

Guiding Criteria of the  
Entertainment Software Self-Regulation Body (USK) for the  
evaluation of computer and video games  
in accordance with the Legislation on Youth Protection.

Agreed and brought into force by the Advisory Council of the USK 2011

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## 1. Preamble

The Entertainment Software Self-Regulation Body (USK) is the institution which oversees voluntary self-regulation in the computer games industry. Since its foundation in 1994 it is one of the principal institutions in the field of the protection of children and young people with regard to computer and video games. In accordance with the Children and Young Persons Protection Act (JuSchG), age classifications are a task of the Ministries for Youth of the individual Federal States. In line with this, age approval is always decided by a Permanent Representative of the Supreme Youth Authorities of the Federal States. Consequently, since 2003, the USK under its auspices and in conjunction with the Supreme Youth Protection Authorities of the Federal States undertakes the task of age classification for computer and video games. The shareholder of the non-profit organization is the industry association of the German games industry “game – Verband der deutschen Games-Branche e.V.”.

Nowadays, computer games have grown to be an integral part of our everyday culture and are also acknowledged for their cultural significance. Technical possibilities and aesthetic expression can interconnect allowing games to integrate characteristics of an art form in contemporary entertainment. Through the interactivity of the medium, developers and players alike can express themselves, critically examine society and its processes and reflect upon reality, development and change.

The significance of computer games as part of the everyday life of children and young people has been increasing constantly for years. In comparison to other media, increasingly more time is spent on the experience provided by digital games on the PC, consoles or mobile platforms. At the same time, players can now be found in all social and age groups. In addition their parents are also more and more likely to already have acquired experience with computer games themselves.

Today, children and adolescents grow up in households with a wide range of media. The media equipment of families with smartphones, computers/laptops, Internet access and television sets has reached a saturation level of almost 100%. Almost three-quarters of households possess a stationary gaming console, and more than



half of families with children aged 12-19 possess a portable gaming console<sup>1</sup>. The smartphone is the first choice when it comes to young people's own device ownership. Virtually all girls and boys have their own smartphone, which "enables many different media activities and multifunctional use<sup>2</sup>".

Many children start to become interested in digital games early on in their school life. "Two thirds of six- to 13-year-olds are interested in the subject of "computer/console/online games". Two thirds of children regularly play digital games across all gaming platforms, i.e. computer, console, tablet or smartphone.<sup>3</sup>" As they become older they are encouraged to do so more by their peer group than by their parents. Thus children and adolescents also find their way into computer games from various genres independently from their parents. From about the age of 12, all genres can be mastered from a technical perspective. For parents who are not present when their child is playing, this may mean that they are unable to always know in full which new experiences their children are getting into and might require further processing. This is why the informative and orienting capacity of age classifications is particularly important for the purchase of games.

Children and young people have a right to be protected against media content and depictions that might harm them. The aim is, as far as possible, to achieve the unimpaired development of children and young people or their progress to becoming autonomous and integrated members of society within the goals of the Youth Media Protection agreements.

With regard to youth protection relevance of contents and depictions, in the case of computer games, the specific characteristics of this medium must be taken into

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<sup>1</sup> Vgl. Medienpädagogischer Forschungsverbund Südwest [Hrsg]: JIM-Studie 2018 Jugend, Information, Medien, Basisuntersuchung zum Medienumgang 12- bis 19-Jähriger in Deutschland, Stuttgart, November 2018, page 6

<sup>2</sup> Ibid, page 8

<sup>3</sup> Medienpädagogischer Forschungsverbund Südwest [Hrsg]: KIM-Studie 2018, Kindheit, Internet, Medien, Basisuntersuchung zum Medienumgang 6- bis 13-Jähriger, Stuttgart, Mai 2019, page 52



consideration at all times. In particular, interactivity and perception of self-efficacy<sup>4</sup> present considerable differences when compared with other media such as films.

