup> Strafgesetzbuch (StGB) of 15 May 1871, last amended 13 April 2007 -

<http://bundesrecht.juris.de/bundesrecht/stgb/gesamt.pdf>

<sup>2</sup> Telekommunikationsgesetz (TKG) of 22 June 2004, last amended 18 February 2007 -

[http://bundesrecht.juris.de/bundesrecht/tkg\\_2004/gesamt.pdf](http://bundesrecht.juris.de/bundesrecht/tkg_2004/gesamt.pdf)

<sup>3</sup> Telemediengesetz (TMG) of 26 February 2007 -

<http://www.gesetze-im-internet.de/tmg/>

<sup>4</sup> Staatsvertrag für Rundfunk und Telemedien (Rundfunkstaatsvertrag – RStV) of 31 August 1991, last amended 31 July – 10 October 2006 -

[http://www.alm.de/fileadmin/Englisch/9\\_RAESTV\\_Englisch.pdf](http://www.alm.de/fileadmin/Englisch/9_RAESTV_Englisch.pdf)

1. "content" means broadcasting programmes or telemedia content;
2. "provider" means a broadcaster or a telemedia provider.

### **Article 4 Illegal Content**

(1) Without prejudice to any liability under the German Criminal Code, content is illegal if it

1. represents propaganda instruments as defined in Article 86 of the German Criminal Code the content of which is directed against the free and democratic order or the spirit of understanding among the nations,
2. uses insignia of organisations which are prohibited under the German Constitution<sup>5</sup> as defined in Article 86a of the German Criminal Code,
3. incites to hatred against parts of the population or against a national, racial, religious or ethnic group, encourages violent or arbitrary action against such a group or violates the human dignity of a person or group by insulting, maliciously degrading or defaming parts of the population or any of the aforementioned groups,
4. denies or plays down acts committed under the National Socialist regime as specified in Article 6 (1) and Article 7 (1) of the International Criminal Code<sup>6</sup> in a manner suited to disturb public peace,
5. presents cruel or otherwise inhuman acts of violence against a person in a manner devised to glorify or trivialise such acts of violence or devised to present the cruel or inhuman nature of the act in a manner which violates human dignity; this also applies to virtual presentations,
6. serves as an instruction to any of the acts specified as illegal under Article 126 (1) of the German Criminal Code,
7. glorifies war,
8. violates human dignity, especially by presenting persons who are or were dying or exposed

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<sup>5</sup> Grundgesetz für die Bundesrepublik Deutschland (GG) of 23 May 1949, last amended 28 August 2006 -

<http://www.gesetze-im-internet.de/bundesrecht/gg/gesamt.pdf>

<sup>6</sup> Völkerstrafgesetzbuch (VStGB) of 26 June 2002 -

<http://bundesrecht.juris.de/bundesrecht/vstgb/gesamt.pdf>

to serious physical or mental suffering while reporting actual facts without any justified public interest in such form of presentation or reporting being given; any agreement granted in this respect shall be irrelevant,

9. presents children or adolescents in unnatural poses; this also applies to virtual presentations,
10. is pornographic and has as its subject acts of violence, the sexual abuse of children or adolescents or sexual acts of persons involving animals; this also applies to virtual presentations,
11. is included in Parts B and D of the List of media harmful to young persons pursuant to Article 18 of the German Protection of Young Persons Act<sup>7</sup> or is wholly or largely identical in content with any work included in this List.

For cases pursuant to numbers 1 to 4 and to number 6 above, Article 86 (3) of the German Criminal Code shall apply mutatis mutandis; for cases pursuant to number 5 above, Article 131 (3) of the German Criminal Code shall apply mutatis mutandis.

(2) Without prejudice to any liability under the German Criminal Code, content is furthermore illegal if it is

1. pornographic in any other manner,
2. included in Parts A and C of the List pursuant to Article 18 of the German Protection of Young Persons Act, or is wholly or largely identical in content with any work included in this List,
3. evidently suited to seriously impair the development of children and adolescents or their education into self-responsible and socially competent personalities, taking into account the specific effect of the media via which the content is provided.

In deviation from sentence 1 above, content is legal in telemedia services if the provider has ensured that such content is accessible for adult persons only (closed user group).

(3) Upon inclusion of content in the List pursuant to Article 18 of the German Protection of Young Persons Act, the prohibitions pursuant to (1) and (2) above shall remain effective even following major

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<sup>7</sup> Jugendschutzgesetz (JuSchG) of 23 July 2002, last amended 26 February 2007 - <http://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung5/PdfAnlagen/juSchGenglisch.property=pdf.bereich=.rwb=true.pdf>

alterations of the content pending a decision by the Federal Review Board for Media Harmful to Young People<sup>8</sup>.

## **Article 5** **Content impairing development**

(1) Providers transmitting or making accessible content suited to impair the development of children or adolescents into self-responsible and socially competent personalities shall ensure that children or adolescents of the relevant age groups do not normally see or hear such content.

(2) Content is assumed to be suited to impair development as specified in (1) above if it has not been cleared for children or adolescents of the respective age group under the German Protection of Young Persons Act. Sentence 1 shall apply mutatis mutandis to content which is largely identical with the assessed content.

(3) A provider may fulfil his obligation pursuant to (1) above by

1. making access and perception of the content impossible or very difficult for children or adolescents of the respective age group via technical or other means, or
2. scheduling transmission of or access to the content in a manner devised to ensure that children or adolescents of the respective age group do not normally see or hear the content.

(4) If an impairment of the development of children or adolescents as specified in (1) above can be assumed, the provider shall be deemed to fulfil his obligation pursuant to (1) above if he transmits or makes accessible the content during the period 23.00 hours to 06.00 hours only. This shall apply mutatis mutandis for the provision of content made available during the period 22.00 hours to 06.00 hours only if an impairment of the development of children or adolescents under the age of 16 years is to be feared. For films not released for children aged less than 12 years of age pursuant to the German Protection of Young People Act, the well-being of younger children shall be given priority in the scheduling of transmission.

