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The International Comparative Legal Guide to:

Telecoms, Media & Internet Laws & Regulations 2016

9th Edition

A practical cross-border insight into telecoms, media and internet laws and regulations

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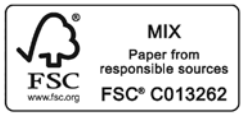

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EDITORIAL

Welcome to the ninth edition of *The International Comparative Legal Guide to: Telecoms, Media & Internet Laws & Regulations*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of telecoms, media and internet laws and regulations.

It is divided into two main sections:

One general chapter. This chapter provides an overview of the EU Regulatory Framework for electronic communications and services in the EU Member States.

Country question and answer chapters. These provide a broad overview of common issues in telecoms, media and internet laws and regulations in 37 jurisdictions.

All chapters are written by leading telecoms, media and internet lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Rob Bratby of Olswang LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The International Comparative Legal Guide series is also available online at www.iclg.co.uk.

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Chapter 34

Taiwan


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1 Overview

1.1 Please describe the: (a) telecoms; (b) audio-visual media distribution; and (c) internet infrastructure sectors in Taiwan, in particular by reference to each sector's: (i) importance (e.g. measured by annual revenue); (ii) 3-5 most important companies; (iii) whether they have been liberalised and are open to competition; and (iv) whether they are open to foreign investment.

There are three major operators in Taiwan's telecoms market: Chunghwa Telecom; Taiwan Mobile; and FarEasTone Telecom. These three operators provide integrated telecoms services comprising fixed-line, mobile and broadband networks, and the market shares are over 70% of total telecoms services. Currently telecoms services have been liberalised, except the mobile/wireless telecoms services, which have to be allocated available frequency. In general, foreign investment is only capped by certain restrictions on Type I telecoms business and no further restrictions on Type II telecoms business apply.

In the market of terrestrial television, in addition to the public broadcasting group (so-called Taiwan Broadcasting System, including CTS and PTS), there are three other stations (TTV, CTV and FTV). In the cable TV market, there are 59 system operators and three programme transmission systems located in 51 service areas, and most of the system operators belong to the five major multi-system operators (Kbro, CNS, TBC, TFN and TOP), acquiring 70% of market shares. There are a few direct broadcasting satellite operators, but they cannot compete with the cable market. In the programme channel market there are hundreds of channel providers, but only about 120 channels could be listed on the analogue cable system and not more than 250 channels in total on the digital tiers, which most viewers are watching today. Foreign investment, either direct or indirect, is subject to legal restrictions on cable and channel providers.

The major modes of internet access service are ADSL, FTTx and cable modem. Chunghwa Telecom is the largest provider of ADSL/FTTx and acquires about 70% of the market share; the leading cable modem operators are Kbro and CNS, acquiring about 20% of the market share. In the mobile market, an official statistic suggests that at the end of 2014, 2G, 3G and 4G services had a total of 29,328,000 users. The penetration of 3G service has been growing fast, with almost 25 million subscribers, while little progress has been made in WiMAX available for Wireless Broadband Access License, with around 12,000 subscribers. 4G LTE licences for mobile broadband services in the frequency bands of 700MHz, 900MHz and 1800MHz were released by auction in the fourth quarter of 2013. Six operators – Chunghwa Telecom, Taiwan Mobile, FarEasTone, Asia Pacific Telecom, Ambit Microsystems Corporation and Taiwan Star – won the bids and since the first three major incumbents launched new 4G LTE services in June 2014 the 4G market has been in fierce competition. There were 3.45 million subscribers to the LTE-Advance service until the end of 2014, and the number continues to grow due to the National Communications Commission's aggressive number portability policy and the "all-you-can-eat" fee plan heavily marketed by the operators.

1.2 List the most important legislation which applies to the: (a) telecoms; (b) audio-visual media distribution; and (c) internet, sectors in Taiwan.

