



# ICLG

The International Comparative Legal Guide to:

## **Telecoms, Media and Internet Laws and Regulations 2013**

**6th Edition**

A practical cross-border insight into telecoms, media and internet laws and regulations

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# Taiwan



Arthur Shay



David Yeh

## Shay & Partners

### 1 Overview

- 1.1 Please describe the: (a) telecoms; (b) audio-visual media distribution; and (c) internet infrastructure sectors in Taiwan, in particular by reference to each sector's: (i) importance (e.g. measured by annual revenue); (ii) 3-5 most important companies; (iii) whether they have been liberalised and are open to competition; and (iv) whether they are open to foreign investment.**

There are 3 major operators in Taiwan's telecom market: Chunghwa Telecom; Taiwan Mobile; and FarEasTone Telecom. These 3 operators provide integrated telecom services comprising fixed-line, mobile and broadband networks and the market shares are over 70% of total telecom services. Currently the telecom services have been liberalised, except that the mobile/wireless telecom services have to be allocated available frequency. In general, the foreign investment only caps certain restriction on the Type I telecom business and no further restriction on Type II telecom business.

In the market of terrestrial television, in addition to the public broadcasting group (so-called Taiwan Broadcasting System, including CTS and PTS), there are 3 other stations (TTV, CTV and FTV). In the cable TV market, there are 59 system operators and 3 programme transmission systems located in 51 service areas, and most of the system operators belong to the 5 major multi-system operators (Kbro, CNS, TBC, TFN and TOP), acquiring 70% of market shares. There are a few direct broadcasting satellite operators, but it cannot compete with the cable market. In the programme channel market, there are hundreds of channel providers, but only about 120 channels could be listed on the analog cable system, which most viewers are watching today. Foreign investment, either direct or indirect, is subject to legal restrictions on cable and channel providers.

The major way of internet access service is ADSL, FTTx and cable modem. Chunghwa Telecom is the largest provider of ADSL/FTTx and acquires about 70% of market shares; the leading cable modem operators are Kbro and CNS, acquiring about 20% market shares. In the mobile broadband market, the penetration of 3G service is pretty high, but the progress of 4G (currently WiMAX) is slow.

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

The Fundamental Communications Act was created in January 2004 to address the goals to be achieved in the course of digital convergence. Functionally, there are the Telecommunications Act,

the Radio and Television Law, the Cable Radio and Television Law and Satellite Broadcasting Law, respectively, drawing lines in between respective transmission platforms though NCC has been exercising its exclusive power granted by the Fundamental Communications Act to have regulatory reform by converging all the above platform regulations on a single legislation. There is no specific regulation for the internet. It is noted, however, the internet in relation to audio-visual content distribution, remains a grey area in NCC's policy.

- 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; (b) audio-visual media distribution; and (c) internet, sectors in Taiwan.**

The National Communications Commission (NCC) is the authority of telecom, audio-video media distribution, and internet except for the following:

1. The Ministry of Transportation and Communications (MOTC) has exclusive power on spectrum allocation, numbering plan and relevant policy planning such as IP addresses based on a decision entered into by the Executive Yuan in 2007.
2. The Ministry of Culture is the co-regulator in the fields of radio and television regardless of transmission types.
3. The NCC has been appointed by Executive Yuan the regulator for internet matters. However, the NCC refused to take such responsibility even though it does regulate internet businesses in the form of Type II telecom operators subject to the Telecommunications Act.

- 1.4 Are there any restrictions on foreign ownership or investment in the: (a) telecoms; (b) audio-visual media distribution; and (c) internet, sectors in Taiwan?**

In the telecoms sector, foreign direct investment in single Type I telecoms operators shall not exceed 49% of total equity shares and shall not be more than 60% of direct and indirect foreign investments.

In the media sector, foreign ownership is prohibited in terrestrial TV stations and radio stations. For investment in the cable system operators, the total foreign ownership must be below 60% and the foreign direct investment shall be for legal entities only and may not exceed 20% of total shareholding. Foreign satellite broadcasters, channel operators, content providers, and DTH service operators are able to receive landing licences either by set-up of branch company or appointment of local agents for compliance with relevant NCC regulations. In the case where foreigners invest in the

Taiwanese satellite broadcasting businesses, a cap of 50% on total equity shares shall apply.

No restriction is placed on foreign investment in internet related business.

## 2 Telecoms

### General

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

Taiwan became a member of the World Trade Organization in January 2002. Taiwan made commitments under the GATS/GATT regarding telecommunications and adopted and implemented the telecoms reference paper later by the further liberalisation of the telecoms sector and enacting amendments to respective telecoms law, as well as to broadcasting regulations.

