

# KJM

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LANDESMEDIENANSTALTEN

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31 October 2003

## **The new German regulation for the protection of minors and human dignity in the media – the first six months**

### I. The protection of minors and human dignity

Discussions concerning the amendment of the legislation governing the protection of minors and human dignity in the media in Germany gained particular momentum in April 2002 when a 19-year-old killed 16 students and teachers of his former school in Erfurt before committing suicide. Some quarters argued that excessive consumption of violent video games had been a contributory factor to his act. New legislation governing the protection of minors and the protection of human dignity in the media subsequently entered into force on 1 April 2003 with the Interstate Treaty governing the Protection of Minors in the Media ("Jugendmedienschutz-Staatsvertrag, JMStV") and the Federal Act on the Protection of Minors ("Jugendschutzgesetz, JUSchG"). While the latter covers all offline media, the JMStV applies to television services and other online media including the Internet.

The JMStV combines the principles of co-regulation and self-regulation in a novel regime under which providers of electronic media can self-regulate their services if they affiliate to a voluntary self-control organisation ("SKE"). The self-control organisations are certified by the Commission for the protection of minors in the media ("KJM") acting on behalf of the regulatory authorities as a non-state body.

The KJM was set up on 2 April 2003 as the first joint supervisory body in control of broadcasting and all other online services ("telemedia"), thus responding to the increasing convergence in the electronic media. The remit of the KJM is laid down in the JMStV which contains rules applying both to services distributed via television and to services distributed via the Internet. The KJM co-operates with other institutions for the purpose of securing an efficient protection of minors vis-a-vis broadcasting services and telemedia; to this end, it has joined forces both with the Bundesprüfstelle fuer jugendgefahrdende Medien ("BPfJM"), an institution set up at Federal level dealing with offline media, and with "jugendschutz.net", an organisation set up by the German states which monitors and controls the Internet. Both institutions have already been gaining experience regarding the protection of minors in the Internet for some time.

The KJM is part of the organisational structure of the 15 regulatory authorities in charge of commercial broadcasting in the 16 German states (Berlin and Brandenburg operate a joint regulatory authority). They provide the funding. The KJM is chaired by Prof. Dr. Wolf-Dieter Ring, the president of the Bavarian regulatory authority (BLM); the vice-chairman is Dr. Lothar Jene of the Hamburg regulatory authority (HAM). Six of the 12 members of the KJM are appointed by the regulatory authorities while four members come from the highest state authorities for the protection of minors and two members from the upper federal institutions for the protection of minors. Each member of the KJM also has a deputy. Under the JMStV, four of the members and four of the deputy members must be qualified as judges. The KJM acts independently; its decisions are binding. The office of the KJM will be located in Erfurt as specified in the JMStV; an appropriate structure is currently being set up to take over matters of organisation and co-ordination on behalf of the KJM. The activities concerning content issues, SKEs and the assessment of services provided are all effected by the regulatory authorities as under the previous legal regime; they co-operate closely with the chairman and his office as well as with the other institutions dealing with these issues.

Apart from aiming at the unified supervision of broadcasting services and telemedia, the new system for the protection of minors and human dignity in the media also seeks to strengthen self-control and self-regulation by the service providers themselves. By establishing or affiliating to voluntary self-control organisations (SKEs), the service providers take on responsibility for the protection of minors themselves to a considerably greater degree than to date, enhancing prevention and efficiency in this field. The scope of assessing issues concerning the protection of minors under a regime of self-regulation has thus been increased considerably while control by the KJM has been limited to some exceptional aspects once an SKE has

been certified. Apart from controlling the scope of assessment, the KJM also monitors the decision-making policy of all SKEs it has certified. Broadcasters not affiliating to an SKE are subject to regulation by the KJM via the licencing regulatory authority.

