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
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’

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?
### Convergence

- Platform convergence – one device providing many services
- 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)

### 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
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?

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
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

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
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?

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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