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

The telecom businesses are divided into facility based operators (Type I) and service based operators (Type II). The Type I telecom operators shall obtain the concessions prior to the initial operation from the regulator and the behaviours are under heavy-handed regulation. Type I telecom businesses including fixed-line network, mobile and wireless broadband access shall abide by respective rules and regulations promulgated by the NCC. Except for those which are defined as Special Type II Businesses such as VoIP and International Simple Resale, Type II telecom operators require general permits from the NCC prior to launching their services and are also subject to light-handed regulation.

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

The regulatory authority is the NCC and the competition law authority is the Fair Trade Commission (FTC). Both of them are well-defined, independent regulators. The NCC executes *ex ante* regulation, while the FTC is more *ex post* as the watchdog for unfair competition even though the FTC enjoys a more parallel power in approval of mergers among the telecoms operators than the NCC does.

#### 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. As for decisions related to approval, permit giving licences and penalties, licence holders and the interested parties have the option to appeal to the Executive Yuan (the cabinet) for second review on both factual and legal grounds, and further to the Taipei High Administrative Court, if relief is not granted for legal review. Appeal to the Supreme Administrative Court would be the last resort if no success was ever received.

## Licences and Authorisations

#### 2.5 What types of general and individual authorisations are used in Taiwan?

Except for Type II operators who require general permits from the NCC prior to service launch, most of the licence holders in the field of telecoms and audio-video media distribution, including Type I telecoms operators, TV service providers (terrestrial, in-land cable, and satellite) are subject to the scrutiny of the operation plan and receive special concessions from NCC before landing into the market.

#### 2.6 Please summarise the main requirements of Taiwan's general authorisation.

It would include basic information of the operator, a brief of its operation plan which items may be designated by the NCC from time to time, date of service launch, and detail of the telecom facility/equipment to be applied in the operation. The NCC also requires prior review of the terms and conditions of the user's agreement.

#### 2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded.

Type I telecom businesses are further detailed into three categories: fixed-line network; mobile/wireless network; and satellite communication network. The fixed-line network business licences so far include integrated network, local phone, long-distance phone, international phone and circuit leasing business, and the duration of above licences range from 15 to 25 years. The mobile/wireless network business licences include mobile communication (GSM), low-tier wireless phone, the third-generation mobile communication (3G) and wireless broadband access (WBA) business. The duration of the mobile licences are generally between 10 and 15 years, except the WBA licence is for 6 years. All of the above individual authorisations or licences are subject to the prohibition of transfer and trading. Mergers and acquisitions among the Type I operators require prior approval of the NCC according to Article 15 of the Telecommunications Act.

## 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?

According to Article 32 of the Telecommunications Act, Type I telecom operators may use public and private land and buildings for the establishment of conduit infrastructure and terminal equipment. Governmental authorities shall not reject a request to use public land or buildings without due cause. If any such use of land or buildings causes material damage, appropriate compensation shall be issued. The location and manner of use shall be the least harmful to governmental entities and owners, occupants or users of such land or buildings.



## Access and Interconnection

### 2.9 How is network-to-network interconnection and access mandated?

Article 16 of Telecommunications Act provides that unless the law specifies otherwise, any request for network interconnection between or among Type I operators shall not be rejected. The arrangement of network interconnection shall follow the principles of transparency, reasonableness, non-discrimination, network unbundling and cost-based pricing.

### 2.10 How are interconnection or access disputes resolved?

The agreement of network interconnection among the telecom operators shall be reached within three months or any involving party may request the NCC to arbitrate the disputes. With respect to network interconnection, tariff calculation, negotiation, mandatory terms within interconnection agreements, arbitration procedures, and matters requiring compliance between or among telecom operators, it is the NCC which enforces the Regulations Governing the Network Interconnection among Telecommunications Operators.

### 2.11 Which operators are required to publish their standard interconnection contracts and/or prices?

All the signed interconnection contracts including prices agreed upon by the parties shall be reported to the NCC for file. The NCC, in its sole discretion, may disclose a part or the whole of the interconnection agreement which is entered into by the dominant market player and other telecom operator(s).