(5) If an impairment on children only as specified in (1) above is to be assumed, the telemedia provider shall be deemed to fulfil his obligation pursuant to (1) above if the content is transmitted or

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<sup>8</sup> Bundesprüfstelle für jugendgefährdende Medien (BPjM) - <http://www.bundespruefstelle.de/bpjm/information-in-english.html>

made available on-demand separately from content aimed at children.

(6) Paragraph (1) above shall not apply to news broadcasts, current affairs broadcasting and similar content available as telemedia to the extent that a justifiable interest in this specific type of presentation or report exists.

#### **Article 6 Protection of minors in advertising and tele-shopping**

(1) Advertising for listed content is permitted only subject to the terms applicable to the content in question itself. The List of media harmful to young persons (Article 18 of the German Protection of Young Persons Act) must not be disseminated or made accessible for advertising purposes. In advertising, there must not be any reference to any pending or completed procedure for the inclusion of a content or a data media with identical content in the List pursuant to Article 18 of the German Protection of Young Persons Act.

(2) Advertising shall not cause any physical or moral detriment to adolescents, nor shall it

1. contain appeals to buy a good or a service directed at children or adolescents exploiting their inexperience and credulity,
2. directly encourage children and adolescents to persuade their parents or others to purchase the goods or services being advertising,
3. exploit the special trust children or adolescents place in parents, teachers or other persons of trust,
4. unreasonably show children or minors in dangerous situations.

(3) Advertising the content of which is suited to impair the development of children or adolescents into self-responsible and socially competent personalities shall be transmitted separately from content directed at children or adolescents.

(4) Advertising directed at children or adolescents or advertising in which children or adolescents are involved as actors shall not harm the interests of children or adolescents or exploit their inexperience.

(5) Advertising for alcoholic beverages shall not be aimed at children or adolescents nor specifically appeal to children and adolescents through its presentation, nor show them consuming alcohol.

(6) Paragraphs (1) to (5) above shall apply mutatis mutandis to teleshopping and sponsorship. In addition, teleshopping must not exhort children or adolescents to contract for the sale or rental of goods and services.

#### **Article 7 Appointees for the protection of minors**

(1) Providers of television programmes or services covering more than one German state shall appoint an appointee for the protection of minors. The same shall apply to commercial providers of telemedia content which is accessible for the general public and contains content which impairs the development of minors or harms minors, as well as to providers of search engines.

(2) Telemedia providers employing less than 50 members of staff or dealing with less than 10 million verified visits per average month of a given year as well as providers of television programmes or services not transmitted nationally may do without appointing an appointee for the protection of minors if they affiliate to an organisation of voluntary self-regulation and require said organisation to execute the tasks of the appointee and if they involve and inform said organisation pursuant to (3) below.

(3) The appointee for the protection of minors shall act as the contact for users and shall provide advice to the provider concerning issues relating to the protection of minors. He shall be involved by the provider appropriately and in good time concerning issues relating to the production, planning and concept of content and all according decisions so that the protection of minors will be ensured, and shall be fully informed about the content in question. The appointee may propose restrictions or alterations of content to the provider.

(4) The appointee for the protection of minors must have the necessary expertise required to fulfil his tasks. He shall not be bound by instructions in his activities. He must not be disadvantaged due to the fulfilment of his tasks. He shall be provided with the necessary material resources to fulfil his tasks. He shall be exempted from his work as far as necessary for his tasks with payment of his earnings being continued.

(5) The appointees for the protection of minors of the providers shall enter into an exchange of information on a regular basis.

## **Section II**

### **Provisions applicable to broadcasting**

#### **Article 8**

##### **Scheduling**

(1) The state broadcasting corporations forming the ARD network<sup>9</sup>, the ZDF<sup>10</sup>, the Commission for the Protection of Minors in the Media (KJM)<sup>11</sup> or organisations of voluntary self-regulation which have been certified by the KJM may each provide for scheduling restrictions in guidelines, or individually for films to which the German Protection of Young Persons Act does not apply, in order to account for the specificities of the transmission of films on television, especially concerning television series.

(2) The bodies or organisations as specified in (1) above may individually provide for scheduling restrictions for other broadcast formats if in an overall assessment the structure of a broadcast is deemed to be suited to impair the development and education of children or adolescents according to its theme, thematic treatment, concept or presentation.

#### **Article 9**

##### **Exceptions**

(1) Upon application by the director, the respective governing body in charge in the state broadcasting corporations forming the ARD network, of Deutschlandradio and of the ZDF as well as upon application of a commercial broadcaster, the KJM or an organisation of voluntary self-regulation which has been certified by the KJM may each deviate from the assumption pursuant to Article 5 (2) above in guidelines or for individual cases. This shall apply in particular to content with a rating dating back more than 15 years. The supreme state youth authorities<sup>12</sup> shall be notified of such deviating assessments.

(2) For digitally transmitted commercial television content the state media authorities<sup>13</sup> may specify by means of concordant statutes the terms under which a broadcaster fulfils his obligations pursuant to Article 5 above by encrypting or blocking said broadcasting programme employing a technology used exclusively for this purpose. The broadcaster shall ensure that decryption by the user is possible only

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<sup>9</sup> Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (ARD) – <http://www.ard.de>

<sup>10</sup> Zweites Deutsches Fernsehen (ZDF) – <http://www.zdf.de>

<sup>11</sup> Kommission für Jugendmedienschutz (KJM) - [http://www.kjm-online.de/public/kjm/index.php?show\\_1=1](http://www.kjm-online.de/public/kjm/index.php?show_1=1)

<sup>12</sup> Oberste Landesjugendbehörden

<sup>13</sup> Landesmedienanstalten – [www.alm.de](http://www.alm.de)

for the duration of the respective broadcasting programme or the respective film. The state media authorities shall specify in statutes pursuant to sentence 1 above in particular which requirements shall apply for encryption and blocking systems for broadcasting programmes to warrant the effective protection of minors.

