



ICLG

The International Comparative Legal Guide to:

Telecoms, Media & Internet Laws & Regulations 2018

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General Chapters:

1	Europe's Digital Single Market: Mid-Term Review – Rob Bratby, Arnold & Porter Kaye Scholer LLP	1
2	A Regulatory Re-Think? – Tim Cowen & Daniel Preiskel, Preiskel & Co LLP	7
3	Consumer Trust, Regulation and the Mobile Opportunity – Rimma Perelmuter, Mobile Ecosystem Forum	10

Country Question and Answer Chapters:

4	Armenia	Concern Dialog law firm: Aram Orbelyan & Vahagn Grigoryan	13
5	Australia	MinterEllison: Anthony Borgese	21
6	Belgium	Caim Legal: Guillaume Rue & Frédéric Paque	31
7	China	Jingtian & Gongcheng: Chen Jinjin & Hu Ke	40
8	Denmark	Kromann Reumert: Torben Waage & Alexander Ph. D. Rasmussen	50
9	Finland	Borenius Attorneys Ltd: Samuli Simojoki & Henriikka Piekkala	57
10	France	Jeanetet: Frédéric Sardain & Sophie Boinnot	64
11	Germany	Pinsent Masons Germany LLP: Dr. Florian von Baum & Dr. Igor Barabash	74
12	Greece	Nikolinakos – Lardas & Partners LLP: Dr. Nikos Th. Nikolinakos & Dina Th. Kouvelou	84
13	Hong Kong	Ashurst Hong Kong: Joshua Cole	93
14	Indonesia	Bagus Enrico & Partners: Enrico Iskandar & Bimo Harimahesa	102
15	Italy	Portolano Cavallo: Ernesto Apa & Adriano D'Ottavio	110
16	Japan	Mori Hamada & Matsumoto: Hiromi Hayashi & Akira Marumo	118
17	Korea	SEUM Law: Steve Kim & Hoseok Jung	126
18	Luxembourg	Wildgen S.A.: Emmanuelle Ragot	134
19	Macau	Rato, Ling, Lei & Cortés – Advogados: Pedro Cortés & José Filipe Salreta	142
20	Malaysia	Azmi & Associates: Khairul Fazli Abdul Kadir & Azarith Sofia Binti Aziz	154
21	Nigeria	Udo Udoma & Belo-Osagie: Olajumoke Lambo & Godson Oghenechuko	165
22	Pakistan	Josh and Mak International: Aemen Zulfikar Maluka & Pir Abdul Wahid	173
23	Portugal	Cuatrecasas: Leonor Chastre & Maria Luísa Cyrne	181
24	Russia	Melnitsky & Zakharov, Attorneys-at-Law: Semion Melnitsky & Anastasia Sivitskaya	189
25	Singapore	OrionW LLC: Winnie Chang	197
26	Spain	Monereo Meyer Marinel-lo Abogados: Sönke Lund & Consuelo Álvarez Pastor	205
27	Switzerland	de la cruz beranek Attorneys at Law Ltd.: Carmen De la Cruz	214
28	Taiwan	Shay & Partners: Arthur Shay & David Yeh	221
29	Thailand	Tilleke & Gibbins: David Duncan	228
30	United Kingdom	Arnold & Porter Kaye Scholer LLP: Rob Bratby	236
31	USA	Wiley Rein LLP: Jennifer D. Hindin & Madeleine M. Lottenbach	244
32	Vietnam	Tilleke & Gibbins: Tu Ngoc Trinh & Waewpen Piemwichai	253

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EDITORIAL

Welcome to the eleventh 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:

Three general chapters. These chapters provide readers with an overview of key issues affecting telecoms, media and internet laws and regulations, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in telecoms, media and internet laws and regulations in 29 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 Arnold & Porter Kaye Scholer 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.com.

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SEUM Law

1 Overview

1.1 Please describe the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction, in particular by reference to each sector's: (i) annual revenue; and (ii) 3–5 most significant market participants.