The Guidance Criteria for the evaluation of computer games in accordance with the Legislation on Youth Protection are based on the applicable statutes, the principles of the USK, scientific findings and the case law from more than 48.000 classification procedures over 26 years, as well as the general debate in society.<sup>5</sup> Thus it is self-evident that social values and standards become part of the consideration too, but exclude evaluation based purely on individual taste or personal, short-term political opinions.

These Guiding Criteria serve first and foremost as a basis for the official committee of the youth protection experts when it comes to evaluating the risks of possible negative effects on the development of children and young people when they play computer games unsuitable for their age group. They provide support in the decision-making process. The Guiding Criteria of the USK are decided upon and adjusted by the USK Advisory Council.

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<sup>4</sup> See C. Klimmt: *Computerspiele als Handlung. Dimensionen und Determinanten des Erlebens interaktiver Unterhaltungsangebote*. Herbert von Halem Verlag, Köln 2006.

<sup>5</sup> Some aspects are not taken into account: this does refer to components which are not intrinsic to the game, such as User Generated Content or payment systems. They apply in the case of computer game contents available via the Internet. Here the regulations of the Youth Media Protection State Agreement apply. However these are not relevant for evaluating game content available only on data media and thus the work of the USK in line with the Children and Young Persons Protection Act, and for this reason are not taken into consideration in the Guidance Criteria. The existence of reliable characteristics in games encouraging a pathological gaming behaviour which can be defined as addictive is disputed scientifically, just as is its applicability in the context of youth protection. For this reason, at present, they are generally not taken into consideration when it comes to the evaluation.



## 2. Terminology

### 2.1. Computer games as objects of evaluation

Regardless of the way they are being distributed, and in contrast to films and books, computer games are, first and foremost, interactive experiences. Most importantly they serve as entertainment and conform to agreed upon rules with respect to types of genre, corresponding requirements for action on the part of the player and specific competitive and reward mechanisms.<sup>6</sup>

### 2.2. Target group of the evaluation in accordance with the Legislation on Youth Protection

The question of what the responsible persons for the decisions on age evaluation assume a child or a young person to be is of considerable importance for the decisions. Therefore, the USK principles state: "A game may only be passed as suitable for an age group if it cannot impair the development or progress of any cohort within said age group. This process is aligned towards those aged under 18 who are particularly susceptible to endangerment rather than to the average child or young person. Extreme cases are excluded".<sup>7</sup>

### 2.3. Harmful impact on development

Harmful impact is defined to be inhibitions, behavioural disturbances or damage caused by overstimulation, excessive stress or overexcitation. In particular the content of games "which inhibit character, moral (including religious) and mental development, which cause disturbance or damage or which exert a disorienting effect in social ethics terms [may impair] the development of children and young people or their progress to becoming an autonomous and integrated member of society [...]".<sup>8</sup>

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<sup>6</sup>This category does not include games for the purposes of information, training or teaching which as per Article 14 Section 7 of the Children and Young Persons Protection Act come under the Provider's own rating and are allowed to be marked with "Information program" or "Educational program".

<sup>7</sup> Article 19 Section 2 of the USK General Policy Statement.

<sup>8</sup> Article 19 Section 2 of the USK General Policy Statement.



It needs to be examined whether important game elements can have an effect on players and if this is the case, on which age groups.

#### 2.4. Minors at risk

Minors at risk are defined as children and young people who display an increased number of risk factors that might impair their development towards becoming an autonomous and integrated member of society. Usually the causes are to be found in the family and/or social environment.

In research, the prevailing view has emerged that the portrayal of violence poses a risk different from individual to individual. As a result, this can apply especially to young people who show high potential of aggression and whose life situation is marked by social isolation or even by their own experience of violence. However, current research into the impact of the media no longer assumes a monocausal or direct relationship between media use and an impact on the personality of children and young people.<sup>9</sup>

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<sup>9</sup> Cf. M. Kunczik/A. Zipfel: Gewalt und Medien. Ein Studienhandbuch. Böhlau-Verlag, Köln 2006.



