# 行政院國家科學委員會專題研究計畫 成果報告

## 數位匯流時代的通訊傳播法規：層級模式或水平管制架構的過渡與實踐
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# 行政院國家科學委員會補助專題研究計畫 ☐成果報告 ☐期中進度報告

## 數位匯流時代的通訊傳播法規：層級模式或水平管制架構的過渡與實踐

Convergent Communications Law in the Digital Age:
Examining the Transition and Implementation of the Layer Model and the Horizontal Regulation in Taiwan

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計畫參與人員：

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數位匯流時代的通訊傳播法規：層級模式或水平管制架構的過渡與實踐

# 中文摘要

我國為了因應數位科技匯流，不但通過通訊傳播基本法、國家通訊傳播委員會組織法，也於2006 年2 月成立了國家通訊傳播委員會(NCC)。NCC 於2007 年9 月對外公布其草擬的通訊傳播管理法草案（以下簡稱通傳法草案），以彙集各界意見。NCC 的通傳法草案在精神上有參考歐盟與英國的水平管制模式，但是提出的是基礎網路層、營運管理層及內容應用層的三層管理架構。由於NCC 鑑於通訊傳播基本法第十六條第一項的規定，認為要在成立兩年內修正通訊傳播法規，迫於時間壓力，NCC 在有限的時間內提出該版本，或許由於時間倉促及影響重大，引起各界不少疑慮，所以該草案已經兩度被行政院退回而暫時擱置。

本研究計畫除了分析國外在面對匯流服務修法時，是否採用層級模式或水平管制架構的作法，也探討層級模式或水平管制架構納入我國通訊傳播法規架構的可行性，如果可行則該如何過渡與實踐？最後則針對我國面對通訊傳播匯流服務所該採取的修法步驟提出建議。

本研究所採取的研究方法包括國內外相關文獻分析、比較法、深度訪談、問卷調查與焦點團體座談。本研究建議，NCC可以分為兩階段修法，先將廣電三法整併，再視需要整併電信法。

關鍵詞：數位匯流、通訊傳播法規、層級模式、水平管制

**Convergent Communications Law in the Digital Age: Examining the Transition and Implementation of the Layer Model and the Horizontal Regulation in Taiwan**

## Abstract

In order to cope with the technological convergence, the Fundamental Communications Act and the National Communications Commission (NCC) Organizational Act were passed in Taiwan. The NCC was established in February 2006. It drafted a convergent communications law in September 2007. Because of time restraints, the NCC did not have enough time to interact and negotiate with the relevant industries and the public interest groups. Therefore, the draft converged bill was criticized and suspended.

This research analyzed whether other developed countries adopt the layer model when they revised their laws to deal with convergent services. It studied the perceptions of the NCC's proposed converged law by the telecommunication and broadcasting industries, experts, and the public interest groups. It also assessed the feasibility of adopting the layer model or horizontal regulation when the NCC revised the relevant laws to deal with convergent services. Finally, it concluded by proposing the steps for the policy-makers and regulator: first, integrate three broadcasting-related laws into one content law, second, decide whether to integrate the unified content law with the Telecommunication Law.

Research methods include literature review, documentary analysis, in-depth interviews, surveys, and focus group study.

Keywords: layer model, horizontal regulation, convergence, communication laws

（三）

## 前言

1980年代初期美國知名學者Pool就指出，科技打破媒體的界線後，相關的法規必須及早因應。近十年來，數位匯流對通訊傳播產業及法規的衝擊，比比皆是。各國的通訊傳播主管機關有的早已開始擬定政策及修法因應,有的則是採取觀望態度,先以鼓勵方式帶動新服務的成長。美國1996年電信法(Telecommunications Act of 1996)雖然開放電信與有線電視的互跨，但是對於之後出現的新興匯流服務例如IPTV與行動電視並無具體規範。

歐盟自1997 年發佈「因應電信、媒體與資訊匯流與管制執行之綠皮書」以來，有關科技整合與匯流的討論變的非常熱烈。數位匯流首先由科技的變化帶來市場的變化，接著對法規帶來衝擊。我國為了因應科技匯流，不但通過通訊傳播基本法、通訊傳播委員會組織法，也曾經試圖草擬廣播電視法、有線廣播電視法及衛星廣播電視法合併修正草案（以下簡稱廣電三法修正草案）。廣電三法合併修正草案完成後，曾於2003 年5 月獲行政院院會通過。該草案第一條立法目的（為因應科技匯流）已提出歐盟討論很多的傳輸與內容分離的概念，及層級模式(layer model)法規的概念，但因主管機關由行政院新聞局轉為國家通訊傳播委員會(National Communications Commission,以下簡稱NCC)而擱置。

回溯我國電訊傳播相關的個別法規，電信法早於1958 年通過，廣播電視法係於1976 年通過，有線電視法於1993 年通過，並於1999 年修訂並更名為有線廣播電視法，衛星廣播電視法則於1999 年通過。面對數位科技衝擊，很多既有法規已經無法處理電信及廣電匯流的問題。雖然法規都是在科技後面追趕,但是過去的產業別(sector-specific) 的管理方式已不足以應付當前電信與廣電媒體匯流所帶來的問題。例如IPTV 的服務，既有電信又有廣電，到底該由電信法管理還是有線廣播法管理，也是一個棘手且具有爭議性的議題。

2003 年12 月立法院通過廣播電視法、有線廣播電視法及衛星廣播電視法的修正案，要求黨政軍限期退出廣電媒體。中華電信公司所提供的MOD（IPTV）業務則因為有交通部的持股而首當其衝，如果依照之前的主管機關用有線廣播電視法來管理，中華電信即面臨政府股份退出或是終止MOD 業務的抉擇。國家通訊傳播委員會於2006 年2 月成立後，即面對各界矚目的中華電信MOD（IPTV）案。委員會議在討論該案時，委員提出兩種不同看法，一是將IPTV視為有線電視,所以根據有廣法，中華電信如果不處理政府股份退出的問題，即面臨被罰甚至終止MOD服務的窘境。另一種看法是參考日本「利用電信設施提供視訊服務」的法規，引用通訊傳播基本法第十六條第二項，訂定暫行管理辦法。NCC 委員會議經過多次討論，後來決議將中華電信MOD 服務改造成開放平台，因此可以避掉有線廣播電視法有關政府股份必須退出中華電信的規定。除此之外，亦用修固網管理規則的方式來管理IPTV。有委員認為IPTV 不等於有線電視，頂多是類似有線電視(cable TV like) ，所以本來就不適用有線廣播電視法，此外，亦不應將中華電信MOD 的個案變成通案，亦即其他電信業者若無政府股份則不需受到中華電信所遭受的一些限制（請見NCC 網站www.ncc.gov.tw劉幼琍之不同意見書）。

根據通訊傳播基本法第十六條第一項，「政府應於通訊傳播委員會成立後二年內，依本法所揭示原則，修正通訊傳播相關法規」。NCC 第一屆委員多數認為，NCC 在成立兩年內應該修正通訊傳播法規，而且是提出一個融合電信法及廣電三法的版本。不過各界對這一條文有不同解讀，不少意見認為面對數位科技的衝擊應該修法，但是並不是在2008 年2 月之前提出一個匯流大法。NCC 經歷七次委員會議之討論後，於2007 年9 月初完成《通訊傳播管理法》草案審議，對外公告。

NCC 隨即於9月下旬舉行六場通訊傳播管理法草案公聽會，會中公民團體（包括公民媒改聯盟、媒體改造學社、婦女新知基金會和學界等代表)提出該草案顯示NCC 向財團傾斜的疑慮，如「刪除徵收業者特種基金、不當開放外資、取消跨媒體經營限制」，以及對於公共服務節目播出比例下限的鬆綁等疑慮。而媒體工作者代表如台灣新聞記者協會則認為通傳法應納入「保障勞動條件」和「組織財務透明」等規範。廣電業者對於「內容管理自律機制」與「廣告時間鬆綁」議題亦表達高度關注（翁翠萍，2007；周永捷，2007；馮昭，2007）。

電信學者、業者、相關協會也針對草案的基礎網路層所應盡的義務提出不同看法，認為相對於營運管理層而言，前者的低度管制亦有疏漏之處，例如網路互連及瓶頸設施的規定（毛治國，2007）。產業界如台灣通訊傳播產業協進會及台灣電信產業發展協會認為，電信與廣播電視產業匯流一步到位，對於產業衝擊過大，他們也指出，通訊傳播管理法草案對於產業發展之問題，如「法律授權不明確，市場定義空白，行政檢查擴權、行政罰擴大、過渡時間未明確規範」等問題有待釐清與解決（陳貴龍，2007；陳繼業，2007；劉莉秋，2007）。

NCC參酌外界意見作了一些修訂後，於2007年11月20日舉辦第二次的公聽會。各界對修訂後的草案仍有很多歧見。多半意見認為NCC 即便遇到2008年1月底委員的去留問題，但是這個匯流法版本的草擬過程太過匆促，仍應與各界多作諮商。NCC 再次彙整各界意見後，於2007年12月底將通訊傳播管理法草案送至行政院審議，但次年4月初遭行政院以「法令可採漸進式、階段性等方式修法」為由將草案退回，要求其重新檢討。NCC 針對行政院彙集相關部會提出的意見修正後，於6月再送行政院。有鑑於第二屆NCC 委員即將上任，行政院要求俟第二屆委員上任後，再提該案。第二屆委員上任後，認為通訊傳播匯流法版本牽涉範圍極廣，需再彙集各界討論，乃於9月決議，當前先將電信法及廣電三法的個別修正視為當務之急，至於匯流法的版本則列於2010年的中程計畫。

美國1996 年電信法(Telecommunications Act of 1996）的管制範圍雖然包含電信與廣電媒體，但是也不足以解決類似IPTV 匯流服務的問題。馬來西亞的1998 年通訊傳播及多媒體法(Communications and Multimedia Act, CMA）很早即融入層級模式的管理架構，但是並未引起我國的重視。英國的2003 通訊傳播法(Communications Act of 2003）雖然有電子通訊網路（Electronic Communication Network, ECN）與電子通訊服務Electronic Communication Service, ECS）水平管制的架構，但是仍然保留廣播及電視多工平台(multiplex）的定義。我國、新加坡、日本、韓國目前仍以個別的電信法及廣電法來管理電信及廣電事業。

## 研究目的

面對數位科技的衝擊，很多國家早已施行傳輸與內容分離。我國的電視媒體與相關產業雖然已經討論多年，但是仍有一些現實的考慮及法規的障礙。層級模式或水平管制的通訊傳播法規架構在我國到底可不可行？台灣現階段需不需要一個四合一（電信法加廣電法、有廣法及衛廣法)的匯流法？如果不需要則該如何修法面對數位匯流帶來的衝擊與問題？如果需要匯流法，又是哪種模式的匯流法？是英國模式、馬來西亞模式，還是NCC 通訊傳播管理法草案三個層級的模式？如果需要一個匯流法，是整個四合一的融合？還是只是將電信與廣電整合在同一部法律但是仍將其在不同章節規範？如果要採取層級模式或水平管制模式，將如何由現行法規過渡與實踐？因此，本研究的研究目的包括：

一、研究層級模式或水平管制架構在通訊傳播法規的應用

二、分析歐盟、英國、馬來西亞、美國、韓國、日本、新加坡因應數位匯流服務的法規，並分析其是否採用層級模式或水平管制的架構。

三、探討層級模式或水平管制架構在我國實施的可行性，並瞭解產官學研的看法。

四、針對我國因應數位匯流服務之修法步驟提出建議

## 文獻探討

### 壹、數位匯流的意涵

早期的文獻認為匯流是服務與網路的匯流。Green Paper(EC, 1997)定義匯流為同樣類似的服務由不同的網路提供。Edwards(1999)與Sheldon (2001)則將匯流定義為單一網路可提供多種服務（如語音、數據與廣播）的能力（Han, et al., 2002）。Pool（1983）對匯流的看法則總其成。他將匯流的情形歸納為有兩種形式：過去為不同媒體所提供的服務，如今可由一個媒體提供；過去為一種媒體所提供的服務，如今可由不同的媒體提供。資訊傳播電訊科技的匯流過程，可藉由電腦系統儲存、控制、展示、傳輸以整合文本、繪圖、圖像、影像及聲音。因此，Bauer, et al. (2002)將匯流定義為基於科技技術、經濟有利的考量，驅使共同提供某項服務的結果。不過，即使科技的匯流可行，但是否能實施則必須考慮經濟、社會、政治及文化的過程與結構（Garnham, 1996）。

### 貳、層級模式（layer model）的意涵

既然電信、媒體與網路已開始匯流，彼此之間的疆界已經打破，原來的法規自然顯得過時，到底以什麼方式來管理匯流後的新服務？近十年來有不少學者指出，層級模式(layer model)可提供參考。層級模式可顯示不同層級的功能區別，可應用在科技、市場與法規等方面(de Bruin & Smits, 1999)。本研究所探討的是層級模式的法規面。美國學者 Benkler(2000)與 Lessig(2001)曾經運用層級模式來作為法規的分析工具。接著有一些產官學者繼續引用層

級模式來探討匯流之後的法規管理模式。層級模式可有很多意涵。最基本的是兩層。歐洲在1980 年代開始電信自由化時，將電信服務主要分為基礎網路(infrastructure)與服務(services)兩層，後來在 1997 年電訊與傳播整合匯流的綠皮書提出傳輸(transport)、服務與內容三層的概念，比原來的兩層多增了內容層。

曾經擔任過美國通訊傳播委員會（FCC）新科技政策顧問的 Werbach(2002)與 FCC 網際網路資深顧問 Cannon(2003)皆指出，面對電訊、媒體與網路的匯流，法規可以層級模式思考。他們認為的理想模式是將法規的層級模式分為四級：(1)實體網絡層(physical network layer); (2) 邏輯網絡層(logical network layer); (3)應用與服務層(application and service layer);(4) 內容層(Cannon, 2003)。法規以層級的角度可以群組或分離一些議題。議題分屬於不同層級也許會有不同的解讀或對待方式。例如實體網絡層包含共同載具法規、頻譜法規、有線電視特許狀的規定。邏輯網絡層包含開放接取、對等互連。應用與服務層包含網路電話、寬頻服務等。內容層涵蓋智慧財產權的保護、誹謗、情色不雅的管理等議題。Werbach(2002)認為，如果要確保競爭的環境，只要實體網絡層與邏輯網絡層是開放的，就沒有必要規範應用與服務層。

Sicker(2002)特別提醒，如果對於提供相同服務的不同業者施行不一致的管制，可能會導致市場扭曲，並延緩科技發展等問題，因此他重新檢視並修正層級模式之架構與內涵，認為層級模式應可用於通訊傳播法規之制訂。Whitt(2004)認同 Werbach 之前提出的觀點，認為應該從 IP 基礎的網際網路為中心，發展出一套層級模型以做為分析各議題和管制的框架。他採用與 Werbach 同樣以網路為中心的管制架構基礎，分為：內容／交易層(Content/Transactions Layer )、應用層(Applications Layer)、邏輯網路層(Logical Network Layer)與實體網路層(Physical Network Layer)，與 Werbach 不同之處在於，Whitt 在實體網路層中，加入了傳輸(transport)與接取(access)層。這樣的作法期能在管制或經濟上提供誘因，鼓勵不同服務提供者互連。

作者曾經指出，主管機關面對數位匯流，採用層級模式修法有其優缺點(劉幼琍，2004a)：

優點：

1. 減少法規的不一致，同樣的服務，不因其科技不同而在法規規範方面有所不同。
2. 對同一層級水平式的網絡，可有一般性的規範。
3. 可減少管制及區隔不同層級的管理，例如越上層（如應用與內容面）的管制越少。越底層的管制，不是看其網絡為何，而是看其市場力量。
4. 層級模式使網絡與應用分開，可使應用層級的服務在每個市場更創新及更有效率(Sicker, 2002)。

缺點：

1. 只能建立法規原則，並無法解決具體的問題。
2. 在整合與匯流未具體實現時，尚不能對不同科技提供一樣的服務予以同樣的管理。

美國於 1934 年通過通訊法案，將電信業者和廣電業者的管制原則納入同一法源，同法也成為匯流主管機關 FCC 的設立依據。美國又於 1996 年通過電訊法案，大幅度地修改電信與廣

電產業的管制規則，但市場經過十幾年的變化，該法已不足以處理 IPTV 和行動電視等新興匯流服務所衍生的問題。至 2000 年以後，預見科技匯流的快速變化以及匯流服務出現後對於市場和法規所造成的衝擊，美國有許多學者開始思考該如何對廣電產業、電信產業與匯流產業進行整體的管制，因此紛紛針對管制架構提出不同的看法。

Werback (2005)不滿意對於美國的穀倉式(Silo)管制架構，他認為層級模式可作為一個新的思考方向。.Mindel & Sicker 於 2006 年比較了美國和歐盟在電信、資訊與媒體產業上的管制架構，他們認為管制的焦點應該在於服務的特徵，而非基礎的技術特色。他們於研究中同時也指出，層級模式已被明確地認定能夠推翻過去以產業別為主的管制方式，並且可成功地運用傳統的市場分析標準。

