

Statute
of the Entertainment Software Self-Regulation Body (USK)
for Telemedia and Broadcasting (Statute USK.online)

Berlin, November 2016



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A. General Provisions

Art. 1 Name, legal entity, members

- (1) “Freiwillige Selbstkontrolle Unterhaltungssoftware GmbH” maintains a department for the Voluntary Self-Regulation for telemedia and broadcasting within the meaning of the Youth Media Protection State Agreement (JMStV). It bears the name USK.online and is managed as an independent business division administered by and as a legal entity of FSU GmbH.
- (2) Every natural or legal person who distributes contents over telemedia and/or broadcasting may join USK.online. Membership of USK.online within the meaning of the Youth Media Protection State Agreement (JMStV) is established by concluding a contract of assignment (of copyright exploitation rights) whilst acknowledging the current USK.online Statute. Natural or legal persons who have concluded a contract of assignment are henceforward referred to as members.

Art. 2 Remit and legal basis

- (1) The remit of USK.online is based on the JMStV, the legislated statutes and directives as currently valid in law. The USK Guidance Criteria for the appraisal of computer and video games as well as USK's Additional Criteria within the scope of the Youth Media Protection State Agreement (JMStV) and other possible codes of conduct apply likewise.
- (2) The purpose of USK.online is to protect children and adolescents from telemedia and/or broadcasting contents which are of a nature to affect or endanger their development into a self-reliant, socially competent personality, and to protect them from telemedia or broadcasting contents which harm legal interests covered by the JMStV and to promote compliance with the remaining provisions of the JMStV.
- (3) In particular, USK.online fulfils this purpose through the following organisations and measures:
 - a) USK.online is the contact partner for its members as regards the Commission for the Protection of Minors in the Media (KJM) and jugendschutz.net, as well as for recognised providers of youth welfare services and users who lodge complaints against contents of members of USK.online.
 - b) USK.online maintains a Complaints Office, which can be contacted by post and via the Internet (<http://www.usk.de/en>).

- c) USK.online organises a testing procedure for submissible telemedia and broadcasting content. Furthermore the testing procedure permits the evaluation of technical youth protection measures.
- d) Pursuant to Art. 20 section 5 and section 3 JMStV, USK.online reviews the relevant contents of its members in cases of infringements alleged by the KJM.
- e) USK.online enters into constant dialogue with the Commission for the Protection of Minors in the Media, the media authorities of the Federal States and other national offices and institutions. It exchanges experiences with other self-regulatory bodies and will liaise with them on the application of the Youth Media Protection State Agreement (JMStV).
- f) USK.online guarantees the subject knowledge of its experts* by providing regular instruction and continued training events. It provides information about its work, the application of technical protection mechanisms and responsible dealings with media.

In addition, USK.online offers, inter alia, the following services:

- g) USK.online undertakes the advisory evaluation of contents, which are distributed within the meaning of the JMStV.
 - h) USK.online also evaluates content within the framework of the International Age Rating Coalition (IARC) by using a classification system.
 - i) USK.online advises telemedia and broadcasting service providers on issues of youth protection in the production, acquisition, planning and design of their contents.
 - j) Pursuant to the provisions of Art. 7 section 2 of the JMStV, USK.online may undertake the role of Youth Protection Representative for its members.
 - k) USK.online offers instruction and continued training events for the Youth Protection Representatives of the telemedia and/or broadcasting.
 - l) USK.online develops codes of conduct for the distribution and publishing of telemedia and broadcasting contents.
- (4) The costs of USK.online's remit are determined by the regulations of the cost overview.

* For improved readability purposes, the use of the feminine form for personal nouns is abandoned in the following text.

