[DE] ZAK issues groundbreaking decisions regarding new media stakeholders

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In March 2024, the state media authorities' *Kommission für Zulassung und Aufsicht* (Commission on Licensing and Supervision – ZAK), the main German media regulator with responsibility, *inter alia*, for regulating national media platforms, issued two noteworthy decisions in relation to the distribution of media content by new media stakeholders. The first decision concerns in-car entertainment systems, which are set to be governed by German media regulations, in particular provisions on public value. The second concerns an infringement of anti-discrimination rules by Google's News Showcase service, which the US company must rectify within three months.

At its March meeting, the ZAK classified the in-car entertainment systems of Audi, BMW/Mini and Tesla as user interfaces within the meaning of the *Medienstaatsvertrag* (state media treaty – MStV). User interfaces are defined in Article 2(2)(15) MStV as the textually, visually, or acoustically conveyed overview of offers or content from one or more media platforms which is used for the orientation and direct selection of offers, content, or software-based applications, which essentially enable direct control of broadcasting, broadcasting-like telemedia, or telemedia. Such services have been subject to new German media law regulations since 2020. In particular, as well as a general obligation to notify the media authorities that they intend to offer a user interface, providers must guarantee the signal integrity of audiovisual content, which may not be overlayed or scaled. The criteria according to which content is sorted, arranged and presented must be made transparent. Since they are classified as user interfaces, these in-car entertainment systems will also be subject to special rules concerning the discoverability of the content they offer (audiovisual, audio or text). Media services that are of significant public value must be easy to find. The Tesla system was classified not only as a user interface, but also as a media platform, i.e. a form of telemedia that combines broadcasting, broadcast-like telemedia, or telemedia into an overall offer. Such platforms are subject to additional provisions of the MStV, including with regard to the allocation of capacities, access and access conditions.

Also at its March meeting, the ZAK took some initial measures as part of an investigation into Google's News Showcase service. Launched in Germany in 2020, the service enables participating publishers and web publishers to publish

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content on Google News and Discover in the form of so-called panels and control how their articles appear. However, the publishers must meet certain criteria laid down by Google. In Germany, these include the number of views and the reach achieved by the publication, compliance with recognised journalistic principles and (on an indicative rather than mandatory basis) membership of a news publishing association. The German media authorities began the investigation after a complaint was lodged by a small publisher that had been told by Google that it could not take part in News Showcase because its readership was too small. The ZAK decided that Google had therefore violated the ban on discrimination that applies to media intermediaries under the MStV. According to Article 94 MStV, media intermediaries are not allowed, for no objectively justified reason, to discriminate against journalistic-editorial offers on whose public profile they have a particularly high influence. The ZAK thought that a publisher's reach was not an objective reason and meant that small and new providers in particular had no realistic chance of taking part, even though they were dependent on (larger) intermediaries to grow their audience. The ZAK therefore ordered Google to modify its service, giving it three months to adapt its criteria before taking a final decision.

The aforementioned provisions of the MStV were adopted in order to safeguard diversity of opinion which, according to the legislator, should be protected not only by traditional media providers, but also by new intermediary services. The ZAK's decisions are therefore an important response to current media consumer behaviour.

Pressemitteilung der ZAK (In-Car-Entertainment-Systeme)

https://www.die-medienanstalten.de/service/pressemitteilungen/meldung/wegweisende-zak-entscheidung-erstmals-sind-in-car-entertainment-systeme-gegenstand-einer-medienrechtlichen-entscheidung

ZAK press release (in-car entertainment systems)

Pressmitteilung der ZAK (Google News Showcase)

https://www.die-medienanstalten.de/service/pressemitteilungen/meldung/zak-fordert-von-google-ireland-ltd-aenderungen-bei-google-news-showcase

ZAK press release (Google News Showcase)

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