### 2.12 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?

The charges for interconnection and/or network access, in general, are determined through negotiation between parties of the network interconnection. Calculation of the access charge shall meet the principles of cost orientation, fair and reasonable, and non-discrimination. Among other things, the access charge of a dominant market player of Type I telecom operator shall be figured out pursuant to the following principles in accordance with the cost of the applied relay, transmission and switching equipment, which shall be reviewed annually: (1) the access charge shall be determined by the costs of the unbundled network elements in service; and (2) the cost shall be figured out on the basis of TELRIC (Total Element Long Run Incremental Cost). The access charge, figured out by a dominant market player in specific Type I business, must receive prior approval from the NCC. Likewise in the case of any amendment or change, the NCC approval is required.

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

Accounting separation applies to all of Type I telecom operators in accordance with Article 19 of Telecommunications Act. They further must refrain from cross-subsidisation to hinder fair competition. The NCC is introducing both functional separation

and legal separation against Chunghwa Telecom, the dominant player in the fixed-line network, to an amendment in the Telecommunications Act.

### 2.14 Are owners of existing copper local loop access infrastructure required to unbundle their facilities and if so, on what terms and subject to what regulatory controls? Are cable TV operators also so required?

Chunghwa Telecom (CHT), formerly a state-owned company prior to August 2005, has the only island-wide existing copper local loops. The NCC announced on 24 December 2006 CHT's copper local loop access bottleneck facility and forced the shared use and lease available to its rivals on a cost basis.

### 2.15 How are existing interconnection and access regulatory conditions to be applied to next generation (IP-based) networks? Are there any regulations or proposals for regulations relating to next-generation access (fibre to the home, or fibre to the cabinet)? Are any 'regulatory holidays' or other incentives to build fibre access networks proposed? Are there any requirements to share passive infrastructure such as ducts or poles?

The NCC holds a neutral position as to the interconnection and access of next generation networks, while negotiation among the operators in existing business practice is upheld. In addition to a massive construction sponsored by the central government in 2004 for island-wide ducts connecting major cities - the so called "M Taiwan project" - for connection and access to meet purpose of FTTB (fiber-to-the-building), local municipal governments also endeavoured to invite investment from private sectors into build-up of similar IP based network by making ducts and poles available for use to the new comers. Taipei city, the capital of Taiwan, announced in January 2012, an ambitious Build-Operate-Transfer (BOT) project commissioned to an international consortium, which is expected to achieve 80% penetration of FTTH in Taipei city by end of 2015. A total of approximately US\$1.3 billion capital expense is estimated for operation of the 25-year franchise.

According to Article 31 of Telecommunications Act and the Regulations Governing the Fixed Network Business, when a Type I telecom operator engages in constructing the infrastructure for the lines/pipes/ducts/poles of its fixed networks, it may request collocation for its lines/pipes/ducts/poles with the facilities at the bottleneck of telecommunications networks with the owners of such facilities at the expense of the requested operator.

## Price and Consumer Regulation

### 2.16 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

All of the Type I telecom operators (including fixed-line, mobile/wireless and satellite networks), are currently subject to retail price control under the price cap regulation imposed by the NCC according to Article 26 of Telecommunications Act. Any pricing adjustment, regardless of increase or decrease, and promotional plans of primary tariffs of the dominant player's, operators shall be submitted to the NCC for approval 14 days prior to the scheduled effective date of such adjustment. Following the approval, the adjustment and promotional plans shall be published for public notice and then becomes effective upon 7 days of the

announcement. As of 24 June 2012, Chunghwa Telecom is the dominant player in fixed-line network service market and it, together with Taiwan Mobile and FarEasTone, are dominant players in the 3G service market.

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### 2.17 Is the provision of electronic communications services to consumers subject to any special rules and if so, in what principal respects?

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Other than the Consumer Protection Law, there is no special rule applying to the provision of electronic communications service to consumers. The NCC however actively force service providers of electronic communications service to adopt terms and conditions in favour of users and consumers by publishing guidance on subscription agreement and users agreement and followed by regulatory review of implementation may be complained from time to time by consumers.

## Numbering

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### 2.18 How are telephone numbers and network identifying codes allocated and by whom?

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The Ministry of Transportation and Communications (MOTC) has been appointed by the Executive Yuan subject to Article 3.2 of the Fundamental Communications Act, the authority for allocation of telephone numbers and network identifying codes. Further to its numbering plan for 2001 through to 2011, the MOTC announced its numbering plan for the next 10 years until 2021 early this year. The NCC is responsible for the numbers assignment and management regulations.

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### 2.19 Are there any special rules which govern the use of telephone numbers?