According to the Korea Association for ICT Promotion (see industry report dated July 2016), the 2015 estimated revenue for the telecommunications industry was KRW 58.28 trillion (USD 50.96 billion). As of December 31, 2015, three service providers (SK Telecom, KT and LG U+) dominated the Korean market with a combined market share of approximately 90% in telecommunications and internet services based on revenue.

The broadcasting industry generated KRW 15.32 trillion (USD 13.39 billion) in revenue in 2015 according to a report jointly issued by the Ministry of Science and ICT (“MSIT”) and the Korea Communications Commission (“KCC”). The audio-visual media distribution sector remains dominated by the following traditional broadcasting companies: Korean Broadcasting System (“KBS”), Munhwa Broadcasting Corporation (“MBC”) and Seoul Broadcasting System (“SBS”).

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

The telecommunications and internet businesses are primarily regulated by the following:

- the Telecommunication Business Act (“TBA”);
- the Act on Promotion of Information and Communications Network Utilization and Information Protection (“ICNA”); and
- the Radio Waves Act (“RWA”).

The distribution of audio-visual media, or broadcasting, is regulated by:

- the Broadcasting Act; and
- the Internet Multimedia Broadcast Services Act.

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, including internet; and (b) audio-visual media distribution sectors in your jurisdiction.

The two major government bodies that regulate telecommunications and broadcasting in Korea are the MSIT and the KCC.

The KCC is a regulatory agency directly under the authority of the President while the MSIT is an executive ministry under the authority of the Prime Minister. The TBA and the Broadcasting Act authorise both the KCC and MSIT to regulate telecommunications and broadcasting by granting the two agencies the authority to develop policies, grant authorisations, investigate violations and levy sanctions.

The TBA and the Broadcasting Act specify which agency has authority over certain matters. Generally, the MSIT has a wider range of responsibility with respect to telecoms businesses while the KCC is focused on broadcasting. In particular, the TBA authorises the MSIT to grant licences and registrations for telecoms businesses and establish policies regulating such businesses while granting the KCC with authority to decide on competition matters related to telecommunications. On the other hand, the Broadcasting Act authorises the KCC to issue licences for terrestrial broadcasting and regulate content while authorising the MSIT to issue licences for satellite and CATV broadcasting under the Broadcasting Act.

1.4 In relation to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors: (i) have they been liberalised?; and (ii) are they open to foreign investment?

The telecoms and broadcasting industries have been liberalised and are open to foreign investment subject to certain restrictions. In terms of foreign investment specifically, the main restrictions are as follows:

	Type of Business	Authorisation Type	Relevant Agency	Foreign Ownership Restriction
TBA	Common telecommunication	Licence	MSIT	Maximum 49% ownership
	Special-category tele-communications	Registration	MSIT	None
	Value-added tele-communications	Report	MSIT	None

	Type of Business	Authorisation Type	Relevant Agency	Foreign Ownership Restriction
Broadcasting Act	Terrestrial broadcasting	Licence	KCC	Foreign ownership is prohibited
	CATV	Licence	MSIT	Maximum 49% ownership
	Satellite	Licence	MSIT	Maximum 49% ownership
	General programming	Registration	KCC	Maximum 20% ownership
	News programming	Licence	KCC	Maximum 10% ownership

2 Telecoms

General

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

Yes, Korea has been a member of the World Trade Organisation since January 1995. Korea has made commitments under the GATS for special-category services and value-added services and has implemented the telecoms reference paper.

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

Telecoms networks and services are mainly regulated by the TBA and ICNA (see question 1.2). The TBA and its related regulations comprise the main laws that regulate telecoms networks and services. The TBA provides the requirements and procedures for obtaining the relevant licences, ownership and operations requirements, and rules related to fair competition and use of land.

The ICNA sets forth specific requirements applicable to network and service providers that are intended to protect consumer rights such as protection of personal information and minors.

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

The KCC and the MSIT are the main authorities regulating the telecoms industry (see question 1.3). The MSIT's role under the TBA is to develop policy and oversee licensing while the KCC plays a larger role on the consumer protection side including competition.

The MSIT is a ministry of the government so it is not independent. The KCC is technically independent from the government, but the commissioners and chairman are appointed by the President and a committee of the National Assembly so its independent nature is arguably subject to influence from the government.

