



ICLG

The International Comparative Legal Guide to:

Telecoms, Media & Internet Laws & Regulations 2016

9th Edition

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

Published by Global Legal Group, with contributions from:

Andreas Neocleous & Co LLC

Bagus Enrico & Partners

Bello, Gallardo, Bonequi y García, S.C.

Borenus Attorneys Ltd

Bowman Gilfillan

Chajec, Don-Siemion & Zyto

Legal Advisors

Coulson Harney

Davies Ward Phillips & Vineberg LLP

Dr. Norbert Wiesinger, Law Offices

Gün + Partners

Heuking Kühn Lüer Wojtek

Hogan Lovells (CIS)

John W Fooks & Co

King & Wood Mallesons

Kromann Reumert

Linklaters LLP

Melchior, Micheletti & Amendoeira Advogados

Mori Hamada & Matsumoto

NautaDutilh N.V.

Olswang LLP

Pachiu & Associates

Pestalozzi

Sanchez Elia & Associates

Shay & Partners

Sociedade Rebelo de Sousa &

Advogados Associados, RL

The Law Office Krehić

Tilleke & Gibbins

Udo Udoma & Belo-Osagie

Webb Henderson

Wigley & Company

Wilkinson Barker Knauer, LLP

Živković Samardžić

GLG

Global Legal Group

Contributing Editor
Rob Bratby, Olswang LLP

Head of Business Development
Dror Levy

Sales Director
Florjan Osmani

Commercial Director
Antony Dine

Account Directors
Oliver Smith, Rory Smith

Senior Account Manager
Maria Lopez

Sales Support Manager
Toni Hayward

Editor
Gemma Bridge

Senior Editor
Suzie Levy

Group Consulting Editor
Alan Falach

Group Publisher
Richard Firth

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

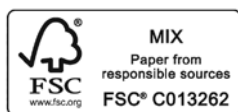
GLG Cover Image Source
iStockphoto

Printed by
Information Press Ltd.
September 2015

Copyright © 2015
Global Legal Group Ltd.
All rights reserved
No photocopying

ISBN 978-1-910083-61-1
ISSN 2050-7607

Strategic Partners



General Chapter:

1	An Overview of the EU Regulatory Framework – Purvi Parekh & John Enser, Olswang LLP	1
---	--	---

Country Question and Answer Chapters:

2	Angola	Sociedade Rebelo de Sousa & Advogados Associados, RL: Octávio Castelo Paulo & Luís Neto Galvão	11
3	Argentina	Sanchez Elia & Associates: Juan Sanchez Elia & Alejandro Sigfrido Pérez	18
4	Australia	King & Wood Mallesons: Renae Lattey & Neil Carabine	24
5	Austria	Dr. Norbert Wiesinger, Law Offices: Dr. Norbert Wiesinger	34
6	Belgium	Linklaters LLP: Tanguy Van Overstraeten & Guillaume Couneson	41
7	Brazil	Melchior, Micheletti & Amendoeira Advogados: Sílvia Regina Barbuy Melchior	49
8	Canada	Davies Ward Phillips & Vineberg LLP: George Addy & Elisa Kearney	62
9	China	King & Wood Mallesons: Rui Wang	69
10	Croatia	The Law Office Krehić: Tarja Krehić	78
11	Cyprus	Andreas Neocleous & Co LLC: Andrea Kallis Parparinou	85
12	Denmark	Kromann Reumert: Torben Waage & Julie Bak-Larsen	92
13	Finland	Borenus Attorneys Ltd: Jukka Airaksinen & Henriikka Piekkala	99
14	Gabon	John W Ffooks & Co, member of the Bowman Gilfillan Africa Group: Lydia Rasoanirina & Hantamalala Rabarijaona	106
15	Germany	Heuking Kühn Lüer Wojtek: Dr. Dirk Stolz & Dr. Lutz Martin Keppeler	112
16	Hong Kong	King & Wood Mallesons: Joshua Cole	120
17	Indonesia	Bagus Enrico & Partners: Enrico Iskandar & Stephen Sim	128
18	Ivory Coast	John W Ffooks & Co, member of the Bowman Gilfillan Africa Group: Fenosa Rajomarison & Claudia Randrianavory	136
19	Japan	Mori Hamada & Matsumoto: Hiromi Hayashi & Akira Marumo	142
20	Kenya	Coulson Harney, member of the Bowman Gilfillan Africa Group: Edwina Warambo-Ogallo & Richard Harney	151
21	Mexico	Bello, Gallardo, Bonequi y García, S.C.: Carlos Arturo Bello Hernández & Quitzé Alejandra Espetia Mendoza	159
22	Netherlands	NautaDutilh N.V.: Paul M. Waszink & Piet Sippens Groenewegen	167
23	New Zealand	Wigley & Company: Michael Wigley	175
24	Nigeria	Udo Udoma & Belo-Osagie: Olajumoke Lambo & Godson Oghenechuko	181
25	Poland	Chajec, Don-Siemion & Zyto Legal Advisors: Andrzej Abramczuk & Mariusz Busiło	188
26	Portugal	Sociedade Rebelo de Sousa & Advogados Associados, RL: Octávio Castelo Paulo & Luís Neto Galvão	196
27	Romania	Pachiu & Associates: Remus Ene & Ioana Iovanesc	204
28	Russia	Hogan Lovells (CIS): Natalia Gulyaeva & Julia Gurieva	213
29	Senegal	John W Ffooks & Co, member of the Bowman Gilfillan Africa Group: Fenosa Rajomarison & Francky Rakotondrina	221

