

Hey there. You probably ended up here because someone sent this to you after you said that cub or lolisho is illegal. This is a document with references to official German Federal Court of Justice (BGH) decisions. The BGH is more or less the supreme court of Germany. All information is provided without guarantee and applies specifically to the German-speaking legal landscape. I can only recommend checking the links yourself. And lastly: not everyone has to like everyone, and not everyone has to agree with everyone's ideals. If you can't live with it, there's the block button.

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Executive Summary

Under German criminal law, the legality of fictional child pornography (including furry art depicting childlike anthropomorphic animals and anime-style "lolisho" art) depends entirely on whether the material is considered "realistic" (wirklichkeitsnah) or "clearly fictional" (klar fiktiv/nicht-wirklichkeitsnah).

The core legal principle:

Content Type	Possession	Distribution/Production
Clearly fictional (cartoons, anime, furry art)	Generally not criminal	Generally not criminal
Realistic/fact-like (photorealistic, indistinguishable from reality)	Criminal (Section 184b(1))	Criminal (Section 184b(1))

For Furry Art (Cub Porn):

Furry art depicting anthropomorphic animal characters (with fur, paws, tails, animal features) is generally considered clearly fictional and therefore likely legal for possession under German law, as these characters are visually distinguishable from real human children.

For Anime/Lolisho:

Anime-style art is in a grey area. Whether it's legal depends on the specific artwork. If the characters could be perceived by an average observer as potentially depicting real human children, there is a risk of criminal liability. More stylized/cartoonish anime is safer; more realistic anime poses higher risk.

Legal Framework

Section 184b StGB - Child Pornography

The German Criminal Code (Section 184b StGB) criminalizes child pornography.

The key provisions are:

Section 184b Abs. 1 StGB criminalizes the following acts involving child pornography:

- Herstellen (Producing)
- Beschaffen (Acquiring)
- Besitzen (Possessing)
- Verbreiten (Distributing)
- Zu sich nehmen (Taking into possession)

Section 184b Abs. 3 StGB defines what constitutes child pornography:

"Kinderpornographische Darstellungen im Sinne dieses Abschnitts sind bildliche oder andere Darstellungen, die ein Kind oder einen Jugendlichen bei einer sexuellen Handlung oder eine an ein Kind oder einen Jugendlichen gerichtete sexuelle Handlung zeigen oder auf eine Art zeigen, dass aus der Art der Darstellung hervorgeht, dass ein Kind oder ein Jugendlicher dargestellt wird."

The crucial distinction - the law specifically requires depictions of actual or realistic representations. The term "wirklichkeitsnah" (realistic/lifelike) is the key legal standard.

EU Directive 2011/93/EU

The EU Directive on child sexual abuse and exploitation (Directive 2011/93/EU) was implemented into German law. Importantly, Recital 13 and Article 2 specify that member states may exclude purely fictional material from criminalization for possession, provided it is not realistic.

Important Distinction: Active Retrieval vs. Passive Viewing

German law distinguishes between:

- Abruf (active retrieval): Actively requesting data (e.g., clicking a link, downloading) - this can be criminal
- Zugriff (passive viewing): Merely viewing content without active retrieval (e.g., a pop-up window) - this is generally NOT criminal

This distinction ensures that criminal liability is tied to an active behavioral choice rather than mere contemplation.

The „realistic“ (Wirklichkeitsnah) Standard

The Legal Test

Under German law, the distinction between criminal and non-criminal fictional material hinges on the "wirklichkeitsnah" (realistic) standard:

1. If the depiction is "wirklichkeitsnah" (realistic/lifelike):

- > The material is treated as child pornography
- > Possession **is** criminal (Section 184b Abs. 1 StGB)

2. If the depiction is "nicht-wirklichkeitsnah" (not realistic/clearly fictional):

- > The material is **not** considered child pornography
- > Possession is generally **not** criminal

Who Decides What Is "Realistic"?

The test is objective: Would an average observer reasonably perceive the image as potentially depicting a real human child? This is NOT about the creator's intent, but about how the image would be perceived.

Key Precedent: BGH 1 StR 8/13 (2013)

The German Federal Court of Justice (Bundesgerichtshof) has established that:

"Der Besitz von fiktiven, nichtwirklichkeitsnahen Darstellungen (wie Zeichnungen, Comics oder Animationen) ist nicht strafbar."

Translation: "The possession of fictional, non-realistic depictions (such as drawings, comics, or animations) is not criminal."

