

Guiding criteria of the USK for the Youth protection assessment of digital games

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1. Preamble

The Entertainment Software Self-Regulation Body (USK) is a voluntary organization of the games industry. Since its foundation in 1994, it has been one of the central institutions in the field of child and youth protection for digital games. According to the German Youth Protection Act (JuSchG), age rating is a task of the youth ministries of the federal states. Age rating is therefore always carried out by a permanent representative of the highest state youth authorities. Since 2003, the USK has therefore carried out the joint procedure with the highest state youth authorities for age rating digital games under its umbrella. The non-profit organization's shareholder is game - Verband der deutschen Games-Branche e. V. (Association of the German Games Industry).

Digital games are a natural part of our everyday culture and also attract attention from an artistic point of view. Technical feasibility and aesthetic expression can be combined in such a way that games take on the characteristics of an art form in contemporary entertainment. Thanks to the possibility of interactivity, developers and players can express themselves through digital games, engage critically with society and its processes and reflect on reality, development and change.

Digital games are part of everyday life for children and young people. Compared to other media, a significant amount of time is invested in digital gaming experiences on PCs, consoles or mobile platforms. Gamers can now be found in all areas of society and age groups. The vast majority of young people play regularly - whether on a computer, console, tablet or smartphone. In addition, the parents' generation has also increasingly gained experience with digital games themselves. Today, children and young people grow up in households with a wide range of media. The media equipment of families with smartphones, computers/laptops and televisions has reached a saturation level of almost 100%. Almost three quarters of households have a game console and more than half of families with 12- to 19-year-olds have a handheld device.

When looking at device ownership among young people themselves, the smartphone is in first place. Virtually all girls and boys own a smartphone.¹

Many children's interest in digital games begins at an early school age. Across all gaming options, 60% of 6- to 13-year-olds regularly play digital games.² As they get older, they are more likely to be encouraged to do so by peer groups than by their parents. This means that children and young people access digital games of various genres independently of their parents. Skill-wise, 12-year-olds are usually capable of playing all genres. For parents who are not present when their child is playing, this may mean that they are not always sufficiently aware of which experiences their child needs to process. It is therefore important to enable children to use media in an informed, reflective, self-determined and age-appropriate, risk-conscious manner through measures to promote media literacy in the sense of preventative educational media protection for children and young people. Within the framework of statutory youth media protection, age labels, additional information and precautionary measures play a central role in providing reliable guidance and carefree participation.

Precautionary measures, including safe default settings for the protection of minors, are elementary - they enable children and young people to participate in a self-determined, carefree manner and, through a gradual expansion of services, gradually enable them to deal responsibly with the remaining risks.

Children and young people have a constitutionally protected right to participate in the digital environment. At the same time, they have the right to be protected from media content and depictions that are harmful to them and to be protected with regard to their personal integrity when using the media.³

¹ See Medienpädagogischer Forschungsverbund Südwest [ed:] JIM-Studie 2024 Jugend, Information, Medien, Basisuntersuchung zum Medienumgang 12- bis 19-Jähriger in Deutschland, Stuttgart, November 2024, p. 6.

² See Medienpädagogischer Forschungsverbund Südwest [ed:] KIM-Studie 2022, Kindheit, Internet, Medien, Basisuntersuchung zum Medienumgang 6- bis 13-Jähriger, Stuttgart, June 2023, p. 54.

³ Both the Basic Law (cf. general right of personality pursuant to Art. 2 para. 1 in conjunction with Art. 1 para. 2 GG or Art. 5 para. 2 GG), as well as the UN Convention on the Rights of the Child (Art. 13 and Art. 17 UNCRC) and its concretizations by the UN Committee on the Rights of the Child in its General Comment No. 25 (cf. in particular paras. 19 - 21 and paras. 106 - 111 GC25) already entitle



The guiding criteria for the evaluation of digital games under youth protection law are formed on the basis of applicable laws, the USK's testing principles, findings from science and the practical experience of 30 years of game testing as well as social discourse. It goes without saying that social values and norms are also taken into consideration, but this excludes assessments based purely on taste or personal political views of the day.

These guiding criteria primarily serve as a basis for the independent review bodies of the USK both in assessing the risks of possible developmental impairment of children and young people due to content and depictions and with regard to the risks of impairment of their personal integrity in the context of media use when playing digital games that are not age-appropriate. They support the decision-making process and the determination of the main reasons for the age rating. The latter has a direct impact on the selection and order of the additional information (descriptors) to be issued as the main reasons for the age rating. The USK's guiding criteria are reviewed at least every two years and amended or confirmed by resolution of the USK Advisory Board.

2. Terminology

2.1 The digital game as a test object

"Digital games" are games that can be played with a terminal device.⁴ In contrast to films and books, digital games are primarily interactive experiences, regardless of their form of distribution. They are intended to be entertaining and follow a set of rules typical of the genre, corresponding to specific calls to action, as well as competition and reward mechanisms.⁵ Depending on the offering, it is possible to intervene interactively in the game beyond the role of the recipient as a player and create game worlds as a

and oblige the Federal Government to comprehensively guarantee protection, empowerment and participation.

⁴ Cf. Pfaff-Rüdiger, Senta; Oberlinner, Andreas; Winter, Christin; Eggert, Susanne (2024).

Zwischen großen Sorgen und heldenhaftem Stolz- Medienerziehung bei digitalen Spielen, p. 30.

⁵ This category does not include offers for informational, instructional or educational purposes that fall under the provider labeling pursuant to Section 14 (7) JuSchG and may be labeled "Infoprogramm" or "Lehrprogramm".

producer. If games are played together with others, their use is often characterized by social interactions, including in the context of communities.⁶

2.2 Standard of review for the assessment under youth protection law

The question of what idea of a child and a young person is assumed by those making an age rating is of great importance for the decisions. The USK's test principles state: "A game may only be rated for a specific age group if it cannot impair the development or education of anyone in that age group. The focus here is not only on average minors, but also on minors at risk; extreme cases are to be excluded."⁷

Vulnerable minors are children and adolescents who exhibit increased risk factors that can counteract their development into a socially competent and responsible personality. As a rule, the causes lie in personal predispositions and conditions such as the family and/or social environment.

2.3 Developmental impairment

2.3.1 Content effect

The effect is assessed on the basis of circumstances arising from the content of the game itself. Impairment is understood to mean inhibition, disturbance or harm caused by overstimulation, overload or overexcitement. In particular, the content of games that are excessively frightening, advocate violence⁸, inhibit, disrupt or damage the "character, moral (including religious) or spiritual education or have a socio-ethically disorienting effect, can impair the development of children and adolescents or their education to become a responsible and socially competent personality."⁹

It needs to be examined whether significant game elements have such an effect and, if so, for which age group.

⁶ See BzKJ, Gefährdungsatlas: Digitales Aufwachsen vom Kind aus denken - Zukunftssicher handeln, 2nd edition, p. 123.

