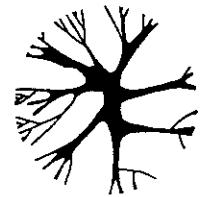


# COMMUNICATION RESEARCH TRENDS



A Quarterly Information Service from the  
Centre for the Study of Communication and Culture

Vol 12 (1992). No.4

## THE INTERNATIONALIZATION OF COMMUNICATIONS LAW

By Patrick J. Goggins  
and James J. Conn, S.J

Law arises from custom and precedents as well as from formal legislation. It is constantly mixing these in different combinations, developing and changing to meet different historical needs and creating diverse jungles of regulations and interpretations among human societies.

Differences in the various national systems of law contribute to even greater complexities in international relations, which nations constantly struggle to resolve through a body of understandings, agreements and treaties based on negotiation and compromise: 'international law'. If all else fails, they resort to remote or proximate threats of economic coercion and military force to impose control over their relationships.

This issue of *Trends* cannot hope to address all of this massive and labyrinthine topic. We therefore have limited ourselves to reviewing two areas of the international law of communications which are especially relevant to human dignity and which are undergoing especially rapid change: laws regulating speech and those dealing with the economics of telecommunications.

Many of the legal issues dealt with here have first been argued before courts in the United States, which has more lawyers and more litigation per capita than any other country. The discussion therefore tends to have an American emphasis; but the issues affect the right to communicate of everyone on earth.

The Editor.

# Introduction

The law of communications has not yet adopted Marshall McLuhan's famous declaration that 'the medium is the message.' Distinct bodies of law have developed around the medium, that is to say, the material means by which information is communicated, and the message or content of communication. Communications law is a body of knowledge consisting of international declarations and agreements, national constitutions as interpreted by supreme tribunals, legislation and statutory regulations, as well as developments of the many areas of common law made through the decisions and opinions of judges. McLuhan's 'medium' is regulated in the field of telecommunications law, while his 'message' falls under what is generally known as speech law. Telecommunications law centres on administrative regulation of the industries that provide communications services such as broadcast stations, telephone carriers, and cable television networks. The process of regulation typically involves a balancing of economic interests with political interests under legislatively determined policy, goals, and constraints. Speech law, on the other hand, focuses on judicial interpretations of national constitutions, which balance the competing values of the rights of the speaker with the rights of those affected by the speech.

Major trends in the area of communications law point toward less governmental involvement in both medium and message. There has been a major trend in speech law toward greater protection of speech rights. This is due in part to technological advances which make it increasingly difficult for governments to control speech. International pressure for human rights further advances the trend toward protecting speech. Telecommunications law has been moving in the direction of privatization, deregulation, and the

lowering of barriers to competition in the marketplace for communications services. Recent events in the former Soviet bloc have lent support to the arguments made by the critics of a government-controlled communications enterprise. New technology has also been a driving force behind the movement toward free markets; the world's communications infrastructure has matured to a point that the initial investments of the original monopolies have been recouped. Governments are now considering ways to take the best advantage of new markets that technical innovation is creating. The regulators now increasingly favour free market competition over government control.

Research in the area of communications law reflects this steady shift to a global perspective. Literature has traditionally focused on national constitutions, national legislation, national regulators, and the national monopolies. The shift to an international perspective began when satellites made instant global communication routine within the past quarter-century. A body of comparative literature subsequently emerged to shed light on differences among national systems. As international organizations rose in prominence during the 1960s, another body of literature appeared which challenged the sovereign 'national security' motivations of governments to regulate speech. Since then, the literature on communications law has focused on the effects of technological developments. Influential authors such as Ithiel de Sola Pool and George Gilder have documented the entrance of the computer into the information age and its profound effect on how people communicate. The computer will have important implications for the law of speech and telecommunications, though only some of these consequences are evident today.

## I. The Internationalizing of Speech Law

### What Is Speech?

Any fruitful discussion of how law can limit speech should be preceded by a common understanding of what 'speech' is. To say that 'speech' means 'words' is too simple a definition for the world of speech law. A work of art in U.S.

federal jurisprudence, for example, that some people may consider to be obscene must first be categorized as speech before it can be protected by the First Amendment to the Constitution. Many such works contain no words, yet they convey messages; they communicate. While law cannot

readily ban an idea, since ideas are not easily verified, it can and does attempt to regulate, or in some systems protect, the expression of ideas. Other less obvious non-verbal activity can fall within the purview of speech law. Concern about speech and the desire to control it motivates the regulation by some societies of the freedom of movement. Some governments place restrictions on the travel of foreigners into their jurisdiction, as well as on the travel of their own citizens within and outside their borders. Some of these restrictions are based on ideas that the traveller has expressed and may express in the future.

### **Interpersonal Conversation**

Face-to-face one-on-one conversation is perhaps the most powerful and effective means of communication. The speaker has the advantages of being able to establish visual, audial, and even tactile contact with the listener. He can give the listener verbal as well as physical cues. The speaker has the advantage of being able to see the listener's reactions to his speech and to adjust the message instantly to those reactions.

Telephone conversations remove the visual advantage of face-to-face conversations; the speaker is unable to see his listener's reactions to what he is saying. Yet telephones remove the limitation of distance. Telephone companies are at work today attempting to eliminate this impediment. AT&T introduced a video telephone last summer which has met with limited success. At only five frames per second, the picture is still too jumpy, as compared, for example, to a television broadcast at 30 frames per second. There is good reason to believe that this technology will improve and become more widely accessible as research continues. Interpersonal communication rarely arises as an issue in communication law. The narrow scope of face-to-face conversation does not generally raise legal issues unless a confidence such as a professional privilege or a trade secret is being compromised. These areas, however, are outside the scope of this paper.

Among the earliest non-face-to-face methods of interpersonal communication is the letter. With the exception of mass-mailing technology with its demographics and databases, the mails are today much like they were when they were carried by horses. An advantage of the mail is that it is

almost universal; a letter can be sent to some areas where no telephone call can be placed. The mails also have the advantage of physicality; a letter can be faxed, but a box of fruit must still be mailed.

### **Media.**

The term 'media' as applied to communications law is misleading. Newspapers, broadcasting, and cable are the media of the communications lawyer. Most literature on media law discusses these concrete realities. This is distinguished from what Marshall McLuhan meant when he used the term 'medium.' A medium is a physical means of communication detached from the message which it can carry. But because our topic is communications law, we will adopt the framework of the communication lawyer.

Media law was effectively born with the newspaper. Media lawyers before all else have concentrated their attention on the balance among the interests of the press, the individual, and the state. A free and vocal press is generally agreed to be a sign of a healthy society. As more voices enter the marketplace of ideas, the interested reader is able to base his views on a greater variety of information. Most of the literature agrees that more information is generally better than less. But this is not to say that the press can run roughshod over an individual's reputation or invade the privacy of his bedroom with the claim that it has freedom to do so. Nor can the press publish information that would compromise the safety of military personnel during a war. Most countries regulate the press in these respects.

Regardless of its beginnings, media law did not long restrict itself to the press. The pervasiveness and impact of the broadcast media had captured the attention of governments and lawyers long before Orson Wells sent people madly running through the streets assured that the Martians would soon be sending death rays through their bodies. Their power has been a source of tension between regulators and broadcast speakers. But because the airwaves are a scarce commodity, the number of broadcasters is limited first by the nature of the medium, not by regulation. There is only a limited number of frequencies. In most countries, broadcasters are either big corporations licensed by the state or the state itself. This monopoly has the effect of limiting the amount of speech that is objectionable to the state. The ability of the state to regulate the airwaves will be

discussed later, but it is important to note from the outset that the very nature of broadcasting demands that the message appeal to the widest number of listeners possible in order to be economically feasible.

Alternative media such as cable and satellite have capitalized on this limitation of broadcasting by whittling away at the edges of the broadcast audiences. Home Box Office and the Sky Channel have proven what broadcasters thought would never happen: that audiences are willing to pay for television services. Cable television introduced the concept of narrowcasting to the mass media industry. Governmental regulators typically grant private cable television companies limited rights to provide television services in a geographic area. The communication lawyers representing such private companies deal with the regulators. Where cable television exists, legal issues currently being addressed include the role of government in ownership or in sustaining and regulating the cable monopoly and the role of other industries such as telephone companies in providing television services. With respect to satellites, the communication lawyer will more likely be dealing with internationally-oriented organizations such as the International Telecommunications Union or COMSAT.

### **Artistic Expression**

Art also falls within the category of speech in communications law. Art includes literature, film, theatre, paintings and sculpture. Most countries give artists wider leeway with respect to the content of their speech than they give broadcasters, probably because of the limited audience that art has. Media law becomes involved with art when the state is funding art, or when it is controlling the content of art.

### **Data**

If a political advertisement is speech, is it speech when it is in digital form, coursing through the fibre optic network? If so, then what makes it different from computer software also in digital form, operating in the same fibre optic network? The only clear answer to these questions is that the introduction of new technologies in communications has blurred the definition of speech. The introduction of computer technology has allowed the communications industry to

expand its potential geometrically. The complexities of the new computer-driven communications industry and the speed with which it is changing have focused the attention of many regulators on keeping up with the changes in technology rather than on forming policies for the future.

Digital data are not the only information that falls under the regulator's eyes. Scientific, economic, and engineering data are likewise controlled to some extent by the state. Either by suppression or more often by funding, the state manipulates the content of research. In this area, the claim of national security is invariably at the root of the government's interest. Regulating research, however, raises some of the most fundamental issues in limiting speech because it is often research that sets the agenda for the media and, consequently, people in their face-to-face communication. Any limitation placed by the state on research or on disseminating the results of research will have ripple effects throughout society.

### **Intellectual Property**

On the fringe of speech in communications law are the proprietary rights of a speaker over what he says. Intellectual property is where speech law intersects with the law of property. Just as an author will claim a copyright in a novel, so will a soap manufacturer claim a trademark on the label of his or her package and a toy manufacturer claim a patent on his or her latest invention. Every nation has developed its law of intellectual property. The jurisprudence in this area is quickly changing as national economies are expanding into regional and worldwide economies. For an owner to retain rights in his or her property when it passes to another country, that country must recognize his/her right. The Berne Convention of 1886, which set the stage for all subsequent international copyright agreements, is an example of how states have come together to negotiate a uniform set of rules for the sake of improving the economic climate for businesses in their jurisdictions.

### **How is Speech Regulated?**

Elizabeth Hull. *Taking Liberties: National Barriers to the Free Flow of Ideas*. New York/Westport/London: Praeger, 1990.

Governments have a variety of means available to regulate speech. Whatever means they use, they must strike a balance between the interests of government and interests of individuals in free speech. International charters give the broadest guidelines for maintaining this balance, but because they are essentially consensual agreements, they carry no power to enforce their provisions. National constitutions are the focus of where the balance is struck; they are the template for a government's policies affecting speech rights. Statutes enacted under a constitution demonstrate narrower governmental policies, and some are more true to the constitution than are others. Specific acts of censorship perhaps best demonstrate the attitude of government to the speech rights of its citizens.

### **Censorship**

It has been said that murder is the ultimate form of censorship. Commonly associated with Third World countries, violent acts against journalists and other speakers are probably the most pernicious form of censorship. The jailing or killing of a speaker not only has the immediate effect of silencing him, but it also has a chilling effect on other speakers. Violence, however, is not limited to the state. When speakers are attacked by private individuals, the state is often put in the awkward position of protecting views to which it is opposed. Not all governments have risen to the occasion. The International Centre on Censorship (ICC, 1991: 420-421) says that in 1989, 53 journalists were murdered or disappeared in the line of duty. Most incidents occurred in Latin America. In Columbia, drug barons have killed journalists who spoke out against cocaine trafficking. More than 100 journalists were physically assaulted and countless numbers were subjected to death threats (p.421). More than 325 journalists were arrested in 1989, some short term, some long term. In 1989, more than 60 journalists were expelled from countries while attempting to do their job.

If murder is the ultimate form of censorship, then illiteracy is certainly the cruellest. According to the International Centre on Censorship, nine hundred million adults in the world are illiterate; over two thirds of them women. One hundred million children are not enrolled in school. The problem is not limited to the Third World.

UNESCO estimates that over 10% of the populations of developed countries are functionally illiterate (ICC 1991: 426).

The form of censorship most commonly associated with the word is the banning of a particular work. This is usually done pursuant to a statute, a method which is further discussed below. Book burning by the Nazis was universally reviled, yet few raise their voices when a book is banned, although both have the same effect. The *Spycatcher* controversy in Britain illustrated that governments in even the most politically advanced societies are not above book banning.

As new technologies are introduced into the communication industry, the job of the censor becomes more difficult. In the former Soviet Union, the introduction of personal computers and photocopiers made the publication and distribution of dissident *samizdat* texts more pervasive and ultimately beyond the reach of the state censor. As we discussed above, digital data are inherently more difficult to control because they are electronic and not tangible. In effect, the ability of a state to control the information that flows in and out of the country decreases each time a fibre optic cable is laid across an ocean or a continent.

A much more subtle form of censorship is the use of economic pressures to control speech. Governments often fund researchers, broadcasters, artists, and even newspapers. The presence of government money often presents the speaker with the dilemma of swallowing his words or biting the hand that feeds him. It is not hard to imagine that the speaker who bites only gets one chance. It is a natural tendency for the patron to fund speakers with whom he is inclined to agree. It is also natural for the speaker to want to please his patron. This symbiosis has the effect of limiting the presence of dissident speech. It is a subtle effect, though, in that economic pressures can exist despite the best of intentions.

But sometimes intentions are not so noble. Hull (1990: 109-113) discusses how the United States Information Agency (USIA) uses economic pressures to restrict speech. Under the Beirut Agreement, films that are both educational in nature and, in contrast to blockbuster motion pictures or best-sellers, unlikely to enjoy any commercial success, are promoted when a country exempts them from import duties, taxes and licensing requirements after they are certified by

another country's cultural authority - in the American case, the USIA - as 'educational, scientific or cultural' in character. The Agreement has proved to be a commercial bonanza for the U.S. film industry, but the USIA has been criticized because the few films it rejects are often eliminated on the basis of regulations that are unnecessary, highly restrictive, or ideologically biased. The USIA will not certify materials which attempt generally to influence opinion, conviction, or policy; espouse a cause; or discredit economic, religious, or political views or practices. In 1981, the USIA denied certification to *In Our Own Backyard*, a documentary dealing with health hazards created by uranium mining and milling operations. The agency rejected the film because it was 'emotional rather than technical,' its primary purpose or effect being 'less to instruct or inform in an educational sense than to present a special point of view.' *Radiation . . . Naturally*, a film produced by the Edison Electrical Institute which took the position that uranium and atomic energy are fundamentally safe, was granted certification.

### Statutes Limiting Speech

Statutory law differs from common law, in that the former is introduced, debated, and passed by a legislature while the latter is made by a judge's decision. Communication statutes typically either regulate the content of the speech or the time, place, and manner in which the speech may be expressed. A content-based statute will commonly rely on governmental interests in national security or on persons' interests in their reputations. A time, place, and manner statute will limit when, where and how speech may be expressed according to a governmental interest in protecting unwilling listeners. Most statutes limiting speech either restrict speech which is obscene or speech which is thought to compromise national security. The International Centre on Censorship (1991: xv) points out that laws are too often used by those in power to persecute minorities.

The ability of a statute to define what is obscene has long been a subject of frustration for the United States Supreme Court. Many standards have been defined which attempt to gauge the effectiveness of these statutes, but none has clearly done so. Perhaps the most honest yet unsatisfying measure is the now famous standard

of Justice John Paul Stevens, who said, 'I know it when I see it.' Perhaps no legal definition of obscenity can be achieved. Voltaire said that one man's vulgarity is another man's lyric. Whether speech is obscene depends very much on when and where it is made. A film that would have made people faint in the nineteenth century may evoke a yawn today. Likewise a broadcast that may not be appropriate during after-school time may be acceptable at three o'clock in the morning. Similarly, what is obscene in Kuwait City may be Sunday fare in Paris, and what may be risqué in a city's business district may well be commonplace in the red light district only a few blocks away. Time, place and manner statutes are the most effective way to control indecent speech without unreasonably substantially limiting the rights of speakers.

