

## Protection of Young Persons Act

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### Chapter 1: General

#### § 1 Definitions

(1) The following definitions shall apply by letter and spirit of this Act:

1. *Children* are persons below the age of 14 years.
2. *Adolescents* are persons as of 14 but below the age of 18 years.
3. A *Custodial Person* is an individual who is personally or together with another individual responsible for care and custody of other persons according to the legal provisions of the (German) Civil Code [BGB].
4. *Person with Parental Power* describes the status of any person above the age of 18 who is permanently or for a defined period of time or in the context of school or vocational training or under a youth welfare scheme in charge of educational duties for a child or adolescent on the basis of an agreement with the *Custodial Person*.

(2) *Data media* in terms of this Act are physical media which carry text, pictures or sound suitable for transfer or direct perception or built into projectors or game machines. Physical dissemination, letting, offering or access of data media shall be deemed equivalent to electronic dissemination, letting, offering or access unless related to broadcasting in terms of § 2, German Interstate Broadcasting Convention.

(3) *Telemedia* in terms of this Act are media which are transmitted or rendered accessible, according to the Telemedia Act [Telemediengesetz, TMG]. The terms of “transmission” and “accessible” in Phrase 1 shall apply to operators’ own or other operators’ programmes.

(4) *Mail order business* in terms of this Act shall apply to any commercial transaction relating to ordering and sending of goods by conventional mail or online without personal contact between supplier and buyer or without any technical or other measures to prevent shipment to children and adolescents.

(5) The provisions of §§ 2 through 14 of this Act shall not apply to married adolescents.

## **§ 2 Duty of proof and examination**

(1) Any *Person with Parental Power* in terms of this Act, § 1, Sub-Clause 1, No. 4, authorised to accompany minors shall provide evidence to her/his authority if so requested. Event and other business operators, in case of doubt, shall have the right of examination.

(2) Any person under legal age limitation shall provide adequate evidence to her/his age if so requested. Event and other business operators shall have the right of examination.

## **§ 3 Notification of legal provisions**

(1) Event and business operators shall be obliged to put up clearly visible notices of the legal provisions applicable to their events, according to §§ 4 through 13, and, in case of movies, shall add age ratings and quality codes in compliance with § 14, Sub-Clause 7.

(2) Verbal notification of age ratings of movies and comparable programmes shall be limited to the wording codes specified in § 14, Sub-Clause 2. Any lending or other transfer of films intended for the general public shall be accompanied by notification to the event operator of age ratings and quality codes as specified in § 14, Sub-Clause 7. Movies and comparable programmes rated in conformity with § 14, Sub-Clause 2, by a supreme state authority or by an organisation of voluntary self-control and specifically labelled by a procedure under § 14, Sub-Clause 6, shall be announced or advertised without reference to undesirable effects on moral development of young people and shall not be announced or advertised in a manner that might have such undesirable impact.

## **Chapter 2: Protection of young persons in the public**

### **§ 4 Restaurants**

(1) *Children* and *Adolescents* below the age of 16 years shall not be present in a restaurant unless they are accompanied by a *Custodial Person* or a *Person with Parental Power* or for one meal or drink between 5 a.m. and 11 p.m. *Adolescents* as of the age of 16 years shall not be present in a restaurant between midnight and 5 a.m. unless they are accompanied by a *Custodial Person* or a *Person with Parental Power*.

(2) Sub-Clause 1 shall not apply to *Children* or *Adolescents* who are travelling or who attend an event sponsored by a youth welfare body.

(3) *Children* and *Adolescents* must not be permitted to be present in restaurants of night club nature or in comparable entertainment establishments.

(4) Exeptional permits regarding Sub-Clause 1 may be granted by the applicable authority.

### **§ 5 Dances**

(1) *Children* as well as *Adolescents* below the age of 16 years must not be permitted to attend public dance events unless they are accompanied by a *Custodial Person* or *Person with Parental Power*. The time limit for *Adolescents* as of 16 years of age shall be midnight.

(2) Presence of *Children* until 10 p.m. and of *Adolescents* below the age of 16 until midnight may be permissible for dance events sponsored by a youth welfare body or for artistic participation or folklore programmes.

(3) Exceptional permits may be granted by the applicable authority.

### **§ 6 Gambling rooms, games of chance**

(1) *Children* and *Adolescents* must not be permitted to be present in gambling rooms or comparable gambling facilities.

(2) Participation of *Children* and *Adolescents* in games with prizes run in the public shall be restricted to fun-fairs, folklore festivals and comparable events under the condition of low-value prizes in kind.

### **§ 7 Events or premises of undesirable impact on young people**

Operators of public or company-related events with a potential of undesirable impact on the physical, spiritual or psychic wellbeing of *Children* or *Adolescents* may be ordered by the applicable authority to prevent *Children* and *Adolescents* from presence and/or participation. Such public orders may be qualified by age or time limits or other provisions to rule out or minimise the risk.