然而，也有部分學者不看好層級模式的功能。2006 年賓州州立大學教授 Shin 等人(2006)歸納了層級模式的缺點,認為層級模式無法清楚地區分管制規範中對於基礎設施的開放近用，同時還會引起價格複雜性的相關問題。層級模式所帶來的致命問題其實就是無法讓管制者知道要如何在每個層級中進行管制。美國 Freedom Works 副主席 Brough (2004)甚至認為層級模式的發展雖然源自於現行管制面對匯流科技時的不足與缺失，但事實上層級模式和目前 FCC 的管制並沒有顯著的差異。Reed(2006)也對層級模式提出質疑，認為層級模式並不適用於法律架構，只能套用在技術工程的架構上。

Frieden(2009)則指出，FCC 將匯流服務視為資訊服務，但是卻不願意將 VOIP 與 IPTV 當作不用管制的資訊服務。此外，他還認為無線傳輸業者也應擔負一些義務。Grimmelmann(2010)在討論網路時，也指出層級的方式已被法律學者承認具有政策上的啟示意涵。層級模式尤其能讓不同層級中的不同資源分配得到管理。

## 研究方法

本研究計畫所採取的研究方法包括文獻分析法、深度訪談法、比較法、親身觀察法、問卷調查及焦點團體座談等。在深度訪談部分，訪問了美國、日本、南韓及我國的產官學研。

在問卷調查方面，本研究特別於2010年8月挑選與通訊傳播匯流法相關及瞭解的產官學研各10名（有的業別因為數目較少各挑5名，並與性質相近的業別合併成10名），總共回收80份有效問卷，包含電信業者、有線電視系統業者、衛星電視頻道業者、無線廣播電視業者、電訊傳播相關學協會、專家及記者、相關政府官員、相關學者各10份。本問卷的發放方式主要是以電郵方式執行，再輔以電話提醒，或是當面發送提醒的方式，其中，只有兩家規模較小的業者因為不瞭解本議題而婉拒，研究者則以其他條件類似的業者替換，所以做到百分百的回收。詳細問卷受訪者的分類請見附錄一。

在焦點團體座談方面，則是於2010年8月24日上下午在台大校友會館會議室各舉行一場。出席來賓的姓名與職稱請見附錄二。

# 研究結果與討論

## 壹、美國與歐盟對電信、媒體與網路的匯流政策

美國於 1934 年通過傳播法，將電信業者和廣電業者的管制原則納入同一法源，同法也成為主管機關FCC的設立依據。美國又於1996年通過電訊法(Telecommunications Act of 1996)，大幅度地修改電信與廣電產業的管制規則，解決了一些匯流帶來的問題，例如允許有線電視與電信互跨，讓每種產業都能彼此互跨及競爭(Sung, 2002)。該法甚至讓電信業者能以開放視訊(open video system)業者的身份快速提供視訊服務。不過，因為很多地方政府不能接受，所以還是需要向地方政府申請類似有線電視的執照。

但市場經過十幾年的變化，該法已不足以處理 IPTV 和行動電視等新興匯流服務所衍生的問題。至 2000 年以後，預見科技匯流的快速變化以及匯流服務出現後對於市場和法規所造成的衝擊，美國有許多學者開始思考該如何對廣電產業、電信產業與匯流產業進行整體的管制，因此紛紛針對管制架構提出不同的看法。

面對IP服務的出現,FCC於2004年時曾對於透過IP可以提供的服務發佈了一份聲明文件，當中確認了關於 VoIP 和其他 IP 服務的事項，但卻沒有針對 IPTV 做出任何決議。IPTV 業者為了早點提供服務避免法律訴訟，也不得以向地方政府個別申請執照。後來有些州政府為了鼓勵該服務，願意統一發放整個州的 IPTV 執照，這樣也可省去向地方政府一一申請執照的麻煩。IPTV 一般皆被認為在 1996 年電訊法的規範中，是屬於一種資訊服務。FCC 對於 IPTV 的管制雖然不很清楚，2006 年 12 月公布一份報告，其中明文禁止主管機關不合理的拒絕影音服務的競爭業者提出進入市場的申請，並鼓勵投資建設寬頻設施，規定各州主管特許機關必需在 90 天內對傳統電信公司影音服務播送的申請提出答覆，在 180 天內對尚未持有有線電視營運許可之新影音服務業者的申請進行答覆。新規定還禁止各地州政府對於影音服務的新進入者採取比傳統有線電視公司更嚴格的要求。這些規範更加釐清了 IPTV 的管制範圍，因而也加速了電信營運商進入影音服務市場的時程（工研院，2009)。

針對另一項匯流服務--行動電視，美國對其內容並沒有明文的規範，反而是讓行動產業團體自行發展出自律規範。2005 年 2 月，FCC 無線電信處要求無線產業協會 CTIA 針對行動電視中的成人內容問題提出解決方案，他更建議 CTIA 可以去參考別的國家，例如英國、澳洲和以色列對於成人內容的政策管制。為了回應 FCC 的要求，CTIA 於同年 11 月發表無線內容指南(Wireless Content Guidelines)，其中的主要決議在於自發性的內容分級標準，將行動電視的內容分成「一般可近用內容(所有年齡適合觀賞)」以及「限制級內容(18 歲以上的成人才可觀賞)」兩類。由此，足見美國對於行動內容的管制，主管機關採取非常寬鬆的態度，讓業者進行自律，而業者也在無法律管制的情況下進行自發性的內容分級(Goggin, 2008)。

在歐盟方面，1997 年 12 月歐盟針對電訊、媒體與資訊科技匯流的情形所公佈的綠皮書，一方面詢問外界有無必要建立一個新的法規模式因應電訊廣電媒體匯流的情形。一方面指出，因應匯流的原則是法規應該限縮於實際的必要性。如果對於不同科技提供同樣類似的服務採取

不同的規範，會阻礙業者競爭、投資與提供服務。1998 年歐盟整理各界對綠皮書反應的報告表示，匯流是漸進式的，仍有一些不確定性。匯流的障礙包括法規的不確定、內容來源、智慧財產權的保護與消費者的保護。相關議題還包括近用權（含互連與機上盒）、價格（拍賣是否導致業者會對消費者漲價）、頻譜與公共利益目標、市場進入障礙、執照、競爭規範、標準規格、消費者利益與國際競爭力。歐盟的討論是平衡匯流之後衝突的政策目標。例如思考是否需要對匯流後的媒體採取平衡一致的管制方式？是否對提供同樣服務的媒體或平台採取一樣的管制？如果語音、數據與視訊是由同一種媒體或平台提供，其管制方式是否一樣？

1999 年歐盟進一步提出「邁向電子傳輸基礎設施及相關服務之新架構」諮文，並於次年對該諮文提出公開諮詢結論及新管制取向。執委會於 2002 年通過一系列通訊傳播之相關指令。根據「電子通訊網路與服務共同管制架構指令」，所謂「電子通訊網路」（electronic communications network, ECN），指的是「不問傳輸資訊的種類，凡利用有線、無線、光學或其他電磁手段傳輸訊號的系統，包含衛星網路、固定網路（線路交換，並包括網際網路的分封交換）、行動網路、電力線系統等交換機或路由設備或其他設備，或為傳輸訊號之廣播電視專用網路、有線電視網路」。因此不論其傳輸內容，只要能進行資訊傳遞的實體網路均稱為電子通訊網路（高凱聲、劉柏立，2005）。而「電子通訊服務」（electronic communications service, ECS）係指「全部或主要藉由電子通訊服務（ECN）來傳輸訊號而提供之通常為付費的」服務」。因此 ECS 包括電信服務及藉由廣播電視網路傳輸之服務，但卻不包括「廣播電視的節目內容、金融服務、甚或資訊社會服務等利用電子通訊網路或服務而在電子通訊網路上傳輸服務的內容」（高凱聲、劉柏立，2005；江耀國，2009）。

美國與歐盟在面對科技匯流所採取的政策中，最大的歧異就是歐盟有國家主張傳輸與內容分離。其中以法律規範結構與內容分離最典型的例子是英國。英國 1996 年廣播電視法(Broadcasting Act 1996)將無線數位電視的傳輸與內容分離，分為多工平台(multiplex services), 數位節目提供者(digital program services)與數位其他服務提供者(digital additional services)。多工平台很像多頻道營運者，把幾個電視頻道安置在政府指配的 8MHz 頻譜，百分之九十的頻道容量必須播節目或與之相關的服務，百分之十可做其他的內容，例如數據傳輸。英國獨立電視委員會 Independent Television Commission, ITC)發出六張多工平台的執照，執照期限為 12 年，規定該業者必須保持技術品質與穩定，並且不可對數位節目提供者或其他服務提供者有任何歧視或差別待遇。數位節目提供者必須遵守獨立電視委員會的一些節目內容規範。數位其他服務提供者所提供的是數據或資訊，而非節目。

## 貳、從層級模式看日本嘗試整併通訊傳播法規的過程

在新的匯流服務方面，日本的行動電視「One Seg」最初發展為現有傳統無線電視播送的延伸服務，日本政府沒有另外制訂法規管理行動電視，行動電視的規管主要是在現有的放送法（Broadcast Law ）之下。日本對 IPTV 的管制，主要是依照 2002 年通過的「利用電信事業提供廣播電視服務法」的相關規定。

2006 年至 2010 年對於日本來說是處理產業與法規匯流相當重要的一段時期。由於日本決定於 2011 年 7 月 24 日前關閉類比服務及讓所有日本民眾都能在 2010 年享有寬頻網路服務，

必須檢視傳播與廣電的法規結構，以迎接新的 ICT 社會。自從 2006 年開始，日本便有一些有關於傳播匯流法架構的討論與爭議，如媒介經濟學學者菅谷實(Minoru Sugaya)教授就提出層級模式(layer model)作為匯流法的架構。電信主管機關總務省也曾經宣布會在 2010 年採用整合電信法與廣電法的層級模式，並且組織了研究團隊研議法規架構，以提供政府制定方向，並知會各電信及廣電業者為新的法規環境做好準備，以適應新的匯流法。前總務省部長竹中(Takenaka)於 2006 年首先組織「資訊與傳播整合法律架構」(Comprehensive Legal Structure of Information and Communication)專門小組來處理相關問題(Liu, 2009)。

日本現階段有四個廣電相關的法、三個管理電信方面的法,以及兩個有關傳輸設備的法律。總務省與專門小組從 2006 年 8 月開始，召開 20 次會議研議整合法規架構，該專門小組將其最後的討論結果報告於 2007 年 12 月提出。根據專門小組所提出報告建議，日本總務省原計畫將原有與通訊傳播相關的九項法律整合在同一法律中。然而，日本民主黨 2009 年 8 月執政後，原本計畫有所變化。在 2010 年 5 月日本政府所發布的匯流法律結構的修正版本中，卻宣布只將四項有關傳播相關的法律整併。換言之，原來企圖應用層級模式整併成一部匯流法的作法已經暫時停擺(Liu, 2009)。

## 參、最早引用層級模式管理通訊傳播產業的亞洲國家--馬來西亞

馬來西亞是亞洲最早，也是全世界最早和少數採以單一立法為管制架構的國家。早期，馬來西亞政府為因應通訊傳播整合趨勢，即決定檢討現有的法規和政府的管制分工是否應予整併或修正的問題，而初期的主要工作在於規劃整合管理機關。經過二年多時間的規劃，於 1998 年 11 月依據「1998 年馬來西亞通訊傳播與多媒體委員會法」(Malaysian Communications and Multimedia Commission Act 1998)成立監理機關 「馬來西亞傳播通訊與多媒體委員會」(簡稱 MCMC)，此委員會整合和取代原有的電信局(Jabatan Telekom Malaysia，簡稱 JTM)及資訊部的廣電管理機構的職務。

1999 年 4 月馬來西亞政府廢除「1950 年電信法」與「1988 年廣播法」，將電信法和傳播法整併為「傳播通訊與多媒體法」(The Communication and Multimedia Act，簡稱 CMA)。馬來西亞在管制架構上完全改為水平管制。然而至今已有十二年時間，馬來西亞雖然最早有層級模式概念，但多半國家在談論匯流趨勢，它可供引以為鑑的例子並不多，目前傳播通訊產業依舊劃分為四大類，而通訊傳播業者執照授權基本上即依據這四類：網路設施提供者、網路服務提供者、應用服務提供者和內容應用服務提供者。即使是新興媒體內容例如 IPTV 和行動電視，馬來西亞主管機關尚未有針對行動電視做出明確的管制條例，主要還是依執照分類及內容規定法為管制標準，在 IPTV 執照申請方面，業者則被歸類為內容應用服務提供者，並依據相關條件發放執照。相關規範乃依循 CMA1998 第四章之第四項為管制標準。科技不斷進步，新興媒體不斷湧現，馬來西亞在規管上算還不夠細膩以對應這變化迅速的數位媒體世代。

## 肆、韓國尚未採用層級模式，但已開始討論

韓國已在 2008 年依據韓國廣播通訊委員會之設立與管理法整併韓國廣播委員會(KBC)及資訊通訊部(MIC)，成立單一獨立的電訊傳播主管機關--韓國廣播通訊委員會(KCC)，直接對總統負責。在新匯流服務的發展方面，韓國針對 IPTV 通過了「網路多媒體廣播事業法」(俗稱 IPTV 法)，並在 2008 年 9 月正式發出三張 IPTV 執照。該法針對 IPTV 的執照取得、外資限制、市場集中度、跨業經營、必載規定、內容等進行規範。而在行動電視的部分，韓國早已在 2005 年就開始營運。在規管法規的部分，韓國針對行動電視的規管並未如 IPTV 一般另立專法管理，而是在廣播電視法裡面的「多媒體服務」章節進行規範。

近年來，韓國學界對「匯流」的討論也多集中在報業跨業經營電視媒體的管制，與國際趨勢較為不同。即使韓國國內已有關於法規匯流的討論，也僅止於學術層次。至今韓國對於是否該將電訊傳播法規整併或是引用層級模式修法並未達到共識。

## 伍、新加坡的廣電法與電信法共管

新加坡在新的匯流服務，如 IPTV 的執照發放上，主要是以業者影響力與市場規模做為考量指標，因此根據訂閱人數十萬為標準，可分為小眾性訂閱型電視執照（Niche Subscription TV License）與全國性訂閱型電視執照（Nationwide Subscription TV License），而不同種類的執照在所有權、必載、廣告收入等規定上也有不同的標準。在行動電視方面，MDA 在 2007 年 11 月曾發布對於行動電視管制的提案（Mobile TV Consultation document），但至目前為止，仍未發與行動電視執照。

新加坡政府並未有將電訊傳播相關法案做匯流的規劃。而在各項匯流服務如 IPTV 及行動電視快速發展的衝擊下，新加坡仍然是以現有法律規範。然而這些法律在處理匯流服務上也會出現問題與不足之處，甚至引來影響到創新服務內容的爭議。

## 陸、從層級模式看我國數位匯流法規走向

我國為了因應數位匯流，政府所採取的第一個措施是行政院在 2003 年 5 月通過新聞局所提的廣電三法合併修訂草案。廣電三法合併修訂草案最能看到台灣引用西方的層級模式制訂數位匯流政策法規。廣電三法修訂草案過去最引人矚目的是黨政軍退出媒體的條文，其實因應數位匯流，影響業者與通訊傳播生態最深遠的應該是傳輸與內容分離的規範。該草案不僅打破原有的媒體產業別，還推出傳輸平台與平台服務業的概念。新聞局當初在草擬該草案時，雖然提到平台的概念，卻只能將電信與網路視為「他類」的平台。

2004 年 1 月及 2005 年 11 月，通訊傳播基本法與國家通訊傳播委員會組織法相繼通過並公佈實施。之前的廣電三法合併修訂草案因為通傳會成立之後遭到擱置。通傳會於 2006 年 2 月

成立後，基於通訊傳播基本法第十六條第一項，「政府應於通訊傳播委員會成立後二年內，依本法所揭示原則，修正通訊傳播相關法規」的規定，乃決定提出一個融合電信法及廣電三法的版本。在歷經七次委員會議之討論後，於 2007 年 9 月初完成《通訊傳播管理法》草案審議，對外公告。該草案將通訊傳播產業分為基礎網路層、營運管理層及內容應用層三層管理，而歐盟及英國的水平管制則是管制電子通訊網路及服務，但是內容服務及資訊社會服務則不屬於架構指令的規範範圍，而是由視聽媒介服務指令(Audio Visual Media Services Directive) 及電子商務指令(e-Commerce Directive)規範（江耀國，2009)。

通傳會所提的通訊傳播管理法草案首先定調為中高度匯流，法案架構採取單一立法模式，因為廣播電視的管理有其特殊性,無法一步到位,所以通訊與傳播之規範仍視其特性分別處理。其他的原則還包括以業務執照分類為主，與事業資格分離、網路、服務分離原則、減少政府干預，市場機制優先。內容管制的原則則是落實媒體自律及引進社會他律機制。

由於各界對該草案有很多歧見，並認為這個匯流法版本的草擬過程太過匆促，仍應與各界多作諮商。所以 2008 年 4 月行政院以「法令可採漸進式、階段性等方式修法」為由將草案退回給通傳會，要求其重新檢討。通傳會針對行政院彙集相關部會提出的意見修正後，於 6 月再送行政院。有鑑於第二屆通傳會委員即將上任，行政院要求俟第二屆委員上任後，再提該案。2008 年 8 月第二屆委員上任後，認為通訊傳播匯流法版本牽涉範圍極廣，需再彙集各界討論，乃於 9 月決議，當前先將電信法及廣電三法的個別修正視為當務之急，至於匯流法的版本則列於施政計畫的中程計畫。2009 年 12 月通傳會公布了「匯流政策發展研究小組」成立目的及工作目標。該工作小組將匯流法草案的議題分為三組，分別為「傳播及內容監理議題」、「結構及行為管理議題」、「網路及資源管理議題」，然後舉行座談會。