⁷ § 18 para. 2 no. 5 of the USK test principles.

⁸ See § 10b para. 1 JuSchG.

⁹ § 18 para. 2 no. 3 of the USK test principles.

2.3.2 Personal integrity

When assessing the developmental impairment, circumstances or functionalities of the digital game that lie outside the media content effect and that may pose significant risks to the personal integrity of children and adolescents when using the medium in question may also be appropriately taken into account in the assessment.¹⁰

The protection of personal integrity covers the protection of the personal rights of children and young people¹¹ as well as the associated right to informational self-determination and overall protection against identity violations.¹² It therefore covers in particular development-related aspects of the manifestation of the general right of personality. These include the right to self-determination (formation of one's own identity), self-preservation (privacy and confidentiality) and self-presentation (right to personal honor, right to one's own word, right to one's own image, right to informational self-determination, right to guarantee the confidentiality and integrity of information technology systems).¹³ The general right of personality is thus intended to ensure the conditions for the exercise of free, autonomous individuality in a community. Externally favored disorders should be prevented while growing up and the path to a mentally healthy and strong - in cases of imminent violations of personality rights also in the sense of a resilient - person should be made possible.¹⁴ The central protection goal is mental and emotional integrity or psychological well-being in the sense of a state in which the individual is in harmony with themselves and the world.¹⁵

Accordingly, impairments are possible, for example, with regard to psychological integrity (identity formation, inner autonomy, individual opinion formation), social integrity (claim to validity in a community, identity and relationship management),

¹⁰ Cf. § 10b para. 2 JuSchG.

¹¹ In the broad sense in indirect third-party effect from Art. 2 para. 1 in conjunction with Art. 1 para. 1 GG. Art. 1 para. 1 GG.

¹² BT-Drs. 19/24909, 43.

¹³ See Dreyer in Erdemir Das neue JuSchG § 2 para. 25.

¹⁴ See BzKJ, Gefährdungsatlas: Digitales Aufwachsen vom Kind aus denken - Zukunftssicher handeln, 2nd edition, p. 73 ff.

¹⁵ Dreyer in Erdemir Das neue JuSchG § 2 para. 26.



decisional integrity (freedom of decision, commercial autonomy) or sexual integrity (sexual self-determination).¹⁶

According to Section 10b (3) sentence 2 JuSchG, the risks to personal integrity that may arise during use include, in particular, those that may arise through communication and contact functions, purchase functions, gambling-like mechanisms, mechanisms to promote excessive media usage behavior, the disclosure of usage data to third parties without consent and age-inappropriate purchase appeals, in particular through advertising references to other media. These - non-exhaustive - risk dimensions primarily describe technical functionalities that make certain forms of use and communication possible in the first place. For example, calls to action implied in user interfaces and action sequences can represent a circumstance outside the media content effect.¹⁷

Impairments to personal integrity and well-being can thus arise, for example, in interaction with third parties.¹⁸ This is also possible with digital games, as they are part of a changed media landscape and are no longer limited to the reception of static media content, but allow each participant to engage in an interactive and communicative exchange with each other or to create content themselves.¹⁹

In addition, however, mechanisms contained in games or their design that start outside of the actual game activity can also pose a risk to the personal integrity of children and young people. This can include manipulative designs or processes that attempt to deliberately impair players' ability to control themselves ("dark patterns"), such as social, playtime-related or store designs.²⁰

¹⁶ Dreyer in Erdemir Das neue JuSchG § 2 para. 26.

¹⁷ See Dreyer in Erdemir Das neue JuSchG § 2 para. 42.

¹⁸ See Dreyer in Erdemir Das neue JuSchG § 2 para. 26.

¹⁹ See Dreyer in Erdemir Das neue JuSchG § 2 para. 22.

²⁰ According to the Digital Services Act (DSA) for online platforms and the Unfair Competition Act (UWG) for commercial activities aimed at consumers, infringements due to unfair activities or manipulation or deception require a noticeable degree of "significant influence" (Section 3 (2) UWG) or "significant impairment or obstruction" (Art. 25 (1) DSA).



Impairment can be assumed if a lasting disruption and not just short-term irritation can be predicted. Although a comprehensive assessment of risks to personal integrity requires a subjective perception, the assessment must be limited to an objectified framework due to the statutory definition of objectives.²¹

2.4 Precautionary measures

Precautionary measures are protective measures that are intended to minimize risks to the personal integrity of children and young people that may arise in the course of use. In order to achieve this protection, the existing risks in the respective offer must be adequately countered in individual cases and accordingly the protective measures must be appropriate and effective.

Possible structural precautionary measures that limit usage risks include parental controls or parental guidance tools, safe default settings ("safety by default"), purchase and playtime restrictions, measures for transparency and information, reporting and remedial procedures, age rating systems for user-generated content, age verification or references to provider-independent advisory services and help and reporting options.²² Depending on the individual case, a variety of other effective precautionary measures may be possible and should be taken into account. Precautionary measures can be implemented either in the game itself or via the platform linked to the game.

3. Test sequence and assessment levels

The age verification of a digital game is carried out exclusively on the basis of youth media protection law and does not offer comprehensive legal protection with regard to compliance with other laws and regulations, such as data protection law or other consumer protection rights.

²¹ Dreyer in Erdemir Das neue JuSchG § 2 para. 27.

²² Cf. examples of rules pursuant to Section 24a (2) JuSchG, which can be applied mutatis mutandis to age rating processes and can serve as a guide.

First of all, the content of the digital game must be assessed, on the basis of which the age rating for the game is determined by the classification committee. If so-called risks of use are identified in the context of a digital game, these must be included in the assessment under youth protection law if the requirements set out in Section 10b (2) and (3) JuSchG are met. These include in detail:

1. The review framework is open if the circumstances or functionalities are not merely temporary or short-term at the time of the review, but are intended to be permanent in the digital game.²³ The decision is based on the concepts of the respective usage components already included or at least confirmed and documented by the applicant at the time of submission.²⁴
2. In addition, the functionalities must be part of the game, i.e., included in the individual game itself.²⁵ Functionalities that only occur when using the respective surrounding platform and independently of the use of the respective digital game are not to be taken into account.²⁶

Insofar as the review framework is open, the review by the USK review bodies must be carried out along the hierarchy of the respective assessment levels in each individual case:²⁷

The usage functionalities specified by the applicant and the additional information resulting from this information must be checked cursorily for accuracy. If there are indications that the additional sensitizing information is not sufficient in the specific individual case to mitigate risks to personal integrity, an in-depth examination will be carried out as part of the assessment of the specific risk prognosis.

²³ § 10b para. 2 JuSchG.

²⁴ See Dreyer in Erdemir Das neue JuSchG § 2 para. 42.

²⁵ § 10b para. 2 JuSchG.