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. A KCC decision may be appealed to an appeals committee within the KCC, and a decision from such appeals committee can be further appealed to the courts.

An MSIT decision may be appealed to the Central Administrative Appeals Commission, a separate government agency that handles administrative appeals, and a decision from the Central Administrative Appeals Commission can be further appealed to the courts.

Licences and Authorisations

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

The TBA identifies three types of communications businesses: common telecommunications; special-category telecommunications; and value-added telecommunications businesses. Each type of business requires a different type of authorisation from the MSIT as shown in the table below. There is no distinction between general and individual authorisations.

Business Type	Business Description	Authorisation Type
Common telecommunications	Provision of services for transmitting or receiving sound, data, and images such as telephone or internet services; or leasing equipment and facilities for the transmission or receipt of sound, data and images	Licence
Special-category telecommunications	Provision of common telecommunications services through the use of telecoms networks owned by a person that has a common telecommunications business licence	Registration
Value-added telecommunications	Provision of non-core services using telecoms network	Report

2.6 Please summarise the main requirements of your jurisdiction’s general authorisation.

Below is a summary of the main requirements under the TBA:

Business Type	Review Criteria	Certain Key Service Requirements
Common telecommunications	<p>The MSIT has wide discretion in deciding whether to issue a common telecommunications business licence. The key document that will be evaluated by the MSIT is the applicant’s business plan. The MSIT will consider the following factors in reviewing the business plan:</p> <ul style="list-style-type: none"> ■ Financial capability. ■ Technical capability. ■ Sufficiency of measures to ensure user protection. ■ Sufficiency of plans for investment in upgrades. 	<ul style="list-style-type: none"> ■ Filing of report to MSIT regarding service charges and terms of use. ■ Provision of contract terms to users. ■ Sufficient verification of user identity for mobile communications.
Special-category telecommunications	<p>Any person seeking to operate a special-category telecommunications business must register with the MSIT and submit the following:</p> <ul style="list-style-type: none"> ■ Operation plan. ■ Details of principal facilities to be used in business. ■ Terms of use applicable to users. <p>The company must meet certain minimum capital requirements ranging from KRW 300 million to KRW 3 billion depending on the type of business.</p> <p>The MSIT may impose conditions on the registration if it deems necessary to ensure fair competition, protect users and improve service quality.</p>	<ul style="list-style-type: none"> ■ Commencement of business within one year of registration. ■ Implementation of user protection measures. ■ Retention of certain qualified employees such as a licensed radio electronic communication engineer.

Business Type	Review Criteria	Certain Key Service Requirements
Value-added telecommunications	<p>Any person seeking to operate a value-added telecommunications business must file a report with the MSIT including:</p> <ul style="list-style-type: none"> ■ A schematic diagram of the telecoms networks to be used. ■ Detailed statement of user protection measures. <p>The report must also show that the company implements technical measures to prevent online copyright infringement.</p> <p>Those providing services via the Internet with less than KRW 100 million in capital are exempt from filing a report.</p>	<p>The following are some key requirements that apply to value-added telecoms businesses:</p> <ul style="list-style-type: none"> ■ Commencement of business within one year of registration. ■ Implementation of technical measures to protect minors. ■ Implementation of technical measures to protect against computer viruses and malicious code.

2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded. Are there restrictions on the change of control of the licensee?

The transfer and change of control restrictions for the three types of telecoms business are as follows:

Business Type	Duration, Transfer, Change of Control Restrictions
Common telecommunications	<p>MSIT approval is required for the following:</p> <ul style="list-style-type: none"> ■ Sale or acquisition of a common telecoms business. ■ Merger with a common telecoms business. ■ Acquisition of 15% or more shares, become the largest shareholder or otherwise gain effective control, of a licensed business. <p>Approvals cannot be transferred. Approvals remain in effect indefinitely.</p>
Special-category telecommunications Value-added telecommunications	<p>A report must be filed with the MSIT for the following:</p> <ul style="list-style-type: none"> ■ Any change in information that was previously registered or filed in a report. ■ Sale or acquisition of a business registered with the MSIT or that previously filed a report with the MSIT. ■ To effect a merger with business registered with the MSIT or that previously filed a report with the MSIT. <p>Reports cannot be transferred. Filed reports remain in effect indefinitely and information may be amended or updated.</p>

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?**

The TBA includes specific provisions dealing with the following issues:

- Prior consultation with owners of private property to install infrastructure and petition for government permission in case of disagreement.
- Temporary use of land for up to six months for measurement and inspection.
- Request for removal of obstacles.
- Reinstatement and compensation for losses caused by use.
- Use of public property for installation.