Federal law in the United States limits speech to protect national defense. Hull (1990: 125-127) discusses the effect of the Export Control Laws on speech. From the day he took office, Ronald Reagan insisted on a strict interpretation of the Export Control Laws. By authorizing federal regulation of the export of 'technical data', the Export Control Laws govern the access of foreigners and citizens alike to unclassified information. They require scientists to obtain a license before exporting technical data. The Department of Defense (DOD) maintains a 'militarily critical technologies' list (MCTL) which is to be used to determine whether a technology requires licensing. In its unabridged form the MCTL is considered too sensitive for public disclosure; but because it is larger than the London telephone directory, it is 'really a list of modern technology.'

According to Hull (1990: 128-131) the DOD uses the Arms Export Control Act and the Defense Authorization Act of 1984 to withhold from disclosure under the Freedom of Information Act any information that cannot be disseminated under the export control acts. It can impose restrictions on who may attend and on what may be said at international scientific conferences. Conferences in the early 1980s were disrupted by government officials who insisted that participants from unfriendly countries be excluded, and pledges were secured from all others not to divulge any information acquired at the conference to individuals from these countries. None of the papers at the conferences dealt with classified

information. Conferences are now held restricted to United States citizens only (p.130). Harvard University refused the Department of State's (DOS) request for information concerning foreign students because university research is heavily dependent on these students; by 1980 they comprised fully one third of those doing postdoctoral work in science and engineering. Restricting their access to necessary data or technical facilities would significantly reduce the amount of research performed in U.S. educational institutions.

### **Statutes Limiting Right to Travel**

Limits on travel inhibit the free flow of speech by inhibiting the free flow of speakers. To call travel a right may be an overstatement, but people in most industrial states travel within their national borders without questioning their ability to do so. It is only when travel goes across national borders that restrictions become more visible. What is important to consider is what motivates governments to regulate travel within and across their borders.

International travel is regulated in most countries by passport and visa systems. Passports are issued by a state to its citizens in order to control the flow of its citizens across its borders, and to maintain information on where its citizens are going. Hull (1990: 54-64) discusses the passport system in the United States. In 1953, Congress passed the Internal Security Act which made it a criminal offense to leave the country without a passport and explicitly made the receipt of a passport contingent on the applicant's political ideology. DOS could deny passports at will where travel was not in 'the best interests of the United States'. Playwrights Arthur Miller and Nobel-laureate scientist Linus Pauling were denied passports. A writer was denied a passport because 'nothing constructive' could be expected from his writings.

Two cases said that the DOS could not unilaterally prevent people from travelling on the basis of their political beliefs, unless the ban were supported by national security. In 1978, suspecting that the DOS was denying passports for partisan reasons, Congress prohibited the President from imposing area restrictions unless

the safety of Americans were endangered. The Reagan administration emasculated this Act relying on the Trading With the Enemy Act of 1917. The TWEA has been used to ban trade with and travel to Cuba. In 1982, this ban was upheld by the Supreme Court. 'Freedom to travel is subordinate to national security and foreign policy considerations; as such, it is subject to reasonable governmental regulation'.

The travel restrictions exempted journalists until 1983 when the military, backed by the Reagan administration, imposed a total news blackout during the first days of the Grenada invasion (Hull, 1990: 67-69). This had not been done since the Civil War. In contrast with journalists in Vietnam, journalists in Grenada could neither verify nor dispute the news releases supplied by the government. Officials had made several critical misstatements which are said to have amounted to prior restraint. 'Individuals responsible for disseminating legally proscribed material may be punished after the fact, but government officials are rarely allowed to intervene before it is published because courts consider prior restraint a particularly dangerous expedient. Once prior restraint is imposed, the public is denied access to information that may be constitutionally protected and of critical importance'.

In addition to keeping unqualified drivers off the streets, the licensing of drivers also has implications for human rights. The requirement to have a driver's license is both a limitation on a person's right to travel within national borders and a means of the state keeping track of where its citizens are going. Driver's permits are a means of compiling information about a state's citizens. With the introduction of computer databases to driver's license systems, information such as a person's address and driving record is available to government agents.

The existence of these databases raises the possibility of other types of information being kept about a person. If tax information and criminal records are not far from the reach of these agents, then neither are credit card purchase records and the destinations of telephone calls. The potential for serious human rights violations in this area has not been vigorously explored in the literature surveyed for this study, but certainly merits attention.

## Constitutions

Mervyn Matthews (ed.) *Party, State, and Citizen in the Soviet Union: A Collection of Documents*. London: M.E.Sharpe, Inc., 1989.

As the Iron Curtain dissolves, the former Soviet Bloc countries are taking the opportunity to redefine their national identities. A constitution is the defining document of a nation's identity. It serves to set priorities, values, and standards. It sets out the rights of its citizens and limits the power of the state. In terms of protecting speech, a constitution can be the most important document a state will ever adopt.

According to Matthews (1989: 346), the differences between the constitutions of the superpowers reveal the importance of protecting the rights of citizens to communicate. The First Amendment to the Constitution of the United States says 'Congress shall pass no law abridging the freedom of speech,' where Article 50 of the 1977 Soviet constitution said 'In accordance with the interests of the people and in order to strengthen and develop the socialist system, citizens of the USSR are guaranteed freedom of speech, of the press, and of assembly, meetings, street processions, and demonstrations'. The caveat speaks volumes of the attitude of the former Soviet Union to the rights of its citizens to communicate. By placing the interest of the government over the right of the people to speak, the Soviet Union sowed the seeds for its own destruction.

In a world where the only thing that is constant is change, a government that adapts best to change will survive the longest. Since the Enlightenment, philosophers have asserted that to the extent that a government exists at the consent of the governed, a government will adapt to change most easily when the citizens are informed of the options available. Limitations on speech have the natural tendency to limit the information available to citizens in the marketplace of ideas. The more burdensome these limitations become, the more a government limits its ability to adapt to change, and the more it jeopardizes its hold on power.

Former Socialist states such as Czechoslovakia are embracing the right of their citizens to communicate in their new constitutions. This development is promising to the extent that it

represents a shift toward pluralism. What remains to be seen is the effect of these new freedoms on persons who have lived under more repressive governments. It is not certain whether governments will survive the awakening of their citizens, but if the former Soviet Union is any guide, it is certain that once a people are given speech freedom, it becomes nearly impossible to take it away.

## International Charters

Just as the proximity of the American colonies forced them to negotiate trade agreements among themselves before they became the United States, the governments of the world are engaging in an ever-increasing dialogue in order to clear the way for economic activity. As world markets open up and the world becomes a smaller place, governments are increasingly forced to resolve conflicting policies so that their industries may prosper. International trade agreements have existed for as long as there has been international trade. But beginning with the formation of the United Nations after World War II, governments have met to agree on more than just trade issues. The members of the United Nations have agreed to charters which, among other things, address human rights. This was an important development in international law because it went beyond practical issues of trade to the moral issue of which activities by a government within its own borders will not be tolerated by the community of nations.

The practical limitation of international charters, of course is the limited enforcement capability inherent in an agreement between sovereign states. Short of military action, trade sanctions and censure are the strongest means available to parties to these agreements. The debate over the Maastricht Treaty demonstrates the trepidation that any government has with ceding any of its sovereignty to another governmental body. Probably not until the economic motivations for ceding authority become so compelling as to mandate economic or political union will states cede sovereignty to international organizations.

## Justifications for Regulation

Sig Mickelson and Elena Mier y Teran (eds.) *The First Amendment - The Challenge of New Technology*. New York/Westport/London: Praeger, 1989.



The way a government justifies limiting speech is very reflective of the government itself and the society that it governs. Such limitations could also be said to reflect the health of the government. The literature suggests that the healthier governments tend to be more protective of speech. It is the short-sighted self-preservationist motivations of bureaucrats that tend to endanger the free flow of ideas. Because it is an integral part of society, speech interacts with many interests that concern a government. The role of government in speech law is to define those interests and strike an appropriate balance between them. The readings in this survey all indicate that when a government's own interests are at stake, it is considerably less protective of speech.

### **National Security**

It is clear from the literature that national security is the most prevalent justification for laws limiting a person's right to communicate. The theme pervades discussions of socialist and democratic states in the Third World and the industrialized world alike. But a definition of national security must precede a discussion of how it can be invoked to justify limits on speech.

The readings in this survey point out two poles along the continuum of a definition of national security. Scharff and Thomas note that the U.S. Joint Chiefs of Staff define national security as 'a collective term encompassing both national defense and foreign relations of the United States; specifically, the condition provided by a military or defense advantage over any foreign nation or group of nations, a favourable foreign relations position, or a defense posture capable of successfully resisting hostile or destructive action from within or without, overt or covert' (Mickelson and Mier 1989: 68). This could be said to represent the traditional military view of national security. The term 'national security' has always had a military connotation, but some definitions are more expansive. The International Centre on Censorship (ICC) defines national security as 'the safety of a nation from threats by other nations to its political and economic independence, its territorial sovereignty, its cultural heritage and its way of life' (1991: 412). This definition encompasses more than merely military concerns; it addresses the motivation of a state to maintain

its sovereignty.

These two definitions indicate fundamental differences that have vast implications for limitations on speech. A government motivated only by military national defense concerns would tend to be much more protective of speech than would a government motivated by the ICC understanding of national security. Military national security concerns would only limit speech that could compromise the lives of military personnel presently engaged in conflict, or the lives of civilians threatened by a menacing foreign military presence or a violent domestic uprising. But as we saw in discussion of export control laws, limitations can be expanded to such areas as military technology, non-emergency military secrets, and government information in general.

A government motivated by the ICC notion of national security starts from a position significantly less protective of speech than a government that seeks only to maintain military integrity. If a government sees a threat to its political or economic independence as adequate justification to place limitations on speech, there is theoretically no limit on what can be banned. Any speech that is critical of the government could be banned by such a government. But even speech that is critical of society in general could be restricted.

Matthews (1989: xxv) points out that on the second day after coming to power, Lenin signed a decree that suppressed all anti-Bolshevik publications. Censorship under Stalin became worse. Economic, social, and demographic statistics disappeared; even official reports became infrequent. According to Matthews, Gorbachev's reform measures were too little, too late. After years of repression the Soviet system became so rigid that when the people were given a taste of the freedoms that the rest of the world enjoyed, the system snapped instead of bending with the people's increased appetite for change. More than any other, the Soviet example demonstrates that when a government, motivated by an expansive view of national security, limits communication, it actually puts at risk the sovereignty that it desired to protect.

### **Public Health and Safety**

Government activity in public health and safety information is the mirror image of communication law as it has been discussed up to now: most laws

in this area compel private parties to release information about health risks. Labelling laws and bans on some kinds of advertising are justified by the health risks that citizens face in consuming certain products. But governments' motivations may not always be so altruistic. Health information has been banned in order to preclude the adverse effects of its release.

The ICC (1991: 436) points out that some countries have repressed reports of the number of their AIDS cases. Some African countries fear this information would damage tourism, foreign investment, and national prestige. The dangers of such manipulation of information may be exemplified by Ireland, where religious and legal prohibitions against homosexuality have forced many gay men to marry to conceal their sexuality. Ireland consequently is said to have the highest incidence of HIV positive babies in Europe.

### **Personal Reputation**

The interest of a person in his reputation has long been a justification for limiting speech based on the law of libel and defamation. This differs from other justifications such as national security in that the interests at stake are personal rather than public. Not surprisingly perhaps, government rarely if ever deems this interest to be so compelling as to justify prior restraints on speech. This area of speech law falls instead under tort law. A person who claims to have been harmed by speech has a claim against the speaker much like one he would have had the speaker broken his leg. The ICC notes that in common law countries such as the U.S., Britain, Canada, and Australia, money damages for defamation can be very large. By contrast, money damages in civil law countries, such as those in continental Europe and Latin America, are considerably smaller and impose a relatively modest burden on the press. In the United States, speech that criticizes public figures acting in their official capacity is protected much more zealously than speech maligning a private citizen. It is much easier for a person with such a claim to recover in civil law states such as those in Europe.

### **Protection of Religious Speech**

When it comes to religious speech, governments tend to be either speech neutral, speech protective, or speech proscriptive. Both the United States

and the former Soviet Union were speech neutral in the area of religious speech. The U.S. Constitution's First Amendment guarantees the right of citizens to practice whatever religious tradition they choose but assiduously maintains a separation between church and state.

Matthews cites Article 52 of the 1977 constitution of the former Soviet Union which, on its face at least, is speech neutral. Article 52 says 'Citizens of the U.S.S.R are guaranteed freedom of conscience, that is, the right to profess or not to profess any religion, and to conduct religious worship or atheistic propaganda. Incitement of hostility or hatred on religious grounds is prohibited. In the U.S.S.R, the church is separated from the state, and the school from the church' (1989: 436). Although the Western cold-war propaganda asserted that the Soviet authorities were somewhat less than neutral in discouraging the free exercise of religion, the Russian churches seem to have survived the Soviet state.

The aspirational declarations of the United Nations seem to be more actively protective of religious speech. The International Centre on Censorship (1991: 416) mentions that the UN Declaration on Religious Intolerance (1981) recognizes that an important aspect of religious freedom is the ability to propagate the dogma, aims, or beliefs of a religion. The advantage of an international organization is that it does not have to concern itself with the establishment of a state religion that often hinders national policy. While the United Nations can confidently defend the right to religious speech, an individual nation must balance the defense of religious speech with any interests it may have in favouring religious establishment. The constitutions of the United States and of the former Soviet Union provided for strict separation of church and state. Because the United Nations need not bother with these concerns, it can be considerably more speech protective.

The reverse of the non-establishment coin is where a state religion is established. Some of these proscriptive governments tend to be very intolerant of dissident religious speech. Several Islamic countries require the content of teaching materials to conform to the religious dogma endorsed by the government (ibid.). Iran's Ayatollah Khomeini issued a *fatwa*, a condemnation of British novelist Salman Rushdie to death because his novel *The*

*Satanic Verses* was viewed as blasphemous and insulting to Islam (ICC 1991: 363). The novel is currently banned in over 25 countries (p.416).

### **The Effect of New Technologies.**

Ithiel de Sola Pool, *Technologies Without Boundaries: On Telecommunications in a Global Age*. Edited by Eli M. Noam. Cambridge, MA/London:Harvard University Press, 1990.

Speech law has become substantially more complicated with the introduction of new technologies. Because the way we communicate has been forever altered, the job of the censor and the regulator has become nearly impossible.

### **Effect on Ability to Censor.**

New technology tends to make the job of the censor more difficult. As noted above in the discussion of the Soviet *samizdat* texts, technology such as photocopiers and microcomputers helped intensify the practical problems of censorship (ICC 1991: xxvii). Also discussed above are the practical problems of the digitization of information. A book, which in some respects *can* be judged by its cover, can be burned; the contents of a computer disk, much less the contents of a computer network, cannot be discovered by superficial inspection.

The would-be censor who is faced with the task of controlling information in the form of one of the new technologies must seek either to control it before it is communicated or provide for penalties afterward. The former is known in legal parlance as prior restraint. To feel that it is justified in restraining the communication of information a government must first know that it exists. Government certainly knows of information that is owned by the government, and most governments strictly control which elements of such information are released. Freedom of information laws provide a foothold for critics of the government to gain access to governmental information, but these right-to-know laws are subject to national security concerns. Another form of prior restraint on information is thought to be the funding by government of research and the arts. As discussed above, there are explicit and implicit pressures on private individuals working with the support of government funds not to dissent. Since the pressure is implicit, the only

way to eliminate it is for government to get out of the business of funding these activities. But even most critics of government censorship agree would be an extreme solution.