#### **Article 10**

##### **Programme trailers and labelling**

(1) Article 5 (4) and (5) above shall apply mutatis mutandis to programme trailers including moving images which are transmitted unencrypted and without blocking.

(2) Programmes which can be assumed to impair the development of children or adolescents under the age of 16 years must be identified at the start as unsuitable for the respective age group by acoustic means, or by visual means for the entire duration of a broadcast.

## **Section III**

### **Provisions applicable to telemedia**

#### **Article 11**

##### **Technical systems for the protection of minors**

(1) Telemedia providers can fulfil the requirements pursuant to Article 5 (3) number 1 above by fitting content which is suited to impair the development and education of children and adolescents with a technical system which has been certified as suitable for the protection of minors or by installing such a system upstream of the telemedia content.

(2) Technical systems for the protection of minors as specified in (1) above must be presented for certification of suitability. The competent state media authority shall take such a decision via the KJM. The state media authority which receives the application for certification shall be the competent state media authority. Certifications shall be limited in duration to five years. Certifications may be renewed.

(3) The certification pursuant to (2) above shall be granted to technical systems for the protection of minors provided that they allow for differentiated access according to age groups or fulfil their function in a similar manner.

(4) The certification may be revoked if the conditions prevailing for certification no longer apply.

(5) Persons providing or making accessible telemedia content in a professional capacity or on a major scale shall also fit content which does not raise any concern regarding children or adolescents with a

certified system for the protection of minors to the extent to which this is not unreasonable and can be realised without undue expenditure.

(6) Prior to certifying a system for the protection of minors, the KJM may allow for a pilot test with new systems, provisions or technical options to warrant the protection of minors; such tests shall be limited in duration.

## **Article 12** **Obligatory labelling**

Telemedia providers shall provide clear references to any existing labelling in the content provided if said content is wholly or largely identical in content with recorded video cassettes and other programmed data media suited for distribution and reproduction on a monitor or for playing on a monitor, using data media with films or games (image carriers) which are labelled or have been cleared for the respective age group pursuant to Article 12 of the German Protection of Young Persons Act.

## **Section IV** **Procedures applicable to providers with the exception of public-service broadcasting**

### **Article 13** **Scope of application**

Articles 14 to 21 as well as Article 24 (4) sentence 6 shall only apply to content covering more than one German state.

### **Article 14** **Commission for the Protection of Minors in the Media**

(1) The competent state media authority shall verify compliance with the provisions applying for the providers under this Interstate Treaty. The authority shall take the corresponding decisions in accordance with the provisions of this Interstate Treaty.

(2) In order to perform the tasks pursuant to (1) above, the Commission for the Protection of Minors in the Media (KJM) shall be established. The KJM shall serve the respective competent state media authority in the fulfilment of the tasks of the authority pursuant to (1) above. Upon application of the competent state media authority, the KJM may also be called upon to deal with content covering one state only. This provision shall be without prejudice to paragraph (5) below.

(3) The KJM consists of 12 experts. Of these,

1. six members shall be delegated by the directors of the state media authorities following consensual appointment by the state media authorities;
2. four members shall be delegated by the supreme state youth authorities in charge of the protection of minors,
3. two members shall be delegated by the supreme federal authority in charge of the protection of minors<sup>14</sup>.

For the event of a member being prevented from participating, a deputy member shall be appointed for each member pursuant to sentence 2 above. The term of the members or deputy members shall be five years; they may be reappointed. At least four members and deputy members shall have the qualification for judgeship. A director of a state media authority shall act as chairman.

(4) The following persons may not be members of the KJM: members and employees of the institutions of the European Union, the federal and state constitutional organs, members of the governing bodies and employees of the state broadcasting corporations forming the ARD network, the ZDF, Deutschlandradio<sup>15</sup>, the European cultural television channel ARTE<sup>16</sup>, and the commercial broadcasters or telemedia providers as well as employees of companies which have a direct or indirect interest in them as specified in Article 28 of the Interstate Broadcasting Treaty.

(5) The KJM may set up examining boards. Each board must include as a member at least one member of the KJM as specified in (3) sentence 2 numbers 1 to 3 above or, in the event of the member being unable to participate, the respective deputy member. The examining boards shall take decisions in place of the KJM unanimously in each case. At the start of the term of the KJM, the allocation of the examination procedures shall be determined by the KJM. The details shall be specified in the rules of procedure.

(6) The members of the KJM shall not be bound by instructions in fulfilling their tasks under this Interstate Treaty. The provisions governing confidentiality pursuant to Article 24 of the Interstate Broadcasting Treaty shall also apply in the relationship of the members of the KJM with other bodies of the state media authorities.

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<sup>14</sup> Oberste Bundesbehörde für den Jugendschutz

<sup>15</sup> Deutschlandradio - <http://www.dradio.de/>

<sup>16</sup> ARTE (Association Relative à la Télévision Européenne) G.E.I.E. - <http://www.arte.tv/de/alles-ueber-ARTE/38566.html>

(7) The members of the KJM shall be entitled to receive reimbursement of their necessary costs and expenses. The details shall be specified by the state media authorities by means of concordant statutes.

#### **Article 15**

##### **Participation of the decision-making committees of the state media authorities**

(1) The KJM shall continually inform the decision-making committees of the state media authorities about its activities. It shall involve the chairpersons of the committees in matters of principle, in particular when drafting statutes or guidelines.

(2) The decision-making committees of the state media authorities which are competent pursuant to the respective state media legislation shall enact concordant statutes and guidelines covering the implementation of this Interstate Treaty. In so doing, they shall consult with the state broadcasting corporations forming the ARD network and the ZDF and shall conduct a joint exchange of information regarding the application of the provisions for the protection of minors in the media with them and with the KJM.