### 3. Presumption of effect

The USK General Policy Statement defines the basic approach for the identification and assessment of adverse effects of computer games: "All impairments need to be accorded due consideration in conjunction with the overall impact of the game. Impairments may arise as the result of the content of the image medium or as a result of its details."<sup>10</sup> Overall it is irrelevant whether the users of the game play through to the very end or only play using certain features or at times only individual modes, such as the multiplayer mode. Decisive for the evaluation therefore is the consideration of the game as a whole in the age evaluation.

When making a decision, the degree of ability to distinguish fantasy from reality which minors are trusted to be capable of in the cognitive and emotional-moral classification of media content and depictions depending on age plays a major role. The ability to distinguish fantasy from reality or the media-specific interpretation skills result in the fact that the player, based on his life and media experience, does not confuse the real world with the virtual world.

With computer games, this includes both the ability to decode graphical patterns and to classify the events into a storyline/genre type already known to the player, as well as the related interpretation of combative or humorous elements in game's storylines. Ideally, in the different worlds, ideas and behaviour patterns are developed and applied appropriately in each case by the ability to distinguish fantasy from reality. Certain transfer processes between the different worlds are included in the usage by the player.<sup>11</sup>

If an unambiguous distinction is apparently hampered by certain game elements, so that risky transfer processes may be possible, these may prove to be disturbing factors in the upbringing as an autonomous and integrated member of society.

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<sup>10</sup> Article 19, Section 2 of the USK General Policy Statement.

<sup>11</sup> Cf. J. Fritz/W. Fehr [Hrsg.]: Handbuch Medien: Computerspiele. Bundeszentrale für Politische Bildung, Bonn 1997.



The idea that reasoning and morality develop in a relevant manner depending on the age of a child or a young person is based to a large extent on the core concept of what is known as Kohlberg and Piaget's classification models.<sup>12</sup> The core aspects of the theory are the changing processes of recognition, adaptation and the acceptance of the different roles, as well as ultimately the acceptance and the shaping of an individual's ideas with respect to the understanding of one's role.

According to this, by the end of the first 12 years of life, the processes of preoperational, specific thought, the increasingly specific-operational thought (moral realism with both heteronomous and already autonomous moral ideas) right up to formal-operational thought have been completed. The search for generally-valid principles governing one's own actions, the solidification of autonomous attitudes to morality within society, takes place in conjunction with the transition. This process includes the understanding of functional relations and independently finding solutions to problems; it continues throughout life.<sup>13</sup>

Even if the developmental psychology classification model does not coincide exactly with the age classifications of the Youth Media Protection agreements, it is nevertheless basically suitable as a dimension to be taken into account for the evaluation of computer games in accordance with the legislation on the Protection of Young People and the estimation of risks to development dependent on the respective age.

The USK Classification Committees assume when considering the age classification "approved without age restriction" that the game contains no youth protection relevant contents. For the decision it is not of importance whether the game is

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<sup>12</sup>Kohlberg and Piaget's classification models assume that socialization is formed by cognitive-structural changes of the restructuring of the social self, the social world and the relationship between the two. Social knowledge, including the ability to make moral judgements, is bound to participation in groups and the interaction with the surrounding world.

<sup>13</sup>Cf. J. Piaget: *Das Erwachen der Intelligenz beim Kinde* (1936). Klett, Stuttgart 1969 and A. Colby/ L. Kohlberg: *Das moralische Urteil: Der kognitionszentrierte entwicklungspsychologische Ansatz*. In H. Bertram [Hrsg.]: *Gesellschaftlicher Zwang und moralische Autonomie* (S. 130-162). Suhrkamp, Frankfurt/Main 1986.



suitable or pedagogically of value for pre-school children, whether pre-school children can handle the game technically and content-wise, whether the tasks and graphics of the game have always been implemented in a child-oriented manner and whether text inserts and spoken language are understood.

