

**Interstate Treaty
on the Protection of Human Dignity
and Minors in Broadcasting and Telemedia
[Jugendmedienschutz-Staatsvertrag (JMStV)] in the version of the Second Interstate Treaty to
Amend Interstate Treaties on Media Law
[Zweiter Medienänderungsstaatsvertrag]
of 14 December 2021**

Unofficial version

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Section I

General provisions

Article 1

Purpose of this Interstate Treaty

The purpose of this Interstate Treaty is to provide uniform protection to children and minors against services in electronic information and communication media which may hamper or impair their development or education, and protection against services in electronic information and communication media which violate human dignity or other legal interests protected by the German Criminal Code [Strafgesetzbuch (StGB)].

Article 2

Application

(1) This Interstate Treaty applies to broadcasting and telemedia within the meaning of the German State Media Treaty [Medienstaatsvertrag (MStV)]. The provisions of the German State Media Treaty also apply to providers who, under the German Telemedia Act [Telemediengesetz (TMG)] or the German State Media Treaty, are not established in Germany, but whose services are intended for use in Germany, and in consideration of the requirements of Articles 3 and 4 of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95 of 15 April 2010, p. 1) amended by Directive 2018/1808/EU (OJ L 303 of 28 November 2018, p. 69), and Article 3 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (OJ L 178 of 17 July 2000, p. 1). Intended use in Germany must be assumed where services in their overall assessment, especially based on the language used, content offered, or marketing activity, are aimed at users in Germany or obtain a not insignificant portion of their refinancing in Germany. Within the scope of Directive 2010/13/EU, this Interstate Treaty shall apply to providers of video-sharing platform services who are established in Germany under the German Telemedia Act; furthermore, sentences 1 to 3 shall apply.

(2) The German Telemedia Act and the provisions of the German State Media Treaty applicable to telemedia shall remain unaffected.

Article 3

Definitions

(1) For the purposes of this Interstate Treaty,

1. 'service' means a broadcast or content of telemedia;
2. 'provider' means a broadcaster or provider of telemedia;
3. 'child' means a person who is not yet 14 years old;
4. 'youth' means a person who is between 14 and 18 years old.

Article 4

Illegal services

(1) Without prejudice to criminal liability, services are illegal which

1. constitute propaganda within the meaning of Article 86 of the German Criminal Code, and whose content is directed against the free and democratic order or the concept of international understanding;
2. use symbols of unconstitutional organisations within the meaning of Article 86a of the German Criminal Code;
3. incite hatred of parts of the population or national, racial, religious, or ethnic groups, advocate violence or tyranny against such groups, or attack the human dignity of others by insulting, maliciously disparaging or defaming parts of the population or above-stated group;
4. deny or downplay an act committed under the rule of National Socialism in the manner described in Article 6 (1) of the German Code of Crimes against International Law [Völkerstrafgesetzbuch (VStGB)] and which is likely to disturb the public peace, or disturb the public peace by endorsing, glorifying or justifying National Socialist tyranny in a manner that violates the dignity of its victims;

5. depict cruel or other inhumane acts of violence against persons in a way that trivialises or glorifies such acts of violence or depicts the cruel or inhumane aspect of the process in a way that violates human dignity; the same applies to virtual representations;
6. serve as instructions for an illegal act referred to in Article 126 (1) of the German Criminal Code [Strafgesetzbuch (StGB)];
7. glorify war;
8. violate human dignity, especially by depicting persons who are dying or are or have been exposed to severe physical or psychological harm, and present an actual event without legitimate interest in this form of depiction or reporting, irrespective of consent;
9. depict children or youths in an unnaturally blatant sexual position; the same applies to virtual representations;
10. constitute child pornography within the meaning of Article 184b (1) of the German Criminal Code, or are pornographic, or involve violent or sexual acts of persons with animals; the same applies to virtual representations;
11. are included in the list of media harmful to minors in Article 18 (1) of the German Protection of Young Persons Act [Jugendschutzgesetz (JuSchG)], and have been deemed harmful pursuant to Article 18 (5) of the German Protection of Young Persons Act or assessed as such pursuant to Article 18 (6) of the German Protection of Young Persons Act, or whose content is entirely or essentially identical to a work included in this list, and which has been deemed harmful pursuant to Article 18 (5) of the German Protection of Young Persons Act or assessed as such pursuant to Article 18 (6) of the German Protection of Young Persons Act.

In cases referred to in numbers 1 to 4 and 6, Article 86 (3) of the German Criminal Code shall apply; in cases referred to in number (5), Article 131 (2) of the German Criminal Code shall apply *mutatis mutandis*.

