

## **Background information on the competence of the Federal Review Board for Media Harmful to Minors (BPjM) in connection with the notification of parties to the proceedings resident abroad**

Under the Protection of Young Persons Act (*Jugendschutzgesetz - JuSchG*), the Federal Review Board has the **mission** to protect children and adolescents from media contents harmful to minors. In principle, an indexing procedure is carried out upon **request** by youth authorities (youth welfare offices, ministries for youth affairs), the Commission for the Protection of Minors in the Media or at the **urging** of all other authorities (e.g. police authorities, customs offices, authorities for the protection of the Constitution or schools).

The Federal Review Board is **responsible** for examining data media (print media, audio media, image media (films, video games)) as well as telemedia (internet contents). By contrast, the Federal Review Board is not responsible for broadcasting contents (television and radio) as well as films and video games which have been released for a specific age group by the supreme *Laender* authorities in charge of youth affairs via an organisation of voluntary self-control (*Freiwillige Selbstkontrolle der Filmwirtschaft - FSK; Unterhaltungssoftware Selbstkontrolle - USK*).

**Boards comprising members from various disciplines** decide on the imperilling of minors in **quasi-judicial proceedings**. Within the scope of the administrative procedure as well as a non-public hearing, the parties to the proceedings (e.g. publishers, authors, manufacturers, distributors) have the right to be heard and may also obtain legal representation. In case of indexing procedures for websites, an opinion by the Commission for the Protection of Minors in the Media (*Kommission für Jugendmedienschutz - KJM*) will be requested prior to the meeting, which is to be given the greatest possible respect in the judgement. The *KJM* supervises the protection of minors in online contexts and proceeds against providers based in Germany in case they violate legal provisions for the protection of minors.

The Board of 12 is the *BPjM*'s central decision-making body and is composed of the chairwoman of the Federal Review Board, eight representatives of socially relevant groups and three representatives of the Federal *Laender*.

The candidates representing socially relevant groups are nominated by the associations listed in the Protection of Young Persons Act and appointed by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. They come from the following groups of society: arts, literature, book trade and publishing industry, providers of image media and telemedia, responsible bodies of voluntary and public youth welfare, teaching staff as well as churches, Jewish and other religious communities.

Media will be included in the List of Media Harmful to Young Persons if two thirds of the Board vote in favour of indexing, taking into account all aspects of the individual case. The parties to the proceedings may appeal the decision of the Board of 12 by being heard by an administrative court.



In cases of an evident imperilling of minors, the *BPjM* has the opportunity to decide in simplified proceedings via the Board of 3. The simplified proceedings serve to reduce the workload of the Board of 12 in those cases where the Board of 12 would certainly argue in support of an indexing. The Board of 3 has to decide unanimously. Where the required unanimity cannot be reached, or the members of the Board of 3 conclude that the medium in question is not to be included in the List of Media Harmful to Young Persons, the decision will be obtained by the full line-up, meaning the Board of 12.

Pursuant to Section 18 (1), first sentence, of the Protection of Young Persons Act, contents of media shall be deemed to be imperilling of minors when they might have a severely damaging impact on the development and education of children and adolescents to responsible personalities in society. This includes, above all, media and other publications with immoral and brutalising content or those instigating violence, crime and racism and media conveying the following messages: presentation in detail of acts of violence, murder and massacre for their own purpose or recommendation of the law of the jungle as the only proven tool by which to obtain supposed justice.

In addition to minor offences, which are not conclusively specified in Section 18 (1), second sentence, of the Protection of Young Persons Act, further media contents might lead to socio-ethical disorientation of children and adolescents. The *BPjM* has defined further categories of imperilling of minors, which have been confirmed by court rulings, provided that jurisprudence submitted its comment on it. These include:

- violation of human dignity,
- discrimination against groups of people,
- glorification / trivialisation of National Socialism,
- glorification / trivialisation of drug use,
- glorification / trivialisation of excessive drinking,
- suggestion of self-injurious behaviour (pro-ana/pro-mia, suicide).

Even if the Board has come to the conclusion that the medium in question corresponds to one or several of the aforementioned offences, the outcome of an indexing to be imposed is not yet certain.

Indexing always constitutes an encroachment on specific **fundamental rights of the party to the proceedings**. However, since the protection of minors has constitutional status as well, meaning it is as significant as other fundamental rights, it has to be considered which of the two is to be given preference in a case of colliding interests. In this respect, the freedom of art, science, research and teaching as well as the freedom of expression and religion have to be particularly considered.

In addition to 'minor' imperilling of minors as explained above, Criminal Code standards authoritative for the protection of minors have also been included in the offence list of the Interstate Treaty on the Protection of Minors and the Protection of Young Persons Act. Media containing such contents are considered to be severely harmful to minors. Further offences of severe imperilling of minors are constituted in addition to the application of criminal law provisions. Regarding these media contents, the indexing consequences already apply by law. The following offences are thus considered to be **severely harmful to minors**:

- dissemination of propaganda material of unconstitutional organisations (Section 86 of the German Criminal Code);
- Holocaust denial, incitement to hatred (Section 130 of the German Criminal Code);
- attempt to cause the commission of serious offences (Section 130a of the German Criminal Code);
- depictions of violence that violate human dignity or express glorification of violence (Section 131 of the German Criminal Code);
- pornography (Section 184 (1) of the German Criminal Code);
- pornography depicting violence or sodomy (Section 184a of the German Criminal Code) or child or juvenile pornography (Sections 184b and, respectively, 184c of the German Criminal Code );
- glorification/trivialisation of war;
- media portraying people who are dying or who are being or have been exposed to severe physical or emotional suffering in a manner that violates human dignity and presenting actual events and developments, although there is no overriding public interest that would justify the choice of such reporting practices;
- presentation of children and adolescents in unnatural, sexually provocative physical postures;
- or media which might have a severely damaging impact on the development and education of children and adolescents to responsible personalities in society.

To avoid ambiguities in trade and distribution, the *BPjM* also includes media severely harmful to minors in the List upon application or proposal and publishes the listing of data media in the Federal Gazette.

By including them in the List of Media Harmful to Young Persons, data and telemedia are subject to extensive sales and distribution restrictions as well as an advertising ban. However, with a few exceptions, they may still be made available to adults.

With regard to [*exact description of the medium*], an application or proposal for indexing has been submitted to the Federal Review Board.

Upon receipt of the present formal notification you are granted the opportunity to submit your comments **within one week** subsequent to the service of the present letter.

In case you know names and/or addresses of (any other) originators, we should herewith like to give you the opportunity of conveying their data to us. By service of the documents relevant to the procedure upon them, the aforesaid may seek to exercise, if applicable, their right to be heard in accordance with the law.