2010 年 7 月 8 日行政院院會通過科技顧問組所提「數位匯流發展方案」，並由政務委員張進福召集成立「數位匯流專案小組」，協助各部會規劃推動我國數位匯流工作。該方案將在分層競爭與管理的管制架構下，推動兩階段修法，以利產業掌握數位匯流發展契機。以 2010 至 2012 年為第一階段，將提出廣播電視法、有線廣播電視法、衛星廣播電視法、電信法的法規修正案及廣電架構規範，由行政院通過後送立法院審議。2013 至 2014 年為第二階段，將完成數位匯流架構整合或分立的規範並通過立法。第一波擬先放寬電信、廣播及網際網路跨業經營限制，2014 年完成調整數位匯流架構，2015 年達成數位匯流目標（http://www.ey.gov.tw)。
2010 年 8 月有四位新的委員被聘為第三屆通傳會委員。不過廣電三法是否要合併或是是否要分兩階段先合併為傳輸平台法及內容管理法，最後是否要再整併成一部匯流法，目前委員意見分歧，尚未討論達成共識。截至 2011 年 1 月為止，通傳會仍是將重點放在個別修法方面。有線廣播電視法與衛星廣播電視法已經送到行政院審查，衛廣法原已審查完畢，唯因黨政軍退出媒體相關限制放寬為間接持股 10%的爭議而退回通傳會修訂。廣電法的部分分為小修版與大修版。小修版是指執照發放方式有拍賣制、審議制等多種發放方式，可由通傳會視業務性質決定。廣電法大修版原由第二屆主委彭芸開始組成工作小組，接著由第三屆主委蘇蘅繼續帶領工作小組研擬。至於電信法修正草案，也將於 2011 年年初提通傳會委員會討論。

## 柒、問卷調查結果：

### 一、個別修法還是整併法規

面對科技及匯流服務的衝擊，針對廣播電視法、有線廣播電視法、衛星廣播電視法（簡稱廣電三法）及電信法應該個別修法，還是應該將既有法規整併？80 位受訪者中有 36 位認為應個別修既有的法，有 38 位認為應整併既有法規，認為就新服務另訂法規的有 8 位。無線廣電業者與政府官員等受訪者有半數以上勾選應個別修法，電信三大業者也勾選此項目，規模較小的電信市場新進者多選擇整併既有法規。多數廣播相關協會也支持個別修法，與廣電業者看法相似。學者部分則各有半數支持個別修法及整併法規。但是研究機構的專家及跑電訊傳播路線的記者則明顯的支持整併相關法規。

有些受訪者勾選個別修法的理由並非反對整併法規，而是多認為一次整併困難度高，希望先透過個別修法以解決目前面臨的規管困境，待個別修法完成後，做為日後法規進行匯流的基礎。官員當中多認為，在無法掌握未來科技發展之趨勢下，一步到位風險大且難以達成，因此，應先各別修法，日後法規若真要匯流，再以修訂好的版本為依據。至於如何修訂，有官員指出，應各別在廣播電視法及有線廣播電視法中增訂數位內容的專章；亦有官員指出，應在有線電視廣播法及電信法中導入互跨經營的規範，以利新服務的發展。

在未來的修法建議部分，受訪者多表示希望建立公平的環境及放寬管制。而提到廣播電視法的修法建議，電信業者與電信相關協會皆認為應放寬黨政軍投資媒體的限制，亦有部分學者同意此看法；另外無線廣播業者及相關協會也提出廣播及電視應分開規範，以免造成不公平的競爭環境。在衛星廣播電視法的修法建議部分，業者及相關協會也採相同看法，認為平台（直播衛星）及內容（衛星廣播電視節目供應事業）分開管理，且針對不同媒體應有相同管制方式。這點與水平管制的思維是相矛盾的。最後，在電信法修法的建議部分，三大電信業者及電信相關協會也持有相同看法，認為應該要先修訂資費管制、市場不對稱管制、市場主導者定義等法條。

表 1　產官學研對於個別修法或整併法案的看法

| | 個別修法 | 就新興服務另訂法規 | 整併法規 |
|---|---|---|---|
| 電信業者 | 4 | 1 | 5 |
| 系統業者 | 3 | 1 | 4 |
| 頻道業者 | 5 | 2 | 4 |
| 無線廣播電視 | 6 | 0 | 4 |
| 相關學協會 | 4 | 0 | 5 |
| 專家、記者 | 2 | 1 | 6 |
| 政府官員 | 6 | 0 | 4 |
| 學者 | 6 | 3（2 也個別）+(1 也整併） | 6（3 個別+3 整併） |
| 總計 | 36 | 8 | 38 |

## 二、若要整併法規，整併的方式及階段

受訪者中，支持分「兩階段」進行整併的最多，有 22 位，其中有 16 位認為先整併廣電三法,再與電信法整併。贊成一次整併的有 12 位,其中有 11 位贊成一次整併廣電三法及電信法。認為只要整併廣電法規的有 8 位。

表 2　若要整併法案，產官學研對於整併的方式及階段的看法

| | 僅併廣電三法 | 僅併廣電四法 | 兩階段先併廣電三法再併電信法 | 兩階段先併廣電四法再併電信法 | 一次併廣電三法及電信法 | 一次併廣電四法及電信法 | 其他 |
|---|---|---|---|---|---|---|---|
| 電信業者 | 0 | 0 | 1 | 1 | 4 | 0 | 0 |
| 系統業者 | 0 | 1 | 3 | 0 | 1 | 0 | 3 |
| 頻道業者 | 1 | 0 | 2 | 0 | 0 | 0 | 1 |
| 無線廣播電視 | 1 | 0 | 2 | 1 | 1 | 0 | 0 |
| 相關學協會 | 0 | 0 | 1 | 0 | 1 | 0 | 3 |
| 專家、記者 | 1 | 0 | 3 | 1 | 2 | 0 | 2 |
| 政府官員 | 1 | 0 | 2 | 2 | 0 | 0 | 2 |
| 學者 | 3 | 0 | 2 | 1 | 2 | 1 | 1 |
| 總計 | 7 | 1 | 16 | 6 | 11 | 1 | 12 |

## 三、整併法規的適當時機

受訪者有半數以上對於整併法規的時機認為充滿了不確定性。有 10 位認為是 2014 年，8 位認為是 2011 年，因為他們指的是整併廣電法規。選取「不確定」選項的原因包括：(1)認為水平管制是否確實可行，尚無定論，為求審慎，建議應以逐步穩健的方式過渡，不應設定時間表；(2) 亦有提出由於我國立法時程複雜，故無法確定；(3)應先待匯流趨勢成熟再另行討論。

表 3　對於整併適當時機的看法

| | 2011 | 2012 | 2013 | 2014 | 不確定 |
|---|---|---|---|---|---|
| 電信業者 | 3 | 0 | 1 | 0 | 6 |
| 系統業者 | 0 | 0 | 1 | 2 | 5 |

| | | | | | |
|---|---|---|---|---|---|
| 頻道業者 | 1 | 0 | 0 | 1 | 7 |
| 無線廣播電視 | 0 | 2 | 0 | 0 | 6 |
| 相關學協會 | 2 | 2 | 0 | 0 | 4 |
| 專家、記者 | 2 | 0 | 1 | 3 | 3 |
| 政府官員 | 0 | 0 | 0 | 4 | 6 |
| 學者 | 0 | 2 | 2 | 0 | 5 |
| 總計 | 8 | 6 | 5 | 10 | 42 |

**四、若將電訊與廣電法規匯流，對電訊傳播產業的影響**

多數電信業者認為應鬆綁法規並建立公平競爭環境，尤其要拉齊有線電視、衛星電視及其他視訊平台間的管制門檻。而系統業者則認為匯流後必須投入更多成本以面對新進者的挑戰，部分業者認為將不利小型業者生存。頻道業者則希望匯流後，法規能幫助內容及文創產業的發展。無線廣電業者及無線廣電協會則關切市場將遭強力分割與侵襲，並不利於廣播產業的發展。然而，數位電視學會則關切市場面的影響，認為匯流後將有助新市場的開發。專家學者多認為法規匯流會促使更多市場競爭，訂定法規時要兼顧公平性。此外，政府官員則提出，在進行法規匯流時，要注意原有產業規模的差異性，避免打破匯流障礙後可能因原有規模差異而產生之不公平競爭的問題。

**五、電訊與廣電法規若不匯流，對電訊傳播產業的影響**

產官學界皆認為數位匯流是技術發展的必然趨勢，因應此發展趨勢，法規必須配合修正，否則將嚴重阻礙產業發展。部分業者認為若不將法規匯流，電信事業及廣電事業管制依舊有落差，不利兩者競爭，並造成適用法規之疑義，演變為阻礙新服務推出的最大癥結。另外，業者亦指出，若不將法規匯流，仍應放寬政府投資廣電媒體限制、並對市場定義、市場主導者定義、資費管制等法條進行修改，同時亦需致力拉齊在不同平台上相同服務的規管方式。官員、專家及相關學會則認為法規不匯流將會造成法律上的疑義及規管上的漏洞。

**六、層級模式的管制對電訊傳播市場競爭的影響**

多數受訪者，包含電信業者、無線廣電業者、學協會代表、專家及政府官員等皆認為層級模式可引進新興服務、促進相互競爭、提供民眾多元選擇的優點，並有助於將業者的責任義務釐清。然而，也有受訪者同時擔憂會因此傾向集團化經營，對小規模經營者，如廣播電台、有線電視獨立系統經營者等，將有造成掠奪性競爭之虞。有受訪的官員表示，雖然管制模式通常是一體適用，但在執行面仍應以主導業者為主，否則小業者將很難生存。另外，也有官員認為實際現有的整合比形式整合重要，並認為層級的概念在電信方面可行，但用在廣播電視上則不太可行。

**七、層級模式的管制架構，是否可在合理特定範圍內維持垂直管制**

大多數業者皆認同適當的垂直管制，以節制市場壟斷。且無線廣電業者、中華民國電視

學會內的成員及多數官員提出無線電視台製播分離不應採強制性，鑒於廣電傳播之特殊性，允許其維持垂直經營之模式。專家指出，在電信的部分，可將水平管制視為一致性規範，僅在廣電的部分考慮採取垂直管制的必要性。廣電部分必須考量，針對無線廣播電視的部分，在我國現行審議制的釋照制度下，具有濃厚的公益色彩，因此對於無線廣播電視的規範，不論是網路、平台及內容，均有特殊規範之必要，因此此一部分的垂直管制似乎仍有需要。在有線電視方面，「有線電視網路因同時具有電信傳輸網路及廣電頻道播送網路的性質，使得在管制上兩者難以區別：前者部分應與電信法對於固網的規範為一致性管理，後者則必須考量頻道上下架對於公眾收視權益的影響，在管制上必須思考如何同時兼顧兩者面向」(王碧蓮，2010)。

**八、如果引用層級模式的規範管理，同一事業是否可同時經營各層服務？**

產官學界多數認為同一事業可經營各層服務，並認為如為了符合層級模式管理而硬性規定通傳產業作不必要的資產切割，反而可能產生破壞業者經濟規模的問題。並且在匯流管制中，營運管理層與網路傳輸層具有管制上的不可切割性，故應在允許業者垂直整合經營的前提下，納入水平競爭條款。專家建議，在修法或執行面上，可考慮採取兩種策略：(1)行為管制，禁止為不當的競爭行為；(2)結構管制，避免獨寡占地位的形成，如水平整合比例之限制；垂直整合比例的限制（王碧蓮，2010)。

**九、如果引用層級模式管理，新舊法規如何過渡**

針對過渡期的長短，專家有不同見解。有人認為過渡期不應該超過一年，否則將落後其他國家，而有受訪者則表示，為了避免企業經營的短期風險以及消費者的短期差異，至少應該有三年的緩衝過渡期，且需充分與業界溝通。有業者提出，可將歸屬在相同服務層級（例如 MOD 平台、有線電視系統平台及直撥衛星電視平台）之各項服務的管制強度趨於一致後，再施行水平層級管制。也有業者建議，應先將電信法以及廣電三法等相關法條進行整併，完成法制作業後再進行水平匯流。而舊有的執照在執照到期前不能改變，須到期後再處理。

## 捌、產官學研焦點團體座談

在 2010 年 8 月 24 日所舉辦的第一場焦點團體座談，大多數產官學界專家學者傾向現階段先個別修法，未來在適時點再整併也不遲。對產業界代表而言，業者關心修法內容勝於修法方式，建議把在電信和廣電之不公平、不一致的障礙排除，將管制高度拉齊，凝聚各方的共識，才能有效率推動，使匯流管制更有影響力。

在 8 月 24 日的第二場焦點座談，大多數與會來賓皆贊成先個別修法，9 位來賓中就有 8 位支持這種想法。一方面是因為大型的整併修法時機尚未到達，業者需要更多時間進行調適與準備；另一方面是因為修法程序繁複而緩慢，除了立法院議程排定困難之外，立法院與 NCC 之間的權力關係對修法更具有關鍵性的影響。但是支持個別修法的來賓，並不否定未來整併廣電三法與電信法的可能性，認為漸進式地先將個別法修訂後，再將廣電三法合併，最後再

與電信法結合，轉換為頻道法與平台法的水平架構，才是最適合台灣整體傳播通訊環境的做法。

## 結論與建議

國家通訊傳播委員會（簡稱通傳會）在 2007 年所提的通訊傳播管理法草案，因為與外界溝通時間不夠而引起各界疑慮，不但被行政院退回，也未獲第二屆通傳會委員採納。第二屆委員採取的是個別修法。2010 年 7 月行政院公佈的數位匯流發展方案讓通傳會有時間壓力，必須在 2014 年針對數位匯流服務完成修法。行政院雖未要求通傳會是否該將既有法規整合成一部匯流法。依照本研究所做的調查，我國和日本很像，皆傾向先將廣電相關法規整併，屆時再看需求決定是否再整併電信法。日本從 2006 年開始成立研究匯流法的小組，本來是要將九個與電信及傳播相關的法整併成一個匯流法，可是 2009 年 8 月民主黨獲得政權後，已決定將八個法整併成四個法，其實是將與廣電相關的四個法合併。

本研究除了研究日本以外，也研究美、英、韓、新、馬等國。我國也曾考慮是否要仿效美國的 1934 年傳播法，將電信或傳播的規範在不同章節管理，目前認為實質個別修法比較重要，是否要將電信與傳播的管理放在同一部法，目前尚未有共識。美國目前還是依產業別做不同的管理。這部分，顯然我國已有朝向歐盟水平管理模式的趨勢，但是單就無線電視、有線電視的外資與本國自製節目百分比就很難立刻趨向一致性的管理。再看看英國，英國的 2003 年傳播法通過後，其他相關的電信法或廣電法並未廢除，只廢除個別不合時宜的條文。我國並不會採取英國的多法並存方式。我國的產官學研認為公共電視法、通訊傳播基本法及通訊傳播委員會組織法還需個別存在。

韓國雖有個別的 IPTV 法，其行動電視是在放送法中的多媒體專章管理，我國的 IPTV 卻是修固網管理規則，新增多媒體傳輸平台來管理，但是遇到該平台的內容時，仍是依廣電三法管。韓國的學者已經開始探討引用層級模式或水平模式的管理，也在思索是否有必要將電信法與傳播法整併，但是也未形成共識。新加坡認為目前的電信法與廣電法在管理匯流服務時，並無窒礙難行之處。該國是將平台與內容分開管理。例如 IPTV 是拿平台執照，其平台上的內容亦是依廣電法管理。我國的 IPTV 目前以中華電信的 MOD 為主要業者，但是因為中華電信尚有交通部的持股，違背了黨政軍退出媒體的精神，而處處受限，只能作為開放平台。通傳會要求其平台上的內容要依衛廣法申請執照，難免對創新服務內容帶來進入市場障礙。

本研究計畫原來假設通傳會會以 2007 年的「通訊傳播管理法草案」為基礎，繼續往層級模式或水平管制架構實踐。但是，第二屆通傳會委員認為應該先個別修法，第三屆委員也因為忙於四個法的修法也無暇顧及是否要整併法規的議題。所以直至 2011 年 1 月底尚未見到通傳會有朝向層級模式管理的作法。換言之，本研究報告本來要研究層級模式或水平管制的可行性及其過渡與實踐，礙於主管機關對匯流法規的推動並無進展，只能呼籲行政院必須提出具有前瞻性的政策。通傳會在現階段只有監理而無輔導角色的時候，如果只是忙於修個別的法，而不與國家數位匯流政策僅僅扣連，其修法只會落於短視及在科技後面追趕。總之，歐盟雖然採取水平管制架構，但並未要求必須將廣電法及電信法加以整併，多數會員國仍維持電信法與廣電法分立的架構。因此，本研究建議，我國可以設定以 2012 年為目標，先將

現行廣電三法整併，並與電信法就有關匯流服務的部分加以調和。這段期間再觀察有無必要整併成一部匯流法。2013 年若認為有必要，再設定 2015 年底將電信法與廣電三法整併，這段期間要多宣傳與各界溝通，以漸進方式完成修法與整併的工作，如此才不失為穩健的作法。

## 參考文獻


Bauer, M. J., Weijnen, P. C. M., Turk, L. A., and Herder, M. P. (2001). Delineating the scope of convergence in infrastructures: new frontiers for competition. In Proceedings of the 5th International Conference on Technology, Policy and Innovation. Hague, Netherlands.