The Fundamental Communications Act was created in January 2004 to address the goals to be achieved in the course of digital convergence. Functionally, there is the Telecommunications Act, the Radio and Television Law, the Cable Radio and Television Law, and the Satellite Broadcasting Law respectively, which draw lines in between respective transmission platforms though the National Communications Commission (NCC) has been exercising its exclusive power granted by the Fundamental Communications Act to have regulatory reform by converging all of the above platform regulations in a single legislation. There is no specific regulation for the internet. It is noted, however, that the internet, in relation to audio-visual content distribution, remains a grey area in NCC's policy.

1.3 List the government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in Taiwan.

The National Communications Commission (NCC) is the authority on telecoms and audio-video media distribution, and the internet, except for the following:

1. The Ministry of Transportation and Communications (MOTC) has exclusive power on spectrum allocation, the numbering plan and any relevant policy planning, such as IP addresses based on a decision entered into by the Executive Yuan in 2007.
2. The Ministry of Culture is the co-regulator in the fields of radio and television regardless of transmission types.

3. The NCC has been appointed by the Executive Yuan as the regulator for personal data protection in relation to internet matters. However, in November 2011 the NCC officially refused to take such responsibility even though it does regulate internet businesses in the form of Type II telecoms operators subject to the Telecommunications Act.

1.4 Are there any restrictions on foreign ownership or investment in the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in Taiwan?

In the telecoms sector, foreign direct investment in single Type I telecoms operators shall not exceed 49% of total equity shares and shall not be more than 60% of direct and indirect foreign investments.

In the media sector, foreign ownership is prohibited in terrestrial TV stations and radio stations. For investment in the cable system operators, the total foreign ownership must be below 60%, and the foreign direct investment shall be for legal entities only and may not exceed 20% of the total shareholding. Foreign satellite broadcasters, channel operators, content providers and DTH service operators are able to receive landing licences either by set-up of a branch company or appointment of local agents for compliance with relevant NCC regulations. In the case where foreigners invest in Taiwanese satellite broadcasting businesses, a cap of 50% on total equity shares shall apply.

No restriction is placed on foreign investment in Internet-related business.

2 Telecoms

General

2.1 Is Taiwan a member of the World Trade Organisation? Has Taiwan made commitments under the GATS regarding telecommunications and has Taiwan adopted and implemented the telecoms reference paper?

Taiwan became a member of the World Trade Organisation in January 2002. Taiwan made commitments under the GATS/GATT regarding telecommunications and adopted and implemented the telecoms reference paper later by the further liberalisation of the telecoms sector and enacting amendments to respective telecoms law, as well as to broadcasting regulations.

2.2 How is the provision of telecoms (or electronic communications) networks and services regulated?

Telecoms businesses are divided into facility-based operators (Type I) and service-based operators (Type II). Type I telecoms operators shall obtain concessions prior to the initial operation from the regulator and their behaviour is under heavy-handed regulation. Type I telecoms businesses, including fixed-line networks, mobile and wireless broadband access, shall abide by respective rules and regulations promulgated by the NCC. Except for those which are defined as Special Type II Businesses, such as VoIP and International Simple Resale, Type II telecoms operators require general permits from the NCC prior to launching their services and are also subject to light-handed regulation.

2.3 Who are the regulatory and competition law authorities in Taiwan? How are their roles differentiated? Are they independent from the government?

The regulatory authority is the NCC and the competition law authority is the Fair Trade Commission (FTC). Both are well-defined, independent regulators. The NCC executes *ex ante* regulation, while the FTC is more *ex post* as the watchdog for unfair competition, even though the FTC also enjoys a parallel power in approval of mergers among the telecoms operators as a mandate under the Fair Trade Act.

2.4 Are decisions of the national regulatory authority able to be appealed? If so, to which court or body, and on what basis?

