



Session 2

Asymmetric Regulation & Convergence

“Regulating Up” or “Regulating Down” in the Era of New Media and Services

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Context: The Info Society

- Affordable and ubiquitous access to the Internet is increasingly available through mobile and fixed broadband networks
 - This enables more use of smart phones and mobile applications
 - Today’s innovations are in smart phones and social networking
 - Intelligence and computing power are at the edge of networks
 - To some extent, regulatory focus is broadening/shifting
 - Away from operators (i.e., economic regulation)
 - Toward users (i.e., consumers and applications designers)
 - Regulation is also becoming more difficult because:
 - IP and the Internet are so open and decentralized, and
 - The Internet is inherently *international*.
- **Digital divide remains a key issue**

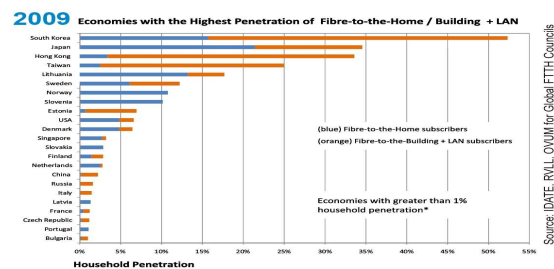


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Nets, Dongles & Apps

- Growth markets are broadband and mobile – and their nexus
- The Information Society is driven by:
 - **Networks:** NGNs, 3G & 4G BWAs
 - **Devices:** laptops, netbooks & smart phones
 - **Applications:** social networking, location & 'augmented reality'



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Social, Economic and Political Dimensions



- **The expectation gap for new tools**
 - **What we want:** tele- medicine, distance education, social services, networked civil society
 - **What we are also getting:** Cyber crime, hacking, malware, invasion of privacy
 - Markets are driven by social networking, gaming
- **Should governments try to steer development of Info Society and broadband capability – why or why not?**
 - If so – how? What regulatory and legal frameworks are needed?
 - If so – who? Who should design, implement and enforce rules for new media and networks?



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Convergence

- Platform convergence – one device providing many services  **iOS 4**
- Service convergence – one company, providing many services (i.e., triple play) 
- Industry convergence – vertical or horizontal integration
- Addressing convergence through economic regulation:
 - Do you regulate the company, the service or the platform/device?
 - Considering possible taxonomies for regulation:
 - Regulating by **provider** (existing paradigm)
 - Regulating by **service or functionality** (technology neutrality)
 - Regulating by **responsibility for content** (dividing common carriers from content generators)
 - Regulated v. “**not regulated**” (e.g., license-exempt or consumer devices)

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Net Neutrality

- “Open access” v. “Deregulation”
 - Debate in US has pitted network operators against content & applications providers
 - Can operators degrade non-affiliated apps?
 - Do operators have power to manage their nets?
 - Result: Dec 2010 FCC Open Internet Order
 - It's gone **political**: Congressional Republicans are working to overturn net neutrality; Democrats favor it
 - Verizon, Metro PCS have filed court appeals

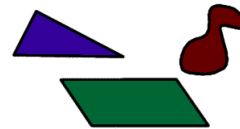


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Asymmetric Regulation

- **Defining *asymmetric regulation*:** A regime that applies different sets of rules to different situations, operators or services, in order to achieve certain policy goals
 - When is it necessary or desirable?
 - Potential drawbacks: arbitrage and market skewing
- Asymmetric regulation **by default:**
 - Regulation as a layer cake – adding new rules over time, one technology or service at a time.
- Is asymmetric regulation necessary for new media?
 - The “pro” argument: incubating new services, competition
 - The “con” argument: What about incumbent investments?

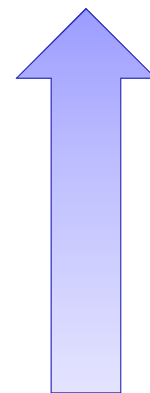


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Regulating Up

- **Definition:** Putting the same regulatory framework on new media that exists for older networks and services
- **The economic regulation context**
 - Competition policy
 - Infrastructure buildout/universal service
 - Price regulation
- **The consumer protection context**
 - Access to emergency services
 - Quality of Service (Qos)
 - Privacy and network security

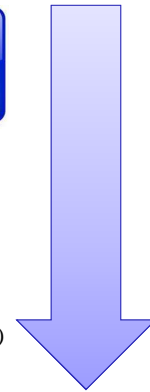


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Regulating Down

- Definition: Dismantling regulations on incumbents to match the “lighter touch” of regulation on new media players
- Economic Regulation
 - Ending rate regulation
 - Ending licensing
 - No longer mandating incumbents’ standard interconnection offers
- The Consumer Protection context
 - Dissolving QoS or customer privacy rules for telcos
- Alternative models
 - Industry “self-regulation”
 - Alternative dispute resolution (complaints or inter-carrier disputes)
 - Regulatory forbearance

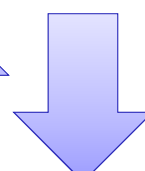
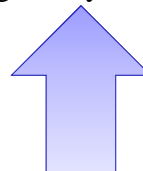


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Exploring a ‘Middle Path’

- Flash-cut shift to either “regulating up” or “regulating down” entails risks
 - **Failing to regulate incumbents can = immature competition/abuse of market power, cream-skimming network build-outs**
 - **Failing to regulate new entrants can = lack of consumer protection**
- **Over time**, as competition matures, regulatory treatment can be equalized
 - For economic regulation – Regulate down
 - For consumer protection – Regulate up
 - For either – only regulate **as needed**



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A Step-by-Step Approach

- Step One: Clarify jurisdictional and bureaucratic roles
- Step Two: Assess the market
 - Define service markets – assess substitutability of services
 - Define geographic markets – Is there urban cherry-picking?
- Step Three: Assess competition status in each market
 - Do incumbents have market power?
 - Are there regulatory inefficiencies and barriers to entry?



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Step by Step, cont.

- Step Four: Apply asymmetric rules where necessary
 - To promote competition
 - To protect consumers
- Step Five: Establish clear, objective criteria for forbearance and lighter rules
 - Criteria should apply to market (e.g., when two or more providers are operating in a given service market, in a given area)
 - Criteria should also apply to operators – (e.g., good track record on IC rights, or on access to emergency services)
- Step Six: Reassess and adjust
 - Asymmetries should be phased out as market expands to become more competitive, and as consumer satisfaction grows.

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