die medienanstalten

! 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.

Transparency FAQs for media intermediaries

The entry into force of the State Media Treaty (Medienstaatsvertrag) on November 7, 2020, modernized media regulation in Germany. Since then, there have been differentiated requirements for so-called media intermediaries as essential intermediaries between users and content providers in order to ensure diversity of content in this area as well. A central pillar of the requirements is the obligation to make all criteria essential for the compilation of offers transparent. In other words: to explain to users why they are (not) shown certain content and to inform content providers about the criteria according to which their content is successfully displayed – or not.

We would like to offer additional guidance on the implementation of the relevant requirements by means of FAQs. In the interests of informed users and diverse content, further efforts in terms of transparency are urgently needed. We therefore provide some examples below of minimum standards that should not be fallen short of. The examples are not exhaustive and cannot replace a case-by-case examination and analysis of the requirements of Sections 93 MStV (Medienstaatsvertrag – State Media Treaty) and 6 of the Statutes on the Regulation of Media Intermediaries (Satzung zur Regulierung von Medienintermediären).

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What exactly is the purpose of the transparency information?

The compilation of (social media or news) feeds determines the diversity and visibility of content and thus the formation of public opinion. The transparency information should therefore explain to users why certain content is displayed in the feed. Only the disclosure and explanation of whether content is displayed because it has been liked by many "friends" or whether its reach has simply been purchased provides the context necessary for informed and confident media use.

Content providers – whether individuals or professional companies – also need this information to be able to defend themselves effectively against possible discrimination against their content.

At least some media intermediaries are now also subject to the provisions of the DSA. Will it be sufficient for media intermediaries to comply only with the DSA requirements in future?

The DSA and the State Media Treaty (MStV) use similar mechanisms with their transparency requirements. However, they differ significantly in their objectives, as the transparency requirements under the MStV are specifically aimed at ensuring diversity of opinion and media. The requirements of the MStV therefore continue to apply and must be implemented accordingly by media intermediaries.

Is it sufficient to inform users about transparency details via a banner when they open the app, for example?

No. A banner is relatively prominent for a short moment, but then it disappears. Transparency details, on the other hand, need to be accessible **throughout the entire usage process** and should not only appear when a service or website is first used and be "clicked away."

Is it sufficient to provide transparency details in the app?

All users and content providers need to be able to find out how a media intermediary operates – and they should be able to do so as soon as they become potentially interested in using the service. Transparency information must therefore be made available independently of logging into the service and offered on all access channels (desktop, mobile, apps).

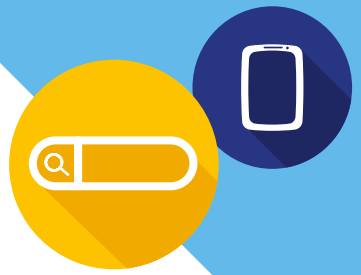
Virtually all media intermediaries allow users to search for specific content via a search field. Is it sufficient for the transparency details to be found by this method?

No. A customised link is generally required to guide users to the information. Placing a link behind general icons such as “Menu,” “Settings,” or “Profile” can only be easily perceived if users regularly have to use this icon for navigation because no other control elements for navigation—such as links at the bottom of the page—are available.

What should the link be called?

The specific name of the link is decisive for ease of recognition. From the user’s perspective, it has proven useful to refer to the order of the content as specifically as possible, for example, “This is how the ranking works.”

More general information on how the service works, on the other hand, was not regularly associated with the transparency details by users. Since the transparency commitment pursuant to the DSA and Interstate Media Treaty (MStV) differ in a fundamental way, we assume that easy perceptibility cannot be achieved via a link labeled “Details according to DSA.”



There are other obligations to provide information that providers must comply with in addition to the transparency details. It is not always easy to implement all of this on one page in practice. Is it therefore possible to stagger the information over several clicks?

Users must be able to access all essential information in one go with a maximum of two clicks via the link. Further cascading links should therefore always be preceded by a corresponding one-pager containing all essential basic information.