(2) Furthermore, without prejudice to criminal liability, services are illegal which

1. are otherwise pornographic;
2. are included in the list of media harmful to minors in Article 18 (1) of the German Protection of Young Persons Act, but have not been deemed harmful pursuant to Article 18 (5) of the German Protection of Young Persons Act or assessed as such pursuant to Article 18 (6) of the German Protection of Young Persons Act, or whose content is entirely or essentially identical to a work included in this list, but which has not been deemed harmful pursuant to Article 18 (5) of the German Protection of Young Persons Act or assessed as such pursuant to Article 18 (6) of the German Protection of Young Persons Act;
3. are obviously likely to harm the development of children or youths into responsible and independent members of society in consideration of the functioning of the disseminating media.

In telemedia, services shall be lawful, by derogation from sentence 1, which the provider ensures are only made available to adults (closed user group).

(3) After a service has been added to the list in Article 18 of the German Protection of Young Persons Act, the prohibitions of paragraphs (1) and (2) shall also apply in case of significant changes to the content until a decision has been made by the German Federal Review Board for Media Harmful to Minors [Bundesprüfstelle für Jugendgefährdende Medien (BPjM)].

Article 5

Services harmful to development

(1) Where providers distribute or make services available that are likely to harm the development of children or youths into responsible and independent members of society, providers must ensure that these services are not made available to children and youths of a prohibited age category. Age categories shall be:

1. from the age of 6;
2. from the age of 12;

3. from the age of 16;
4. from the age of 18.

(2) Likelihood to harm development within the meaning of paragraph (1) shall be assumed for services which are restricted to children or youths of the respective age category by the German Protection of Young Persons Act. Sentence 1 shall apply mutatis mutandis to services whose content is essentially identical to the assessed service. The KJM shall, on request, confirm age ratings made by a certified organisation of voluntary self-regulation. Article 20 (3) sentence 1 and (5) sentence 2 shall apply mutatis mutandis to assessments by the KJM. Age ratings by certified organisations of voluntary self-regulation which have been confirmed by the KJM shall be adopted by the supreme national youth authorities to approve and label services with the same or essentially identical content in accordance with the German Protection of Young Persons Act.

(3) The provider may comply with the obligation under paragraph (1) by

1. preventing or significantly hampering access to the service by children or youths of a restricted age category through technical or other means, or providing the service with an age rating which can be read by appropriate youth protection programs within the meaning of Article 11 (1) and (2); or
2. choosing the time at which the service is distributed or made available to not normally be seen by children or youths of a restricted age category.

Services not harmful to development may be labelled as “all ages” and distributed without restriction.

(4) Where effects harmful to development within the meaning of paragraph (1) are likely for children or youths, the provider may comply with the obligation under paragraph (1) by only distributing or making the service available between 11 PM and 6 AM. Where effects harmful to the development of children or youths under the age of 16 are likely, the same shall apply if the service is only distributed or made available between 10 PM and 6 AM. Where effects harmful to development within the meaning of paragraph (1) are likely for children under the age of 12, the wellbeing of younger children must be taken into account when choosing broadcast times.

(5) Where effects harmful to development within the meaning of paragraph (1) are only likely for children under the age of 14, the telemedia provider shall comply with the obligations under paragraph (1) if the service is distributed or made available separately from services intended for children.

(6) Paragraph (1) shall not apply to news programmes, broadcast programmes on current political events, or comparable services on telemedia, except where there is no legitimate interest in this form of representation or reporting.

(7) For services which communicate text or image content of periodical print media, the limitations of paragraph (1) sentence 1 shall only apply after the KJM has confirmed to the provider that the service is harmful to development.

Article 5a

Video-sharing platform services

(1) Without prejudice to the obligations under Articles 4 and 5, providers of video-sharing platform services shall adopt appropriate measures to protect children and youths from services which are harmful to development.

(2) Measures within the meaning of paragraph (1) which may especially be considered:

1. introducing and applying age verification systems;
2. introducing and applying systems which enable parents to control access to services harmful to development.

Providers of video-sharing platform services shall establish systems whereby users may rate services uploaded by other users, and which may be read by the systems within the meaning of sentence 1.

Article 5b

Reporting user complaints

Illegal within the meaning of Article 10a of the German Telemedia Act shall refer to content which

1. is prohibited under Article 4; or

2. consists of services which are harmful to development within the meaning of Article 5 (1), (2) and (6), and are made available to the public by the video-sharing platform service provider without complying with the obligations referred to in Article 5 (1) and (3) to (5).

Article 5c

Announcements and labelling

(1) If programmes are announced outside of their restricted broadcast times, the content of their announcement may not be harmful to development.

(2) Programmes likely to be harmful to the development of children or youths under the age of 16 must be announced with acoustic signals or appropriately labelled through visual means as unsuitable for the restricted age category; these provisions shall be without prejudice to Article 12.

