

Code of conduct for mobile phone operators in Germany for the protection of minors

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- unauthorized translation from German -

Preamble

Mobile phone technology has continued to spread increasingly throughout the population in Germany over recent years, particularly where children and young people are concerned. At the same time the technology is growing, which provides access to a wider range of mobile information and communication services (mobile media) and which could have a detrimental effect or put at risk the development or education of children and young people. It is therefore an important task to protect children and young people from such mobile media services. At the same time it is important to protect the interests of children and young people, as well as the public in general, with regard to such mobile media services, which breach human dignity or other objects of legal protection.

Against this background, the undersigned mobile phone operators have imposed this code of conduct. The code of conduct describes the standards that mobile phone operators will comply with in future. Mobile phone operators are not prevented from implementing further protective measures, if and as long as they do not conflict with the code of conduct.

The aim is also to increase the awareness of parents and other guardians towards responsible behaviour with mobile media and to provide them with ways to effectively protect minors.

The code of conduct describes the mutual standards for the protection of minors, in accordance with the Law for the Protection of Minors (JuSchG in German) and the State Treaty on Protection of Minors in the Media (JMStV in German) in the following areas:

- Illegal and pornographic or any other content of any type that might seriously impair the development of minors or is likely to impair the development of minors,
- Advertising for services with such content,
- Chat rooms,
- Games and films on mobile phones

§ 1 Observing the protection of minors

a) Responsibility

The undersigned mobile phone operators recognise their responsibility for mobile contents within the context of the media services treat and the teleservices act, as long as they themselves are the providers of their own mobile contents.

Mobile contents are widely marketed by independent content providers, for whom the mobile phone operators simply act as access providers. The mobile phone operators therefore assume no responsibility for these services. The mobile phone operators will oblige the content providers to comply with the statutory regulations in their agreements, however. In doing so, the mobile phone operators are making a contribution that goes beyond their legal responsibility.

b) Totally illegal contents

The undersigned mobile phone operators ensure as part of their legal responsibility, or oblige content providers to ensure, that they do not offer any illegal contents in accordance with § 4 Para. 1 of the State Treaty on Protection of Minors in the Media (JMStV).

This includes in particular:

- means of propaganda and signs belonging to unconstitutional organisations,
- racial incitement and lies about Auschwitz,
- incitement or instruction to perform illegal acts,
- violent images,
- child, animal and violent pornography,
- sexually-related images of minors,
- contents that glorify war,

- breaches against human dignity,
- telemedia indicating breach against the criminal code (StGB in Germany) and telemedia that is of exactly or essentially the same nature.

The undersigned mobile phone operators ostracise such contents and will support criminal prosecution thereof.

c) Pornographic or other content that might seriously impair the development of minors

As far as such material is offered, the undersigned mobile phone operators ensure within their area of responsibility, or oblige content providers to ensure that mobile contents, which are classified as pornographic or otherwise clearly might seriously impair the development or identity of children and young people, are only offered to adults in closed user groups. For this purpose, the undersigned mobile phone operators undertake to meet the legal requirements of an age verification system as described below:

- **Identification:** There shall always be a one-off, reliable age check, for example when a mobile phone contract is concluded in shops and sales outlets.
- **Authentication:** Carrying out authentication before usage starts ensures that the risk of copying, transferring or other misuse of access data to or by children and young people is kept to a minimum. Authentication can be ensured, for example, by the combination of a PIN, which is only given to the identified customer, and a SIM card allocated to the customer, meaning that the latter can only retrieve content after entering the PIN whilst using his/her SIM card.

d) Content that is likely to impair the development of minors

As long as the undersigned mobile phone operators offer mobile contents that are capable of having a negative impact on children and young people developing a self dependent and socially responsible identity, they will ensure as far as is technically and operationally possible that children and young people of the age levels concerned do not normally take advantage of these services. The undersigned mobile phone operators will oblige content providers, with which they are contractually linked, to do the same.

aa) The mobile phone operators will therefore provide parents or other guardians with a way of blocking mobile phone access, which they make available to children or young people, for contents that have a negative impact on the relevant age level. Furthermore, the mobile phone operators will make an active contribution towards educating parents or other guardians by providing appropriate information.