Yes. As for decisions related to approval, permits giving licences and penalties, licence holders and interested parties have the option to appeal to the Executive Yuan (the cabinet) for second review on both factual and legal grounds, and further to the Taipei High Administrative Court if relief is not granted for legal review. Appeal to the Supreme Administrative Court would be the last resort if this was unsuccessful.

Licences and Authorisations

2.5 What types of general and individual authorisations are used in Taiwan?

Except for Type II operators that require general permits from the NCC prior to service launch, most of the licence holders in the field of telecoms and audio-video media distribution, including Type I telecoms operators and TV service providers (terrestrial, in-land cable, and satellite), are subject to the scrutiny of the operation plan and receive special concessions from the NCC before launching into the market.

2.6 Please summarise the main requirements of Taiwan's general authorisation.

It must include basic information about the operator, a brief of its operation plan, which items may be designated by the NCC from time-to-time, the date of the service launch and details of the telecoms facility/equipment to be applied in the operation. The NCC also requires prior review of the terms and conditions of the user's agreement.

2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded.

Type I telecoms businesses are further detailed into three categories: fixed-line networks; mobile/wireless networks; and satellite communication networks. The fixed-line network business licences so far include integrated network, local phone, long-distance phone, international phone and circuit leasing business, and the duration of the above licences ranges from 15 to 25 years. The mobile/wireless network business licences include mobile communication (GSM), low-tier wireless phone, third-generation mobile communication

(3G), wireless broadband access (WBA) and mobile broadband business. The duration of mobile licences are generally between 10 and 15 years, except the WBA licence, which is for six years. All of the above individual authorisations or licences are subject to the prohibition of transfer and trading. Mergers and acquisitions among Type I operators require the prior approval of the NCC according to Article 15 of the Telecommunications Act.

Public and Private Works

2.8 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

According to Article 32 of the Telecommunications Act, Type I telecoms operators may use public and private land and buildings for the establishment of conduit infrastructure and terminal equipment. Governmental authorities shall not reject a request to use public land or buildings without due cause. If any such use of land or buildings causes material damage, appropriate compensation shall be issued. The location and manner of use shall be the least harmful to governmental entities and owners, occupants or users of such land or buildings.

Access and Interconnection

2.9 How is network-to-network interconnection and access mandated?

Article 16 of the Telecommunications Act provides that unless the law specifies otherwise, any request for network interconnection between or among Type I operators shall not be rejected. The arrangement of network interconnection shall follow the principles of transparency, reasonableness, non-discrimination, network unbundling and cost-based pricing.

2.10 How are interconnection or access disputes resolved?

The agreement of network interconnection among telecoms operators shall be reached within three months or any involved party may request the NCC to arbitrate the dispute. With respect to network interconnection, tariff calculation, negotiation, mandatory terms within interconnection agreements, arbitration procedures, and matters requiring compliance between or among telecoms operators, the NCC has the authority to enforce the Regulations Governing the Network Interconnection among Telecommunications Operators.

2.11 Which operators are required to publish their standard interconnection contracts and/or prices?

All of the signed interconnection contracts, including prices agreed upon by the parties, shall be reported to the NCC for filing. The NCC, at its sole discretion, may disclose a part or the whole of the interconnection agreements entered into by the dominant market player and other telecoms operator(s).

2.12 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?

The charges for interconnection and/or network access, in general, are determined through negotiation between the parties of the network interconnection. Calculation of the access charge shall meet the principles of cost orientation, be fair and reasonable, and be of a non-discriminating nature. Among other things, the access charge of a dominant Type I telecoms operator market player shall be figured out pursuant to the following principles in accordance with the cost of the applied relay, transmission and switching equipment, which shall be reviewed annually: (1) the access charge shall be determined by the costs of the unbundled network elements in service; and (2) the cost shall be figured out on the basis of TELRIC (Total Element Long Run Incremental Cost). The access charge figured out by a dominant market player in a specific Type I business must receive prior approval from the NCC. Likewise, in the case of any amendment or change, NCC approval is required.