Access and Interconnection

- 2.9 How is wholesale interconnection and access mandated? How are wholesale interconnection or access disputes resolved?**

The MSIT has authority to mandate wholesale interconnection and access on the operator with the largest market share after considering market size, number of users and conditions of competition. Wholesale services may also be privately agreed to between parties. The KCC has authority to resolve disputes and the parties may also file suit with the courts.

- 2.10 Which operators are required to publish their standard interconnection contracts and/or prices?**

The telecoms operator that has been designated by the MSIT to provide wholesale services for having the largest market share must publish contract terms and prices. Currently, the operator with the largest market share is KT. For private agreements, the MSIT will determine and publish guidelines for contract terms and prices.

- 2.11 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?**

Please refer to questions 2.9 and 2.10.

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

Yes. Common telecoms operators must separate the accounting for telecoms business from non-telecoms business. They must also separate accounting between common telecommunications services and value-added telecommunications services as well as the accounting for assets, expenses and profits by type of telecoms and functions.

After consulting with the MSIT, the KCC may order functional separation or legal separation, if the KCC determines that the operator engaged in activity that undermines or may undermine fair competition or user rights.

- 2.13 Describe the regulation applicable to high-speed broadband networks. On what terms are passive infrastructure (ducts and poles), copper networks, cable TV and/or fibre networks required to be made available? Are there any incentives or 'regulatory holidays'?**

Aside from the TBA, the Framework Act on National Informatization ("FANI") was enacted to promote sharing of information through high-speed broadband networks. The FANI authorises the MSIT to designate government agencies to support the development and use of broadband integrated service digital networks, including expansion and management of passive infrastructure and other facilities. Under the FANI, telecoms businesses may also request the construction or lease of facilities from the government.

There are no terms or requirements related to making available passive infrastructure, copper networks, cable TV and/or fibre networks.

There are no statutory or government provided incentives or regulatory holidays related to high-speed broadband networks.

Price and Consumer Regulation

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

No, retail price controls are not imposed on operators.

- 2.15 Is the provision of electronic communications services to consumers subject to any special rules (such as universal service) and if so, in what principal respects?**

All telecoms business operators must provide basic telecoms services (wire telephone services, telephone services for emergency communications) at reasonable fees (including the reduction of charges for disabled and low-income individuals) and cannot refuse service without justifiable grounds.

Numbering

- 2.16 How are telephone numbers and network identifying codes allocated and by whom?**

The MSIT allocates network identification codes, telephone numbers and mobile phone numbers based on applications for the code or numbers submitted by operators.

- 2.17 Are there any special rules which govern the use of telephone numbers?**

The use of telephone numbers is regulated by the Regulation for the Management of Telecommunications Numbers issued by the MSIT. The Regulation covers fundamental and standard issues and does not contain any special rules.

- 2.18 Are there any obligations requiring number portability?**

Yes. Pursuant to the TBA, the MSIT has issued regulations that require operators to provide number portability.

3 Radio Spectrum

3.1 What authority regulates spectrum use?

The RWA grants the MSIT with authority to regulate spectrum use. However, the KCC has the authority to regulate radio frequencies used by a terrestrial broadcasting business.

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

The use of radio spectrum is authorised by the MSIT and allocated to candidates through auctions and ‘beauty parades’ pursuant to the RWA as follows:

Auction

The MSIT will issue a public notice of its intent to assign radio frequencies and then select a bidder through an auction process. The MSIT can set a minimum price for the auction and may require a security deposit.