The technically operational method of procedure can be put into practice, for example, as follows:

- The customer advises the mobile phone operator that a particular mobile phone connection should not be used to access such material.
- The mobile phone operator records the phone number concerned, which is uniquely attributed to a SIM card, in a database (blacklist).
- The mobile phone operators who provide mobile contents themselves, or the content providers with which they are contractually linked, will make a check on the customer when content that is likely to impair the development of minors (SMS, MMS, mobile portals) is ordered, delivered or provided, to see if the phone number of the user accessing this content is registered in the mobile phone operator's blacklist.
- If the phone number for connecting the user making the request is stored in the blacklist, access will not be provided to the contents and corresponding information or an error message will be sent.
- It is only possible to be crossed off the blacklist by written application or by telephone after carrying out the customer ID check. This ensures that children and young people are not able to lift the access protection themselves.

bb) The mobile phone operators can also fulfil their obligations by selecting the time when offers are advertised or made accessible in such a way that children or young people of the age level concerned will not normally take advantage of the services or by implementing effective or higher technical or other means.

§ 2 Advertising

The mobile phone operators will not advertise in a way that breaches the statutory regulations for the protection of minors, particularly the JuSchG and the JMStV. Content providers contractually linked with the mobile phone operators will be correspondingly obliged by the mobile phone operators to do the same.

The mobile phone operators will refrain from advertising that can lead to physical or mental damage to children and young people. Furthermore they will:

- not aim any sales appeal directly at children or young people that exploits their inexperience and gullibility,
- not encourage children and young people to ask their parents or third parties to buy the goods or services advertised,
- not exploit the special trust that children or young people have in parents, teachers and other figures of trust, and
- not show children or young people in dangerous situations without justification.

Advertising, whose content is capable of having a negative impact on children or young people developing a self-dependent and socially responsible identity, will only be conducted separately from services aimed at children or young people.

Advertising, which is also aimed at children or young people or in which children or young people are used as actors, will be designed in such a way that it does not injure the interests of children or young people or exploit their inexperience.

§ 3 Chat rooms

The obligations of the JMStV concerning the legal protection of minors are clearly only tailored to the provision of proprietary contents. The authors of chat contributions are basically responsible for the content in chat rooms. Consequently, there is no responsibility concerning the legal protection of minors on the part of the undersigned mobile phone operators.

At the same time, mobile phone operators are aware of the dangers that children and young people can be exposed to in public chat rooms. They therefore do their best to implement monitoring systems for these chat rooms on a voluntary basis, or oblige operators of chat rooms with which they are contractually linked to do the same.

The agreements between mobile phone operators and chat room providers should be constructed in such a way that the chat room providers react immediately to problems and user enquiries and illegal contributions are deleted after coming to light.

The mobile phone operators support the prosecution of criminally relevant contributions through the criminal prosecution authorities responsible for this.

§ 4 Games and films

With regard to the legal assessment of mobile phone games and films, the mobile phone operators subscribe to the following opinion:

1. Download offers of games and films in mobile technology

As far as material is offered both for downloading and offline on storage media and both have exactly or essentially the same content, the age restriction will be referred to on the storage media in accordance with § 12 of the JuSchG. Inasmuch as the games and films are classified as likely to impair the development of minors or as that they might seriously impair the development of minors, the protection mechanisms illustrated under § 1 of this code of conduct also apply.

2. Mobile telephones with built-in games

Mobile phones with games built into the memory definitely fall into the area of the law for the protection of minors. According to the concurrent view of the highest youth protection authorities and the undersigned mobile phone operators, however, these phones are not subject to any labelling obligation, as the games are not capable of being passed on (separately). The general regulations valid for all supporting media remain applicable, for example the general ban on illegal contents and those that might seriously impair the development of minors in

accordance with § 15 of the Law for the Protection of Minors and the rules regarding possible subscription through the federal test centre.

3. Games and films on separate storage media for mobile phones

The undersigned mobile phone operators recognise that in these cases, games and films are subject to labelling obligations and restrictions on sales in accordance with §§ 12 et seq. of the JuSchG. When separate storage media are sold together with the appliance, operators work on the assumption that the labelling obligation applies only to the storage medium and not to the mobile phone.

§ 5 Implementing standards

The mobile phone operators will implement these standards as soon as possible, depending on their respective technical and operational conditions.

§ 6 Updating

Technical progress in the mobile phone sector and the resulting consequences for the protection of minors in all services and offers will require changes in the described standards and measures. For this reason the undersigned mobile phone operators undertake to update this code of conduct on a regular basis.

§ 7 Youth protection officers

The undersigned mobile phone operators have appointed youth protection officers to whom customers and those interested can turn with questions and suggestions.

The undersigned mobile phone operators will involve the youth protection officers in an appropriate and timely manner regarding issues about producing, buying, planning and designing services and regarding all decisions aimed at safeguarding youth protection and respecting this code of conduct.

The youth protection officers will meet regularly to exchange experiences. The contact details of the youth protection officers are listed in the appendix.

§ 8 Commencement and publication

This code of conduct comes into effect when signed by the participating mobile phone operators. The mobile phone operators undertake to publish the code of conduct and in particular to make it available on their websites on the Internet.