### **§ 8 Places with undesirable impact on young people**

If a *Child* or *Adolescent* is present at a place at which she/he may be exposed to a direct risk for her/his physical, spiritual or psychic wellbeing, the applicable authority shall take all measures necessary to avert the risk. The following measures may have to be taken:

1. The *Child* or *Adolescent* may be asked to leave the place.
2. The *Child* or *Adolescent* may be transferred to the *Person with Parental Power*, in compliance with § 7, Sub-Clause 1, No. 6, Eighth Edition, Social Security Code, or, if a *Person with Parental Power* is temporarily not available, may be taken into the care of the local Youth Welfare Office.

In difficult cases, the local authority shall provide the Youth Welfare Office with more specific information on the place concerned.

### **§ 9 Alcoholic drinks**

(1) The following bans shall apply to restaurants, stores and other points of sale:

1. Brandy as well as brandy-containing drinks or food products with brandy above negligible level or
2. Other alcoholic drinks

must neither be sold to *Children* and *Adolescents* below the age of 16 years nor must their consumption by said persons be tolerated.

(2) Sub-Clause 1, No. 2 shall not apply to *Adolescents* accompanied by a *Custodial Person*.

(3) Alcoholic drinks must not be available from drinks dispensers in the public.

This shall not apply under the following circumstances:

1. A drinks dispenser is located on a site not accessible for *Children* and *Adolescents*.
2. A drinks dispenser is located in enclosed company space and furnished with mechanical devices or adequately guarded and supervised to the effect that *Children* and *Adolescents* have no access to alcoholic drinks.

§ 20, No. 1, German Licensing Act, shall not be affected.

(4) Sugared alcohol-containing beverages in terms of § 1, Sub-clauses 2 and 3, Alcopop Tax Act, must not be commercially launched without the label “Not to be distributed to persons below 18 years of age, § 9, Protection of Young Persons Act”. This notice shall be attached to the sales package in type, size and colour of print identical with that of the trade or fancy name or with the marketing label or, in case of bottles, on the front label.

### **§ 10 Smoking in the public, tobacco products**

(1) Tobacco products must not be sold to *Children* and to *Adolescents* nor must the latter be permitted/tolerated to smoke in restaurants, stores and other public places.

(2)\* Tobacco products must not be available from selling machines unless the following conditions are satisfied:

1. The selling machine has been installed at a location not accessible for *Children* and for *Adolescents*.
2. The selling machine has been furnished with mechanical devices or is permanently guarded to ensure that *Children* and *Adolescents* cannot take tobacco products out of them.

[\* Increase of eligibility from 16 to 18 years for buyers from selling machines shall come into force on January 1, 2009.]

## **Chapter 3: Protection of young people in the context of media**

### **Sub-chapter 1: Data media**

#### **§ 11 Movie performances**

(1) Presence of *Children* and *Adolescents* at public movie performances shall not be permissible unless the films shown have been cleared for them by the supreme state authority or an organisation of voluntary self-control in a procedure according to § 14, Sub-Clause 6 or if they are labelled “Information Programme” or “Educational Programme”.

(2) Presence of *Children* as of six years of age at public movie performances may be permissible, in deviation from Sub-Clause 1, if the films shown have been cleared/labelled for *Children* and or *Adolescents* as of twelve years, provided that parental guidance is ensured (*Custodial Person*).

(3) Presence at public movie performances shall be solely permitted with parental guidance (*Custodial Person, Person with Parental Power*), notwithstanding the conditions specified in Sub-Clause 1. This restriction shall apply to the following situations:

1. *Children* below the age of six years;
2. *Children* as of six years at performances finished later than 8 p.m.;
3. *Adolescents* below the age of 16 years at performances finished after 10 p.m.;
4. *Adolescents* as of 16 years at performances lasting beyond midnight.

(4) Sub-Clauses 1 through 3 shall apply to public movie performances independent of techniques of recording and reproduction. They shall also apply to advertising commercials and supporting programmes. They shall not apply to non-commercial films, as long as those films are not used for commercial purposes.

(5) Commercials and advertising programmes for tobacco products and alcoholic drinks must not be shown before 6 p.m., notwithstanding the conditions specified in Sub-Clauses 1 through 4.

## **§ 12 Data media with films or games**

(1) Recorded video cassettes and other data media suitable for distribution and reproduction on a monitor or playing on a monitor, using data media with films or games, shall not be accessible in the public for *Children* and *Adolescents* unless they have been cleared and labelled for the respective age group by the supreme state authority or an organisation of voluntary self-control in a procedure according to § 14, Sub-Clause 6, or unless they are labelled "Information Programme" or "Educational Programme".

(2) Labelling codes according to Sub-Clause 1 should be clearly visible on the surface of data media and on its cover. The label of at least 1,200 mm<sup>2</sup> shall be applied to the front surface of the cover, bottom left, and to the image medium in the size of at least 250 mm<sup>2</sup>. The following steps may be taken, in this context, by the supreme state authority:

1. Instructions on content, size, form, colour and fixation of codes.
2. Exceptional permissions regarding fixation of codes to media surfaces or cover.

