Chapter X
European Regulatory Challenges for Developing Digital Content Services in Modern Electronic Communications Platforms

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ABSTRACT

The European Union (EU) has recently applied a more proactive and consistent regulatory approach in the wider electronic (mainly Internet-based) communications areas, also including a variety of modern broadcasting activities, aiming to promote their strategic and commercial importance. New requirements imposed by the converged information society technologies are currently demanding high-performance access and high-quality facilities (or services) for the benefits of all market actors involved (both for operators-providers and consumers). More specifically, the continuous expansion of the Internet creates considerable potential for growth, in terms of market and business activities. The latter, however, indicate that different and adequate forms of “content” should be legally available for use, treatment, storage
INTRODUCTION: ACCESS ISSUES TO MODERN INFRASTRUCTURES AND AVAILABILITY OF CONTENT

Quite apart from the multiple effects generated by convergence in its role as an “enabler” of the Information Society (European Commission, 1997), there is likely to be a direct and positive impact on technical development, market growth and social cohesion. Expansion of the market and the continuous demand for “innovative” forms of content and related services generate new needs for people (including all potential “actors”). In particular, as content providers and network or service operators “re-orient” themselves in the new market reality, they combine their use of standardised and already deployed digital platforms (such as the Internet) with software skills to develop customized applications aimed both at business (corporate) clients and residential customers.

The major task is to take full advantage of technological convergence by integrating the diverse components of telecommunications, media and IT sectors to produce innovative services. In addition to technical and economic aspects, social, cultural and political aspects are also of great importance for further evolution and development. More specifically, knowledge and innovation through the dispersion of “converged” content-oriented facilities should be expected to act the proper “engines” to promote growth and development, especially towards building a fully inclusive information society, based on the widespread use of Information and Communication Technologies (ICT) in public services, enterprises and households. In fact, ICT are a powerful driver of the modern digital economy: A quarter of the European Union’s (EU) gross domestic product (GDP) growth and 40% of productivity growth are due to ICT. Differences in economic performances between industrialised countries are largely explained by the level of ICT investment, research and use, and by the competitiveness of information society and media industries (European Commission, 2003b). Consequently, ICT services, skills, media and content are, without doubt, a growing part of the economy and society.

The matter of access in modern platforms-networks-infrastructures is mainly an issue for commercial negotiation/agreement between market “players,” dependent on the overall safeguards provided by the general EU competition rules. However, there is currently a “sort of asymmetry” in that access rules apply only for certain categories of networks (e.g., the interconnection and “open network provision” (ONP) rules which traditionally apply to telecommunications networks), but not to infrastructures used for broadcasting activities. (Correspondingly, a frame exists for conditional access systems for digital television, but not for all sorts of digital services.) As for access issues correlated to content, ordinary commercial principles apply, tempered only by related competition rules. One exception to this option is the “management” of certain “premium” content in the EU Member States, such as national sporting events where the revision to the “Television without Frontiers” (“TVWF”) Directive has considered the mutual