

**Code of Conduct**  
**of the FSM – organisation for the voluntary self-regulation of**  
**multimedia service providers**  
**(Freiwillige Selbstkontrolle Multimedia- Diensteanbieter e.V.)**  
Issued: 16.10.07

**Preamble**

The objective of the FSM Code of Conduct is to protect children and young people from media content considered likely to threaten or harm their development as socialised persons with a sense of individual responsibility, and to protect them from content likely to degrade human dignity or affect other legal concepts protected by the German Interstate Treaty on the Protection of Minors in the Media (JMStV).

The FSM Code of Conduct intends to contribute, on a self-regulatory basis, to reinforcing the freedom to operate on the part of providers of multimedia services, while paying attention to the interests of users and the public in general, with particular reference to policies intended to combat discrimination and the glorification of violence, and initiatives designed to protect young people. The organisation rejects censorship in all its forms.

The aim of voluntary self-regulation is to ensure that providers of multimedia services who subscribe to the organisation observe the basic principles of the Code of Conduct, and that any violations of the Code are duly sanctioned.

The FSM recognizes individual service providers' freedom to operate, and the basic right of users to be kept informed. The FSM also defends basic freedom of opinion and that of the press, the basic right to intellectual property and the freedom to exercise a profession, freedom of information and artistic freedom within the terms of article 5, section 3, subsection 1 of the German Constitution (*Grundgesetz*). The FSM aims to keep users of services informed of its own work, the application of technical protection mechanisms and the existence of its information and enquiry services, in order to encourage the responsible use of such services, including those offered over the Internet.

The obligations set down in this code of conduct should not and cannot form a basis, whether actual or implied, for third-party liability of any kind. The submission of complaints under FSM procedures does not rule out the right to seek further legal redress.

The FSM intends to co-operate with other voluntary, self-regulatory bodies – at both a European and international level – in order to meet the needs of the services concerned and the global nature of networks and suppliers of multimedia services.

## **I. Code of conduct**

### **Clause 1: Scope of application**

1. The Code of Conduct is binding on members of FSM from the moment in which they sign it.
2. The Code of Conduct helps define the extent to which suppliers of multimedia services are responsible for the content of such services under the terms of the relevant legislation of the Federal Republic of Germany.
3. The Code of Conduct is designed to prevent the supply of services that are not permitted under the terms of clause 2, while ensuring compliance with the stipulations of clauses 3 to 12. Provision is made, in addition to clauses 9 to 11, to prevent violations of legislation covering advertising, copyright, data protection, consumer rights and free competition.
4. The tasks of existing self-regulatory bodies, along with voluntary initiatives on the part of individual members of the FSM with respect to the provision of services, remain unaffected.
5. Additional sub-regulations for application in individual areas (groups of members/types of activity) can be drawn up by the members concerned under the terms of clause 11 of the articles of association. In the event of any doubt, the provisions of the Code of Conduct take precedence over sub-regulations. Members affected by such a code may be subject to the regulations included therein.

### **Clause 2: The prohibition of child pornography and the supply of erotic content to minors**

The members of the FSM are committed to protecting the special status of children and young people. They are fully convinced that the social problem of child pornography can only be combated by clear prohibition and the prosecution of wrongdoers. For this reason, the members prohibit all child pornography within the terms of § 184 b) of the German Criminal Code (StGB) and the supply of erotic material to minors within the terms of § 4, sect.1, subsection 9 of the Interstate Treaty on the Protection of Minors in the Media (JMStV), while fully accepting their legal responsibility to ensure that no content of this type is supplied or accessed. Members who become aware of child pornography being supplied via a multimedia service should immediately inform the authorities concerned.