2.13 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

Accounting separation applies to all Type I telecoms operators in accordance with Article 19 of the Telecommunications Act. Further, they must refrain from cross-subsidisation to hinder fair competition. The NCC has made several attempts to introduce concepts of both functional separation and legal separation against Chunghwa Telecom, the dominant player in the fixed-line network in draft amendments to the Telecommunications Act but has not yet had any success.

2.14 Are owners of existing copper local loop access infrastructure required to unbundle their facilities and if so, on what terms and subject to what regulatory controls? Are cable TV operators also so required?

Chunghwa Telecom (CHT), formerly a state-owned company prior to August 2005, has the only island-wide existing copper local loops. The NCC announced on 24 December 2006 that CHT's copper local loop access bottlenecked facility and forced shared use and lease to its rivals on a cost basis. On the other hand, the NCC has a very different measure on cable TV operators by opening the franchise market in order to promote multiple network competition in each cable franchise market.

2.15 How are existing interconnection and access regulatory conditions to be applied to next-generation (IP-based) networks? Are there any regulations or proposals for regulations relating to next-generation access (fibre to the home, or fibre to the cabinet)? Are any 'regulatory holidays' or other incentives to build fibre access networks proposed? Are there any requirements to share passive infrastructure such as ducts or poles?

The NCC holds a neutral position as to the interconnection and access of next-generation networks while negotiation among the operators in existing business practice is upheld. In addition to a

massive construction project sponsored by the central government in 2004 for island-wide ducts connecting major cities – the so-called "M Taiwan project" – in order for connection and access to meet the purpose of FTTB (fibre-to-the-building), local municipal governments also endeavoured to invite investment from the private sector into the creation of similar IP-based networks by making ducts and poles available for use to newcomers. Taipei City, the capital of Taiwan, announced an ambitious Build-Operate-Transfer (BOT) project commissioned to an international consortium in January 2012, which was expected to achieve 80% penetration of FTTH (fibre-to-the-home) in Taipei City by the end of 2015. A total capital expense of approximately US$1.3 billion is estimated for the operation of the 25-year franchise.

According to Article 31 of the Telecommunications Act and the Regulations Governing the Fixed Network Business, when a Type I telecoms operator engages in constructing the infrastructure for lines/pipes/ducts/poles for its fixed networks, it may request co-location for its lines/pipes/ducts/poles with the facilities at the bottleneck of telecommunications networks with the owners of such facilities at the expense of the requested operator.

Price and Consumer Regulation

2.16 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

All of the Type I telecoms operators (including fixed-line, mobile/wireless and satellite networks) are currently subject to retail price control under the price cap regulation imposed by the NCC according to Article 26 of the Telecommunications Act. Any pricing adjustment, regardless of increase or decrease, and promotional plans of primary tariffs of the dominant players, shall be submitted to the NCC for approval 14 days prior to the scheduled effective date of such adjustment. Following the approval, the adjustment and promotional plans shall be published for public notice and then become effective upon seven days of the announcement. As of 31 May 2014, Chunghwa Telecom is the dominant player in the fixed-line network service market and it, together with Taiwan Mobile and FarEasTone, are dominant players in the 3G service market.

2.17 Is the provision of electronic communications services to consumers subject to any special rules and if so, in what principal respects?

Other than the Consumer Protection Law, there is no special rule applying to the provision of electronic communications services to consumers. The NCC, however, actively forces service providers of electronic communications services to adopt terms and conditions in favour of users and consumers by publishing guidance on the subscription agreement and the user's agreement, followed by a regulatory review of implementation, which may be complained of from time-to-time by consumers.

Numbering

2.18 How are telephone numbers and network identifying codes allocated and by whom?

The Ministry of Transportation and Communications (MOTC) has been appointed by the Executive Yuan subject to Article 3.2 of the Fundamental Communications Act, as the authority for allocation of telephone numbers and network identifying codes. Further to its numbering plan for 2001 through to 2011, the MOTC in early 2012 announced its numbering plan for the next 10 years until 2021. The NCC is responsible for the number assignments and management regulations.