Beauty Parade

If the MSIT does not assign radio frequencies through an auction, it may assign radio frequencies through a beauty parade taking into consideration the efficiency of the use spectrum resources, the financial and technical capability of the applicant, and the characteristics of the relevant radio frequencies. The MSIT may also allocate radio frequencies through a beauty parade if deemed necessary for security or diplomatic reasons.

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

Yes. A licence is not required for the use of spectrum in certain cases. Any person can establish a radio station by merely filing a report with the MSIT if the radio station:

- has weak radio waves or it does not need installation and maintenance of radio facilities;
- is used exclusively for reception;
- is established by a person who has been allocated radio frequencies to provide telecommunication services under the RWA; or
- is established for digital multimedia broadcasting under the Broadcasting Act.

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

There are two types of fees payable for the use of radio frequencies: (i) allocation fees; and (ii) spectrum use fees.

Allocation Fee

If the MSIT has allocated a frequency spectrum through an auction, the allocation fee will be the amount offered by the bidder. 25% of the fee must be paid in a lump-sum with the remaining 75% paid in instalments over the usage period.

In the case of a beauty parade, the fee will be a combination of an amount calculated based on the expected revenue and an amount calculated based on actual revenue. For the portion that is calculated based on expected revenue, 50% of this amount must be paid in a lump-sum with the rest paid in instalments over a three-year period

starting from the third year of the allocation. The amount of the fee based on actual revenue must be paid every year of the usage period.

Spectrum Use Fee

In addition to the allocation fee, the MSIT or the KCC may charge a fee for the use of radio frequencies by a radio station. The fee is calculated based on the frequency band, range of radio waves and antenna supply power, except for mobile carriers. The fee for mobile carriers is calculated based on the number of subscribers.

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

No approval or filing of a report is required in connection with a change of control of a licence holder.

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

Spectrum licences may be transferred or sub-licensed three years after issuance with approval from the MSIT. The transferee or lessee must satisfy all the requirements applicable to the original licence holder.

4 Cyber-security, Interception, Encryption and Data Retention

4.1 Describe the legal framework for cybersecurity.

Cybersecurity matters related to key infrastructure are regulated by the Act on the Protection of Information and Communications Infrastructure (the “APICI”). The objective of the APICI is to formulate and implement provisions to protect major information and communications infrastructure such as electronic systems utilised for national security, national defence, finance, telecommunications, transportation and energy.

Public sector cyber-security matters are regulated by the following:

- National Cyber Security Management Regulation (“NCSMR”) – Pursuant to the NCSMR, the government and public institutions are required to establish cyber safety measures and conduct relevant training related to matters such as malware contained in emails and other forms of system attacks.
- Electronic Government Act – This act regulates the computerisation of administrative affairs and requires government institutions to implement security measures (e.g., encrypting important documents, use of security programmes or hardware to prevent hacking or access to information) to ensure safety and reliability of information systems.

Private sector cyber-security matters are regulated by the following:

- ICNA – This act protects users, users’ rights, minors and personal information contained in information and telecommunications networks. This act requires that telecommunications service providers implement a management system (e.g., require use of passwords, security software and firewalls, track employees that access personal information) for information security. In addition, the act contains penalty provisions for the infringement of information and telecommunications networks, including imprisonment and fines.
- The Electronic Financial Transactions Act – This act regulates electronic financial transactions and sets forth obligations of electronic financial service providers. The act requires that (i) users comply with certain standards related to the

transmission of electronic financial transaction information and the use of electronic certificates, and (ii) electronic financial service providers implement safety measures for electronic financial transaction infrastructure. Infringement of electronic financial transaction infrastructure under this act is more severely punished than infringement under the ICNA.

The government has discussed allocating certain authority to the National Intelligence Service in connection with cyber-terror prevention in the public and private sectors, but no actions have been taken at this time.

4.2 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 Protection of Communications Secrets Act (“**Secrets Act**”) generally protects secrecy and freedom of communication by making due process of law mandatory for the government to access communications. Evidence obtained in violation of the law may not be admitted as evidence in a court proceeding.