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The NCC follows the Regulation Governing the Telephone Numbers previously ordered by the DGT under the MOTC, the former telecommunications authority authorised under the Telecommunications Act, in 2003 and administrates the use of telephone numbers. All Type I telecom operators and certain Type II telecom operators such as those who operate simple resale service are eligible for applying the telephone numbers. For non-profit purposes, a person or a legal entity may apply for the use of telephone numbers for the test of new telecommunications service or technology. The NCC in its discretion, may grant the use of telephone numbers upon request of government agencies, non-profit organisations, or public utilities for public interest.

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### 2.20 What are the basic rules applicable to the 'porting' (i.e. transfer) of telephone numbers (fixed and mobile)?

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The number portability service in local phone service had been available since November 2003, and mobile number portability became available on the date as of 1 January 2005. The Regulation Governing the Number Portability, which has been amended by the NCC in 2011, provides detail of do's and do-not's in relation to number portability. For example, the number portability is not available for cross service category (fixed-line to mobile or *vice versa*). Further the number portability of local phone is available in the same code area.

## 3 Radio Spectrum

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### 3.1 Is the use of radio spectrum specifically regulated and if so, by which authority?

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Absent a specific law on the use of radio spectrum, the management and planning of radio spectrum has been regulated under general authorisation given in accordance with the Telecommunications Act to MOTC. The Office of Post and Telecommunications under the Ministry of Transportation and Communications (MOTC) is responsible for the planning of spectrum allocation while the NCC administrates the matters regarding detail to the spectrum management, frequency assignment, and radio interference.

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### 3.2 How is the use of radio spectrum authorised in Taiwan? What procedures are used to allocate spectrum between candidates - i.e. spectrum auctions, comparative 'beauty parades', etc.?

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Pursuant to Article 48 of the Telecommunications Act, the NCC shall regulate radio frequency, power, mode of transmission, radio station identification signals and call signs, and other radio spectrum related matters. The NCC enacts regulations governing the planning and allocation of radio frequency, application procedures, principles of assignment, termination of approval, use administration of radio frequency, handling of interference the standard definition of interference and regulations related to the supervision of radio waves. The NCC further mandates the term of utilisation of frequency, and establishes a fee schedule to collect usage fees from radio frequency users.

Spectrum assignment shall be made by auction or open bid except for the following, which shall take the beauty contest approach:

1. the radio frequencies for the military, police, navigational, ships, amateur radio, government telecommunications, industrial, scientific, medical, low power radio frequency devices, academic experiment, emergency aid and rescue, and other benevolent or public uses;
2. the radio frequencies for mobile communications networks, satellite communications networks, radio broadcast stations or TV stations whose operation are based on the utilisation of specific radio frequencies, which shall be designated at the time of issuance of operation permit or franchise licence, or networks thereof could not function; and any radio frequency increased for further improvement of quality of local telecommunications; or
3. the radio frequencies, which could be used repeatedly under certain conditions of use, for wireless local loop of fixed-line networks, satellite links or wireless microwave links.

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### 3.3 Are distinctions made between mobile, fixed and satellite usage in the grant of spectrum rights?

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The Taiwan Radio Spectrum Chart latest amended by MOTC in August 2011 has distinct allocation between fixed, mobile and satellite usage. It has been hence strictly observed by the NCC for the grant of spectrum rights.

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### 3.4 How is the installation of satellite earth stations and their use for up-linking and down-linking regulated?

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The installation and use of satellite earth stations is governed by the Regulations for Administration on Satellite Communication Services. An applicant shall apply for a network installation

approval and frequency assignment with the NCC. The applicant, upon completion of installation and inspection, shall apply for a concession licence which is valid for 10 years. An operator who engages in the up-linking and down-linking of satellite communication shall apply for allocated spectrum prior to installation of the satellite stations.

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

Certain radio frequency devices, such as Wi-Fi and Bluetooth, are free of licence on the use of specified open spectrum. Walky-talky is another licence-exempt example. These devices, however, shall meet the requirements of type approval regarding the technical specification of output power, modulation technique, operating frequency, etc.

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

The fees for the use of radio frequency spectrum are calculated every year pursuant to the Charge Standard of Utilization Fee of Radio Frequency. The fees standard varies for permitted types of communications businesses and the frequency spectrum applied despite that the fees for usage of academic experiments, navigation aid, meteorology radar, rescue, military dedication, or emergency medication, may be exempted.

### 3.7 Are spectrum licences able to be traded or sub-licensed and if so on what conditions?

No. Spectrum licences are not permitted to be traded, nor sub-licensed.