The KJM will certify self-control organisations for broadcasting services and telemedia in accordance with the regulations of the JMStV provided that the applicants can reliably prove that the staff they appoint are independent and well qualified for their task and include representatives of the major groups of society. The SKEs must ensure that all decisions are taken with due regard to the relevant issues. Apart from sufficient funding, the SKEs also have to establish guidelines for the decision-making processes for their staff so that they can reliably ensure the protection of minors. Following a first hearing conducted in May 2003, the KJM in its meeting on 18 June 2003 certified the Freiwillige Selbstkontrolle Fernsehen (FSF) as the first SKE in accordance with section 19 of the JMStV. The FSF acts on behalf of the commercial television services. The members of the KJM were in agreement that the application for certification presented by the FSF required only some minor amendments including a transparent and verifiable procedure for the appointment of the staff and the incorporation of all social groups in the staff. The certificate was eventually issued by the Berlin-Brandenburg regulatory authority which is the local regulator for the FSF; it applies for a duration of four years as of 1 August 2003.

By certifying the FSF, the KJM has thus paved the way towards regulated self-regulation as envisaged under the JMStV. The FSF has taken up its task as a self-regulatory body on the basis of the JMStV, now enjoying a considerable increase in competences compared to the legal framework applying before 1 April 2003. The FSF verifies that its members adhere to the legal stipulations concerning the protection of minors and human dignity. In the day-to-day application of the regulation, it will be of key importance for the television service providers affiliated with the FSF to apply the regulations in a responsible manner. Under the JMStV, the KJM can overturn a decision taken by the FSF with regard to a programme already televised only if the scope of assessment under the JMStV has been exceeded; in such a case the KJM may impose sanctions of up to € 500.000,-

Key to the new legal regime is the appropriate balance between self-regulation and the regulation of self-regulatory bodies as a back-up ("co-regulation" or "regulated self-regulation"). Under the concept of self-regulation, service providers can act at their own responsibility and are thus required to take competent decisions in a responsible manner. Under the concept of regulated self-regulation or co-regulation, the responsibility taken over by the service provi-

ders and the promotion of media literacy continue to be underpinned by a regulatory mechanism for the protection of minors. Under the German Constitution, the protection of minors ranks very highly; it qualifies as an objective of considerable importance for society as a whole. For this reason it is not possible to completely do away with measures contributing to the safe physical and mental development of minors and their protection against moral impairment.

The scope of assessment within which the SKEs can operate therefore requires "fine-tuning" in a very thorough manner. The experience gathered with the limited form of self-regulation which was operated prior to the JMStV entering into force proved that for a system of self-regulation to work well high standards must be met while the regulation of self-regulation has to ensure an indispensable back-up to warrant the effective protection of minors. The concept of "regulated self-regulation" is generally welcomed on principle; the SKEs which are set up and funded by the service providers now have to prove that they are able to take their decisions concerning the protection of minors in a responsible manner. Control by the KJM ensures that the new system works satisfactorily and that the concerns regarding the protection of minors and human dignity are not sacrificed for other considerations or interests.

The new regulations concerning telemedia services under the JMStV provide for a staged system for the protection of minors and present a considerable challenge for the KJM and the regulatory authorities. In broadcasting services, all types of pornography are now strictly prohibited. However, in telemedia services, some "minor" forms of pornography, certain contents put on the list of media likely to cause harm to minors for which restrictions concerning the distribution and promotion apply ("indexed contents") or some contents qualified as evidently causing serious harm to minors may be distributed provided that they are available only to so-called "closed user groups". The appropriate provisions for making such contents available to closed user groups is included in section 4 sub-section 2 JMStV. The distribution of child pornography, bestiality (sodomy) or pornography involving violence as well as the glorification of war continue to be absolutely illegal in all online services.

