

Direktorenkonferenz der Landesmedienanstalten

Fachausschuss
Netze, Technik, Konvergenz

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Information sheet: Differentiation between media intermediaries and media platforms

1 Fundamentals:

Media intermediaries	Media platforms
<p>Definition of media intermediary, § 2 para. 2 no. 16 of the Interstate Media Treaty (MStV):</p> <p>"...any telemedia that also aggregates, selects and generally presents journalistic-editorial content from third parties without combining it into an overall package"</p>	<p>Definition of media platform, § 2 Para. 2 No. 14 of the Interstate Media Treaty (MStV):</p> <p>"... any telemedia, to the extent that it combines broadcasting, broadcast-like telemedia or telemedia in accordance with § 19 para. 1 into an overall package determined by the provider."</p>

From the legislative reasoning:

The term "to the extent" in the definition of the media platform clearly emphasises that there can also be mixed offerings. A **functional approach** is required, through which different, **distinguishable functions** of a service can also be subject to **different legal consequences** - for example, that one part of a service falls under regulation as a media platform and another part as a media intermediary. The differentiation needs to be made based on the circumstances of the individual case, especially with regard to **design, content, recipient group and technical structure**.

An overall package determined by the provider and consequently a media platform is **not** deemed to exist when the provider offers third parties the opportunity to present packages **without specific limitation**, e.g. in social media. This will generally also be applicable to app stores, to the extent that only a purely **functional check** is performed in advance to allow access. The same is also true for packages that **merely provide guidance** regarding relevant content without being based on a decision regarding the selection of content (e.g. search engines).

Gesellschafter

Landesanstalt für Kommunikation
Baden-Württemberg (LFK)
Bayerische Landeszentrale für neue Medien
(BLM)
Medienanstalt Berlin-Brandenburg (mabb)
Bremische Landesmedienanstalt (brema)
Medienanstalt Hamburg/Schleswig-Holstein
(MA HSH)
Hessische Landesanstalt für privaten Rundfunk
und neue Medien (LPR Hessen)
Medienanstalt Mecklenburg-Vorpommern
(MMV)
Niedersächsische Landesmedienanstalt (NLM)
Landesanstalt für Medien NRW
Medienanstalt Rheinland-Pfalz
Landesmedienanstalt Saarland (LMS)
Sächsische Landesanstalt für privaten Rundfunk
und neue Medien (SLM)
Medienanstalt Sachsen-Anhalt
Thüringer Landesmedienanstalt (TLM)

2 Differentiation criteria

The decisive differentiation criterion is the "**overall package**". The following criteria in particular can be used to determine whether such is the case:

2.1 Access for organisers and providers *"Who can be part of the package?"*

<p>Media intermediaries are basically openly conceptualised as mediating services::</p> <ul style="list-style-type: none"> - Search engines theoretically cover the entire (open) Internet through crawling and indexing - All you need to do to participate in social media is register <p>As a rule, certain requirements do apply - community standards or terms of use - but in principle, access is automatic.</p>	<p>Media platforms are primarily designed as closed systems as a result of capacity restrictions:</p> <ul style="list-style-type: none"> - Cable network operators in particular only have limited programme slots available <p>Access is generally granted on the basis of a selection decision in individual cases and an (individual) agreement is concluded. In many cases, there are also technical requirements that restrict the circle of potential content providers and consequently create an actual hurdle that restricts access.</p>
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2.2 Content curation of the package *"What should users be offered?"*

<p>When it comes to media intermediaries, there is no content selection in terms of how the package is put together. This means that neither search engines, when crawling and indexing, nor social networks, during registration, ensure that certain content distributions are adhered to.</p> <p>Requirements under purely technical and utilisation law for inclusion in the package are usually harmless as content-neutral requirements. Should, however, technical requirements be so stringent that they constitute an actual hurdle for content providers, this may speak in favour of restricting access - refer to point 1 above for media platforms.</p>	<p>Decisions are made about how the content of media platforms is compiled based on capacity constraints or the respective configuration:</p> <ul style="list-style-type: none"> - Cable network providers, for example, base their programme line-up on which channels their customers are interested in and which composition produces an attractive package - Also conceivable for packages that are aimed at a specific topic or target group
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<p>Thematic specialisations, such as in business networks, are not covered by content curation.</p> <p>A restriction of content may be present, however, if content is only presented from a limited or predetermined selection of sources. This might speak against categorisation as a media intermediary.</p>	
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2.3 Foreseeability by the provider *"What are users presented with?"*

<p>The provider of a media intermediary is unable to foresee in cases of doubt what will be displayed to users tomorrow - how the search results list for search term xy will appear or what will be displayed in the (news) feed of the social media account. After all, this is dependent on the underlying sources - websites or posts - that the provider has no influence over.</p> <p>Whilst it is true that the provider has the selection of the content in its hands and is aware of the criteria used to select the content, it does not know which content is "available" at the moment of the request or use.</p>	<p>By contrast, the provider of a media platform is able to say exactly which channels, streaming content, etc. will be available to users tomorrow because it has made the selection decision.</p> <p>What is decisive here is how the provider determines the overall package - this leads to a predetermined selection that is available to users.</p>
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2.4 Access by the users *"Who can use the package?"*

<p>Media intermediaries are defined by the aggregation, selection and generally accessible presentation of content. The legislative reasoning clarifies that a registration or payment obligation is not contrary to the characteristic of "generally accessible presentation" and consequently the categorisation as a media intermediary.</p>	<p>Media platforms are available in a variety of usage modalities - the use of classic cable network services involves a fee and requires a corresponding contract; OTT services are available both free of charge and for a fee, with or without compulsory registration.</p>
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2.5 User perspective
"How is the package advertised?"

<p>Media intermediaries serve as mediating services and are focussed on participation. Anyone can be part of the package in principle - be it by including their website in search engines or by making their own contributions to social media or user-generated content portals. Even - if not mostly - the package includes "amateur contributions".</p> <p>The users/everyone is typically part of the package.</p>	<p>By contrast, media platforms generally advertise using a diverse and comprehensive, but above all professional selection of services. The individual content is generally presented in a professional way in line with business standards. The objective of media platforms is to provide a "well-rounded" package - especially for entertainment and information - to their respective target groups.</p> <p>The users here are solely consumers.</p>
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3 Disclaimer

The information presented in this information sheet regarding the differentiation between media intermediaries and media platforms is of a purely informative and non-exhaustive nature. It is the responsibility of the competent state media authority to determine the characteristics of a package and its classification under media law on a case-by-case basis.

Die vorliegende englische Version ist eine Übersetzung und dient ausschließlich Demonstrationszwecken – maßgeblich bleibt allein die originale Version in deutscher Sprache.

The present English version is a translation and serves for demonstration purposes only – the original German version remains the only decisive one.