Blackman, C. R. (1998). Convergence between telecommunications and other media. Telecommunications Policy, 22(3): 163-170.

Bohlin, E., Brodin, K., Lundgren, A., and Thorngren, B. (2000). Convergence in communications and beyond. In E. Bohlin, K. Brodin, A. Lundgren, and B. Thorngren (Eds.), Convergence in communications and beyond: An introduction (pp. 19-25). Amsterdam, Holland: Elsevier.

Cannon, R. (2003). The legacy of the Federal Communications Commission's computer inquiries. Federal communications Law Journal, 55: 167-205.

Cawley, R. A. (2000). The impact of internet on communications regulatory models in Europe. In E. Bohlin, K. Brodin, A. Lundgren, and B. Thorngren (Eds.), Convergence in communications and beyond: An introduction (pp. 47-62). Amsterdam, Holland: Elsevier.

Collins, R. (2000). Realising social goals in connectivity and content: the challenge of convergence. In C. Marsden (Ed), Regulating the Global Information Society (pp. 108-115). Cavendish: Routledge.

Cox, Braden (2004). MCI's layered approach: a horizontal leap nowhere. In New Millennium Research Council (Ed). Free Ride: Deficiencies of the MCI 'Layers' Policy Model and the Need For Principles that Encourage Competition in the New IP World (pp. 8-10). Washington, D.C.: New Millennium Research Council.

Cuilenburg, J. V. & Verhoest, P. (1998). Free and equal access: in search of policy models for converging communication systems. Telecommunication policy, 22(3): 171-181.

De Bens, E and Mazzoleni, G. (1998). The media in the age of digital communication. In D. McQuail, and K. Siune, (Eds), Media Policy: Convergence, Concentration, and Commerce (pp.165-179). London: Sage.

De Bruin, R. & Smits, J. (1999). Digital video broadcasting: technology, standards, and regulations. London: Artech House.

EU (1997). The Green Paper on the Convergence of the Telecommunications, Media and Information Technology Sectors, and the Implications for Regulation: Towards an Information Society Approach. (Brussels: EC, COM997 623), Retrieved December 03, 1997, from http://www.ispo.cec.be/.

Europe. (2002). Directive 2002/21/EC of the European Parliament And of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive). *Official Journal of the European Communities*, *L 108*, 33–50.

Fransman, M. (2000). Convergence, the internet and multimedia: implications for the evolution of industries and technologies. In E. Bohlin, K. Brodin, A. Lundgren, and B. Thorngren (Eds.), Convergence in communications and beyond: An introduction (pp. 26-38). Amsterdam, Holland: Elsevier.

Frieden, R. (2003) Adjusting the Horizontal and Vertical in Telecommunications Regulation: A Comparison of the Traditional and a New Layered Approach, Federal Communications Law Journal, 55(2): 207-250.

Frieden, R. (2004). Wither convergence: legal, regulatory, and trade opportunism in telecommunications. In Geradin D, and Luff D. (Eds). The WTO and Global Convergence In Telecommunications and Audio–Visual Services (pp. 323-55). Cambridge

Garnham, N.(1996). Constraints on multimedia convergence. In William H. Dutton (Ed). Information & Communication Technologies─Visions and Realities (pp.103-19). Oxford University Press.

Gattuso, J. L. (2004). Introduction: the layered regulation policy model. In New Millennium Research Council (Ed). Free Ride: Deficiencies of the MCI 'Layers' Policy Model and the Need For Principles that Encourage Competition in the New IP World (pp. 1-3). Washington, D.C.: New Millennium Research Council.

Gershon, A. R. (2002). The deregulation paradox the telecommunications industry in crisis. Paper presented in the 30th TPRC conference paper.

Gibbs, J.F. & Hartman, T.G. (2001). Telecommunications in the 21st century: the regulation of convergence technologies: an argument for technologically sensitive regulation, 27 Wm. Mitchell L. Rev. 2193.

Guilenburg, J. V. & Verhoest, P. (1998). Free and equal access: in search of policy models for converging communication systems. Telecommunications Policy, 22(3): 171-181.

Han, S. P., Ahn, J. H., & Skudlark, a. (2002). Convergence phenomenon and service—network matrix. Paper presented in the ITS 14th Biennial conference.

Krattenmaker, T. G.. & Powe, Jr. L. A. (1995). Converging first amendment principles for

converging communications media. Yale Law Journal, 104: 17-19.

Latzer, M. (1998). European mediamatics policies: coping with convergence and globalization. Telecommunications Policy, 22(6): 457-466.

Latzer, M. (2000). Toward an integrated universal services policy for the 'Mediamatics' Sector". In E. Bohlin, K. Brodin, A. Lundgren, and B. Thorngren (Eds.), Convergence in communications and beyond: An introduction (pp. 301-12). Amsterdam, Holland: Elsevier.

Marcus, J. S. (2002) The Potential Relevance to the United States of the European Union's Newly Adopted Regulatory Framework for Telecommunications, FCC.

McClure, D. P. (2004). Feasibility issues inherent in the "Layers" model for internet public policy. In New Millennium Research Council (Ed). Free Ride: Deficiencies of the MCI 'Layers' Policy Model and the Need For Principles that Encourage Competition in the New IP World (pp. 11-15). Washington, D.C.: New Millennium Research Council.

McQuail, D. (1998). Looking to the future. In McQuail, D. and Siune, K. (Eds). Media Policy: Convergence, Concentration, and Commerce (pp. 218-24). London: Sage.

Mesher, G., & Zajac, E. E. (2000). Toward a theory of the global liberalization of telecommunications: implications for convergence regulation. In E. Bohlin, K. Brodin, A. Lundgren, and B. Thorngren (Eds.), Convergence in communications and beyond: An introduction. Amsterdam, Holland: Elsevier.

Mindel, J. & Sicker, D.C. (2006). "Leveraging the EU regulatory framework to improve a layered policy model for US telecommunications markets," *Science Direct*.

Noam, E.M. (2000). Four convergences and a trade funeral? In E. Bohlin, K. Brodin, A. Lundgren, and B. Thorngren (Eds.), Convergence in communications and beyond: An introduction (pp. 405-10). Amsterdam, Holland: Elsevier.

Odlyzko, A. (2004). Layer architectures and regulation in telecommunications. In New Millennium Research Council (Ed). Free Ride: Deficiencies of the MCI 'Layers' Policy Model and the Need For Principles that Encourage Competition in the New IP World (pp. 16-19). Washington, D.C.: New Millennium Research Council.

OECD (1999). Regulation and competition issues in broadcasting in the light of convergence, Retrieved from http://www.oecd.org//da/clp/Roundtables/broad00.htm.

Ono, R. (2000). Regulatory challenges in convergence: beyond internet telephony. In E. Bohlin, K. Brodin, A. Lundgren, and B. Thorngren (Eds.), Convergence in communications and beyond: An introduction (pp. 313-35). Amsterdam, Holland: Elsevier.

Qstergaard, B.S. (1998). Convergence: legislative dilemmas. In McQuail, D. and Siune, K. (Eds),

Media Policy: Convergence, Concentration, and Commerce (pp. 95-106). London: Sage.

Owen, M. B. (1999). The Internet Challenge to Television. Harvard university press.

Pociask, S. (2004). Do we really want a new regulatory model?. In New Millennium Research Council (Ed). Free Ride: Deficiencies of the MCI 'Layers' Policy Model and the Need For Principles that Encourage Competition in the New IP World (pp. 20-21). Washington, D.C.: New Millennium Research Council.

Sicker, D. C. (2002). Further defining a layered model for telecommunications policy. Paper presented in the 30th TPRC Conference.

Sicker, D. C., & Mindel, J. L. (2002). Refinements of a layered model for telecommunications policy. Journal on Telecommunications and High Technology Law, 1(1): 69-94.

Sicker, D. & Blumensaadt, L. (2006). The Layered Regulatory Model Debate: Misunderstanding the Layered Models." *Journal on Telecommunications & High Technology Law.*

Steinmueller, W. E. (2000). Paths to convergence: the roles of popularisation, virtualisation and Intermediation, In E. Bohlin, K. Brodin, A. Lundgren, and B. Thorngren (Eds.), Convergence in communications and beyond: An introduction (pp. 383-96). Amsterdam, Holland: Elsevier.

Storsul, T. & Syvertsen, T. (2007). "The Impact of Convergence on European Television Policy: Pressure for Change-Forces of Stability," *Convergence: The International Journal of Research into New Media Technologies*, vol. 12 (3): 275-291.

Sugaya, Minoru (2009). "The Transformation of Telecommunication Regulatory Structure in Japan: Vertical and Horizontal Perspectives." *Keio Communication Review* No. 31, pp. 23-36.

Taniwaki, Y. (2003). "Emerging broadband market and the relevant policy agenda in Japan." *Journal of Interactive Advertising*. Vol. 4, No. 1, Fall.

Tarjanne, P. (2000). Convergence and implications for users, market players and regulators. In E. Bohlin, K. Brodin, A. Lundgren, and B. Thorngren (Eds.), Convergence in communications and beyond: An introduction (pp. 39-43). Amsterdam, Holland: Elsevier.

United Nations Conference on Trade and Development (2006) Information Economy Report 2006: Chapter 7 The Layered Internet Architecture: Governance Principles and Policies.

van Cuilenburg, J. & McQuail, D. (2003) Media Policy Paradigm Shifts. European Journal of Communication, 18(2): 181-208.

Werbach, K. (2002) A Layered Model for Internet Policy, Journal on Telecommunications and

High Technology Law, 1(1): 37-67.

Whitt, R. S. (2004) A Horizontal Leap Forward: Formulating a New Communications Public Policy Framework Based on the Network Layers Model. Federal Communications Law Journal, 56(3): 587-672.

Woroch, Glenn A. (2004). Peeling the “Layered Regulation” onion. In New Millennium Research Council (Ed). Free Ride: Deficiencies of the MCI ‘Layers’ Policy Model and the Need For Principles that Encourage Competition in the New IP World (pp. 27-29). Washington, D.C.: New Millennium Research Council.

中文文獻

毛治國（2007）。〈通訊傳播管理法草案公聽會紀錄第一場：通訊傳播管理法草案整體架構討論〉。《國家通訊傳播委員會》。

江耀國（2006）。《我國單一通訊傳播立法之必要性及立法方式之研究》。國科會計畫，NSC94-2414-H-155-002。

江耀國（2009）。〈英國2003 年通訊傳播法之研究—兼論我國通訊傳播匯流之法〉。本文以被《東吳法律學報》接受刊登。預計於第20 卷第3 期，2009 年1 月出版。

何吉森（2007）。《通訊傳播規範之整合與建構研究》，世新大學傳播研究所博士論文，頁69-70。

林桓(2002)。〈我國建立「法規衝擊分析」機制之初論〉,《研考雙月刊》,26(5),頁40-49。

林昶宏（2008）。〈媒體結構管制議題〉，《2008 媒體公民會議》。取自 http://www.mediawatch.org.tw/modules/news/article.php?storyid=955

周永捷(2007)。〈公民參與媒體改造聯盟 : 議通傳法向財團傾斜 媒改團體拒背書〉,《中央社》。取自http://www.mediawatch.org.tw/modules/news/article.php?storyid=855

洪貞玲(2008)。〈聰明的管制者,如何制定聰明的法案？--觀察通訊傳播管理法草案進程〉,《NccWatch 媒體公民行動網》。取自http://nccwatch.org.tw/story/20080414/17200

翁翠萍（2007）。〈廣電業者關注通傳管法草案內容自律機制〉，《中央社》。取自 http://www.nccwatch.org.tw/news/20071001/3790

高凱聲、劉柏立（2005）。〈歐盟2003 年通訊法之研析〉。《經社法制論叢，第35 期，2005 年1 月，319-340 頁。

高凱聲（2004）。〈我國通訊傳播法規發展概述與今後展望〉。《科技法律透析》。16(9)，頁6-14。

陳人傑（2004）。〈通訊傳播基本法之管制原則〉。《科技法律透析》，16(3)，44 頁。

陳美靜（2008）。〈我們需要什麼樣的通訊傳播管理法〉，《2008 媒體公民會議》。取自 http://www.mediawatch.org.tw/modules/news/article.php?storyid=952

陳貴龍（2007）。〈通訊傳播管理法草案公聽會紀錄第一場：通訊傳播管理法草案整體架構討論〉。《國家通訊傳播委員會》

陳繼業（2007）。〈通訊傳播管理法草案公聽會紀錄第一場：通訊傳播管理法草案整體架構討論〉。《國家通訊傳播委員會》

莊國榮（2001）。〈數位時代廣播電視、電信及資訊產業之新管制架構〉。劉孔中、施俊吉主編《管制創新》。頁219-221。

莊國榮（2003）。《通訊傳播法規整合之研究》。國科會計畫，NSC92-2414-H-004-054。

張天欽、陳人傑、林夢芃（2004）。〈通訊傳播匯流〉。《律師雜誌》，296，頁33-41。

張其祿（2008）。〈法規（管制）影響評估理論與實務之初探〉，《研考雙月刊》，32(2)，頁50-58 。

理律法律事務所（2001）。〈電信、資訊及傳播跨業整合監管機構組織之研究。交通部電信總局委託。

黃菁甯、戴豪君（2004）。〈開展通訊傳播法制新局--我國通訊傳播法之研析〉。《科技法律透析》。16(9)，頁32-49 。

黃菁甯（2004）。〈通訊傳播基本法之概述與未來展望〉。《律師雜誌》。296，頁15-24。

蔡明誠等（2000）。《迎接數位時代的資訊傳播基本法制之整合與建構》，台灣有線視訊寬頻網路發展協進會委託研究。

蔡明誠等（2002）：《因應公平競爭環境之資訊傳播產業結構整合及規範建構》，台灣有線視訊寬頻網路發展協進會委託研究。

管中祥（2007）。〈我們一定出席「通訊傳播管理法草案」公聽會〉，《台灣媒體觀察教育基金會》。取自 http://www.mediawatch.org.tw/modules/news/article.php?storyid=827 。

馮昭（2007）。〈婦團反對公共服務節目播出比例下限鬆綁〉，《中央社》。取自 http://www.nccwatch.org.tw/news/20071001/3789。

劉莉秋（2007）。〈通訊傳播管理法草案公聽會紀錄第一場：通訊傳播管理法草案整體架構討論〉。《國家通訊傳播委員會》

劉幼琍（2004）。"「電信、媒體與網路的整合與匯流」。電訊傳播。," 雙葉書廊。

簡維克（2007）。〈從科技匯流到管制匯流—論NCC 成立後的通訊傳播監理政策〉。《科技法學評論》。4(2)，頁281。

附錄一　問卷調查受訪者名單(2010.8)

| 受訪者業別 | 受訪者 | 備註 |
|---|---|---|
| 電信業者 | 中華電信、台灣大哥大、遠傳電信、亞太電信、威寶電信、大同電信、威達電信、威邁思電信、大眾電信、全球一動 | |
| 有線電視系統業者 | 五大 MSO 及五家獨立系統業者如大新店民主有線電視股份公司、聯維有線電視、新永安有線電視股份有限公司、世新有線電視、台灣數位寬頻有線電視股份公司 | |
| 衛星頻道業者 | TVBS、三立電視、緯來電視台、大愛電視台、霹靂電視台、非凡電視台、年代電視台、中天電視台、八大電視股份有限公司、東森電視台 | |
| 無線廣播電視業者 | 五家無線電視台及五家廣播電台，分別為中國廣播公司、好事電台、正聲廣播公司、港都電台、全國廣播 | |
| 相關協/學會 | 中華民國廣播商業同業公會、中華民國民營廣播電台聯合會、中華民國台灣中功率調頻廣播電台協會(同全國廣播問卷)、台灣電信產業發展協會、衛星電視頻道協會、數位電視學會、台灣通訊傳播產業協進會、台灣網際網路協會、有線寬頻電視協會、中華民國電視學會 | 中華民國電視學會、有線寬頻電視協會係整理自同業意見，業者意見紛歧時不納入計算 |
| 專家與記者 | 戴豪君、陳朝平、王碧蓮、石佳相、林敬堯及五位主跑 NCC 之記者 | |
| 交通部與 NCC 委員及官員 | 交通部郵電司鄧添來司長、NCC 劉崇堅委員、NCC 翁曉玲委員、NCC 前委員謝進男、及六位 NCC 副處長以上之官員 | |
| 學者 | 李淳、周韻采、劉昌德、江耀國、羅世宏、黃郁雯、陳炳宏、陳清河、洪貞玲、彭心儀 | |

附錄二　產官學研焦點團體座談

| 2010年8月24日上午<br>台大校友會館會議室 | | 2010年8月24日下午<br>台大校友會館會議室 | |
|---|---|---|---|
| 單位與職稱 | 姓名 | 單位與職稱 | 姓名 |
| 國家通訊傳播委員會委員 | 劉崇堅 | 交通部郵電司司長 | 鄧添來 |
| 國立台灣科技大學教授，國家通訊傳播委員會前委員 | 謝進男委員 | NCC副處長 | 謝煥乾 |
| 台灣通訊學會 | 李淳秘書長 | 中華電信副總 | 謝繼茂 |
| 台灣大哥大 | 丁憲文處長 | 中華民國電視學會理事長 | 陳正修 |
| 台灣寬頻 | 林志峰法務部副總裁 | 世新大學傳播學院院長 | 陳清河 |
| 台灣廣播公司 | 馬長生董事長 | 台灣大學新聞所教授 | 洪貞玲 |
| 電信技術中心 | 王碧蓮顧問 | 中嘉副總經理 | 趙培培 |
| 世新法律系 | 黃郁雯教授 | 中華民國衛星廣播電視公會秘書長 | 鍾瑞昌 |
| 中視 | 鄭大智主任 | 遠傳電信經理 | 蕭景騰 |
| 資策會 | 戴豪君主任 | | |

附錄三：期刊發表

Liu, Y.L. (2011). “The Impact of Convergence on the Telecommunications Law and Broadcasting-Related Laws: A Comparison between Japan and Taiwan,” *Keio Communication Review,* No. 33.