The KJM has already given intensive consideration to the requirements to be applied for the formation of closed user groups. In its meeting on 18 June 2003, it decided on the criteria it considers suitable for ensuring that such contents can be accessed only by adults while children and adolescents are prevented from accessing them. For this purpose, all potential users have to prove reliably that they are of age; this age verification must be conducted via personal contacts. In addition, users must authenticate themselves for each single order to

prevent minors from gaining access to such contents which are also detailed under section 4 sub-section 2 JMStV. In order to gain some insight into the positions held on this issue by the online service providers, the KJM set up a working group which has so far conducted more than 20 meetings with online service providers and similar organisations, including, among others, the Freiwillige Selbstkontrolle Multimedia (Association for the Voluntary Self-Monitoring of Multimedia Service Providers - FSM), trade associations, operators of age verification systems and experts specializing in Internet security. In the meetings, a key issue debated was the development and introduction at the earliest-possible stage of suitable age verification systems. This proves the considerable responsibility of the service providers in developing solutions and systems which meet the legal requirements. The KJM has also entered into a dialogue with Internet service providers with the aim of establishing rules and decisions in a constructive manner. Discussions on feasible and effective solutions for age verification systems and systems warranting the protection of minors have proven quite fruitful. In its meeting held on 24 September 2003, the KJM found that age verification systems based on the verification of the number of the personal identity card only would not be sufficient to meet the requirements laid down in the JMStV. On the other hand, the KJM considered the age verification systems presented by Coolspot AG and Vodafone D2 GmbH to be adequate to meet the requirements of section 4 JMStV provided they are applied appropriately. Once the systems are operational, the KJM will verify whether they are in fact suited to ensure the protection of minors in the way envisaged.

Under the JMStV, telemedia services must be equipped with a programme for the protection of minors (filter software) that has been certified by the KJM, if the service includes contents that might impair the development of minors. Concerning this requirement under the JMStV, the KJM has already laid down some key rules according to section 11 JMStV which covers programmes for the protection of minors, and is currently assessing the first applications for certification of such programmes.

The large number of applications for certification and other matters the KJM has received for assessment since it was set up in April 2003 has prompted the KJM to develop rules of procedure ensuring the effective and timely processing of such applications. Under the rules, assessment groups made up of three KJM members each can pass applications on behalf of the KJM provided they arrive at unanimous decisions on the basis of the preparatory work conducted by test groups. The test groups include staff from the regulatory authorities qualified in all issues relating to the protection of minors as well as from the Upper state youth authorities, BPjM and jugendschutz.net. The KJM has decided that for the time being, the

test groups and assessment groups will apply the assessment guide developed for programme control of broadcasting services by the predecessor organisation of the KJM. This guide can be applied to the extent to which the relevant legal stipulations are still in force. A working group set up by the KJM is currently revising the assessment guide; in this process, it will also develop new criteria for contents provided via the Internet.

From April to September 2003, the KJM dealt with more than 50 applications for exemptions under section 9 JMStV ("watershed" provision) for broadcasting services. During this period, it also received 30 complaints concerning television programmes or services which were assessed with a view to a possible violation concerning the stipulations governing the protection of minors. The workload of the KJM increased considerably due to the responsibility it now has for services provided by telemedia. By August 2003, the KJM had provided assessments on approx. 80 applications forwarded by the BPjM for putting specific contents or services on the list of contents restricted in distribution ("indexed contents"); the BPjM takes these into consideration in its final rulings. During the same period, jugendschutz.net forwarded 20 cases from the online sector for a ruling to be given by the KJM. In addition, numerous complaints from the public and advice from other institutions concerning problematic contents in the Internet were received and are currently being checked by the KJM for a possible violation of the regulations governing the protection of minors and human dignity in the media.

With the new regime for the protection of minors and human dignity in broadcasting and telemedia services and the system of regulated self-regulation which was introduced in Germany on 1 April 2003, a new era has begun concerning the protection of minors. The concept offers greater autonomy and more rights to all certified SKEs and the broadcasters or Internet service providers affiliated to them; by the same token, however, it affords them considerably higher responsibility. The German legislator has therefore provided for a first review of the system after three years and an overall evaluation after a period of five years. As a first finding it has already to be noted that regrettably, public-sector broadcasting has not been incorporated in the revised system for the protection of minors in the media. Even though the same rules apply to both Internet services and television broadcasts, commercial television broadcasters are governed by rules differing from those applying for public-sector television. However, since the programmes shown by public-sector television can and do contain depictions of violence and other contents considered problematic with a view to the protection of minors, the difference in rules applicable might be qualified to constitute a discrimination against commercial service providers. As a consequence, the states of Baden-Wuerttemberg,

Bavaria and Saxony have put on record in the JMStV that public-sector broadcasting be integrated in the new model of regulation.

