

## **Complaint Rules for the Association Freiwillige Selbstkontrolle Multimedia-Diensteanbieter e.V.**

Version of 05/04/2004

### **§ 1 The Complaint Office**

1. The activities of the Complaint Office are deemed to protect children and youth from offers on the telemedia that might threaten or impair their development or education to become self-responsible personalities capable of living in our society as well as protecting against offers violating the right of human dignity or other objects of legal protection under the JMStV [Inter-State Agreement on Youth Protection in the Media].
2. The Complaint Office represents a complaint office as provided under the Inter-State Agreement on Youth Protection in the Media, § 19, Section 3, Clause 6. Furthermore, the Complaint Office may also take action against one of its members on its own initiative.
3. The Complaint Office is a self-responsible and independent body as provided under the Statutes of the FSM, § 12, associated to the organisation of the FSM. The organisation and steering of the Complaint Office is being carried out by the Head of the Complaint Office.
4. The complaints are dealt with on the basis of the Statutes of the Association, these Complaint Rules, the Code of Conduct adopted by the members of the Association, the examination principles of the FSM, the JMStV [Agreement on Media Services between the Federal Länder in Germany] and the corresponding Statutes and Guidelines passed by the KJM [Commission for Youth Protection in the Media]. The examination principles are developed and updated based on the practical experiences of the Complaint Office on approval by the FSM and represent an integral part of these Complaint Rules. The members of the bodies to the Complaint Office of the FSM meet once a year.
5. The Complaint Office shall not receive complaints in the capacity of a receiving courier, as a representative of the members of the Association or of the undersigned to the Code of Conduct, but solely as independent self-monitoring body of the FSM and contact for the users, as provided under the Inter-State Agreement on Youth Protection in the Media, § 7, Section 3.

## **§ 2 Right to complaint**

Any natural person or legal body, including and especially the youth welfare service promoters under German Federal Law, is entitled to file a complaint with the Complaint Office of the FSM against content on the Internet or other online services that are publicly accessible. The undersigned to the Code of Conduct may transfer complaints received to the Complaint Office.

## **§ 3 Filing a complaint**

1. In order to file a complaint with the Complaint Office the form on the FSM website (<http://www.fsm.de>) must be filled in and sent via electronic transfer. Complaints sent to the Complaint Office via e-mail shall also be treated by the Complaint Office.
2. The complainant shall indicate its first and last names as well as its e-mail address and its place of residence. The complaint must make reference to a certain content and to the Internet address where such content was found. The complainant shall be obliged to make a statement of reasons on its complaint.

## **§ 4 The Complaint Office's area of responsibility**

1. Geographical responsibility
  - a. The Complaint Office's responsibility geographically includes complaints against content providers or those providing content to call as far as these are seated in Germany, offer their services from Germany or if their services are explicitly targeted to the German market.
  - b. The Complaint Office shall transfer those complaints against foreign content providers or against those who provide such content to call in foreign countries by way of anonymous mentioning to the competent institution, if such institution is known. In case of countries where the members of the INHOPE Association prevails, it shall be preferably notified. The complainant shall be notified accordingly.
  - c. The Complaint Office shall transfer those complaints against foreign content providers or against those who provide such content to call in foreign countries and that might be harmful to youth after first evaluation, by way of anonymous mentioning to the Bundesprüfstelle für jugendgefährdende Medien [Federal Department for Media Harmful to Young Persons] for further treatment.

## 2. Responsibility as regards the subject matter

- a. The Complaint Office's responsibility as regards the subject matter shall include those cases where an infringement of the Code of Conduct by a member of the FSM is not obviously excluded.
- b. In case of those complaints the treatment of which does obviously not fall under the responsibility as regards the subject matter of the FSM, the complainant shall be notified about the competent self-monitoring body and provided with the contact of the corresponding complaint office, if such contact is known. If such complaint is filed against a member of the FSM, this member shall be notified accordingly and allowed the opportunity for self-remedy.
- c. The Complaint Office may transfer those complaints against German telemedia providers who do not hold membership with the FSM by way of anonymous mentioning to the competent Landesmedienanstalt [Federal German Media Institution].
- d. The Complaint Office is entitled to refrain from treating an anonymous complaint. To exclude being considered as anonymous an operative e-mail address as well as the first and last names must be indicated. Obviously wrong data shall also be deemed to be anonymous.