Art. 3 USK.online Advisory Council Panel

- (1) The USK Advisory Council will create a panel for USK.online. The task of this panel is to advise the management in the creation and further development of criteria for the examination by USK.online, in the updating of the Statute and in the creation and further development of any codes of conduct in all matters concerning youth protection in telemedia and broadcasting. The panel reports to the Advisory Council at regular intervals.
- (2) The USK.online Advisory Council Panel consists of two representatives from the shareholder organisations in the Advisory council and one representative of the members of USK.online. In addition there are two further members of the Advisory Council, who can be proposed from among the representatives mentioned in the following text. The following representatives will also be appointed.
 1. Representatives from independent providers of child and youth services,
 2. Representatives from the churches and other religious communities, which are corporate bodies in public law,
 3. Representatives from media education.
- (3) Members of the USK.online Advisory Council Panel will serve for 3 years. Re-appointment is permitted.
- (4) The USK.online Advisory Council Panel will meet once annually as a general rule.

Art. 4 Members' Obligations

- (1) USK.online members commit themselves to distribute and publish their contents only in compliance with the legal provisions appointed under Art. 2 section 1.
- (2) The members shall make an overview of their telemedia and/or broadcasting contents available and shall guarantee USK.online complete and unlimited access to all their telemedia and/or broadcasting contents.
- (3) Moreover, the members commit themselves to inform USK.online of pending penal and supervision proceedings introduced pursuant to the provisions of the Youth Media Protection State Agreement or the Children and Young Persons Protection Act.

- (4) Members of USK.online are to comply with and implement the decisions of USK.online and to draw attention to their membership of USK.online in their services at the appropriate place (Company Legal Information).

B. Classification procedure and classification ruling

Art. 5 Three types of procedure: complaints, examination and supervision procedures

- (1) USK.online will maintain a Complaints Office within the meaning of Art. 19 section 3, Point 6 of the Youth Media Protection State Agreement (JMStV). The Complaints Office is particularly concerned with complaints which are directed against telemedia and broadcasting contents of USK.online members (Complaints Procedures, cf. under **D.**).
- (2) Upon application USK.online will undertake the appraisal and age evaluation of telemedia and broadcasting contents. Examination can apply both to complete and to single contents. In addition USK.online evaluates technical systems upon application. Hereof included are youth protection programs according to Art. 11 section 1 JMStV, which must be submitted for evaluation of their suitability, programs in the legal sense of Art. 11 section 2 JMStV, technical or other measures according to Art. 5 section 3 JMStV as well as law-complying age verification systems in the legal sense of Art. 4 section 2 phrase 1 JMStV, which can be submitted to USK.online for evaluation (Examination Procedures, cf. under **E.**).
- (3) USK.online monitors complaints about alleged infringements of the KJM by contents from its members within the meaning of supervision procedures pursuant to Art. 20 section 5 or section 3 of the Youth Media Protection State Agreement (JMStV) (cf. under **F.**).
- (4) Each testing procedure consists of reviewing, advising on and taking a decision on the subject-matter of the complaint. The presentation comprises the announcement of the applications submitted, reasons for the appeal and other circumstances essential for each testing case including previous classification processes. The presentation of the proceeding subject is carried out by a representative of USK.online. In all three classification procedures USK.online guarantees that the service provider concerned will be heard before any decision is taken, the decision will be stated in a classification ruling and that the service provider will be informed about the allegations.

- (5) The examination procedures are not open to the public and the procedures of the committees are confidential. The youth protection experts and the committees are entitled to obtain technical or legal expert opinion in every procedure if the object of appraisal requires this. These proceedings will be documented in the resulting classification ruling.

C. Youth protection experts and panels

Art. 6 Youth protection experts

- (1) The management of USK will appoint the USK.online youth protection experts. The youth protection experts must have special expertise of telemedia and broadcasting. It is crucial that a part of the youth protection experts have a sufficient technical and legal knowledge.
- (2) In making appointments the management of USK will bear in mind representatives relevant in society who deal sui generis with issues of youth protection. By composing the list with youth protection experts and members of the examination panels from a variety of backgrounds, the widest possible spectrum for appraisal will be achieved leading to appropriate decisions.
- (3) The youth protection experts will be appointed for a maximum of 3 years. Re-appointment is permitted. USK.online may also appoint full-time youth protection experts in order to achieve coherent precedents.
- (4) The youth protection experts take their decisions in accordance with the legal provisions mentioned under Art. 2 section 1 of this statute. Decisions will be based on assessments by the youth protection experts, relying on special expertise and judgement, experience in dealing with children and adolescents, knowledge of developmental psychology and research on the impact of media.
- (5) The youth protection experts will work independently in their assessments and will not be bound by instructions. In carrying out their work they shall not be held liable in particular for the content of their decisions and the effects of those decisions - except where malice or gross negligence is proven.
- (6) USK.online guarantees the independence and special expertise of their youth protection experts. USK.online undertakes to provide regular advanced training. The youth protection experts may not be employed by any company which is a member of USK.online or by a company which is part of a corporate group connected to any such company.