Telemedia operators who are involved in distribution of film and game programmes have to make sure that labels on their products are clear and unambiguous.

(3) Data media which are unlabelled or are labelled "Not released for young people" by the supreme state authority or an organisation of voluntary self-control, in compliance with § 14, Sub-Clause 2; and in a procedure according to § 14, Sub-Clause 6, or § 14, Sub-Clause 7, shall be subject to the following restrictions:

1. They must not be offered or rendered available to *Children* or *Adolescents*.
2. They must not be offered or rendered available in retail stores, stands or other points of sale outside business rooms usually not visited by customers or in mail order schemes.

(4) The following rules shall apply to machines selling recorded data media:

1. They must not be installed in public places accessible for *Children* and *Adolescents*.
2. They must not be installed outside business spaces.
3. They must not be installed in unguarded entrance areas, lobbies or corridors.

Rules 1-3 shall not apply to exclusive sale of data media adequately labelled according to § 14, Sub-Clause 2, Nos. 1-4, and to selling machines furnished with mechanical devices to prevent distribution among *Children* and *Adolescents* of age groups for whom the programmes concerned have not been cleared according to § 14, Sub-Clause 2, Nos. 1-4.

(5) Data media with extracts of film and games programmes, in deviation from Sub-Clauses 1 and 3, may be distributed in conjunction with periodicals if they are clearly labelled by the distributor to the effect that an organisation of voluntary self-control has confirmed that the extracts concerned do not include material with a potentially undesirable impact on young people. Such label together with a clearly visible code shall be attached to both the periodical and the data media prior to distribution. § 12, Sub-Clause 2, Clause 2, Phrases 1 to 3, shall apply as the case may be. Release according to Phrase 1 may be ruled out for a distributor by the supreme state authority.

### **§ 13 Equipment for monitor games**

(1) Playing at electronic games monitors without prizes, installed in public areas, may be permitted to *Children* and *Adolescents* not accompanied by a *Custodial Person* or *Person with Parental Power* if the play programmes have been released for the age group concerned according to § 14, Sub-Clause 6, by the supreme state authority or an organisation of voluntary self-control and have been appropriately labelled or labelled "Information" or "Educational" by the operator of the games facility.

(2) Electronic games monitors may be installed

1. in public areas accessible for *Children* and *Adolescents*,
2. outside business spaces,
3. in unguarded entrance halls, lobbies or corridors

if their programmes have been released for *Children* as of six years of age and have been appropriately labelled or labelled "Information" or "Educational" according to § 14, Sub-Clause 7.

(3) § 12, Sub-Clause 2, Phrases 1 up to 3, shall apply to the mode of labelling of such electronic games monitors.

### **§ 14 Labelling of films as well as of film and play programmes**

(1) Films as well as film and play programmes which might potentially impair the development and education of *Children* and *Adolescents* to responsible personalities in society shall not be released for that age group.

(2) The following release codes may be issued for films as well as film and play programmes by the supreme state authority or an organisation of voluntary self-control in a procedure on the basis of Sub-Clause 6:

1. Released for general audiences, without age restriction
2. Released for audiences as of six years of age
3. Released for audiences as of twelve years of age

4. Released for audiences as of 16 years of age
5. Restricted to audiences below 18 years of age.

(3) Data media shall not be labelled at all if their content has been rated according to § 15, Sub-Clause 2, Nos. 1-5, by the supreme state authority or by an organisation of voluntary self-control or if they have been included in the List according to § 18. The supreme state authority shall be obliged to notify the applicable criminal prosecution authority of any fact indicative of an offence under § 15, Sub-Clause 1.

(4) A programme for data media or monitor games which is fully or substantially identical with data media recorded in the List according to § 18 shall not be labelled. The same shall apply to programmes meeting the prerequisites for inclusion in the List. In cases of doubt, the Federal Review Board for Publications Harmful to Young People shall be asked for a ruling in response to a procedure initiated according to Sub-Clause 6 by the supreme state authority or an organisation of voluntary self-control.

(5) Labelling of film programmes for data media and monitor games shall as well apply to public performances and the films selected for such events. Compulsory labelling of films for public film performances may just as well apply to film programmes of identical quality as may be shown by means of data media and other film performance facilities. Sub-Clause 4 shall apply accordingly.

(6) Supreme state authorities may agree on a common procedure for release and labelling of films as well as of film and play programmes based on findings recorded from reviews that had been undertaken by organisations of voluntary self-control set up and supported by industrial associations. Such an agreement may provide that release and labelling by one organisation of voluntary self-control is equivalent to release and labelling by the supreme authorities of all German states unless a deviating decision has been taken by one supreme state authority for the region under its administrative responsibility.

(7) Films or film and play programmes for information, instruction or teaching purposes must not be labelled "Information" or "Educational" unless they are clearly harmless to *Children* and *Adolescents*. Sub-Clauses 1-5 shall not apply. The supreme state authority may rule out an operator's general right of labelling or of labelling certain film or play programmes or may lift a label already applied to a product by an operator.