²⁶ See Dreyer in Erdemir Das neue JuSchG § 2 para. 43.

²⁷ The hierarchy results from the formulation that a deviating overall assessment must be justified beyond a labeling according to § 14 para. 2a JuSchG, see Dreyer in Erdemir Das neue Juschg § 2 para. 46.

On the basis of a specific risk prognosis, it must be assessed whether the functionalities contained represent a risk to the personal integrity of children and adolescents that must be classified as significant and thus justify a deviation from the age rating determined up to this point. The higher the age rating, the lower the requirements for the depth of testing with regard to potential risks to personal integrity.

The central approach to concrete risk forecasting is to deal with the probability of occurrence of a specific risk and the associated damage potential.²⁸ Corresponding risks must be identified and evaluated (risk assessment). When assessing the probability of occurrence of a risk and the associated potential damage, the question of the inevitability of the potential risk due to the gameplay or the focus and thus the relevance of the function or element in the overall view of the game can provide important clues.²⁹

In addition, factors that are structurally and effectively able to reduce the probability of occurrence or mitigate the associated damage potential (risk encounter) must be taken into account. With regard to a possible increase in the age level, descriptors (information on the main reasons and functionalities of use) must be given priority, as they can already have an awareness-raising effect on the potential risk of use itself as a protective measure³⁰ and do particular justice to the participation rights of children and young people. In particular, the consideration of whether to raise the age level includes the inclusion of existing, appropriate and effective structural precautionary measures, such as technical configuration options within the meaning of Section 24a (1) and (2) JuSchG.³¹

²⁸ Dreyer in Erdemir Das neue JuSchG § 2 para. 49.

²⁹ Cf. Wager/Waldeck in Erdemir Das neue JuSchG § 3 para. 25.

³⁰ Cf. BT-Drs. 19/27289, 13, according to which the consideration of interaction risks in age labeling should primarily take place through the descriptors provided for in § 14 para. 2a JuSchG.

³¹ The reference to Section 24a JuSchG is merely to be understood as a clarification of possible measures ("in the sense of"). However, the extent to which the provider is actually obliged to implement corresponding measures in accordance with Art. 28 para. 1 DSA does not play a role in taking their risk-reducing nature into account (cf. Hilgert/Sümmermann K&R 2021, 297 (298) and Dreyer in Erdemir Das neue JuSchG § 2 para. 50).

With regard to precautionary measures, reference should be made to the risks specified in § 10b JuSchG as far as possible, depending on the individual case. The risks must be considered individually and assessed in each case with regard to their impact on the age rating, taking into account the precautionary measures. In principle, an examination of the precautionary measures should always take into account whether

1. precautionary measures have been taken,
2. the precautionary measures themselves are effective and appropriate in view of the expected risks and
3. the extent to which there are obvious or easily achievable workarounds³² that limit the effectiveness of the respective precautionary measures.³³

The "safety by default" principle can be taken into account by the review bodies as a reinforcing factor when assessing the effectiveness of a precautionary measure.

A deviation with regard to the age rating in the context of the specific risk prognosis must therefore arise along the hierarchy of the individual assessment levels of content age rating, orientation potential of the additional information and risk potential of the functionalities relevant to the protection of minors.³⁴

4. Presumption of effectiveness

The USK's testing principles set out the basic approach for the determination and assessment of adverse effects of digital games: All adverse effects in connection with the overall effect of the game must be taken into account. Adverse effects can arise both from the digital game as a whole and from its details. It is irrelevant whether users play the game in its entirety, only play certain features or sometimes only individual

³² Cf. KJM criteria for suitability requirements in accordance with Section 11 (3) JMStV for youth protection programs, p. 2.

³³ The standard here must not be set any higher than is the case in the context of the prevention of perception ("usually") in accordance with Section 5 (1) and (3) JMStV. The decisive factor is therefore the general case, but "complete protection" is not required.

³⁴ See Dreyer in Erdemir Das neue JuSchG § 2 para. 46.

modes. The inclusion of the entire game offering in the age rating therefore remains decisive for the assessment.

The category of framing competence, which is attributed to minors in the cognitive and emotional-moral classification of media content and representations depending on their age, plays an important role in the decision-making process. Framing competence or media-specific literacy means that players do not mix the real world with the virtual world due to their life and media experience.

In the case of digital games, this includes the ability to decode graphic patterns and to classify the game events in an existing storyline/genre as well as the related interpretation of combative or humorous elements in game actions. Ideally, ideas and action patterns are developed and applied appropriately in the different worlds through framing competence. Certain transfer processes between the different worlds are included in the use by players.³⁵

If a clear framing is obviously made more difficult by certain game elements, so that risky transfer processes seem possible, these can prove to be disruptive factors in education for personal responsibility and community skills.

The idea that thinking and morals develop in a relevant way depending on the age of children and young people is largely based on the core statements of Kohlberg and Piaget's so-called stage models.³⁶ The core points of the theory are the change processes of understanding, adapting and accepting the various roles and ultimately also adopting and shaping one's own role concepts.

³⁵ Cf. J. Fritz/W. Fehr [Eds:] Handbuch Medien: Computerspiele. Federal Agency for Civic Education, Bonn 1997.

³⁶ The stage models of Kohlberg and Piaget assume that socialization is shaped by cognitive-structural changes in the restructuring of the social self, the social world and the relationship between the two. Social knowledge, which also includes moral judgment, is linked to participation in groups and interactions with the environment.

By the end of the 12th year of life, the processes of pre-operational, descriptive thinking, increasingly concrete-operational thinking (moral realism with both heteronomous and already autonomous moral concepts) through to formal-operational thinking have regularly been mastered. This is followed by the transition to the development of autonomous moral concepts within society, the search for universally valid principles of one's own actions, which is certainly risky for the individual. This process includes understanding functional relationships and independently finding solutions to problems, and it takes place throughout a person's life.³⁷

Even if the developmental-psychological stage model does not entirely correspond to the age stages of youth media protection, it is nevertheless fundamentally suitable for a dimension to be taken into account in the evaluation of digital games under youth protection law and the assessment of age-dependent developmental risks.

When considering the age rating "without age restriction" ("ohne Altersbeschränkung") as part of the content assessment of the digital game, the USK's review bodies assume that no content relevant to the protection of minors is part of the game. Games with this age rating do not contain any questionable depictions of violence and do not confront children with lasting frightening situations. In typical children's games, the game world often conveys a friendly and colorful impression. However, it is not relevant for the decision whether the game is suitable for preschool children or educationally valuable, whether preschool children can master the game technically and in terms of content, whether the game's tasks and graphics have always been implemented in a child-friendly way and whether text overlays and spoken language are understood.