## Abstract

In order to cope with the convergence of telecommunications and broadcasting, the governments of Japan and Taiwan have both considered integrating telecommunications law and broadcasting laws. In Japan, the integration work started in 2006 which was earlier than its commencement in Taiwan. Before the Democratic Party took the helm in August 2009, Japan planned to integrate nine laws into one. However, in March 2010, Japan announced that it would realign eight laws concerned with communications and broadcasting into four laws. Compared with Japan, the pace of alignment in Taiwan became slower because of inconsistent government policy. However, the common belief shared by both governments is that the layer model is a trend for the convergence of communications laws in the future. While it was easier for Japan to adopt the layer model (horizontal regulation) when it revised its laws, Taiwan will require more time and effort to put the layer model into practice. To most Taiwanese stakeholders, whether the regulator will adopt horizontal regulation or vertical regulation is not that important. They only care about the impact and the substantial changes caused by the revised laws.



Key words: convergence, layer model, communications law, Japan, Taiwan

## Introduction

The purpose of this paper is to study the impact of convergence on the Telecommunications Laws and Broadcasting-related Laws in Japan and Taiwan. The years between 2006 and 2010 are very important for Japan and Taiwan to deal with convergence. Although Taiwan drafted a converged bill integrating telecommunications law and media laws in 2007, it was opposed and questioned by the telecom and media industries and the academics. It seems that Taiwan can learn the Japanese experience with regard to how to interact with the industry people, the academics and the public interest groups. When Japan starts to draft the converged law, the NCC's draft bill might be a good reference. As a matter of fact, South Korea and Hong Kong are also interested in the converged communications law. Therefore, this paper might shed some light on countries other than Japan and Taiwan as well. The research methods of this paper include literature review, document analysis, and in-depth interviews.

## Literature Review

### Convergence of Telecommunications and Broadcasting

The term "convergence" originally comes from the world of science and mathematics. It was also used in political science and economics. In the area of communications, Pool (1983) clearly helped popularize it (Gordon, 2003). He conceptualized convergence as follows:

A process of called the "convergence of modes" is blurring the lines between media . . . A single physical means . . . may carry services that in the past were provided in separate ways. Conversely a service was provided in the past by any one medium . . . can now be provided in several different physical ways.

Convergence can be defined from many perspectives such as technological, economic, and regulatory dimension (Dupagne, & Garrison, 2006). From the technological dimension, broadband can be provided not only by DSL, but also by cable modem. In addition to TV, cable operators can also provide cable telephony. From the economic dimension, a single business such as cable TV or fixed network can provide triple-play or quadruple-play bundled services on the same platform.

From the regulatory perspective, there are discussions about converged regulators or converged laws. The trend of convergence poses challenges to the current separate laws for telecommunications, broadcasting, cable TV, and satellite TV not only in Japan and Taiwan, but also everywhere.

In the United States, different media are regulated differently, even if they deliver the same content, because there may be different social impacts based on the delivery technology. However, in the EU, the member states regulate contents depending on linear (such as scheduled channels) or non-linear (such as VOD) classification. Uncertainty could inhibit the development of the converged services and the benefits to consumers. Therefore, it is very important for the governments in Japan and Taiwan to deal with convergence by revising the relevant laws. Then, another question arises. Should Japan and Taiwan integrate the existing laws or revise the separate laws? Before March 2010, Japan proposed to integrate nine laws into one. However, it decided to integrate eight laws into four laws in 2010. Taiwan was caught in between. Some people welcome the converged law. Others suggested revise separate laws and unify the telecommunication law and broadcasting- related laws later.

**Layer Model**

Layer models can be used from the perspectives of technology, market, and policy. Facing the converged technologies and services, the industry people use layer model to plan their business. The communication policymakers also find it useful when confronting with the problems brought by convergence. They think layer model is a conceptual framework and can be used to provide a unified regulatory direction for the new evolved media and services.

The earliest layer model is the Open System Interconnection Reference Model (OSI model) which is an abstract description for layered communications and computer network protocol design. It divides network architecture into seven layers: physical, data-link, network, transport, session, presentation, application (Wikipedia, http://en.wikipedia.org/wiki/OSI_model). When the idea of layer model is used by policy makers, the layers vary from two to five layers. Two-layer model comprises infrastructure and content. Three-layer model adds a layer for service.

Werbach (2002) modified the OSI model and made it four layers: content, applications/services, logical and physical layers. Sicker and Mindel (2002) also proposed four layers which were

different from Werbach's model. Their model comprises access, transport, application, and content layers. Taniwaki (2003), a MIC official, proposed another four layers: terminal, network, platform, and content/application.

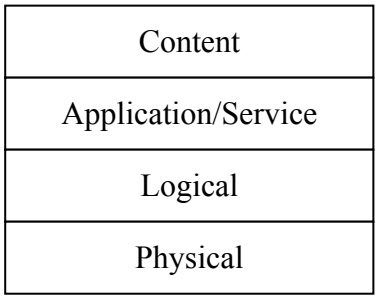


Figure 1 Werbach's model (2002)

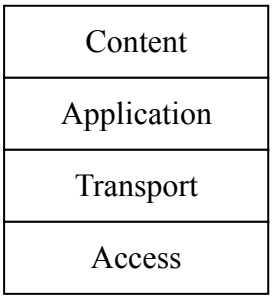


Figure 2 Sicker & Mindel's model (2002)

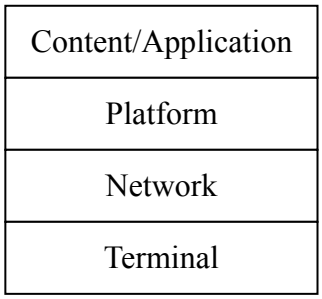


Figure 3 Taniwaki's model (2003)

From the interface perspective, Guilenburg & Verhoest (1998) proposed five layers comprising infrastructure, network interface, carrier, user interface, and application. Taiwanese former broadcasting regulator Government Information Office (GIO) introduced different five-layer model when it tried to integrate Broadcasting Act, Cable Radio and TV Act, and Satellite Radio and TV Act into one Broadcasting Act (Liu, 2004).

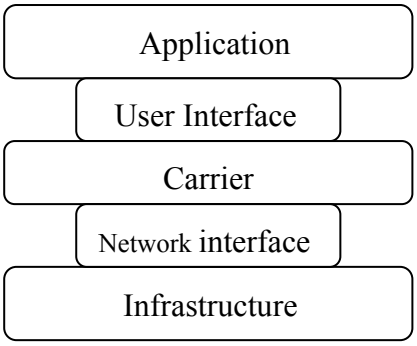

Figure 4　Cuilenburg, J. V. & Verhoest, (1998)

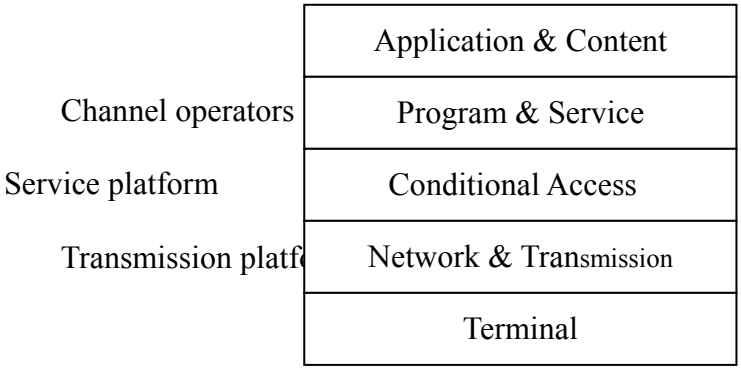


Figure 5 GIO model (2004).

The useful part of the layer model is that it provides a unified legal framework for the converged services. It can prevent the phenomenon that same services provided by different technologies are regulated differently. It also encourages deregulation for the topper layers such as content and application layer. The industry will have more flexibility in their management and can increase innovation and efficiency. For instance, if the broadcasters only want to be content providers, they do not need to build transmission towers. They can use other's facilities if they want. It's so-called separation of transmission and content. The entry barrier for each layer is lower and easier than the vertical structure. All the players can be innovative and flexible.

The defect of the layer model is that it is only a concept or framework and cannot solve all the problems the regulators and industry are facing everyday. Sicker & Blumensaadt (2006) also challenged that there were misunderstandings about layer model. Nevertheless, the layer model is a big paradigm shift from vertical regulation to horizontal regulation. Japanese scholar and officials used to adopt four layers (Sugaya, 2006; Taniwaki, 2003). Now, the Japanese government wants to adopt three layers. The European Union (EU) has adopted the layer model in their legal framework (classification of electronic communication service and electronic communication network). In 2002, the EU set up a Directive which states "the convergence of

telecommunications, media and information technology sectors means all transmission networks and services should be covered by a single regulatory framework". With regard to content, it is regulated by Audio-visual Media Service Directive. The EU Framework is "a set of approved regulations that are being currently implemented by member states," whereas the layered model is "a tool to help policy makers establish a unified policy model" that facilitates "consistent, systematic treatment" of issues (Mindel & Sicker, 2006).

## Convergence Impact on Telecommunications Law and Broadcasting Law

Before the converged service such as IPTV occurred, Japan had three laws for telecommunications business and three laws for broadcasting. After IPTV technology appeared, the Japanese government made a specific law "Law Concerning Broadcast on Telecommunications Services" to regulate IPTV. In order to accomplish the goals of switching off analogue TV and expend broadband services, the MIC started to review the comprehensive structure to enable convergent services. It has decided to work on the integration of the legal system and the establishment of a system that has flexibility to expand the area of management (MIC, 2009).

In Taiwan, before the National Communications Commission (NCC) was established, telecommunications and broadcasting were regulated by the Directorate General of Telecommunications (DGT) and Government Information Office (GIO) respectively. When the converged service such as IPTV occurred in Taiwan, the two governing agencies had different views about regulating IPTV. DGT would treat IPTV as a new telecom service; however GIO would treat IPTV as cable television. Even after the NCC was established, it still could not find a proper law to regulate IPTV. Even though Taiwan learned that Japan has a specific law to regulate IPTV, it chose to revise the fixed network regulation and ask Chunghwa Telecom (CHT)'s IPTV to act as an open platform for all the interested parties.

In addition to IPTV, other converged services such as digital audio broadcast (DAB) also encountered many problems caused by the outdated laws. For instance, DAB operators, due to their broadcasting nature, could not provide data service unless they followed Telecommunications Act. However, before Telecommunications Act was revised, the DAB operators were not qualified

to provide telecom service because they were considered as broadcasters. The above-mentioned examples clearly show that convergence does have great impact on Telecommunications Law and Broadcasting laws. The boundaries between telecommunications and broadcasting are blurring and the existing laws are outdated.

## Background of the Evolution of the Converged Law Framework

In Japan, there have been discussions and debates about the proposed framework of the converged communications law since 2006. Media economics scholars such as Prof. Minoru Sugaya proposed to adopt the layer model (horizontal regulation) for the converged law. The telecommunication regulator Ministry of Internal Affairs and Communications (MIC) announced that it would adopt the layer model and integrate the telecommunications laws and the broadcasting laws in 2009. However, in March 2010, it only decided to integrate eight laws into four laws. Unlike Taiwan, Japan' telecom regulator has not initiated a detailed draft for the converged law, because it chose to establish a Study Group to work on the framework and also inform the telecom and broadcasting industries to prepare for the new regulatory environment and adapt to the new converged law.

In Taiwan, in order to cope with convergence, a newly-converged government agency, the National Communications Commission (NCC), was established in February 2006. The NCC is an independent regulator governing the telecommunications, media and information sectors. Authority over telecommunications and broadcasting that was originally under the Ministry of Transportation and Communications (MOTC), Government Information Office (GIO), and Directorate General of Telecommunications (DGT) was transferred to the NCC.

Article 16 of the Fundamental Communications Act states that the government shall amend the relevant statutes within two years of the NCC's establishment. The NCC can consider abolish or amend unnecessary regulatory legislation, respond to urgent industry need, complete revision of laws on a small scale or respond to the needs of digital convergence, create the "4-in-1" Converged Telecommunications & Media Law. In 2007 there were discussions about whether the Telecommunications Law and laws related to electronic media should be amended individually or

integrated into one law (*DigiTimes*, 2007). In this case, the NCC must decide whether to revise the four laws individually or to submit a revised draft of the converged laws to the new administration.

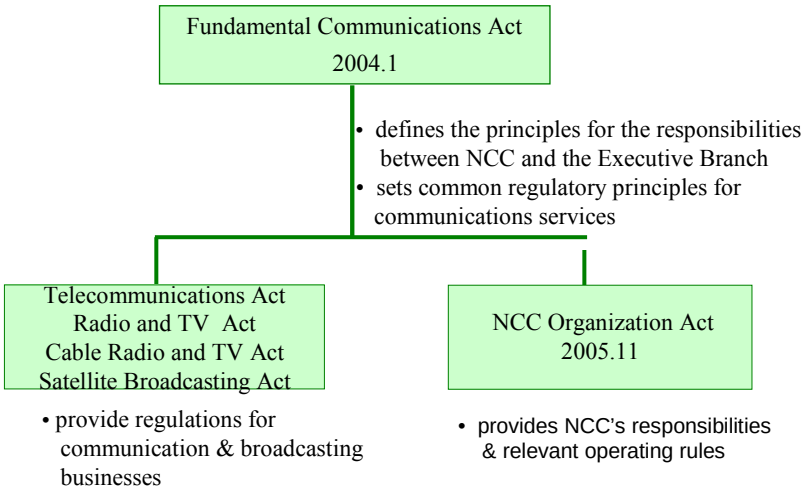


Figure 6 Legal Framework for Communications

Source: NCC, 2007

Since so many converged services have emerged in Japan and Taiwan, the telecom regulators of both countries need to accommodate the convergent media with appropriate regulations. Therefore, the years of 2009 and 2010 are very important for Japan and Taiwan to deal with convergence.

## The Development of the Converged Law framework

### Japan

Since Japan has decided to terminate analog broadcasting on July 24, 2011and make all the people have broadband Internet access in 2010, it needs to review legal structure for Communications and Broadcasting in order to cope with the new ICT society.

Currently, there are four laws for broadcasting, three laws for telecommunications business, and two laws for transmission facilities. The laws include Telecommunications Business Act,

Radio Act, Wire Telecommunications Act, Act Concerning Wire Broadcasting Telephones Business, Laws and Ordinances concerning Measures against Illegal and harmful information, Broadcast Act, Act to Regulate the Operation of the Cable Radio Broadcasting Services, Cable Television Broadcast Act, and Act Concerning Broadcast on Telecommunication Services. Before the Democratic Party took the helm in August 2009, Japan planned to integrate these nine laws into one. However, on March 5, Japan announced that it would realign eight laws concerning communications and broadcasting into four laws (Radio Netherland Worldwide, March 3, 2010).

Unlike Taiwan, Japan started a converged law framework working group to give the governments directions. The former Minister of MIC Takenaka took the initiative in 2006. He organized a panel for the Comprehensive Legal Structure of Information and Communication in January 2006. The following were the timetable for the preparation of the converged law framework.

Table 1 Timetable for the preparation of the converged law framework (Japan)

| Time | Task |
|---|---|
| January 2006 | Former MIC minister Takenaka formed a Panel to study the convergence issues. |
| June 2006 | The Panel on Frameworks of Communications and Broadcasting submitted report. |
| June 2006 | Agreement between the Government and the Ruling parties on Regulatory Frameworks for Communications and Broadcasting was reached. |
| July 2006 | The LDP and the MIC released the Joint Paper. |
| August 2006 | Study Group on a Comprehensive Legal System for Telecommunications and |

| | |
|---|---|
| | Broadcasting was formed. |
| September 2006 | Process program regarding the reform of Communication and broadcasting fields |
| June 2007 | The Interim report was released. |
| December 2007 | Study Group on a Comprehensive Legal System for Communications and Broadcasting submitted final report. |
| February 2008 | Had consultation with the Telecommunications Council on Comprehensive Legal System for Communications and Broadcasting |
| March 2008 | The Second Study Group was formed. |
| June 2008 | Invited public comment—Interim Report by Panel on Issues |
| December 2008 | Summarized as “Discussion Agenda on Comprehensive legal System for Communications and Broadcasting” |
| August 2009 | The Telecommunication Council (at the MIC) authorized the final report from the Second Study Group. |
| September 2009 | The LDP left and the Democratic Party took the helm and organized a new Cabinet. |
| March 2010 | Realign eight laws into four laws |
| May 2010 | The MIC Minister submitted the New Broadcasting Law to the Diet. |
| May 2010 | The New Broadcasting Law was passed in the House of Representatives. |

| | |
|---|---|
| November 2010 | The New Broadcasting Law was passed in the House of Councilors. |

Sources; Sugaya (2009); Sugaya (2010); MIC website; NHK website.