- (7) In the event that an youth protection expert is rejected because of concern about a conflict of interests or if an youth protection expert himself feels that he is subject to a conflict of interests, another youth protection expert will be appointed.

Art. 7 Selection of youth protection experts and constellation of the examination panels

- (1) The youth protection experts appointed by the management of USK are recorded in a list. Individual experts and the constellation of the examination panels will be staffed from the offices of the USK on the strength of reports from the youth protection experts. In composing the examination panels the offices of the USK will ensure that during the course of the year all youth protection experts will be considered with the maximum fairness possible.
- (2) The panels will take decisions based on the majority of votes. Abstention from voting is not permitted.

Art. 8 Documentation/ archiving

- (1) Classification rulings are to be documented. The significant content of a service on which a decision is based is also to be documented, insofar as it is technically possible and can be achieved at reasonable cost.
- (2) USK.online is entitled to destroy this contents three years after completion of the examination. The classification ruling itself may not be destroyed.

D. Complaints procedures

Art. 9 Initiation of complaints procedures

- (1) Every natural or legal person is entitled to file a complaint, in particular those designated by Federal state law as providers of youth welfare services. USK.online members may forward complaints received by them to USK.online for appraisal.
- (2) The complainant must give the following data in the form of a contact proforma made available by USK.online.
- a) first and surnames, plus a contact address (an e-mail or postal address),
 - b) information about the specific content, specifying the source,

- c) the reason for the complaint.

Art. 10 Jurisdiction of the Complaints Office

- (1) The Complaints Office has factual jurisdiction for complaints, which are filed against telemedia and/or broadcasting contents of the members.
- (2) The Complaints Office has regional jurisdiction, where the content clearly emanates from Germany (Art. 3 Telemedia Act, "TMG") or where the content is clearly aimed at the German market.
- (3) For complaints outwith the jurisdiction of the Complaints Office the complainant will be redirected to the responsible office.

Art. 11 Preliminary procedures

- (1) Once received the complaint will be checked in a preliminary proceeding to ascertain whether USK.online has jurisdiction and whether an infringement of the legal provisions mentioned under Art. 2 section 1 of this statute cannot demonstrably be excluded.
- (2) Where complaints are not comprehensible, the complainant will be given the opportunity to substantiate his complaint.
- (3) As part of the preliminary procedures the complaints procedure can be abandoned, where:
 - a) USK.online does not have jurisdiction to review and appraise the service being queried;
 - b) an infringement of the Youth Media Protection State Agreement, the Statute of USK.online, the USK Guidance Criteria for the appraisal of computer and video games pursuant to the Children and Young Persons Protection Act and the USK Additional Criteria within the scope of the Youth Media Protection State Agreement (JMStV) cannot demonstrably be excluded;
 - c) the USK.online member has remedied the complaint in the meantime.
- (4) The complainant will be informed in writing of any reasons which have led to the abandonment of the complaints procedure. If the procedure is abandoned because the Complaints Office does not have jurisdiction the complainant will be directed to the competent authority where applicable.
- (5) If any suspicion arises from the complaint that a real danger for life, body or personal liberty, in particular in connection with child pornography in contents

or any other crime pursuant to Art. 138 of the Criminal Code exists, USK.online will inform the relevant competent authority.