Continued Overleaf →

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

GLG

Global Legal Group

Country Question and Answer Chapters:

30	Serbia	Živković Samardžić: Slobodan Kremenjak & Miloš Stojković	227
31	Singapore	Webb Henderson: Angus Henderson & Daryl Cox	235
32	South Africa	Bowman Gilfillan, member of the Bowman Gilfillan Africa Group: Dominique Saayman & Livia Dyer	244
33	Switzerland	Pestalozzi: Clara-Ann Gordon & Phillip Schmidt	254
34	Taiwan	Shay & Partners: Arthur Shay & David Yeh	261
35	Thailand	Tilleke & Gibbins: Weerawat Distapinyo & Ahmet Yesilkaya	268
36	Turkey	Gün + Partners: Uğur Aktekin & Begüm Yavuzdoğan Okumuş	276
37	United Kingdom	Olswang LLP: Purvi Parekh & Tomos Jones	286
38	USA	Wilkinson Barker Knauer, LLP: Natalie G. Roisman & Brian W. Murray	295

EDITORIAL

Welcome to the ninth edition of *The International Comparative Legal Guide to: Telecoms, Media & Internet Laws & Regulations*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of telecoms, media and internet laws and regulations.

It is divided into two main sections:

One general chapter. This chapter provides an overview of the EU Regulatory Framework for electronic communications and services in the EU Member States.

Country question and answer chapters. These provide a broad overview of common issues in telecoms, media and internet laws and regulations in 37 jurisdictions.

All chapters are written by leading telecoms, media and internet lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Rob Bratby of Olswang LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The International Comparative Legal Guide series is also available online at www.iclg.co.uk.

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

Finland

Jukka Airaksinen



Henriikka Piekkala



Borenus Attorneys Ltd

1 Overview

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

The Finnish market for telecoms, audio-visual media distribution and internet is fairly competitive, although new actors rarely enter the market. The Finnish Communications Regulatory Authority (FICORA) regulates telecommunications by supervising and issuing technical regulations and guidelines on equipment and networks. The telecoms, audio-visual media and internet infrastructure sectors are open to competition and no regulatory barriers exist for foreign investment in any of the sectors.

(a) 9.4 million mobile connections and 750,000 landline connections were in use in Finland (having a population of 5.5 million) at the end of 2014.

The biggest telecommunications companies in 2014 are TeliaSonera Finland Oyj, Elisa Oyj and DNA Oy.

(b) The market for electronic mass communications, encompassing television, radio and internet media, had an annual revenue of MEUR 4,6 in 2014. Key companies are the Finnish Broadcasting Company Oy, Sanoma Oyj and Bonnier Ab.

In 2014, over 90 per cent of all Finnish households received television broadcasts, of which 49 per cent were through the terrestrial network, 46 per cent through the cable network, 3 per cent through the satellite network and 13 per cent through IPTV.

Digita Oy and DNA Oyj own the infrastructure for terrestrial television. Digita Oy, DNA Oyj and Anvia Oyj hold the terrestrial television network licences. The television channels are positioned in nine nationwide and one local channel bundles. Five of the channel bundles are capable of transmitting HD TV. The largest cable television network transmitter is DNA Welho Oy, a part of DNA Oy.