The USK's review bodies only consider an age rating "without age restriction" ("ohne Altersbeschränkung") on the basis of the functionalities contained in the game if a corresponding decision on the age level has already been made on the basis of the content review. Furthermore, the functionalities contained in the game must not entail

³⁷ Cf. J. Piaget: *The Awakening of Intelligence in the Child* (1936). Klett, Stuttgart 1969 and A. Colby/L. Kohlberg: *Moral judgment: The cognition-centered developmental psychological approach*. In H. Bertram [ed.] *Social coercion and moral autonomy* (pp. 130-162). Suhrkamp, Frankfurt/M. 1986.



any additional risks to the personal integrity of children and young people that could be classified as significant and would justify a higher age rating as part of the overall assessment (see point 3).

However, if a functionality relevant to the protection of minors is a central component of the game, an age rating "without age restriction" ("ohne Altersbeschränkung") can only be considered if effective precautionary measures simultaneously ensure that these functionalities do not have an adverse effect on minors.

When considering the age rating "from the age of 6 up" ("ab 6 Jahren"), the USK's review bodies assume that children of this age develop the ability to perceive media representations and content in a differentiated and distanced manner. They increasingly learn to differentiate between the world of play and reality, acquire their first differentiated media experiences and are able to cope with brief moments of tension as well as pressure to act that is reduced by pauses. Media content and depictions can have a particularly detrimental effect on the youngest age group if game elements are offered that permanently cast doubt on the fictitious, emotionally distancing character of the games on offer.

When evaluating the usage functionalities contained in the game, the USK's review bodies assume that, compared to children under the age of six, children aged six and over do not gain any significant additional experience that would enable them to better deal with possible usage risks. Children up to the age of eleven are therefore in particular need of protection with regard to the risks of using digital games. For this reason, when determining risks of use in a digital game, the review bodies only consider the age classification "from the age of 6 up" ("ab 6 Jahren") if it is simultaneously ensured by appropriate and effective precautionary measures that these functionalities do not cause any adverse effects for children of this age group.

When considering the age rating "from the age of 12 up" ("ab 12 Jahren"), the USK's review bodies assume that 12- to 15-year-olds are more capable of developing the ability to maintain detached perception and differentiate between the game world and

reality than younger children. They increasingly have a diverse and complex media experience and can also distance themselves from immersive gaming. It can be assumed that they can cope with longer-lasting tension and greater pressure to act when completing game tasks. Their framing competence ensures that, despite credible game scenarios, solving tasks, removing obstacles and defeating opponents does not have a detrimental effect as long as there are sufficient distancing elements that reduce the impact. The youngest members of the age group in particular must be taken into account in these considerations.

The USK's review bodies can only consider an age rating of "from the age of 12 up" ("ab 12 Jahren") on the basis of the functionalities contained in the game if a decision has already been made in the first review step based on the content criteria and the functionalities contained that do not pose any additional risks to the personal integrity of children and young people that would justify a higher age rating as part of the overall assessment (see point 3).

An age rating of "from the age of 12 up" ("ab 12 Jahren") due to usage risks is considered by the USK's review bodies, for example, if the game is designed to appeal to children or takes place in a child-friendly setting, but contains usage risks that could have a potential impact on the personal integrity of children. In such cases, the decisive factor is whether appropriate and effective precautionary measures are in place to safeguard against the risks of using the game, such as secure store systems or secure chats. If such precautionary measures are in place and effective, an age rating of "from the age of 12 up" ("ab 12 Jahren") will be considered. The review bodies may also consider such a rating if the identified risks of use represent a central component of the game but are effectively safeguarded by existing precautionary measures.

When considering the age rating "from the age of 16 up" ("ab 16 Jahren"), the USK's review bodies assume that young people of this age already have a wide range of systematic media experience and knowledge of media production. Although games with this label also contain content that emphasizes combat and violence, neither the game plot nor the game options convey socially harmful messages or role models. The

framing competence of young people aged 16 and over can be called into question by particularly powerful productions in such a way that developmental impairments are assumed.

An age rating of "from the age of 16 up" ("ab 16 Jahren") due to risks of use is usually considered by the USK's review bodies in the case of a strong problem orientation, for example in the case of multiple risks due to different functionalities that reinforce each other and are not offset by appropriate and effective precautionary measures. This can include design decisions or the design of mechanisms that aim to negatively influence players' decisions or address their ability to control themselves and urge or tempt users to take actions that could compromise their personal integrity. The review bodies of the USK assume that only older adolescents from the age of 16 are able to see through the various risks of use and interaction in digital games, distance themselves from them and make conscious decisions, for example with regard to their gaming, communication and purchasing behavior, due to their level of maturity and life experience.

When considering the age rating "not suitable for minors"³⁸ (USK 18), the USK age rating experts assume that the game in question may have a detrimental effect on minors of all ages. This protects minors from, for example, drastic depictions of violence or socio-ethically disorientating world views. Older adolescents may also find it difficult to distance themselves from the game, particularly due to the high atmospheric density and credibility of the gameplay. In general, the aim is to prevent underage players from identifying with characters whose actions do not meet the ethical and moral requirements of our society. The games on offer and their implementation require a degree of social maturity and distance that cannot generally be assumed for young people aged 16 and over.

If a digital game contains risks of use that represent a particularly serious constellation of dangers, even for older adolescents aged 16 and over, and no appropriate and

³⁸ In accordance with § 14 para. 2 JuSchG.

effective precautionary measures are provided, this can lead to an age rating of “not suitable for minors” (USK 18).

Games for which the USK classification committees suspect that the indexing criteria of the Federal Agency for the Child and Youth Protection in the Media (BzKJ) may be met are not given an age rating.

5. Aspects of impact

5.1 Areas of impact

In the testing practice of the USK classification committees, the following central areas of impact form an essential basis for the content-related assessment of a possible developmental impairment for children and young people of the respective age group emanating from the game. These include, in particular, media that are excessively frightening, advocate violence or impair social and ethical values.³⁹

5.1.1 Pressure to act

If the players are forced to act quickly due to the time limit of a game task, a permanently high number of opponents or a consistently fast game speed, this stress factor can be included in the evaluation as pressure to act. The higher the demands on speed and coordination skills, the more likely it is that there will be too little opportunity to distance oneself from the action. Particularly in the case of games aimed at younger children, the criterion of pressure to act can come to the fore in the assessment of the specific age rating. The resulting stress reaction can lead to lasting overexcitement in younger children and consequently to impairments in their further development.

³⁹ See § 10b para. 1 JuSchG.

5.1.2 Violence

For the evaluation, the context of the content (location in time and space) and the type of violence⁴⁰ must be taken into account in accordance with the genre typology⁴¹ as well as the determination of whether - and if so, how - the use of violence appears to be the only means of conflict resolution. It is also important to determine whether it appears to be legitimized and rewarded. Something that also needs to be taken into account is a possible media interpretation of violent content, for example through problematization, trivialization or idealization. Media effects are always the result of a complex interplay of media content, personality and other factors. Monocausal approaches that focus exclusively on media content are considered outdated in media effects research.