#### **Article 16**

##### **Competences of the KJM**

The KJM shall be in charge of the definitive assessment of content pursuant to this Interstate Treaty. Without prejudice to the competences of certified organisations of voluntary self-regulation pursuant to this Interstate Treaty, under sentence 1 the KJM shall be in charge of

1. monitoring the application of the provisions of this Interstate Treaty,
2. certifying organisations of voluntary self-regulation and taking back or revoking the certification,
3. scheduling transmissions pursuant to Article 8 above,
4. deciding on exemptions pursuant to Article 9 above,
5. assessing and licensing an encryption and blocking technology,
6. certifying technical systems for the protection of minors and taking back or revoking the certification,
7. providing assessments on listing applications presented by the Federal Review Board for

Media Harmful to Young People, and filing applications for listings with the Review Board,

8. deciding on administrative offences pursuant to this Interstate Treaty.

#### **Article 17**

##### **Procedures of the KJM**

(1) The KJM shall act ex officio; upon application of a state media authority or a supreme state youth authority, it shall commence an examination procedure. It shall take decisions with the majority of the votes of the statutory members; in the case of parity of votes, the chairperson shall have the decisive vote. The reasons for decisions shall be given. The reasons shall include the main factual and legal arguments. The decisions of the KJM shall be binding upon the other bodies of the competent state media authority. They shall be taken as a basis for the decisions of the state media authority.

(2) The KJM shall cooperate with the Federal Review Board for Media Harmful to Young People and shall conduct a regular exchange of information with the Review Board.

(3) For the first time two years following its establishment, and every two years thereafter, the KJM shall present reports on the implementation of the provisions of this Interstate Treaty to the committees of the state media authorities, the supreme state youth authorities and the supreme federal authority in charge of the protection of minors.



## **Article 18**

### **"jugendschutz.net"**

(1) The joint organisation of all German states for the protection of minors ("jugendschutz.net") which was established by the supreme state youth authorities shall be organisationally linked to the KJM. The organisation "jugendschutz.net" shall be jointly funded by the state media authorities and the German states until 31 December 2012. The details of the funding of this organisation by the German states shall be decided and laid down in a statute by the Ministers of the states in charge of the protection of minors. The statute shall also specify the professional and budgetary independence of the organisation.

(2) "jugendschutz.net" shall support the KJM and the supreme state youth authorities in their tasks.

(3) "jugendschutz.net" shall examine telemedia content. In addition, "jugendschutz.net" shall also provide advice and training concerning telemedia content.

(4) In the event infringements of the provisions of this Interstate Treaty, "jugendschutz.net" shall notify the provider and shall inform the certified organisations of voluntary self-regulation and the KJM accordingly.

## **Article 19**

### **Organisations of voluntary self-regulation**

(1) Organisations of voluntary self-regulation may be established for broadcast services and for telemedia services.

(2) Under their statutory remit, certified organisations of voluntary self-regulation shall monitor adherence to the provisions of this Interstate Treaty and the statutes and guidelines issued thereunder by the affiliated providers.

(3) An organisation shall be certified as an organisation of voluntary self-regulation under this Interstate Treaty, if

1. the independence and competence of the appointed examining staff are ensured and if representatives of the relevant groups of society who specifically deal with issues relating to the protection of minors are also included among the staff,
2. adequate resources are ensured by a large number of providers,
3. instructions are put in place concerning the decisions to be taken by the examining staff which are suited to warrant the effective pro-

tection of children and adolescents in the decision-taking procedures,

4. rules of procedure are put in place which provide for the scope of control, in the case of broadcasters also for the obligatory presentation of content, and which furthermore specify possible sanctions and provide for a review of decisions also at the application of organisations for youth support set up under state law,

5. it is ensured that the providers concerned are heard prior to a decision being taken, the reasons for the decision are given in writing to the parties concerned, and

6. a body for dealing with complaints is set up.

(4) The competent state media authority shall take its decisions via the KJM. The state media authority shall be the competent authority in whose area of competence the organisation of voluntary self-regulation is located. If no competence can be established according to the above, the state media authority which received the application for certification shall be the competent authority. The organisation shall present to the KJM the documents required for assessing whether the requirements to be fulfilled for certification are being met. The certification shall be granted for a duration of four years. The certification may be renewed.

(5) The certification may be revoked if the requirements for certification are subsequently no longer met or if the decision-taking practice of the organisation is not in keeping with the legislation applying for the protection of minors. Compensation for loss to assets resulting from the revocation of the certification shall not be granted.

(6) The certified organisations of voluntary self-regulation shall coordinate their activities on the application of this Interstate Treaty.

## **Section V**

### **Enforcement procedures applicable to providers with the exception of public-service broadcasting**

## **Article 20**

### **Supervision**

(1) If the competent state media authority finds that a provider has violated the provisions of this Interstate Treaty, it shall take the necessary measures against the provider.

(2) For broadcasters, the competent state media authority shall take the respective decision in accordance with state legislation via the KJM.

(3) If the KJM approaches a broadcaster with the allegation that the broadcaster has violated provisions of this Interstate Treaty, and if the broadcaster proves that he has presented the broadcasting programme to a certified organisation of voluntary self-regulation prior to transmission as specified in this Interstate Treaty and has adhered to its instructions, measures by the KJM with respect to the adherence to the provisions for the protection of minors by the broadcaster are permitted only if the certified organisation of voluntary self-regulation has exceeded its legal discretionary power with its decision, or lack of decision. For broadcasting programmes which cannot be presented for assessment prior to transmission, the certified organisation of voluntary self-regulation to which the broadcaster has affiliated shall be involved prior to the KJM taking measures because of alleged infringements of the provisions for the protection of minors except for infringements of Article 4 (1) above; sentence 1 shall apply mutatis mutandis. For decisions pursuant to Articles 8 and 9 above, sentence 1 shall apply mutatis mutandis.

(4) For telemedia providers, the competent state media authority shall take the respective decision via the KJM in accordance with Article 59 (2) to (4) of the Interstate Broadcasting Treaty, paying due regard to the provisions governing responsibility pursuant to Articles 7 to 10 of the Telemedia Act.