How can the censor stop the release of information once it has already been communicated? The new technologies' speed and pervasiveness assimilates information and spreads it over a large area very quickly. Once the information has been communicated, the censor's only option is to punish the speaker. While this action does not satisfy the government's interest in preventing the communication of undesirable information, it does serve to discourage it from happening again, at least by the same speaker. The futility of the censor's attempt to stop the flow of information was readily demonstrated in the *Spycatcher* controversy. While it was banned in Britain, the book was on the best-seller list in Canada and the United States. The British experience has been that banning materials tends to boost, rather than inhibit, the sales of whatever is banned.

### **Technology and the Ability to Regulate.**

Regulators in today's technology explosion have found that even keeping up with emerging technologies is an almost impossible task. Breathlessly, regulators around the world are making policy on technologies that are becoming obsolete almost as fast as the rules can be laid down. The introduction of the computer into the telecommunications network has spurred innovation at rates that have surpassed even the most optimistic estimates.

The rule-making process at the United States Federal Communications Commission can take up to four years. Regulators wisely have concentrated on emerging technologies, operating under the theory that the rules will be in place when the technologies are ready to be deployed into the market. The international attention being paid to high-definition television (HDTV) is an example of this effect. HDTV is a technology that brings cinema-quality video into the home. The standards for HDTV are being discussed now among nations whose industries are developing non-compatible systems, even though HDTV services will probably not be widely available until fibre optics become dominant in the public network.

### **Effect on the Ability to Communicate**

New technologies pervade our everyday lives. These new technologies have profoundly affected our ability to communicate. It is difficult to imagine that ten years ago a mobile phone was considered an extravagance and the idea of a portable fax machine was a foreign, ridiculous idea. Cellular technology, cable technology, computer technology, all have conspired to bring the world into the information age.

Video teleconferencing obviates the necessity for much business travel. It also allows transactions to occur which otherwise would not have been possible. Cellular technology makes travel time more efficient by enabling users to transact business on the road. Cable technology has opened up huge new markets in the entertainment industry. Viewers are given a wealth of new sources of television entertainment and information. Video cameras have made movie moguls out of thousands. Computers have increased people's production of work geometrically.

These technologies allow people to communicate faster and more people. They expand our sources of information and our ability to manipulate it. New technologies have changed forever how business is conducted, as well as the way people interact with each other. Soon, fibre optics will bring unprecedented levels of information into each home. That information will be greeted by a piece of equipment that will combine the functions of today's television, computer, stereo, modem, fax machine, scanner, laser printer, and photocopier. Vast libraries of databases will be available to the researcher. No longer will a person be limited to a choice between one or two local daily newspapers; dailies across the world will be available through a simple menu selection. Thousands of cinema-quality movies will be available on demand; they will merely be downloaded, viewed, then stored or erased. The possibilities of new technologies are limited only by the imagination of those who are in the business of creating them.

According to Pool (1990: 13-18), writers have called the 'electronic revolution' the birth of the quaternary sector. Agriculture and other processes that create the raw materials for human sustenance constitute the primary sector; the transformation of these raw materials in

manufacturing is the secondary sector; information services are the tertiary sector. The shift to an information society became a revolution in the United States in the 1960's when the proportion of Americans working with paper went from one-fourth to one-half. Pool says the consequences of the electronic revolution are (1) to remove distance as a significant economic burden on communication, (2) to make different kinds of communication increasingly interconnected in a single digital network with the help of government policy; (3) to reverse the trend toward cultural homogeneity begun by mass media by promoting specialization among sources of information; (4) to shift populations away from urban centres towards suburban and rural areas by making the costs of communication less significant. The long-term effects of the rise of new technologies on government policy makers as the flow of information speeds up will be to shift their attention from a national to an international focus.

That is not to deny that there is a downside to the information age. Critics say that information is just that, and the real value of information is in critical analysis. The emphasis of the information age thus far has been to provide more raw information without the means of putting the information into perspective. For the information age to live up to its true potential, it must increase understanding, not just knowledge.

### **An International Right to Communicate?**

Savage, James G. *The Politics of International Telecommunications Regulation*. Boulder/San Francisco/London: Westview Press, 1989.

The most significant area of international speech law concerns the issues of national and transnational communication rights. Although UN documents do not concern many lawyers in their daily pursuits, these agreements will carry greater significance as law becomes increasingly international. UN representatives have served us all well by laying a policy foundation that is highly protective of our right to communicate for resolution of disputes in the future.

### **Article 19**

ICC. *Article 19, International Centre on Censorship. Information Freedom and Censorship: World Report*

1991. Chicago: American Library Association, 1991.

*Article 19 of the Universal Declaration of Human Rights* proclaimed by the UN General Assembly in 1948 reads: 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.' As an aspirational international charter, the declaration does not have any real enforcement power, but that is not to deny its importance as a document. It has set the standard by which each nation will gauge the actions of other nations. It has also served the important function of setting the agenda for the future.

Article 19 asserts that everyone has freedom of opinion and expression. The inclusion of 'everyone' is quite provocative. Surely Article 19 protects those who are critical of their government. They have the right to that opinion and the right to express that opinion. But does it extend to the foreigner who expresses those ideas? On its face, Article 19 would not allow a country to place ideological restrictions on travel. Surely it protects the citizen who is critical of his government, but does it protect the non-citizen who is critical of the government in question? On its face Article 19 protects 'everyone regardless of frontiers.' The non-citizen, it would appear, is protected under Article 19. Taken one step further, Article 19 could be used to challenge national restrictions on the right to travel.

Because it calls the freedom to hold opinions, to receive information, and to impart information, a 'right,' Article 19 is a powerful statement of the freedom to communicate. A right is much more fundamental than a privilege. A right is something that cannot be taken away by government. Good government exists to protect the rights of the governed, not to limit them. The international right to communicate embodied in Article 19 will have profound effects on how arbitrary governmental action is addressed in the international forum. As governments become increasingly conscious of other governments as a result of the globalization of economic markets and the communications explosion, the breadth of Article 19 will surely be significant.

### **Transborder Speech**

Article 19 guarantees the right to express ideas

'through any media and regardless of frontiers.' Trans-frontier speech is central to the meaning of Article 19, for just as the freedom to communicate internationally serves to provide long-term political stability for the regulating government by allowing it to adapt quickly to change, so does the freedom of international communication serve to promote peace by allowing governments to adjust to changing worldwide circumstances without having to resort to violence.

Transfrontier communication is nothing new. Early conflicts in transfrontier broadcasting ironically began with wartime propaganda. Tokyo Rose enticed American soldiers to desert during the Second World War as 'Lord Haw Haw' broadcast from Germany to try to undermine British morale. Governments such as the former Soviet Union attempted to stop the flow of unwelcome broadcasts across their borders through use of deliberate interference or 'jamming.' According to Savage (1989: 132-141), jamming occurs when countries employ technical means to restrict the free flow of information from abroad as a defensive tactic. Broadcast jamming is as old as radio broadcasting itself. During the Cold War, the U.S. began broadcasting the Voice of America and Radio Free Europe (financed by the CIA). The Soviet Union objected: 'each country has . . . the sovereign right to defend itself against this form of aggression, just as it had the right to prevent opium smuggling, the sale of pornographic literature, or the traffic in persons'.

But the U.N. Subcommission on Freedom of Information and the Press of the Commission on Human Rights adopted an American proposal explicitly condemning under Article 19 the jamming of these broadcasts. The rationale was that jamming was a denial of the right of all persons to be fully informed. Statistics suggest that in 1986, between 50% and 90% of Russians, Czechoslovakians, Hungarians, Poles, Rumanians, and Bulgarians tuned in to the Radio Free Europe and Voice Of America broadcasts. 'It would therefore appear that jamming is an ineffective, self-defeating exercise which only serves to encourage listeners to try that much harder to listen to the forbidden message. One suspects that if the Soviet authorities had not taken RFE/Radio Liberty quite so seriously neither would many Soviet listeners.' Savage predicted in 1989 that the USSR would continue to jam American broadcasts in order to

preserve the Soviet state. Could he have predicted that the underlying thesis of that jamming would ultimately bring down the USSR?

### Cold War Conflicts

Andres Oppenheimer. *Castro's Final Hour: The Secret Story Behind the Coming Downfall of Communist Cuba*. New York/London/Toronto/Sydney/Tokyo/Singapore: Simon and Schuster, 1992.

The United States has also been sparring with a Socialist government located not 140 kilometres from its coast. There has been considerable outcry against U.S. propaganda broadcasts to Cuba - partly on the grounds that they interfere with Cuban domestic stations (e.g. Alexandre 1991). Most of the complaints neglect to mention that as soon as he came to power in Cuba in 1959, Fidel Castro stopped abiding by the North American Regional Broadcast Agreement (NARBA), which allocated radio bandwidths in the region. The Agreement had been signed by seven countries including the United States and Cuba in 1950. The International Centre on Censorship describes how broadcasts of the U.S. station, TV Marti have persistently been jammed by Cuba (p.98). Andres Oppenheimer, who has studied Cuban-American relations extensively, points out that while Radio Marti enjoys a big audience in Cuba, TV Marti is rarely seen on the island; he has never met a Cuban who has seen or heard of TV Marti (p.333). The Cuban government cites a sovereignty-related rationale of territorial integrity and political independence as justification for the jamming. The International Centre on Censorship has written the Cuban government expressing its concern about the jamming of TV Marti.

In some cases transfrontier broadcasting results from the broadcasters' choice of transmission equipment. How governments will handle material which is legal in the broadcasting country but illegal in the receiving country is unresolved. The European Community Directive on Broadcasting seeks to harmonize the rules governing broadcasting in Europe.

The European court of Human Rights has decided only one case concerning transfrontier communication. The International Centre on Censorship (1990: 430) cites *Autronic A.G. v. Switzerland*, in which a Swiss company requested

governmental permission to broadcast a Soviet TV programme. The Swiss government denied the company's application because the Soviet Union, in its desire to prevent disclosure of confidential information, had itself refused permission. The European Court ruled that the denial violated Article 10 of the European convention which guarantees the free flow of information across frontiers.

The issues of transborder speech today are more technical than content-oriented. The International Telecommunications Union (ITU) is involved in setting uniform standards for manufacturers of communications equipment. Their role in the realm of international communications policy will be discussed at greater length below.

### Developments in Canon Law

Canon Law Society of America. *Code of Canon Law, Latin-English Edition*. Washington: Canon Law Society of America, 1983.

While the 1917 Code of Canon Law made no reference to freedom of speech and obviously had no interest in mass communication, its 1983 successor both acknowledges that freedom, according the principles of the Second Vatican Council, and devotes, as the Council also did, some modest attention to what official Vatican documents refer to as the 'instruments of social communication.'

Canon 212 on freedom of expression is one of 16 canons enumerating the rights and obligations of all the Christian faithful, both clerical and lay. There are 8 more that deal with the rights and obligations of lay people. Rights and obligations are dealt with elsewhere in the Code, for example in the sections on the sacraments and on Catholic education, but the canons in Book II of the Code, (on the People of God), tend to treat some of the more fundamental rights of believers. Indeed, during the drafting period, the Commission for the Revision of the Code of Canon Law had considered including these canons in an altogether new document on the fundamental law of the Church.

The particular canon on freedom of expression assures the faithful the right 'to make known their needs, especially spiritual ones, and their desires to the pastors of the Church.' As long as they consider the integrity of faith and morals, have due reverence for their pastors, and take into account

the common good and the dignity of persons, those with knowledge, competence, and stature 'have the right and even at times the duty to manifest to the sacred pastors their opinion on matters which pertain to the good of the Church, and they have a right to make their opinion known to the other Christian faithful...' This principle comes almost verbatim from the conciliar *Dogmatic Constitution on the Church*, no. 37, but the Code cites as other references the *Decree on the Instruments of Social Communication*, no. 8 (the duty to form and voice worthy views on public affairs); the *Decree on the Apostolate of the Laity*, no. 6 (the duty of the laity to discover opportunities of announcing the Gospel); the *Decree on the Ministry and Life of Priests*, no. 9 (the duty of priests to listen to the laity and acknowledge their competence); and the *Pastoral Constitution on the Church in the Modern World*, no. 92 (the fostering of dialogue within the Church as a prerequisite for dialogue between the Church and the world).

Communications are considered more specifically in the 11 canons that constitute the fourth, ('Instruments of Social Communication and Especially Books,') of five titles in the new Code's Book III on the Teaching Office of the Church.' Canon 822 affirms the right of pastors to use communications media in fulfilling the Church's responsibility, asks pastors to educate the faithful

to use the media in ways consistent with a human and Christian spirit, and finally calls upon the faithful, especially those involved in media regulation, to help the Church to use the media effectively. Pastors are told in canon 823 to be vigilant against anything in the media that would bring harm to Christian faith and morals.

Canons 824-830 deal with censorship of publications. Requirements for prior approval have been significantly simplified, and prior approval is needed only for the following: books and translations of Sacred Scripture, liturgical books as well as their reprints and translations, prayer books, catechisms and other materials for catechetical instruction, textbooks for religious instruction in elementary, middle, or higher schools (the last category probably including colleges and universities). Prior approval is only 'recommended' for other writings on sacred scripture, theology, canon law, church history, and other religious or moral disciplines.

Specifically with respect to communication media, canon 831, §2 prescribes: 'It is the responsibility of the conference of bishops to establish norms concerning the requirements for clerics and members of religious institutes to take part in radio or television programmes which deal with questions concerning Catholic teaching or morals.'

## II. Economic and International Telecommunications Law

Raymond M. Duch. *Privatizing the Economy: Telecommunications Policy in Comparative Perspective*. Ann Arbor: The University of Michigan Press, 1991.

If the law of communication centres on speech, the law of telecommunications centres on the communications industry, that is, on the gadgets and wires that make communication possible. A discussion of international telecommunications law must center on telecommunications regulation. Because telecommunications is almost always regulated, and regulation requires policy, most of the literature on the regulation of telecommunications deals with economic and social policy making.

### Privatization

When British Telecom was privatized under the Thatcher government, another landmark in the

debate over the merits of public and private ownership was reached. During the 1980s the literature on the subject of privatization was strongly in favor of private ownership. As the Communist empire crumbled, public opinion accepted the superiority of private ownership as axiomatic. Competition and private enterprise, it is argued, deploys capital more efficiently than public enterprises. Raymond Duch's study (1991) challenges these notions and makes the case that privatization is not the best solution in every situation.

Duch's study sets up five categories of telecom ownership schemes based on varying proportions of public and private ownership and control. There

exist the private firm, semiprivate firm, government business, government corporation, and government agency. He points out (1991: 44) that the United States is the only Organization for Economic Cooperation and Development (OECD) country where telecommunications services are provided primarily by completely private telcos. The privatized British Telecom and NTT in Japan are examples of semiprivate enterprises, Italtel is an example of a government business, Deutsches Bundespost is an example of a government corporation, and France Télécom an example of a government agency. Duch emphasizes that these organizations vary in their financial autonomy and the discretionary authority of their management. Ultimately, Duch's categories turn on the level of political control exerted over the telecommunications services organization.

Duch points out that market barriers are economic and political (pp. 48-49). Economic market barriers in the telecommunications industry have led many to call it a natural monopoly. Political market barriers vary with the political institutions involved in the decision-making. Duch bases his thesis on hypothetical pluralist, statist, and corporatist societies patterned after Britain, France, and Germany.

The pluralist society is one where there is high access to the political process and moderate protection of entrenched interests (Duch 1991: 110-114). Pluralist societies are the most conducive to liberalization and privatization because they pose fewer barriers to new and unconventional interests that advocate policy change. The statist society is one where there is low access to the political process and low protection of entrenched interests. Because the telecommunications monopoly in a statist society is wholly owned by the government, and the political process is not easily influenced, the monopoly exists subject only to the will of the government. A corporatist society such as Germany is characterized by low access to the political process and high protection of entrenched interests.