The way in which violence is depicted audiovisually is of crucial importance for the classification of a game, as different forms of depiction can have different psychological effects on players. It should be noted that the effects vary depending on the age group. Depictions of violent acts, effects and consequences are to be assessed more critically if they are conveyed as credible, detailed and/or realistic due to their specific design.

Visualization, and in particular the visualization of hits, plays a central role in assessing the impact of depictions of violence. This can be implemented in various graphic styles, ranging from comic-like abstract to realistic. If the consequences of the acts of violence are implemented in detail and include the depiction of blood, the consequences of injuries (e.g. wounds, burns, acoustic implementation of broken bones, etc.) or even the possibility of severing limbs from opponent figures or comparably drastic visualizations, this is of particular importance with regard to the assessment of impairment or even danger.

⁴⁰ A typical feature of the computer game medium is the playing out of rivalry. According to Fritz, effectiveness, power, domination and control determine action in the game. See J. Fritz/W. Fehr [Eds:] Handbuch Medien: Computerspiele. Federal Agency for Civic Education, Bonn 1997.

⁴¹ Violence is designed in different ways. A distinction must be made between structural and symbolic violence, e.g. in management and strategy games, combative confrontations in beat 'em ups or other competition-like structures in sports games. Multiplayer games ultimately involve the victory or defeat of one side, as do armed battles in shooters.

5.1.3 War themes

War as a theme for game ideas and plots is also implemented in a wide variety of ways in digital games. This ranges from the implementation of board games to strategy games and shooters. For the assessment, it is important to determine whether the game theme itself or the specific graphic implementation of the game idea has a detrimental effect on the players.

Logistical, strategic and tactical considerations are important in military strategy games. Combat units, weapons and equipment are used as a means of conflict resolution. The time and place of the action/conflict are relevant. In military simulations, the focus is on the technical execution of the planned action, in which technical war equipment must be operated appropriately. The graphic level usually remains abstract or symbolic.

The main motive for playing military strategy games is to anticipate the actual military action in the player's mind or to reproduce strategic and tactical battle sequences. The more symbolic and abstract the conflict pattern is, or the more it relates only to the technical side of solving the set conflict, the more consideration must be given to whether the background story and game idea of "war" can have an impact.

The more real the political conflict pattern, the weapons used, the acoustic realization of battles or even personifiable actors are, the more likely it is to assume impairments or even dangers. A direct reference to a current or historical real war scenario in a credibly implemented audiovisual framework (e.g. the implementation in a first-person shooter with particular proximity to the action) must also be taken into account in the assessment. This applies in particular to a dense combat atmosphere and a high degree of immersion.

5.1.4 Fear and threat

Particularly in games aimed at children, sustained tension and an unsettling atmosphere must not lead to overexcitement or lasting anxiety. It should be checked whether the potentially frightening moments or the passages in which a threatening situation can be transferred to the players are balanced out by relaxing passages or

whether the game is designed to be dark and oppressive throughout. Distancing elements must create sufficient distance from the action in order to provide a clear cognitive and emotional framework for the respective age group.

5.1.5 Sexual content

The depiction of sexual content must be assessed in the context of the specific game. Sexual depictions with sexual references must generally be age-restricted. Sexualized language as well as corresponding gestures and innuendo are also relevant to the protection of minors and must therefore be included in the age rating.

In the case of sexual depictions below the criminal threshold of pornography, both the graphic depiction and the context must be taken into account.

5.1.6 Discrimination

Visual, textual or contextual references to discrimination must generally be taken into account when considering the USK rating and can also be of particular importance for older adolescents with regard to the assessment of an impairment. If there is evidence of the degradation of sections of the population or individuals because of their membership of such a group against a sexist, racist, religious or otherwise seriously discriminatory background in a game offering, the offense of endangering minors and possibly also the offense of incitement to hatred (§ 130 StGB) may also be fulfilled.

5.1.7 Inappropriate language

It is generally considered problematic when vulgar language plays a dominant role within a game. This effect can be intensified by addressing the players directly. The linguistic aspect becomes particularly relevant if the language used is clearly intended to appeal to young people. It must therefore be checked whether the language used is likely to impair the development of certain age groups.

5.1.8 Drugs

The issue of drug use can be an indicator of an age restriction. Both the depiction of consumption as well as a possible accompanying glorification of drugs as performance-enhancing and promising must be assessed in terms of their severity and significance for the effect on minors and possibly taken into account in the fundamental question of age classification. The use of icons, names etc. of real, legal and illegal drugs should be given particular consideration.

5.1.9 Gambling issues

The participation of minors in games of chance is generally prohibited, as this can lead to the medically recognized clinical picture of a gambling addiction⁴² with serious psycho-social consequences and considerable financial risks for those affected. Further details are regulated in particular by Section 6 JuSchG, the State Treaty on Gambling and Sections 284 et seq. of the German Criminal Code (StGB). Pursuant to Section 3 (1) of the State Treaty on Gambling, gambling is deemed to exist if a fee is charged for the acquisition of a chance to win and the decision to win depends entirely or predominantly on chance. It is imperative that a prize of not insignificant financial value is offered for participation.

If digital games are not subject to the statutory gambling ban, the age classification of digital games must take into account those game elements for the protection of children and young people that are likely to impair or endanger the personality development of children or young people with regard to their attitude towards participating in gambling. In particular, this includes game content that can lead to a habituation to or trivialization of gambling by promoting a positive attitude towards gambling, contributing to desensitization to gambling losses or creating unrealistic expectations of winning.

Specific indications for the assessment of the protection of minors may result from the storyline (story and dialog), but also from features like the centrality of the gambling

⁴² So-called "gambling disorder", according to the diagnostic criteria of ICD-10 (International Statistical Classification of Diseases).

theme (e.g. proportion of the overall game), the conveyance of a typical arcade atmosphere (e.g. through the operation of casino-type virtual gaming machines) or gambling-like mechanisms and designs and their embedding in a child-friendly setting. Increasing the pressure to act and strengthening the potential for identification must also be taken into account. Non-realistic visualization or functionality (e.g. use of "trials" instead of virtual currency) and the interruption of gambling-like elements by other game activities can have a distancing effect.

5.1.10. Socio-ethically disorienting role models

Role models conveyed in the game can be taken into account in the age rating, as children and young people in the early adolescence phase are also guided by media role models. Relevant representations in the context of age rating are, for example, criminal and sexualized as well as gender-discriminatory role models. Criminal role models are particularly present when criminal acts are trivialized in the game. For example, robberies and illegal car races are portrayed as adventures or criminal organizations are glorified.