(5) If a telemedia provider has affiliated to a certified organisation of voluntary self-regulation as specified in this Interstate Treaty or subjects himself to its statutes, said organisation shall be involved prior to the KJM in the case of alleged infringements against the provisions governing the protection of minors, except for infringements of Article 4 (1). Measures pursuant to (1) above by the KJM against the provider shall be permitted only if the certified organisation of voluntary self-regulation has exceeded its legal discretionary power with its decision or lack thereof.

(6) The competent state media authority shall be the authority of the state in which the licence of the broadcaster was granted or in which the telemedia provider has his office, seat of residence or, failing that, his permanent domicile. If no competence can be established under the above provisions, the state media authority shall be the competent authority in whose area of competence the cause for the official action is raised.

(7) The German states shall review the application of the provisions of (3) and (5) above three years after this Interstate Treaty has entered into force; said review shall be based in particular on the report of the KJM pursuant to Article 17 (3) above and on the comments of certified organisations of voluntary self-regulation and of the supreme state youth authorities.

## **Article 21 Right to Information**

(1) A telemedia provider shall be obliged to provide the KJM with information on the content and the measures taken to comply with the provisions for the protection of minors, and shall upon request grant access to the content for control purposes free of charge.

(2) The viewing or the use of content for the purpose of supervision, punishment of infringements or control shall be free of charge. Providers have to ensure access accordingly. Providers must not block content against viewing or information-gathering by the competent institution and must not impede viewing or information-gathering.

## **Article 22 Appeal to the Federal Administrative Court**

Appeals to the Federal Administrative Court in a judicial proceeding may also be made on the grounds that the judgement being challenged is based on a violation of the provisions of this Interstate Treaty.

## **Section VI Punishment of infringements by providers with the exception of public-service broadcasting**

### **Article 23 Sanction**

A prison sentence of up to one year or a fine shall be imposed on anyone who - in violation of Article 4 (2) sentence 1 number 3 and sentence 2 - transmits or makes accessible content which is obviously suited to seriously impair the development of children or adolescents or their education into self-responsible and socially competent personalities, taking into account the specific effect of the transmission media. If the perpetrator acts negligently, the prison sentence will be up to six months or the fine will be up to 180 rates per diem.

## **Article 24 Administrative offences**

(1) A provider commits an administrative offence if he, either intentionally or through negligence:

1. transmits or makes accessible content which
  - a) in breach of Article 4 (1) sentence 1 number 1 represents propaganda instruments as specified in the German Criminal Code,

- b) in breach of Article 4 (1) sentence 1 number 2 uses insignia of organisations which are prohibited under the German Constitution,
- c) in breach of Article 4 (1) sentence 1 number 3 incites to hatred against parts of the population or against a national, racial, religious or ethnic group, encourages violent or arbitrary action against such a group or violates the human dignity of a person or group by insulting, maliciously degrading or defaming parts of the population or any of the aforementioned groups,
- d) in breach of Article 4 (1) sentence 1 number 4 denies or plays down acts committed under the National Socialist regime as specified in Article 6 (1) and Article 7 (1) of the International Criminal Code in a manner suited to disturb public peace,
- e) in breach of Article 4 (1) sentence 1 number 5 presents cruel or otherwise inhuman acts of violence against persons in a manner devised to glorify or trivialise such acts of violence or devised to present the cruel or inhuman nature of the act in a manner which violates human dignity; this also applies to virtual presentations,
- f) in breach of Article 4 (1) sentence 1 number 6 serves as an instruction to any of the acts specified as illegal under Article 126 (1) of the German Criminal Code,
- g) in breach of Article 4 (1) sentence 1 number 7 glorifies war,
- h) in breach of Article 4 (1) sentence 1 number 8 violates human dignity, especially by presenting persons who are or were dying or exposed to serious physical or mental suffering while reporting actual facts without any justified public interest in such form of presentation or reporting being given,
- i) in breach of Article 4 (1) sentence 1 number 9 presents children or adolescents in unnatural poses; this applies to virtual presentations,
- j) in breach of Article 4 (1) sentence 1 number 10 is pornographic and has as its subject acts of violence, the sexual abuse of children or adolescents or sexual acts of persons involving animals; this also applies to virtual presentations,
- k) in breach of Article 4 (1) sentence 1 number 11 is included in Parts B and D of the List pursuant to Article 18 of the German Protection of Young Persons Act or is wholly or largely identical in content with any work included in this List,
2. in breach of Article 4 (2) sentence 1 number 1 and sentence 2 transmits or makes accessible content which is pornographic in another manner,
3. in breach of Article 4 (2) sentence 1 number 2 and sentence 2 transmits or makes accessible content which is included in Parts A and C of the List pursuant to Article 18 of the German Protection of Young Persons Act or which is wholly or largely identical with any work included in this List,
4. in breach of Article 5 (1) transmits or makes accessible content which is suited to impair the development of children or adolescents into self-responsible and socially competent personalities, without ensuring that children or adolescents of the respective age groups do not normally see or hear such content,
5. in breach of Article 6 (1) sentence 1 and (6) transmits or makes accessible advertising or teleshopping for listed content,
6. in breach of Article 6 (1) sentence 2 and (6) disseminates or makes accessible the List of media impairing minors,
7. in breach of Article 6 (1) sentence 3 and (6) provides information specified therein,
8. in breach of Article 7 does not appoint an appointee for the protection of minors,
9. transmits programme formats in breach of the scheduling provisions pursuant to Article 8 (2),
10. transmits broadcasting programmes which are assumed to be suited to impair the development of minors pursuant to Article 5 (2) without the KJM or an organisation of voluntary self-regulation certified for this purpose having deviated from the assumption pursuant to Article 9 (1) sentence 1,
11. in breach of Article 10 (1) transmits programme trailers with moving images outside the suitable transmission time and in unencrypted form,
12. in breach of Article 10 (2) transmits broadcasting programmes without identifying their transmission with an acoustic signal at the start or without labelling them with visual means for their entire duration,

13. transmits content without the necessary warning pursuant to Article 12,
14. in breach of an enforceable order issued by the competent state media authority pursuant to Article 20 (1) does not act,
15. in breach of Article 21 (1) does not fulfil his obligation to provide information,
16. in breach of Article 21 (2) sentence 3 blocks content against viewing by the competent state media authority.