### **Clause 3: Absolutely illicit content**

The members of the FSM fully accept their legal responsibility to ensure that no absolutely illicit content is supplied or accessed. This definition refers in particular to:

- Propaganda and other material issued by anti-constitutional organisations, as defined in § 86 of the German Criminal Code, § 86 a of the same code, and § 4, sect.1, subsections 1 and 2 of the Interstate Treaty on the Protection of Minors in the Media
- Hate crime and holocaust denial, as defined in § 130 of the German Criminal Code, and § 4, sect. 1, subsections 3 and 4 of the Interstate Treaty on the Protection of Minors in the Media
- The incitement of or encouragement to commit criminal offences, as defined in §§ 111, 130 a of the German Criminal Code, and § 4, sect. 1, subsection 6 of the Interstate Treaty on the Protection of Minors in the Media

- Portrayals of violence, as defined in § 131 of the German Criminal Code, and § 4, sect. 1, subsection 5 of the Interstate Treaty on the Protection of Minors in the Media
- Pornography featuring children, animals and/or violence, as defined in §§ 184 a, b of the German Criminal Code ff.; and § 4, sect. 1, subsection 10 of the Interstate Treaty on the Protection of Minors in the Media
- Erotic portrayals of minors, as defined in § 4, sect. 1, subsection 9 of the Interstate Treaty on the Protection of Minors in the Media
- Content glorifying war, as defined in § 4, sect. 1, subsection 7 of the Interstate Treaty on the Protection of Minors in the Media
- Affronts to human dignity, as defined in § 4, section. 1, subsection 8 of the Interstate Treaty on the Protection of Minors in the Media
- Multimedia providers and similar suppliers of content found to be infringing the German Criminal Code and § 4, sect. 1, subsection 11 of the Interstate Treaty on the Protection of Minors in the Media

#### **Clause 4: Relatively illicit content**

The members of the FSM undertake to ensure that access to content defined in § 4, sect. 2 of the Interstate Treaty on the Protection of Minors in the Media as being “for adults only” is restricted to closed groups of users.

#### **Clause 5: Harm or the threat of harm to the well-being of children/young people**

1. The members of the FSM are to ensure, in so far as they are legally responsible for doing so, and to the extent that such measures are both legal and feasible, that content deemed likely to harm the development of children and young people as responsible members of society, as defined in § 5, sect. 1 of the Interstate Treaty on the Protection of Minors in the Media, is only offered or used if access to it by children and young people is restricted in accordance with the applicable legislation. Suppliers are to achieve this by applying the following measures:
  - a) Technical or other methods designed to prevent or hinder access to such material by children or young people of the age-groups concerned, or
  - b) By establishing a watershed, timed in such a way as to apply to a period when children or young people are normally not present, or
  - c) By making such content compatible with, or subject to restriction by, a commonly-available child-protection program.
2. Providers who promote their services commercially or to the mass market must ensure that content considered harmless for children and young people is likewise compatible with a generally-available child-protection programme, provided this is feasible and does not entail unreasonable costs. FSM members are to make efforts to apply a system of positive ratings. FSM members who supply children’s and educational content undertake to ensure that this material is classed as suitable for minors.
3. All content suspected of having a negative effect on child development must be promoted and supplied separately from material designed for the use of children. The members of the FSM undertake not to include Internet links from children’s content to such unsuitable material.

## **Clause 6: Advertising**

The signatories to the Code of Conduct undertake not to include advertising material that infringes § 6 of the Interstate Treaty on the Protection of Minors in the Media. The signatories furthermore undertake to prohibit advertising that is likely to harm young people, while ensuring in this respect that visual advertising, e-mail campaigns and dial-up programs all conform to the relevant legislation.

Members undertake in particular:

- In the case of advertising where the content is concealed, to prevent children and young people above all from being referred to further advertising material when they click on the "close" button.
- Not to allow the use of dial-up programs that are installed or activated surreptitiously when an advertising link is clicked.

## **Clause 7: Age-verification systems and dial-up programs**

Members whose content can only be accessed after application of an age-verification system undertake to ensure, before activation of dial-up access at extra cost, that users are notified of the age-verification process that takes place once access is established. The members of the FSM undertake to ensure cost-free access to the details of the age-verification process that applies to the use of their web pages.