The largest programme licence holders in digital terrestrial television are MTV Oy and Sanoma Media Finland Oy. The Finnish Broadcasting Company Oy is permitted to broadcast in the terrestrial television network by virtue of law. The most prominent among the 25 notified cable television operators is Sanoma Media Finland Oy. Satellite television is operated in Finland, e.g. by Canal Digital

Finland Oy and Viasat Finland Oy. As for radio operations, 10 nationwide and 56 local radio programme licences have been granted.

(c) Approximately 92 per cent of all Finnish households had a broadband internet connection in 2015. Key companies are TeliaSonera Finland Oyj, Elisa Oyj, DNA Oy and the Finnet group.

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

The Information Society Code (917/2014) governs the markets of network services, television and radio programming operations, telecommunications and radio equipment and planning and usage of radio frequencies.

The Information Society Code, together with the Personal Data Act (523/1999) and the Penal Code (39/1889), govern confidentiality and information security in electronic communications. The Act on Audiovisual Programmes (710/2011) sets down provisions for age-limit classification of audio-visual programmes.

1.3 List the government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in Finland.

Telecoms regulation in Finland falls within the responsibilities of the Ministry of Transport and Communications. Certain decisions are reserved for the Government. FICORA is an independent authority under the Ministry and is responsible for regulating communications markets.

The Finnish Competition and Consumer Authority (FCCA) monitors competition restrictions and matters relating to consumer protection.

The Finnish Centre for Media Education and Audiovisual Media is the national authority for the supervision and classification of audio-visual media and the co-ordination of media education.

The major self-regulatory bodies are the Council for Mass Media, the Council of Ethics in Advertising and the Ethical Committee for Premium Rate Services.

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

There are no such restrictions.

2 Telecoms

General

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

Yes, Finland has been a WTO member since its establishment in 1995 alongside the EU. The EU, and Finland as its Member State, has given commitments regarding telecommunications services, including the telecoms reference paper which has been appended to the schedule of commitments. The reference paper and the relevant EU legislation have been implemented in Finland.

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

Finnish legislation in the field of telecoms is based on the EU legal framework. The Information Society Code governs the provision of communications networks and communications services. The telecoms regulations apply primarily to 'telecommunications operators', who are either network operators or service operators. Under the code, FICORA has been empowered to issue technical regulations. Its duties also include the economic regulation of telecommunications. Telecoms legislation is based on the principle of technology neutrality. Telecoms operators are also subject to general competition and consumer legislation.

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

General telecommunications guidance and development are the responsibility of the Ministry of Transport and Communications, including preparing legislation in the field of telecoms. FICORA supervises compliance with the Information Society Code and issues regulations under it. FICORA also ensures effective competition within telecoms, but is required to cooperate with the European Commission when carrying out market definitions and analyses and imposing obligations on operators with significant market power. The authority to grant licences and allocate frequencies resides primarily with FICORA and in some instances the Government.

Communications markets are also under the scrutiny of the FCCA by virtue of the general legislation governing competition and consumer fields. FICORA and FCCA make their decisions independently from the government and its political decision-making processes.

2.4 Are decisions of the national regulatory authority able to be appealed? If so, to which court or body, and on what basis?

The decisions of FICORA are appealable. The competent court depends on the subject matter of the decision; as a main rule, decisions are appealed to one of the regional Administrative Courts. Decisions relating to e.g. imposing obligations to operators having significant market power are appealed to the Supreme Administrative Court. FICORA's decisions relating to the prohibition of an unfair agreement term are appealed to the Market Court. The decisions can be appealed both on the merits and on procedural failures.

Licences and Authorisations

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

A network licence is required to provide a network service that uses radio frequencies in a digital terrestrial mass communications network or in a mobile network practising public telecommunications. FICORA, and in some instances the Government, has the general authority to grant such licences. Licences are granted by comparative procedure or auction.

The provision of public telecommunications (for example, as a mobile communications network operator, internet service provider, cable network operator and a radio programme service carrier) requires that a telecommunications notification be submitted to FICORA.

The provision of other types of telecommunications does not require a licence or notification.