Key BGH Decision: 1STR 8/13 (2013)

Citation: BGH, Beschluss vom 19. März 2013, Az. 1 StR 8/13

Source: <https://www.hrr-strafrecht.de/1/13/1-8-13.php>

Background

The case involved a defendant who exchanged various child and juvenile pornographic materials via email. The central legal question was whether a textual description of child sexual abuse (contained in an email) constituted a "child pornographic writing" under Section 184b StGB.

Key Holdings

1. Textual Descriptions Are Excluded from Possession Offense:

The BGH ruled that a mere textual description of sexual acts, even if it describes real events, does NOT meet the threshold of depicting an "actual" or "realistic" occurrence for the purposes of the possession offense. The court reasoned that textual descriptions are always indirect and lack the direct impact of visual or audio recordings.

2. The "Realistic" (Wirklichkeitsnah) Threshold:

The court distinguished between:

Realistic depictions that could be mistaken for real photographs -> CRIMINAL

Clearly fictional depictions (cartoons, drawings) -> NOT CRIMINAL for possession

3. Legislative Intent:

The BGH noted that the German legislature consciously excluded fictional

works, drawings, and verbal descriptions from the possession offense. The protective intent of the law is to criminalize materials that carry a heightened risk of incentivizing the sexual abuse of children for the purpose of creating such materials. Fictional materials (drawings, comics, animations) do not inherently involve the actual abuse of a child in their creation.

4. Electronic Possession:

The decision also clarified that the electronic transmission of child pornographic content to another person constitutes the "provision of possession" under Section 184b StGB. This applies even for one-on-one exchanges, not just broad public dissemination.

Significance

This decision is the cornerstone precedent establishing that:

Cartoons, drawings, and anime that are clearly distinguishable from reality are not criminal to possess. The key test is whether the material is "wirklichkeitsnah" (lifelike/realistic). Fictional/fantastical depictions fall outside the scope of Section 184b for possession. The legislature intentionally limited the possession offense to materials with a realistic character.

Important Clarification

The BGH decision 1 StR 8/13 was specifically about whether textual descriptions (email text) constitute child pornographic "writings." The broader application to visual fictional depictions (drawings, comics, anime, furry art) follows by logical extension of the court's reasoning: if even textual descriptions of real events are excluded from the possession offense due to their indirect nature, then clearly fictional visual depictions (which are even further removed from reality) are a fortiori excluded.

Note: The term "wirklichkeitsnah" (realistic) is a judicial/scholarly interpretation used by courts and legal scholars to describe the standard. It does not appear verbatim in the statutory text of Section 184b StGB, but has been consistently applied in case law and academic commentary as the operative threshold.

Furry Art (Cub Porn)

Legal Position: GENERALLY SAFE FOR POSSESSION

Furry art depicting anthropomorphic animal characters with childlike features ("cub porn") falls squarely within the "clearly fictional" category:

Why Furry Art Is Generally Legal

1. Distinct Non-Human Features:

- Fur, paws, tails, animal ears, snouts, animal eyes
- These features make the characters visually distinguishable from real human children
- An average observer would NOT perceive these as potentially depicting real human children

2. Not "Wirklichkeitsnah" (Not Realistic):

- Anthropomorphic animal characters are inherently fantastical
- The "average observer test" is clearly met: no reasonable person would think a furry character is a real human child

3. Consistent with BGH 1 StR 8/13:

- The BGH explicitly excluded "Zeichnungen" (drawings) and fantastical depictions from criminal liability
- Furry art is an extreme form of fictional depiction - it's even more clearly fictional than human cartoon characters

4. No Actual Child Abuse Risk:

- The creation of furry art does not involve photographing or depicting actual children
- This aligns with the legislative purpose of Section 184b StGB

ANIME/LOLISHO

Legal Position: Context Dependend (GREY AREA)

Anime-style "lolisho" (depicting young-looking female anime characters in sexual contexts) occupies a legal grey area:

Factors That Make It Legal

1. Clearly Stylized/Cartoonish Anime:

- Large eyes, simplified features, exaggerated proportions
- Characters that are obviously cartoon/anime style
- These would likely be considered "nicht-wirklichkeitsnah" (not realistic)
- Possession would likely NOT be criminal

2. Consistent with BGH Precedent:

- The BGH explicitly mentioned "Comics" and "Animationen" as examples of non-criminal fictional content
- Anime is a form of animation/cartoon art

3. International Precedents:

- Sweden: Supreme Court ruled manga-style images were NOT child pornography because they weren't realistic enough
- Netherlands: Courts established fictional pornography is illegal only if "indistinguishable from reality"
- Spain/Austria: Restrict only "realistic" images, interpreting the term narrowly