(2) A provider also commits an administrative offence if he

1. in breach of Article 11 (5) wrongly labels telemedia content to be suited for children or adolescents of the respective age group,
2. provides wrong data in the framework of a procedure for certification of an organisation of voluntary self-regulation pursuant to Article 19 (4) above.

(3) The administrative offence may be penalised by a fine of up to Euro 500,000.

(4) The competent administrative authority in accordance with Article 36 (1) number 1 of the Administrative Offences Act<sup>17</sup> shall be the competent state media authority. In the cases of (1) and (2) number 1 above, the competent state media authority shall be the authority of the state in which the licence of the broadcaster was granted or the telemedia provider has his office, seat or residence or, failing that, his permanent domicile. If no competence can be established under the above provisions, the state media authority shall be the competent authority in whose area of competence the cause for the official action occurred. In the case of a breach pursuant to (2) number 2, the competent state media authority shall be the authority of the state in which the organisation of voluntary self-regulation has its office. If no competence can be established under the above provision, the state media authority shall be the competent authority which received the application for certification. The competent state media authority shall take its decisions via the KJM.

(5) The competent state media authority shall inform the other state media authorities about the opening of proceedings without delay. In cases in which proceedings have been initiated in several states pursuant to this provision, the competent au-

thorities shall coordinate their activities with regard to the question which authority will continue the proceedings.

(6) The competent state media authority may determine that complaints following an infringement of provisions of this Interstate Treaty as well as decisions in an administrative offence proceeding which are legally binding pursuant to (1) or (2) above shall be transmitted or made accessible by the respective provider in his content or service. The content and the scheduling of the announcement are to be determined with due discretion by the competent state media authority.

(7) The prosecution of the administrative offences specified in (1) and (2) above shall come under a statute of limitations of six months.

## **Section VII Final Provisions**

### **Article 25 Amendments of other Interstate Treaties**

(1) The Interstate Broadcasting Treaty of 31 August 1991, last amended by the Sixth Interstate Treaty of 20/21 December 2001 for Amending the Interstate Treaties with Regard to Broadcasting Law will be amended as follows:

1. The table of contents will be amended as follows:
  - a) The title of Article 2a shall be deleted.
  - b) The title of Article 3 shall read as follows:
 

"Article 3 General Programming Principles"
  - c) The title of Article 4 shall read as follows:
 

"Article 4 Illegal Content, Protection of Minors"
  - d) The titles of Articles 49a and 53a shall be deleted.
2. Article 2a (old) shall become Article 3.
3. Article 3 (old) shall become Article 4 and shall read as follows:

"Article 4

Illegal Content, Protection of Minors

The provisions of the Interstate Treaty on the Protection of Minors in the Media applying for broadcasting shall apply".

<sup>17</sup> Gesetz über Ordnungswidrigkeiten (OWiG) in the version of 19 February 1987, last amended July 2006 - [http://bundesrecht.juris.de/bundesrecht/owig\\_1968/gesamt.pdf](http://bundesrecht.juris.de/bundesrecht/owig_1968/gesamt.pdf)

4. Article 4 (old) shall be deleted.
5. In Article 5 (1) sentence 2, the reference to "paragraphs (2) to (11)" shall be replaced by the reference "paragraphs (2) to (12)".
6. Article 7 (1) sentences 2 and 3 shall be deleted.
7. In Article 16 sentence 1, the reference to "Article 3" shall be deleted.
8. In Article 40 (1) sentence 2, the date "31 December 2004" shall be replaced by the date "31 December 2010".
9. In Article 46 sentence 1, the reference to "Article 3" shall be deleted.
10. Article 47d (1) sentence 3 shall be deleted.
11. Article 49 is amended as follows:
  - a) Paragraph (1) sentence 1 shall be amended as follows:
    - aa) Numbers 1 to 12 shall be deleted.
    - bb) Numbers 13 to 37 (old) shall become numbers 1 to 25.
  - b) Paragraph (5) sentences 2 and 3 shall be deleted.
12. Articles 49a and 53a are deleted.

(2) The ZDF Interstate Treaty of 31 August 1991, last amended by Article 3 of the Fifth Interstate Treaty of 06 July - 07 August 2000 for Amending the Interstate Treaties with Regard to Broadcasting Law<sup>18</sup> is amended as follows:

1. In the table of contents, the title of Article 8a shall be deleted.
2. In Article 7 (1) sentence 2, the reference to "paragraphs (2) to (11)" shall be replaced by the reference "paragraphs (2) to (12)".
3. Article 8 shall read as follows:

"Article 8

Illegal Content, Protection of Minors

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<sup>18</sup> ZDF-Staatsvertrag (ZDF-StV) of 31 August 1991, last amended 31 July – 10 October 2006 – [http://hh.juris.de/hh/ZDFStVtr\\_HA\\_rahmen.htm](http://hh.juris.de/hh/ZDFStVtr_HA_rahmen.htm)

The provisions of the Interstate Treaty on the Protection of Minors in the Media applying for the ZDF shall apply."

4. Article 8a shall be deleted.

(3) The Deutschlandradio Interstate Treaty of 17 June 1993, last amended by Article 4 of the Fifth Interstate Treaty of 06 July - 07 August 2000 for Amending the Interstate Treaties with Regard to Broadcasting Law<sup>19</sup> is amended as follows:

1. Article 8 shall read as follows:

"Article 8

Illegal Content, Protection of Minors

The provisions of the Interstate Treaty on the Protection of Minors in the Media applying for Deutschlandradio shall apply."