The above records can be found on the MIC website. In the beginning, the broadcasting industry opposed to adopt the converged framework, because they were afraid that many new comers would come in the market and share their advertising revenues. Also, they were afraid that they would be asked to transform from vertical structure to horizontal structure (i.e. give up the transmission part to be the content provider to follow the layer model). It took the government some time to work with different stakeholders.

The MIC held 20 meetings of Study Group on a Comprehensive Legal System for telecommunications and broadcasting since August 2006 in order to study the legal system for convergence of communications and broadcasting. The Study Group compiled its final report at the 20th meeting in December 2007 and gave the following recommendations (MIC Communications News, Feb. 8, 2008).

1. Recognizing the necessity to undertake a fundamental revision of the legal system for telecommunications and broadcasting

"Vertical structure" limits markets and usage patterns according to the physical attributes of each medium. "Horizontal (layer) structure" would enable free combinations of networks and contents. The industry can create new services and new markets by building a horizontal business model that goes beyond existing vertical media. Therefore, the government can consider changing the current vertical structure to a layered structure and unifying the current legal systems into a single "Information and Communications Law".

2. Legal system for content

The Final Report of the Study Group divided the contents into two types: items that are not open in nature such as the specified communications between people (i.e. personal correspondence) and items that are open in nature. For the non-open nature content, safeguarding confidentiality in transmissions has to be assured. For the open nature content, there are two categories: (1) open

media contents: the transmission of telecommunications that is not aimed at any specific person such as web pages. Also, the elements do not have a special influence on society; (2) media service: existing broadcasting and content distribution services that can be analogized to broadcasting that is expected to appear in the future. Also, the elements do have a special influence on society (Sugaya, 2009; MIC Communications News, February 2008).

3. Legal system for transmission infrastructure

There are two parts: (1) transmission service regulation: the government can consider integrating transmission service regulations and speeding up flexible and free business development. Also, it can place emphasis on promoting fair competition and the security of users. (2) Transmission facility regulation: revise radio licensing system and restructure the system to promote usages for telecommunications and broadcasting.

4. Legal system for platforms, and interplay rules

The report said there was no need to enact regulations for platforms as independent from other layers. However, if platforms create bottleneck to harm free flow of information, it is necessary to prevent any discriminatory handling. With regard to interplay rules, the operators should have freedom to promote their business development beyond layers.

**Taiwan**

In Taiwan at present there are three electronic media laws (the Radio and Television Act, Cable Radio and Television Act and Satellite Broadcasting Act) and one Telecommunications Act. However, with the convergence of telecommunication and broadcasting, many laws and regulations have become outdated.

As a matter of fact, Article 16 of the Fundamental Communications Act did not say which government agency should take the initiative to revise the laws. The NCC believed it was its responsibility to revise the laws. Also, whether the NCC should revise the individual communication laws or to integrate the laws, it was debatable. However, the NCC did not revise the separate laws. Instead, it wanted to integrate all the telecommunication and broadcasting-related laws into one comprehensive law.

It finished the first draft in September 2007 and held two-step public consultations in September and November 2007. The stakeholders such as communication scholars, experts, public interest groups, and representatives of the telecommunication and broadcasting sectors all expressed their concerns about the draft. It was felt that more discussion and dialogues were needed.

Because of time restraints, the NCC submitted the draft converged law to the Executive Yuan in December 2007. Thus, it came as no surprise that the Executive Yuan returned the draft of the integrated law to the NCC in April 2008. After the second- term NCC Commissioners came to the office in August 2008, they decided to revise the current laws individually. Therefore, the converged law draft was temporarily put off.

In the Commission Meeting, during the discussion of the draft law, Commissioner Yu-li Liu wrote two major dissenting opinions. She argued that the converged law initiative should base on the policy and the goal the government wants to achieve rather than just write a new law. The new law should give the industry flexibility to decide how many layers they want to manage. Otherwise, it will be meaningless to integrate the laws (www.ncc.gov.tw).

Table 2 Timetable for the Converged Communications Law (Taiwan)

| Time | Task |
|---|---|
| September 11, 2007 | NCC finished the draft and opened it for public consultation |
| September 26-28, 2007 | First round public hearings |
| November 9, 2007 | Explain the policy for the converged law draft |
| November 21, 2007 | Second round public hearings |
| December 20, 2007 | Submitted the draft to the Executive Yuan |
| January 2008 | KMT became the ruling party |

| | |
|---|---|
| | after the election |
| April 2008 | The Executive Yuan returned the draft bill to the NCC |
| August 2008 | The second term NCC Commissioners assumed the post and decided to suspend the draft |
| August 2009 | NCC established a Convergence Policy Development Task Force which was divided into three groups: structure and behaviour, communication content, and network & resources. |
| November 2009—May 2010 | NCC held several meetings on convergence issues. |
| July 2010 | The Executive Yuan passed the Digital Convergence Policy Initiative calling for a two-stage regulatory reform. The NCC was asked to relax the relevant laws and regulations by 2014 in order to help the industry cope with convergence |

In the draft, there were three directions for the converged draft bill: (1) technological convergence: allow separation of network and content, relax cross media ownership rule, and improve digital divide; (2) marketplace order: set spectrum planning principle, prevent unfair competition; (3) social norm and regulation: implement self regulation, introduce ombudsman

system, respect press autonomy, allow product placement and advertisement flexibility.

## The Content of the Converged Law Initiatives

### Japan

#### The Converged Law Framework in Japan

In June 2009, the Study Group announced its draft for public comments. It finalized the draft and submitted it to the Committee, and then the draft went to the Telecommunications Council under the MIC. The MIC then finalized the draft and submitted it to the Minister. Thereafter, the bill went to the Legal office of the Cabinet. Since the ruling party has been changed to the Democratic Party in August 2009, there are changes in the framework.

According to the MIC, the 2009 version of the proposed comprehensive legal framework only has three layers and it is a little different from the Final Report of the Study Group. It is aimed at promoting free distribution of information, promoting flexible business management, securing safety and reliability of information communications, and protecting general public and individual users (Shirae, 2009). The 2009 converged law framework is as follows:

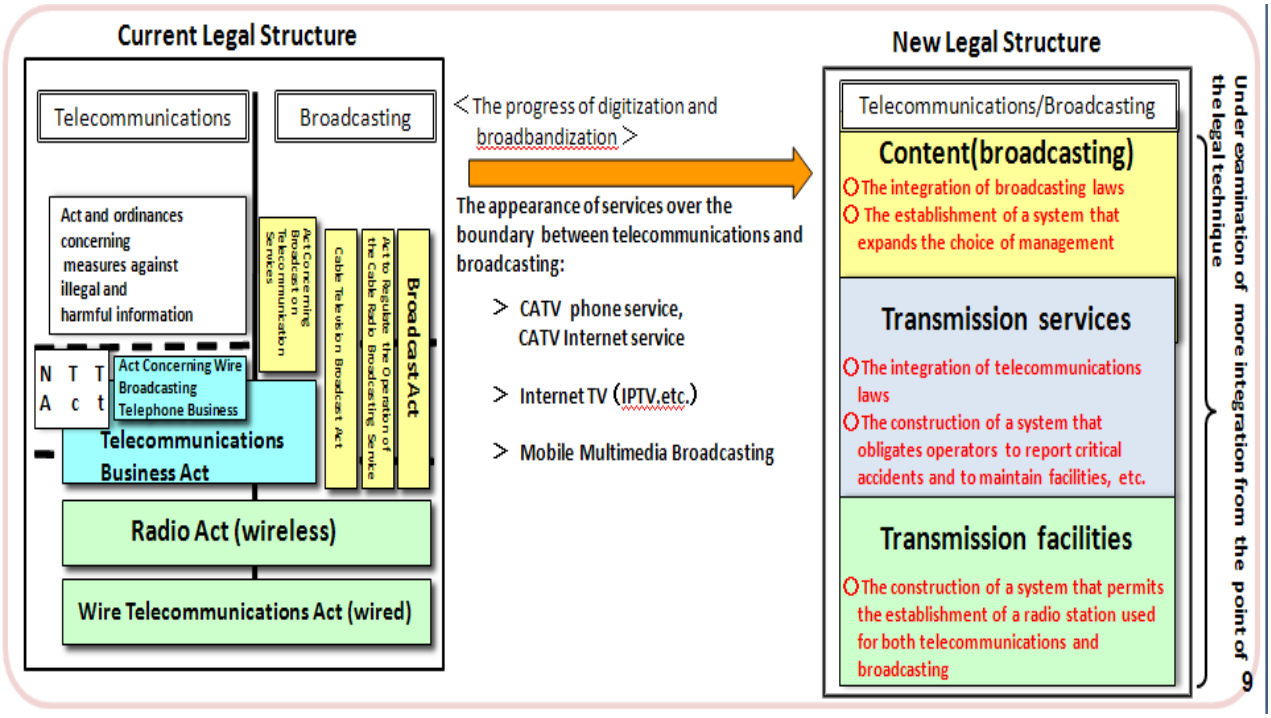


Figure 1. Legal Structure towards Convergence, source: MIC, July 2009.

According to the planned legal structure, the three layers include transmission facilities, transmission services, and content. At the layer of transmission facilities, the construction of a system permits the establishment of a radio station used for both telecommunications and broadcasting. At the transmission service layer, the construction of a system obligates operators to report critical accidents and to maintain facilities. At the content layer, the establishment of a system can expand the choice of management. The three layers are explained as follows:

**1. Transmission Facilities**

The principles include flexible use of radio frequencies, reasonable use of white spaces, promote new technologies and make use of the creative ideas of the private sector, and promote the new services and new products. The drafted bill will allow the licensee to establish a station used for both telecommunications and broadcasting and to change what the station is used for after it is licensed.

**2. Transmission Services**

The principles include integrating rules for transmission services such as Telecommunications Business Act and Act Concerning Wire Broadcasting Telephone Business. The government should review rules for cable television broadcasting facilities and maintain broadcast reliability with technical standards in consideration of accidents interrupting broadcasting.

**3. Content**

The principles include integrating current four broadcasting Acts but not establishing new regulation applied to open media content such as web content. Maintaining the specific broadcast in the framework and apply it only to terrestrial broadcasts and to special satellite broadcasts. Current law does not give flexibility to broadcasters. The drafted bill will allow broadcasters to choose their operating structure. As for program classification, broadcasters still need to disclose classifications of each program and broadcasting time**.**

**Other issues**

In addition to the above-mentioned three layers, the proposed framework also added other issues such as expanding the function of Telecommunications Dispute Settlement Commission to dispute between content providers and telecommunications carriers and between broadcasters and cable television broadcasters about retransmission consent. In order to promote consumer protection, this legal framework also suggested that broadcasters that provide paid services are obligated to explain terms and conditions of those services to consumers, process complaints from consumers, and prior notice on suspension of business activities.

However, the 2009 legal framework did not integrate NTT Act. NHK still operate both facilities and services because it is a public corporation and its position will not change under the new framework. The MIC will probe into these issues related to NTT and NHK later. The MIC admitted that although they studied the EU model, they did not follow the Audio-visual Media Service Directive. Based on the final report of the Study Group, the MIC modified the bill and submitted it to the Diet in March 2010. The new legal framework is as follows:

Figure 2. Amendment of the Legal Structure towards Convergence (MIC, 2010)

The major difference between the new legal structure and the 2009 legal framework is that the new bill abandoned the idea of integrating nine laws into one law. Instead, it realigned the eight laws concerned with communications and broadcasting into four laws. It integrated four broadcasting-related laws such as Broadcast Act, Act to Regulate the Operation of the Cable Sound Broadcasting Service, Cable Television Broadcast Act, and Act Concerning Broadcast on Telecommunication Services into a new Broadcasting Law. Meanwhile, the Act Concerning Wire Broadcasting Telephone Business was abolished.

The following is the discussion of the new bill which was passed in the House of Representatives and the House of Councilors in May and November 2010 respectively.

**1. Broadcast Act**

The new broadcast Act established a category for Kikan Hoso "basic broadcasting" (major broadcasting service, or broadcasting that uses frequencies allocated exclusively to broadcasting) and a category for Itsupan Hoso "general broadcasting" (broadcasting other than basic broadcasting). At the same time, the Act to Regulate the Operation of the Cable Radio Broadcasting Services, the Cable Television Broadcast Act, and the Act Concerning Broadcast on Telecommunication Services are abolished.

(1) Enabling broadcast operators to choose its own operating structure

Under the current law, broadcast operators cannot choose its own operating structure. For instance, terrestrial broadcasters have to own their broadcast stations. However, the new bill will allow broadcasters to separate vertically or get licenses of terrestrial broadcast station under vertically integration (MIC, 2010).

(2) Clarifying ownership limitations of broadcasters

Under the current law, the MIC can establish ownership restriction without any limitation. The new act clarifies ownership limitations in the MIC ordinance within the range from minimum 10% to maximum 33%.

(3) Requiring basic broadcasters to disclose classifications of each program and broadcasting time

The new act requires basic broadcasters (terrestrial television and BS broadcasting) to disclose classifications of each program and broadcasting time.

(4) Rationalizing broadcast licensing scheme

Under the current law, cable television operator must receive permission from the MIC. The new bill only requires cable television operator to register to the MIC.

(5) Requiring basic broadcasters that provide paid services to explain terms **and** conditions of those services

According to the new bill, tariffs related to basic paid broadcasting only need to notify the regulator instead of getting approval. Notification for tariffs related to general paid broadcasting is abolished. Meanwhile, basic broadcasters that provide paid services have to explain terms and conditions of those services.

**2. Radio Act**

(1) Flexible use of radio frequency

The new act enables companies to provide both telecommunications services and broadcasting services under a single license as long as it does not hinder the main purpose of radio station license. In addition, after receiving a license, companies can change the purpose of the radio station with permission (MIC, 2010).

(2) Allowing a blanket license to include mobile telephone base stations

Mobile telephone base stations and small-scale stations that are installed indoors do not need to obtain individual licenses if they have obtained a blanket license. However, they still need to submit notifications.

**3. Telecommunications Business Act**

(1) Expand the function of Telecommunications Dispute Settlement Commission

The new bill will allow content providers to use the dispute settlement procedure of the Telecommunications Dispute Settlement Commission.

(2) Establishing an interconnection accounting system for the mobile carriers installing the

category II designated telecommunications facilities

In order to promote the services by competitive carriers and to guarantee transparency of interconnection rates for mobile telephones, the new bill establishes an interconnection accounting system for the mobile carriers installing the category II designated telecommunications facilities (MIC, 2010).

**Taiwan**

The NCC adopted three-layer framework aiming to offer consistent regulatory criterion for operators running same business, encourages flexible and creative business models and shift from vertical regulation to horizontal regulation. The three layers include Content/ application Layer, Service/ platform Layer, and infrastructure/Network Layer. The NCC's regulatory principles for Communication Administrative Bill are as follows:

1. Toward the direction of medium to high degree of convergence

The NCC realized that it was difficult to ask the industry to transform from vertical structure to horizontal structure right away. It takes time for the industry to adjust. Therefore, it decided to work toward the direction of medium to high degree of convergence. For instance, on the service layer, telecommunication and broadcasting are still treated differently.

2. Adopting 3-layer horizontal regulatory structure and regulating accordingly based on their different features

After considering different layer models, the NCC decided to adopt 3-layer model. The NCC would not force the industry to adopt only one layer. The industry has freedom to choose how many layers it wants to manage.

3. Adopt a single legislation approach (4-in-1)

The NCC decided to integrate Telecommunications Act, Radio and TV Act, Cable Radio and TV Act, and Satellite Broadcasting Act into one comprehensive Act. Some critics argued that the NCC could integrate three broadcasting-related laws first, and then integrate the Telecommunications Act. It means they prefer two stages rather than one stage integration.

4. Separate network and service regulation

The NCC wanted to separate network and service regulation by treating network and service in different layer. Some critics argue that the NCC should not only impose obligations on the service layer. It is also necessary to regulate network layer in terms of network connection.

5. Handle broadcasting services separately if necessary

Even though the Fundamental Communications Act stipulates that the government should not treat the same service provided by different technology differently, in reality it is premature to treat broadcasting the same with telecommunications service. Therefore, the drafted bill suggested that the government can handle broadcasting services separately if necessary.

**6.** Ensure minimum government intervention and respecting market **mechanisms**

The NCC wants to ensure minimum government intervention and respect market mechanisms. The NCC would relax the advertisement regulations by allowing product placement in certain kinds of programming (only news and children programs are not allowed).

7. Fulfill media self-regulation and civil society regulation

The NCC emphasized at many occasions that it wanted to encourage media to endorse self-regulation and invite public interest groups to participate in the license renewal process. It is believed that normally the news media would not enforce self-regulation unless they are required to do so. Therefore, the draft would require the news media to endorse self-regulation in their news reporting.

8. Seek seamless migration

The government has to make sure that there will be seamless migration from the existing laws to the new law. It has to ensure that the interests of the existing telecommunication operators and broadcasting media will not be affected. Also, the consumers' interests have to be protected.

## The Pros and Cons of the Converged Law Framework

### Japan

Most of the stakeholders did not resist the converged legal framework in Japan. When the layer model idea was brought to the public in 2006, the broadcasting industry did not agree with this plan.

They were afraid they might be asked to choose only one layer to manage (either transmission or content layer). They also had great concerns about new competitors' entry into the market and take away their advertising revenues.