(8) For decision-making on labelling, due consideration should be given to potentially harmful titles, supplements or other text, pictures or sounds in data media or performance facilities in addition to the actual film or play programmes.

### **§ 15 Date media harmful to young people**

(1) The following restrictions shall apply to data media which by public announcement have been included in the list of publications harmful to young people:

1. They must not be made available or accessible to *Children* and *Adolescents*.
2. They must not be displayed or performed and made otherwise available in a place accessible to *Children* or *Adolescents*.
3. They must not be offered or let to persons other than customers in retail trade outside business spaces or in stands or other points of sale usually not visited by customers or in mail order business or public or lending libraries.

4. They must not be offered or let to persons other than customers through commercial lending or comparable permission to use, except for stores not accessible to and optically barred from *Children* and *Adolescents*.
  5. They must not be launched through mail order channels.
  6. They must not be offered, announced or advertised in a public place accessible to and not optically barred from *Children* and *Adolescents* by dissemination of data media or telemedia apart from routine business transactions within the trade sector concerned.
  7. They must not be produced, bought, supplied, stored or launched for full or partial (extracts) use, according to Nos. 1-6, or for enabling use by third persons.
- (2) The following categories of harmful data media shall be subject to the restrictions of Sub-Clause 1 even without being included in the List or in a special announcement:
1. Media carrying content defined in § 86, § 130, § 130a, § 131, § 184, § 184a, § 184b or § 184c, German Criminal Code;
  2. Media carrying content glorifying war;
  3. Media presenting in a disgraceful manner people who are dying or are exposed to severe physical or psychic suffering or violating human dignity by presenting actual facts and developments, although there is no justifiable public interest in such mode of reporting;
  - 3a. Extremely realistic, cruel and sensational presentations of violence for its own purpose and dominant of the given scene.
  4. Media presenting *Children* and *Adolescents* in unnatural, sexually provocative physical postures;
  5. Media which might have a severely damaging impact on the development and education of *Children* and *Adolescents* to responsible personalities in society.
- (3) Subject to the restrictions of Sub-Clause 1, even without being included in the List or specially announced, are also data media which are qualitatively comparable to or identical with other data media which by special announcement already are included in the List.
- (4) The List of harmful media must not be printed or published for advertising purposes.
- (5) No advertisement of whatever kind must disclose that a procedure for getting data media or comparable telemedia included in the list had been or still is pending.
- (6) If trading is permissible at all, producers shall inform, prior to delivery, wholesale or retail partners of any restriction according to Sub-Clause 1, Nos. 1-6.

## **Sub-Paragraph 2 – Telemedia**

### **§ 16 Special rules on telemedia**

Rules on telemedia included in the List of harmful media according to § 18 shall be issued under state law.



## Chapter 4 – Federal Review Board for Publications Harmful to Young Persons

### § 17 Name and scope of activity

(1) This agency formally named “Federal Review Board for Publications Harmful to Young People” [Review Board] shall be established by Federal Government.

(2) Decisions on inclusion into or deletion from the List of harmful media shall be taken by the Review Board.

### § 18 List of Media Harmful to Young Persons

(1) Data media and telemedia which might have a severely damaging impact on the development and education of *Children* and *Adolescents* to responsible personalities in society shall be registered by the Review Board and included in a List of Publications Harmful to Young Persons [List]. Included are media and other publications with immoral and brutalising content or those instigating violence, crime and racism and media conveying the following messages:

1. Presentation in detail of acts of violence, murder and massacre for their own purpose.
2. Recommendation of the law of the jungle as the only proven tool by which to obtain supposed justice.

(2) The List shall be made up of the following four parts:

1. Part A [Public List of Data Media] shall include all media not to be listed in Parts B, C or D.
2. Part B [Public List of Totally Banned Media] shall include media not to be listed in Part D but rated absolutely harmful by the Review Board in terms of § 86, § 130, § 130a, § 131, § 184a, § 184b or § 184c, German Criminal Code.
3. Part C [Non-Public List of Media] shall include media not included in Part A for exemption from public listing, according to § 24, Sub-Clause 3, Phrase 2, as well as all telemedia not to be listed in Part D.
4. Part D [Non-Public List of Totally Banned Media] shall include media not included in Part B for exemption from public listing, according to § 24, Sub-Clause 3, Phrase 2, as well as telemedia rated harmful by the Review Board in terms of § 86, § 130, § 130a, § 131, § 184a, § 184b or § 184c, German Criminal Code.

(3) Exclusion criteria:

1. Media must not be included solely for political, social, religious or ideological content;
2. Media must not be included for content supporting arts, science, research or teaching;
3. Media must not be included for content in the interest of society unless presented in an unacceptable manner.

(4) Media may be exempt from listing in cases of minor relevance.

(5) Media shall be included in pursuit of a court ruling according to which the content meets the conditions of § 86, § 130, § 130a, § 131, § 184, § 184a, § 184b or § 184c, German Criminal Code.

