

## TV regulation will become telecom regulation

Eli M. Noam OCTOBER 24 2006

---

What will the regulation of television look like in the future? That question is on the minds of policymakers and media companies around the world. In the past, television was tightly controlled through restrictive licenses and other rules that do not exist for print media. Yet when these print media originally emerged centuries ago, they, too, were censored and licensed. This history raises expectations that television would follow a similar path. It would be set free when television would migrate from the limited over-the-air broadcasting to a delivery over the wide-open open internet.

Yet it is worth taking a look at what is actually happening on the internet. Things have certainly changed. Just over a decade ago in 1994, the internet's pioneers declared in their Charter for Internet Liberties: "Government, leave us alone, we did not call you, we don't need you." But today, the internet community is seeking, under the heading of "net neutrality", regulations that protect them from telephone companies' control over access, price discrimination, gate keeping, and self-dealing. They have encountered the market power of the infrastructure networks, and they do not like it.

Thus, for all practical purposes, different hands are on the libertarian flag: today, the incumbent telecom infrastructure networks wave it to keep restrictions from being enacted, while the internet community seeks an increased role for government.

"Common carrier" regulation is back.

We must jettison the conventional view that such regulation is backward or primitive. Existing telecom regulation is quite a sophisticated tool in comparison with the regulation of other industries. Neither aviation, pharma drugs, environmental controls, rail transportation, electric utilities, nor even securities has anything that comes close in terms of economic analysis and institutional intricacy.

It has been easy to belittle the resultant complexity as old-fashioned, pre-net, out-of-touch, and analog. And of course any accumulated set of rules will have its share of inconsistencies and holy cows. But on the whole, telecom regulation is complicated because it is trying to balance multiple policy goals and their constituencies. None of these goals or constituencies disappears just because information gets delivered and encoded differently. And in the meantime, the new participants encounter the old problems: market power based on economies of scale, the need to access “essential facilities”, and the vertical leveraging of a firm’s market power in one segment into others.

The significance of this lies in the fact that most next-generation media - television, music, film, games, online news - will run over the internet and its fixed-line and wireless pathways. Therefore, as the internet becomes the main platform for most media uses, the regulatory rules that underlie the internet become the rules for much of the media system as a whole. And with the regulatory rules for the internet moving toward those of telecom, it follows that the telecom-style rules become the rules affecting all media.

This does not apply just for the interaction of content companies versus the infrastructure networks. A variety of societal goals inevitably enter as well: ownership diversity, privacy, morality, trade, competition, innovation, national culture, protection from defamation and hateful speech, consumer protection, revenue generation, truthful advertising, public health, technological innovation, connectivity across geography and income classes, security – the list gets longer, if anything.

To carry out such policies, legislation and regulation tend to lean on the most limited and reachable segment of a communications chain, and try to manage through the policing of its bottlenecks a set of broader goals. That limited segment is generally the last-mile transmission. For traditional broadcasting, that element was the over-the-air electromagnetic spectrum, and access to it was therefore made subject to many conditions. For cable and satellite TV, the scarce elements were construction franchises and orbital slots that provided the pivot. And now, for internet-based video media, the internet’s delivery path becomes the nexus of regulation.

Thus, the regulation of the television system will not fade away. Nor will it become a new-style “converged” regulation that amalgamates various media. Instead, It will simply shift to the newer underlying delivery pathway, the telecom (and cable) infrastructure on which the broadband internet is riding. Television regulation will therefore end up resembling in many important respects old-fashioned telecom-style regulation, and the present debate over net-neutrality is a harbinger of more to come.

(A fuller version of this article will be presented in November at the international conference of Ofcom, the UK’s telecom and television regulatory agency, and in its forthcoming volume, “Communications - The Next Decade.”)

---

[Copyright](#) The Financial Times Limited 2023. All rights reserved.

---