## **§ 5 Scope of examination**

The scope of examination of the appeal filed shall depend on the argument submitted by the complainant.

## **§ 6 Preliminary proceedings**

1. The preliminary proceedings shall be initiated upon receipt of the complaint. An examination on whether the complaint might represent a violation against the Code of Conduct shall be carried out in the course of the preliminary proceedings. If the preliminary proceedings reveal in total that a violation against the Code of Conduct by the FSM cannot obviously be excluded, the complainee shall be notified via e-mail that a complaint has been filed against an offer under its responsibility. The complainee shall be notified about the statement of reasons submitted by the complainant. The complainee shall be allowed to issue its comments or to remedy the complaint on its own initiative within a delay of two weeks.

2. In case of complaints that are not understandable the complainant shall be allowed the opportunity to submit its complaint in more concrete terms. If it does not make use of this opportunity or if its argument does not reveal any new findings, the complaint proceedings shall be discontinued.
3. If the complainee has modified the content subject to appeal in a way that the complaint becomes irrelevant with respect to its content, the proceedings shall be discontinued. The complainant shall be notified accordingly.
4. A complaint against a member of the FSM that has been filed by the Commission for Youth Protection in the Media or a youth welfare promoter under the Federal Law of Germany shall in any case be submitted to the Complaint Committee.
5. As far as the complaint is not filed against a member the staff member of the Complaint Office shall decide upon the proceedings applicable to the complaint in question. This staff member may either initiate the proceedings applicable to members of the FSM or transfer the complaint by way of anonymous mentioning to a competent body. For this purpose the staff member may transfer the complaint either to the competent other self-monitoring body, the respectively competent Federal German Media Institution or another administrative authority.

## **§ 7 Discontinuance of complaint proceedings**

The complaint proceedings may be suspended or discontinued if the Complaint Office has knowledge of Investigation proceedings, criminal proceedings or proceedings for non-criminal offence that are pending against the member in the same matter, i.e. with respect to the same offer. The complainant shall be notified about the discontinuation of the proceedings.

## **§ 8 Function of the Complaint Office**

1. The Head of the Complaint Office is in charge of organising and steering the Complaint Office; he must dispose of the qualification for judicial office.
2. In the course of the preliminary proceedings, a staff member of the Complaint Office takes all necessary measures to prepare the decision-making process; he is especially entitled to make inquiries, interrogate witnesses and to interview experts.

3. Should the suspicion arise that life and limb or the freedom of individuals are endangered in concrete terms, especially in the context of child pornography, the staff member of the Complaint Office shall notify the competent authority on the content of such complaint and the suspicion arising thereof. If the host provider in question is a member of the FSM, it shall also be notified about the content of such complaint so that the host provider may safe its log files. The offer in question shall be withdrawn from the Net upon consultation with the competent authority.
4. After accomplishment of the preliminary proceedings the Complaint Office staff member shall transfer the complaint and any existing comments thereon, including a summary of the facts to be investigated on to the members of the corresponding Complaint Committee.

## **§ 9 Constitution of the Complaint Committee**

A Complaint Committee shall at least comprise three examiners who will determine the Chairman amongst them. A Complaint Committee shall not represent a fixed body; it shall rather be constituted by the Head of the Complaint Office according to the function plan and according to the selection criteria as provided under the Statutes, when necessary.

## **§ 10 Decisions passed by the Complaint Committee**

1. The Complaint Committee shall found its decisions on the provisions under the Statutes, based on the majority of votes submitted by its members; should a parity of votes prevail, the vote of the Chairman shall decide.
2. The decisions of the Complaint Committee shall be set out in writing by the Chairman (expertise) and provided with a statement of reasons and the Chairman's signature. The decision must contain the names of all participating members of the Complaint Committee.
3. The expertise shall comprise the decision passed upon examination, details on the content of the offer which had substantial impact on the decision as well as a statement of reasons. This statement of reasons must contain and indicate the considerations that had a substantial impact on the decision as well as it shall specify the provisions under the Inter-State Agreement on Youth Protection in the Media, the provisions under the Statutes and / or guidelines adopted or under the Code of Conduct of the FSM on which it is

based. The special importance of the expertises on the basis of the Inter-State Agreement on Youth Protection in the Media shall be taken into consideration when these expertises are drawn up.

