

Code of Conduct for the Association Freiwillige Selbstkontrolle Multimedia- Diensteanbieter e.V.

Version of 11/15/2016

Preamble

The aim of the Code of Conduct of the Association for Voluntary Self-regulation of Multimedia Service Providers [Freiwillige Selbstkontrolle Multimedia e.V. (FSM)] is to protect children and young people from material offered in telemedia that might threaten or impair their development or education to become self-responsible members of society, and to offer protection against material violating the right to human dignity or other aspects of legal protection available under the JMStV [Inter-State Treaty on Youth Protection in the Media].

The FSM wishes to make its contribution to reinforcing the freedoms of telemedia service providers and respecting the legitimate interests of users and the general public, in particular against discrimination and the glorification of violence and to strengthening measures for the protection of minors on the basis of self-responsibility. Any form of censorship will be rejected.

Voluntary self-regulation aims to encourage telemedia service providers, in joining the Association, to observe the principles of this code and to impose sanctions on behaviour which violates the code.

The FSM respects the scope for free expression of individual communication in the services offered and the fundamental right of users to freedom of information. At the same time, the FSM defends the fundamental constitutional rights to freedom of opinion and of the press, freedom of property and choice of an occupation, the right to informational self-determination, and the freedom of the arts.

Through the information that it offers on its own work, on the application of technical protection mechanisms and by establishing an office for information and establishing contact, the FSM seeks to impart a responsible approach to the user in dealing with these services, including the range of content which can be accessed from the Internet.

The obligations laid down in this Code of Conduct should not and cannot form the basis of responsibility to third parties or serve to facilitate the substantiation of a responsibility of this nature. The FSM Complaints Office procedure does not preclude legal action.

The FSM will work together with other self-regulatory bodies – including at European and international level – to meet the demands of the comprehensive range of services offered and the international nature of the networks and the providers of telemedia.

I. Code of Conduct

Section 1: Scope of application

1. On signature this Code of Conduct is binding for members of FSM.
2. This Code of Conduct applies to the extent that providers of telemedia are legally responsible for the content of services under the currently applicable statutory regulations in the Federal Republic of Germany.
3. This Code of Conduct is intended to prevent the provision of inadmissible services, listed under Section 2, and ensure compliance with the provisions under Sections 3 to 12. Besides those mentioned in Sections 9 to 11, violations of statutory provisions relating to advertising, copyright, data protection consumer protection and competition are not covered.
4. The tasks of existing self-regulatory bodies and self-regulatory measures carried out by individual members of the FSM remain unaffected.
5. As provided under § 11 of the Statutes, members concerned may define complementary sub-codes for individual areas (member groups / issues). In case of doubt the provisions determined under this Code of Conduct take precedence over those defined under a sub-code. The members that would be affected by such a sub-code may subject themselves to their provisions.

Section 2: Proscribing child- and youth-pornography and portrayal of minors in an erotic manner.

The members of the FSM are engaged in protecting the special dignity of children and young people. They hold the profound conviction that the societal problem of child and youth pornography can only be addressed by clear condemnation and pursuit. For this reason, the members

ban content in accordance with §§ 184b, 184c StGB [German Penal Code] and portrayals of minors in an erotic manner as specified in § 4 Section 1, Number 9 of the Inter-State Treaty on Youth Protection in the Media (JMStV). Within the framework of their statutory responsibility they ensure that no content of this nature is offered or linked for use. Should members become aware of pornographic content involving children or young people in telemedia, they immediately inform the responsible authorities of this material.

Section 3: Completely inadmissible content

Within the framework of their statutory responsibility the members of the FSM ensure that no completely inadmissible content is offered or linked for use. Such content comprises in particular:

- propaganda material and insignia of unconstitutional organisations (§ 86 StGB [German Penalty Code], § 86 a StGB; § 4 Sect.1 Clause 1 und 2 JMStV [Inter-State Treaty on Youth Protection in the Media]),
- incitement to hatred and violence against segments of the population and the „Auschwitz lie“ (Holocaust denial) as well as condoning, glorifying or justifying acts committed under the National Socialist regime (§ 130 StGB, § 4 Abs. Sect. Nr. 3, 4 JMStV),
- instigation or incitement to commit criminal offences (§§ 111, 130 a StGB , § 4 Sect. 1 Nr. 6 JMStV),
- depictions of violence (§ 131 StGB, § 4 Sect. 1 Nr.5 JMStV),
- child, youth, animal, and violence pornography (§§ 184a bis c StGB; § 4 Sect. 1 Nr. 10 JMStV),
- depictions of minors in an erotic manner (§ 4 Sect. 1 Nr. 9 JMStV),
- content seeking to glorify war (§ 4 Sect. 1 Nr. 7 JMStV),
- violation of the right to human dignity (§ 4 Sect. 1 Nr. 8 JMStV) and
- telemedia that are on the index for contravention of the German Penal Code and telemedia with the same content (§ 4 Sect. 1 Nr. 11 JMStV)

Section 4: Relatively inadmissible contents

The members of the FSM undertake to ensure that content specified under the Inter-State Agreement on Youth Protection in the Media (JMStV) § 4 Sect. 2, is made accessible only to adults in closed groups of users.

Section 5: Impairment or threat to the welfare of children and young people

1. Within the framework of their statutory responsibility, the members of the FSM take measures to ensure that content which qualifies to impair the development of children and young people or their education to become self-responsible members of society (§ 5 Sect. 1 JMStV), is offered and linked for use only when care is taken that their visibility for children and young people is restricted in accordance with statutory provisions provided by the law. This will be achieved if the provider
 - a) by technical or other measures makes it impossible, or significantly increases the difficulty, for children or young people of the age range affected to become aware of the material offered, or
 - b) selects the time at which the material is distributed or made accessible so that children or young people of the age range affected would not normally become aware of it, or
 - c) labels the content with an age rating which can be read by suitable parental control software pursuant to § 11 paras. 1 and 2 JMStV.