2. In Article 34 (4) half-sentence 2, the reference to "Article 21 (6) sentence 6" shall be replaced by the reference "Article 21 (6) sentence 7".

(4) The Media Services Interstate Treaty of 20 January - 12 February 1997, last amended by Article 3 of the Sixth Interstate Treaty of 21/21 December 2001 for Amending the Interstate Treaties with Regard to Broadcasting Law<sup>20</sup> is amended as follows:

1. In the table of contents, the title of Article 24a shall be deleted.
2. In Article 2 (1) sentence 2, after the words "of the Interstate Broadcasting Treaty" the words "and of the Interstate Treaty on the Protection of Minors in the Media" shall be inserted.
3. Article 12 shall read as follows:

"Article 12

Illegal Media Services, Protection of Minors

The provisions of the Interstate Treaty on the Protection of Minors in the Media applying for media services shall apply."

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<sup>19</sup> Staatsvertrag über die Körperschaft des öffentlichen Rechts "Deutschlandradio" (DLR-StV) of 17 June 1993, last amended 31 July – 10 October 2006 - [http://mv.juris.de/mv/DLRStVtr\\_MV\\_1994\\_rahmen.htm](http://mv.juris.de/mv/DLRStVtr_MV_1994_rahmen.htm)

<sup>20</sup> Staatsvertrag über Mediendienste (Mediendienste-Staatsvertrag - MDStV) of 20 January – 07 February 1997, last amended 08 – 15 October 2004, repealed with effect from 01 March 2007 - <http://www.recht-niedersachsen.de/22620/mdstv1.htm>

4. Article 13 shall be amended as follows:
  - a) Paragraph (1) shall be deleted.
  - b) Paragraphs (2) to (4) (old) shall become paragraphs (1) to (3).
5. Article 22 (1) shall be amended as follows:
  - a) Sentence 1 shall be deleted.
  - b) Sentences 2 and 3 (old) shall become sentences 1 and 2.
6. Article 24 is amended as follows:
  - a) Paragraph (1) shall be amended as follows:
    - aa) Numbers 4 to 9 shall be deleted.
    - bb) Numbers 10 to 16 (old) shall become numbers 4 to 10.
  - b) In paragraph (2) the reference to "number 1 to 3 and 10 to 14" shall be replaced by the reference "number 1 to 8".
  - c) The following paragraph (3) shall be added:
 

"(3) The prosecution of the administrative offences specified in paragraph (1) shall come under a statute of limitations of six months."
7. Article 24a shall be deleted.
8. In Article 25 sentence 3 the date "31 December 2004" shall be replaced by the date "31 December 2006".

**Article 26**  
**Duration, termination**

(1) This Interstate Treaty shall remain in force for an indefinite period. It may be terminated by any of the contracting parties subject to twelve months' notice at the end of the calendar year. It may be terminated at the earliest with effect from 31 December 2008. Regarding Article 20 (3) and (5), the contractual relationship may be terminated separately at the earliest with effect from 31 December 2008 subject to six months' notice. If the Interstate Treaty has not been terminated as of that date, the same period of notice may be given for termination at a date two years later each time. Termination shall be made in writing to the Chairman of the Prime Ministers' Conference. Termination by one of the German states will not affect the validity of the contractual relationship to one another among the other states; however, each of the other states may termi-

nate the contractual relationship at the same time with a period of three months following receipt of the notice of termination.

(2) For the termination of the Interstate Treaties amended in accordance with Article 25 above, the provisions on termination regulated therein shall apply.

**Article 27**  
**Notification**

Amendments of this Interstate Treaty are subject to obligatory notification pursuant to Directive 98/48/EC of the European Parliament and of the Council of Europe of 20 July 1998 amending Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations.

**Article 28**  
**Entry into force, new publication**

(1) This Interstate Treaty shall enter into force on 01 April 2003. Unless all ratification documents have been deposited with the State Chancellery of the Chairman of the Prime Ministers' Conference by 31 March 2003, the Interstate Treaty shall become invalid.

(2) The State Chancellery of the Chairman of the Prime Ministers' Conference shall notify the German states about the deposition of the ratification documents.

(3) The State Chancelleries of the German states shall be entitled to publish the wording of the Interstate Broadcasting Treaty, the ZDF Interstate Treaty, the Deutschlandradio Interstate Treaty and the Media Services Treaty with a new date in the version resulting from the provisions of Article 25.

For the State of Baden-Württemberg  
Berlin, 22 September 2002  
*Erwin Teufel*

For the Free State of Bavaria  
Berlin, 13 September 2002  
*Reinhold Bocklet*

For the State of Berlin  
Berlin, 13 September 2002  
*Klaus Wowereit*

For the State of Brandenburg  
Berlin, 13 September 2002  
*Matthias Platzeck*

For the Free Hanseatic City of Bremen  
Berlin, 27 September 2002  
Henning *Scherf*

For the Free and Hanseatic City of Hamburg  
Berlin, 26 September 2002  
Ole von *Beust*

For the State of Hesse  
Berlin, 13 September 2002  
Roland *Koch*

For the State of Mecklenburg-Western Pomerania  
Berlin, 13 September 2002  
Dr. Harald *Ringsdorff*

For the State of Lower Saxony  
Berlin, 23 September 2002  
Sigmar *Gabriel*

For the State of North Rhine-Westphalia  
Berlin, 13 September 2002  
Wolfgang *Clement*

For the State of Rhineland-Palatinate  
Mainz, 13 September 2002  
Kurt *Beck*

For the Saarland  
Saarbrücken, 10 September 2002  
Peter *Müller*

For the Free State of Saxony  
Berlin, 13 September 2002  
Prof. Dr. Georg *Milbradt*

For the State of Saxony-Anhalt  
Berlin, 13 September 2002  
Prof. Dr. Wolfgang *Böhmer*

For the State of Schleswig-Holstein  
Berlin, 27 September 2002  
Heide *Simonis*

For the Free State of Thuringia  
Berlin, 13 September 2002  
Dr. Bernhard *Vogel*

**Clarificatory protocol of the states regarding the Interstate Treaty on the Protection of Minors in the Media:**

The heads of government of the German states and the Federal Government are agreed on the following procedure for evaluation:

The German Protection of Young Persons Act and the Interstate Treaty on the Protection of Minors in the Media shall be subject to an overall review within a period of 5 years following their entry into force. The review shall comprise an evaluation of all experiences gathered regarding the allocation of regulatory competences, the scope of application of the Federal Act and the Interstate Treaty, the practicability of the criteria for the protection of minors underpinning these legal instruments, the effectiveness and efficiency of the regulatory structures and the involvement of the institutions of voluntary self-regulation. The evaluation shall be undertaken with specific attention being paid to the criteria indicating whether the new regulations have resulted in an improvement of the protection of minors and whether the new structure warrants an effective and practicable control.