4. Decisions of the Complaint Committee may also be passed using the method of circulation.

## **§ 11 Content and announcement of the decision**

1. A staff member of the Complaint Office shall notify the complainant and the complainee about the content of a decision passed.
2. Unfounded complaints shall be rejected.
3. If a complaint has been remedied on the own initiative of a member of the FSM, this shall be stated by the Complaint Committee, and the proceedings shall be discontinued. As provided under § 7, the Chairman of the Complaint Office shall provide a statement of reasons in writing on this being a case of self-remedy.
4. A founded complaint may – dependent on the level of seriousness of the infringement – have the following legal consequences:
  - disapproval with request for remedy, or
  - reprimand, or
  - Association penalty, or
  - exclusion from the Association.
5. Natural persons or legal entities that are not undersigned to the Code of Conduct may solely be made reference to, including the request for remedy.
6. The decisions under Section 4 include the request to the member or the undersigned to the Code of Conduct to take the appropriate measures in order to remedy the stated infringement and to omit repeated action. The measures requested must be factually and legally feasible and reasonable. The complainee shall implement the decision within a two weeks' delay.

7. Should the complainee fail to have complied with the issued request for remedy within the statutory delay, the Chairman of the Complaint Committee shall issue a reprimand with reference to the fact that in case of non-compliance with the remedy request within the following two weeks an Association penalty may imminently be imposed. In founded cases of exception the delay may be extended, depending on the decision passed by a staff member of the Complaint Office.
8. A reprimand issued against a member of the Association or against the undersigned of the Code of Conduct shall be published in its essence for the duration of one month by the corresponding member of the Association or undersigned to the Code of Conduct as integral part of its online offers. The reprimand must be published within one week after announcement of the decision.
9. Should the Complaint Committee decide an Association penalty to be impeded, the Chairman of the Complaint Committee shall make notice thereof to the Chief Executive Officer of the FSM. Thereafter, the Managing Board shall issue the Association penalty according to the Statutes, § 8, Section 6. The complainee shall be notified that in case of non-compliance with the remedy request and failure to pay within three weeks the exclusion from the Association would be initiated.
10. Should the complainee neither comply with the reprimand nor pay the penalty impeded by the Managing Board within three weeks upon reception of the decision the proceedings for exclusion from the Association shall be initiated.
11. Furthermore, the decisions shall be subject to written procedure and statement of reasons as provided under the Rules of Complaint, § 6, Section 2, 3.

## **§ 12 Publication of the decision**

In case of pending proceedings against a member of the FSM, the final decision and its ratio decendi may by way of anonymous mentioning be published on the FSM website.

## **§ 13 Subordinate proceedings against service providers**

1. Should a content provider fail to comply with the decision according to § 11, Clause 4, a staff member of the Complaint Office shall then notify this decision to the service provider as set forth under TDG [Law on the use of Teleservices], § 3, Clause 1, and Agreement

on Media Services between the Federal Länder in Germany, § 3, Clause 1, and the service provider shall be requested to withdraw the offer or to ban the access hitherto.

2. The service provider shall be allowed the opportunity to raise objections with the Head of the Complaint Office that oppose a withdrawal of the offer or an access ban.
3. If the service provider is a member of the FSM, subordinate proceedings may be initiated against it.