If the converged legal framework wanted to include NTT and NHK during the policy making process, it would be very complicated. Therefore, the MIC decided not to deal with these two entities this time. They announced that they will review the two cases in the near future. The following are the pros and cons of the proposed legal framework of 2009.

**National Association of Broadcasters (NAB)**

They welcome this legal framework. They hope the content of the four broadcasting related laws will be kept. They emphasized that content on the internet should not be regulated. They have six concerns:

First, they wish content regulation will not be stricter than the current regulation in the future.

Second, they hope the term "broadcasting" will maintain in the new law.

Third, they wish the program genre shall be classified by the broadcasters instead of the regulators. Home shopping programs are very important for the broadcasters. They wish they can discuss how to classify home shopping programs through an open and self-regulatory approach.

Fourth, they hope to abolish the retransmission consent regulation. According to the current regulation, if the broadcasters and cable operators cannot reach an agreement regarding retransmission consent, the government can arbitrate. The broadcasters want to have freedom to negotiate with cable operators.

Fifth, if the Telecommunications Complaint Committee will be in charge of both telecommunications and broadcasting in the future, it is urged to consider the characteristics of broadcasting and make it clear and concrete.

Sixth, with regard to the emergent cases, back-up equipments are needed for broadcasters. The country's digitization is very important. However, the government should consult with the broadcasting industry and have full discussion with them.

**Cable TV Association**

The cable TV industry welcomes the abolition of the lease channel requirement. However, it suggests the government has to have an alternative measure for the transitional period. The new law plans to abolish "licensing system" and change it to registration system. Meanwhile, it is still important to require the cable operators to meet certain technical standards in order to protect consumers. It also has to warn cable operators not to over-concentrate on the cities to prevent so-called cream skimming.

With regard to content, cable TV has to serve the public interest and provide some local information. If the government wants to abolish licensing system, it has to maintain some basic requirements. For the areas where terrestrial TV signals cannot be received clearly, the existing guidelines should be maintained. Both terrestrial TV and cable TV should work together to solve the reception problems.

In order to protect consumers, the basic plans stipulated in the Broadcasting Act should also apply to cable TV. Unlike NAB, the cable TV industry expressed the concerns that the arbitration system for transmission consent should stay. They wish at this stage the arbitration between cable TV and broadcasting industry should be resolved locally first. Then, the central government can intervene when it is necessary. The cable TV industry strongly suggests that the arbitration system for telecommunication and cable TV are very different. They do not want to see a unified arbitration system for both. They still want to be separated from telecommunications.

**Taiwan**

Because the NCC only gave the public two weeks to submit their opinions in response to the proposed converged law, the stakeholders all complained the time was too short for public consultation. They said that EU's "Framework Directive on Electronic Communications Networks and Services" asks NRA to give all the stakeholders reasonable review time. WTO asked all of its members give 60 days for review. The NCC's draft has 185 articles. Even though the NCC held two rounds of hearings, one in September, the other in November, most of the stakeholders still thought this was a rush version and opposed this draft. They emphasized that the

impact of the new law on the industry must be great. The NCC should at least conduct Regulatory Impact Analysis (RIA) before it introduced its converged law.

With regard to the obligations for different layers, most of the stakeholders suggested that the network layer should also carry the responsibility of network interconnection. This draft only asks the service/platform providers to provide network interconnection. They asked why the NCC did not ask the network layer to provide interconnection (Taiwan Communications Society, www.ncc.gov.tw). For the service layer, some stakeholders questioned the NCC: Why telecommunication service and broadcasting service were still regulated differently on this layer?

Foreign investment of the media and multiple ownership rules are also the public interest groups' great concerns. They warned the government not just consider economic efficiency, cultural autonomy and diverse ownership are also important. In addition to the media sector, there is also concern for not regulating foreign investment of the network layer. The NCC explained that foreign owners cannot take away the facilities they invest. Also, the service/platform layer is the one to manage the customers and business, therefore, there should be no worry about leaving debt to the local industry and endanger national security.

When facing convergence, most of the stakeholders are concerned about the definition of the market. They said the definition for market was unclear in the draft. How to define market is important, because when the regulator wants to regulate the operator which has significant market power (SMP), it has to know which market it belongs to. There was also criticism about overlap between Fair Trade Act and this draft with regard to the regulation for SMP. The following are opinions received from different industry associations:

**Taiwan Telecom Industry Association**

1. Incremental change and stage by stage: Japan announced its IT national strategic planning in 2001. EU announced its convergence green paper in 1997. UK announced Communications white paper in 2000 and passed Communications Act in 2003. They all had enough discussion, planning, and preparation before they introduced a new law. The NCC should conduct RIA before it introduced its proposed bill.

2. Too much delegation of power to the regulator**:** The articles of the new law should be very specific. It should not leave too much room for the regulator to interpret the law. 56 articles in the bill authorize the regulator to enact the rule-making. In this case, the regulator will become too powerful.

3. Market definition should be clear: When the boundaries of the media and telecommunications become blurred, how to define the market becomes another important issue. If the regulator only wants to regulate the SMP, it has to know how to distinguish the markets and measure the operator in the specified market.

**Cable Broadband Institute in Taiwan**

Foreign investment: In Taiwan, the three biggest MSOs are all owned by foreign investors (one big MSO kbro was acquired by a domestic MSO in 2010). They want to promote no restriction on foreign shares by citing the experiences of USA, Hong Kong, Japan and UK. They argued that open foreign investment does not mean cultural autonomy is not protected.

The cable operators are also very concerned about IPTV regulation, must carry rule, rate regulation, restructuring the management area, and clear definition for shopping channels. They suggest content providers' rate structure on CHT's IPTV platform should also be regulated as cable operators.

**Taiwan Broadcasting Association**

They suggested the government deregulate the media and abolish the time limit on advertising per hour.

**NCC Watch, a civil group**

The civic group is against repealing the special fee collected from the media (The current Cable Radio and TV Law requires cable operators to submit 1% of its turn over per year). The special fee is aimed for sponsoring public television and local culture. The NCC thought that public television can receive budget from the government annually. Local programs can be

sponsored by the local government. Therefore, it might not be necessary to mention special fee in the converged law. The civic group strongly opposed abolishing this requirement. It said exempting the special fee; the media do not carry social responsibility any more.

The civic group also expressed concerns about domestic and locally produced programs and media concentration issues. Therefore, it opposed to lift the cross media ownership restriction and loosen foreign investment regulations for some media.

**Discussion and conclusion**

In Japan, after the August 2009 election, the Democratic Party took the helm and has become the ruling party. The MIC revised the legal framework by realigning eight laws into four laws in March 2010. It submitted the New Broadcasting Law to the Diet in May 2010. The New Broadcasting Law was passed in the House of Representatives in the same month. In November 2010, the New Broadcasting Law was passed in the House of Councilors.

In Taiwan, the second-term NCC Commissioners did not think passing the converged law was a matter of urgency. They preferred to revise the Telecommunications Act and three broadcasting-related laws first. Therefore, the draft converged bill was not on their agenda or part of their annual plan. However, in July 2010, the Executive Yuan passed the Digital Convergence Policy Initiative calling for a two-stage regulatory reform. The first stage aims to complete the legal framework with regard to digital convergence in 2014 and the second stage is to achieve the goal of digital convergence in 2015. The NCC was asked to relax the relevant laws and regulations by 2014 in order to help the industry cope with convergence (http://www.cepd.gov.tw).

Taiwan was one of the first countries in Asia to liberalize its telecommunication and broadcasting sectors. However, the political infighting and the inconsistent policy prevented the opportunity from being realized. The establishment of the NCC gave Taiwan a chance to improve its competitive environment. Given the political climate in the government, a lengthy law-making process has become inevitable. However, the NCC was asked to play an active role in revising the relevant laws and to submit them to the Executive Yuan by 2014. It is uncertain whether Taiwan will adopt a Convergent Telecommunication and Media Law, but it will be easier to integrate three

broadcasting-related laws.

Unlike that in Taiwan, the 2009 converged legal framework in Japan used to require a compromise among different stakeholders. It is obvious that Japan abandoned the idea of integrating nine laws into one comprehensive law. Instead, it realigned eight laws concerning communications and broadcasting into four laws. After some revisions, the New Broadcasting Law integrating four broadcasting-related laws will be enacted in 2011.

The telecommunication regulators in Japan and Taiwan tried to create a Convergent Telecommunication and Media Law but they both failed. However, Japan has at least succeeded in integrating four broadcasting-related laws. Taiwan used to have a draft bill for the converged Broadcasting Act (which involved integrating three broadcasting-related laws), but it was put off. Since the NCC has a deadline to revise the laws, the easiest way to begin is to integrate the broadcasting-related laws. With regard to the four-in-one convergent law issue, the NCC wants to adopt a gradual approach. If there is a great consensus among the stakeholders, the layer model might be considered again. However, communication and interaction with all the relevant stakeholders is the key to success.

## References


Blackman, C. R. (1998). "Convergence between Telecommunications and Other Media." *Telecommunications Policy.* Vol. 22, No.3, 163-170.

Bohlin, E. et al (2000). "Convergence in Communications and Beyond: An Introduction", in Bohlin, E., Brodin, A., Lundgren, A., and Thorngren, B. (eds). *Convergence in Communications and Beyond*. Amsterdam: Elsevier, 19-25.

Cuilenburg, J. & Verhoest, P. (1998). Free and equal access: In search of policy models for converging communication systems, *Telecommunications Policy* **22** (1998) (3), pp. 171–181.

Dowling, M., Lechner, C., & Thielmann, B. (1988). Convergence: Innovation and Change of market structures between televisions and online services. I*nternational Journal of Media Managemen*t, 8(4), 31-35.

Dupagne, M & Garrison, B.(2006). "The Meaning and Influence of Convergence: A Qualitative Case Study of Newsroom Work at the Tampa News Center," *Journalism Studies* Vol. 7, No. 2.

EU, the Green Paper on the Convergence of the Telecommunications, Media and

Information Technology Sectors and the Implications for Regulation: Towards An Information Society Approach (Brussels: EC, COM997)623, Dec.3, 1997) http://www.ispo.cec.be/.

Europe. (2002). Directive 2002/21/EC of the European Parliament And of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive). *Official Journal of the European Communities*, *L 108*, 33–50.

Fransman, M. (2000). "Convergence, the Internet and Multimedia: Implications for the Evolution of Industries and Technologies." In Bohlin, E. Brodin, K. Lundgren, A., and Thorngre, B. eds., *Convergence in Communications and Beyond*. Amsterdam: Elsevier, 26-37.

Fransman, M. (2002). Mapping the evolving telecoms industry: The uses and shortcomings of the layer model, *Telecommunications Policy* **26** (2002) (9,10), pp. 473–483.

Frieden, R. (2002). "Wither Convergence: Legal, Regulatory, and Trade Opportunism in Telecommunications". 18 *Computer & High Tech. L. J*. 171.

Frieden, R. (2002). Adjusting the horizontal and vertical in telecommunications regulation: A comparison of the traditional and a new layered approach. Presented at *Telecommunications Policy Research Conference* (*TPRC*), Arlington, Virginia.

Garnham, N.(1996). "Constraints on multimedia convergence." In Dutton, W. H., ed. *Information & communication technologies: visions & realities*. Oxford Union Press.

Gibbs, J.F. & Hartman, T.G. (2001). "Telecommunications in the 21st Century : the Regulation of Convergence Technologies: An Argument for Technologically Sensitive Regulation." 27 *Wm. Mitchell L. Rev*. 2193.

Gordon, R. (2003). "Convergence Defined," USC Annerberg Online Journalism Review. C:\Documents and Settings\mediacom\Desktop\OJR article Convergence Defined .mht

Liu, Y.L. (2004), ed., *Telecommunications*. Taipei: Yeh yeh book publisher.

McQuail, D. (1998). "Looking to the Future." In McQuail, D. and Siune, K. (eds), *Media Policy: Convergence, Concentration, and Commerce*. London: Sage, pp. 218-224.

MIC Communications News (Feb., 8, 2008). Vol. 18. No.21.

Mindel, J. & Sicker, D.C. (2006). "Leveraging the EU regulatory framework to improve a layered policy model for US telecommunications markets," *Science Direct*.

Noam, E.M. (2000). "Four Convergences and a Trade Funeral?" in Bohlin, E., Brodin, A., Lundgren, A., and Thorngren, B. (eds). *Convergence in Communications and Beyond*. Amsterdam: Elsevier, 405-410.

Ono, R. (2000) "Regulatory Challenges in Convergence: Beyond Internet Telephony." in Bohlin, E., Brodin, A., Lundgren, A., and Thorngren, B. (eds). *Convergence in*

*Communications and Beyond.* Amsterdam: Elsevier, 313-335.

Pool, I. D. S. (1982). Technologies of Freedom. Belknap Press.

Qstergaard, B.S. (1998). "Convergence: Legislative Dilemmas" In McQuail, D. and Siune, K. (eds), *Media Policy: Convergence, Concentration, and Commerce*. London: Sage, 95-106.

Shirae, Hisazumi (2009). "Discussion Agenda on Comprehensive Legal System for Communications and Broadcasting in Japan," ppt file.

Sicker, D.C.& Mindel, J. (2002). Refinements on a Layered Model for telecommunications policy, *Journal of Telecommunications and High Technology Law* **1** (2002) (1), pp. 69–94.

Sicker, D. & Blumensaadt, L. (2006). The Layered Regulatory Model Debate: Misunderstanding the Layered Models." *Journal on Telecommunications & High Technology Law.*

Sugaya, Minoru (2009). "The Transformation of Telecommunication Regulatory Structure in Japan: Vertical and Horizontal Perspectives." *Keio Communication Review* No. 31, pp. 23-36.

Storsul, T. & Syvertsen, T. (2007). "The Impact of Convergence on European Television Policy: Pressure for Change-Forces of Stability," *Convergence: The International Journal of Research into New Media Technologies*, vol. 12 (3): 275-291.

Taniwaki, Y. (2003). "Emerging broadband market and the relevant policy agenda in Japan." *Journal of Interactive Advertising*. Vol. 4, No. 1, Fall.

Tarjanne, P. (2000). "Convergence and Implications for Users, Market Players and Regulators." In Bohlin, E. Brodin, K. Lundgren, A., and Thorngre, B. eds. *Convergence in Communications and Beyond*. Amsterdam: Elsevier, 39-43.

Telecommunications Business Sub-Council (May 12, 2009). Telecommunications Council Study Group on a Comprehensive Legal System for Communications and Broadcasting (16th Meeting), Minutes of the Meeting.

Werbach, K. (2002). A Layered Model for internet policy, *Journal on Telecommunications and High Technology Law* **1** (2002) (1), pp. 37–68.

**In-depth interviews:**

Prof. Minoru Sugaya, Keio University, July 17, 2009 (follow-up: April 30, 2010; November 29, 2010).

Mr. Yasu Taniwaki, MIC, July 16, 2009 (follow-up: November 30, 2010).

Mr. Shinya Shimada, MIC, July 16, 2009 (follow-up: May 6, 2010).

Dr. Liu Po-li, July 10, 2009 (follow-up: April 30, 2010).

Prof. Kim Junghoon, Keio University, July 17, 2009.

# 國科會補助專題研究計畫成果報告自評表

請就研究內容與原計畫相符程度、達成預期目標情況、研究成果之學術或應用價值（簡要敘述成果所代表之意義、價值、影響或進一步發展之可能性）、是否適合在學術期刊發表或申請專利、主要發現或其他有關價值等，作一綜合評估。

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☑ 達成目標

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其他：（以 100 字為限）

本研究之部分成果，不僅於 2010 年 6 月在東京舉辦的國際電訊傳播研討會發表，也在學術期刊發表。Liu, Yu-li (2011). “The Impact of Convergence on the Telecommunications Law and Broadcasting-Related Laws: A Comparison between Japan and Taiwan,” *Keio Communication Review,* No. 33.

