

Video Games, Censorship and Youth Protection in Germany

Prohibited content

The Basic Constitutional Law of Germany guarantees freedom of speech and expression: [*There shall be no censorship.*](#) Nevertheless this freedom finds its [*limits in the provisions of general laws, in provisions for the protection of young persons, and in the right to personal honour.*](#)

Beside youth protection, these provisions are the following:

To protect the federal state of Germany from unconstitutional organisations like the NSDAP, there is [section 86](#) of the [German Criminal Code \(StGB\)](#), which prohibits the dissemination of propaganda material of unconstitutional organisations and [*the use of their symbols \(section 86a\).*](#)

These laws do not apply when the content is [*meant to serve civil education, to avert unconstitutional movements, to promote art or science, research or teaching, the reporting about current or historical events or similar purposes.*](#) This basically means the mentioned laws should not affect video games, which can be classified as art or that serve educational purposes.

In this sense [section 131 of the StGB](#) has a much bigger impact on video games and other forms of art, since it does not have an “art exception” (see subsection 3). [Section 131](#) prohibits materials, [*which describe cruel or otherwise inhuman acts of violence against humans or humanoid beings in a manner expressing glorification or which downplays such acts of violence or which represents the cruel or inhuman aspects of the event in a manner which violates human dignity.*](#)

To prevent discrimination there is [section 130 of the StGB](#) that prohibits content (without exception), that [*incites hatred*](#) against segments of the population or individuals. Additionally [section 130a of the StGB](#) bans content that is ought [*to cause the commission of offences.*](#)

The prohibition of “[pornography depicting violence or sodomy](#)”, “[child pornography](#)” and “[juvenile pornography](#)” in sections [184a](#), [184b](#) and [184c](#) of the StGB also has no “art exception” and thus affects video games and other forms of art .

Section 15 of the [Protection of Young Persons Act \(JuSchG\)](#) as well as article 4 of the [Interstate Treaty on the Protection of Human Dignity and the Protection of Minors in Broadcasting and in Telemedia \(JMStV\)](#) amplify these laws by explicitly pointing out that *content is illegal if it* [...]

4. *denies or plays down acts committed under the National Socialist regime as specified in Article 6 (1) [Genocide] and Article 7 (1) [Crimes against humanity] of the [International Criminal Code](#)⁶ in a manner suited to disturb public peace,*

[...]

7. *glorifies war,*
8. *violates human dignity, especially by presenting persons who are or were dying or exposed to serious physical or mental suffering while reporting actual facts without any justified public interest in such form of presentation or reporting being given; any agreement granted in this respect shall be irrelevant [...]*

(see [JMStV, article 4, sentence 1](#)).

Youth protection

While the aforementioned laws prohibit the production of the corresponding content (at least the production with intent of sharing), youth protection solely restricts the distribution of content, that *is suited to impair the development of children or adolescents into self-responsible and socially competent personalities* (see [JMStV, article 5, sentence 1](#)).

In Germany there are two levels of youth protection (in respect of media):

The second level applies to content that is *evidently suited to **seriously** impair the development of children and adolescents or their education into self-responsible and socially competent personalities, taking into account the specific effect of the media via which the content is provided* (see [JMStV, article 4, sentence 2](#)). This content can only be legally distributed, *if the provider has ensured that such content is accessible for adult persons only (closed user group)* (see [JMStV, article 4, sentence 2](#)).

The first level basically applies to all content that is not covered by the second level protection. This kind of content can be given an age rating by a rating board and may be openly distributed in public spaces to persons with the appropriate age (as long as the parts you can see of the product in public are suitable for all ages, see [JuSchG, section 12](#)). Content providers have to ensure that children or adolescents within an inappropriate age range *do not normally see or hear such content* (see [JMStV, article 5, sentence 1](#)). The appropriate age group is determined autonomously by the provider or by a rating board (obligatory for offline media, see [JuSchG](#),

[section 14](#)). The possible age ranges are: 0-6, 6-12, 12-16, 16-18, 18+ (see [JuSchG, section 14](#)).

While second level content requires closed user groups with a very strong age verification system (see [“AVS-RASTER”](#) [in German]), first level content effectively only has to be secured (at least for online access/purchase) if the age group is 16 or higher (see [JMStV, article 5, sentence 4 and 5](#)). In this case the provider can schedule the access or use technical measures to meet the obligations.

Scheduling the access

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