Article 6

Protection of minors in advertisement and home shopping

(1) Advertisement for prohibited content shall only be permitted under the following conditions which shall also apply to the distribution of the service itself. The same shall apply to advertisement for services within the meaning of Article 4 (1). The list of media harmful to minors (Article 18 (1) of the German Protection of Young Persons Act) may not be distributed or made available for advertising purposes. Advertisement may not indicate that proceedings concerning the inclusion of a service or media with the same content as in the list in Article 18 of the German Protection of Young Persons Act remain pending or have been conducted.

(2) Advertisement may not inhibit children or youths physically or mentally, and, furthermore, may not

1. directly appeal to children or youths to purchase or lease goods or services by exploiting their inexperience and credulity;
2. directly urge children or youths to persuade their parents or third parties to purchase the advertised goods or services;

3. abuse the special trust children or youths place in parents, teachers, or other persons;

4. depict children or youths in dangerous situations for no legitimate reason.

(3) Advertisement likely to harm the development of children or youths into responsible and independent members of society must be separate from services aimed at children or youths.

(4) Advertisement aimed at children or youths or which features children or youths as actors may not damage the interests of children or youths or take unfair advantage of their inexperience.

(5) Advertisement for alcoholic beverages may not be aimed at children or youths or appeal to children or youths through its depictions of them, and may not show children or youths consuming alcohol.

(6) Home shopping may not elicit children or youths to enter into purchase, rental or lease agreements for goods or services.

(7) Where distributed around children's programmes, providers shall provide appropriate safeguards to meaningfully reduce the effects of advertisement for food containing nutrients and substances with dietary or physiological effects, especially fat, trans fat, salt, sodium, or sugar, whose excessive consumption is not recommended as part of a healthy diet.

Article 7

Child protection officers

(1) Whoever, across German federal states, provides fee-based television programmes requiring approval must appoint a child protection officer. The same applies to commercial providers of free television services within the meaning of Article 54 of the German State Media Treaty, or publicly available telemedia where the services contain content which is harmful to development or harmful to minors, and to providers of search engines. The provider must make essential information about the child protection officer easily visible, directly accessible, and permanently available. Such information must especially include the name and contact details to enable rapid contacting by electronic means.

(2) Providers of telemedia with fewer than 50 employees or whose content is verifiably accessed less than ten million times on average per month of a year, and providers who do not provide television programmes which are distributed across Germany are not obliged to appoint a child protection officer if they join an organisation of voluntary self-regulation which they obligate to perform the tasks of the child protection officer, and involve and inform pursuant to paragraph (3).

(3) The child protection officer shall serve as a contact person for users and advise the provider on matters concerning the protection of minors. The child protection officer must be appropriately involved in time in all matters concerning the production, acquisition, planning, and design of services, and in any decisions concerning the protection of minors, and must be fully informed about any service. The child protection officer may recommend restrictions or changes to services.

(4) The child protection officer must have the expertise necessary for the performance of his or her tasks. The child protection officer shall not be subject to instructions when carrying out his or her activity. The child protection officer may not be disadvantaged due to the performance of his or her tasks. The child protection officer must be provided with the means necessary for the performance of his or her tasks. Where necessary for his or her tasks, the child protection officer must be given a leave of absence with continued payment of his or her remuneration.

(5) The child protection officers of the providers shall engage in regular exchange of experience.

Section II

Broadcasting

Article 8

Broadcast times

(1) The public broadcasters of the German federal states organised in the Association of Public Broadcasting Corporations in the Federal Republic of Germany [Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (ARD)], the Zweite Deutsche Fernsehen (ZDF), the Commission for the Protection of Minors in the Media [Kommission für Jugendmedienschutz (KJM)], or organisations of voluntary self-regulation certified by the KJM for this purpose may, to take the specific features of the broadcast of films on television and especially

television series into account, implement restrictions on broadcast times in directives or, in individual cases, for films not subject to the German Protection of Young Persons Act.

(2) For other television formats, the bodies referred to in paragraph (1) may restrict broadcast times if, in its overall assessment, the subject, treatment, or presentation is likely to harm the development of children or youths.

(3) Any directive within the meaning of paragraph (1) issued by a certified organisation of voluntary self-regulation within the legal limits of its discretion shall prevail.

Article 9

Derogations

(1) On request of the director, the competent body of the public broadcasters of the German federal states organised in the Association of Public Broadcasting Corporations in the Federal Republic of Germany, Deutschlandradio, or ZDF, and on request of a private broadcaster, the KJM, or organisations of voluntary self-regulation certified by it for this purpose may, in directives or for individual cases, derogate from the assumption of Article 5 (2) sentences 1 and 2. This especially applies to services which have been assessed more than 10 years ago. The supreme national youth authorities shall be informed of any derogating assessments. Article 8 (3) shall apply mutatis mutandis.

