

The Impact of Technological Convergence in the Television Sector: Towards a Single “Technology-Neutral” Regulatory Framework. A Comparative Legal Analysis of Institutional and Substantive Issues in Europe and the U.S.

Research project

Investigator:

Pablo Ibáñez Colomo

Abstract:

Technological convergence has had transformative effects in the television sector. The development of alternative means of transmission, such as satellite, cable, ADSL or Fibre, brings about new challenges, unforeseen in legacy sector-specific regulation. First of all, television activities can no longer be regulated in the abstract, as it is a source of competition among convergent service providers. In the same way that cable and telecommunications companies compete for broadband Internet subscribers, they also compete for the acquisition of premium television content. As a result, a comprehensive regulatory framework devised to promote competition in the Electronic Communications sector at large will always be incomplete, for as long as television content remains excluded from its scope, as it is currently the case in Europe (but not in the United States). Secondly, most of the assumptions underlying legacy sector-specific regulation no longer hold true. Justifications for regulation based on market failure arguments have become suspect with technological developments, such as conditional access systems. More importantly, legacy sector-specific regulation was adopted in a context of outlet scarcity where television operators' activities could be easily monitored and where strict conditions for the licensing of activities were justified insofar as they constituted a *quid pro quo* for the use of a public resource, the radio spectrum.

The purpose of this research project is to examine, from a critical standpoint, the current approach to regulation in the television sector in the European Union and in the United States and to explore the ways in which regulation can be streamlined or reformed. From an institutional standpoint, the inability of legacy sector-specific regulation to cope with technological evolution has resulted in the emergence of a “regulatory tangle” of potentially conflicting sets of rules applicable to television activities. From a substantive standpoint, it appears that a more than questionable application of antitrust laws in Europe has become the main instrument to deal with new challenges. Substantive issues at stake are different in the United States. Even though the regulatory approach in this country has proven more effective in dealing with some of these new challenges, decisive steps towards a “technology neutral” regulation have not yet been undertaken. As a result, the Telecommunications Act is unable to deal satisfactorily with upcoming issues, in particular entry by incumbent telecommunications operators in the television sector.

The comparative legal analysis of these different issues will be complemented with the insights provided by economic theory. There is a growing body of economic literature both in Europe and the United States analysing the impact of technological convergence on television activities and showing some of the flaws in the current regulatory approach.