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

Telecommunications operators have a number of obligations under the Information Society Code. The obligations are summarised in a confirmation provided by FICORA to all operators who file a telecommunications notification. The obligations include *inter alia* interconnection obligations, a duty to maintain information security in electronic communications and networks' and services' functionality, and a duty to prepare for exceptional circumstances. A telecommunications operator subject to a notification duty or a licence must pay an annual supervision fee (the information society fee).

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

Network licences are granted by FICORA or the Government either by auction or in a comparative procedure for a fixed period of up to 20 years. Licences are non-transferable, and they may be cancelled if the effective control in respect of the licence holder changes; however, an internal transfer of a licence between a parent company and a wholly owned subsidiary is allowed. Further, the licence holder may request a preliminary ruling on whether a licence would be cancelled due to a contemplated transfer. As an exception to the above, an auctioned licence can be leased with the Government's permission.

Public and Private Works

2.8 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

The Land Use and Building Act (132/1999) and the Information Society Code contain provisions that allow the location of telecommunications cables and related minor equipment, structures and installations on property owned by another. If no agreement is reached with the owner, the local building supervision authority may make a decision to allow the location.

Access and Interconnection

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

The Information Society Code stipulates that a network operator has an obligation to negotiate in good faith on interconnection with another network operator. FICORA may impose interconnection and access obligations on a network operator with significant market power. In more exceptional situations, interconnection and access obligations can be mandated also on an operator that does not have significant market power. Access and interconnection regulations are in line with the relevant EU directives.

2.10 How are interconnection or access disputes resolved?

Operators can refer violations of the Code to FICORA, which aims to resolve any disputes primarily through mediation. If mediation is unsuccessful, FICORA resolves the matter within four months. The time limit does not apply to unusually extensive cases.

If the parties do not agree on the details of the interconnection, an operator, under an interconnection obligation set by FICORA, is obliged to follow the default rules on interconnection as set out in the Information Society Code.

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

FICORA can impose obligations on a telecommunications operator to publish its terms and prices regarding interconnection and network access. A great number of operators with significant market power are subject to such a duty regarding different communications markets.

2.12 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and if so, how?

FICORA has imposed price regulation on SMP operators in the market of mobile termination, fixed network interconnection, access to fixed networks and broadcasting. Depending on the market, the SMP operators have to apply non-discriminatory and/or cost oriented pricing. FICORA uses the fully distributed current cost methodology. FICORA has set an *ex ante* maximum price for leasing antenna sites on broadcasting masts. The decision to impose maximum prices on local loops was overruled by the Supreme Administrative Court. FICORA has the power to impose retail minus price regulations and fair and reasonable prices, but has not yet exercised these powers.

In addition, FICORA has the power to decide on a maximum price when assessing *ex post* whether an obligation to observe cost-oriented pricing has been followed, and has also exercised this power.

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

FICORA has required several operators having significant market power to employ accounting separation. Thus far, no decisions

have been made to mandate functional separation. FICORA cannot mandate legal separation.

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

FICORA has imposed obligations on SMP operators to grant access to local loops and associated facilities on non-discriminatory terms and prices. Major SMP operators must also observe cost-oriented pricing.

There are no cable TV operators having significant market power and thus no obligations have been issued.

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

Due to the technology neutral policy adopted in the legislation, next-generation networks are subject to the same legislation as traditional networks. Since March 2013, the major SMP operators have been required by FICORA to observe cost-oriented pricing for local loop unbundling in next-generation networks.

In addition, legislation has been adopted to provide public financial aid for broadband building in sparsely populated areas; such aid is only available for networks that allow minimum connection speeds of 100 Mbit/s and open network access to competing service providers. No 'regulatory holidays' are contemplated.

FICORA may oblige an operator to lease out part of a cable duct and to share poles and related equipment under certain conditions.

Price and Consumer Regulation

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

The retail markets are competitive and no operator has been defined as having significant market power in retail markets. Therefore, no retail price controls have been imposed on operators on the basis of their significant market power. However, operators assigned as universal service providers are required to offer the universal service at a reasonable price.

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

Part 5 of the Information Society Code, containing provisions relating to users' rights, is compulsory legislation in consumer relationships. The part governs, for instance, the content of the communications service agreement.

Numbering

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

FICORA allocates numbers and codes for operators on application. Numbers and identifiers are distributed in a manner that treats telecommunications operators and other persons as fairly as possible, taking into account the nature and extent of operations. FICORA must make the numbering decision within three weeks, or where the number has exceptional economic value, in six weeks from receipt of the application.