The umbrella organisation of the regulatory authorities for commercial broadcasting (DLM) in its contribution to the revision of the EU Directive "Television without Frontiers (TVWF)" has recommended that the path outlined in the Interstate Treaty governing the protection of minors in the media for the inclusion of the self-regulatory institutions of the service providers regarding the protection of minors and human dignity in an autonomous, non-governmental regulatory system should be taken up in the revised TVWF directive.

## II. Media education and media literacy

Regulation constitutes one of the core components for the effective protection of minors aiming at protecting them against potentially harmful contents. However, not every problem can be solved applying regulatory measures. Some contents may, for example, not in themselves be considered harmful to minors, while the growing consumption of television programmes, music, Internet services and computer games can present a considerable problem. In this respect, media literacy takes on a key role, enabling minors via a preventive approach to assess media contents critically and to examine the perception and the consumption of media contents. In this respect, media education aimed at teaching media literacy provides an invaluable contribution.

The promotion of media literacy including financial support is one of the key objectives pursued by the regulatory authorities. In Bavaria, the media law has been including media literacy as part of the remit of the BLM since the amendment of March 1996 while the Interstate Broadcasting Treaty for the first time took the issue up in a national context in its 4<sup>th</sup> amendment which entered into force on 1 April 2000. Funds for media literacy have been provided for some years now from the licence fee revenue allocated to the regulatory authorities.

In the framework of its activities to promote media literacy, the BLM contributes to minors learning a sensible way of handling media contents. The activities as a prime objective concentrate less on teaching technical know-how, but rather on promoting the competent and responsible use of any type of media. The BLM has started co-operations with a number of well-established partners and participates in numerous media initiatives and projects both as regards content input and financial support. In addition, it undertakes research in the field of

media literacy and has commissioned many studies investigating media behaviour and media reception which it funds and publishes in its series of publications.

The non-profit organisation "Programmberatung fuer Eltern e.V." which was founded in Munich in November 1996 is one of the most important projects of the BLM as regards media literacy. Next to the BLM as a founder-member, members include 13 other regulatory authorities as well as the Internationale Zentralinstitut fuer das Jugend- und Bildungsfernsehen (International Central Institute for Youth and Educational Television - IZI) which is a department of the public-sector Bavarian Broadcasting Corporation (BR), and the Karl-Kuebel-Foundation. The organisation has been publishing "FLIMMO" every four months since 1997. FLIMMO takes the approach of "television as watched through the eyes of children" and assesses broadcasts which minors aged between 3 and 13 like to watch or which they come into contact with when someone else watches television. FLIMMO does not provide critical TV ratings, but seeks to present the contents of children's television programmes from the viewpoints of minors, thereby offering some orientation for television consumption. Its contents are compiled by the Institut fuer Medienpaedagogik in Forschung und Praxis (Institute for media reseach and media education - JFF). In addition to the printed edition, FLIMMO is also updated on its own website every fortnight. Both the brochure and the Internet presence are constructed as a guide on programmes for parents and other educators. Currently, some 400.000 copies of FLIMMO are printed and distributed free of charge to educational institutions, libraries, surgeries, pharmacies etc.