(2) German federal state media authorities may, through corresponding constitutions, specify under which conditions a broadcaster complies with the obligation under Article 5 when distributing commercial television programmes digitally. The broadcaster must ensure that access by the user is only possible for the period of the respective programme or film. The state media authorities shall, in constitutions within the meaning of sentence 1, especially determine the conditions for the encryption and blocking of programmes to ensure effective protection of minors.

Article 10

(repealed)

Section III Telemedia

Article 11

Youth protection programs

(1) Youth protection programs mean software programs which read systems for age identification within the meaning of Article 5 (3) sentence 1 number 1, and recognise services that are likely to harm the development of children and youths. Youth protection programs must be submitted to a certified organisation of voluntary self-regulation for assessment of their appropriateness. Youth protection programs shall be appropriate if they enable access to telemedia based on age categories and identification with due regard to the state of the art. Furthermore, youth protection programs must be user-friendly in their design, and autonomously usable by users.

(2) Programs which are intended merely for single age categories or enable access to telemedia within closed systems may also be submitted to assess their appropriateness.

(3) The criteria for appropriateness within the meaning of paragraphs (1) and (2) shall be determined by the KJM in consultation with certified organisations of voluntary self-regulation.

(4) After a youth protection program has been deemed appropriate within the meaning of paragraphs (1) or (2) by a certified organisation of voluntary self-regulation, the assessment shall be reviewed at least every three years. The youth protection program must take steps to remove malfunctions. Assessments within the meaning of paragraphs (1) and (2) and the results of the review within the meaning of sentence 1 must be published in appropriate form without undue delay.

(5) Program services that are harmless to children or youths shall, where reasonable and without disproportionate cost, also be programmed for an appropriate youth protection program within the meaning of Article 11 (1) and (2) by whoever distributes or makes telemedia publicly available commercially.

(6) Certified organisations of voluntary self-regulation may conduct trials and agree on procedures in consultation with KJM to advance technical youth protection. This shall also apply to age rating systems provided by the organisations of voluntary self-regulation.

Article 12

Disclaimers

Providers of telemedia whose content is entirely or essentially identical to that of films or games or image carriers within the meaning of the German Protection of Young Persons Act must provide clear disclaimers pursuant to the German Protection of Young Persons Act in their service. Versions of films and games in telemedia that are ready on data carriers to be submitted for rating may be labelled in compliance with the German Protection of Young Persons Act.

Section IV

Procedure for providers, except public broadcasters

Article 13

Application

Articles 14 to 21 and Article 24 (4) sentence 6 shall only apply to interstate services.

Article 14

Commission for the Protection of Minors in the Media [Kommission für Jugendmedienschutz (KJM)]

(1) The competent German federal state media authority shall review compliance with provisions applicable to providers under this Interstate Treaty and the provisions of Articles 10a and 10b of the German Telemedia Act. The competent state media authority shall make decisions in accordance with the provisions of this Interstate Treaty.

(2) The KJM shall be established for the performance of the tasks in paragraph (1). The KJM shall serve the competent state media authority as a body for the performance of its tasks under paragraph (1). On request of the competent state media authority, the KJM may also be engaged with non-interstate services. Paragraph (5) shall remain unaffected.

(3) The KJM shall be comprised of 12 experts. Of these,

1. six members shall be delegated from 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.

For every member, a deputy member pursuant to sentence 2 shall be appointed in case of absence. The term of membership or deputy membership shall last five years. Reappointment shall be permitted. At least four members and deputy members shall have qualification for judgeship. The chairperson shall be a director of a state media authority.

(4) Ineligible for membership of the KJM shall be members and employees of institutions of the European Union, constitutional bodies of the German federal government and states, committee members, and employees of the public broadcasting corporations, ARD, ZDF, Deutschlandradio, the European public service channel dedicated to culture, "ARTE," commercial broadcasters, providers of telemedia services, and employees of companies in which they have a direct or indirect interest within the meaning of Article 62 of the German State Media Treaty.

(5) Ratings boards may be established. Every ratings board must include at least one KJM member or, in case of absence, deputy member referred to in paragraph (3) sentence 2 numbers 1 to 3. In case of a unanimous decision, rating boards shall make decisions in place of the KJM. The allocation of ratings procedures shall be determined at the beginning of the term of the KJM. Further details shall be specified in the rules of procedure of the KJM.

(6) A decision on whether to confirm an age rating pursuant to Article 5 (2) sentence 3 shall be made within fourteen days and communicated to the applicant. An individual examiner may be appointed for the confirmation procedure.