(6) Telemedia shall be included in the list in response to an application filed by the Central State Agency for Media Protection of Young Persons unless such application cannot be supported by plausible reasoning or is unjustified under the practice of the Review Board.

(7) Media shall be deleted from the list when the conditions for listing have ceased to exist. Any listing shall expire after 25 years.

(8) Sub-Clause 1 shall not apply to films nor to film and play programmes labelled according to § 14, Sub-Clause 2, Nos. 1-5. Sub-Clause 1 shall not apply either to telemedia on which a decision had been taken by the Central State Agency to the effect that the conditions for listing according to Sub-Clause 1 did not exist. Sub-Clause 1 shall not apply to telemedia which had been rated by an official body of self-control unless the Central State Agency ruled that conditions do exist for listing according to Sub-Clause 1.

### **§ 19 Composition of the Review Board**

(1) Serving on the Federal Review Board for Publications Harmful to Young Persons are one chairperson appointed by the Federal Ministry for Family, Senior Citizens, Women and Youth, one official appointed by each of the State governments as well as additional officials appointed by the above Federal Ministry. At least one deputy shall be appointed to the chairperson and to each of the officials. State governments may confer to a supreme state authority their right of appointment according to Sub-Clause 1.

(2) Officials appointed by the above Federal Ministry shall represent the following facets of society:

1. Creative and performing arts
2. Literature
3. Book trade and publishing
4. Suppliers of data media and telemedia
5. Non-government bodies of youth welfare
6. Bodies of public youth welfare
7. School teaching
8. Christian churches as well as Jewish and other religious communities holding the status of a public-law corporation.

Book traders, publishers and suppliers of data media and telemedia thus work together with institutions involved in comparable activities for evaluation and distribution of media notwithstanding their modes of recording and reproduction.

(3) Chairperson and officials shall be appointed for an office term of three years. Those failing to comply with their duty of full cooperation with the Review Board may be recalled by the appointing authority before the end of their full office term.

(4) The members of the Review Board shall not be bound to instructions.

(5) Twelve members of the Review Board shall constitute a quorum which shall include the chairperson, three State-appointed officials and one official each of the groups listed in Sub-Clause 2 (1-8). In case of absence of appointed members, a quorum may be constituted by at least nine members which, in turn, should include at least two members representing the groups 1-4, Sub-Clause 2.

(6) Any decision on listing shall be taken by a two-third majority of members present at the given meeting. In case of absence of appointed members, such decision shall require not less than seven votes (Sub-Clause 5, Phrase 2).

## **§ 20 Institutions with right of nomination/appointment**

(1) The right of nomination and appointment according to § 19, Sub-Clause 2, shall be used by one official or deputy each representing the following organisations:

1. For creative and performing arts:

Deutscher Kulturrat,  
Bund Deutscher Kunsterzieher e.V.,  
Künstlergilde e.V.,  
Bund Deutscher Grafik-Designer.

2. For literature:

Verband Deutscher Schriftsteller,  
Freier Deutscher Autorenverband,  
Deutscher Autorenverband e.V.,  
PEN-Zentrum.

3. For book trade and publishers:

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. – Publishers Committee  
Arbeitsgemeinschaft der Zeitschriftenverlage (AGZV) im Börsenverein des Deutschen Buchhandels.

4. For suppliers of data media and telemedia:

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 non-government bodies of youth welfare:

Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege,  
 Deutscher Bundesjugendring,  
 Deutsche Sportjugend,  
 Bundesarbeitsgemeinschaft Kinder- und Jugendschutz (BAJ) e.V.

6. Bodies of public youth welfare:

Deutscher Landkreistag,  
 Deutscher Städtetag,  
 Deutscher Städte- und Gemeindebund.

7. For school teaching:

Gewerkschaft Erziehung und Wissenschaft im Deutschen Gewerkschaftsbund,  
 Deutscher Lehrerverband,  
 Verband Bildung und Erziehung,  
 Verein Katholischer Deutscher Lehrerinnen.

8. For public-law corporations according to § 19, Sub-Clause 2, No. 8:

Plenipotentiary of the Council of Evangelical Churches of Germany,  
 Commissioner of German Bishops – Catholic Office in Berlin,  
 Central Council of Jews in Germany.

Any organisation using its right of nomination and appointment shall appoint two persons, an official and a deputy. One official and deputy shall be selected by the Federal Ministry of Family, Senior Citizens, Women and Youth if more than one nominations are submitted by an organisation named in Sub-Clause 1.

(2) Officials and deputies may as well be nominated by organisations not explicitly named, as long as the latter are representative of any of the groups listed in § 19, Sub-Clause 2. The above Federal Ministry shall use the Federal Gazette once a year, in January, to invite nominations which then should be submitted within six weeks from the date of invitation. It shall select and appoint one additional official or deputy per group from among the nominations received within the above period of six weeks. No consideration shall be given to nominations submitted by organisations without association status or from organisations of whom sustainable activity cannot be expected. Decision shall be taken by drawing lots if no agreement can be achieved on one of several nominees. Sub-Clause 1, Phrase 3, shall apply accordingly. Provided due consideration of the workload on the Review Board or an insufficient number of nominations submitted by organisations for any of the listed groups, officials and deputies may be appointed by the above Federal Ministry, with Phrase 5 applying accordingly.