In addition, the BLM joined the association "Internet ABC" located with the Northrhine-Westphalian regulatory authority. This initiative is a joint undertaking of eight regulatory authorities aimed at promoting the safe and competent use of the Internet and at supporting children and parents alike in acquiring Internet know-how. The initiative aims at contributing to the protection of minors in the Internet as well as at providing an equal opportunity for children gaining access to education. The website carries no advertising and is easily accessible; it is directed at parents, teachers and children aged between six and 12 years of age. It provides easy-to-understand basic information for those inexperienced with the Internet as well as concrete support on issues such as search engines, e-mail, computer games, filter software and the protection of minors. However, those more experienced in surfing the world-wide web can also find useful and up-to-date information and advice on the Internet.

Apart from developing attractive tools for minors, the work undertaken by the BLM in the area of media literacy concentrates on analysing the effects of the media. For this purpose, the



BLM commissions research and studies on media behaviour and the reception of the media. The new catch phrase of convergence and the merging of technical infrastructures have prompted the BLM to participate in two studies which analyse the fact that the number of television service providers offering online services complementing their broadcast activities is continually on the increase. Many of these services are designed for interactive use by consumers, and this approach enjoys considerable attraction as proven, e.g., by the large numbers of games down-loaded from the Internet. However, it must be noted that the merging of transmission routes that had previously been separate can result in some potential risks, considering that the separations between the various types of "classic" media are becoming increasingly blurred and may eventually disappear altogether. The portal function which television services now represent is being investigated in a three-part study on the use of convergent media services by adolescents. The study is undertaken on behalf of the BLM and the public-service broadcasters BR and ZDF by the JFF. It seeks to establish how adolescents familiarise themselves with this new media as well as the way in which they use Internet services complementing television broadcasts, which services they prefer and what their significance is in the overall media environment. The first part of the study was presented to the public in October 2003. The portal function is also being addressed in a study on the convergence of television and the Internet dealing with services on the portals of major television broadcasters with a relevance to the protection of minors. This study is currently undertaken by jugendschutz.net and concentrates on documenting and analysing of contents and services on those websites which might be considered problematic from the viewpoint of the protection of minors. Another objective the study pursues is to develop a code of conduct for the Internet which might include guidelines on how to prevent problematic contents or on access restrictions for such contents.

The umbrella organisation of the German regulatory authorities (Directors' Conference – DLM) is dealing with principal issues and questions which are relevant across state borders. Promoting media literacy is considered a task of major relevance for society as a whole. So far, the focus tended to be mainly on technical aspects while content issues, i.e. structuring, analysing and critically consuming media services, were not paid greater attention. It is therefore essential to establish opportunities for everyone to acquire some degree of media literacy. The DLM therefore works at providing parents and educators with tools of orientation and support in this respect. For this purpose, the regulatory authorities contribute to more than 230 projects and initiatives with FLIMMO probably being the best-known of them. All these projects and initiatives reflect the continued and persistent commitment of the regulatory authorities to media education and media literacy. The DLM supports the projects pursued

by the various regulatory authorities, ensuring adequate exchange of information and experience so that measures dealing with media literacy from the various social angles can be brought across in as wide an area as possible. This requires intensive PR work aiming at integrating the objectives of media literacy into the general social debate. In addition, it is considered essential that the existing structures are used and linked in order to concentrate the resources available to optimum effect.

However, irrespective of how great the commitment and how intense the activities regarding media education and media literacy may be, they will not ever be able to replace the regulatory component of the work conducted by the regulatory authorities. Teaching children and adolescents a responsible use of media contents will continue to remain a key objective of media education. Media education must not, however, be taken as the all-purpose remedy for every problem caused by the existence and consumption of the media. There will always be a need for a regulatory body ensuring and safeguarding the effective protection of minors vis-a-vis the service providers so that consumers are effectively protected against contents which might impair the development of minors or infringe human dignity.

Useful links:

[http://www.alm.de/gem\\_stellen/gem\\_stellen\\_kjm.htm](http://www.alm.de/gem_stellen/gem_stellen_kjm.htm)

<http://www.alm-medienkompetenz.de>

<http://www.flimmo.de>

<http://www.Internet-abc.de>

<http://www.jugendschutz.net>