The USK Classification Committees assume when considering the age classification "approved for children aged 6 and up" that children of 6 up to 11 years of age are developing the ability to perceive media depictions and contents in a differentiated manner and dissociate themselves from them. They constantly learn to distinguish between game world and reality, acquire their first differentiated media experiences and are able to cope with small doses of excitement and the pressure to act if relieved by rest periods. Media content and depictions can have an adverse effect particularly on the youngest in the age group if game elements are presented which permanently cast doubt on the fictional character of the game which allows it to be kept emotionally at arms' length.

The USK Classification Committees assume when considering the age classification "approved for children aged 12 and above" that 12 to 15-year olds develop the ability of dissociated perception and to differentiate between game world and reality to a higher degree than younger children. They possess more experience with the diversity and complexity of media. It can be assumed that they can cope with longer continuous tension and greater pressure to act in fulfilling game objectives. Their ability to distinguish fantasy from reality ensures that despite believable game scenarios, solving tasks, removing obstacles and conquering opponents does not have an adverse effect, as long as sufficient elements are presented which dissociate the game from reality. In the evaluation, the youngest in the age group are to be given special consideration.

The USK Classification Committees assume when considering the age classification "approved for children 16 and up" that 16 to 17-year olds already have diverse, systematic media experience and have knowledge of media production. It can be assumed that they can cope with longer continuous tension and greater pressure to



act in fulfilling game tasks without adverse effects to their self-development. 16-year old's ability to distinguish fantasy from reality can be limited by particularly powerful images in such a way that the concern for adverse effects on development is justified.

The USK Classification Committees assume when considering the age classification "not approved for young persons aged under 18" that the game in question may have adverse effects for 16 and 17-year olds. Even young people of this age classification find it difficult to dissociate themselves from the course of the game, particularly if the atmospheric density and the course of events are credible. The game content and implementation demand a degree of social maturity and ability to dissociate oneself from them which cannot generally be assumed in the case of 16 to 17-year olds.

Games of which the USK Classification Committees suspect that the indexing criteria of the Federal Department for Media Harmful to Young Persons might be fulfilled receive no age rating.

#### 4. Aspects of content pertinent to the evaluation

##### 4.1. Audiovisual implementation of the game concept

Both the visual and the acoustic implementation of a game concept are important aspects with regards to the evaluation of game content from the point of youth protection. Here, above all, the realism of the depictions plays a decisive role. The entire setting may be realistic if the graphics borrow from reality or try to imitate it. This is unlikely to be the case for completely abstract or fantasy settings. A setting with realistic elements may also exhibit at the same time a certain appeal to young people which has to be taken into consideration during evaluation: above all, depictions of acts of violence, their impact and results are then to be judged more critically if they are perceived as credible, detailed and/or close to reality because of their specific implementation.

##### 4.2. Gameplay

The understanding of gameplay is a basic pre-condition in order to be able judge the relationships of the influential factors of the game as a whole. Which genre does the gameplay correspond to? What objectives are set for the player? What are the games' internal requirements for solving problems, removing obstacles, attacking and defeating characters? What must be done in order to be successful? How is the reward system designed? Here, all aspects of the requirements for action are relevant. The gameplay also affects the layout of the game, obstacles to be overcome (linear, open world) and the pressure to act to which the gamer is subjected.

Other relevant factors are objectives and missions within the game story: Which way can objectives be achieved? Are there non-violent solutions? If objectives also have the option to be achieved non-violently (e. g.: sneaking, communication, undiscovered infiltration), this may have a moderating effect on the impact of a game. Furthermore it is necessary to determine how the actual objectives and the individual game tasks are realized, e. g.: it is important what role the player takes on while he is controlling his character: is he on the side of good or of evil? Are the two sides



mixed? Are virtual actions expected which in real life are considered to be criminal or can/must the player control his own character in such a way that as a result, during the game, bystanders are attacked without penalty?