## **§ 21 Procedure**

(1) The Review Board, as a rule, shall take action in response to formal request.

(2) Formal requests may be submitted by the Federal Ministry of Family, Senior Citizens, Women and Youth, the Central State Agency for Media Protection of Young Persons and

youth welfare offices at state and local levels. Formal requests may as well be made by persons listed in Sub-Clause 7 for deletion from the List of Harmful Publications or for an official statement to the effect that media are not fully or partially identical with media already listed.

(3) A procedure may be suspended by the Chairperson if inclusion into or deletion from the List is out of question.

(4) The Review Board shall as well take formal action in response to a formal request submitted by an authority not explicitly mentioned in Sub-Clause 2 or by an established non-government body of youth welfare, provided that the Chairperson considers such proceedings in the best interest of protection of young persons.

(5) The Review Board for Publications Harmful to Young Persons shall take formal action by order of the Chairperson under the following conditions:

1. In case of doubt as to whether the content of a medium is partially or fully identical with the content of a medium already listed.
2. In case of findings to the effect that the conditions for listing according to § 18, Sub-Clause 7, Phrase 1, do no longer exist.
3. If inclusion into the List according to § 18, Sub-Clause 7, Phrase 2, is no longer valid and conditions for listing continue to exist.

(6) Prior to decision-making on listing of a telemedium, the Review Board shall provide the Central State Agency with an opportunity for being heard without delay. Such testimony shall be duly considered by the Review Board before a decision is taken. The Review Board may take a final decision unless testimony has been filed by the Central State Agency within five working days from invitation.

(7) The author or holder of beneficial interest in telemedia shall be provided with an opportunity of being heard on the case under review.

(8) Rulings shall be passed on to the following persons/institutions:

1. Author and holder of beneficial interest in the data media concerned;
2. Author and supplier of telemedia;
3. Applicant authority;
4. Federal Ministry of Family, Senior Citizens, Women and Youth, supreme state authorities of youth welfare and Central State Agency for Media Protection of Young Persons.

All distribution-related and advertising restrictions resulting from the given ruling shall be communicated in detail. The reasons should be stated in the same notification or should be separately communicated within one week.

(9) The Review Board and the Central State Agency shall maintain close cooperation and exchange of information.

(10) The Review Board shall have the right, as of January 1, 2004, to levy fees on proceedings opened on request of persons listed in Sub-Clause 7 for the purpose of one of the following rulings:

1. The content of a given medium is not fully or partially identical with the content of a medium already listed.
2. A given medium is to be deleted from the List.

The Federal Ministry of Family, Senior Citizens, Women and Youth hereby is authorised to issue a ministerial order to specify chargeable offences and fees, with such order being subject to consent of the Federal Council. The Administrative Expenses Act shall apply.

### **§ 22 Listing of periodically published data media and telemedia**

(1) Periodically published data media may be included for periods of three to twelve months into the List of Publications Harmful to Young Persons if more than two of their issues were listed within that twelve-month period. This shall not apply to dailies and political magazines.

(2) Telemedia may be included for periods of three to twelve months into the List of Publications Harmful to Young Persons if more than two of their issues were listed within that twelve-month period. Sub-Clause 1, Phrase 2, shall apply accordingly.

### **§ 23 Simplified procedure**

(1) The Review Board may resort to a simplified procedure to pass a unanimous resolution to the effect that a medium may potentially jeopardise the moral development of *Children* or *Adolescents* and their education to become a responsible personality in society, such simplified procedure being related to a reduced number of decision-makers, i.e. the Chairperson plus two members, one of them being a representative of one of the groups according to § 19, Sub-Clause 2, Nos. 1-4. The fully staffed Review Board shall take a final decision if a unanimous resolution cannot be achieved (§ 19, Sub-Clause 5).

(2) Inclusion into the List according to § 22 cannot be done by means of the above simplified procedure.

(3) Respondents may file an objection to a simplified procedure (§ 21, Sub-Clause 7) within one month from service by submitting an application for a ruling by the fully staffed Review Board.

(4) The Review Board may rule in a simplified procedure deletion of a medium from the List under the condition of § 21, Sub-Clause 5, No. 2, on completion of ten years from the date of inclusion.

(5) In a situation in which large-scale distribution, dissemination or other means of accessibility of data media or telemedia is an imminent threat although definitive listing is obviously forthcoming, such listing may be ruled in a simplified procedure. Sub-Clause 2 shall apply accordingly.

(6) Such simplified and temporary ruling shall be deleted from the List contemporaneously with the definitive ruling by the Review Board, yet not later than after one month. Said one-month deadline (Phrase 1) may be extended by another month. Sub-Clause 1 shall apply accordingly. Extension, just as the original deadline, shall be published in the Federal Gazette.