2.19 Are there any special rules which govern the use of telephone numbers?

The NCC followed the Regulation Governing the Telephone Numbers previously ordered by the DGT under the MOTC, the former telecommunications authority authorised under the Telecommunications Act, in 2003 and further amended the above regulation in 2010 and again in 2013 to administer the use of telephone numbers. All Type I telecoms operators and certain Type II telecoms operators, such as those who operate simple resale services, are eligible for applying for telephone numbers. For non-profit purposes, a person or a legal entity may apply for the use of telephone numbers for the test of new telecommunications services or technology. The NCC, at its discretion, may grant the use of telephone numbers upon the request of government agencies, non-profit organisations or public utilities for public interest.

2.20 Are there any obligations requiring number portability?

The number portability service in the local phone service has been available since November 2003, and mobile number portability became available as of 1 January 2005. The Regulation Governing the Number Portability, which was last amended by the NCC in June 2014, provides detailed do's and do not's in relation to number portability. For example, number portability is not available for the cross-service category (fixed-line to mobile or *vice versa*). Further, the number portability of local phones is available in the same code area.

3 Radio Spectrum

3.1 What authority regulates spectrum use?

Absent a specific law on the use of radio spectrum, the management and planning of radio spectrum has been regulated under general authorisation given in accordance with the Fundamental Communications Act, based on a decision entered into by the Executive Yuan in 2007 to MOTC. The Office of Post and Telecommunications under the Ministry of Transportation and Communications (MOTC) is responsible for the planning of spectrum allocation, while the NCC administrates details like the spectrum management, frequency assignment and radio interference.

3.2 How is the use of radio spectrum authorised in Taiwan? What procedures are used to allocate spectrum between candidates – i.e. spectrum auctions, comparative 'beauty parades', etc.?

Pursuant to Article 48 of the Telecommunications Act, the NCC shall regulate radio frequency, power, mode of transmission, radio station identification signals and call signs, and other radio spectrum-related matters. The NCC enacts regulations governing the planning and allocation of radio frequency, application procedures, principles of assignment, termination of approval, administration of radio frequency, handling of interference, the standard definition of interference and regulations related to the

supervision of radio waves. The NCC further mandates the term of utilisation of frequency, and establishes a fee schedule to collect usage fees from radio frequency users.

Spectrum assignment shall be made by auction or open bid except for the following, which shall take the beauty contest approach:

1. the radio frequencies for the military, police, navigational aid, ships, amateur radio, government telecommunications, industrial, scientific, medical, low-power radio frequency devices, academic experiments, emergency aid and rescue, and other benevolent or public uses;
2. the radio frequencies for mobile communications networks, satellite communications networks, radio broadcast stations or TV stations whose operation is based on the utilisation of specific radio frequencies, which shall be designated at the time of issuance of operation permit or franchise licences, or networks thereof could not function; and any radio frequency increased for further improvement of quality of local telecommunications; or
3. the radio frequencies which could be used repeatedly under certain conditions of use, for wireless local loop of fixed-line networks, satellite links or wireless microwave links.

3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions?

Certain radio frequency devices, such as Wi-Fi and Bluetooth, are free of licence on the use of specified open spectrum. A walkie-talkie is another licence-exempt example. These devices, however, shall meet the requirements of type approval regarding the technical specification of output power, modulation technique, operating frequency, etc.

3.4 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

The fees for the use of radio frequency spectrum are calculated every year pursuant to the Charge Standard of Utilization Fee of Radio Frequency. The standard fee varies for permitted types of communications businesses and the frequency spectrum applied; despite that the fees for the usage of academic experiments, navigational aid, meteorology radar, rescue, military dedication, or emergency medication may be exempt.

3.5 What happens to spectrum licences if there is a change of control of the licensee?

Any change of control of the licensee is required to receive the NCC's prior approval subject to respective conditions set forth in various communications regulations.