Art. 12 Examination procedures in the event of complaints

- (1) If the complaint is not demonstrably unfounded, the member affected will be informed of the complaint. He will be accorded the right to reply in writing to the complaint.
- (2) Examination and appraisal of the service will be implemented within a commensurate period which will as a rule be no longer than ten working days. Examination comprises the notification of the complaint, consideration of the response of the member and other significant circumstances of the case.
- (3) Examination and appraisal will be carried out by the Complaints Panel. In simple cases, where the panel has already evolved precedents for the subject-matter of the complaint, the Head of the Complaints Office can make a decision on the complaint.
- (4) The Complaints Panel will consist of three youth protection experts. The Head of the Complaints Office will preside.
- (5) The Complaints Office or the Complaints Panel can allow for requirements for the current service to be altered or amended. The requirements imposed must be feasible and reasonable in fact and in law.
- (6) The decisions of the Complaints Office or the Complaints Panel must be justified in writing by the Head of the Complaints Office. The decision, together with reasons for the decision will be communicated to the member concerned in written form. The complainant will be informed in written form of the result of the decision.

Art. 13 Appeals procedures in the event of complaints

- (1) The USK.online member may file an appeal against the decision of the Complaints Office or the Complaints Panel. The appeal must be received within ten working days of notification of the USK.online decision and must be substantiated in writing.
- (2) On receipt of the claim of a provider of youth welfare services as designated by Federal state law, the Appeals Committee is to study the decision of the Head of the Complaints Office or the Complaints Panel.
- (3) The Appeals Committee will then make a decision on the appeal. The Appeals Committee will consist of three youth protection experts. The Appeals

Committee shall elect a chairperson from amongst its members. The youth protection experts on the Appeals Committee must not have been involved in the decision of the Complaints Panel. Otherwise Art. 12 sections 4 and 5 apply as appropriate.

- (4) The decisions of the Appeals Committee are to be substantiated in writing by the Head of the Complaints Office or the Chairman of the Appeals Committee and communicated to those involved in the proceedings.

E. Appraisal of telemedia and broadcasting contents and issuing of age evaluations

Art. 14 Entitlement

- (1) On request USK.online undertakes the examination and appraisal of telemedia and broadcasting contents and will recommend an age rating where applicable. The claim can relate to entire telemedia and/or broadcastingservices, to parts of telemedia and/or broadcasting contents or to single contents distributed via telemedia and/or broadcasting by the claimant.
- (2) A claim form is available for this purpose on the USK.online home page. Both USK.online members and any other service providers of telemedia and/or broadcasting are entitled to make claims.
- (3) Contents which already have an age certification pursuant to the Children and Young Persons Protection Act (JuSchG) will not be accepted for examination. If the decision on age certification pursuant to the Children and Young Persons Protection Act (JuSchG) is older than 15 years, examination of material may be carried out in response to an exceptional claim analogous to Art. 9 section 1 of the Youth Media Protection State Agreement (JMStV).

Art. 15 Examination procedures for the appraisal and age evaluation of telemedia and/or broadcasting services and individual telemedia and/or broadcasting contents

- (1) The examination appraisal and/or age evaluation of telemedia and/or broadcasting contents will be carried out by an examination panel. The examination panel will consist of three youth protection experts. The Chairman of the panel will be chosen from among the youth protection experts and will draft the classification ruling.

- (2) In the age-certification process the issues concerning protection of minors are ascertained and the reasons for any developmental impairment for a given age-group are established. If applicable, age ratings from the ages of 0, 6, 12, 16 or 18 years are recommended, insofar as the content concerned is not covered by Art. 4 of the Youth Media Protection State Agreement .
- (3) In a simple case which exists where a precedent to a comparable issue has evolved, a youth protection expert who has special experience in the area can undertake the appraisal or if appropriate, the age evaluation. The respective youth protection expert will draft the classification ruling. The outcome is communicated to the claimant together with the classification ruling.