Aside from the U.S., telecommunications services until the last decade had been almost exclusively state-owned. Duch believes that the economic performance of a state-owned utility depends more on the political constraints to which the management is subject than on the fact of

government ownership. He argues that pluralist societies such as the U.K. and the U.S. went to private ownership because they are more receptive to privatization than are more statist and corporatist societies. According to Duch, institutions in pluralist societies are most conducive to liberalization and privatization because they pose fewer barriers to new and unconventional interests that advocate policy change. Some nationalized enterprises, such as French banks and Italtel, have flourished, while others such as the French and British postal, telegraph and telephone (PTT) authorities have floundered. He concludes that the economic performance of state-owned firms declines as political control increases.

Duch makes the case for and against privatization. In defense of private ownership, he points out that as political control increases, management's ability to raise capital and define corporate strategy is seriously compromised. Political pressure can force managers to cross-subsidize less profitable services with more profitable services. Setting political goals for telcos such as lowering rates to counteract macroeconomic inflation and providing uniform universal service and protectionist purchasing policies, may be laudable social objectives, but will damage the organization's market position through the imposition of non-market constraints.

In defense of public ownership, he says that private firms are more likely than public firms to 'cream-skim,' or to service the most profitable urban sectors of the markets, while under-serving or not serving at all the less profitable remote areas. Acknowledging that private entities perform better than publicly owned firms, Duch points out that this performance is economic performance, and in achieving its economic goals, a private business may not achieve the positive 'externalities' of public ownership (p.14). He lists six positive externalities of the public ownership of telcos: universal service, risk acceptance, infrastructural development, defense and security, protectionism, and macroeconomic adjustments.

Although the popular press and political debaters have painted public and private ownership in black and white terms, the evidence in Duch's study indicates that the differences are considerably more complex. What is critical to him is the 'institutional design' of the government and of the telecommunications industry in that country



(p.260). A weakness in his argument is that he fails to indicate how the positive externalities of public ownership apply differently to his various political categories. Surely universal service is a virtue, but it is no more virtuous in Germany than it is in Britain. The debate should not assume that the choice is between private ownership and public virtue; the question should be how the most service can be provided with the most efficiency.

### **New Competition in the Marketplace**

Jonathan David Aronson and Peter F. Cowhey (eds.). *When Countries Talk: International Trade in Telecommunications Services*. Cambridge: Ballinger Publishing Co., 1988.

In the early days of the telecommunications industry, monopolies armed with government mandates invested huge amounts of capital in what would become the communications infrastructure of the world. The sheer size of the task of running wires on telephone poles in front of every house in the world was staggering to the industrial-age mind. That task is now substantially complete. During the intervening years the wires have remained substantially the same; what changed was the equipment at the wires' ends. With innovations in electronics, from the tube to the transistor to the chip, telephone services evolved into communications services. Today even the old copper wires are being replaced with fibre optics in preparation for the future of the communications industry.

The introduction of these new technologies has brought increased competition into the communications marketplace. During the early days, the telephone company, or the postal telegraph and telephone (PTT) authority was a true monopoly. It owned the equipment manufacturers, it owned the infrastructure, it owned the telephone sets, and it sent its customers monthly bills.

The ownership scenario has not changed as fast as communications technology has, but as innovations in technology make new services possible, it is becoming increasingly difficult for these huge monopolies, mostly state-owned, to provide the services their customers demand. The PTTs and state-owned monopolies are increasingly relying on private firms to provide the expertise required to keep up with consumer demand. The

experience in the United States has been that these private firms will become uncomfortable with working in the shadow of a huge monopoly, and will increase pressure on regulators to break up the monopoly.

### **To Break, or Not to Break Monopolies?**

If a telecommunications monopoly is broken up, what is to become of its huge infrastructure? None of the private firms have the wherewithal to run a wire into every home and every office in their country. Again, the American experience was to divide the infrastructure into smaller operating units and to allow the private firms to compete on this smaller scale.

The result of a policy of breaking up telecommunications monopolies into smaller units and allowing competition is to sever the network between infrastructure and services. Where the network is owned by a monopoly the services going through the wire and the equipment are sold only by the monopolist. Where the network is opened up to competition, the services going through the wire and equipment are sold by many companies. Firms that own no infrastructure can sell services where competition is allowed.

Using the computer analogy, the communications industry has been divided between hardware and software. New competition will increasingly cause firms to specialize in one or the other. The equipment economy will provide the computer technology, the fibre optic cables, and the home electronics that will make up the bones and flesh of the communications industry of the future. The service economy will provide the data, information, and entertainment products that will bring the equipment to life. It will not be until the service economy is entirely separate from the infrastructure and uses it as trucks use highways that the service economy in communications will have come into its own.

Aronson and Cowhey (1988: 5) observe that the conventional wisdom in economics has been sceptical of the value of what is produced in the service economy. Adam Smith, Karl Marx, and most of their economic heirs have maligned services as unproductive. Economists base their theories on agricultural and manufacturing economies. Most economic models are not designed to deal with the changes in economic behavior produced by a world economy united by inexpensive information flows.

The General Agreement on Tariffs and Trade (GATT) was designed to deal with trade in goods, not services. This is because most services were generally directed toward national markets, and in telecommunications these national markets were made up of monopolies. The debate about international trade in communications services questions how far along the continuum from monopoly control toward free trade it is appropriate to move.

Aronson and Cowhey predict that, under the prodding of the EC, most European countries will split their national postal and telecommunications institutions. Such a division reduces the propensity to use telecommunications as a form of cross-subsidy for unprofitable postal services. By making cross-subsidies considerably more visible and by dividing bureaucratic loyalties, regulators will remove artificial market barriers. But who will make the rules as telecommunications firms enter the world market? The ITU dominates the regulatory scene, but the authors argue that politicians will shift the locus of major international telecommunications decisions to an institution other than the ITU. Although the GATT is not perfectly suited for such responsibilities, it will no doubt join, though not replace, the ITU at the center of the telecommunications stage.

### **The Fall of Natural Monopoly Theory**

An industry may be considered a natural monopoly when the market for its goods or services may be served most efficiently by one firm. McNamara (1991: 168) argues against the traditional natural monopoly argument long posed by communications monopolies. As an example, he cites the experience of American Telephone and Telegraph (AT&T) in the United States. As new technology was introduced, the rights to it were purchased by AT&T, but without competitors AT&T did not have an incentive to implement the technology. As a result, the new technology sat on a shelf, and all that AT&T had purchased was continued control of the market. By not allowing competitors to implement the new technology, regulators perpetuated the non-market distortions of the telecommunications industry. The natural monopolist's argument that competition results in needless duplication of facilities is based on the assumption that technology does not change.

Aronson and Cowhey distinguish between *infrastructure* and *telecommunications service capabilities*. Infrastructure is composed of such physical facilities as transmission lines and switches. Telecommunications services include plain-old-telephone-service (POTS), value-added services based on new technologies, and information services. Enhanced services differ from basic services in that the information provided by the sender is changed, stored, manipulated, or otherwise acted upon in the network before the recipient receives it. Value-added and information services are all enhanced services.

PTTs argue that it makes no sense to permit competition in the infrastructure because it is a natural monopoly. Most countries assume that a natural monopoly existed for the telecommunications infrastructure as a result of economies of scale and scope. Economies of scale exist when increasing output of a single product reduces costs of producing that product. Economies of scope exist when there are reduced costs because of complementarity between two or more products. Even if there is no natural monopoly, some markets yield little competition because of major barriers to new entrants, particularly large fixed investment costs.

It is true that economies of scale and scope work against potential entrants into the telecommunications infrastructure economy. The entry barriers are simply too large for many smaller firms. Only by dividing the infrastructure market into smaller units will there be meaningful competition in the infrastructure. But regulators are unwilling to do that mainly because of concerns that only lucrative, high-density markets will be served and outlying regions will be left out in the cold. What the regulators assume is that once urban markets are saturated, infrastructure firms will either be unwilling or unable to enter into the suburban and rural markets. What the regulators forget are the lessons of the cable television industry. When the demand for services makes the cost of installing an infrastructure manageable, firms will be falling over each other to get into those markets. This was accomplished in cable television through the grants of exclusive licenses to infrastructure firms for certain manageable geographical areas. All a regulator must do is determine how long an infrastructure firm must have an exclusive license to recover its investment, then open the market to

competition after that investment has been recouped.

The telecommunications service economy is surprisingly free of the limitations of economies of scale and scope that make the telecommunications infrastructure economy so difficult to manage. The difficulty that service firms face is getting access to the network. This is where the regulator must step in. Once an infrastructure firm has recouped its investment, the regulator must not only open the infrastructure market to competition but must also open the network to new service firms. The services are what creates the demand, which drives the economic engine of the communications industry.

### **The Deceptive Attraction of Protectionism**

The answer to the question of whether to open national markets to international competition will vary depending on whether a politician or an economist is responding. The politician, along with the labour union and the national firm, argues that opening domestic markets to foreign competition hurts jobs and local industry, while local money goes into foreign banks. The economist argues that international economies of scale and scope make protecting national markets inefficient, and will ultimately serve to undermine national interests by forestalling gradual change.

Pool (1990: 111-114) suggests that enlightened protectionists do not argue for a halt to innovation which may eliminate domestic jobs. Instead, large national institutions such as postal unions, with enormous commitments in jobs and plant, seek measured change. Executives cannot be indifferent to those who lose to electronic competition.

Pool explores three supporting arguments for protectionism. First, he considers classic mercantilism theory which says, in effect, that exports are good for a country and imports are bad. The assumption is that a purchase from a foreign firm is one less sale that a domestic firm will make. Pool points out that trade in telecommunications equipment tends to be more protectionist than other electronic industries because it is usually national monopolies which make the purchases.

Second, sovereignty issues arise when foreign-owned firms are providing essential services. National regulators are concerned with foreign-

owned firms controlling information that may lead to a compromise of national security. Foreign ownership of broadcast stations has been restricted in many countries because of fears of the ideological influence of foreign owners.

Third, regulators argue that the integrity of national culture will suffer at the hands of foreign influences. Using a theory of cultural imperialism, critics of the free flow of information argue that dominant powers such as the U.S. impose their own values on the world at the expense of so-called authentic native culture. A natural response to the drumbeat of new fads which arise at an increasingly faster pace, is to restrict the inflow of new ideas. It is ironic that most literature on cultural imperialism originates in the the U.S. Further irony emerges as the anti-imperialist populist theories of American intellectuals are disseminated to the world by the very commercial system of media distribution that they criticize. Instead of cultural imperialism, Pool views the dynamic as cultural diffusion, arguing that there is increasing convergence of world culture.

### **Anti-Protectionist Arguments**

Pool rebuts the cultural integrity arguments of protectionists. So-called cultural imperialism occurs when the culture of one country, the source culture, is exported to another country, the receiving culture. Pool likens American television to German physics and French impressionism. While a receiving culture initially depends on the source culture, it eventually adapts its activity to its own values. Pool notes in support of his thesis that there are no isolated civilizations in the world nor have there ever been. Ralph Linton wrote in 1936 that no culture 'owes more than 10% of its total elements' to its own invention (Pool, 1990: p.66). For example, while cultures which have not developed the facilities for large-scale video production rely on foreign sources, as a local industry develops, the message will be tailored to the local audience. The main barrier to entering new communications industries is training people to produce the services and gaining access to equipment. Pool argues that 'status-maintenance devices' such as censorship, licensing, and copyright, tend to inhibit the patriation of foreign cultural elements (p.135).

Pool does not directly rebut the mercantilist arguments of the protectionist, but it is not entirely

necessary for him to do so. In 1776, Adam Smith rebutted mercantilist theories in *The Wealth of Nations*. Trade barriers impose artificial restraints on the efficient operation of capitalist markets. By keeping national markets closed, regulators harm their international competitiveness, and in an increasingly international business environment, international competitiveness is the name of the game. Tariffs, for example, cause foreign manufactured parts to become more expensive, which in turn makes the product of the national firm which assembles those parts that much more expensive to produce. And when the national firm sells its product on the international market, it will be that much more expensive and, consequently, that much less profitable. But the regulator, who is usually also a politician, often ignores the economist's advice and opts for short-term protection of local firms and local jobs which are often being undersold by more efficient foreign firms.

### **Regulating the New Marketplace**

Motivated by political considerations, government agencies set rates for telecommunications almost everywhere. According to Pool (1990: 106), 'In all democratic states, even those that sedulously avoid any regulation of print media, the regulations on electronic communication are profuse; for the international communicator what is particularly bothersome is that they are different and constantly changing from country to country'. Where rates are set by the PTTs, the public has no protection, since the ministry is in effect setting the rates for its own services. Where politicians themselves set rates, the services would likely go into deep deficits before those same politicians raise rates for their constituents. Rate setting by regulatory agencies inevitably becomes very complex because regulators are in the business of making rules not simplifying them. In a truly private economy, which does not exist in the communications industry, prices would be set by market forces.

Whoever is regulating prices has several options of pricing models from which to choose. The literature presents a few possibilities. 'Rate-of-return' pricing where the regulated firm is allowed a fair profit on its income is used in the U.S. by the FCC. Some PTTs use 'value-of-service'

pricing where a class of customers is charged what the service is worth to them or, in other words, what the monopolized market will bear. 'Marginal cost' theorists argue that the fairest way to set prices is by using 'peak-load pricing,' which is explored below.

The current regulatory environment developed in response to a market characterized by person-to-person telephone calls and over-the-air radio and television broadcasting. Today, demand is undergoing a fragmentation and specialization that has increased the number of players and produced a more competitive environment that early regulators did not foresee (Pool 1990: 180). The regulatory framework in coming years is likely to be characterized by less regulation of business practices, managerial decisions, and ownership; less centralization of regulation at the federal level; more passive regulation in the form of benign oversight; and more exempt areas. According to McNamara, the benefits to society of immense regulatory bureaucracies do not offset their huge costs: 'The dynamic benefits to society of competition in an industry subject to great technological advances are likely to be far greater than the cost advantages of regulated monopoly under the weak economies of scale that supposedly existed in the past, but that were probably lost in the costly bureaucracy of the former telecommunications monopoly and its accompanying regulatory agencies' (p.181).

### **Rate-setting in a competitive market**

The telecommunications industry has been called a natural monopoly, that is, one where competition leads to inefficiency. In such a situation each firm is required to duplicate very high capital investments, yet none benefits fully from the significant scale economies offered by the industry.

Under rate-of-return regulation, the regulated firm is permitted to earn a fair return on the assets in its rate base. The regulated firm thus has an incentive to depreciate its capital equipment slowly and retain it in use perhaps long beyond its useful life. Regulated public utilities often use economically obsolete capital equipment alongside modern equipment, earning the same return on both, the higher operating costs being passed along to customers through higher rates (Pool 1990: 106). As technological innovation occurs, the monopolizing firm has an incentive to defend its

monopoly status by acquiring patents and cooperating with regulators. McNamara (1991: 64) paints the picture of a virtually incestuous relationship between the regulator and the regulated in telecommunications in the United States. The monopoly survives partly because of its desire to retain its status and the regulator's desire to retain its own. Rate-of-return has been criticized for not encouraging economic efficiency, but economic efficiency is not necessarily the primary goal of regulation. Rate-of-return regulation is intended to protect the consumer from the threat of monopoly and to protect the rights of the utility.

Marginal cost regulation, popularized by the public-interest regulatory theorists, accounts for opportunity costs incurred in periods of peak use and fixed costs. So, for example, a telephone call placed at three o'clock in the morning is less expensive than one made at three in the afternoon because the opportunity cost to network capacity (McNamara 1991: 145). If one assumes the optimally designed system, 'peak load pricing' is universally favored by economists but rarely encountered in regulation because of the complex application of that method of pricing. The ostensible benefit of peak load pricing is that it promotes new investment and innovation in order to increase peak capacity. This is a value that rate-of-return theory lacks.

Value-of-service rate regulation allows regulators to set rates for communications services at what consumers are willing to pay for them, regardless of what they cost to provide. Value-of-service allows regulators to charge different groups different rates for the same services. The most common use of this pricing method is to overcharge business customers for communications services and to use the profit to subsidize less profitable consumer communications services, as well as unprofitable postal services. This is known as 'cross-subsidization.' Cross-subsidization is generally popular among politicians and unpopular among economists.