What does "easy to understand" actually mean – and how exactly does this work with voice assistants?

All transparency details must initially be provided in German. For ensure easy understanding, short sentences without technical terms should be selected and concrete examples or diagrams should be used for explanation. Too many Anglicisms can also lead to poorer comprehensibility. Text explanations should always be provided with a view to ensuring accessibility, while voice assistants should be able to read out the transparency details on request. Furthermore, it is sufficient for the voice assistant to refer users to the transparency details on request, using as many different phrases as possible, which can then be retrieved (with a media break) on a website, for example.

What are "key criteria"?

Key criteria refer to the standards by which content is aggregated, selected, and presented. In other words, it must be clearly explained what determines whether a specific piece of content appears in the feed. Additionally, the relative importance of these criteria — i.e., which factors carry more weight than others — must also be addressed and clarified.

Is it relevant if payment flows influence the feed?

Yes, and the transparency details must therefore explain the extent to which access, retention, and discoverability, in particular the ranking and reach of content, are influenced by payments or other direct or indirect monetary benefits. This also includes any forms of cooperation or other contractual obligations. The impact of payment flows on "findability" affects not only access and retention but also the processes of aggregating, selecting, and publicly presenting content (i.e., through prominent display) within a media intermediary.

What are cooperations or monetary considerations?

Cooperation may be characterized in particular by contractual agreements, payments, or the exchange of information or experience. The media intermediary must also disclose whether its own content or content from affiliated companies or subsidiaries is treated differently from similar third-party content. This includes, in particular, the preferential highlighting of certain content (e.g., to enhance its visibility or discoverability), as well as the downgrading of third-party content that may be similar or potentially competitive.

What does the promotion or downgrading (promotion and demotion) and filtering of content mean?

The transparency details should specify which types of content are filtered by automated systems or are downgraded or upgraded in terms of their visibility. If (partially) automated systems, algorithmic curation processes, or (AI-based) filtering mechanisms are used, the purposed behind the filtering and classification of content must be indicated accordingly.

Do I also have to provide information about the possibility of account verification?

If account verification has an impact on the visibility of content, this must be clearly stated. In this context, verification refers to confirming that the account provider is indeed the individual or entity represented by the account. Even if verification does not affect visibility, information must still be provided. Perceptibility can be influenced, for example, through preferential ranking or special labeling of content. The criteria and requirements for verification must also be described in this context.

I use a wide variety of data to make my recommendation decisions. Do I have to disclose this in the transparency details?

Typical criteria that play a role in recommendation decisions may include personal data such as location and prior usage behavior. In addition to these factors, other data may also be relevant, for example those affecting how content is presented. These factors must therefore be explained in the transparency details. “Other data that is included” may refer to non-personal data, such as purely technical information (e.g., operating system or device type) or content-related data, such as general trends within the respective social network.

What does personalization mean? What information is important for this?

Personalization refers to the selection and presentation of content by a provider that is specifically tailored to an individual based on data collected and used about that person. It must be clearly stated whether content is adapted to the user's profile, how this is technically implemented, in which areas this is used, and what data is used for this purpose.

In particular, the use of algorithms and AI must be explicitly disclosed, particularly if they determine which content is shown to users. This also includes relevance ratings.

What about (youth) protection mechanisms?

Transparency information must also include details about available protection mechanisms (e.g., SafeSearch on Google or Restricted Mode on TikTok), the options for deleting search and playback history, and the ability to deactivate web and app activity tracking. It must also explain how these settings influence the content that is displayed to users.

Should the transparency details clarify how users can influence the service themselves?

Yes, users must be informed about the principles according to which they can select, arrange, or sort content: Specifically, to what extent conscious or explicit actions (e.g., likes, dislikes, subscriptions, feedback options, sharing content), but also unconscious or implicit actions (e.g., time spent on a page) influence the content displayed in the feed.

Imprint

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Version: June 2025

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