[DE] Bill Tightening Sex Crime Legislation Tabled

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The Bundesministerium für Justiz und Verbraucherschutz (Federal Ministry of Justice and Consumer Protection) has tabled a bill designed to tighten German sex crime legislation. The bill is designed to transpose into national law the Council of Europe Conventions on the Protection of Children against Sexual Exploitation and Sexual Abuse (ETS 201 - Lanzarote Convention, 25.10.2007), and on preventing and combating violence against women and domestic violence (ETS 210 - Istanbul Convention, 11.5.2011), which have been signed by the Federal Republic of Germany, as well as Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography.

The bill contains provisions on the territorial area of application of the Strafgesetzbuch (Criminal Code - StGB) and broadens the definition of victims and offenders in relation to the sexual abuse of wards (Art. 174 StGB).

Among the provisions relevant to the audiovisual sector is Article 176(4)(3) StGB (sexual abuse of children through the use of written materials), which the bill extends to include offences committed using information and communication technologies.

The bill also extends the scope of application of Articles 184b and 184c StGB (distribution, purchase and possession of written materials containing child pornography) to materials depicting wholly- or partly-naked children in unnatural sexual poses.

A specific rule will also be introduced concerning criminal liability for the production of written materials containing child pornography based on an actual event (Arts. 184b(1)(3) and 184c(1)(3) of the new bill). Under other specific regulations, anyone who makes pornographic content available to a person or to the public via broadcasting or telemedia can be punished under the existing Articles 184 to 184c StGB (Art. 184d(1)(1) of the bill). Anyone who downloads child pornography via broadcasting or telemedia will be punishable under Articles 184b(4) and 184c(4) StGB (Article 184d(2) of the bill). In addition, a new Article 184e will be added to the Criminal Code, prohibiting the organisation of, or attendance at, live performances of child pornography.

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Finally, the bill provides that the scope of application of Article 201a StGB (breach of intimate privacy through recording of images) will, in future, also include “revealing images” and images of a naked person. It will not matter whether or not the depicted person is in a private home or a place protected from public view. At the same time, harsher penalties will apply to anyone who distributes or makes available to the public images that fall under the new scope of Article 201a StGB. The concept of “revealing images” is only defined in the explanatory memorandum, where they are described as images that show the depicted person in an embarrassing or degrading situation or in a situation images of which, it can be assumed, would not normally be made accessible to a third party.

This final amendment in particular has been criticised by legal experts, who claim that the terms “revealing images” and “images of a naked person” make the definition of the offence too broad. They believe it restricts freedom of expression and freedom of the press, while it has also been suggested that it conflicts with the Kunsturhebergesetz (Art Copyright Act - KUrhG).

Referentenentwurf des Bundesministeriums für Justiz und Verbraucherschutz

http://www.internet-law.de/wp-content/uploads/2014/04/Entwurf-Sexualstrafrecht_2014.pdf

Bill of the Federal Ministry of Justice and Consumer Protection

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