### **Cross-Subsidization and Universal Service**

The regulatory theories of cross-subsidization and universal service are related. Regulators often use cross-subsidies to ensure that less profitable geographic areas get levels of communications service comparable to those in more profitable

areas. These theories, like many others, are popular among politicians and unpopular among economists. Economists argue that by stripping profits from profitable market sectors and subsidizing unprofitable market sectors, the practice of cross-subsidization breeds inefficiency. Politicians argue that some services are inherently unprofitable, yet must still be provided, and that cross-subsidization does so most efficiently.

Cross-subsidization between the communications industry and less profitable industries such as postal unions are also arguably unnecessarily inefficient economically. It has the effect on the communications industry of providing a disincentive from achieving a profit. It also takes capital away from research and development necessary when the communications industry is forced to compete. Cross-subsidization also harms the postal unions by removing incentives to become profitable. An industry that receives subsidies can become lazy and fail to explore less costly methods of delivering service, simply because there is no incentive to do so. Defenders of cross-subsidies argue that in industries such as postal services which are inherently labour-intensive and subject to the cost of labour, cross-subsidies are necessary to provide affordable service.

Cross-subsidization between local service networks is justified by regulators who argue that subsidies flow from high-density urban customers to low-density rural customers. With value-of-service pricing, customers pay for the service's value to them, not cost of providing that service. McNamara criticizes this theory for its assumption that without cross-subsidization, rural areas would not be served. He questions whether this is so and argues that providers can have a fair rate-of-return in serving rural areas (1991: 105).

McNamara points out how cross-subsidization fails in a competitive communication industry and argues that it ultimately serves to undermine the goal of universal service that was cross-subsidization's initial justification. In McNamara's example, regulators set tariff rates where a communications firm must cross-subsidize local phone service with long-distance service. When competitors are allowed into the long distance market, and can charge the lower rate because they do not carry the burden of subsidizing other market segments, the former monopolist must lower long-distance rates to compete and raise local rates to

compensate for its lost profit. Higher local rates create incentives for competitors to enter the local telephone market, especially using new technologies. Subsidies to local phone services grow out of the desire to ensure universal telephone service in a monopolistic system, but these same subsidies in a competitive environment are now causing long-distance businesses to bypass the local exchange companies, thus threatening local exchange revenues and possibly bringing about the local rate increases that will endanger universal telephone service.

### **Spectrum Management Policies.**

Although the discussion up to this point has almost exclusively involved telephone services, one of the most pressing issues in communications regulation is the radio spectrum. The radio spectrum is the range of frequencies of electromagnetic waves that can carry communications services. These include television, satellite, microwave, and cellular communication, in addition to radio services. The spectrum is a finite resource and as such is a very valuable but intangible commodity. Governments treat it as a public resource subject to government control.

Firms that have use of the broadcast spectrum are in an enviable position. Because the spectrum is finite, they have a finite number of competitors. Further, because of the huge investment by broadcast consumers in receiving equipment, new competition is only a distant possibility. Most governments divide the spectrum among different technologies.

Pool (1990) identifies several options for allocation of spectrum space, among which are lotteries, auctions, and merit allocations. Lotteries are arguably fair, but spectrum space often goes to firms that intend only to sell their rights to an established broadcaster, and the government has only lined the pockets of a lottery entrepreneur with money derived from the exploitation of a public resource. Auctions of spectrum space assure full use of the space and serve as a source of revenue for a government, but they disfavour new enterprises. Merit allocation systems, where government solicits applications from firms seeking to use spectrum space, have

the advantage of enabling the regulators to implement specific policies and providing some basis for review. A merit allocation system is probably the most fair and efficient of the three systems because it allows wealth to be a consideration, though not the determining factor, and it allows the government to implement policies promoting broadcast diversity.

The big-picture decisions of regulators concerning spectrum allocations for new technologies will have the longest lasting effect on the communications industry. When new technologies arise, regulators must decide which of them may use the public airwaves. This decision will make or break a budding technology. Not surprisingly, a fair amount of lobbying goes on between entrepreneurs and regulators when such decisions are being made, and the possibility of corruption does exist. But an honest regulator who keeps abreast of the technological innovations and the market dynamics in radio technology will be able to make a fair decision about which technologies will survive in the market and which will not.

The ultimate issues in spectrum management arise when radio technologies go international. At that point, regulators must negotiate with regulators in other nations, often along with communications firms. These international negotiators must make decisions concerning technical compatibility of radio equipment in addition to all of the other regulatory decisions which are made nationally.

Coordinating international use of the airwaves may seem like a daunting task; there are thousands of possible uses for each frequency, some requiring more bandwidth than others, some reaching further than others. International spectrum management must first eliminate the interference that occurs when two radio sources are using the same frequency. Spectrum managers must then identify priority technologies and set standards. If regulators and lawyers had the task of conducting these negotiations, their adversarial inclinations would inhibit progress. The task is simply too large. Today these negotiations are successfully conducted - meticulously, not contentiously - by engineers, not by lawyers, at the conferences of the International Telecommunications Union.

## **The Role of the International Telecommunications Union (ITU)**

The ITU and its predecessors were established in response to necessity. Any form of trans-border communication requires that the technology at both ends of the message be compatible, and there must be some means of assuring that the message arrives at its destination. Savage describes how, in the earliest days of European telegraphy, when messages were sent to neighboring countries, they were telegraphed to the border, transcribed, literally handed across the border, then recoded and sent on to their destination (1989: 28). While all would concur that such a system would not work today, nations still must find mutually agreeable means of regulating communications across their borders. The literature on international telecommunication regulation focuses its attention on the ITU.

Created by a merger between the International Telegraphy Union and the International Radio Conferences at the 1932 Madrid Telegraph and Radiotelegraph Conferences the ITU is a specialized United Nations agency entrusted with harmonizing and coordinating world telecommunications (Savage 1989: 36). It can be said to be a 'control center' for the provision, maintenance, operation, and coordination of international telecommunications (p.15). Its 160 member countries meet every few years at Plenipotentiary Conferences to review and, if necessary, revise, the International Telecommunication Convention the Union's governing document. Plenipotentiaries also establish general ITU policies and priorities and elect ITU officials.

There is an ITU Administrative Council, made up of 41 elected members, which is responsible for implementing decisions of the Plenipotentiary. The difficult and detailed work of the ITU is done at administrative conferences such as the World Administrative Radio Conference (WARC) and the World Administrative Telephone-Telegraph Conference (WATTC), where standards are agreed on and spectrum space is allocated. The Secretary-General of the ITU organizes conferences and attends to ITU's publications and documentation. Consultative committees for radio (CCIR) and telecommunications (CCITT) meet before every WARC and WATTC to provide the conferences with necessary technical information

and to make recommendations which usually win conference support. The International Frequency Registration Board (IFRB) records, registers, publishes, and assesses the legality of every radio frequency used in the spectrum (Savage 1989: 15-18).

The ITU became a specialized agency of the United Nations in 1947, when it was reorganized along U.N. lines after a long dormancy during World War II. As the Belgian delegate to the 1947 conference pointed out: 'Our Union is an essentially *technical and administrative body* . . . as a result, international politics must continue to be excluded from its discussions' (Savage 1989: 39). But because of the commercial impact of the decisions made at the ITU by the CCITT, CCIR, and the IFRB, these decisions are subject to lobbying just like other administrative actions. This introduces *de facto* politics into the process.

With respect to the legal status of ITU decisions, the Union's regulations have tended to follow general patterns of international law and, like most international regulations, rely heavily upon the goodwill and cooperation of signatory countries. Some of this goodwill arises on a *quid pro quo* basis through trade negotiations among participating nations. If a nation violates the Radio Regulations or the Convention, or fails to adopt a CCI recommendation, the ITU may censure the offending party, but it can do little more than that. Fortunately, most countries believe it is in their interest to comply and cooperate with ITU regulations. In turn, the Regulations are largely successful because they reflect the needs and interests of the majority (Savage 1989: 48).

### **Technical Aspects of the ITU.**

The ITU considers itself primarily a technical organization. The two main technical functions that ITU serves are spectrum management and standard setting.

Spectrum management involves the enormously complex task of coordinating the frequency use of every nation. The ITU is hindered in its effort by operating without remedial powers; its decisions are enforced only by consent. ITU delegates to WARC's agree upon the bands to be used for various services. They base their decisions upon the ITU member-states' requirements and the technical advice of the IFRB and the CCIR (Savage 1989: 61-62). Conflict emerges when there is a

charge that the number of bands assigned to a specific service is either too many or too few. Because the spectrum is a limited zero-sum resource, when one service is added one must be dropped. The ITU encourages regional pre-coordination and collaboration to preclude numerous divergent opinions at the ITU conferences. The responsibility for the orderly registration of frequencies rests with the IFRB (p.72). Under the 'Article 17' method the Board focuses on the quality and interference levels present in utilized frequencies; the registration function is de-emphasized (pp. 79-80). The IFRB holds administrative radio conferences in order to manage the spectrum. At general, non-specialized WARCs the ITU may take on a major overhaul of the radio regulations (p.83). At specialized WARCs, such as the GSO-WARC (for Geo-stationary orbit satellites), issues of one part of the spectrum are addressed. Regional administrative radio conferences (RARC) consider questions proper to a single region (p.84). Savage suggests that political tensions are minimized at the WARCs at the expense of addressing many important issues.

In response to the ITU goal of increased harmonization through standard setting, the two CCIs (CCIR and CCITT) make studies of new technologies and issue recommendations for standards (Savage 1989: 167). Multiple standards rarely occur. The CCIs inspire confidence by conferring a strong marketing advantage to the manufacturers of the recommended system. Such CCI recommendations enjoy a high level of credibility. Successful as they have been, there have been some criticisms. One problem is the time lag. At the rate that new technologies are being developed, it still takes three to five years before the ITU sets a standard (Savage 1989: 180). Another criticism comes from developing countries which contend that the standardization process bypasses their interests entirely and widens the already vast technological gap between north and south by recommending standards that require major investment or advanced telecommunication infrastructures (ibid.).

The technical and political aspects of the ITU come closest to conflict when a nation causes deliberate interference with radio signals. The U.N. Subcommittee on Freedom of Information

and the Press of the Commission on Human Rights adopted an American proposal explicitly condemning the jamming of broadcasts under the then new Article 19 which guaranteed the 'right to freedom of opinion and expression' and the right to 'receive and import information and ideas through any medium regardless of frontiers.' This resolution did not involve the ITU, but jamming broadcast signals constitutes a technical process which contravenes specific articles of the ITU Convention and ITU Radio Regulations despite their political motivations. Controls on information flows are completely at odds with the purpose of the ITU. Article 35 of the 1982 Nairobi ITU Convention declares that all stations of member countries must operate 'in such a manner as not to cause harmful interference to the radio services or communications of other members' (Savage 1989: 131).

The jamming of international signals dates back to the early 1930s (p.132). That the recognition of deliberate interference by the ITU was so long in coming indicates how distasteful the technically minded personnel of the Union have traditionally found this thoroughly political issue. In 1957 the U.S. notified the IFRB that the U.S.S.R. was jamming Voice of America (VOA) broadcasts. The U.S.S.R. asserted that their use of the frequency was valid under the 1933 agreement, and that it was not bound by the 1952 agreement, from which it was excluded by the Americans. The U.S.S.R. offered to stop jamming if the U.S. stopped broadcasting VOA propaganda into the Soviet Union. The situation was never resolved, and Savage argues that its inability to resolve the dispute weakened the ITU's reputation (p.161).

### **The Political Aspects of ITU.**

Gerald Sussman and John A. Lent (eds.)  
*Transnational Communications: Wiring the Third World.* Newbury Park: London: New Delhi: Sage Publications, 1991.

Savage points out that politics are entering the once technical orientation of the ITU. While the ITU wishes to retain its technical character, it is inevitable that when a body that makes decisions that affect substantial financial interests such as those of the communications industry, political pressures on decision making are bound to arise. For instance, in a typical standard-setting decision,



the ITU must consider competing technologies. These technologies were developed by competing companies, each of which owned the intellectual-property rights to its respective inventions. The technology chosen to be the standard will earn its owner substantial licensing fees, while patent rights of the rejected technology will be worth very little. It is easy to see that companies with research money at risk, and with potentially large profits to gain, will seek favorable consideration at the Consultative Committee or Administrative Conference level. National governments, too, with interests in potentially increased exports, national pride, and perhaps even an existing investment at stake, will also have much to gain from a local technology being chosen as the standard. In any case, these interests add up to political pressure on the ITU decision maker.

If the ITU is ever to become an openly political organization, it should address communications services for Third World and developing countries. The problem of communications in developing countries has to do with the inadequacy of international measures to protect the interests of nations that are not big enough to be manufacturers of telecommunications equipment. While participating developing countries do have an equal vote at the ITU, that is all they have, and not all matters come up for a vote. It is certainly possible for the ITU as it exists today to include factors such as costs in its decision making and thus favor communications in the developing countries. Beyond that, the ITU could consider investment by an equipment manufacturer in a developing country in making decisions involving that manufacturer's technology.

It may be argued that promoting communications in developing countries will only place more power in the hands of despotic leaders. Pool (1990: 186-188) would argue that if one were to ask such a leader that question, one might get a different answer. According to Pool, the contribution of technology to development is not so much to promote a particular programme as it is to distribute to all the means whereby they can be effective in achieving their own goals. According to Pool, even government-run television has a liberating effect on the mind of the viewers. The Indian SITE project, for example, broadcasts government messages to remote Indian villages

via satellite. The propaganda broadcast by Indira Gandhi's government stressed family planning. Some might have expected that the uneducated audiences would respond favorably to the well tailored messages and alter their behavior accordingly. In fact, the villagers' ability to think about the problem was enhanced, and the issue became one of intense debate among the people, but the government message itself was rejected. The electorate of India turned Mrs. Gandhi out of office a few months later, to a large extent because of her family-planning policies.

Pool's example supports the larger point that communications are important to developing countries. Communications technology makes business activity in a region more attractive. Telecommunications fall under the same categories as roads in this respect: they both are minimum requirements of conducting business in the modern age. On the fall of their totalitarian regimes, former Eastern-bloc countries such as Poland immediately recognized the inadequacies of their telecommunications network and encouraged foreign investment in them. In addition to encouraging development, the consideration that communications technology also serves to liberate the minds of the people should be of prime importance to an international organization concerned with human rights. An informed people, like the villagers in India, are a people that are involved in setting their own destiny. Through information, people are transformed from being a potential to an actual political force. Since it is not in the best interests of totalitarian rulers on their own initiative to allow their people to become informed, the international organization should bring pressure upon such rulers to accept communications technology, and should provide incentives for countries that manufacture communication technologies to invest in the developing countries.

The most difficult aspect of increasing the availability of communication services to developing countries is focusing on economic development in these markets. Melody argues that the fast pace of innovation in the telecommunications industry may tend to inhibit development in the Third World (Sussman and Lent 1991: 38). He points out that a balance must be struck between the competitive motivations of profit-seeking telecommunications firms and the social policy objectives of supposedly

benevolent national and international governments. Melody appears to assume, however, that social policy objectives and profit incentives are mutually exclusive. While the driving force in telecommunications development is the profit motive the goal of social policy should be to point the profit motive in a socially desirable direction. That is the challenge of the ITU. If it is socially desirable to increase the level of communication services available to developing countries, the ITU can best accomplish this goal by utilizing the profit motives of telecommunications firms. Consideration in standardization decisions in favour of firms that have made investments in developing countries is one way the ITU can promote development in

## Perspective

While speech law and telecommunications law are two distinct bodies of communications law, the literature in this survey has a common thread. The thesis underlying the literature on speech law is that limitations on speech inhibit the ability of a society to change and of government to adapt to change. The juxtaposition of the Hull and Matthews studies was intended to demonstrate that there were similar limitations on communications between superpowers on both sides of the Cold War. The International Centre on Censorship demonstrates in page after page of detail that restrictions on speech are not limited to Third World and totalitarian countries, but industrialized Western powers also succumb to the temptaton to silence dissent. The literature on speech law is virtually unanimous in its criticism of limitations on speech. Authors vary in their sympathies for the justifications for speech limits, but limiting speech is at best regarded as a necessary evil.

