The Way Forward: Convergence, Digital & New Media Regulation

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Electronic communications regulation

- Communications liberalisation and regulation (convergence of technologies)
- Technology neutral regulation: covers infrastructure, access, services, universal service obligation, etc.
- In the process of constant change (internationally and nationally)

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Basic principles

- Many information and communication technology services (ICT) depend on a network and all entities must have access
- Entities must be able to interconnect with one-another.
- There must be universal service – everyone has affordable access to the service.
- *To ensure these issues is important for the regulator.*

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Basic principles

- ICT law deals with limited resources like the frequency spectrum and the numbering plan and equitable and efficient division of these between users.
- Rules are needed as they are limited resources and as they only have a value if set in a system

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New telecommunications rules

- Functional separation between service/network
- Consumer protection against personal data breaches and spam
- Easier to change operators
- Encouragement of competition

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Tariffs, pricing

- Because the market cannot function fully (limited infrastructure, undertakings with significant market power, networks, universal service) the regulator is involved in tariff setting:

- Price-cap regulation: regulator sets price, if operators are efficient they get to keep profit

- Rate of return regulation: guaranteed profits

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Standardisation

- Standardisation should be primarily market driven.
- National organs may make standards and/or implement existing ones (ITU or other international standards)
- Publication of standards and invitation of public comment before adoption
- Any decision to make the implementation of standards mandatory should follow a full public consultation.

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Digitalisation

- ITU, deadline of 2015 for switchover to digital broadcasting – binding obligation
- Recommendations and standards from other organisations regionally–framework and principles (best international principles) but details can vary
- Digitalisation does not solve other problems: adequate preparation must be made

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Digitalisation challenges: Social and economic questions

- Citizen perspective: coverage, not territory
- Access to broadcasting – public service broadcasting, social package of programmes (Eliminate inequalities in access)
- Support for equipment (fair, objective criteria + methods for implementation)
- Consumer protection (subscription issues)

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Regulatory issues related to digitalisation

- The independent regulator retains an important role
- Ensuring access to broadcasting
- Content issues (broadcasting standards)
- Frequency matters (legal certainty of existing users)
- New types of licences: transmission and content

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Infrastructure issues related to digitalisation

- High initial costs
  - State support?
  - Incentives for investment
    - state aid rules, non-discrimination
- Environmental consequences
- Use of existing infrastructure
  - Ownership (privatization), access
- Other services (broadband etc)

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Issues regarding the transition

- Different groups must be considered:
- For the audience – access to diverse and pluralistic broadcasting
- For the broadcasters (existing and new)
- For the regulator(s)
- *Simultaneous digital and analogue is expensive – quite rapid switchover while still respecting rights and interests of the audience and of broadcasters (legitimate expectations and legal certainty) is needed*

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Regulators and legislation

- Involvement of different regulators (broadcasting, telecom, frequencies, competition) – division of competence must be clear, mechanisms for cooperation, no duplication, system and rules transparent and easy to understand, adequate legislation
- Technical standards must be set -MPEG (2) 4?
- Importance of the independence of the regulator – open, fair and transparent licensing procedure

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Separation of roles

- Licensing process and different roles must be clear in the law
- Infrastructure owners should not influence content
- Different licences or general authorisations:
  - Licence for network operators (infrastructure)
  - Licence for service providers
  - Licence for content providers

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Selection of channels

- Diversity and plurality the key words: not just more channels but variety of content
- Transparent and open process to select channels
- Importance of the free to air platform (*Choice for the audience: do people want to pay for broadcasting to get extra programming? Choice of minimum package (almost) free*)
- In Europe different models exist for selection of channels (regulator, multiplex owner, etc.)
- No major changes to start with, possibilities for analogue existing channels to continue to a large extent (+ something extra)
- Possible moratorium must be non-discriminatory

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Incentives for broadcasters

- *Examples:*
- Possibilities of increased coverage
- Longer licence periods
- No licence fee
- State subsidies (cf. state aid rules) – danger of anti-competitive provisions
- Regulatory intervention on prices and conditions for access to infrastructure (importance of independent and effective regulator)

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Ownership issues

- Importance of limiting risk of monopolisation of content
- Ownership restrictions (cross-ownership between different media – between transmission and content etc.), disclosure
- Different aims for infrastructure and for programming, different risks of monopoly
- Avoiding possibilities of abuse of dominance is more important than ownership as such

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Infrastructure

- The risk of monopolisation
- Access issues (essential facility) – Interoperability
- Sharing of infrastructure and/or centralised systems
- *The maximum competition* even if limited infrastructure (cf. telecommunications, utilities) – the role of the regulator, special obligations for operators in a dominant position (regardless of ownership)

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Ownership of transmission facilities (multiplexes)

- Programme content providers must as much as possible be able to select a network and operator
- In many countries multiplexes or some of them are State owned or owned by the Public Sector Broadcaster
- Regulatory intervention may be needed to ensure fair conditions: pricing issues (for multiplexes) etc.