In the framework of the overall evaluation, the division of responsibilities between the federal and the state institutions shall be evaluated. The evaluation shall assess in particular the task of classifying content impairing minors allocated to the Federal Review Board for Media Harmful to Young People.

In addition, clarification shall be sought as to whether the procedure of listing content as a means of dealing with content impairing minors is still adequate or whether a different procedure for the protection of minors should be developed.

This evaluation shall be without prejudice to Article 20 (7) of the Interstate Treaty on the Protection of Minors in the Media.

**Clarificatory protocol of the state of Baden-Württemberg as well as the Free States of Bavaria and Saxony regarding the Interstate Treaty on the Protection of Minors in the Media:**

The State of Baden-Württemberg as well as the Free States of Bavaria and Saxony maintain their position that it is necessary to include public-service broadcasting with its content in an overall system of monitoring and control for the protection of minors over and above the provisions laid down in Article 15 (2) sentence 2, and therefore expect the Broadcasting Commission<sup>21</sup> to analyse this issue in the framework of the evaluation pursuant to Article 20 (7) and to then present the findings to the heads of government of the German states.

**Clarificatory protocol of the State of Baden-Württemberg, the Free State of Bavaria, the states of Berlin and Brandenburg, the Free and Hanseatic City of Hamburg, the states of Hesse, Mecklenburg-Western Pomerania and Rhineland-Palatinate, the Saarland, the Free State of**

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<sup>21</sup> Rundfunkkommission der Länder

**Saxony, the State of Saxony-Anhalt and the Free State of Thuringia regarding Article 2 (1) and Article 3 (1) of the Interstate Treaty on the Protection of Minors in the Media:**

The State of Baden-Württemberg, the Free State of Bavaria, the states of Berlin and Brandenburg, the Free and Hanseatic City of Hamburg, the states of Hesse, Mecklenburg-Western Pomerania and Rhineland-Palatinate, the Saarland, the Free State of Saxony, the State of Saxony-Anhalt and the Free State of Thuringia expect that the definition of the term "telemedia" will be devised in a manner doing justice to the interests of those applying the legislation in overcoming the present separation between media services and tele services in the framework of the further consultations concerning the reform of the media order prevailing between Federal government and the German states.

**Clarificatory protocol of the State of Baden-Württemberg, the Free State of Bavaria, the states of Berlin and Brandenburg, the Free and Hanseatic City of Hamburg, the states of Hesse, Mecklenburg-Western Pomerania and Rhineland-Palatinate, the Saarland, the Free State of Saxony, the State of Saxony-Anhalt and the Free State of Thuringia regarding Article 4 (1) sentence 1 numbers 5, 9 and 10 of the Interstate Treaty on the Protection of Minors in the Media:**

The State of Baden-Württemberg, the Free State of Bavaria, the states of Berlin and Brandenburg, the Free and Hanseatic City of Hamburg, the states of Hesse, Mecklenburg-Western Pomerania and Rhineland-Palatinate, the Saarland, the Free State of Saxony, the State of Saxony-Anhalt and the Free State of Thuringia expect a clarification to be arrived at as soon as possible regarding the depiction of beings resembling human beings in the framework of the further consultations concerning the reform of Article 131 of the German Criminal Code (depiction of violence).

**Clarificatory protocol of the State of Baden-Württemberg, the Free State of Bavaria, the states of Berlin and Brandenburg, the Free and Hanseatic City of Hamburg, the states of Hesse, Mecklenburg-Western Pomerania and Rhineland-Palatinate, the Saarland, the Free State of Saxony, the State of Saxony-Anhalt and the Free State of Thuringia regarding Articles 23 and 24 of the Interstate Treaty on the Protection of Minors in the Media:**

The State of Baden-Württemberg, the Free State of Bavaria, the states of Berlin and Brandenburg, the Free and Hanseatic City of Hamburg, the states of Hesse, Mecklenburg-Western Pomerania and Rhineland-Palatinate, the Saarland, the Free State of Saxony, the State of Saxony-Anhalt and the Free State of Thuringia expect alignment of the German

Protection of Young Persons Act and the Interstate Treaty on the Protection of Minors in the Media regarding the classification of behaviour constituting an administrative offence or a criminal offence to continue without delay and potential gaps regarding liability to be closed in a manner adequately reflecting competences in the framework of the further consultations concerning the reform of the media order between Federal government and the German states.

**Clarificatory protocol regarding the Eighth Interstate Treaty for Amending the Interstate Treaties with Regard to Broadcasting Law**

**Clarificatory protocol of all states regarding Article 18 of the Interstate Treaty on the Protection of Minors in the Media:**

The provision in Article 18 of the Interstate Treaty on the Protection of Minors in the Media is based on the assumption that the payments by the states made from the budgetary resources are made in accordance with the status applicable until 31 December 2008. By this date, an evaluation of the legislation for the protection of minors is planned in accordance with the clarificatory protocols of all states regarding the Interstate Treaty on the Protection of Minors in the Media on the Federal and state levels, necessitating a decision on an amendment of the regulation on the basis of an Interstate Treaty after said date.