Factors That Make It Potentially Illegal

1. Photorealistic Anime:

- If the art style is semi-realistic or photorealistic
- Characters that could be perceived as potentially depicting real human children
- Possession COULD be criminal if deemed "wirklichkeitsnah"

2. The "Average Observer" Test:

- If an average person could reasonably think the image depicts a real child
- The more realistic the art, the higher the legal risk

Practical Assessment

Anime Style	Legal Risk	Reason
Classic cartoon (large eyes, simple features)	Low	Clearly fictional
Semi-realistic (detailed, could be mistaken for photos)	High	May be „wirklichkeitsnah“
Photorealistic (CGI, almost photographic)	Very High	Likely „wirklichkeitsnah“

Important Risk Factors

1. The 2021 Legal Reform

In 2021, Germany reformed Section 184b StGB to introduce minimum penalties of one year imprisonment for certain offenses. This reform reclassified all Child Sexual Exploitation Material (CSEM) offenses as crimes ("Verbrechen" rather than "Delikte"), raising the minimum sentence to one year. However, the "wirklichkeitsnah" (realistic) standard remained the key distinction for fictional content.

The reform was prompted by a significant increase in reported CSEM cases (108% increase in 2021 according to the Federal Criminal Office).

2. Artistic Freedom (Kunstfreiheit)

Under Article 5(3) of the German Basic Law (Grundgesetz), artistic freedom (Kunstfreiheit) provides constitutional protection for artistic works. However, this protection is not absolute and may be balanced against the state's interest in child protection.

3. Enforcement Reality

In practice, German law enforcement focuses on:

- Photographic child pornography
- Realistic digital images
- Materials that could be mistaken for real children

Clearly fictional content (cartoons, anime, furry art) has historically been rarely prosecuted for simple possession.

4. The AO3 Case (2022-2023)

The case of Archive of Our Own (AO3) illustrates the complexity:

The German Federal Agency for Media in the Public Interest (BzKJ) attempted to index AO3 for "child pornography in text form"

The indexing was based on fanfiction texts describing sexual acts involving characters under 14

This was challenged and overturned on January 10, 2023 due to procedural errors specifically, the required prior hearing of the provider (OTW) was not conducted

The BzKJ acknowledged that a proper hearing would likely have led to a different proportionality assessment

The case highlights the tension between fictional content and German regulatory authority

Importantly: The authorities' actions were found to have procedural errors, and the indexing was withdrawn

Common Misconceptions

X "All child pornography is illegal to possess in Germany" Reality: Only realistic ("wirklichkeitsnah") depictions are criminal for possession. Clearly fictional content (drawings, cartoons, anime, furry art) falls outside the possession offense.

X "If it shows a child-like character in a sexual context, it's automatically child pornography" Reality: The law requires the depiction to be realistic/lifelike. A cartoon or furry character is a "child-like character" but is NOT child pornography under German law because it is clearly fictional.

X "The BGH has explicitly ruled that anime/manga is legal" Reality: The BGH decision 1 StR 8/13 was specifically about textual descriptions (email text). The application to visual fictional depictions (comics, anime, furry art) is by logical extension of the court's reasoning. The term "wirklichkeitsnah" is a judicial/scholarly standard, not a verbatim statutory phrase.

X "If I know it's fictional, it can't be illegal" Reality: The test is objective: would a reasonable observer perceive it as potentially depicting a real child? Your personal knowledge that it's fictional doesn't matter - the visual appearance does.

X "The 2021 reform made ALL child pornography possession a crime with 1-year minimum" Reality: The 2021 reform raised penalties for offenses that are ALREADY criminal under the statute. It did NOT expand the scope to include clearly fictional content. The "wirklichkeitsnah" standard remains the key threshold.

X "Manga and anime were explicitly mentioned in the BGH ruling" Reality: The BGH mentioned "Zeichnungen" (drawings), "Comics," and "Animationen" (animations). Manga and anime are covered by these categories by logical extension. The Springer Nature (2023) study confirms this interpretation: "Der Besitz von fiktiven, nichtwirklichkeitsnahen Materialien wie Mangas, Comics ist nicht strafbar."

X "If someone calls it child pornography, it must be" Reality: The term "child pornography" is often used colloquially. Under German criminal law, it has a specific legal definition that excludes clearly fictional content for possession purposes.

X "The law treats all fictional content the same" Reality: There is a critical distinction between possession (generally legal for clearly fictional content) and distribution/production (which may still be criminal even for fictional content).

