[DE] State media authorities' new FAQs on media intermediary transparency obligations

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On 10 October 2023, the German *Landesmedienanstalten* (state media authorities) published their new transparency-related FAQs for media intermediaries. The FAQs are designed to explain to intermediary services, i.e. mainly search engines and social networks, how they can meet their transparency obligations under the 2020 *Medienstaatsvertrag* (state media treaty – MStV). They also stress that these rules, which promote media diversity, apply regardless of the entry into force of the Digital Services Act (DSA), which also contains transparency obligations for online platforms and search engines and already applies to certain very large providers.

The term "media intermediary" is defined in the MStV as a service that aggregates, selects and generally presents third-party journalistic-editorial offers without combining them into an overall offer. It mainly covers the aggregation of content relevant to the formation of opinion, such as the content of a social network newsfeed or the search results of an online search engine. Article 93(1) MStV imposes certain transparency obligations on media intermediaries. In order to ensure diversity of opinion, they must make the following information easily understandable, directly accessible and continuously available: the criteria that serve as the basis for the decision as to whether content is accessible to a media intermediary and whether it remains that way, and the central criteria of an aggregation, selection and presentation of content and the weighting thereof, including information about the functionality of the implemented algorithms in plain language. They are therefore required, firstly, to tell users why they are being shown particular content (or not) and, secondly, to explain to content providers which criteria are used to determine when their content is played and when it is not. In order to help media intermediaries better understand the provisions of both the state treaty and the *Satzung der Landesmedienanstalten zur Regulierung von Medienintermediären* (state media authority statute on the regulation of media intermediaries - *MI-Satzung*), adopted under Article 96 MStV to regulate the details of the treaty, the recently published FAQs lay down minimum standards that they must uphold in order to meet their transparency obligations.

The FAQs begin by explaining that the MStV's provisions apply in their current form regardless of those of the DSA. Unlike the DSA, which is mainly aimed at safeguarding the Digital Single Market from an economic point of view, the

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primary aim of the MStV is to protect plurality of opinion and media diversity. As well as the MStV's scope of application, the FAQs deal with practical aspects of transparency. For example, in the media authorities' view, it is unacceptable that users should only be informed about transparency when they initially access a service, e.g by opening an app. Although such pop-ups are relatively prominent for a short time, they then disappear, meaning that the information is not, as the legislation requires, available throughout the time of usage. Transparency information should be available when logging in to a service and via all types of access (desktop, mobile, app) so it can be found by all interested parties. As a rule, a clearly labelled, easy-to-find (e.g. not hidden in the settings) and understandable link (e.g. "How the rankings work") must be provided to enable users to find the relevant information. It is not sufficient to require users to carry out an active search. Rather, via the link provided, users must be able to find all the essential information in the same place with no more than two clicks. Additional links should therefore always be preceded by a one-pager containing all the essential basic details. In order to be easily understandable, transparency information (in German) should, generally speaking, appear in short sentences, without any technical language, and include practical examples or diagrams. In order to ensure accessibility, explanations should always be available, while users should be able to use a voice assistant to have the information read aloud if they wish.

FAQ für Medienintermediäre in Sachen Transparenz

https://www.die-medienanstalten.de/fileadmin/user_upload/die_medienanstalten/Themen/Medienintermediaere/20230929_FAQ_Medienintermedia__re_final_ua.pdf

Transparency-related FAQs for media intermediaries

Pressemitteilung der Medianstalten 18/2023 vom 10. Oktober 2023

https://www.die-medienanstalten.de/service/pressemitteilungen/meldung/google-instagram-co-muessen-den-transparenzpflichten-des-medienstaatsvertrags-unveraendert-nachkommen-trotz-inkrafttreten-des-digital-services-act

Media authorities press release 18/2023 of 10 October 2023

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