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Third Act amending the Telemedia Act[[1]](#footnote-1)\*

of 28 September 2017

The Federal Parliament has adopted the following Act:

Amendment of the Telemedia Act

The Telemedia Act of 26 February 2007 (Federal Law Gazette I p. 179, No 251), last amended by Article 2 of the Act of 1 September 2017 (Federal Law Gazette I p. 3352), is amended as follows:

* + - 1. § 7 is amended as follows:
         1. Paragraph 2(2) and (3) are deleted.
         2. The following paragraphs 3 and 4 are added:

“(3) Obligations to remove information or to block the use of information under general laws based on judicial or official orders shall not be affected even in case of non-responsibility of the service provider pursuant to Articles 8 to 10. Telecommunications secrecy pursuant to Article 88 of the Telecommunications Act shall be respected.

(4) If a user employs a telemedia service to infringe upon the intellectual property of another person, and the owner of the property has no alternative remedy against such infringement, then the owner may require the relevant service provider within the meaning of Article 8(3) to block the use of information in order to prevent the infringement from being repeated. The block must be reasonable and proportional. There shall be no right to claim reimbursement from service providers of the prejudicial and extrajudicial costs of the initiation and enforcement of a claim as referred to in sentence 1, except in the cases described in Article 8(1)(3).”

* + - 1. § 8 is amended as follows:
         1. Paragraph 1 is amended as follows:

After sentence 1, the following sentence is inserted:

“To the extent that the service provider is not responsible, he shall not be held liable for compensation for any unlawful act committed by a user or obliged to cease or desist from an infringement; the same applies in respect of all costs of submission and enforcement of such claims.”

In the new sentence 3, the words ‘Sentence 1 shall’ shall be replaced with the words ‘Sentences 1 and 2 shall’.

* + - * 1. The following paragraph 4 is added:

“(4) Service providers within the meaning of Article 8(3) cannot be required by authorities,

* + - 1. prior to granting access,
         1. to collect and store the personal details of users (registration); or
         2. to require a password to be entered; or
      2. to permanently cease offering the service.

This shall not affect the case where a service provider voluntarily identifies users, requires a password or takes other voluntary measures.”

Evaluation

The Federal Government will assess, two years from entry into force, whether the objective of this Act has been achieved, specifically whether the newly created right to block the use of information pursuant to Article 7(4) of the Telemedia Act has proven to be an effective instrument to protect the interests of right owners. The outcome of this assessment will be reported to the Federal Parliament.”

Entry into force

This Act shall enter into force on the day following its promulgation.

1. \* “Notified in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241 of 17 September 2015, p. 1). [↑](#footnote-ref-1)