In sexualized and gender-discriminatory role models, gender-specific behaviors and/or beauty ideals in particular are uncritically portrayed or trivialized in the game, which can lead to an objectification and/or reinforcement of gender stereotypes. This understanding of roles can potentially convey a distorted image of gender relations to young players, as they lack the ability to critically reflect on such representations and distance themselves from them. This problem can be conveyed through graphic representations, narrative elements or cinematic productions. Examples include the depiction of gender-specific stereotypes that show game characters in subordinate or sexualized roles or poses, voyeuristic camera angles or the degradation of characters to sexualized objects.

5.2 Impact factors

Impact factors are aspects that can have a strengthening or weakening effect on the assessment of the impact areas identified in the test object. They relate to the specific design of the assessment object and its influence on the impact areas. In the context

of practical testing, these impact factors are taken into account when assessing the content of a possible developmental impairment caused by the game for children and adolescents of the respective age group.

5.2.1 Visual and acoustic implementation of the game idea

Both the visual and the acoustic implementation of a game idea are essential aspects in relation to the evaluation of game offerings in terms of the protection of minors. The realism of the presentation plays a decisive role here. A realistic-looking setting can also have a certain affinity with young people, which must be taken into account in the assessment.

5.2.2 Gameplay

Understanding the gameplay is a basic prerequisite for being able to weigh up the interrelationships between the impact factors of the overall game offering. Which genre does the specific gameplay correspond to? What tasks are set for the players? What are the in-game conditions for finding solutions to problems, removing obstacles, attacking and defeating enemy characters? What must be done to be successful? What does the reward system look like? All aspects of the action requirement are relevant here. The gameplay also relates to the structure of the game (linear, open world) and the pressure to act.

Other relevant factors are tasks and missions within the game story: How can game objectives be completed? Are there non-violent options? If game objectives can also be achieved without violence (e.g. sneaking, communication, undetected infiltration), this can be relativizing in terms of the impact of a game.

Furthermore, it is important to determine how the actual game objective and the individual game tasks are set, e.g. it is important which role the players take on when controlling a game character: Is it the side of good or evil, do these sides mix, are virtual actions required that are considered criminal in real life or can/must the players control their own game characters in such a way that people not involved in the actual gameplay are attacked without sanctions?

Lists of achievements or trophies, comments made by the protagonist or other characters in the game world or the weighting and focus of individual game elements should be included in the evaluation. It can also be relevant whether controlling the game character requires special physical effort, for example via certain input devices/controllers, which can contribute to increased identification with a specific game plot.

5.2.3 Atmosphere

The atmosphere aspect describes the mood that is created during the game. In essence, it characterizes the communication of the experience as a whole. The creative means by which the program achieves a specific mood must be determined. Different aspects can simultaneously be responsible for the prevailing atmosphere in a game: the general theme of the game, the storyline, the credibility of the setting, the degree of immersion, the sound effects and musical backdrop, the linguistic implementation, a possible affinity with young people, the arc of suspense, the potential for fear (for example through targeted shock moments) or the speed of the gameplay and the perspective from which the game character is controlled.

The more intense a combative or even aggressive atmosphere is conveyed within a game, the more likely it is that the game will be considered to be too demanding, frightening or disturbing and a higher age rating is likely. The actual appeal of the game and the potential for identification must be determined and evaluated. Believable environments based on reality are more suitable for establishing a possible impairment than abstract or fantastic scenarios.

5.2.4 Realism

The closer the game world is to real places and events, the greater the degree of realism. Even if these places are not named or are only given fantasy names, the parallels and proximity to the recreated locations are decisive. Events or battles based on actual conflicts can also be close to reality. However, as a rule, they do not reflect the reality of children and young people's lives. This is the case, however, with settings that correspond to the everyday lives of children or young people. Examples of this

would be scenarios that replicate schools, residential areas, shopping centers, dormitories, clubs and the like. Such proximity to reality or the reality of children's or young people's lives must be taken into account in the assessment, especially if acts of violence become the focus of the gameplay.

5.2.5 Credibility

The credibility of a game character, an environment or a game plot is conveyed by the overall mood, the narrative density of the game offer and the creative and functional means of expression of the gameplay. These include, for example, believable movement sequences of the game characters or clear feedback elements for the players. The interplay of the various factors for the credibility of a game can make distancing difficult, as the gaming experience can appear coherent and consistent in itself and thus a higher degree of immersion can be assumed for players. This does not necessarily result in a developmental impairment. However, in the context of scenarios relevant to the protection of minors, immersion must always be taken into account in the assessment.

The aspects of realism and human likeness do not necessarily have to play the decisive role but are often directly related to these considerations.

5.2.6 Human likeness

If the enemy figures or acting characters appearing in the violent game are predominantly human, this has consequences for the rating. This is because it can be assumed that human-like characters offer a higher potential for identification with the game actions and thus parallels to the player's own reality of life are more likely to be suggested than is the case with games with non-human characters.

Human likeness is not only determined by how realistically the game characters have been modeled on a real person in their outward appearance but is also determined by other factors such as animated behavior and their individuality. This means that even fantastic game characters such as aliens or monsters can appear human-like if they are conveyed as human-like through audiovisual means of expression. This can also apply if enemy characters are explicitly introduced in the story as non-human beings

but nevertheless suggest the association "human" during the course of the game. An important indication of this is the design of the characters' ability to suffer. Since animals are also creatures capable of suffering, the virtual injury and elimination of game characters in animal form must also be taken into account in the evaluation.

This definition therefore goes further than the criminal law concept of human likeness. This is because in the case of prohibited depictions of violence (Section 131 StGB), the resemblance to a human being is determined solely by objective standards of the external appearance of the character.

5.2.7 Youth affinity and identification potential

An affinity with youth exists when content or characters are thematized that play a central role in youth culture or in the reality of young people's lives. The choice of music, clothing, accessories or the behavior and language of the acting game characters can also have an affinity with young people. Form and design are geared towards the assumed interests of minors. This makes it easier for younger players to identify with the game or the characters. An established youth affinity can be decisive for a higher classification if not only offers of identification are conveyed in this way, but also role models that are considered detrimental to the development and education of minors in community skills and personal responsibility. This includes, for example, the fear of imitating behavior to resolve conflicts.

5.3 Risk dimensions in the use of digital games

5.3.1 Communication and contact functions

Communication and contact functions include all functions of a game or the platform that enable interaction with users to communicate and establish contact.

Children and young people have a right to participate in digital space. It is essential for their personal development that they can also develop communicatively and participate

in this way.⁴³ However, the use of communication options within games can also be associated with risks for children and young people. The risk lies in a possible negative confrontation with third parties who could use these mechanisms with malicious intent. There is a risk that unrestricted and uncontrolled chat or comment functions that do not offer any options for reporting or blocking users can lead to offensive or inappropriate interactions, including cybergrooming, cyberbullying, cyberstalking, the abusive dissemination of intimate content or confrontation with age-inappropriate content.

Impairments to personal integrity in connection with communication and contact functions are potentially very far-reaching and can affect the psychological, social and/or sexual integrity of children and adolescents.