3.6 Are spectrum licences able to be assigned, traded or sub-licensed and if so on what conditions?

For all existing licences, trading or sub-licensing is absolutely not permitted. However, a recent regulation on mobile broadband business published by the NCC on 8 May 2013 allows the transfer usage right to awarded frequency among the licensed mobile broadband operators subject to Article 48 of the Telecommunications Act and the NCC's approval. Application of bid winners or operators for the assignment of frequency usage rights will not be granted in any of the following circumstances:

- The bandwidth as assigned is not in 5MHz multiples for uplink and downlink.
- The remaining bandwidth of the assignor falls below 10MHz for uplink and downlink.
- The total bandwidth of the assignee after the assignment exceeds one third of the total mobile broadband business bandwidth.
- The total 700MHz and 900MHz bandwidth of the assignee after the assignment exceeds one third of the total 700MHz and 900MHz bandwidth of mobile broadband business.

4 Cyber-security, Interception, Encryption and Data Retention

4.1 Describe the legal framework (including listing relevant legislation) which governs the ability of the state (police, security services, etc.) to obtain access to private communications.

The Communication Security and Surveillance Act promulgated in 1999 defined the scope of the government's access to private communications, including, but not limited to, texts, voice, pictures, graphics, and other messages carried through electronic communications, and detailed how the due process must be achieved. In the meantime, Article 7 of the Telecommunications Act provided parallel support allowing legal interception made according to the above authority.

4.2 Summarise the rules which require market participants to maintain call interception (wire-tap) capabilities. Does this cover: (i) traditional telephone calls; (ii) VoIP calls; (iii) emails; and (iv) any other forms of communications?

Pursuant to each communications regulation ordered by the NCC and the enforcement rules for the Communication Security and Surveillance Act, all licensed telecoms operators which physically operate their telecommunications facilities and/or networks must comply with demands issued by applicable enforcement authorities by providing dedicated lines to the specific facility for interception authorised by appropriate court orders. The licensed operators are required by the above enforcement rules to give cooperation for recording and retrieving phone calls, short messages, emails and other forms of electronic communications.

4.3 How does the state intercept communications for a particular individual?

Police, prosecutors, and the national security agency could only apply for court orders of surveillance in relation to investigations on specific crimes, such as treason, corruption, money laundering, smuggling, bribery, insider collusion pool, organised crime and other felonies that carry a sentence of not less than three years in prison. The approved surveillance shall be at all times subject to competent court review in order to determine if it should be called off or terminated. Other than in the case of treason (where the surveillance may last as long as one year), any surveillance that has proceeded under court approval can last 30 days at the most.

4.4 Describe the rules governing the use of encryption and the circumstances when encryption keys need to be provided to the state.

As stated above, all licensed telecoms operators are required under Article 14 of the Communication Security and Surveillance Act and Article 26 of its enforcement rules to render every assistance in the surveillance, which naturally includes provision of encryption keys and decoding software to the satisfaction of the Investigation Bureau, commanded by the Ministry of Justice, or National Police Administration, commanded by the Ministry of Internal Affairs. Subject to the same regulation, all licensed operators must be equipped with wire-tap capabilities acceptable to the aforementioned agencies and then approved by the NCC prior to receiving their operation licences.

4.5 What call data are telecoms or internet infrastructure operators obliged to retain and for how long?

All Type I telecoms operators are obliged to retain the call data, including the telecommunications number, and the date and time of communication for the calling and called parties resulted by the telecommunications system. The retaining period varies for respective telecoms services: (1) three months for local calls; (2) six months for international and long-distance calls; and (3) six months for mobile phones. Type II operators shall retain the data for a period from one to six months, subject to detailed requirements made by the NCC, which may include VoIP, log-in and log-out of broadband access, the IP addresses of free email accounts and newsgroups, and communication record of email, etc.