Agreement is less in evidence when it comes to the area of telecommunications law and policy. While McNamara demonstrates that the trend toward open market and private ownership is undeniable, Duch argues that government enterprise may still be the best economic structure for the communications industry in certain countries.

The common thread in these different aspects of communications law is the presence of new technologies. In the days when there was only

Third World countries without hampering profits.

As communication becomes increasingly international in focus, the role of the ITU is bound to change. Its identity as merely a technical regulatory agency of the U.N. will eventually give way to a more political role in making choices for the future of international communication. ITU actions will come under increasingly intense scrutiny and its decisions will attract much more criticism. But in order to assure fairness, it is incumbent on the ITU as a regulatory agency to make its decisions based on a clear and carefully considered policy. This policy should be set by the United Nations, and should seriously address the communications needs of the Third World.

one newspaper (or one television station) in town, that media source wielded tremendous power over public opinion. This was a power that government recognized and feared, and the fear gave birth to the various limitations on speech. Today the once powerful newspapers are only one voice in a bedlam of information sources. Magazines, newspapers, television, radio, and data services all compete for the ear of the consumer. Their competitive pressures act as checks on each other. Where there are only a few media sources, regulators are concerned with the effect of media bias on consumers. Where there is a multitude of media sources, consumer bias can be said to have a stronger effect on the media than the media has on its consumers. As more sources are made available to the customers of the erstwhile monopoly, customers will purchase the information that most appeals to them. If the monopolist loses a customer, he loses an ear for his message, and the government has one fewer reason to mistrust him.

Similarly, in the realm of telecommunications, new technology continues to change the way people communicate. There was a day when there were no telephone poles or wires. Without exception, it was a monopolist who accomplished the daunting task of installing wires down the streets of the world. Monopolists maintain their monopoly at the will of the government or are themselves agents of government. Governments view the monopoly as a necessary evil at worst, or more likely as a familiar face and a known quantity. This status was upset

when computers introduced the possibility of new communications services at a rate at which the monopolist was unable to provide them. Arguing that the monopolist's initial investment has long since been recouped, potential competitors now clamour for the regulators to open up the market. The monopolist-regulator partnership is now in jeopardy. A major trend is afoot today toward the privatization of government monopolies and divestment of the monopolist's status as the exclusive provider of communications services.

The literature surveyed in this issue makes a strong case for allowing the free flow of speech and assuring open markets in communications services. Legislators, regulators, and judges can apply these concepts to their decisions, especially those that have long-term consequences. Protectionist economics and limitations on dissent often serve the interests of short-term tranquility at the cost of long-term security. A decision to mandate purchases from a domestic equipment supplier, for example, may have the short-term effect of saving local jobs, but if the equipment supplier becomes overly dependent on domestic business and unable to compete internationally, he will fail when the chance for such competition arises. On the other hand, if the domestic market is opened up to competition, domestic firms may suffer in the short term, but will be better-situated, indeed pressured, to compete on an international level.

But like the industrial revolution of the 19th century, the information revolution of the 20th century is leaving the world's poorest communities behind. Pool and Savage point out that Third World countries will become second-class citizens in the information age unless steps are taken to provide for their interests.

Future research might consider with profit how international organizations such as the United Nations can protect the interests of developing countries in the coming years. One alternative suggested in this article is for the ITU to grant favoured status in technological standards decisions to those companies that have made investments in developing countries, but this would necessarily involve the politicization that the ITU has long sought to avoid. A study which would develop several alternative theories of how the profit-seeking motivations of communications companies can be harnessed by international regulators to provide for communications services

to the Third World would provide a needed tool-kit for policy-makers who are sympathetic to the cause of developing countries.

The importance of this issue cannot be understated. Recent events in Somalia demonstrate that the developed world is becoming increasingly concerned for the developing world. While communications services may not be as essential as food and shelter, had it been possible for the people suffering in Somalia to communicate their plight to sympathetic ears in the developed world earlier, thousands of lives may have been saved. Gun-wielding warlords silenced the cries of the suffering until the crisis became so pronounced that it no longer could be hidden. The policy-maker should consider the vital role of communications in preventing tragedies like the one in Somalia.

### References

- Alexandre, Laurien. 1991. 'Television Marti and International Law'. *Media Development*, Vol.38, no.3 (1991), pp.23-26.
- Aronson, Jonathan David, and Peter F. Cowhey (eds.). 1988. *When Countries Talk: International Trade in Telecommunications Services*. Cambridge: Ballinger Publishing Co.
- Canon Law Society of America. 1983. *Code of Canon Law, Latin-English Edition*. Washington: Canon Law Society of America.
- Duch, Raymond M. 1991. *Privatizing the Economy: Telecommunications Policy in Comparative Perspective*. Ann Arbor: The University of Michigan Press.
- Hull, Elizabeth. 1990. *Taking Liberties: National Barriers to the Free Flow of Ideas*. New York/Westport/London: Praeger.
- ICC. 1991, *Article 19, International Centre on Censorship. Information Freedom and Censorship: World Report 1991*. 1991. Chicago: American Library Association.
- Matthews, Mervyn (ed.). 1989. *Party, State, and Citizen in the Soviet Union: A Collection of Documents*. London: M.E.Sharpe, Inc.
- McNamara, John R. 1991. *The Economics of Innovation in the Telecommunications Industry*. New York/Westport/London: Westview Press.
- Mickelson, Sig and Elena Mier y Teran (eds.) 1989. *The First Amendment - The Challenge of New Technology*. New York/Westport/London: Praeger, 1989.
- Oppenheimer, Andres. 1992. *Castro's Final Hour: The Secret Story Behind the Coming Downfall of Communist Cuba*, New York/London/Toronto/Sydney/Tokyo/Singapore: Simon and Schuster.
- Pool, Ithiel de Sola. 1990. *Technologies Without Boundaries: On Telecommunications in a Global Age*. Edited by Eli M. Noam. Cambridge, MA/London: Harvard University Press.
- Savage, James G. 1989. *The Politics of International Telecommunications Regulation*. Boulder/San Francisco/London: Westview Press.
- Sussman, Gerald, and John A. Lent (eds.). 1991. *Transnational*

## CURRENT RESEARCH

### International

**The International Association for Mass Communication Research (IAMCR)**, in collaboration with **Dublin City University**, will hold a conference on 'Europe in Turmoil: Global Perspectives', June 25 and 26 1993. It will include a Round Table on 'Media Law in Europe: A Common European Information Space or a New East-West Gap?'

### Australia

**Mark Armstrong, Sally Walker**, and other colleagues (Faculty of Law, The University of Melbourne, Parkville, Vic. 3052. University Tel.No: +61-3-344-4000; Fax No: +61-3-344-5104) are studying ownership of new channels of media communication.

**Anne Davies and Holly Raiche** (Communication Law Centre, University of New South Wales, P.O. Box 1, Kensington, NSW 2033; Fax: +61 (0)2 662 6839) are studying telecommunications law and children's issues.

**Paul Mallam** is editor of the *Communication Law Bulletin* (PO Box K541, Haymarket, NSW 2000), official publication of the very active Communications and Media Law Association (CAMLA).

### Canada

**Stuart Adam** (Dept.of Journalism, Carleton University, Ottawa, Ontario K1S 5B6. University Tel.No: +1-613-788-3514; Fax No: +1-613-788-4474) has written widely on Canadian Communication Laws and has been doing a comparative study of Canadian, Australian and United States press councils.

**James Linton** (University of Windsor, Windsor, Ontario, N9B 3P4. University Tel.No:+1-519-253-4232) has been studying Canadian press councils.

### Chile

**Silvia Pellegrini R.** (Facultad de Letras y Periodismo, Pontifical Catholic University of Chile, Casilla 114-D, Santiago. University Tel.No: +56-2224516; Fax No: +56-2225515) studies the right to communicate.

### Colombia

**The Instituto de Estudios Sobre Comunicación y Cultura**, directed by **Maria Teresa Herrán** (Aptdo. Aéreo 251905 de Santafé de Bogotá: Tel.No: +57-1-268-3141 or +57-1-616-3309) has the study of communication law as one of its chief interests.

**Jesús Martín-Barbero** (Universidad de Cali, Aptdo. Aéreo 4120, Carrera 5 No. 7-25, Cali, Valle del Cauca) studies the relationships between communication and democracy.

### Finland

**Wolfgang Kleinwachter** (Dept of Journalism and Mass Communications, University of Tampere, PL 607, Kalevantie 4, 33101 Tampere 10; University Tel.No: +358-931-156111; Fax No: +358-931-134473; also Braunschweiger Str. 30, 7022 Leipzig, Germany) has been active in promoting studies of new broadcasting laws in Central and Eastern Europe and on European communication laws in general. He heads the law section of the International Association for Mass Communication Research.

### France

**André R. Bertrand** (Université de Paris I, [Panthéon-Sorbonne], 12 Place du Panthéon, 75231 Paris Cedex 05. University Tel.No: +33-1-46-34-97-00) studies copyright law with special reference to France and the European Community.

**Annie Launois** (Université de Paris II and University of Westminster, 235 High Holborn, London WC1V 7DN) is studying the regulation of culture with particular reference to the implementation in the U.K. and France of the Council of Europe Trans-frontier television and EEC television directive.

### Germany

**Wolfgang Hoffmann-Riem** (Hans-Bredow Inst., Heimhuder Strasse 21, 2000 Hamburg 13.) has been studying public policy in Germany as it relates to constitutional guarantees of communication freedom, licensing of private radio stations, and public broadcasting.

### Italy

**Diana Mattia** (Dept. of Sociology, University degli Studi di Milano, Via Festa del Perdono 7, Milan I-20122; University Tel.No: +39-2-88461; Fax No: +39-2-58304482; Tlx: 320484) studies recent trends in the sociology of international law.

### Kenya

**Cecil Blake** (IDRC Regional Office for Eastern and Southern Africa, P.O. Box 62084, Nairobi) delivered a paper at the meeting of the African Council for Communication Education, in Cairo, in Oct. 1992, on 'African Traditional Values and the Right to Communicate'.

**Patricia G. Kameri-Mbote** (Faculty of Law, University of Nairobi, P.O. Box 30197, Nairobi; University Tel.No: +254-2-334244) is interested in communication law as it relates to women's rights and environmental issues.

### New Zealand

**Bruce Slane**, New Zealand's Privacy Commissioner (Cairns Slane, Barristers and Solicitors, PO Box 6849, Auckland 1), is Associate Editor in New Zealand for the Australia-based *Communications Law Bulletin*.

### **Nigeria**

Luke Uka Uche (Dept. of Communication, University of Lagos, Lagos; University Tel.No: +234-1-821111) has been studying the relationship between communication and democratization in developing countries.

### **Poland**

**Karol Jakubowicz** (c/o International Relations, Polish Radio and Television, P-35, 00-950 Warsaw) delivered a paper on broadcasting regulation in Poland, at the 1992 meeting of the International Association for Mass Communication Research.

### **Russia**

**Yassen Zassoursky** (Moscow State University, 117234 Moscow, Leninskie gory. University Tel.No: +7-939-5340) delivered a paper on broadcasting regulation in Russia, at the 1992 meeting of the International Association for Mass Communication Research.

### **Slovenia**

**Janez Pecar** (Inst. kriminologijo pri Pravni fakulteti, Edvard Kardelj University of Ljubljana, Trg Osoboditve 11, Ljubljana. University Tel.No: 061-331-716) has written on the effects of surveillance on culture.

**Slavko Splichal** (University of Ljubljana) delivered a paper on broadcasting regulation in Slovenia, at the 1992 meeting of the International Association for Mass Communication Research.

### **Spain**

**The Universitat Autònoma de Barcelona** has established the first UNESCO Chair on Communication, intended to focus on aspects of mass communication in various regions. The incumbent for November 1992 to February 1993 is Jesús Martín Barbero of Universidad del Valle, Cali, Colombia.

**Marc Carrillo** (Catedràtic de Dret Constitucional, Universitat Pompeu Fabra, Mar Aureli 22-36, 08006 Barcelona) studies provisions concerning secrecy of journalists in Spanish constitutional law.

**Rafaela Uruena** (Faculty of Law, University of Valladolid, Plaza de Santa Cruz 8, Valladolid E-47002; University Tel.No: 29-14-67; Fax No: 30-20-95; Tlx: 26357) has been working on problems of interpretation between different languages in which international treaties are written.

### **United Kingdom**

**Eric Barendt** (Goodman Professor of Media Law at University College, University of London, Gower Street, London WC1E 6BT. University Tel.No: +44-71-380-7237; Fax No: +44-71-387-0597) has just finished a book, to be published by Oxford University Press in 1993, on comparative broadcasting law. It looks at broadcasting regulation in 5 countries; the U.K., France, Germany, Italy and the U.S.A. Together with **Hugh Stephenson** (Professor of Journalism at City University, London), **Laurence Lustgarten** (University of Warwick), and **John Blackie** (Prof. of Law at Strathclyde University) he is studying the effect of libel laws on the press, broadcasting and other media.

**David Goldberg** (Dept. of Jurisprudence, University of Glasgow, Glasgow G12 8QQ, Scotland; University Tel.No: 041-329-9988 ext. 4910; Fax No: 041-330-5140; Tlx: 777070) chaired a panel on 'The Right to Communicate: The Human Rights on Information and Communication' at the 1992 meeting of the International Association for Mass Communication Research, in Brazil, is at present producing a report on the implementation by the United Kingdom of directives from the European Community which relate to the audio-visual sector as part of The Florence Project.

**The Department of Law at the London School of Economics and Political Science**, (University of London, Houghton Street, Aldwych, London WC2A 2AE) has a long history of work in the field of communication law.

**Vincent Porter** (University of Westminster, 235 High Holborn, London WC1V 7DN; University tel.no: +44-71-911-5160; Fax: +44-71-911-5156; e-mail: PorterV@uk.ac.westminster) is studying freedom of expression in relation to broadcasting; the rights of individuals to receive information and ideas as public service broadcasting faces increasing competition. **Martin Gabriel** is making a comparative analysis of right to reply legislation in the European Community and in applicant states, and **Annie Launois** (see 'France' above) is studying regulation of the culture industries in Europe.

**Monroe E. Price** (Visiting Scholar, Centre for Socio-Legal Studies, Wolfson College, University of Oxford, Oxford OX2 6UD; University Tel.No: +44-865-274100; also, Director, Squadron Program in Law, Media and Society, Benjamin N. Cardozo School of Law, Yeshiva University, 500 West 185th Street, New York, NY 10033, USA; University Tel.No: +1-212-960-5400; Fax No: +1-212-960-0055; Tlx: 220883). Studies gatekeeping and legislative restrictions on broadcasting in the United States.

### **United States**

At Annenberg School for Communication, University of Southern California, University Park, Los Angeles, CA 90089-0281) **Sharon Doctor** is studying the regulation of indecent material across various media, with special emphasis on new videotext and electronic technology. Her study discusses and critiques the rationale for such regulation. Also at Annenberg-USC, **William Dutton**, in conjunction with the National Academy of Sciences, leads research into the rights and responsibilities in electronic communities. He also leads a study analyzing innovative services delivery in the public and private sectors.

**T. Barton Carter** (Boston University School of Law, College of Communication, 640 Commonwealth Ave., Boston, MA 02215) is updating earlier editions of *The First Amendment and the Fifth Estate*, in collaboration with Mark Franclin and Jay Wright. He also is preparing, with Harvey Zuckman (see below), the fourth edition of *Mass Communications in a Nutshell*, a compendium of U.S. mass communications law.

**Everette E. Dennis** is Executive Director of The Freedom Forum Media Studies Center (Columbia University, 2950

Broadway, New York, NY 10027-7004; University Tel. No :+1-212-678 6600), dedicated to 'the advanced study of mass communication and technological change', with a special interest in issues of freedom of speech and of the press, both within the United States and internationally.