Depending on the type of media, different levels of impairment can arise with different degrees of impairment. It must be analyzed in each individual case which interaction possibilities exist in the game and whether this results in increased interaction risks, especially for younger players. It is irrelevant whether it is a function for synchronous, temporary exchange (e.g. live chat) or, for example, a longer visible exchange format such as direct messages or forums. The type of media used for the exchange is also initially irrelevant - be it text, audio, images or video -, any interaction must be recorded. In-game systems that are not initially intended directly or solely for communication between users can also be included, provided they can be used (with a high degree of flexibility) for communication - for example, if letters or books can be written, audio files recorded, surfaces painted or signs inscribed, which can then be found and read/viewed/listened to by other users in the game.

Possible precautionary measures include community guidelines (these should be designed to be suitable for children, especially in the case of low requested age ratings) and their enforcement, word filters, the option to block other users, the moderation of

⁴³ See BzKJ, Gefährdungsatlas: Digitales Aufwachsen vom Kind aus denken - Zukunftssicher handeln, 2nd edition, p. 75.

chats and the option to report content⁴⁴, the reference to external prevention, empowerment and help services as well as the restriction of communication to selected people ("friends only"). The option of switching off the chat completely is also rated positively. If the communication and contact functions are part of the game but are offered via the corresponding platform, the measures implemented at platform level should be included.

If sensitive data such as real names or location data can be shared, default settings that prevent the disclosure of sensitive data are taken into account (see point 5.3.5). Word filters that prevent or warn against the disclosure of personal data such as place of residence, cell phone number and names of common communication platforms must also be taken into account in order to prevent communication from being shifted to other channels. On the other hand, the review process assesses negatively if the game rewards players or repeatedly prompts them to share their location or other highly personal data that could, for example, be used to make contact.

5.3.2 Purchase functions

The option to purchase additional digital content in games is now common practice and does not in itself pose a risk to the personal integrity of children and young people. The purchase functions can include, for example, small additional items that provide more variety in the game (e.g. bonus levels, "skins" such as clothing for game characters), virtual coins and other forms of in-game currency as well as subscriptions and upgrades (e.g. to deactivate advertising).

Depending on the design, however, there may be risks to the personal integrity of children and young people that must be taken into account in the age classification.

Impairments of personal integrity in connection with purchasing functions can primarily affect the decentralized integrity (freedom of choice and commercial autonomy) but

⁴⁴ Reporting options should be designed in a child-friendly way, especially in the case of low age ratings, include a free text field to justify the report and refer to appropriate advice and support services. Providers should offer feedback on reports made and the opportunity to appeal against decisions made.

can also have an impact on other areas of personal integrity, such as social integrity, if purchased virtual goods function as status symbols.

It must be examined whether minors are already able to control their impulses and distance themselves from the purchasing mechanisms due to their cognitive and emotional maturity. It must also be considered whether minors are able to understand the mechanisms of the payment systems and assess their risks in order to make a conscious and informed purchase decision. If game currencies are used, aspects of the transparency of the payment system and the way it works must be taken into account, as there is a risk that younger players could lose track of their spending.

Potentially burdensome elements, especially in their interaction, are, for example, those that focus on the purchase of products, pay-to-win principles, risky designs of timers (time-limited availability), loot boxes (loot boxes containing virtual items and/or additional content), discounts, intermediate currencies, residual amounts of currencies, concealed costs or cost increases, lack of information on the obligation to pay, intrusive advertising and direct appeals to buy in language suitable for children

Precautionary measures could include the option of deactivating or restricting purchases (also via parental guidance tools in the game or on the respective platform), limiting purchase offers, deactivating specific purchase functions, age-differentiated spending limits and a transparent presentation of purchase content and currencies. General design measures and game design are also included, e.g. if an unimpeded game flow is also possible without purchases.

5.3.3 Gambling-like mechanisms

Gambling-like mechanisms primarily include so-called "simulated gambling". In this context, "loot boxes" can represent an element of a gambling-like mechanism. In contrast to the content-related impact aspect "gambling theme" (see point 5.1.9), the focus of "gambling-like mechanisms" is not on content-related representations, but on patterns of action at the level of usage risks. The focus here is on the possible risks of adopting certain gambling-related practices or views that can be promoted by

gambling-like mechanisms. They can permanently disrupt the personal integrity of children and young people, particularly in the areas of psychological integrity (inner autonomy) and decisional integrity (freedom of choice, commercial autonomy).

Potentially onerous elements in this context are those that focus on the use of gambling-like mechanisms, e.g. where important rewards for the player's success can be obtained via gambling-like mechanisms. This may be the case, for example, if virtual stakes are required for the randomized receipt of virtual goods (e.g. special weapons or skins) and the random objects are highly attractive or exclusive because they grant special advantages in the game or are associated with an increase in reputation. The potential risk to the personal integrity of children and young people through gambling-like mechanisms can increase in conjunction with purchase functions (see point 5.3.2) and/or with mechanisms to promote excessive media use (see point 5.3.4). Examples of this include when stakes must either be paid for with real money through purchases or earned through long periods of use. The display of near-winnings can also be a stressful element.

It must be examined whether players already have sufficient impulse control and the necessary self-regulation skills due to their cognitive and emotional maturity to be able to resist the massive stimulating effects of gambling through autonomous decision-making. Only with these prerequisites are players able to distance themselves from the increased incentives to buy and the pressure to play excessively, so that a risk to personal integrity cannot be assumed.

Precautionary measures could include, for example, age-differentiated spending limits, display of purchases made to date (including total amount), transparent presentation of content and the indication of winning probabilities, possibly in conjunction with real cost estimates and options for blocking one's own account for corresponding functions. This also includes general design measures and game design, e.g. by ensuring an unimpeded game flow without the use of gambling-like mechanisms. The deactivation or restriction of gambling-like mechanisms via parental guidance tools is also conceivable as a youth protection measure in this area.

5.3.4 Excessive media use

Games that contain mechanisms that tempt players to play for an excessively long period of time must be taken into account by the USK's classification committees when determining the age rating. These mechanisms include, for example, push messages, season or battle passes, loot boxes, incentives to play at certain times (playing by appointment, wait to play) or reward systems for frequent and long-term play, such as comeback gifts, or sanctions for inactivity (e.g. loss of game progress or game characters). Rewards for logging in regularly are also relevant.

When evaluating digital games, the age at which the game mechanisms can be understood must be examined. The decisive factor is whether players have the ability to distance themselves and self-regulate in order to recognize possible manipulative elements and control their gaming behavior accordingly.