## 4 Data Retention and Interception

### 4.1 Are operators obliged to retain any call data? If so who is obliged to retain what and for how long?

All of the Type I telecom operators are obliged to retain the call data, including telecommunications number, communication date and time of communication for the calling and called parties resulted by telecommunications system. The retaining period varies for respective telecom services: (1) local calls: 3 months; (2) international and long-distance calls: 6 months; and (3) mobile phone: 6 months. Type II operators shall retain the data for a period from 1 to 6 months subject to detailed requirements made by the NCC, which may include VoIP, login and logout of broadband access, IP address of free email account and newsgroup, communication record of email, etc.

### 4.2 Are operators obliged to maintain call interception (wire-tap) capabilities?

Pursuant to the Communications Protection and Surveillance Law, all of the licensed operators of voice services must be equipped with wire-tap capabilities approved by the NCC prior to receiving their operation licences.

## 5 Distribution of Audio-Visual Media

### 5.1 How is the distribution of audio-visual media regulated in Taiwan?

The Radio and Television Act, the Cable Radio and Cable TV Act, and the Satellite Broadcasting Law each authorises the NCC with its exclusive power of licence grant to entry of terrestrial, cable and DTH markets. Heavy-handed regulations are posted on distribution of audio-video media across various platforms.

### 5.2 Is there a distinction between the linear and non-linear content and/or content distributed over different platforms?

Despite the intent disclosed by the NCC of following the EU approach in distinction between the linear and non-linear content, the NCC still has loose control on content distribution over different platforms. All of the licensed platforms, including the wall-gardened IPTV service provided by telecom carriers, are required to carry content offered by those who have passed scrutiny and received from the NCC, the proper content provider licences. internet TV and/or internet radio are grey areas under the NCC current content policy.

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

In general, the licences for the distribution of audio-visual media are regulated on a basic fact of holding and controlling physical distribution platforms including terrestrial TV stations, radio stations, cable radio and cable TV systems, and satellite TV transmission systems. The NCC, since its establishment in 2006, strengthens its licence control beyond the platforms to content providers. All of the above licence holders are required to observe detailed programme and advertisement regulations made by NCC, which basically contain the following criteria:

1. that the content shall not violate compulsory or prohibitive regulations under the law;
2. that the content shall not impair the physical or mental health of children or juveniles; or
3. that the content shall not disrupt public order or adversely affect good social customs.

## 6 Internet Infrastructure

### 6.1 Are conveyance services over the internet regulated in any different way to other electronic communications services? Which rules, if any, govern access to the internet at a wholesale (i.e. peering or transit) and/or retail (i.e. broadband access) level? Are internet service providers subject to telecommunications regulation?

Internet service providers could be subject to telecommunications regulations specifically the Type II rules. For licensed telecoms operators, the following rules are notable in relation to access to the internet: the Regulations Governing the Network Interconnection Among Telecom Operators latest amended in November 2010; and the Regulations Governing the Tariff of Type I Telecommunications Business which NCC amended its Article 9-2 in March 2010 specifically dealing with CHT's behaviour in peering and demanding disclosure of its wholesale price to rivals in broadband access service.



**6.2 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?**

Local courts have upheld the defence made by telecom operators and internet service providers on the grounds of common carrier principle as provided in the Article 8 of Telecommunications Act and the "safe harbour" provision under Chapter 6-1 of Copyright Act.

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

The "safe harbour" mechanism imbedded in Chapter 6-1 of the Copyright Act exempts ISPs from indirect liabilities that their customers engaged in illegal file-sharing or other activities. "Notice and Take Down" is one of the compliances ISPs must do for having the protection under "safe harbour" provisions.

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

It cannot be disguised that such has been a practical troublesome case between the NCC and most of the telecom operators. Network neutrality is not found in the Telecommunications Act, yet it is to be clarified by the NCC for definition.

**6.5 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content?**

There was no such mandatory requirement until November 2011. Minor's Welfare and Rights Protection Law, in its latest amended Article 46, posted on ISPs a direct responsibility for assisting relevant authority on internet content surveillance. The ISPs shall take all necessary measures to restrict minors' access to certain sites or content or remove the content upon receiving from a competent authority notice about the identified internet content or links is determined harmful to the physical and mental health of minors.

**6.6 How are 'voice over IP' services regulated?**

There are two types of "voice over IP" services: VoIP with E.164 numbers; and VoIP without E.164 numbers. The former is a special Type II telecom business subject to scrutiny of operation by the NCC's heavy-handed regulation and the operator bears the obligation of universal service. The latter is a general Type II telecom business though subject to loose regulation and could receive a permit for operation through fast track internet users use the VoIP service by means of application and software download require no licences.

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