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

FICORA can impose conditions to the use of numbers where it is necessary to ensure the clarity and efficiency of numbering or the benefits of users. FICORA can, e.g., order that the number be used to offer a specified service.

The Consumer Ombudsman may order a telecommunications operator to close a number if the service seeks unlawful financial benefit by providing users with essentially false or misleading information in marketing material.

2.20 Are there any obligations requiring number portability?

Number portability is mandated and it must be free of charge to the subscriber. The operator can, however, collect from the other telecommunications operator a one-off payment if the technical process of porting the number generates one-off costs. The one-off payment cannot be so high as to deter the use of the service. In individual cases FICORA can decide on a maximum amount of the one-off payment.

Numbers cannot be ported between fixed and mobile networks. The validity of a fixed-term communications service agreement concerning the telephone number does not release the operator from the number portability obligation.

3 Radio Spectrum

3.1 What authority regulates spectrum use?

FICORA oversees the use of radio frequencies in Finland and grants licences. The Government decides upon spectrum auctions and major network licences.

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

There are two types of licences: network licences (see question 2.5); and radio licences, including technical usage conditions.

The provision of mobile and digital terrestrial mass communications network services requires a network licence granted by the Government or FICORA. Most of these licences have been granted in comparative ‘beauty parades’. The 2.6 GHz and 800 MHz mobile frequencies have been auctioned.

The possession and use of a radio transmitter requires a radio licence generally granted by FICORA. Radio licences are granted on a first-come, first-served basis. If radio licences cannot be granted to all applicants due to the insufficiency of radio frequencies, the licence must be granted on virtue of a ‘beauty parade’ to those applicants whose operations best promote the aims of the Information Society Code.

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

According to the Information Society Act, the possession and use of a radio transmitter requires a radio licence, unless the radio transmitter only functions on the collective frequency designated for it by FICORA, and if its conformity has been confirmed in the manner laid down in the Information Society Act, the radio transmitter has been permanently rendered technically inoperable for radio communication, or it is otherwise evident that the possession is not for the purpose of radio communication.

Some specific radio transmitters have been exempt from licensing by FICORA.

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

The network licences for mobile and digital terrestrial television networks granted by comparative ‘beauty parades’ carry a market-based spectrum fee. The amount of the fee depends on multiple factors, including: the frequency amount allocated to the licence holder’s network; the technical and financial utilisation of the frequency band; and the population coverage and the intended use of the frequencies. The annual market-based spectrum fee is approximately 1.2 MEUR per mobile operator. From 2024 onwards, market-based spectrum fees will also apply to the military use of spectrum.

As for auctioned network licences, the licence fee is the winning bid. The licence fee is paid in annual instalments during the licence period.

A frequency fee is collected on all radio licences granted by FICORA. The frequency fee is defined according to the usability of the frequencies in the radio licence. For short-term radio licences, the frequency fee is calculated based on how long the frequencies are used.

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

The change of control of the licensee must be notified immediately to the Government, which can either accept the change of control or cancel the licence within two months of the notification. The Government accepts the change of control if it is apparent that the requirements for granting a licence are met and operations continue according to the licence terms. The licence holder can request a preliminary ruling on the matter, to be given within two months of the application.

If the change of control must be filed to the competition authorities, the two months’ time frame will be calculated from the merger clearance decision.

At the request of a licence holder, the Government can transfer a licence granted by the auctioning process, provided that it has no especially weighty reasons to suspect that the transfer might prevent

competition or endanger interference-free radio communications or apparently risk national security. The decision will be given within two months of the reception of a transfer application. It is possible to transfer only a part of the frequencies included in the licence.

All rights and responsibilities of the licence holder are transferred to the new licence holder. Along with the network licence, the related frequency reservation or radio licence also transfer in part or in full. The transferor of the licence must immediately notify of the transfer to FICORA.

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

Radio licences can be transferred, except for radio licences connected to network licences. However, the transfer of a radio licence may be prohibited in the licence if the use of the radio transmitter requires a proficiency certificate or if the licence transfer would have a significant effect on the general development of the communications market. The transfer must be notified without delay to FICORA. FICORA may, within a month of the reception of the notice, reject the transfer of a radio licence if it is obvious that the requirements for granting a radio licence are not met.