## **Clause 8: Journalistic and editorial content**

Whenever material offered by FSM members is classed as journalistic or editorial under the terms of the Interstate Broadcasting Agreement (*Staatsvertrag für Rundfunk und Telemedien*), members are to ensure, with respect to their existing legal responsibility, that

- a) Reporting and informative content conforms to recognized professional standards of journalism
- b) Reports of current events are carefully checked by the provider, prior to broadcast and in accordance with the situation concerned, with respect to their contents, sources and veracity
- c) Editorial comment is kept strictly separate from news reporting, and identified as such, along with an indication of the author's name
- d) The published results of opinion surveys carried out by members indicate whether the survey sample is representative

Applicable journalistic principles can be defined by reference to the current version of the code of practice of the German Press Council.

### **Clause 9: Young persons' protection programme**

The signatories to the Code of Conduct undertake, to the best of their abilities, to develop and maintain a publicly-accessible young persons' protection programme designed to meet the requirements of § 11 of the Interstate Treaty on the Protection of Minors in the Media, for simple operation by users. The members of the FSM are to promote the general recognition of such a young persons' protection program, in an effort to ensure that it is widely publicized.

The members of the FSM who implement a young persons' protection program under the terms of § 11 of the Interstate Treaty on the Protection of Minors in the Media are to classify their content in accordance with the requirements of such a program. Providers who implement a recognised young persons' protection program undertake to indicate this in the material that they supply. Providers are to make an effort to ensure the widespread use of a recognized young persons' protection programme.

### **Clause 10: Classification obligations under the terms of § 12 of the Interstate Treaty on the Protection of Minors in the Media**

The signatories undertake to ensure, in the case of multimedia content that is wholly or partly identical to that of pre-recorded DVD discs or videocassettes or similar data storage media designed to allow the reproduction on-screen of image data in films or games, to clearly indicate any content that may be classified by age-group in accordance with § 12 of the German child-protection law (*Jugendschutzgesetz*).

### **Clause 11: Author identification**

Whenever members of the FSM offer their own content, they are to ensure that the legislative requirements regarding author identification are fulfilled. If members offer only third-party content, they are to do everything within their power to ensure that these regulations are observed. Members of the FSM are to indicate their membership in the material that they supply.

### **Clause 12: The promotion of media competence**

The members of the FSM are to contribute to the promoting of media competence, based on the conviction that effective protection for young people with respect to the media requires full interaction between user-awareness, a sense of responsibility on the part of individual providers and voluntary self-regulation of the multimedia sector. They therefore undertake to support the FSM in its efforts to promote media competence among parents and children. They are in particular to support the FSM in its information campaigns, aimed at children, young people and parents, regarding the safe use of the Internet, and to provide assistance in promoting the competent use of the Web.

### **Clause 13: Obligation to provide information**

The members of the FSM undertake, for the purposes of control and inspection by FSM complaints-handling staff, to provide full, charge-free access to the material that they are responsible for providing. The obtaining or usage of material in the course of examination by the complaints-handling staff of the FSM, while acting in their child-protection capacity, must not result in charges to the FSM; and any costs that the FSM does incur in this respect are to be refunded. Content-providers are to supply assurances in this respect. Content-providers must not block access to material on the part of FSM, or attempt to hinder such access in any way.

### **Clause 14: The obligation to subject material to inspection**

Organisations without an in-house child-protection officer that wish to become members of the FSM are to be subjected, as part of their membership application, to a preliminary inspection by the FSM. The details of this inspection are as established in § 4, section 3 of the articles of association.

The same inspection requirement applies in the event of substantial changes to the multimedia material offered by a full member of the FSM that does not have its own in-house child-protection officer, if such changes amount to the supply of new material. The details of this inspection are as established in § 4, section 4 of the articles of association.

## **II. Sanctions**

If the competent committees of the FSM determine that the Code of Conduct has been infringed within the terms of the approved FSM complaints procedures, sanctions may be applied under these same terms.

## **III. Final points**

The members of the FSM agree, given the practical nature of the work carried out by the FSM, that the code of conduct is to be updated and/or the system of sanctions re-examined every two years.

Berlin (Germany), October 16<sup>th</sup> 2008