(7) KJM members shall not be bound to instructions when performing their tasks under this Interstate Treaty. Provisions concerning confidentiality within the meaning of Article 58 of the German State Media Treaty shall also apply between KJM members and other bodies of state media authorities.

(8) KJM members shall be entitled to reimbursement of necessary costs and expenses. Further details shall be specified by the state media authorities through corresponding constitutions.

Article 15

Involvement of state media authority committees

(1) The KJM shall regularly inform the chairpersons of the German federal state media authority committees about its activity. The KJM shall involve committee chairpersons in fundamental matters, especially the drafting of constitutions and directives.

(2) The competent bodies of the state media authorities under German federal state law shall issue corresponding constitutions and directives on the implementation of this Interstate Treaty. The competent bodies must first consult the certified organisations of voluntary self-regulation within the meaning of Article 19, the public broadcasting corporations of the German federal states organised in ARD and ZDF, and engage in a joint exchange of experience with them about the application of protection of minors in the media.

Article 16

Responsibilities of the KJM

The KJM shall be responsible for the final assessment of services within the meaning of this Interstate Treaty. Without prejudice to the powers of certified organisations of voluntary self-regulation within the meaning of the Interstate Treaty in sentence 1, the KJM shall especially be responsible for

1. monitoring compliance with the provisions of this Interstate Treaty;
2. certifying organisations of voluntary self-regulation, and withdrawal of such certification;
3. confirming age ratings pursuant to Article 5 (2) sentence 3;

4. determining broadcast times pursuant to Article 8;
5. determining derogations pursuant to Article 9;
6. assessing and approving encryption and blocking technology;
7. supervising decisions of organisations of voluntary self-regulation pursuant to Article 19b (1) and (2);
8. issuing opinions on applications for placement on the index of the German Federal Review Board for Media Harmful to Minors;
9. decisions concerning administrative offences within the meaning of this Interstate Treaty.

Article 17

Procedures of the KJM

(1) The KJM shall take action *ex officio*; should a state media authority or supreme national youth authority forward a case to the KJM, the KJM shall commence a review. The KJM shall make decisions through a majority of votes of its statutory members; in case of a tie, the tie-breaking vote shall be cast by the chairperson. Decisions shall be explained. Explanations shall include factual and legal reasons. Decisions of the KJM shall be binding on other bodies of the competent state media authority. They shall serve as the basis of their own decisions.

(2) The KJM shall cooperate with the German Federal Review Board for Media Harmful to Minors and supreme national youth authorities and exchange information regularly.

(3) The KJM shall report on the performance of the obligations under this Interstate Treaty to the committees of the state media authorities, the supreme national youth authorities, and the supreme German federal youth authority every two years.

Article 18
“jugendschutz.net”

(1) The joint body, Jugendschutz aller Länder (“jugendschutz.net”), established by the supreme national youth authorities of all German federal states shall be organisationally linked to the KJM. The body, “jugendschutz.net”, shall be funded jointly by the state media authorities and the German federal states. The details of the funding of this body by the German federal states shall be determined in a statute passed by a resolution of the German federal state ministers responsible for the protection of minors. This statute shall also specify the professional and budgetary independence of this body.

(2) “jugendschutz.net” shall assist the KJM and supreme national youth authorities with their tasks.

(3) “jugendschutz.net” shall review telemedia services. In addition, “jugendschutz.net” shall also perform tasks of telemedia consultation and training.

(4) “jugendschutz.net” shall inform the provider and the KJM of possible infringements of provisions of this Interstate Treaty. In case of possible infringements by members of a certified organisation of voluntary self-regulation, the organisation shall be informed first. Certified organisations of voluntary self-regulation must initiate proceedings and inform jugendschutz.net thereof within one week. In case of inaction by the certified organisations of voluntary self-regulation, jugendschutz.net shall notify the KJM.

Article 19
Organisations of voluntary self-regulation

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

(2) An organisation shall be certified as an organisation of voluntary self-regulation within the meaning of this Interstate Treaty if

1. the independence and expertise of its appointed reviewers is ensured and representatives of social groups involved in matters concerning the protection of minors are included;
2. adequate resources are ensured by a number of providers;
3. instructions for decisions by reviewers ensuring effective protection of minors in practice are provided;
4. rules of procedure are in place which govern the scope of reviews, the obligations of providers to submit content for review and possible sanctions, and allow decisions to be reviewed, including on request of youth welfare organisations established under German federal state law;
5. providers may be heard before a decision is made, and decisions are explained in writing and communicated to the parties;
6. a body for handling complaints has been established.

