

Requirement to obtain and provide age ratings and content descriptors that must meet certain requirements

Summary

Law	Sec. 14a Youth Protection Act				Effective date:		1 May 2021				
Applies to:	Social networks	Search Engines	Game distribution platforms	VoD platforms	App stores	Video games	Movies and shows	Video-sharing platforms	Media compilation apps and services	Smart devices/connected devices	Messenger services
			Yes	Yes	Yes				Depends		
Content of the regulation — quick overview											
<ul style="list-style-type: none"> Game distribution and VoD platforms are required to provide German age ratings and newly introduced descriptors for movies or games stocked on their platform. Age ratings must be obtained by designated procedures set out in the law. Other procedures and age ratings are not permitted. 						<ul style="list-style-type: none"> No self-ratings; no self-designed automated age-rating processes; relying on ratings provided by the content provider involves risks. Platforms with >1 m users are exempted. 			Applies to abroad companies?		Yes
									EU/EEA country of origin principle respected?		Yes

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I. Who is affected by the regulation?

In-scope services:

- Game distribution platforms (including app stores) and VoD platforms (TVoD, AVoD and SVoD), which are defined by the law as service providers that combine films or games into an overall offering and make them available as their own content for individual access at a time selected by the user with the intention of making a profit.
- The provision explicitly applies to the platform providers themselves not the content provider, meaning platforms have to provide the age labels even if the content providers do not supply the age ratings to them or only provide self-ratings. This has a significant impact in practice (see below).
- Media compilation apps and services are caught if they grant access to individual films or games. If they only grant access to further services or online press, the requirement does not apply.

Exemptions:

- platforms that can demonstrate that they have less than 1 million users in Germany
- nonprofit platforms

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Companies outside of Germany:

- The requirement, including the possibility to impose fines for violations, explicitly applies to game distribution and VoD platforms that do not have their seat in Germany.
- EU/EEA country of origin principle:
 - The law respects the EU/EEA country of origin principle.
 - The **country of origin** principle under the Audiovisual Media Services Directive (for VoD platforms) and the E-Commerce Directive (for game distribution platforms) applies to service providers established in another EU/EEA member state.
 - Service providers that can rely on the EU/EEA country of origin principle are exempted, as they only have to comply with the youth protection laws in their EU/EEA country of origin.
 - However, the requirements for an actual establishment have to be met (e.g., mere shell companies are not sufficient for this purpose). The exact requirements for an establishment under the Audiovisual Media Services Directive and the E-Commerce Directive country of origin principle, as well as the exemptions from it, differ in detail.
 - The country of origin principle allows for exemptions, in particular, in the area of youth protection. The German youth protection regulator recently started to **test these exemptions** and it is currently unclear whether this will become an ongoing practice in the future.

II. What are the requirements?

Under Section 14a of the Youth Protection Act, game distribution and VoD platform providers are required to provide German age labels and **newly introduced descriptors** for movies or games stocked on their platform. The age labels and descriptors and how they are obtained have to meet specific standards.

- Platforms must provide age labels and descriptors obtained by designated procedures set out in the law. Other procedures are not permitted.
- Permitted procedures are:
 - Classic age ratings by the USK (for games) or the FSK (for films and shows), which are determined through a manual review by a FSK/USK committee.
 - Age ratings determined by means of a manual review by FSK.online, USK.online, the FSF or the FSM (which in Germany fall under a different regulatory regime, though FSK.online and USK.online technically reside under the same roof).
 - Self-ratings determined by a youth protection officer appointed by the company. In Germany, media companies that meet certain requirements have to appoint a youth protection officer. However, for the youth protection officer to be eligible to determine age ratings that meet the requirements of the new obligation, the youth protection officer additionally has to be certified by either FSK.online, USK.online, the FSM or the FSF. These organizations currently set out the certification criteria.
 - Automated rating systems operated by one of the recognized self-control organizations FSK.online, USK.online, the FSM or the FSF
 - Automated means that age ratings are determined, for instance, based on a questionnaire that has to be answered by the content provider during the prepublication process (as opposed to a manual review). Examples are **IARC for video games**. The FSK is working on a similar procedure for films and shows.

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- In addition, the automated rating system has to be recognized by the state youth protection regulator. It is expected that **IARC** will be recognized 6 to 12 months after enactment (i.e., the estimated time of recognition is between Q4/2021 and Q2/2022).
- Non-permitted procedures are:
 - Automated rating systems **self-designed by the platform provider are not permitted** as these are: (i) not operated by FSK.online, USK.online, the FSM or the FSF; and (ii) not recognized by the state youth protection regulator.
 - Platforms can **no longer use self-ratings**, e.g., for their own original content.
 - **Example:** A VoD provider produces/licenses 10 episodes of a new show exclusive for its platform. It age labels the show with "16" for distribution in Germany. This is not permitted anymore, as the self-rating does not fall under the permitted age-rating procedures outlined above.
 - Platforms can **no longer rely on ratings provided by the content provider**, unless these ratings are obtained by means of one of the procedures outlined above. In practice, this is often not the case — in particular, for original films and shows — because many content providers only provide self-ratings for online exclusive distribution.

Example: A VoD provider produces 10 episodes of a new show exclusive for its own subscription-based SVoD platform in the US. The show will also be distributed by a publisher worldwide on several TVoD platforms against payment. During the prepublication process of the TVoD platforms, the publisher of the show age labels each episode with "16" for distribution in Germany. This age rating is then displayed by the TVoD platforms in Germany. This well-established market practice procedure is not permitted anymore, as the publisher's self-rating does not fall under the permitted age-rating procedures outlined above. The TVoD platform is responsible from a media regulatory perspective for providing compliant age ratings and could become subject to enforcement. In this case, the TVoD platform cannot defend itself by arguing that the content provider (i.e., the publisher) is responsible as the new obligation is an obligation of the platform.

- In practice and in particular, game distribution platforms and app stores will de facto only have the option to rely on IARC, as the number of published games is too high to obtain age ratings determined by manual reviews.

III. Enactment and enforcement

- The amended Youth Protection Act came into force on 1 May 2021.
- Platforms have to provide age labels and descriptors for all their film or game content, even content that has been offered before the Youth Protection Act was amended.
- Technically, platforms that rely on IARC are not compliant immediately as the state youth protection regulators have not yet recognized IARC. However, since recognition is expected, enforcement before IARC is recognized is unlikely.

IV. Sanctions

- Failure to comply can lead to regulatory investigations and regulatory orders.
- Regulatory fines of up to EUR 50,000 can be imposed.
- Private cease and desist claims by competitors and — more importantly — German consumer protection organizations (such as the VZBV, which regularly targets tech and game companies) may be issued.

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