2. Those who publish telemedia on a commercial basis or on a large scale should also fit non-objectionable material with an age rating which can be read by suitable parental control software pursuant to § 11 paras. 1 and 2 JMStV as far as this is reasonable and does not incur excessive costs. Those members of FSM offering services suitable for children and fostering their development are committed to publicising these in a manner suitable for children.

3. If the deleterious effect of material for development is likely to be limited only to children under the age of 14 it must be published and made accessible separately from offers intended for children. Members of the FSM undertake to include no links to content damaging to development from offerings directed to children.

Section 6: Advertising

The signatories to this Code of Conduct undertake not to include any advertising in the material which they offer which contravenes § 6 JMStV. In addition, the signatories undertake to refrain from publishing advertising which impairs the protection of young people. In doing so, they ensure that the statutory requirements prescribed by German law are observed in the application of visual forms of advertising, advertising by e-mail and use of dialers.

Members undertake, in particular when using forms of advertising which conceal the content, not to make the use of the service originally called more difficult, above all for children and young people, so that when activating the close button further advertising offers will be opened.

Section 7: Journalistic and editorial content

If the services of members of the FSM contain journalistic and editorial content as defined in the Inter State Treaty for Radio and Telemedia (RStV), within the framework of their statutory responsibility, these members will ensure that

- a) content for reporting purposes and containing information services complies with recognised journalistic principles,
- b) reports about topical news items are verified by the provider before publication with the appropriate care regarding content, origin and truthfulness,
- c) editorial comment is clearly distinguished from news reports and identified as such by giving the name of the author,
- d) in reporting the results of opinion surveys in services, which were carried out by members of the FSM, a statement is made, whether they are representative.

In the assessment of generally accepted journalistic principles, reference can be made, where appropriate and comparable, to the currently applicable version of the Code of Conduct of the German Press Council.

Section 8: Parental control software and technical measures

The members of the FSM are convinced that parental control software as well as technical or other measures can support parents and carers tremendously in enabling children and youth to use the internet / online content in an age-appropriate way. With these kinds of programs and systems children and teenagers can use the internet / online content independently without a high risk of them accessing inappropriate content. The members of the FSM dedicate themselves to developing, promoting and establishing parental control software as well as technical or other measures.

1. Within the limit of their possibilities the members of the FSM contribute to promoting parental control software as well as technical or other measures and support their distribution.

2. Members of the FSM who provide parental control software or other technical measures may obtain a technical review from the FSM.
3. Members of the FSM whose parental control software or other technical measures have been evaluated by the FSM for their eligibility commit themselves to having them reevaluated by the FSM at least every three years. Furthermore, they support the FSM in eliminating malfunctions.

Section 9: Compulsory identification in compliance with the Inter-State Treaty on Youth Protection in the Media, § 12

The undersigned will explicitly indicate the existence of any identification within their offers, in the case of telemedia content which is completely or substantially identical with films or games on carrier media under the Jugendschutzgesetz [Youth Protection Law], § 12, or open to the corresponding age class.

Section 10: Provider identification, reference to youth protection officer

Members of the FSM which themselves act as content providers ensure that the statutory regulations for identification of providers are complied with. In so far as members simply act as switching agents, they will seek to ensure, as far as they are able, that the content providers comply with the regulations. Members of the FSM point out in their own services their membership of the FSM. Members of the FSM, who appointed a youth protection officer according to § 7 JMStV, must keep relevant information regarding the youth protection officer (especially name and data permitting rapid electronic contact) available for easy, direct and permanent accessibility. Members who appointed the FSM as youth protection officer must indicate that in the provider identification.

Section 11: Fostering media competence

The members of the contribute to fostering media competence with the confidence that only through the interplay of media competence on side of the user, the sense of responsibility of the individual provider and voluntary self-regulation of the telemedia can achieve sensible protection of young people in the media. They are therefore committed to support the FSM in

promotion activities of media competence to parents and children. They will in particular support the FSM in disseminating information on the safe use of the Internet to children, young people and parents and offering assistance in achieving Internet competence.

Section 12: Right to information

The members of the FSM are obliged to offer the FSM Complaints Office free access to the services for which they are responsible, for monitoring purposes. Calling or use of services by the FSM for examining a complaint or in its function as the youth protection officer [Jugend-schutzbeauftragter] of the individual provider is free of charge for the FSM, or the costs arising are to be reimbursed to the FSM. Providers have the responsibility for this. The provider may not bar access or obtaining information about their services by the FSM or seek to impede these activities.

Section 13: Obligatory examination of services offered

Companies without their own youth protection officer which want to become a member of the FSM present the services they offer in their application form for membership to the FSM for preliminary examination. The details of the examination are governed by § 4 para. 3 of the Statutes.

The same examination obligation arises when there are significant alterations in the telemedia offering of an ordinary member of the FSM without their own youth protection officer, which are equivalent to a redesign of the offering. The details of the examinations are governed by § 4 para. 4 of the Statutes.

II. Sanctions

Should the relevant bodies of the FSM, on the basis of the Complaint Rules adopted by the FSM, determine that a violation against the Code of Conduct has been committed, sanctions may be imposed as provided under the Complaint Rules.

III. Final provisions

The members of the FSM agree that, due to the practical work load of the FSM, updating of the Code of Practice and a revision of the catalogue of sanctions should be considered every two years.