Art. 16 Testing procedure for the appraisal of technical systems

- (1) In the context of the appraisal of technical systems this chapter of the statute **(E.)** applies with the proviso that each a technically versed and a legally qualified youth protection expert is part of the examination panel and the Appeals Committee.
- (2) Each committee may make the decision contingent on the fulfilment of conditions. If conditions are attached to examination decisions made, the classification decision which should apply in the event that the applicant fails to meet conditions imposed should also be ascertained. In the event that change conditions are accepted by the applicant, the classification decision shall not become effective until such time as the applicant has proved that the changes imposed are contained. Any declaration by the applicant that he or she does not accept the change conditions is irrevocable. The classification decision shall then become effective in the form determined for that case or the examination procedure will be interrupted inconclusively.
- (3) The decision of the appeal and the revisal of programs according to Art. 11 section 4 phrase 3 JMStV will be published on the homepage of the USK. USK.online informs the KJM about the decision in written form.
- (4) The revisal according to Art. 11 section 4 JMStV can be conducted by an employee of USK.online via a simplified proceeding. If a significant deviation within this context is determined in matters of the suitability requirements according to Art. 11 section 1 or section 2 JMStV, a complete proceeding corresponding to this chapter **(E.)** is required.

Art. 17 Appeals procedures in appraisal and age evaluation of telemedia and/or broadcasting contents

- (1) The claimant may file an appeal against the decision forwarded to him. The appeal must be received in written form within ten working days of notification of the USK.online decision and must be substantiated in writing.
- (2) The Appeals Committee will decide on the appeal. The Appeal Committee consists of three youth protection experts. The youth protection experts on the Appeals Committee must not have been involved in any preceding examination work of the same subject-matter.
- (3) Examination consists of reviewing, advice and decision-making. Inspection also involves the notification of the claims asserted, the reasons for appeal and other significant circumstances of the case being assessed including previous examination procedures.
- (4) The decision of the Appeals Committee is final. It will be communicated to the claimant together with the classification ruling in written form.

F. Supervision procedures of the Commission for the Protection of Minors in the Media (KJM)

Art. 18 Panel examination in supervision procedures

- (1) If USK.online is notified of the alleged infringement by one of its members in a procedure pursuant to Art. 20 section 3 or section 5 of the Youth Media Protection State Agreement, an examination panel must be convened within ten working days of the notification. At the same time the member concerned will be invited to comment in writing on the alleged infringement.
- (2) The examination panel consists of five youth protection experts, who shall elect a chairperson from amongst its members; the Chairman should be qualified to exercise the functions of a judge. The member concerned is entitled to state his opinion on the alleged infringement in writing and/or in person to the examination panel or to have his case stated by an appointed representative.
- (3) The relevant media authority of the Federal state and the KJM are informed of the decision of the examination panel within four weeks, unless the legal and technical appraisal of the alleged infringement requires a longer examination period. The competent media authority of the Federal state and the KJM will

inform the member without delay of any extension of the examination period and the reasons for the extension.

G. Sanctions

Art. 19 Types of sanctions

- (1) In the event that a committee or the youth protection experts of USK.online come to the conclusion that the USK.online member has infringed the Statute or other in Art. 2 section 1 appointed provisions, a notice requesting a remedy is issued.
- (2) If the member fails to comply with the request for a remedy within the deadline set by the committee, the Chairman of the committee can pronounce a declaration of disapproval. This declaration of disapproval contains both a further deadline, within which the member must remedy the proven infringement, and the warning that failure to remedy the infringement can result in a reprimand and where appropriate, the imposition of a fine.

Art. 20 Publication of the reprimand, fine and right of termination of USK

- (1) In the case of repeated, similar infringements, the failure to comply with requests for remedy or in the case of serious infringements, a reprimand, a fine or even termination of memberships may be imposed, depending on the degree of blame.
- (2) The USK.online Advisory Panel decides on the pronouncement of a reprimand, the imposition of a fine or the termination of USK.online membership together with the Head of the Complaints Office.
- (3) The content of a pronounced reprimand must be published by the USK.online member within the framework of its content. A fine can be imposed to a maximum of € 20,000.
- (4) In the case of the imposition of a fine and/or the termination of membership, USK.online is entitled to publish the decision together with the respective reasons.