(3) The competent state media authority shall make decisions via the KJM. The competent state media authority shall be the authority of the German federal state in which the organisation of voluntary self-regulation is established. If no competence can be determined thereby, the competent state media authority shall be the authority to which the application for certification was filed. The organisation shall submit the documents necessary for reviewing the certification requirements to the KJM.

(4) Certification may be fully or partially withdrawn or subjected to additional provisions by the KJM if the requirements for certification are no longer met or the decision-making practice of the organisation does not comply with the requirements of this Interstate Treaty. Compensation for financial loss caused by withdrawal of certification shall not be provided.

(5) The certified organisations of voluntary self-regulation shall coordinate the application of this Interstate Treaty.

Article 19a

Responsibilities and procedures of organisations of voluntary self-regulation

(1) As part of their statutory tasks, certified organisations of voluntary self-regulation shall review compliance of their affiliated providers with the provisions of this Interstate Treaty and pursuant statutes and directives. Certified organisations of voluntary self-regulation shall be required by their rules of procedure within the meaning of Article 19 (2) number 4 to investigate complaints about affiliated providers without undue delay.

(2) Certified organisations of voluntary self-regulation shall assess the appropriateness of youth protection programs within the meaning of Article 11 (1) and (2) and appropriateness within the meaning of Article 11 (3). The competent certified organisation of voluntary self-regulation shall be the organisation to which the youth protection program has been submitted for review. The certified organisation of voluntary self-regulation shall communicate its decision and explanation to the KJM in writing.

Article 19 b

Supervising organisations of voluntary self-regulation

(1) The competent state media authority may, via the KJM, object to and require the repeal of decisions of a certified organisation of voluntary self-regulation that exceed the limits of discretion. If a certified organisation of voluntary self-regulation fails to perform tasks and obligations under this Interstate Treaty, the competent state media authority may, via the KJM, demand their performance. Compensation for financial loss caused thereby shall not be provided.

(2) If a certified organisation of voluntary self-regulation deems a youth protection program within the meaning of Article 11 (1) and (2) as appropriate and thereby exceeds the legal limits of discretion, the competent state media authority may, via the KJM, override the assessment of the certified organisation of voluntary self-regulation or impose conditions on the provider of the youth protection program within three months of the decision. Paragraph (1) sentence 3 shall apply mutatis mutandis.

(3) The competent state media authority shall be the authority of the German federal state in which the certified organisation of voluntary self-regulation is established.

Section V

Enforcement against providers, except public broadcasters

Article 20

Supervision

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

(2) For broadcasters, the competent state media authority shall make a decision via the KJM in compliance with applicable state law.

(3) If the KJM accuses a broadcaster of having infringed provisions of this Interstate Treaty and if the broadcaster demonstrates that the respective programme had been submitted to a certified organisation of voluntary self-regulation within the meaning of this Interstate Treaty and complied with its requirements before being broadcast, the KJM may only take measures if the decision or lack of a decision by the certified organisation of voluntary self-regulation exceeds the legal limits of discretion. The KJM shall communicate its decision and its explanation to the organisation of voluntary self-regulation. If a provider of a programme that cannot be submitted for rating is accused of an infringement of youth protection, the certified organisation of voluntary self-regulation affiliated with the broadcaster must be consulted before measures may be taken by the KJM; sentence 1 shall apply mutatis mutandis. For decisions within the meaning of Articles 8 and 9, sentence 1 shall apply mutatis mutandis. This paragraph shall not apply to infringements of Article 4 (1).

(4) For telemedia providers, the competent state media authority shall make a decision via the KJM pursuant to Article 109 of the German State Media Treaty.

(5) If a telemedia provider is affiliated with a certified organisation of voluntary self-regulation within the meaning of this Interstate Treaty or subject to its statutes, this organisation must be confronted with infringements of the protection of minors, except infringements of Article 4 (1), alleged by KJM first. Measures under paragraph (1) by KJM against the provider shall only be permitted where the decision or lack of a decision by the certified organisation of voluntary self-regulation exceeds the legal

limits of discretion. In case of infringements of Article 4, objections and legal challenges brought by the provider shall not suspend the effect of the decision.

(6) The competent state media authority shall be the authority of state of the establishment, residence or, in the absence thereof, permanent residence of the provider; Article 119 of the German State Media Treaty shall apply *mutatis mutandis*. In case of several competent media authorities pursuant to sentence 1 or if the provider is established abroad, a decision shall be made by the state media authority which was involved with the matter first.

(7) If the KJM, a state media authority, or jugendschutz.net accuse a provider of infringing provisions of this Interstate Treaty, they shall advise the provider of the possibility of joining a certified organisation of voluntary self-regulation and of the resulting legal consequences.