## **§ 14 Proceedings on appeal**

1. Appealing is solely admissible if the complainant, the complainee or a youth welfare service promoter under German Federal Law (as provided under the Inter-State Agreement on Youth Protection in the Media, § 19, Section 3, Clause 4) submits a written application. The period set aside for appeal shall represent two weeks upon announcement of the decision. The notice of appeal must state a declaration of filing appeal and against which decision this appeal is filed. The statement of grounds for appeal must be submitted within six weeks upon announcement of the decision. If it is not included in the notice of appeal the statement of grounds for appeal shall be submitted in writing. The statement of grounds for appeal must state a declaration indicating in how far the decision is being appealed against and specify concrete issues justifying doubts on the correctness or completeness of the findings of the decision appealed against and require another review. The burden of establishing guilt is on the appellant.
2. The competent Appeal Committee shall decide upon the admissibility of the appeal. It is not permissible to the members of the Appeal Committee designated by the Head of the Complaint Office to be members of the Complaint Committee the decision of which is appealed against, at the same time.
3. Filing an appeal in due course will obstruct the res judicata as far as this is being opposed.
4. The Head of the Complaint Office shall transfer a copy of the notice of appeal to the appellee on its request and allow him to submit a comment in writing within a delay of three weeks.

5. Those examiners who participated already in drafting the decision of the first Complaint Committee shall be excluded from the final decision-making process and the final decision on the complaint in the proceedings on appeal.
6. Should the Appeal Committee deviate in its decision from the statement of reasons submitted in the first-instance examination expertise, the reasons thereof must be stated in the expertise.

## **§ 15 Joint Committee**

### **1. Setting up of a Joint Committee**

A Joint Committee of the FSM Complaint Committees is founded for the purpose of preserving the uniformity of decisions passed by the FSM Complaint Committees.

### **2. Area of responsibility**

The Joint Committee shall be appealed to if one Complaint Committee intends to pass a deviating decision from another Complaint Committee or from the Joint Committee with respect to a legal matter.

Furthermore, the Joint Committee shall pass a decision if it is appealed to by an Appeal Committee with respect to a decision on appeal that is of fundamental importance and in the interest of the members of the FSM.

The appellant may suggest the Complaint Committee to appeal to the Joint Committee, as far as he may deem that the matter is of general importance and in the interest of the members of the FSM.

### **3. Constitution and chairmanship**

The members of the Joint Committee shall be designated by the Head of the Complaint Office in compliance with the Statutes. The Joint Committee shall comprise the Chairman of the appealing Appeal Committee, the Chairman of the Appeal Committee the decision of which shall be deviated from, and seven further members.

The members of the Joint Committee shall determine a Chairman amongst themselves whilst the Chairmen of the Appeal Committees involved shall be excluded thereof.

### **4. Subject and effects of the decision**

The Joint Committee shall solely decide upon the legal matter. A statement of reasons shall be provided on the decision passed and it shall be notified to the parties involved in

the process. The decision passed by the Joint Committee shall be binding for the Appeal Committee with respect to the matter in question.

5. Bodies of the FSM may submit comments to the Joint Committee, which shall not have any binding effect for the Joint Committee.

## **§ 16 Lack of impartiality**

1. In case of founded suspicion of lack of impartiality against a member of the Complaint or Appeal Committee both, the complainant / appellant as well as the appellee may file an application for rejection.
2. The Complaint / Appeal Committee shall decide upon the application for rejection in mutual agreement with the Managing Board of the FSM. If the application for refusal is deemed to be supported by a reasoned opinion, the member in question shall be excluded from any decision-making process. The applicant to this procedure shall be notified accordingly.
3. A member of the Complaint Committee may declare himself partial. In such case, this member shall be replaced by its respective substitute provided under the Statutes.

## **§ 17 Data protection**

1. Personal data that are necessary in order to treat a complaint against a non-member shall solely be kept as long as it is necessary for the treatment of the complaint.
2. Personal data shall only be transferred upon the explicit consent by the complainant, unless a legally binding request has been submitted by a competent authority.

## **§ 18 Confidentiality**

The members as well as the Head of the Complaint Committee and its staff shall not disclose any content of complaints, their handling and the respective decision-making process as far as no publishing is provided for under these Complaint Rules or under the Code of Conduct.

## **§ 19 Form**

If written procedure is stipulated under these Complaint Rules, the delivery via mail or e-mail shall suffice, as far as delivery by mail is not explicitly provided for.