**Mark D. Director** (c/o The Annenberg Washington Program, The Willard Office Building, 1455 Pennsylvania Avenue, N.W., Suite 200, Washington, DC 20077-1208; University Tel.No:+1-202-393-7100; Fax No: +1-202-638 2745.) coordinates Northwestern University's Annenberg Washington Program in International Media, Telecommunications and Regulation, part of the over-all Program in Communications Policy Studies.

**George Gerbner** (Annenberg School of Communication, University of Pennsylvania, 4200 Fifth Ave., Philadelphia, PA15260-0001. University Tel.No:+1-412-624-4141) compared Eastern European and American developments in broadcasting regulation, in a paper delivered at the convention of the International Association for Mass Communication Research (IAMCR) in Guarujá, Brazil.

**Eileen Mahoney** (George Washington University, Washington, DC 20052. University Tel.No:+1-202-994-6350. Fax No:+1-202-994-0022) studies international multilateral communication regulation, with special reference to ITU and GATT.

**Harvey Zuckman** (Columbus School of Law, The Catholic University of America, Washington, DC 20064) is leading the preparation of a major treatise on modern U.S. communications law. Topics covered will include the First Amendment, common carrier regulation, and international regulation. The two-volume work is expected to be published in 1995 by the West Publishing Company.

#### Venezuela

**Jesús Maria Aguirre** (Schl. of Social Communication, Universidad Católica 'Andrés Bello', Urb. Montalbán, La Vega, Aptdo. 29068, Caracas 1021) is interested in issues concerning communication law in general.

**Simeón Contreras** (Faculty of Humanities and Education, Universidad del Zulia, Escuela de Comunicación, Aptdo. 526, Maracaibo) studies socio-political aspects of communication law.

**Herbert J. Corona A.** (Universidad Central de Venezuela, Ciudad Universitaria Los Chaguaramos, Aptdo. Postal 104, Caracas 1051) has written on computerisation of legal information in Venezuela.

#### Zambia

**Francis P. Kasoma** (Dept. of Mass Communication, University of Zambia, PO Box 32379, Lusaka) studies mass media policy in Zambia.

## ADDITIONAL BIBLIOGRAPHY

### Journals

*British Journalism Review* (B.J.R. Publishing Ltd., c/o Cassell plc., Villiers House, 41-47 Strand, London WC2N 5JE, England; tel: +44 (0)71/839 4900; fax: +44 (0)71/839 1804). Quarterly. Now in volume three. General essays on communications, with occasional articles on law.

*Communications Law Bulletin*. Published quarterly by the Communications and Media Law Association, Communications Law Centre, University of New South Wales, P.O. Box 1, Kensington, NSW 2033, Australia. Chiefly an Australian and Pacific perspective. (1992 is Vol.12).

*Federal Communications Law Journal*. Published three times a year by the School of Law, University of California, Los Angeles, and the Federal Communications Bar Association. (1993 is volume 45.) Mainly U.S. federal law.

*InterMedia* (Tavistock House South, Tavistock Square, London WC1H 9LF, England; tel: +44 (0)71/388 0671; fax: +44 (0)71/380 0623) is published bimonthly by the International Institute of Communications. Its international coverage of the whole spectrum of media communication includes many articles on legal aspects of telecommunications and mass media. Vol. 20, no. 3 (May-June 1992), focussed on broadcasting restrictions in post-Cold War Eastern Europe. Vol. 20, no. 6 (November-December 1992), contained a special

section on 'The Re-Regulation of International Telecommunications'.

*Legipresse: Revue du Droit de la Communication* (38, rue Croix-des-Petits-Champs, 75001 Paris, France). Monthly. 1992 was its thirteenth year of publication. Covers all aspects of French communication law in depth, with limited reference to other countries.

*Journal of Media Law and Practice* (Tolley Publishing Co. Ltd, Tolley House, 2 Addiscombe Road, Croydon, Surrey CR9 5AF, England; tel: +44 (0)81/686 9141; fax: +44 (0)81/686 3155). Quarterly. 1992 was volume eleven. Essays, news and book reviews concerning UK communication law, with some reference to other countries, especially Europe and English-speaking countries.

### Books and Articles

Babe, Robert E. *Telecommunications in Canada: Technology, Industry, and Government*. Toronto/Buffalo/London: Toronto University Press, 1990. Canadian telegraph, telephone, broadcast, and new technology regulation.

Barber, Sussanna. *News Cameras in the Courtroom: A Free Press-Fair Trial Debate*. Norwood, NJ: Ablex, 1987. The basic issue examined is whether linking courts to television will enhance or diminish the integrity and independence of the administration of justice.

- Becker, Jürgen. *Beiträge zum Medienprozeßrecht* (Contributions to media case law). Baden-Baden: Nomos Verlagsgesellschaft, 1988.
- Bensman, Marvin R. *Law and Regulation of Common Carriers in the Communications Industry*. Boulder/San Francisco/Oxford: Westview Press, 1992. Selected opinions of the United States Supreme Court relating to libel, privacy and First Amendment issues. Presents the analysis, holding and significance of each case.
- Bertrand, André R. *Le droit d'auteur et les droits voisins* (The right of authorship and adjacent rights). Paris/Milan/Barcelona/Bonn: Masson, 1991.
- Bethge, Herbert. *Rundfunkfreiheit und öffentlich-rechtlicher Organisationsvorbehalt*. (Broadcasting Freedom and Legal Restraints on Organization) Baden-Baden: Nomos Verlagsgesellschaft, 1987.
- Blackburn, Robert, and John Taylor (eds.) *Human Rights for the 1990s: Legal, Political and Ethical Issues*. London/New York: Mansell, 1991. Human rights law, including an argument for a British bill of rights.
- Blue, Martha. *By the Book: Legal ABC's for the Printed Word*. Flagstaff: Northland Publishing Co., 1990. Legal advice for authors, including sample book contracts and copyright information.
- Blumler, Jay G., and T. J. Nossier (eds.) *Broadcasting Finance in Transition: A Comparative Handbook*. New York/Oxford: Oxford University Press, 1991. Policy issues in financing broadcast services in selected countries.
- Bollinger, Lee C. *Images of a Free Press*. Chicago/London: University of Chicago Press, 1991. Freedom of the press in the United States.
- Bradley, Stephen P., and Jerry A. Hausman (eds.) *Future Competition in Telecommunications*. Boston: Harvard Business School Press, 1989. Introduction of competition into the American long distance telephone network.
- Brenner, Daniel L. *Law and Regulation of Common Carriers in the Communications Industry*. Boulder/San Francisco/Oxford: Westview Press, 1992. Public utility theory and rate regulation of common carriers in the United States. Discusses cable television and satellites, but emphasizes deregulation and the opening of the market for telephone services.
- Campbell, Douglas S. *The Supreme Court and the Mass Media: Selected Cases, Summaries and Analyses*. New York/Westport/London: Praeger, 1990. Selected opinions of the United States Supreme Court relating to libel, privacy and First Amendment issues. Presents the analysis, holding and significance of each case.
- Carrillo, Marc. *La Clàusula de Consciència i el Secret Professional dels Periodistes: Una aproximació a l'estatut jurídic dels professionals de la informació* (The [constitutional] article on conscience and professional secrets of journalists: a draft of the juridical statute concerning information professionals). Barcelona: Generalitat de Catalunya, Centre d'Investigació de la Comunicació, 1992. (In Catalan).
- Cassese, Antonio. *Human Rights in a Changing World*. Philadelphia: Temple University Press, 1990. Catalogue of human rights violations in selected areas of the world.
- Caswell, Stephen A. *E-Mail*. Boston/London: Artech House, 1988. Detailed view of electronic mail, a so-called new technology.
- Chesterman, John, and Andy Lipman. *The Electronic Pirates: DIY Crime of the Century*. London: Routledge, 1988. Examines the enormous scale of worldwide piracy in print, tapes, videos, and computer software, looks at how the battle against it is fought, and explains the intricacies and inconsistencies of the copyright law.
- Cohen, Jeremy, and Timothy Gleason. *Social Research in Communication and Law*. (CommText series, volume 23.) Newbury Park/London/New Delhi: Sage Publications, 1990. Proposes an interdisciplinary study of law and communication, with emphasis on libel law.
- Collins, Richard, Nicholas Garnham and Gareth Locksley. *The Economics of Television: The U.K. Case*. London/Newbury Park/Beverly Hills/New Delhi: Sage Publications, 1988. Part of Sage's *Media, Culture and Society* series. Covers the Peacock Committee and the internationalization of the programme market.
- Coulter, Maureen. *Property in Ideas: The Patent Question in Mid-Victorian Britain*. Kirksville: The Thomas Jefferson University Press, 1991. Historical perspective on intellectual property law.
- Cowhey, Peter F., Jonathan D. Aronson, and Gabriel Székely (eds.) *Changing Networks: Mexico's Telecommunications Options*. San Diego: University of California Press, 1989. Global and national trade in telecommunications services, with emphasis on Mexico.
- Dennis, Everette E., Donald M. Gillmor, and Theodore L. Glasser (eds.) *Media Freedom and Accountability*. New York/Westport/London: Greenwood Press, 1989. Essays on media self-regulation and accountability in the communications market.
- Elazar, Daniel J. (ed.) *Constitutionalism: The Israeli and American Experiences*. Lanham/New York/London: University Press of America, 1990. The framing of the Israeli constitution.
- Emord, Johathan W. *Freedom, Technology, and the First Amendment*. San Francisco: Pacific Research Institute for Public Policy, 1991. The American first amendment in the media age.

- Forsythe, David P. *The Internationalization of Human Rights*. Lexington/Toronto: Lexington Books, 1991. The role of the United Nations, Organization of American States, and the International Red Cross in global human rights.
- Francois, William E. *Mass Media Law and Regulation, 5th edition*. Ames: Iowa State University Press, 1990. Broad coverage of American law relating to First Amendment, censorship, libel, privacy, free press, pornography, broadcast regulation and copyright.
- Gargurevich, Juan. *Comunicación y Democracia en el Perú* (Communication and Democracy in Peru). Lima: Horizonte, 1988.
- Garnham, Nicholas. *Capitalism and Communication: Global Culture and the Economics of Information*, edited by Fred Inglis. London/Newbury Park/New Delhi: Sage Publications, 1990. The political economy of telecommunications regulation in Britain and the U.S.
- Gibney, Mark (ed.) *World Justice? U.S. Courts and International Human Rights*. Boulder/San Francisco/Oxford: Westview Press, 1991. Essays on international human rights litigation.
- Gleason, Timothy W. *The Watchdog Concept: The Press and the Courts in Nineteenth Century America*. Ames: Iowa State University Press, 1990. The development of American free press theories in the nineteenth century.
- Goodwin, Andrew, and Garry Whannel (eds.) *Understanding Television*. London/New York: Routledge, 1990. Essays on television in Britain.
- Graber, Mark A. *Transforming Free Speech: The Ambiguous Legacy of Civil Libertarianism*. Berkeley/Los Angeles/Oxford: University of California Press, 1991. Civil libertarianism and American free speech legal theory.
- Greenwood, Walter, and Tom Welsh (eds.) *McNae's Essential Law for Journalists, Twelfth Edition*. London: Butterworths, 1991. Handbook of basic U.K. laws.
- Griboff, Howard. 'New Freedom for A.T. & T.' *Federal Communications Law Journal*, vol. 44, no.3 (May 1992), pp.435-471.
- Hannum, Hurst. *Materials on International Human Rights and U.S. Criminal Law and Procedure*. Washington: The Procedural Aspects of International Law Institute, 1989. The impact of international human rights law in U.S. courts.
- Hartmann, Paul, B. R. Patil and Anita Dighe. *The Mass Media and Village Life: An Indian Study*. (Sage Communication and Human Values series.) New Delhi/Newbury Park/London: Sage Publications, 1989.
- Holmes, Deborah. *Governing the Press: Media Freedom in the U.S. and Great Britain*. Boulder/London: Westview Press, 1986. Press/government relations in the Falklands War and the Iranian hostage crisis.
- Horwitz, Robert Britt. *The Irony of Regulatory Reform: The Deregulation of American Telecommunications*. New York/Oxford: Oxford University Press, 1989. Deregulation followed by re-regulation of American telecommunications.
- Hughes, Gordon, and David Vines. *Deregulation and the Future of Commercial Television*. Aberdeen: Aberdeen University Press, 1989. Britain's Independent Television and deregulation.
- Instituto Internacional de Periodismo (IJI). 'Medios de Comunicación en Europa Central y Oriental' (Communication Media in Central and Eastern Europe), in *Signo y Pensamiento*, (Bogotá), No.17 (1990), pp.77-109.
- Jeandon, Jean Paul. 'Los Cambios en la Industria Televisiva: una Renovacion Necesaria de la Intervencion Publica' (The Changes in the Television Industry: A Needed Restoration of Public Intervention). *Rev. Telos* (Madrid) No.16 (1988), pp.29-40.
- Katsh, M. Ethan. *The Electronic Media and the Transformation of Law*. Ann Arbor, MI: University Microfilms, 1989.
- Kreile, Reinhold (ed.) *Medientage München '87 - Dokumentation* (Munich Mediaday '87 - documentation). Baden-Baden: Nomos Verlagsgesellschaft, 1988.
- Langham, Josephine, and Janine Crichley (eds.) *Radio Research: An Annotated Bibliography, 1975-1988, 2nd Edition*. Aldershot/Brookfield/Hong Kong/Singapore/Sidney: Avebury, 1989. Research on broadcasting in Britain, America, Europe and the Third World.
- Lawrence, John Shelton, and Bernard Timberg (eds.) *Fair Use and Free Inquiry: Copyright Law and the New Media (Second Edition)*. Norwood, NJ: Ablex, 1989. Essays intended to provide better understanding of fair use issues and point towards significant changes in the U.S. law on fair use of copyrighted material.
- Lively, Donald E. *Essential Principles of Communications Law*. New York/Westport/London: Praeger, 1992. American First Amendment and communications regulation, including a section on content regulation of the media.
- Lütje, Stefan. *Die Rechte der Mitwirkenden am Filmwerk*. (The law on co-production in cinema). Baden-Baden: Nomos Verlagsgesellschaft, 1987.
- Martin, Michele. 'Hello, Central?' *Gender, Technology and Culture in the Formation of Telephone Systems*. Montreal/Kingston/London/Buffalo: McGill-Queen's University Press, 1991. The role of women in the history of Canadian telecommunications.
- Martin, Robert, and Stuart Adam. *A Sourcebook of Canadian Media Law*. Ottawa: Carleton University Press, 1989. A



survey of freedom of expression with regard to the media in the Canadian legal system.

Mattia, Diana. 'Temi emergenti della sociologia del diritto internazionale' (Emerging themes in the sociology of international law). *Sociologia del Diritto*, vol. 18, no. 1 (1991), pp. 179-193.

McGoldrick, Dominic. *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights*. Oxford: Clarendon Press, 1991. Legislative history of the International Covenant on Civil and Political Rights.

Mejía Barquera, Fernando. *La Industria de la Radio y Televisión y la Política del Estado Mexicano (1920-1960)* (The Radio and Television Industry and the Politics of the Mexican State, 1920-1960). Mexico City: Fundación Manuel Buendía, 1991.

Mielke, Thomas. *Urheberrecht und kulturelle Entwicklung* (Law concerning authors and cultural development.) Baden-Baden: Nomos Verlagsgesellschaft, 1987.

Mosco, Vincent, and Janet Wasko. *The Political Economy of Information*. Madison/London: The University of Wisconsin Press, 1988. The information society and the political economy of telecommunication regulation.

Newberg, Paula R. (ed.) *New Directions in Telecommunications Policy*. Durham, NC/London: Duke University Press, 1989. Politics and policy in international telecommunication regulation. Includes the essay, 'Network Pluralism and Regulatory Pluralism', by Eli M. Noam.