Article 21

Right to information

(1) A provider of telemedia shall be obliged to inform the KJM about services and measures taken for the protection of minors, and shall provide access to services free of charge for review purposes if requested.

(2) Providers not established in Germany under the German Telemedia Act shall designate an authorised recipient in Germany who shall be referred to in their service in an easily visible and easily accessible manner. Deliveries for proceedings under Article 24 or proceedings before German courts concerning the distribution of illegal content shall be receivable by this person. This shall also apply to the servicing of written documents that initiate or prepare such proceedings.

(3) Services shall be accessed and used free of charge for purposes of supervision, punishment of violations, or review. This must be ensured by the provider. The provider may not block services from access or information gathering by the competent authority.

Article 22

Appeals to the German Federal Administrative Court [Bundesverwaltungsgericht]

Appeals to the German Federal Administrative Court may also be made on the grounds that the contested judgment is based on an infringement of the provisions of this Interstate Treaty.

Section VI

Punishment for infringements by providers, except public broadcasters

Article 23

Penalty

Whoever, in breach of Article 4 (2) sentence 1 number 3 and sentence 2, distributes or makes available services which are obviously likely to harm the development of children or youths into responsible and independent members of society in consideration of the functioning of the disseminating media shall be punished by imprisonment for not more than one year or shall be fined. Where the offender acts with negligence, the prison sentence shall be not more than six months or the fine not more than 180 day-fines.

Article 24

Administrative offences

(1) A provider commits an administrative offence who, with intent or gross negligence,

1. distributes or makes available services which,

- a) in breach of Article 4 (1) number 1, constitute propaganda within the meaning of Article 86 of the German Criminal Code;
- b) in breach of Article 4 (1) number 2, use symbols of unconstitutional organisations;
- c) in breach of Article 4 (1) number 3, incite hatred of parts of the population or national, racial, religious, or ethnic groups, advocate violence or tyranny against such groups, or attack the human dignity of others by insulting, maliciously disparaging or defaming parts of the population or above-stated group;

- d) in breach of the first alternative of Article 4 (1) number 4, first alternative, deny or downplay an act committed under the rule of National Socialism in the manner described in Article 6 (1) of the German Code of Crimes against International Law and which is likely to disturb the public peace;
- e) in breach of the second alternative of Article 4 (1) number 4, second alternative, disturb the public peace by endorsing, glorifying or justifying National Socialist tyranny in a manner that violates the dignity of its victims;
- f) in breach of Article 4 (1) number 5, depict cruel or other inhumane acts of violence against persons in a way that trivialises or glorifies such acts of violence or depicts the cruel or inhumane aspect of the process in a way that violates human dignity; the same applies to virtual representations;
- g) in breach of Article 4 (1) number 6, serve as instructions for an illegal act referred to in Article 126 (1) of the German Criminal Code;
- h) in breach of Article 4 (1) number 7, glorify war;
- i) in breach of Article 4 (1) number 8, violate human dignity, especially by depicting persons who are dying or are or have been exposed to severe physical or psychological harm, and present an actual event without legitimate interest in this form of depiction or reporting, irrespective of consent;
- j) in breach of Article 4 (1) number 9, depict children or youths in an unnaturally blatant sexual position; the same applies to virtual representations;
- k) in breach of Article 4 (1) number 10, constitute child pornography within the meaning of Article 184b (1) of the German Criminal Code, or are pornographic, or involve violent or sexual acts of persons with animals; the same applies to virtual representations;
- l) pursuant to Article 4 (1) sentence 1 number 11, are included in the list of media harmful to minors in Article 18 (1) of the German Protection of Young Persons Act, and have been deemed harmful pursuant to Article 18 (5) of the German Protection of Young Persons Act or assessed as such pursuant to Article 18 (6) of the German Protection of Young Persons Act, or whose content is entirely or essentially identical to a work included in this list, and which has been

deemed harmful pursuant to Article 18 (5) of the German Protection of Young Persons Act or assessed as such pursuant to Article 18 (6) of the German Protection of Young Persons Act.