The listing of Achievements or Trophies, own comments or the comments of computer-controlled characters in the game world, or the weighting and orientation of individual game elements are to be considered in the evaluation. It may equally be relevant whether controlling the character requires a particular body activity, for instance via certain input devices or controllers which may contribute to increasing the player's identification with a specific gameplay.

#### 4.3. Atmosphere

Atmosphere describes the ambience which is created during the game. It characterises in essence how the experience is transmitted overall. What must be determined is what creative means the programme uses to achieve a specific mood. Different aspects may be simultaneously responsible for the prevalent atmosphere in a game: the general game theme, the presence of the storyline it follows, the authenticity of the setting, the degree of immersion<sup>14</sup>, the sound effects and musical background, the use of language, the possible appeal to young people, the arc of suspense, the potential capacity to cause fear (for instance by deliberately placed shock moments) or also the verve of action and the perspective from which the character is controlled.

The more densely a combative or aggressive atmosphere is built up within a game, the more likely it is that possible excessive demands, fear or even impairment are to be weighted and a higher age classification seems likely. The actual attraction of the game and the identification potential must be determined and evaluated. In this case, credible surroundings borrowed from reality are more likely to constitute possible adverse effects than abstract or fantasy scenarios.

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<sup>14</sup>The degree of immersion in a virtual reality whilst at the same time the perception of one's own person is reduced, see R. A. Bartle: *Designing Virtual Worlds*. New Riders, Indianapolis 2004.



#### 4.4. Realism

The more the game world resembles real locations and events, the higher is its degree of realism. Even if these locations are not given names or only fantasy names, the parallelism and close resemblance to the places they imitate is decisive. Events or battles derived from real conflicts can equally exhibit closeness to reality. These however generally do not depict the reality of everyday life of children and young people. This is, on the other hand, the case for settings that reflect the everyday life of children or young people. Examples of these would be scenarios which display schools, residential areas, shopping centres, residential establishments and clubs among other things. Such closeness to reality or the life of children or young people must be taken into consideration when evaluating a game, in particular if acts of violence are the focus of the gameplay.

#### 4.5. Authenticity

The authenticity of a character, an environment or a game's story line is transmitted by the overall atmosphere, the narrative density of the game and the creative and functional means of expression of the gameplay. These include for instance believable movement animations of the characters or unambiguous elements of feedback for the player. The interaction of the various factors contributing to a game's credibility can make it difficult for the player to dissociate himself since the game experience can seem consistent and coherent and as a result, a higher degree of immersion of the player can be expected. This does not necessarily lead to impairment of development. In the context of youth protection scenarios however, immersion cannot go unheeded in the evaluation. The aspects of closeness to reality and human likeness do not necessarily play the decisive role but are often directly linked to these considerations.

#### 4.6. Human likeness

In a game containing violent action, if the opponents or characters largely take on a human shape, this has consequences for the evaluation. This is because it can be assumed that human-like characters have a higher identification potential with the



game's story line and thus parallels to the player's own life are drawn more readily than in the case of a game with characters of non-human appearance.

Human appearance is determined not only to the extent of how closely to reality the characters in their visual design are modelled after real people, but it is also determined by other factors such as the animated behaviour of characters and their individuality. Thus, even fantasy figures such as aliens or monsters may be considered human-like if they transmit human-like characteristics by audiovisual means of expression. This may even apply if opponents in the story have been expressly introduced as non-human beings and yet in the course of the game still exhibit characteristics which associate them with "human" characteristics. An important indicator of this is the characters' capability of suffering. Since animals too are creatures capable of suffering, the virtual injuring and elimination of characters in animal form is to be taken into account as well when it comes to the evaluation.