Mechanisms that promote excessive media use could affect the personal integrity of children and adolescents in various dimensions, for example through negative effects on psychological integrity (e.g. inner autonomy), social integrity (e.g. relationship management) and also on decisional integrity (e.g. freedom of choice). Games with so-called pay-to-win mechanisms, loot boxes, comeback gifts and login bonuses in particular can have an impact on players by exerting pressure to play excessively, as children and young people often do not have enough money of their own and are therefore tempted to play a lot in order to make faster progress in the game without any paid benefits. There is a risk to social integrity if the game exerts a high level of social pressure to obtain special advantages for other players (e.g. guild members) by spending an excessive amount of time.

Precautionary measures could include deactivating push notifications so that children in particular cannot reactivate them on their own, limiting the playing time or deactivating or restricting loot boxes and season or battle passes.

5.3.5 Data sharing with third parties

Mechanisms that favor the transfer of inventory and usage data to third parties without permission, even though data protection regulations are essentially complied with or at least appear to be complied with, are taken into account in the age assessment.

The primary focus of the age rating of digital games is not the protection of data, but rather the prevention of risks to the personal integrity of children and young people associated with the accessibility of this data.⁴⁵ Depending on the type of data that is shared, different areas of the personal integrity of children and young people could be affected. For example, the disclosure of inventory data (e.g. name, age, place of residence, etc.) can potentially compromise sexual integrity (sexual self-determination), while the disclosure of usage data (e.g. media usage in terms of genre, duration, frequency, etc.) could compromise the decisional integrity (freedom of choice, commercial autonomy).

It must be examined whether players have the option of displaying or sharing their location with other game participants or whether they are tempted to give false consent by using mechanisms that present or reward the disclosure of data as desirable, for example through repeated prompts ("nudging"). The extent to which it is possible to avert these risks by restricting user accounts must also be taken into account.

It is a relief if the default setting asks whether the location should be shared and if parents have the option of selecting age-appropriate settings together with their child. Default settings in accordance with § 24a Para. 2 No. 6 JuSchG can also be taken into account:

- User profiles can neither be found by search services nor viewed by people who are not logged in.
- Location and contact details as well as communication with other users are not published.

⁴⁵ Cf. BT-Drs. 19/24909, 66.

- Communication is restricted to a group of people selected in advance by the users themselves.
- Use is anonymous or under a pseudonym.

5.3.6 Appeals to buy that are not age-appropriate / problematic advertising content

The inclusion of advertising and non-age-appropriate appeals to buy through advertising references to other media and their possible negative effects on the personal integrity of children and young people must be given appropriate consideration by the classification committees as part of the age assessment.

In particular, advertising could impair children's and young people's decisional integrity (freedom of choice, commercial autonomy). In addition, however, advertising could also impair psychological integrity (e.g. inner autonomy) and social integrity (e.g. claim to prestige inside a community).

There are exonerating aspects if advertising is not an integral part of the game or gameplay and is made recognizable. Negative effects are possible if the consumption of advertising is aimed at children or young people and impairs their personal integrity. This is the case, for example, when users are rewarded for watching advertising videos. It could also have a negative impact on the personal integrity of children and young people if the game is frequently interrupted by advertising.

Classification committees also take into account whether the game contains advertising for media that are more relevant to the protection of minors than the actual gameplay.

6. Consideration of signs of unconstitutional and terrorist organizations

The use of emblems of unconstitutional and terrorist organizations is generally punishable under Section 86a StGB and only permissible within narrow limits in

individual cases under Section 86a para. 3 StGB in conjunction with Section 86 para. 4 StGB (social adequacy).⁴⁶ According to established case law, the offence is also not committed if the sign is obviously used for the purpose of criticizing the unconstitutional and terrorist organization, e.g. if the swastika is crossed out or if it is used in a recognizably caricature-like manner (teleological limitation of the offence).

If prohibited symbols within the meaning of Section 86a StGB are used in digital games, this can have relevance under both criminal law and youth protection law. At the level of criminal law, the protected interests of Section 86a StGB (free democratic basic order/public peace/reputation of the Federal Republic of Germany abroad) are weighed against the freedom of art in particular, unless there is already a limitation of the offense. At the level of youth protection law, the socially appropriate use is taken into account incidentally in the context of the examination of a possible endangerment of minors, insofar as it is relevant for the existence of endangerment of minors.

The USK classification committees examine whether endangerment of minors (in particular glorification or trivialization of Nazi ideology, brutalization through trivialization of National Socialism) can be determined which then excludes the award of an age rating by the OLJB in accordance with § 14 JuSchG. When deciding on the awarding/refusal of an age rating, a balance must also be struck between artistic freedom and the interests of the protection of minors in the case of games that contain prohibited symbols in accordance with Section 86a of the German Criminal Code (StGB) as with any other digital game. If no indications of a risk to minors are identified in the review process, taking social adequacy into account, the game is reviewed in a second review step in accordance with Section 14 (1) and (2) JuSchG for possible harm to minors.

In order to assess the potential for impairment of digital games that contain symbols of unconstitutional and terrorist organizations pursuant to Section 86a StGB (in particular

⁴⁶ A review result by the USK review bodies and an age rating by the OLJB do not correspond to a final review of prohibited offenses under criminal law and do not constitute comprehensive protection against possible criminal prosecution.

National Socialism), their use must be examined on a case-by-case basis. In particular, the framing of the context of the depiction (e.g. a differentiated-critical approach to historical events, purely fictional material with dystopian scenarios or satires exposing the ideology) must be assessed. The players' options for action should be analyzed for their potential to convey socially and ethically disorienting messages.

Children and younger adolescents in particular often do not yet have sufficient social and political (orientation) knowledge or established morals to be able to correctly differentiate and classify fictional content from historical events. They are in the process of moral development, in which they develop humanity and learn to link their feelings with moral principles. The historically and contextually non-embedded and possibly positively connoted depiction of symbols of unconstitutional and terrorist organizations can lead to children not learning to correctly assess the meaning of the symbols.

In order to avoid identification with the symbols of unconstitutional and terrorist organizations, the role and the clearly identifiable mission of the game characters to be controlled must be evaluated against their ideology (good-evil scheme). It should also be taken into account that young people in particular are in an intensive phase of finding their identity, in which the predetermined moral boundaries of society are tested and questioned. In the course of this, the use of symbols of unconstitutional and terrorist organizations in media products can attract particular attention and significance due to the supposed breaking of taboos.

7. Indications of danger to minors

During the assessment, a decision must be made as to whether a game is not only harmful to minors, but whether it crosses the line into youth endangerment. When assessing this, the indexing grounds of the Federal Agency for the Child and Youth Protection in the Media (BzKJ)⁴⁷ must be applied and violations of Section 15 Para. 2

⁴⁷ The Federal Center for the Protection of Children and Young Persons in the Media (BzKJ) at: <https://www.bzkg.de/>



(Serious Harm to Young Persons according to JuSchG) must be identified. § Section 14 para. 4 sentence 4 JuSchG must be observed, as must the USK test principles in this context, section 9 para. 13.