Nordemann, Wilhelm. *Soeben erschienen: Wettbewerbsrecht (5. Auflage)*. (Current advertising regulation) Baden-Baden: Nomos Verlagsgesellschaft, 1987.

Oraá, Jaime. *Human Rights in States of Emergency in International Law*. Oxford: Clarendon Press, 1992. Discussion of human rights treaties, including the European Convention.

Palmer, Michael, and Jeremy Tunstall. *Liberating Communications: Policy-making in France and Britain*. Oxford/Cambridge: Basil Blackwell Ltd., 1990. Telecommunications, information and technology policy in France and Britain.

Ploman, Edward W., and L. Clark Hamilton. *Copyright: Intellectual Property in the Information Age*. London/Boston/Henley: Routledge and Kegan Paul, 1980. Old, but useful outlines of international copyright agreements.

Popkin, Jeremy D. *News and Politics in the Age of Revolution: Jean Luzac's Gazette De Leyde*. Ithaca/London: Cornell University Press, 1989. Regulation of the eighteenth century European press.

Poster, Mark. *The Mode of Information: Poststructuralism and Social Context*. Chicago: University of Chicago Press, 1990. Explores the social effects of the introduction of computers into telecommunications.

Potter, Jeremy. *Independent Television in Britain, Volume 4: Companies and Programmes: 1968-80*. Houndsmills/Basingstoke, Hants./London: Macmillan, 1990. Last in a series of four volumes covering the history of independent television in Britain since 1946. The first two volumes were authored by Bernard Sendall.

Powe, Lucas A., Jr. *The Fourth Estate and the Constitution: Freedom of the Press in America*. Berkeley/Oxford: University of California Press, 1991. Freedom of the press, libel, and prior restraint in the U.S.

Price, Pamela. *In Defense of Rights: Attacks on Lawyers and Judges in 1990*. New York: NY Lawyers' Committee for Human Rights, 1991. Human rights violations against lawyers and judges from Argentina to Zaire.

Pringle, Peter K., and Helen H. Clinton. *Radio and Television: A Selected, Annotated Bibliography: Supplement Two: 1982-1986*. Metuchen/London: The Scarecrow Press, 1989. Second supplement to the 1978 bibliography compiled by William E. McCavitt, covering broadcasting literature since 1920.

Randall, Kenneth C. *Federal Courts and the International Human Rights Paradigm*. Durham, NC/London: Duke University Press, 1990. Judicial authority and domestic jurisdiction in the world legal order.

Reitemeier, Ulrich. *Studien zur juristischen Kommunikation: Eine kommentierte Bibliographie* (Studies in Juridical Communication: An Annotated Bibliography). publisher?, 1985.

Rieke, Richard D., and Randall K. Stutman. *Communication in Legal Advocacy*. Columbia: University of South Carolina Press, 1990. Communication strategies in litigation.

Robertson, James C. *The British Board of Film Censors: Film Censorship in Britain: 1896-1950*. London: Croom Helm, 1985. A history of film censorship in Britain to 1950.

Rosen, Philip T. (ed.) *International Handbook of Broadcasting Systems*. New York/Westport/London: Greenwood Press, 1988. Broadcasting systems in twenty-four selected countries. Covers the history, regulation, economic structure and programming of broadcast media.

Schmandt, Jurgen, Frederick Williams and Robert H. Wilson. *Telecommunications Policy and Economic Development: The New State Role*. New York: Praeger Publishers, 1989. Telecommunications policy in nine U.S. states.

Schofield, Philip (ed.) *Securities Against Misrule and Other Constitutional Writings for Tripoli and Greece*. Oxford: Clarendon Press, 1990. Part of a series of the works and correspondences of Jeremy Bentham.

- Schott, Jeffrey J. (ed.) *Completing the Uruguay Round: A Results-Oriented Approach to the GATT Trade Negotiations*. Washington: Institute for International Economics, 1990. Essays on selected areas to be addressed at the Uruguay Round, including anti-dumping, trade in services and intellectual property.
- Schuetz, Janice, and Kathryn Holmes Snedaker. *Communication and Litigation: Case Studies of Famous Trials*. Carbondale/Edwardsville: Southern Illinois University Press, 1988. Legal practitioners' reactions to communication techniques used in litigating selected well-known American trials.
- Schwarze, Jürgen (ed.). *Fernsehen ohne Grenzen*. (Broadcasting Without Frontiers). Baden-Baden: Nomos Verlagsgesellschaft, 1985.
- Schwoch, James. *The American Radio Industry and Its Latin American Activities, 1900-1939*. Urbana/Chicago: University of Illinois Press, 1990. American communications and global media culture.
- Shapiro, Susan P. 'Media Lawyers as Risk Counselors: Pre-Publication and Pre-Broadcast Review and the Social Construction of News'. Chicago: American Bar Foundation, 1989. (Conference Paper - American Sociological Association).
- Shetreet, Shimon (ed.) *Free Speech and National Security*. Dordrecht/Boston/London: Nartinus Nijhoff Publishers, 1991. Essays on state security, censorship, government leaks, press coverage of military operations and security matters.
- Skilling, H. Gordon. *Samizdat and an Independent Society in Central and Eastern Europe*. Columbus: Ohio State University Press, 1989. Explores dissident underground speech in Central Europe, Eastern Europe, the USSR and China, with an emphasis on Czechoslovakia and Václav Havel.
- Soria, Carlos. 'La Science du droit de l'information en Espagne' (The science of information law in Spain). *Communications* (Sweden), vol. 13, no. 3 (1987), pp. 89-117.
- Stevenson, Wilf, and Nick Smedley (eds.) *Responses to the White Paper*. London: British Film Institute, 1989. An overview of submissions in response to the British government's White Paper, 'Broadcasting in the '90s: Competition, Choice and Quality'.
- Strong, William S. *The Copyright Book: A Practical Guide (Third Edition)*. Cambridge, MA: MIT Press, 1990. Current U.S. copyright law, including fair use and infringement.
- Surette, Ray (ed.) *The Media and Criminal Justice Policy: Recent Research and Social Effects*. Springfield: Charles C. Thomas, 1990. Essays on the effects of pornography, mass media and the police, and cameras in court.
- Teeter, Dwight L., Jr., and Don R. LeDuc. *Laws of Mass Communications: Freedom and Control of Print and Broadcast Media, 7th edition*. Westbury/New York: The Foundation Press, Inc., 1992. American First Amendment, libel, privacy and broadcast law.
- Thompson, Kenneth W., and Rett R. Ludwikowski (eds.) *Constitutionalism and Human Rights: America, Poland and France*. Lanham/New York/London: University Press of America, 1991. Constitutionalism and the freedom of political speech in three countries.
- Uche, Luke Uka. *Mass Media, People and Politics in Nigeria*. New Delhi: Concept Publishing Co., 1989. Discusses Nigerian history, radio, television, press and cultural identity. Examines media law, censorship and freedom of the press. [Available from the Centre for the Study of Communication and Culture £12.50]
- Uruena, Rafaela. 'El problema de la interpretacion de tratados redactados en diversos idiomas, segun el derecho internacional' (The problem of the interpretation of treaties written in different languages according to international law). In *Language Problems and Language Planning*, vol. 14, no. 3 (fall 1990), pp. 209-223.
- Vousden, Neil. *The Economics of Trade Protection*. Cambridge: Cambridge University Press, 1990. The political economy of protectionism and free trade in the international economy.
- Wakefield, Gerald. 'Pacific Rim Report: Telecommunications Structure and Development in Malaysia'. *Communications Law Bulletin*, vol. 12, no. 2 (Sept. 1992), pp. 14-15, 21. Second article in a series surveying communications developments on the Pacific Rim.
- Wilhelm, Donald. *Global Communications and Political Power*. New Brunswick, NJ/London: Transaction Publishers, 1990. Perestroika, satellites and remapping the world.
- Williams, Noel, and Peter Harley (eds.) *Technology in Human Communication*. London/New York: Pinter Publishers, 1990. Essays on the effects of new technologies and computers on communication.
- with the United States Federal Communications Commission in Washington, D.C. In June 1993 he will join the Maimi, Florida, law firm of Steel Hector & Davis.
- Father James J. Conn, S.J.**, is vice president and canon law professor at Saint Mary's Seminary and University in Baltimore, Maryland. He holds a doctorate in canon law from the Pontifical Gregorian University in Rome and a doctor of law degree from Fordham University in New York City. He

previously served as Executive Assistant to the President and Director of Planning at Fordham University, as Communications Secretary for the Society of Jesus in the

United States, and as associate dean and law professor at Marquette University Law School.

## AFTERWORD

By W. E. Biernatzki, SJ

Editor, *Communication Research Trends*

In the present, imperfect state of human nature, laws of some sort are essential to the orderly conduct of society. With the rapid multiplication and complexification of technologies during recent decades, however, the pressure on legislatures and courts to keep the legal system abreast of the problems caused by change is immense. This is especially true for communications law, where technologies can be invented, developed and mass produced at a pace which often far outstrips the ability of legislators and regulators to keep up.

This can be a good thing. The inability of censors in the Soviet Union to keep track of the many channels through which *samizdat* and other subversive information materials could move in recent years may have been a significant factor in the fall of communism. Similarly, even in democratic societies, unjust or overly-restrictive laws often can be bent or bypassed with little fear of punishment by those who have real needs of which legislators have not yet taken adequate account.

But, more frequently, the effects are bad. Those with a principled commitment to the benefits of an orderly society may continue to obey the spirit of the law and of fair play, even in the absence of appropriate legislation; but those without such scruples are likely to take advantage of every opportunity for gain, no matter if the effects are just or unjust.

Current international copyright agreements have, for some years, been difficult to enforce, because of the ease with which printed and electronically recorded intellectual and artistic property can now be reproduced. This results in a decline in the benefits of their work to authors and artists. Not only is this a matter of justice, but eventually it could spread discouragement among talented people who might hesitate to develop their talents if they could not expect to reap proportionate rewards for their efforts.

Pirate stations - radio or TV - can be a good thing in a dictatorship; but failure to control them in a free society can lead to chaos on the electromagnetic spectrum which adversely affects all its users, thereby actually restricting the right of all to communicate.

In many cases keeping regulation to a minimum can promote free access to all mass media by everyone. Theoretically, this might be a good thing, but when the 'everyone' includes children in their most formative

years, and when the 'mass media' include violent and pornographic contents - whose effect on children is generally agreed to be negative, though not yet fully understood - the well-being of future generations could be seriously put at risk. Parents and educators, unaided by civil authorities, are almost powerless against the uncontrolled flood of media contents which modern technologies, together with misapplication of the principle of 'free speech', has let loose on children.

Recognizing that totally free expression also has its problems, the Catholic Church has been slow to warm to the freedom of speech as a principle. The changes in Canon Law, between the 1917 and 1983 Codes, mark a considerable improvement in this situation. This example raises the need to stress a difference between legal structures based on code law and those which are heavily influenced by common law, which may give rise to misunderstandings when the two are compared on the international level. Codes of law - including Canon Law and systems based on the Napoleonic Code - often seem to manifest a discouraging rigidity of expression and resistance to change which make them appear hopelessly unable to cope with rapidly changing circumstances. However the judicious application of the principles of equity and *epikaia* - necessary accompaniments of code law - can give it a greater degree of adaptability than is immediately evident.

The interaction between law and economics always is complex, and it becomes even more complex when political advantage is at stake. Legal, economic and political factors come together in questions of the ownership and regulation of large telecommunications enterprises, but the prime consideration in such cases should be the public interest or common good. Policies such as cross-subsidization to bring services to poor areas would be unthinkable if only economic considerations are brought to bear. But the public interest and the common good demand them. On the other hand, economists with a broad perspective which takes the common good into account might be able to suggest alternative plans which are both morally responsible and fiscally advantageous.

There is no way to judge, apart from exhaustive study of the factors affecting a given case, just what the proper mix of public and private control should be. Doctrinaire ideologies, either of left or right, certainly offer no solution. What is certain is that effective supervision by

a regulatory body whose only interest is the common good is essential to guarantee that such enterprises meet the needs of all. Without such supervision, for example, the enterprises would not extend services into areas where low demand would cause them losses or minimal profits. Supervision also is necessary to ensure that monopolies do not overcharge their customers, that they introduce advanced technologies which may not promise immediate profits, that they maintain their efficiency through capital expenditures, and that they are persuaded or forced to establish industry-wide standards for equipment, rather than continuing to frustrate the public in a morass of competing standards.

Effective regulation of the mass media needs to take account not only of political and economic factors but of social and cultural factors as well. Important among these is religion, which frequently is neglected when only narrow considerations of politics and economics are allowed to dominate regulatory decisions. Among the most glaring current examples of this neglect is the United States, where the addition of the Federal Communications Commission to decisions based on free market economics have practically driven mainstream religious groups off the major broadcast networks. Unbalanced attention to one kind of free speech - in this case that of commercial advertisers - has resulted in a gross, if unacknowledged, violation of a freedom which is far more explicitly protected by the U.S. Constitution: freedom of religious expression...

Regulation becomes even more problematic at the international level, where all negotiation takes place among established vested interests, and no body superior to them can intervene to protect the common good. All that can result from the deliberations of ITU or GATT, therefore, are agreements among established entities not to step on each others' toes. These agreements are essential and valuable, as far as they go, but the protection of the rights of those who have no economic clout in the telecommunications industry must be left to other forces, outside the negotiating room. There is, at present, no guarantee that those forces - whether religious bodies, voluntary organizations, or humanitarian movements - can exert any systematic or long-term influence on the process, which seemingly will continue to be guided chiefly by economic, technological and political considerations.

The many pitfalls opened by political and policy questions make it imperative that religious groups and other non-governmental organizations which wish to use the mass media seek good legal advice concerning all local, national and international laws and regulations which may affect them. They should also take full account of the state of the art of technological innovation in a chosen medium and be prepared for developments both in the technology market and in the

regulatory responses to which they will inevitably give rise. Failure to take all such factors into consideration could result not only in frustration but also in waste of time and resources.

#### COMMUNICATION RESEARCH TRENDS

Published four times a year by the Centre for the Study of Communication and Culture  
ISSN 0144-4646

**Publisher:** Kevin F. Kersten, S.J.

**Editor:** William E. Biernatzki, S.J.

**Assoc. Editor for Latin America, Spain & Portugal:**

José Martínez Terrero, S.J.

**Assistant Editor:** Maria Way

#### Subscription:

Annual Subscription (UK£15.00)(US\$28.00)

Student (UK£11.00)(US\$20.00)

Set of Volumes

Nos. 7-12 (UK£40.00)(US\$75.00)

Set of Volumes

Nos. 1-6 (UK£35.00)(US\$65.00)

Complete set and Vol.13 (UK£70.00)(US\$130.00)

Payment in US\$, UK£, International Money Order or Giro Transfer 52 596 0805.

Address all correspondence to:

*Communication Research Trends*

221 Goldhurst Terrace

London NW6 3EP, England

Fax No: +44-71-372-1193 Tel No: +44-71-328-2868

E-Mail: mway@uk.ac.ulc.clus1

**Printing:** Roebuck Press, Mitcham, Surrey, England  
*The Centre for the Study of Communication and Culture* is an international service for communication research established by the Jesuits in 1977.

**Director:** Kevin F. Kersten, S.J.

**Librarian:** Simone Donnelly, O.P.

**International Board of Advisors:** Brendan Callaghan, S.J.(London), Jean Bianchi (Lyon), Thomas Connelly (Glasgow), Nim Gonzalez, S.J. (Manila), Henk Hoekstra, O.Carm. (Amsterdam), Raymond Parent, S.J. (Rome), Carlos Valle (London), Robert A. White, S.J. (Rome)

#### Acknowledgements

Our thanks are due to the following for contributions and material for this issue:

*Comunicación* (Caracas)

Johannes Ehrat S.J. (Munich)

Howard Frederick (San Francisco)

Ralf Martaler (Munich)

Dra. Migdalia Pineda de Alcázar (Maracaibo)

Rafael Roncagliolo (Lima)