### **§ 24 Keeping of the List of Media Harmful to Young Persons**

(1) The List of Media Harmful to Young Persons [List] shall be kept by the Chairperson of the Review Board.

(2) Decisions on listing or delisting shall be taken without delay. Amendments to the List shall be made as soon as an earlier ruling by the Review Board is rescinded or otherwise invalidated.

(3) Any listing or delisting of a data medium shall be published in the Federal Gazette with reference to the underlying ruling. Publication should not be done for data media disseminated merely by telemedia or if such publication would have a harmful impact on the practice of protection of young persons.

(4) Inclusion in Parts B or D of the List shall be reported by the Chairperson to the local criminal prosecution authority. A medium shall be included in Parts A or C in case of a legal ruling to the effect that its content has no relevance in terms of the Criminal Code. The Chairperson shall obtain another ruling of the Review Board to consider potential deletion from the List.

(5) For a telemedium listed in response to an offence committed abroad, the Chairperson shall report such listing to the applicable self-control bodies of telemedia for inclusion in user-autonomous filter programmes. Such report must be exclusively used for inclusion in user-autonomous filter programmes.

## **§ 25 Legal process**

(1) Recourse to administrative tribunals shall be taken for any action or appeal against a ruling by the Review Board on listing of a medium or rejection of an application for delisting.

(2) Recourse to administrative tribunals may as well be taken by an applicant authority for any action or appeal against a ruling by the Review Board on listing of a medium or suspension of proceedings.

(3) Such action shall be filed against the Federal Government, represented by the Review Board.

(4) An appeal shall not have suspensive effect. Filing of an appeal shall not depend on an investigation in a pre-trial process. A ruling in a simplified procedure, however, shall depend on a prior ruling by the Review Board staffed according to § 19, Sub-Clause 5.

## **Chapter 5 – Power of executive order**

### **§ 26 Power of executive order**

The Federal Government is authorised to issue executive orders with consent of the Federal Council to settle details regarding location of and procedures used by the Review Board as well as keeping of the List.

## Chapter 6 – Punishment for offences

### § 27 Penal rules

(1) The following offences shall be liable to imprisonment up to one year or a fine:

1. Presentation or letting in any form of data media in violation of § 15, Sub-Clause 1, Nos. 1-5 or 6, also in conjunction with Sub-Clause 2;
2. Production, procurement, supply, storage or import of data media in violation of § 15, Sub-Clause 1, No. 7, also in conjunction with Sub-Clause 2;
3. Copying or publication of the List of Media Harmful to Young Persons in violation of § 15, Sub-Clause 4;
4. Providing of a relevant clue in any business advertising activity in violation of § 15, Sub-Clause 5;
5. Infringement of an enforceable ruling issued according to § 21, Sub-Clause 8, Phrase 1, No. 1.

(2) Event operators or other businessmen staging events shall be liable to punishment for the following offences:

1. Premeditated offence in violation of § 28, Sub-Clause 1, Nos. 1-18 or 19, carelessly causing severe danger to the physical, spiritual or moral development of at least one *Child* or *Adolescent*;
2. Premeditated activities in pursuit of profit or persistent repetition of activities listed in § 28, Sub-Clause 1, Nos. 4-18 or 19.

(3) Imprisonment up to six months or fine up to 180 daily rates shall be imposed upon negligent offenders of the following rules:

1. Sub-Clause 1, No. 1;
2. Sub-Clause 1, Nos. 3, 4 or 5.

(4) Sub-Clause 1, Nos. 1 and 2 and Sub-Clause 3, No. 1 shall not be applied to a *Custodial Person* for offering or letting a medium to a *Child* or *Adolescent* or making such medium accessible to them in any other way. This, however, shall not apply to cases of gross negligence of educational duty.

### § 28 Civil penalty rules

(1) The following premeditated or negligent offences, as committed by operators or event organisers, shall be liable to (non-criminal) civil penalties:

1. Failure of adequate announcement and clearly perceptible presentation of legal provisions applicable to the premises concerned in violation of § 3, Sub-Clause 1 and 2;
2. Use of a label in contravention of § 3, Sub-Clause 2, Phrase 3;
3. Failure of adequate and/or timely information in contravention of § 3, Sub-Clause 2 and Phrase 4;