Network licences can only be transferred within a group of undertakings. However, auctioned network licences can be transferred or leased under certain conditions (see question 3.5). A network licence granted by auction can be leased, subject to Government approval. Upon the licence holder's application, the Government may approve the lease within two months of the arrival of the application, provided that it has no especially weighty reasons to suspect that the leasing would apparently risk national security. The licence holder continues to be responsible for the licence obligations.

4 Cyber-security, Interception, Encryption and Data Retention

4.1 Describe the legal framework (including listing relevant legislation) which governs the ability of the state (police, security services, etc.) to obtain access to private communications.

The main legislative provisions are governed by the Information Society Code (917/2014) and the Coercive Measures Act (806/2011). Criminal sanctions for non-compliance with the Code have been set out in the Criminal Code (39/1889 as amended).

4.2 Summarise the rules which require market participants to maintain call interception (wire-tap) capabilities. Does this cover: (i) traditional telephone calls; (ii) VoIP calls; (iii) emails; and (iv) any other forms of communications?

Such requirements have been set out in the Information Society Code. The Code provides that a telecommunications operator must equip its communications network and communications service with technical instruments and features that allow the interception of electronic communications and telecommunications monitoring as referred to in the Coercive Measures Act, the Police Act, and the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union.

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

Communications interception is regulated under the Coercive Means Act. Further, the Police Act authorises the police to use tele surveillance and metering of telecommunications for reconnaissance purposes.

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

There are no specific rules governing the use of encryption.

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

A service operator obliged to submit a telecommunications notification must ensure that data generated or processed in connection with the provision of publicly available electronic communications services, or of public communications networks, are retained for a period set out below. Such data may be used only for the purposes of investigating, solving and considering charges for criminal acts subject to the Coercive Measures Act.

The retention obligation under the Information Society Code applies to data related to: 1) a telephone service or SMS service provided by an operator under the retention obligation, including calls for which a connection has been established but the call remains unanswered or is prevented from being connected due to network management measures; 2) internet telephone service provided by an operator under the retention obligation, meaning service provided by a service operator enabling calls that are based on internet protocol through to the end customer; and 3) internet access service provided by an operator under the retention obligation. The data of the services referred to above in (1) must be retained for 12 months, the data of the services referred to in (3) for nine months, and the data of the services referred to in (2) for six months. The data retention time starts with the time of the communications. The retention obligation does not apply to the contents of a message or traffic data generated through the browsing of websites.

5 Distribution of Audio-Visual Media

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

The main legislative act governing television network operations and broadcasting of television and radio programmes is the Information Society Code. The Ministry of Transport and Communications and FICORA act as the main regulatory bodies, supervising and regulating the field, as well as issuing network and programme licences.

5.2 Is content regulation (including advertising, as well as editorial) different for content broadcast via traditional distribution platforms as opposed to content delivered over the internet or other platforms? Please describe the main differences.

Due to the technology neutral policy adopted in the legislation, content regulation for content broadcast via any technology is subject to the same legislation.

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

Operating television network services in the terrestrial mass communications network requires a network licence. The holder of a network licence is responsible for putting together television channel bundles as well as maintaining television transmission services. The broadcasting of television and radio programmes in the terrestrial mass communications network requires a programme licence. A supervision fee is collected from licensed broadcasters.

Operating television network services or broadcasting television programmes in the cable, satellite and IP networks does not require a licence. Operators providing network services in cable television networks have an obligation to transmit certain television programmes without a charge (the so-called must carry obligation).

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

A licence granted for television or radio broadcasting cannot be assigned to another party. If the licence holder assigns the licence to another party, the licensing authority will make a formal decision confirming that the licence has become void. An internal transfer of a licence within a group between the parent company and a wholly owned subsidiary is permitted. Such a transfer must be notified immediately to the licensing authority.

If the effective control with regard to a licence holder changes, the licensing authority may approve the changes or cancel the licence. Any transfer or change must be notified immediately to the licensing authority. The licence holder can request a preliminary ruling on the matter. The licensing authority must decide the matter within two months of reception of notification or application.

6 Internet Infrastructure

6.1 How have the courts interpreted and applied any defences (e.g. 'mere conduit' or 'common carrier') available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

We are not aware of any court decisions relating to network operators' or internet service providers' defence of acting as a 'mere conduit' under the Information Society Code. However, the Supreme Court of Finland has considered copyright infringement in a peer-to-peer file sharing network in the *Finreactor* case. The court held that the administrators could not benefit from the exemption from liability for hosting services because they had participated in the provision of the service and copyright infringement by administering torrent descriptor files, etc.

