



Germany – Telemedia Act



Full title:**The Telemedia Act (TMG – Telemediengesetz) 26/02/2007**

Entered into force on 1 March 2007 and will regulate providers of electronic communications services such as websites, ISPs and commercial email. "Telemedia" (Telemedien) comprises all electronic information or communication services other than telecommunication services and broadcasting. The new definition includes the provision of websites, email services, video-on-demand, Internet access and commercial email.

Title of relevant section:

Section 5: General Information to be provided (Imprint / Legal Notice)
Section 6: Special information to be provided in case of commercial communications
Sections 12.1 and 12.2; 13.1 and 13.2/3; and 15.3: relate to Cookie Law

Section 5**General information to be provided**

- (1) Service providers of business-like telemedia usually offered for a fee/ remuneration, must make the following information easily recognizable, immediately accessible and always available:
 1. The name and address at which they are established, in the case of legal persons also the legal form, the authorised representative and, to the extent that details are provided of the equity of the company, the share and nominal capital and, if all the deposits to be made in money have not yet been paid in, the total amount of outstanding deposits,
 2. Details which permit rapid electronic contact and direct communication with them, including the electronic mail address,
 3. To the extent that the service is offered or provided in the context of an activity subject of approval from a state agency, details of the relevant supervisory body,
 4. The commercial register, association register, partnership register or co-operative register in which they are entered and the corresponding register number,
 5. To the extent that the service is offered or provided in exercising an occupation within the meaning of Article 1 Letter d of Directive 89/48/EC of the Council of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ EC No. L 19 p. 16), or within the meaning of Article 1 Letter f of the Directive 92/51/EEC of the Council of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ EC No. L 209 p. 25, 1995 No. L 17 p. 20), most recently amended by Directive 97/38/EC of the Commission of 20 June 1997 (OJ EC No. L 184 p. 31), details of:
 - a. The chamber to which the service providers belong,
 - b. The statutory designation of the occupation and the state in which the designation of the occupation was awarded,
 - c. The designation of the professional rules and of how these can be accessed,

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6. In cases in which they possess a VAT ID number pursuant to Section 27a of the Turnover Tax Act or a business identification number pursuant to Section 139c of the Fiscal Code, the details of this number,
 7. In the case of limited companies, limited partnerships and limited liability companies that are in liquidation, details of this.
- (2) This shall be without prejudice to more extensive obligations to provide information pursuant to other statutory provisions.
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Section 6

Special information to be provided in the case of commercial communications

- (1) In the case of commercial communications which are telemedia or parts of telemedia, service providers must observe at least the following preconditions:
 1. Commercial communications must be clearly identifiable as such.
 2. The natural or legal person in whose name the commercial communications are made must be clearly identifiable.
 3. Promotional offers, such as discounts, premiums and gifts, must be clearly identifiable as such, and the conditions that are to be met to qualify for them must be easily accessible and presented clearly and unambiguously.
 4. Prizes and games of an advertising nature must be clearly identifiable as such and the conditions of participation must be easily accessible and presented clearly and unambiguously.
 - (2) If commercial communications are dispatched by electronic mail, neither the name of the sender nor the commercial character of the message may be disguised or concealed in the heading and subject lines. Disguising or concealment takes place if the heading and subject lines are deliberately designed in such a way that, before the recipient views the content of the communication, he receives no or misleading information about the actual identity of the sender or the commercial character of the message.
 - (3) This shall be without prejudice to the provisions of the Unfair Competition Act.
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Section 12

Principles

- (1) The service provider may collect and use personal data for the provision of telemedia only to the extent that this Act or another statutory provision referring expressly to telemedia permits it or that the recipient of the service has given his approval.
 - (2) The service provider may collect and use personal data for other purposes only to the extent that this Act or another statutory provision referring expressly to telemedia permits it or if the recipient of the service has given his approval.
 - (3) (4) Except as otherwise provided, the provisions in force on the protection of personal data shall be applied, even if the data are not processed automatically
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Section 13