The Secrets Act specifies the circumstances under which and the procedures that must be followed for the government to restrict or gain access to communications. For example, prosecutors may seek court permission to implement measures if deemed necessary to prevent a crime or arrest a criminal. In more serious cases where death or serious injury is deemed imminent, the prosecutors may take action first and file for permission from the courts.

Upon a court’s approval, a prosecutor or the police may request from a telecommunications business operator communication data such as date of communication, the parties involved, the communication log and location tracking data.

The Criminal Procedure Act and the Military Court Act authorises the government to confiscate a person’s communication data in certain cases for an investigation or trial.

4.3 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?

Currently, there are no rules or regulations requiring market participants to maintain call interception capabilities. Legislation for this requirement was proposed, but failed to pass.

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

Communication interception is permitted in three cases: (i) criminal investigation; (ii) matter impacting national security; and (iii) emergencies:

Criminal Investigation

Prosecutors may intercept communications of a criminal suspect with court approval. The maximum period for such an interception is two months, although this period may be extended for an additional two months. Such interception is only approved to investigate crimes concerning foreign aggression, diplomatic relations, public safety, duties of public officials and other crimes of a similar nature.

National Security

If there is a threat against national security, the National Intelligence Service may intercept communications of a Korean national with

court approval. If the communications are between foreigners the intelligence agency may intercept communications with approval from the President. The interception can be conducted for up to four months with a possible extension for another four months.

Emergency

If there is an emergency and it is not feasible to obtain prior approval from the court, prosecutors or the National Intelligence Service may perform a communication interception without court approval, provided that approval is later obtained within 36 hours of the interception.

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

Under the ICNA, information and communications service providers that manage personal information of users must implement encryption technology for the safe storage of such information such as one-way encryption of passwords, encryption of resident ID numbers, bank account numbers and biometric information. There are no rules requiring the disclosure of encryption keys to the state.

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

Under the Secrets Act, telecoms operators must retain communications that have been subject to a wiretap or other intercept measure under the Secrets Act as follows:

- Date of communications, start and end time of communication, number of outgoing and incoming calls, frequency of use, and location tracking data must be retained for 12 months for mobile phone communication and six months for landline communications.
- Computer communications or internet log records of users and location tracking data must be retained for three months.

5 Distribution of Audio-Visual Media

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

Audio-visual media is distributed through (i) terrestrial broadcasting, (ii) satellite broadcasting, (iii) program-providing business, (iv) CATV relay broadcasting, (v) CATV music broadcasting, (vi) game software, (vii) movie content, (viii) video content, and (ix) internet content.

Audio-visual media content is protected under copyright law.

The Broadcasting Act regulates distribution of audio-visual media via methods such as terrestrial broadcasting, satellite broadcasting, program-providing business, CATV relay broadcasting and CATV music broadcasting; and authorises the KCC to regulate content. For example, the KCC requires that broadcasters not harm the public peace. In addition, the KCC has set forth standards for programming such as restrictions on depictions of smoking, violence or sexual acts. Under the Broadcasting Act, any individual or entity seeking to be a broadcasting company must obtain a licence, receive approval and/or register with the KCC or MSIT.

The Internet Multimedia Broadcast Services Act regulates distribution of audio-visual media via the internet and categorises internet related businesses as a (i) service providing business, or (ii) content providing business. Content providing business, for example, must comply with requirements such as not harming the

public peace and restrictions on depictions of smoking, violence or sexual acts. Under this act, any individual or entity seeking to be an internet content providing business must register with the MSIT. Internet content providers that satisfy the definition of a broadcasting business operator under the Broadcasting Act are not required to register with the MSIT.

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.

Content regulation for broadcast via traditional distribution platforms is generally similar to content delivered over the internet or other platforms. However, the applicable laws are different.

For traditional distribution platforms such as television, the Broadcasting Act requires that broadcasting business operators comply with content rules and regulations issued by the Korea Communications Standards Commission. Accordingly, such operators must rate content broadcast over traditional platforms such as television with respect to matters such as violence and lewdness and indicate the content rating during the applicable broadcast.

For content delivered over the internet, the TBA and the ICNA require operators to rate content and indicate the rating in a similar way as required under the Broadcasting Act. Content delivered over the internet is not subject to the Broadcasting Act because it is considered “providing services” rather than broadcasting.