2. in breach of Article 4 (2) number 1 and sentence 2, distributes or makes available services which are otherwise pornographic;
3. in breach of Article 4 (2) number 2 and sentence 2, distributes or makes available services which are included in the list of media harmful to minors in Article 18 (1) of the German Protection of Young Persons Act, but have not been deemed harmful pursuant to Article 18 (5) of the German Protection of Young Persons Act or assessed as such pursuant to Article 18 (6) of the German Protection of Young Persons Act, or whose content is entirely or essentially identical to a work included in this list, but which has not been deemed harmful pursuant to Article 18 (5) of the German Protection of Young Persons Act or assessed as such pursuant to Article 18 (6) of the German Protection of Young Persons Act;
4. in breach of Article 5 (1), distributes or makes available services which are likely to harm the development of children or youths into responsible and independent members of society without ensuring that these services are not normally viewed by children and youths of a restricted age category, except where the provider negligently labels the service with an age category that is too low in breach of Article 5 (3) sentence 1 number 1;
 - 4a. in breach of Article 5a, fails to adopt appropriate measures to protect children and youths from services which are harmful to development;
 - 4b. in breach of Article 5c (1), distributes announcements of programmes with moving images outside of their appropriate broadcast times and without encryption;
 - 4c. in breach of Article 5c (2), distributes programmes without acoustic signals or visual means as disclaimers;
5. in breach of Article 6 (1) sentence 1, distributes or makes available advertisement for prohibited content;

6. in breach of Article 6 (1) sentence 3, distributes or makes available the list of media harmful to minors;
 7. in breach of Article 6 (1) sentence 4, makes an indication referred to therein;
 8. in breach of Article 7, fails to appoint a child protection officer;
 9. distributes television formats in breach of the broadcast time restrictions referred to in Article 8 (2);
 10. distributes programmes assumed to be likely to harm development pursuant to Article 5 (2) without the KJM or an organisation of voluntary self-regulation certified by the KJM for this purpose having derogated from this assumption pursuant to Article 9 (1) sentence 1;
 11. distributes services without the necessary disclaimer pursuant to Article 12;
 12. in breach of an enforceable order of the competent supervisory authority within the meaning of Article 20 (1), fails to act;
 13. in breach of Article 21 (1), fails to comply with an obligation to disclose information;
 - 13a in breach of Article 21 (2), fails to appoint an authorised recipient;
 14. in breach of Article 21 (3) sentence 3, blocks a service from access or information gathering by the competent supervisory authority.
- (2) Furthermore, a provider commits an administrative offence who, with intent,
1. in breach of Article 11 (5), falsely labels telemedia as appropriate for a restricted age category of children or youths;
 2. makes false statements as part of the certification process of an organisation of voluntary self-regulation pursuant to Article 19 (3).
- (3) The administrative offence shall be subject to a fine of up to EUR 500,000.

(4) The competent supervisory authority within the meaning of Article 36 (1) number 1 of the German Act on Regulatory Offences [Gesetz über Ordnungswidrigkeiten (OWiG)] shall be the competent state media authority. In the cases referred to in paragraph (1) and paragraph (2) number 1, the competent supervisory authority shall be the state media authority of the German federal state from which the broadcaster received its license, or in which the telemedia provider has its establishment, residence or, in the absence thereof, permanent residence. If no competence can be determined thereby, the competent state media authority shall be the authority in whose district the reason for the official act occurs. In the cases referred to in paragraph (2) number 2, the competent supervisory authority shall be the state media authority of the German federal state in which the organisation of voluntary self-regulation is established. If no competence can be determined thereby, the competent state media authority shall be the authority in whose district the application for certification was filed. The competent state media authority shall make decisions via the KJM.

(5) The competent state media authority shall inform the other state media authorities without undue delay when initiating proceedings. Where proceedings within the meaning of this provision have been initiated in several German federal states, the engaged authorities shall determine which authority shall continue the proceedings.

(6) The competent state media authority may allow complaints following an infringement of provisions of this Interstate Treaty, or final judgments on administrative offence proceedings pursuant to paragraphs (1) or (2) to be distributed or made available in the service of the affected provider. The content and time of the announcement shall be determined at the discretion of the competent state media authority.

(7) Administrative offences referred to in paragraphs (1) and (2) shall be subject to a limitation period of six months.

Section VII

Final provisions

Article 25

Transitional provision

This Interstate Treaty shall enter into force without prejudice to certified youth protection programs within the meaning of Article 11 (2) of the Interstate Treaty on the Protection of Minors in the Media of 10 to 27 September 2002, in the version of the Thirteenth Interstate Treaty to Amend Interstate Treaties on Media Law, until the end of 30 September 2018.

Article 26

Period of validity

This Interstate Treaty shall enter into force for an indefinite period. This Interstate Treaty may be revoked by each of the contracting German federal states at the end of the calendar year by giving one year's notice. Notice of revocation may first be given from 31 December 2018. Notice of revocation must be given in writing to the chairperson of the Conference of German Federal State Prime Ministers [Ministerpräsidentenkonferenz]. Revocation by one German federal state shall not affect the validity of this Interstate Treaty among the other German federal states; however, each of the other German federal states may also revoke this Interstate Treaty within three months of receipt of notice of revocation.

Article 27

Notification

Amendments to this Interstate Treaty shall be subject to notification pursuant to Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services.