The above concept definition thus goes beyond the legal term of human likeness: in the event of prohibited portrayals of violence (Article 131 StGB) the resemblance with humans is decided purely in accordance with objective features of the outward appearance of the character.

#### 4.7. Appeal to young people and identification potential

An appeal to young people exists if contents or characters are a central theme in games and correspond to youth culture or the everyday life of children or young people. The choice of the music, clothes, accessories or the behaviour and language of the protagonists can exhibit an appeal to young people as well. Shape and design are orientated towards the assumed interests of minors. This makes it easier for younger players to identify with the game or the characters within. If an appeal to young people is determined, this can be decisive for placing the game in a higher age category if not only the opportunity to identify with the characters but indeed role models are provided, which can be considered detrimental to the development and upbringing of minors as socially integrated and autonomous individuals. This

includes, for instance, concerns that such behaviour might be imitated to resolve conflicts.

#### 4.8. Pressure to act

If the player is forced to take action quickly by a restrictive time limit for a game task, a constant high density of opponents or a general high pace of play, this stress factor becomes part of the evaluation in terms of pressure to act. The higher the demands on swiftness and ability to coordinate are, the more it is assumed that the possibility to dissociate the player from the game is too low. In particular in the case of games for children, this criterion may become the factor which decides the final age classification.

#### 4.9. Violence

For the evaluation, the context (localization in time and space) and the type of violence<sup>15</sup> depending on the genre<sup>16</sup> must be taken into account, as well as the determination whether - and if this is the case, in what way - use of violence appears to be the only means of resolving conflict. Also whether it is justified and rewarded is of importance. Equally to be taken into account is the possible media interpretation of violent contents for instance by showing them as problematic, underrating or idealizing it.

During the evaluation of the effects of the portrayal of violence, the general visualization and above all the hit and damage visualization play a central role. This can be implemented in various graphic styles, which stretch from comical-abstract to realistic. If the consequences of acts of violence are shown in detail and contain the depiction of blood, the results of injuries (e. g.: wounds, burns, acoustic feedback of breaking bones, etc.) or even the possibility of cutting off opponents' limbs or similar

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<sup>15</sup> The waging of conflicts with opponents is a typical characteristic of computer games as a medium. According to Fritz, in the game, effectivity, power, dominance and control determine the action. See J. Fritz/W. Fehr [Hrsg]: Handbuch Medien: Computerspiele. Bundeszentrale für Politische Bildung, Bonn 1997.

<sup>16</sup> However, violence is applied in different ways. Thus a distinction must be made between structural and symbolic violence e.g.: in management and strategy games, physical contests in Beat' em Ups or other competitive structures in sports games. Multiplayer games in the end imply the victory or defeat of one side, just as in armed conflicts in shooter games.



drastic visual effects, then this is of particular importance with respect to judging adverse effects or even the possible endangerment of young people.

#### 4.10. War

War as a theme for game concepts and actions is implemented in the most varied manners in computer games as well. The variety stretches from board games to strategy games up to shooters. It is important for the evaluation whether the game theme itself or rather the specific graphical realization of the game concept has a prejudicial impact on the player.

In military strategy games, logistical, strategical and tactical considerations on the use of the available armed forces, weapons, equipment, times and places are the means used for resolving conflicts. In military simulations, the focus is on the technical implementation of the planned action, where military units must be correctly operated. The graphical level remains mostly abstract or symbolic. The game motive in the case of military strategy games is above all in pre-empting actual martial events in the player's head or simulating the strategical and tactical course of events of a battle. The more symbolic and abstract the patterns of conflict are, or only related to the technical side of resolving the conflict, the more must be considered whether the background story and game concept of "war" may have an impact.

The more real the political patterns of conflict, the weapons used, the accompanying acoustic realization of battles or also the more individualized the protagonists are, the more likely it can be assumed that negative influences or even the possible endangerment of young people are. Also a direct reference to a real, current or historical war scenario in a credibly recreated audiovisual framework (e. g.: the implementation in a First Person Shooter with particularly close contact to the events) needs to be taken into account during evaluation. This applies in particular in the case of a dense battle atmosphere and a high degree of immersion.