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Other areas of ICT to be regulated

- Strategy for a secure information society
- Data protection
- E-commerce
- Consumer protection
- Electronic communications regulation
- Fight against cybercrime

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Goals

- Inclusive e-government/information society landscape (no citizen left behind)
- Efficiency
- Use new technologies to strengthen democracy and participation
- Use new technology to support business and create new business opportunities

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Information soceity

- World Summit on the Information Society (Geneva 2003, Tunis 2005) recognised the right of everyone to benefit from the information society; reaffirmed the desire and commitment of participating states to build a people-centred, inclusive and development-oriented information society, fully respects ***the Universal Declaration of Human Rights,*** and the universality, indivisibility, interdependence and interrelation of all human rights and fundamental freedoms

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Data protection

- Data protection is a key issue in a modern information society
- Data protection an important consideration for all laws in the ICT area
- The development of information society must not undermine people's sense of security or the protection of their fundamental rights
  - Importance of implementing structures (data protection commissioner or similar)
  - Inter-institutional cooperation

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Data protection principles

- The use of data must be in accordance with law in proportion with the aim
- Data must be of high quality and correct
- Data must be used only for the purpose it was collected for
- Not more data will be collected than what is needed, data shall only be collected once
- The subject should be informed and have the possibility to correct
- If data is no longer needed there should be a right to have it removed

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E-governance

- E-services of the government
- Interoperable databases
  - Fast
  - Secure
  - User friendly
  - Non-corruptible

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E-commerce

- International harmonisation of certain aspects of laws on buying and selling online
- Reduce regulatory burdens for businesses (country of origin principle, prohibition of prior authorisations)
- Measures to encourage consumer confidence
- Linked to e-signatures
- Public procurement rules
- The main aim of e-commerce rules is to ensure consumer protection also in electronic commercial activities

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E-commerce, cont.

- One special issue is unsolicited commercial communications
- Financial services are usually regulated separately (special security measures, etc.)
- Jurisdiction, to establish the place of providing a service. EU rules refer to the concept of place of economic activity- it is not the geographical location of servers that is important but the actual place from which a business conducts its activities.

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Relevant legislation, e-commerce

- Civil code (contracts, obligations)
- Civil Procedure Code
- Consumer protection legislation
- Company legislation
- Company (commercial registers)
- Laws on banking and insurance, financial supervision and organs for this
- Laws on payments
- Electronic communication law (especially concerning terminology)
- Tax laws

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E-commerce, cont.

- There must be a definition on what kind of services are covered by an e-commerce law as very many services may use internet but not all are such services as should be covered by the e-commerce law

- The question of service providers (intermediaries) is important and needs regulation including related issues such as caching and hosting

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E-signatures

- Mutual recognition of e-signatures and systems for verification
- International cooperation and harmonised rules
- Market access
- Legal effect of e-signatures

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Cybercrime

- It must be defined what cybercrime is, as the term is used in many ways
- Is a crime committed on the internet or just using the internet?
- Example: EU Framework Decision (2005/222/JHA of 24 February 2005)- illegal access to information systems, illegal system interference and illegal data interference.

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Cybercrime, cont.

- The Council of Europe Convention on Cyber-crime defines cybercrime in four different categories:
- (1) offences against the confidentiality, integrity and availability of computer data and systems;
- (2) computer-related offences;
- (3) content-related offences;
- (4) offences related to infringements of copyright and related rights.

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Cybercrime, cont.

- Substantive criminal law: details of offences against the confidentiality, integrity and availability of computer data and systems; computer-related forgery and fraud; offences related to child pornography, and offences related to infringements of copyright and related rights.
- Provisions of procedural law shall apply on any criminal offence committed by means of a computer system, and to the collection of evidence in electronic form of a criminal offence (preservation of stored computer data, production order, search and seizure of stored computer data, real-time collection of computer data).

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