Practical Guide: „Is my content safe?“

Quick Self-Assessment Checklist

Ask yourself these questions about the content in question:

1. Does the image show human characters?

- NO (animal/furry characters): -> [OK] Likely clearly fictional -> [OK] Likely safe for possession
- YES (human characters): -> Continue to question 2

2. Is the art style highly stylized/cartoonish?

- YES (large eyes, simplified features, exaggerated proportions): -> [OK] Likely clearly fictional -> [OK] Likely safe for possession
- NO (detailed, naturalistic): -> Continue to question 3

3. Could this look like a photograph of a real child?

- NO (clearly a drawing, painting, or CGI): -> [OK] Likely clearly fictional -> [OK] Likely safe for possession
- YES (photorealistic, CGI that mimics photography): -> Potentially "wirklichkeitsnah" -> Higher risk

3a. Is it a deepfake or AI-generated photorealistic image?

- YES: -> High risk - could be classified as realistic -> Consult a lawyer

Red Flags (Higher Risk)

- Photorealistic CGI or 3D renders
- Deepfakes of real children

- AI-generated images designed to look like photographs
- Collages combining real photographs with fictional elements
- Semi-realistic artwork where anatomical details are highly accurate

Green Flags (Lower Risk)

- Traditional cartoon/drawing style
- Furry art with animal features (fur, paws, tails, snouts)
- Anime/manga with stylized features (large eyes, simplified anatomy)
- Pixel art or low-resolution art
- Clearly fantastical or abstract art styles

What to Do If You're Unsure

1. Apply the reasonable observer test: Would someone who has never seen your art think it could be a real child?
2. Consider the context: Is it part of a larger clearly-fantastical universe (e.g., a furry art collection)?
3. When in doubt, consult a German criminal law attorney (Strafrechtsanwalt) specializing in media or art law

Sources

Primary Legal Sources

1. Section 184b StGB (German Criminal Code - Child Pornography)
 - Primary statute governing child pornography in Germany
2. EU Directive 2011/93/EU - Directive on child sexual abuse and exploitation
 - Implemented into German law, allows member states to exclude purely fictional material
3. BGH, Beschluss vom 19. März 2013, Az. 1 StR 8/13
 - Key precedent on fictional vs. realistic depictions
 - Source: <https://www.hrr-strafrecht.de/1/13/1-8-13.php>

Secondary Sources

4. Springer Nature (2023) - "Unwissenheit schützt vor Strafe nicht" (Ignorance is no excuse in law)
 - Academic analysis of public legal knowledge regarding CSEM Confirms: "Der Besitz von fiktiven, nichtwirklichkeitsnahen Materialien wie Mangas, Comics ist nicht strafbar"
 - Source: <https://link.springer.com/article/10.1007/s11757-023-00759-7>
5. Wikipedia - "Legal status of fictional pornography depicting minors"
 - Comprehensive international comparison
 - Confirms Germany's position: "In Germany, while the distribution of realistic images resembling real children is criminalized, the acquisition and possession of clearly fictional works like comics and anime are generally protected under constitutional freedom of art"
 - Source: https://en.wikipedia.org/wiki/Legal_status_of_fictional_pornography_depicting_minors
6. Netzpolitik.org (2023) - AO3 Case Analysis

- Analysis of German authorities' treatment of fictional content
- Source: <https://netzpolitik.org/2023/bundeszentrale-jugendmedienschutz-archive-of-our-own-pruefstelle-muss-indizierung-von-fan-fiction-portal-zuruecknehmen/>

7. Verfassungsblog (2022) - "Child Protection, Sexuality and Feindstrafrecht"

- Analysis of German child protection law reforms
- Source: <https://verfassungsblog.de/child-protection-sexuality-and-feindstrafrecht/>

International Comparisons

8. Sweden Supreme Court (2012) - Manga images ruled NOT child pornography

9. Netherlands - Fictional pornography illegal only if "indistinguishable from reality"

10. Spain/Austria - "Realistic" images only, excluding standard cartoons

Disclaimer

This document is a research compilation and does not constitute formal legal advice. For specific legal matters, consultation with a German criminal law attorney (Strafrechtsanwalt) is recommended.

Key Takeaway: Under current German law and BGH precedent, furry art (cub porn) is generally legal for possession because it is clearly fictional. Anime/lolisho is context-dependent - stylized/cartoonish anime is likely legal, while photorealistic anime carries significant legal risk. The determining factor is always whether the material is "wirklichkeitsnah" (realistic/lifelike).

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- JakeFox