#### 4.11. Fear and threat

Especially in the case of games aimed at children, continued tension and an unsettling atmosphere should not lead to overexcitement or sustained anxiety. It must be examined whether the possibly distressing moments or the scenes in which a threatening situation may be transferred to the player are balanced by scenes without tension or whether the game is designed to be sinister and oppressive throughout. Dissociating elements must create sufficient emotional distance to the events so that the age group in question can unequivocally recognise and place the title in its context by cognitive and emotional means.

#### 4.12. Sexual content

The portrayal of nudity must be evaluated in the context of any particular game. Sexual-oriented content with sexual references is, in general, to be labelled with an age restriction. Sexualised language as well as corresponding gestures and allusions are equally relevant to the protection of young people and thus to be considered in the evaluation. In the case of sexual imagery below the penal limit of pornography, both the graphical portrayal and the context are to be taken into account.

#### 4.13. Discrimination

Images or text as well as hints at discrimination to be found in the context are generally to be taken into account when considering the question of any rating and may have considerable importance when judging the negative impact even for older age groups. If indications of the humiliation of parts of the population or of individuals because they belong to a particular group where a sexist, racist, religious or other discriminating background are detected in a game, this may in addition fulfil the elements of the offence of Incitement to Racial Hate (Article 130 StGB).

#### 4.14. Language

It is basically considered to be a problem if vulgar language takes on a dominant role in a game. If the user is addressed directly, this effect can even be reinforced. The linguistic aspect may be especially relevant if by using expressions clearly directed at young people the intention is to create an appeal to young people. Thus an

examination must be made whether the language used is capable of adversely affecting certain age groups during their development.

#### 4.15. Drugs

The subject of drug use may be an indicator for an age restriction. Both the portrayal of consumption and also a possibly associated glorification of drugs as substances which increase performance and promise success must be judged with respect to their importance for the impact on minors and possibly considered for the basic question of age classification. The use of icons, names, etc. of existing drugs, whether legal or illegal, should be examined in particular.

#### 4.16. Gambling

The participation of minors in gambling is generally prohibited, as it can lead to the medically recognised clinical picture of a gambling disorder<sup>17</sup> with serious psychosocial consequences and considerable financial risks for those affected. Further details are regulated in particular by § 6 JuSchG, the State Treaty on Gambling and §§ 284 et seq of Criminal Code. According to § 3 (1) of the State Treaty on Gambling, a game of chance is considered gambling if a fee is demanded for the acquisition of a chance of winning in a game and if the decision of winning depends entirely or predominantly on chance. It is imperative that a profit of a not insignificant asset is promised for participation.

If digital games do not fall under the legal prohibition of gambling, the age classification of digital games must take into account those game elements for the protection of children and adolescents, which are likely to impair or endanger the development of the personality of children or adolescents with regard to their attitude towards participation in gambling. In particular, these are game elements that can lead to the habituation to or trivialisation of gambling by promoting a positive attitude towards gambling, contributing to desensitisation to gambling losses or creating unrealistic profit expectations.

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<sup>17</sup> „Pathological gambling“ according to the diagnostic criteria of ICD-10-CM (International Statistical Classification of Diseases)



Concrete indications for age classification can result from the narrative context (story and dialogues) and, among other things, from characteristics such as the centrality of the gambling theme (e.g. share in the overall game), the mediation of typical (affective) impressions of gambling houses (e.g. through the operation of casino-typical, virtual slot machines) or gambling-like mechanisms and designs and their embedding in a child-oriented setting. An increase in the pressure to act and an increased identification potential must also be taken into account. Distancing effects can be caused by an unrealistic visualisation or functionality (e.g. use of "attempts" or "tries" instead of virtual currency) as well as the interruption of gambling-like elements by other game mechanics.

