

European Communications Law

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Introductory remarks

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- From ‘telecommunications’ to ‘electronic communications’
- Evolving Policy
 - 3 phases: ‘New Regulatory Framework’ (2003)
 - convergence
 - Current review
- Regulatory boundaries
 - Regulated activities
 - Legal certainty
 - Concurrent application

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New Regulatory Framework

Content services provided over networks, from broadcasting to electronic banking

Communication services from voice telephony to broadcast transmission services

Communications infrastructure, from wire (e.g. DSL, cable, powerline) to wireless (e.g. satellite, WiFi, 3G)

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Communications Law

- Framework Directive
 - ‘electronic communications networks and services’
 - “a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting,”
 - Recital 10
 - e.g. voice telephony and electronic mail
- Excluding
 - “content regulation and audio-visual policy”
 - Telecommunications equipment
 - Self-certifying ‘type-approval’ regime

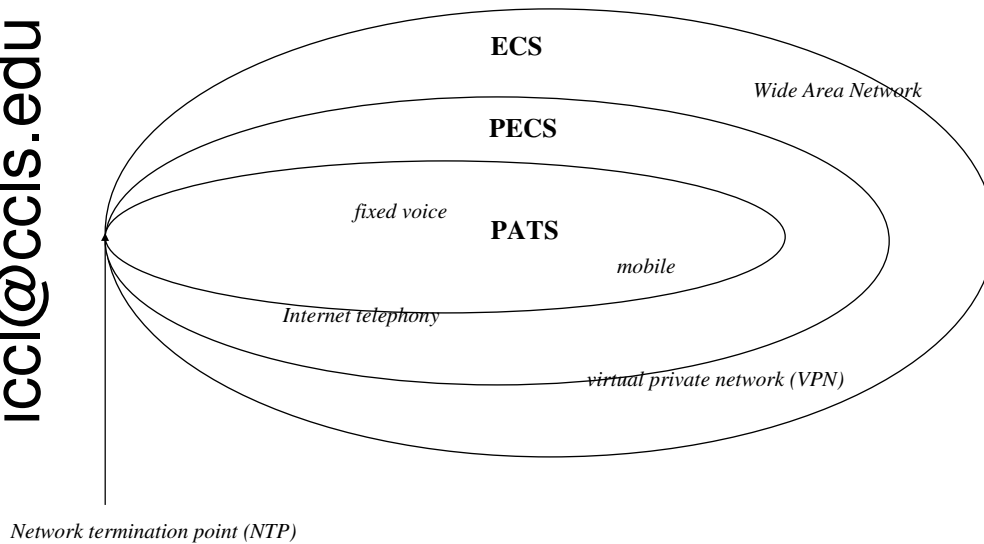
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Communications Law

- Public and private boundary
 - ‘publicly available electronic communications service’ (PECS)
 - “available for use by members of the public”
 - ‘publicly available telephone services’ (PATS)
 - Internet telephony?
 - UK guidelines (May 2003)
 - public:
 - available to anyone who is both willing to pay for it and to abide by applicable terms and conditions
 - no upper limit on the class of potential customers other than from technical or capacity constraints
 - private: bespoke service restricted to a limited group of individual and identifiable customers

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The Rings of Saturn



Regulatory intervention

- Regulating behaviour (*ex ante*)
 - General obligations
 - General authorisation not licensing
 - Operators with ‘significant market power’
 - Wholesale remedies
 - Transparency, non-discrimination, accounting separation, access, price control and cost accounting
 - Functional separation?
 - Retail remedies
 - e.g. price cap
- Punishing or preventing behaviours (*ex post*)
 - Anti-competitive agreements, abuse of dominant position & mergers & acquisitions

Content Services

- Framework Directive, art. 2(c)
 - “excludes services providing, or exercising editorial control over, content transmitted using electronic communications networks and services;”
 - Content services
 - provision of material and/or editorial control
 - one to one: ‘information society services’
 - one to many: ‘broadcasting’
- But.....convergence*

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Broadcasting Services

- From ‘broadcasting’ (Directive 89/552/EEC)
 - “the initial transmission... of television programmes intended for reception by the public....*It does not include communication services providing items of information or other messages on individual demand...*”
 - e.g. ECJ Case C-89/04, *Mediakabel BV*
- To ‘audiovisual media service’ (Proposal 2007)
 - ‘television broadcasts’
 - “for simultaneous viewing of programmes on the basis of a programme schedule”
 - ‘on-demand service’
 - “individual request on the basis of a catalogue of programmes”

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Information Society Services

- Framework Directive, art. 2(c)...continued
 - “it does not include information society services, as defined in Article 1 of *Directive 98/34/EC*, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks”
 - ‘at a distance’, ‘by electronic means’, ‘at the individual request of the recipient’ ‘for remuneration’
- Electronic Commerce Directive (00/31/EC)
 - liability protection (arts. 12)
 - ‘mere conduit’
 - ‘does not initiate the transmission
 - ‘does not select or modify the information contained in the transmission’

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Concluding remarks