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

General

In general, broadcasting business operators distributing audio-visual media are subject to requirements regarding management of the business such as scheduling of programmes, forming and managing channels and content related to commercials. The different types of licences are as follows:

Terrestrial broadcasting licence

A terrestrial broadcasting licence is required to manage and operate a business that broadcasts television signals via radio waves from an Earth-based transmitter. Under the Broadcasting Act, a terrestrial broadcasting licensee and its shareholders are subject to certain restrictions. For example, no shareholder can own more than 40% of the total outstanding shares of a terrestrial broadcasting business operator and a terrestrial broadcasting business operator cannot receive any investment from a non-Korean entity or individual (a “**Foreigner**”).

CATV broadcasting licence

A CATV broadcasting business licence is required for a business that manages and operates CATV (or cable) broadcasting stations that provide multi-channel broadcasting via cables such as coaxial or fibre-optic cables. Under the Broadcasting Act, a CATV broadcasting licensee is subject to certain restrictions related to the receipt of investments from a Foreigner.

Satellite broadcasting licence

A satellite broadcasting business licence is required for a business that manages and operates wireless stations that broadcast content via satellite signals from satellites owned or leased by the operator. Under the Broadcasting Act, a satellite broadcasting licensee is subject to certain restrictions related to the receipt of investments from a Foreigner.

Program-providing business licence

A program-providing business licence is required by a business that exclusively uses all or some of the airing hours of a channel offered by a terrestrial broadcasting business operator, a CATV broadcasting business operator or a satellite broadcasting business operator. Under the Broadcasting Act, a programme-providing business licensee is subject to certain restrictions related to the receipt of investments from a Foreigner.

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

Generally, there are no laws or regulations related to the assignability of licences or restrictions on change of control of a licensee. However, certain types of change of control require approval from the MSIT or KCC, or require that a report be filed notifying such organisations of the relevant change. For example, mergers and spin-offs as well as changes to the largest shareholder of a licensee require approval from the MSIT or KCC.

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?

Generally, telecommunications operators and internet service providers are not subject to liability for content carried over their networks since they do not have control over content produced by an audio-visual media company such as an internet media website. In contrast, for example, web portal service providers have been held to be liable for content when they have the ability to edit content, subject to various other requirements.

Internet service providers have a general duty to detect, delete and prevent distribution of child pornography, and may be subject to criminal liability if negligent in exercising such duty.

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

If a content owner claims that its rights have been infringed the content owner may request that an internet service provider suspend the activity allegedly causing the infringement. The internet service provider will review such request and, for example, consider the background information and evidence provided by the content owner, and determine whether to suspend the infringing activity. In connection with a civil or criminal claim brought by the content owner against an alleged infringer, an internet service provider must provide such content owner with certain information such as any infringing content in its possession and the name and address of the transmitter of such infringing content.

Generally, telecommunications operators are not subject to any obligations related to content infringement.

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

Generally, “net neutrality” principles have not been codified under the law nor have the courts provided clear guidance on this issue. Telecommunications operators and internet service providers may differently charge and/or block different types of traffic, but under the TBA “unreasonable discrimination” by a telecommunications business operator is not allowed. For example, an operator may not refuse to provide telecommunications services without “just cause” and the terms and conditions for common telecommunications services may not “unfairly discriminate” against specific persons.

In 2011 the KCC released guidelines regarding net neutrality addressing areas such as (i) protection of users’ rights, (ii) transparent management of internet traffic, and (iii) prohibition on blocking legitimate content, applications, services and devices which are not harmful to the internet. However, these are merely guidelines, and are not enforceable under the law.



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

Under the TBA, telecommunication business operators who provide telecommunications services to minors must provide measures to block content that is harmful and obscene. Under the ICNA, the KCC may order a telecommunication service provider or a website operator to prohibit, limit or refuse to process information that is obscene or defamatory in nature.

Under the Act on the Protection of Children and Juveniles against Sexual Abuse, an online service provider has the obligation to properly manage and block child pornography.

There is no regulation of consumer VPN services.



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