Obligations of the service provider

- (1) The service provider must inform the recipient of the service at the beginning of the session about the nature, scope and purpose of the collection and use of personal data and about the processing of his data in countries outside the scope of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ EC No. L 281 S. 31) in generally understandable form, unless such information has already been provided. In the case of an automated procedure that permits subsequent identification of the recipient of the service and prepares the collection or use of personal data, the recipient of the service must be informed at the beginning of this procedure. The content of this information must be accessible by the recipient of the service at any time.
 - (2) Approval can be stated electronically if the service provider ensures that
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1. The recipient of the service has consciously and unambiguously given his approval,
 2. A record of the approval is kept,
 3. The recipient of the service can access the content of the approval at any time, and
 4. The recipient of the service can revoke the approval at any time with effect for the future.
- (3) Before the recipient of the service states his approval, the service provider must refer him to the right pursuant to Sub-section 2 No. 4. Subsection 1 sentence 3 applies *mutatis mutandis*.
- (4) The service provider must ensure by means of technical and organisational precautions that
1. The recipient of the service can terminate the use of the service at any time,
 2. The personal data accruing during the course of the access or other use are deleted immediately following termination of use or are disabled in the cases of Sentence 2,
 3. The recipient of the service can make use of telemedia without this being disclosed to third parties,
 4. The personal data on the use of different telemedia by the same recipient can be used separately,
 5. Data pursuant to Section 15 (2) can be collated solely for invoicing purposes, and
 6. User profiles pursuant to Section 15 (3) cannot be brought together with details to identify the holder of the pseudonym.

Disablement shall replace deletion pursuant to Sentence 1 No. 2 where statutory, by-law-based or contractual retention periods prevent deletion.

- (5) The recipient of the service shall be informed when he is passed on to a different service provider.
- (6) The service provider must enable the use of telemedia and payment for them to occur anonymously or via a pseudonym where this is technically possible and reasonable. The recipient of the service is to be informed about this possibility.
- (7) Service providers shall, as far as this is technically possible and economically reasonable, ensure, within the scope of their respective responsibility for commercially offered telemedia, by means of technical and organizational measures, that:
1. no unauthorized access to the technical equipment used for their telemedia offers is possible, and
 2. they
 - a) are protected against personal data breaches and
 - b) against disturbances, even if they are caused by external attacks
- (8) On request, the service provider must provide the recipient of the service with information about the data stored regarding his person or his pseudonym in line with Section 34 of the Federal Data Protection Act. This information can be provided electronically on the request of the recipient of the service in line with Section 34 of the Federal Data Protection Act.

Section 15

Data on Usage

- (1) The service provider may collect and use the personal data of a recipient of a service only to the extent necessary to enable and invoice the use of telemedia (data on usage). Data on usage are in particular
1. Characteristics to identify the recipient of the service,
 2. Details of the beginning and end of the scope of the respective usage, and

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3. Details of the telemedia used by the recipient of the service.

- (2) The service provide may collate a recipient's usage data regarding the use of different telemedia to the extent necessary for invoicing the recipient of the service.
 - (3) For the purposes of advertising, market research or in order to design the telemedia in a needs-based manner, the service provider may produce profiles of usage based on pseudonyms to the extent that the recipient of the service does not object to this. The service provider must refer the recipient of the service to his right of refusal pursuant to Sub-section 13 No. 1. These profiles of usage must not be collated with data on the bearer of the pseudonym.
 - (4) The service provider may use data on usage beyond the end of the session to the extent necessary for invoicing the recipient of the service (invoicing data). The service provider may disable the data in order to fulfil existing statutory, by-law-based or contractual retention periods.
 - (5) The service provider may transmit invoicing data to other service providers or third parties to the extent necessary to ascertain the fee and to invoice the recipient of the service. If the service provider has concluded a contract with a third party on the collection of the fee, he may transmit invoicing data to a third party to the extent necessary for this purpose. Data on usage may be transferred in anonymous form for the purpose of market research by other service providers. Section 14 (2) applies mutatis mutandis.
 - (6) The invoicing of the use of telemedia must not render identifiable the provider, time, duration, nature, content and frequency of certain telemedia used by a recipient of a service unless the recipient requests itemised billing.
 - (7) The service provider may store invoicing data processed for the production of itemised billing on the use of certain services at the request of the recipient of the service at most until the end of the sixth month following the sending of the invoice. If objections are raised against this invoice within this period, or if despite reminders this invoice has not been paid, the invoicing data may be stored further until the objections have finally been clarified or the invoice has been paid.
 - (8) If the service provider has actual documented grounds for suspicion that his services are deliberately being used by certain recipients who intend not to pay or not fully to pay, he may use the personal data of these recipients beyond the end of the session and the storage period cited in Sub-section 7 only to the extent that this is needed for purposes of legal action. The service provider must delete the data expeditiously when the preconditions pursuant to Sentence 1 no longer pertain or the data are no longer required for legal action. The recipient of the service affected must be informed as soon as is possible without endangering the purpose pursued by the measure.
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