5 Distribution of Audio-Visual Media

5.1 How is the distribution of audio-visual media regulated in Taiwan?

The Radio and Television Act, the Cable Radio and Cable TV Act, and the Satellite Broadcasting Law each authorise the NCC with its exclusive power to licence and grant entry to terrestrial, cable and DTH markets. Heavy-handed regulations are posted on the distribution of audio-video media across the above platforms.

5.2 Is content regulation (including advertising, as well as editorial) different for content broadcast via traditional distribution platforms as opposed to content delivered over the internet or other platforms? Please describe the main differences.

Despite its intent to follow the EU approach in distinguishing between linear and non-linear content, the NCC has not had a clear policy toward content delivered over the internet or similar platforms. All of the licensed platforms as mentioned above in question 5.1, including the wall-gardened IPTV service provided by telecoms carriers, are required to carry only content offered by those who have passed scrutiny and received the proper content provider licences from the NCC. Internet TV and/or internet radio are grey areas under the NCC's current content policy – the NCC has been silent on whether licences would be required for such internet services.

5.3 Describe the different types of licences for the distribution of audio-visual media and their key obligations.

In general, licences for the distribution of audio-visual media are regulated on the basic fact of holding and controlling physical distribution platforms, including terrestrial TV stations, radio stations, cable radio and cable TV systems, and satellite TV transmission systems. The NCC, since its establishment in 2006, strengthens its licence control beyond the platforms to content providers. All of the above licence holders are required to observe detailed programme and advertisement regulations made by the NCC, which basically contain the following criteria:

1. that the content shall not violate compulsory or prohibitive regulations under the law;
2. that the content shall not impair the physical or mental health of children or juveniles; and
3. that the content shall not disrupt public order or adversely affect good social customs.

5.4 Are licences assignable? If not, what rules apply? Are there restrictions on change of control of the licensee?

No licences are assignable. The NCC conducts scrutiny on the licence holders, who must always be exactly the same as those approved originally on the official record.

Change of control of the licensee is required to receive the NCC's prior approval subject to respective conditions set forth in various communications/broadcasting laws.

6 Internet Infrastructure

6.1 How have the courts interpreted and applied any defences (e.g. 'mere conduit' or 'common carrier') available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

Local courts have upheld the defence made by telecoms operators and internet service providers on the grounds of common carrier principles as provided in Article 8 of the Telecommunications Act and the "safe harbour" provision under Chapter 6-1 of the Copyright Act.

6.2 Are telecommunications operators and/or internet service providers under any obligations (i.e. provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

The "safe harbour" mechanism imbedded in Chapter 6-1 of the Copyright Act exempts ISPs from indirect liabilities arising from customers engaged in illegal file-sharing or other activities. "Notice and Take Down" is one of the compliances ISPs must make for having protection under "safe harbour" provisions.

6.3 Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks? Are there any 'net neutrality' requirements?

It cannot be disguised that such has been a troublesome case in practice between the NCC and most of the telecoms operators. Network neutrality is not found in the Telecommunications Act, yet it is to be clarified by the NCC.

6.4 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content?

There was no such mandatory requirement until November 2011. The Minor's Welfare and Rights Protection Law, in its latest amended Article 46, posted on ISPs a direct responsibility to assist relevant authorities with internet content surveillance. ISPs shall take all necessary measures to restrict minors' access to certain sites or content or remove the content upon receiving from a competent authority notice about the identified internet content or links determined harmful to the physical and mental health of minors.

6.5 How are 'voice over IP' services regulated?

There are two types of "voice over IP" services: VoIP with E.164 numbers; and VoIP without E.164 numbers. The former is a special Type II telecoms business subject to scrutiny of operation by the NCC's heavy-handed regulation, and the operator bears the obligation of universal service. The latter is a general Type II telecoms business, though subject to loose regulation, and could receive a permit for operation through fast-track. Internet users using a VoIP service by means of application and software downloading require no licence.

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