In contrast to content-related criteria, non-content-related components, such as advertising, purchase appeals or in-game purchases (in connection with randomly generated rewards also known as "lootboxes") are not part of the age classification.

## 5. Consideration of symbols of unconstitutional organisations

The use of symbols of unconstitutional organisations is generally punishable according to § 86a StGB and only permissible within narrow limits in individual cases according to § 86a para. 3 StGB in conjunction with § 86 para. 3 StGB (social adequacy)<sup>18</sup>. Furthermore, according to established case-law, there is no criminal offence if the symbol is obviously used precisely for the purpose of criticising the unconstitutional organisation, e.g. if the swastika is crossed out or used for caricatural purposes (teleological limitation of the offence).

If forbidden symbols in the sense of § 86a StGB are used in computer games, this can be relevant both under penal law and youth protection law. At the level of penal law, unless there is already a limitation of offence, the objects of protection of § 86a StGB (free democratic basic order/public peace/ reputation of the Federal Republic of Germany abroad) are weighed against artistic freedom of expression in particular. Looking at the level of youth protection law, the socially adequate use of such symbols is taken into account incidentally during the examination of a possible endangerment of youth to the extent that it is pertinent to the existence of offences that would constitute an endangerment of youth.

The USK examination committees examine whether an offense against penal law in the form of youth endangerment (in particular glorification or trivialization of the NS ideology, brutalization by banalization of the National Socialism) can be ascertained which would prohibit the OLJB from awarding an age rating in accordance with § 14 JuSchG. In the decision as to whether or not to grant or refuse an age rating, even in the case of games which contain prohibited symbols as defined by § 86a StGB - as in the case of any other computer game - it is important to weigh artistic freedom against the interests of youth protection. If no evidence of a youth endangerment is found in the examination procedure, taking the social adequacy of the game into

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<sup>18</sup> An examination result by the USK examination committees and an age rating by the OLJB do not constitute a conclusive examination of penal law and do not constitute comprehensive protection against possible criminal prosecution.



account, the game will be examined in accordance with § 14 (1) and (2) JuSchG for a possible youth impairment in a second test step.

In order to assess the potential impairment of digital games which contain symbols of unconstitutional organisations as defined in §86a StGB (in particular symbols of 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 revealing the ideology) must be assessed. The player's options for action are to be analysed with regard to their possible conveyance of socially and ethically disorienting messages.

Children and young people in particular often do not have sufficient social and political (orientational) knowledge and no established morals that would allow them to correctly distinguish 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 portrayal of symbols of unconstitutional organisations can lead to children not learning to correctly assess the meaning of the symbols.

In order to avoid identification with bearers of symbols of unconstitutional organisations, the players' role and the clearly recognisable mission of the controllable characters must be weighed against their ideology (good-evil scheme). It should also be borne in mind that young people in particular are in an intensive phase of identity-finding, in which the given moral limits of society are tested and questioned. In the course of this, the use of symbols of unconstitutional organisations in media products might receive special attention and significance through the alleged breaking of taboos.

## 6. Indication for the endangerment of young people

In the evaluation, the decision must be taken whether a game not only has adverse effects on young people in the sense of impairment, but rather whether it crosses the line and is actually liable to harm or endanger youth. In the evaluation of this matter the criteria for placing games on the index list of the Federal Department for Media Harmful to Young Persons <sup>19</sup> are to be applied or offences against Article 15 Section 2 (liable to severely corrupt the young in accordance with the Children and Young Persons Protection Act) are to be identified. § Section 14 (4) sentence 3 JuSchG shall be observed in the same way as the USK Principles Section 10 (10).

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<sup>19</sup>Criteria for the index list of the Department for Media Harmful to Young Persons (BPjM) at:  
<http://www.bundespruefstelle.de/bpjm/Jugendmedienschutz/Indizierungsverfahren/spruchpraxis.html>.