4. Presentation of an information or announcement of a film or a film and games programme or advertising of them in contravention of § 3, Sub-Clause 2, Phrase 3;
5. Toleration of a *Child's* or *Adolescent's* presence in a restaurant in contravention of § 4, Sub-Clause 1 or 3;
6. Toleration of a *Child's* or *Adolescent's* presence at a public dance in contravention of § 5, Sub-Clause 1;
7. Toleration of a *Child's* or *Adolescent's* presence in a public gambling hall or a comparable room in contravention of § 6, Sub-Clause 1;
8. Toleration of a *Child's* or *Adolescent's* participation in a prize-winning game in contravention of § 6, Sub-Clause 2;
9. Contravention of an enforceable ruling according to § 7, Phrase 1;
10. Permission or promotion of consumption of an alcoholic drink by a *Child* or *Adolescent* in contravention of § 9, Sub-Clause 1;
11. Providing alcoholic drinks in a vending-machine in contravention of § 9, Sub-Clause 3, Phrase 1;
- 11a Trading of alcohol-containing sugared beverages in violation of § 9, Sub-clause 4;
12. Providing tobacco products to a *Child* or *Adolescent* or toleration of smoking by said persons in contravention of § 10, Sub-Clause 1;
13. Providing tobacco products in a vending-machine in contravention of § 10, Sub-Clause 2, Phrase 1;
14. Toleration of a *Child's* or *Adolescent's* presence at a public film performance or advertising credits or supporting programme in contravention of § 11, Sub-Clause 1 or 3, and in conjunction with Sub-Clause 4, Phrase 2;
- 14a Presentation of an advertising film or commercial programme in contravention of § 11, Sub-Clause 5;
15. Rendering a data medium accessible to a *Child* or *Adolescent* in contravention of § 12, Sub-Clause 1;
16. Offering or letting a data medium in contravention of § 12, Sub-Clause 3, No. 2;
17. Installation of a vending-machine or games monitor in contravention of § 12, Sub-Clause 2, or § 13, Sub-Clause 2;
18. Distribution of data media in contravention of § 12, Sub-Clause 5, Phrase 1;
19. Toleration of a *Child* or *Adolescent* playing at games monitors in contravention of § 13, Sub-Clause 1;
20. Failure of adequate and/or timely announcement of compulsory information or notice in contravention of § 15, Sub-Clause 6.

(2) The following premeditated or negligent activities conducted by suppliers shall be considered regulatory offences:

1. Failure of adequate and/or timely presentation/display of compulsory information or notice in contravention of § 12, Sub-Clause 2, Phrase 1, No. 1, also in conjunction with Sub-Clause 5, Phrase 3, or § 13, Sub-Clause 3;

2. Contravention of an enforceable ruling according to § 12, Sub-Clause 2, Phrase 2, also in conjunction with Sub-Clause 5, Phrase 3, also in conjunction with Sub-Clause 5, Phrase 3, or § 13, Sub-Clause 3, or § 14, Sub-Clause 7, Phrase 3;
3. Failure of adequate and/or timely presentation of information or notice in contravention of § 12, Sub-Clause 5, Phrase 2;
4. Unjustified labelling of a film or film or games programme “Information” or “Educational” in contravention of § 14, Sub-Clause 7, Phrase 1.

(3) Other regulatory offences:

1. Failure of adequate and/or timely presentation of information or notice in contravention of § 12, Sub-Clause 2, Phrase 3;
2. Use of a notice in contravention of § 24, Sub-Clause 5, Phrase 2.

(4) A regulatory offence is committed by a person above 18 years of age who encourages a *Child or Adolescent* to assume behaviours that ought to be prevented by a ban according to Sub-Clause 1, Nos. 5-8, 10, 12, 14-16 or 19 or § 17, Sub-Clause 1, No. 1 or 2, or § 12, Sub-Clause 3, No. 1 or according to an enforceable ruling as specified in § 7, Phrase 1. The ban according to § 12, Sub-Clause 3, No. 1, shall not apply to a *Custodial Person* or a person acting with consent of a *Custodial Person*.

(5) A regulatory offence may be punishable by a fine up to € 50.000.

## **Chapter 7 Concluding clause**

### **§ 29 Transitional Rules**

Film programmes and data media subject to the code “Not released for users below the age of 18” under current law shall be subject to § 18, Sub-Clause 8, Phrase 1, under the assumption that the reference to “§ 14, Sub-Clause 2, Nos. 1-5” is replaced by “§ 14, Sub-Clause 2, Nos. 1-4”.

### **§ 29a Other Transitional Rules**

Image media with designations according to § 12, Clause 1, with characters that meet the requirements of § 12, Clause 2, but fail to meet the requirements of § 12, Clause 2, Phrase 2, may be launched until August 31, 2008.

### **§ 30 Validity, abrogation.**

(1) This Act shall come into force on the enactment date of the Interstate Agreement on Protection of Human Dignity and Young Persons in the Context of Broadcasting Programmes and Telemedia. This shall coincide with abrogation of the Act on Protection of Young Persons in Public Life published February 25, 1985 (Civil Code I, p. 425), latest update by Article 8a, same Act, December 15, 2001 (Civil Code I, p. 3762) and the Act on Dissemination of Printed Publications and Media Content, version of public announcement, July 12, 1985 (Civil Code I, p. 1502), latest update by Article 8a, same Act, December 15,

2001 (Civil Code I, p. 3762). The date of enactment of this Act shall be published in the Federal Gazette by the Federal Ministry of Family, Senior Citizens, Women and Youth.

(2) § 10, Sub-Clause 2, and § 28, Sub-Clause 1, No. 13, shall come into force on January 1, 2007, in deviation from Sub-Clause 1, Phrase 1.