3. 請依學術成就、技術創新、社會影響等方面，評估研究成果之學術或應用價值（簡要敘述成果所代表之意義、價值、影響或進一步發展之可能性）（以500 字為限）

本研究比較分析美、英、日、韓、新、馬等國針對數位匯流服務的管理法規，並探索我國引用層級模式或水平管理架構的可行性。研究期間發現我國與日本的發展脈絡非常相似，因而撰寫了一篇比較兩國邁向數位匯流法規的作法，投稿於日本學術期刊。

本研究挑選與通訊傳播匯流法相關及瞭解的產官學研各 10 名做訪問，總共回收 80 份有效問卷，包含電信業者、有線電視系統業者、衛星電視頻道業者、無線廣播電視業者、電訊傳播相關學協會、專家及記者、相關政府官員、相關學者各 10 份。本研究網羅了對我國匯流法規關心及瞭解的產官學研代表，並且也舉辦兩場座談會，讓產官學研代表互動，並參考國外相關修法經驗對我國提出修法建議。

層級模式的管制架構在歐美已經討論了將近十年。本人在 2004 年即在台灣學術刊物探討層級模式的意涵。在借調到通傳會期間，在委員會議提出通訊傳播管理法草案之前，也建議委員會以三層架構思考未來修法方向。在本研究，本人以親身實務經驗，加上研讀國外文獻及訪談，提出我國應該採取的兩階段步驟。層級模式的討論在學術上有其創新及理論建構的層次，對政府匯流政策亦是一種管制參考架構。因此，本研究對通訊傳播政策法規的學術及實務都有其價值及參考之處。

# 國科會補助專題研究計畫項下出席國際學術會議心得報告

日期: 99 年 3 月 19 日

| | | | |
|---|---|---|---|
| 計畫編號 | NSC 98 － 2410 －H － 004 － 114 － | | |
| 計畫名稱 | 數位匯流時代的通訊傳播法規：層級模式或水平管制架構的過渡與實踐 | | |
| 出國人員姓名 | 劉幼琍 | 服務機構及職稱 | 國立政治大學廣電系教授 |
| 會議時間 | 99 年 3 月 9 日至 99 年 3 月 13 日 | 會議地點 | 美國紐約 |
| 會議名稱 | (中文)國際媒介集中度研究會議<br>(英文)Media Concentration Around the World | | |
| 發表論文題目 | (中文)臺灣電訊傳播媒介集中度之探討<br>(英文)The Study of Media Concentration in Taiwan | | |

一、參加會議經過

本人於 2010 年 3 月 10—13 日出席在美國紐約哥倫比亞大學舉辦的「國際媒介集中度研究會議」”Media Concentration Around the World”。該會議共有 28 個國家的代表參加。本人除了代表我國團隊發表我國電訊傳播集中度的初步資料分析，也與與會來賓討論匯流時代主管機關對於媒介集中度所該採取的政策及修訂的法規。此外，還訪問 Verizon, Direc TV, CNN-Time Warner 等電信及媒體公司，以瞭解美國產業面對匯流衝擊所做的應變，及政府採取的政策法規。美國對於新傳播科技都是採取鼓勵政策，對於結構法規則有放寬的趨勢，但是對於維護電訊傳播市場的公平競爭則不遺餘力。

二、與會心得

媒介集中度是國際電訊傳播產官學界關心的議題。與會 28 個國家的學術代表除了發表各國的電訊傳播集中度的發現，也討論對政策法規的意涵。舉例而言，我國有線廣播電視法對於有線電視的水平整合管制上限是三分之一（全國系統數），三分之一（全國有線電視戶數）與二分之一（每區系統數），而垂直整合管制上限是四分之一。美國的 AOL 與 Time Warner 的併購案及 AT&T 與 TCI 的併購案都是數位匯流後的相關案例。最近引起關注的則是 Comcast 與 NBC 的併購案。當數位匯流後，主管機關到底應該如何界定市場？應該限制水平整合，還是垂直整合？

會議中，主辦單位特別請到前任 FCC 主席 Reed Hundt 作專題演講，題目是：〈How Policy Makers Deal with Media Ownership〉。此外，亦請到 AOL-Time Warner 前任 CEO—Gerald Levin 談他對媒體併購案的看法。.

除了法規之外，在研究方法方面，大家在蒐集資料，考證、計算及分析方面也交換意見，並且計畫共同出書。會中出席的知名學者還有 Robert Picard, Ben Campaine, Phil Napoli, Ron Rice, Richard Taylor, Eli Noam 等人。

本人出席這次的會議，不僅增加本國及本校的能見度，亦讓各國代表瞭解到我國的電訊傳播發展及媒介集中度研究進行的情形，同時對本人所執行的國科會研究亦很有幫助。

三、考察參觀活動(無是項活動者略)

3 月 10 日訪問美國 Verizon 及 Direc TV

3 月 12 日訪問美國 AOL-Time Warner

四、建議

媒介集中度的研究很值得我們長期研究與追蹤。在民主化的國家，多元的媒介才會有多元的聲音。在數位匯流時代，到底該如何界定市場是各國主管機關正在尋找的答案。建議政府主管機關及學術研究單位都要關注這個議題，並且支持相關研究。本人所執行的國科會有關匯流法的研究也是希望提出相關建議供我國參考，也希望未來本人及其他同仁所參與的國際跨國研究團隊能得到相關支持與贊助。

五、攜回資料名稱及內容

請見 Media Concentration 網站資料

# 國科會補助專題研究計畫項下出席國際學術會議心得報告

日期: 99 年 7 月 19 日

| | | | |
|---|---|---|---|
| 計畫編號 | NSC 98 － 2410 －H － 004 － 114 － | | |
| 計畫名稱 | 數位匯流時代的通訊傳播法規：層級模式或水平管制架構的過渡與實踐 | | |
| 出國人員姓名 | 劉幼琍 | 服務機構及職稱 | 國立政治大學廣電系教授 |
| 會議時間 | 99 年 6 月 22 至 99 年 6 月 25 日 | 會議地點 | 新加坡 |
| 會議名稱 | (中文)第六十屆 ICA 年會<br>(英文)60th Annual ICA Conference | | |
| 發表論文題目 | (中文)從管制者的角度看數位時代的匯流法規議題<br>(英文)Accommodating Convergence in the Digital Age: Regulator's Perspective | | |

一、參加會議經過

本人論文發表的場次於 6 月 23 日上午 8：30 分-9：45 分舉行。本場次有新加坡、日本、中國、香港等學者發表與數位匯流法規相關的論文。出席者有 ICA 傳播法規社群前後任的召集人，分別為美國籍及英國籍，加上在座也有研究歐盟傳播法規的學者，因此能夠給本人不少有關本研究案的建議。

二、與會心得

1. 本人參與這次會議有機會與國際學者交換心得，在本人所參加的場次，主題方面與本人研究直接相關，對本人的視野及有關匯流法的研究案都有幫助。

2. 今年我國參與 ICA 的學者比以往熱烈，希望能持續見到這樣的情形。國科會及各大學對學者及研究生出席國際會議的補助希望持續。也希望我們能鼓勵研究生到國際學術會議發表論文，以開拓他們的研究視野。

3. 新加坡這一次主辦 ICA 會議特別將註冊費降一半，以鼓勵國際學者踴躍參加。結果參與者有 1700 多名，達到預期效果。我國明年建國一百年，在鼓勵國內舉辦國際會議方面，政府應可考慮在經費上予以資助以發揮多重效果。

三、考察參觀活動(無是項活動者略)

略

四、建議

1. 建議國科會及各大學對學者及研究生出席國際會議的補助能夠持續並且多予鼓勵。其中一個誘因是在審查研究計畫時也給 conference paper 一點 credit。由於國科會始終不給「會議論文」點數，以致有些學者失去參與國際學術會議的動力。

2. 建議鼓勵研究生到國際學術會議發表論文，以開拓他們的研究視野。

3. 建議我國舉辦 ICA 年會，以增加國際學術社群與我國傳播學術界的互動及提昇我國參與國際學術社群的深度與廣度。

五、攜回資料名稱及內容

請見 ICA 網站資料

# 國科會補助專題研究計畫項下出席國際學術會議心得報告

日期：99 年 7 月 20 日

| | | | |
|---|---|---|---|
| 計畫編號 | NSC 98 － 2410 －H － 004 － 114 － | | |
| 計畫名稱 | 數位匯流時代的通訊傳播法規：層級模式或水平管制架構的過渡與實踐 | | |
| 出國人員姓名 | 劉幼琍 | 服務機構及職稱 | 國立政治大學廣電系教授 |
| 會議時間 | 99 年 6 月 26 至 99 年 7 月 1 日 | 會議地點 | 日本 |
| 會議名稱 | (中文)第 18 屆國際電訊傳播學會年會<br>(英文)18th Biennial Conference of the International Telecommunications Society | | |
| 發表論文題目 | (中文)數位匯流對電訊傳播政策法規的衝擊：日本與台灣的比較<br>(英文) The Impact of Convergence on the Telecommunications Law and Policy: A Comparison between Japan and Taiwan | | |

一、參加會議經過

本人這一次在 ITS 的年會上扮演五個角色。除了發表與國科會研究案相關的論文 The Impact of Convergence on the Telecommunications Law and Policy: A Comparison between Japan and Taiwan，也參加另外兩場 panel 擔任引言人（匯流主管機關與媒介集中度),並且還主持別一場論文發表(寬頻服務),及獲邀在閉幕之前的 Plenary Session 針對「電訊傳播未來發展」擔任 panelist。本人也在會議期間為明年我國舉辦 ITS 亞太區域會議作宣傳，除了發放宣傳手冊也介紹台灣電訊傳播的發展。

二、與會心得

1. 本人在撰寫本論文時，日本的匯流法政策受到政壇的影響一再改變。本人也需不斷修正。本人很高興向日本的產官學者請教有關本人寫到日本匯流法的進度。要在日本談日本的匯流法進度是一項很大的挑戰，但是優點是可以立即得到反饋(feedback)，本人可以據此再予以修正。

2. 這一次 ITS 會議主辦單位邀請本人在 Plenary Session 針對「電訊傳播未來發展」擔任 panelist，也是肯定我國將接續於明年舉辦 ITS 的亞太區域會議。我國今年出席 ITS 會議的學者比以前增加。在本人的鼓勵下，本人上學期所教過的兩位碩士研究生也將期末報告改寫，並且通過 ITS 主辦單位審查，在今年的會議中發表，國科會也有補助其大部分的出國費用。

三、考察參觀活動(無是項活動者略)

由於在會議期間扮演五個角色，無暇離開會場做其他的參觀訪問。

四、建議

1. 建議國科會及各大學對學者及研究生出席國際會議的補助能夠持續並且多予鼓勵。其中一個誘因是在審查研究計畫時也給 conference paper 一點 credit。由於國科會始終不給「會議論文」點數，以致有些學者失去參與國際學術會議的動力。

2. 建議鼓勵研究生到國際學術會議發表論文，以開拓他們的研究視野。

3. 建議我國明年在舉辦 ITS 亞太區域會議時，除了國科會以外，其他政府相關單位也能予以補助，以增加國際電訊傳播學術社群與我國電訊傳播產官學者的互動及提昇我國參與國際學術社群的深度與廣度。

五、攜回資料名稱及內容

請見 ITS 網站

# 國科會補助計畫衍生研發成果推廣資料表

日期:2011/01/28

| 國科會補助計畫 | 計畫名稱: 數位匯流時代的通訊傳播法規：層級模式或水平管制架構的過渡與實踐 |
|---|---|
| | 計畫主持人: 劉幼琍 |
| | 計畫編號: 98-2410-H-004-114- 學門領域: 傳播法規與制度 |

無研發成果推廣資料

# 98 年度專題研究計畫研究成果彙整表

| 計畫主持人：劉幼琍 | 計畫編號：98-2410-H-004-114- |
|---|---|
| 計畫名稱：數位匯流時代的通訊傳播法規：層級模式或水平管制架構的過渡與實踐 | |

| 成果項目 | | | 量化 | | | 單位 | 備註（質化說明：如數個計畫共同成果、成果列為該期刊之封面故事...等） |
|---|---|---|---|---|---|---|---|
| | | | 實際已達成數（被接受或已發表） | 預期總達成數(含實際已達成數) | 本計畫實際貢獻百分比 | | |
| 國內 | 論文著作 | 期刊論文 | 0 | 0 | 100% | 篇 | |
| | | 研究報告/技術報告 | 1 | 1 | 100% | | |
| | | 研討會論文 | 0 | 0 | 100% | | |
| | | 專書 | 0 | 0 | 100% | | |
| | 專利 | 申請中件數 | 0 | 0 | 100% | 件 | |
| | | 已獲得件數 | 0 | 0 | 100% | | |
| | 技術移轉 | 件數 | 0 | 0 | 100% | 件 | |
| | | 權利金 | 0 | 0 | 100% | 千元 | |
| | 參與計畫人力（本國籍） | 碩士生 | 4 | 4 | 100% | 人次 | |
| | | 博士生 | 0 | 0 | 100% | | |
| | | 博士後研究員 | 0 | 0 | 100% | | |
| | | 專任助理 | 0 | 0 | 100% | | |
| 國外 | 論文著作 | 期刊論文 | 1 | 1 | 100% | 篇 | Liu, Yu-li (2011). The Impact of Convergence on the Telecommunications Law and Broadcasting-Related Laws: A Comparison between Japan and Taiwan,' Keio Communication Review, No. 33. |
| | | 研究報告/技術報告 | 0 | 0 | 100% | | |
| | | 研討會論文 | 1 | 1 | 100% | | Liu, Yu-li (2010.6). The Impact of Convergence on the Telecommunications Law and Broadcasting-Related Laws: A Comparison between Japan and Taiwan,' ITS Biennual Conference, Tokyo |
| | | 專書 | 0 | 0 | 100% | 章/本 | |
| | 專利 | 申請中件數 | 0 | 0 | 100% | 件 | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | 已獲得件數 | 0 | 0 | 100% | | |
| | 技術移轉 | 件數 | 0 | 0 | 100% | 件 | |
| | | 權利金 | 0 | 0 | 100% | 千元 | |
| | 參與計畫人力（外國籍） | 碩士生 | 0 | 0 | 100% | 人次 | |
| | | 博士生 | 0 | 0 | 100% | | |
| | | 博士後研究員 | 0 | 0 | 100% | | |
| | | 專任助理 | 0 | 0 | 100% | | |

| | |
|---|---|
| 其他成果<br>(無法以量化表達之成果如辦理學術活動、獲得獎項、重要國際合作、研究成果國際影響力及其他協助產業技術發展之具體效益事項等，請以文字敘述填列。) | 本研究比較分析美、英、日、韓、新、馬等國針對數位匯流服務的管理法規，並探索我國引用層級模式或水平管理架構的可行性。研究期間發現我國與日本的發展脈絡非常相似，因而撰寫了一篇比較兩國邁向數位匯流法規的作法，投稿於日本學術期刊。<br><br>本研究挑選與通訊傳播匯流法相關及瞭解的產官學研各 10 名做訪問，總共回收 80 份有效問卷，包含電信業者、有線電視系統業者、衛星電視頻道業者、無線廣播電視業者、電訊傳播相關學協會、專家及記者、相關政府官員、相關學者各 10 份。本研究網羅了對我國匯流法規關心及瞭解的產官學研代表，並且也舉辦兩場座談會，讓產官學研代表互動，並參考國外相關修法經驗對我國提出修法建議。<br><br>層級模式的管制架構在歐美已經討論了將近十年。本人在 2004 年即在台灣學術刊物探討層級模式的意涵。在借調到通傳會期間，在委員會議提出通訊傳播管理法草案之前，也建議委員會以三層架構思考未來修法方向。在本研究，本人以親身實務經驗，加上研讀國外文獻及訪談，提出我國應該採取的兩階段步驟。層級模式的討論在學術上有其創新及理論建構的層次，對政府匯流政策亦是一種管制參考架構。因此，本研究對通訊傳播政策法規的學術及實務都有其價值及參考之處。 |

| | 成果項目 | 量化 | 名稱或內容性質簡述 |
|---|---|---|---|
| 科教處計畫加填項目 | 測驗工具(含質性與量性) | 0 | |
| | 課程/模組 | 0 | |
| | 電腦及網路系統或工具 | 0 | |
| | 教材 | 0 | |
| | 舉辦之活動/競賽 | 0 | |
| | 研討會/工作坊 | 0 | |
| | 電子報、網站 | 0 | |
| | 計畫成果推廣之參與（閱聽）人數 | 0 | |

# 國科會補助專題研究計畫成果報告自評表

請就研究內容與原計畫相符程度、達成預期目標情況、研究成果之學術或應用價值（簡要敘述成果所代表之意義、價值、影響或進一步發展之可能性）、是否適合在學術期刊發表或申請專利、主要發現或其他有關價值等，作一綜合評估。

1. 請就研究內容與原計畫相符程度、達成預期目標情況作一綜合評估

■達成目標

□未達成目標（請說明，以 100 字為限）

□實驗失敗

□因故實驗中斷

□其他原因

說明：

2. 研究成果在學術期刊發表或申請專利等情形：

論文：■已發表 □未發表之文稿 □撰寫中 □無

專利：□已獲得 □申請中 ■無

技轉：□已技轉 □洽談中 ■無

其他：(以 100 字為限)

本研究之部分成果，不僅於 2010 年 6 月在東京舉辦的國際電訊傳播研討會發表，也在學術期刊 Keio Communication Review 發表。

3. 請依學術成就、技術創新、社會影響等方面，評估研究成果之學術或應用價值（簡要敘述成果所代表之意義、價值、影響或進一步發展之可能性）（以500 字為限）

本研究比較分析美、英、日、韓、新、馬等國針對數位匯流服務的管理法規，並探索我國引用層級模式或水平管理架構的可行性。研究期間發現我國與日本的發展脈絡非常相似，因而撰寫了一篇比較兩國邁向數位匯流法規的作法，投稿於日本學術期刊。

本研究挑選與通訊傳播匯流法相關及瞭解的產官學研各 10 名做訪問，總共回收 80 份有效問卷，包含電信業者、有線電視系統業者、衛星電視頻道業者、無線廣播電視業者、電訊傳播相關學協會、專家及記者、相關政府官員、相關學者各 10 份。本研究網羅了對我國匯流法規關心及瞭解的產官學研代表，並且也舉辦兩場座談會，讓產官學研代表互動，並參考國外相關修法經驗對我國提出修法建議。

層級模式的管制架構在歐美已經討論了將近十年。本人在 2004 年即在台灣學術刊物探討層級模式的意涵。在借調到通傳會期間，在委員會議提出通訊傳播管理法草案之前，也建議委員會以三層架構思考未來修法方向。在本研究，本人以親身實務經驗，加上研讀國外文獻及訪談，提出我國應該採取的兩階段步驟。層級模式的討論在學術上有其創新及理論建構的層次，對政府匯流政策亦是一種管制參考架構。因此，本研究對通訊傳播政策法規的學術及實務都有其價值及參考之處。