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

Under the Copyright Act (404/1961 as amended), courts may order a service provider to surrender the contact information of a subscriber who makes infringing material protected by copyright available to the public. Further, courts may order an injunction to discontinue against a service provider whose services are used to make copyright-infringing material available to the public. Several ISPs in Finland have been ordered to block access to certain domains and IP addresses by such injunctions.

In addition, courts may order the service provider to prevent access to material infringing copyright or a neighbouring right when an injunction order is not available for the reason that the copyright infringer is unknown. Such order is valid for a maximum of 12 months at a time.

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

The Information Society Code governs the provision of net neutrality. An internet access service provider may not restrict a subscriber's or user's opportunity to use an internet access service, except: 1) in a way necessary for implementing the main features of internet access service quality, data transfer rate variation or other services that are clearly and extensively defined in the communications service agreement; 2) on the basis of a decision issued by an authority or court; 3) for the purpose of information security or to remedy an interruption; or 4) for the purpose of meeting quality requirements.

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

The Act on Preventive Measures Relating to Distribution of Child Pornography (2006/1068) set up a system with the purpose of preventing access to foreign websites containing child pornography. Under the act, the police have set up a list of pages containing illicit material that telecommunications operators are entitled, but not required, to use to block access to those sites by their IP addresses.

In addition, ISPs can be required to block access to content or sites by court order under the Act on the Exercise of Freedom of Expression in Mass Media (460/2003) regarding content, the distribution of which to the public is a criminal offence or for infringement of an intellectual property right.

6.5 How are 'voice over IP' services regulated?

In keeping with the principle of technology neutrality, VoIP services are regulated by the same general rules as other services on the communications markets. Where VoIP services are based on peer-to-peer technology and the service provider merely provides a directory service, the Information Society Code will not apply (although the service may still be considered an information society service).

**Jukka Airaksinen**

Borenium Attorneys Ltd
 Eteläesplanadi 2
 00130 Helsinki
 Finland

Tel: +358 20 713 3432
Fax: +358 20 713 3499
Email: jukka.airaksinen@borenium.com
URL: www.borenium.com

Jukka advises in the field of outsourcing, technology transactions, and procurement of ICT-based products and services, as well as data privacy related matters. He is known for his pragmatic and hands-on approach in large-scale outsourcing projects and transactions. He regularly lectures and writes articles on issues related to his area of expertise.

Prior to joining Borenium, Jukka worked as an adviser and member of the board of directors in a local ISP that he established, and as a lawyer in another major law firm specialising in technology and media contract law. In outsourcing projects and ICT procurement cases Jukka typically acts for the client-side.

For a full biography please visit <http://www.borenium.com/people/jukka-airaksinen/>.

**Henriikka Piekkala**

Borenium Attorneys Ltd
 Eteläesplanadi 2
 00130 Helsinki
 Finland

Tel: +358 20 713 3284
Fax: +358 20 713 3499
Email: henriikka.piekkala@borenium.com
URL: www.borenium.com

Henriikka advises on legal issues related to telecoms matters. She has wide knowledge and experience in telecoms law-related antitrust issues and policy matters, and in pricing issues in particular.

Henriikka transferred from the Finnish Communications Regulatory Authority (FICORA), where she acted as a legal counsel. She started her career at the Finnish Competition Authority before joining FICORA in 2001. While working at FICORA, she represented FICORA before the European Commission, the Independent Regulators' group, Nordic countries' cooperation group and Finnish courts, including the Finnish Supreme Administrative Court.

In addition, Henriikka was the project leader for FICORA's radio spectrum auction, where the licences for the digital broadband mobile network were granted in 2009.

For a full biography please visit <http://www.borenium.com/people/henriikka-piekkala/>.

BORENIUS

Borenium Attorneys Ltd is one of the largest leading law firms in Finland. The firm was established in 1911 and has offices in Helsinki, Tampere and St. Petersburg (Borenium Attorneys Russia Ltd) and in New York (Borenium Attorneys LLP). Borenium is a member of the Borenium Group together with local independent law firms operating in Tallinn, Riga and Vilnius.

Current titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Recovery & Insolvency
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks



59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk

www.iclg.co.uk