

In the “Trusted Health Ecosystems” project we are creating a concept and a product vision for a national health platform of the future. This text is part of the overall concept which is published at [www.trusted-health-ecosystems.org](http://www.trusted-health-ecosystems.org).

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# Creating vs. brokering editorial content: Where does the content come from?

The vision of a national health platform outlined in the “Trusted Health Ecosystems” project raises questions about the origin of the content and services offered there. A demand-driven offering requires a diverse range of information and services, which a single provider may struggle to fulfill alone. However, the platform operator does not have to create the content on their own. The following considerations explore whether the platform operator should generate their own information or focus on facilitating third-party information.

## The challenge

The dissemination of information involves certain legal requirements that differ in principle depending on who authors the content. The question of attribution depends on the perception formed by users of an information offering regarding the authorship or responsibility for the content. Relevant legal requirements in this context may involve preventive obligations to verify the accuracy of content, obtaining permission for third-party content, provider identification obligations, and the removal of unlawful content.

For most information offerings, it is assumed that there is no obligation to check the accuracy and legality of third-party information in advance. However, the provider may be required to do so if there are indications of a potential violation of the law. The situation is different when the provider adopts third-party content as its own, especially if it appears that the provider has independently verified the information or deemed it correct on another basis.

In addition to these liability considerations, the trade-off involved with generating one's own content versus relying on third-party content and service offerings is also relevant with respect to the legal justification of the proposed national health platform. It's important to take into account that opting to create original content, especially by a primarily publicly funded operator, could affect the range of opportunities available to private sector actors and potentially put market-active companies at a disadvantage. State information initiatives are always subject to the condition that they must serve a governmental purpose, among other requirements (see also *The state as a provider of information: What is the government allowed to do?*).

The distribution of quality-monitored health-related information is clearly in the interest of health education and, by extension, in the interest of state healthcare policy. However, as of today, there is no state-issued mandate or explicit legal assignment of tasks regarding the operation of a national information hub in Germany.

## Background

The first question that arises – irrespective of copyright attribution issues – involves identifying who is responsible for the information provided through an external entity. This can include a legal entity that has obtained the information through a licensing agreement or other arrangements with third parties, for example.

From a German legal perspective, online information offerings are classified as telemedia services and are subject to the regulations specified in the German Telemedia Act (TMG). According to § 5 TMG, all telemedia services are required to disclose the provider's information in an imprint or legal notice. To the extent that a telemedia service offers journalistic or editorial content, it is required to appoint an individual who will be held legally responsible for the content, separate from the information platform itself.

These transparency obligations serve to identify an institution or individual against whom claims can be pursued in the event of legal disputes. However, being a provider doesn't necessarily imply that all information or content must originate from that same provider. Being identified as a provider is initially a formality designed to ensure that the responsibility for each telemedia offering is clearly delineated. It is crucial to distinguish between responsibility for the technical platform

and responsibility for the content disseminated on that platform. Although a single entity may be held legally responsible for both aspects, this is not mandatory.

Providers, as defined under the German Telemedia Act, can include institutions or individuals who have had no substantive influence on the information and merely offer it as third-party content. The provider thus serves as the primary point of contact for their own as well as third-party content. However, variations emerge in terms of responsibility, including the ability to claim removal or seek damages in cases involving the publication of unlawful or false content.

In principle, the entity responsible for creating the content, such as the author of a text or the organization behind a study or figure, should assume primary responsibility for it. From a legal standpoint, the operator of an information offering is not directly liable for third-party content. Initially, liability applies only to their own content, not to third-party content.

From a legal point of view, the distinction between one's own and third-party content depends on how the content is visibly attributed. Authorship is not relevant in this context; what matters is how users encounter the information. If there is no clear distinction in an information offering, users typically assume that all information either originates from the platform provider or that the provider adopts third-party content as their own.

Third-party content is considered as such only when users can clearly recognize that the online content does not originate from the provider and that the provider does not wish to assume responsibility for it. A reference to its third-party nature can be made by exercising transparency in indicating a different contact or an external source for specific content.

Past experience shows that private or civil society actors are indeed capable of generating and disseminating relevant information themselves. Given this, it seems advisable for the national healthcare platform to make health-related information from third-party providers easily accessible to the public while leveraging both state and private sector or civil society resources. In sum, the platform operator should not create and disseminate their own content.

*“The national health platform should limit itself to bundling and organizing third-party content.”*

*Prof. Dr. Laura Schulte*

From a practical perspective, it will be important to consider how third parties can be motivated to make their content available for further distribution on the platform. Presumably, third parties could be enticed to contribute their content if they are provided a high-quality environment in which they are credited as the source of the information.

Moreover, a clear definition of guidelines for the inclusion of content and general procedures is crucial. This includes determining how the information should be presented and how frequently updates should occur. In such an environment, offering multiple equivalent options or information can provide users with a comprehensive and unbiased selection to choose from.

## Conclusion

Aside from legal issues, the decision to adopt and offer information as proprietary content is primarily a strategic one. Providing one's own information usually involves more significant effort, whether this means creating or acquiring relevant content. Handling third-party content requires less production-oriented effort but involves considerable effort in terms of coordination and alignment activity. The desired quality level is thus essential.

From the perspective of competition law, adopting an open market approach and offering third-party content is preferable to claiming it as proprietary or creating it from scratch. This approach helps prevent potential infringements on the funda-

### Fact or value judgment?

The responsibility for editorial content depends, among other things, on whether the content is classified as factual information or a value judgment – both of which are fundamental to the national health platform. Factual information is objectively true or false, which means the provider bears the risk of disseminating information that is factually incorrect. There is no legitimate interest worthy of protection in spreading false information. Such content must therefore be promptly removed or corrected once so identified. Value judgments, on the other hand, are not subject to objective evaluation. They are subjective opinions that cannot be labeled as “true” or “false.” This gives information providers more leeway in terms of managing content on the platform.

Challenges arise when dealing with mixed forms, especially when opinions are based on verifiable facts. Information providers must therefore carefully monitor the content on their platform and address complaints appropriately (Hofmann, 2022).

Providing information to the public always involves the risk that some information may, at a later date, be found false or misleading. This risk applies to both self-generated content and information obtained from third parties. In order to manage this risk effectively, precautions can be taken for both self-produced and third-party content.

mental rights of information providers (see The state as a provider of information: What is the government allowed to do?). The national health platform should therefore focus on bundling and organizing third-party content and refrain from engaging in the thorough examination of specific content, modifying content, or granting extensive usage and exploitation rights to the platform operator.

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## Bibliography

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