



February 2024

Interstate Media Treaty

New service categories and regulatory provisions in practice

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At the end of 2020, the Interstate Media Treaty replaced the old Interstate Broadcasting Treaty and revolutionized media regulation. A few years later, there are still uncertainties, particularly with regard to the new service categories, despite concretizing statutes of the federal states. What is a media intermediary? What makes a service a media platform? How are regulatory requirements to be interpreted?

Within the light of the Digital Services Act (DSA), which partly replaces and partly amends the Interstate Media Treaty, these questions are more relevant than ever.

We will give you an overview of the relevant new service categories and present the most important regulatory requirements for the services.

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1 Media intermediaries

Media intermediaries are services that, unlike traditional media, do **not publish their own content** but instead forward **user-generated content** such as newspaper articles. Examples are search engines such as Google and social networks such as Facebook.

The Interstate Media Treaty defines media intermediaries as **services with journalistic-editorial offers** that aggregate, select and generally present third-party content without combining it into an overall offer. Media intermediaries accordingly publish journalistic-editorial content such as newspaper articles or radio content, aggregate the content, select it by using algorithms and present it to the public, but without combining to their own offer.

- A separate overall offer only exists if there is journalistic-editorial control over all content, but not in the case of purely functional controls as with most app stores.

Regulatory requirements for media intermediaries

Most of the regulatory requirements apply primarily to media intermediaries that reach at least one million users per month, do not specialize in goods or services and do not pursue exclusively private purposes.

- Media intermediaries must appoint a German **authorized recipient** who must be easily recognizable and traceable.
- **Transparency requirements** also demand that media intermediaries provide information about which content is deleted and the criteria according to which content is presented, but without having to disclose the entire algorithm.
- **Social bots** must be labeled if they are recognizable as such.

The provisions of the Interstate Media Treaty also apply to media intermediaries who are established in another EU member state but direct their services to German users. The compliance of this regulation with EU law has not been conclusively clarified.

The EU Digital Services Act, which has been in force throughout the EU since 17.02.2024, also addresses media intermediaries and provides for full harmonization. At the same time it does not forbid national regulation in principle. Therefore, with regard to each regulatory provision must be examined to determine whether the Interstate Media Treaty is still applicable or is superseded by the DSA.

2 Video sharing services

Video sharing services such as YouTube and TikTok are media intermediaries that do not publish their own content, but rather forward third-party broadcasts and user-generated videos.

The content (mostly videos) is arranged algorithmically based on user interests. Video sharing services also bear no editorial responsibility for the transmitted content, unlike broadcast-like telemedia such as Netflix ([see below](#)).



Regulatory requirements for video sharing services

Special regulatory requirements also apply to video sharing services:

- Advertising regulation for broadcasters, such as the requirement to **separate** advertising from editorial content and regulation on product placement, is also applicable to video sharing services.
- This advertising regulation must not only be observed by the service providers themselves but also by users of video sharing services. Service providers must take measures to ensure that their **users comply with advertising regulation**, for example by obliging them in their general terms and conditions to comply with all requirements and by providing a tool to allow users to flag their advertising.

The EU's Digital Services Act also applies to video sharing services, so that again in turn, it must be examined with regard to each regulatory provision whether the Interstate Media Treaty is still applicable or is superseded by the DSA.

3 Broadcast-like telemedia

Broadcast-like telemedia includes **streaming services** such as Apple TV+, Audible, Disney+, and Netflix. These services offer on-demand video and audio services, on which the user decides when to stream which content. **Linear live streaming services such as ZATTOO are not included.**

Broadcast-like content, such as movies and series, is compiled into a catalog by the provider according to their own editorial selection. **Upload platforms such as YouTube are therefore not considered to be broadcast-like telemedia**, as the users decide which content is uploaded. However, individual YouTube channels could be classified as broadcasting-like telemedia if a user on YouTube makes their own editorial selection.



Regulation of broadcast-like teledmedia

Broadcast-like teledmedia are subject to **general regulation** that also applies to traditional broadcasters.

- These include **general advertising regulation**, such as the requirement of recognizability and separation, according to which advertising must be clearly recognizable and distinguishable from editorial content. The **regulation on product placement** also applies: As in traditional linear television, product placement in broadcast-like teledmedia must be clearly indicated.
- Furthermore, **specific regulatory requirements** also apply to broadcast-like teledmedia. The Interstate Media Treaty introduces for example a quota of 30% for European works.

A similar quota also applies to broadcasters. In order to promote the accessibility of European productions, they have to be highlighted in a special section on the platform. This can be implemented through a special section for European productions that can be accessed from the main page of the service.

4 Media platforms

Media platforms such as Amazon Prime Video, Sky, Zattoo and digital cable network operators such as Vodafone, as well as end devices such as smart TVs and streaming sticks, fall under the term media platform.

The **Interstate Media Treaty** defines them as services that provide broadcasting, broadcast-like telemedia or journalistic-editorial telemedia as an overall offer specified by the provider. **Media platforms bundle various content**, including broadcasting (linear television or streaming), telemedia similar to broadcasting (VoD services) and journalistic-editorial telemedia (online press). The provider decides according to its own criteria which content they make accessible on their platform and present it as overall offer.

Typical social media platforms are not media platforms, as users determine the content uploaded there. The decisive factor is that **media platforms must also incorporate content created by third parties**, such as Google News Showcase, which provides editorial-journalistic content from various press publishers as a **spate overall offer**. There might also be mixed offers, which combine content curated by the provider and other user generated content. In this case, the service only qualifies as media platform in parts.



Regulation of media platforms

Media platforms are subject to specific regulatory requirements, some of which depend on the size of the platform. A mixed offer that falls into different service categories must comply with all applicable regulatory requirements.

- Media platforms must be **notified** to the state media authorities one month before they go live.
- Providers of media platforms must also ensure **non-discriminatory access** by guaranteeing the same access conditions for all content providers.
- **No changes** may be made to the third party content without the consent of the respective content providers.
- The **accessibility of content** in user interfaces must also be non-discriminatory. Certain regulation for ensuring diversity applies:
The content must be arranged and presented in a non-discriminatory manner. Permissible criteria for a specific arrangement are alphabetical or genres.

Certain content must also be easy to find in the user interfaces of media platforms. For example, linear content of broadcasters must be easily and quickly accessible at the first selection level of a user interface.

- Within the broadcasting section, certain selected content that specifically contributes to public opinion, so-called “**public value content**”, must be found on a privileged basis. This includes, for example, the content of **public broadcasters**.
- Finally, platforms that reach a certain minimum size must meet **transparency requirements**. For example, providers of media platforms must make transparent why content is granted access to their platform. This includes, among other things information on the criteria according to which content is arranged and presented on their platform.

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