
THE TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS REVIEW

THIRD EDITION

EDITOR
JOHN P JANKA

LAW BUSINESS RESEARCH

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CONTENTS

Editor's Preface	vii
	<i>John P Janka</i>
List of Abbreviations	 ix
Chapter 1	AUSTRALIA 1
	<i>Anthony Lloyd, Paul Kallenbach and Paul Schoff</i>
Chapter 2	BRAZIL 17
	<i>André Gomes de Oliveira, Renato Parreira Stetner and Tiago Franco da Silva Gomes</i>
Chapter 3	CANADA 28
	<i>Hank Intven and Grant Buchanan</i>
Chapter 4	EGYPT 42
	<i>Aly El Shalakany and Omar Sherif</i>
Chapter 5	EUROPEAN UNION 53
	<i>Maurits J F M Dolmans, Francesco Maria Salerno and Malik Dhanani</i>
Chapter 6	FINLAND 83
	<i>Mikko Manner, Anna Haapanen and Vilhelm Schröder</i>
Chapter 7	FRANCE 94
	<i>Myria Saarinen and Jean-Luc Juhan</i>
Chapter 8	GERMANY 107
	<i>Laura Johanna Reinlein and Gabriele Wunsch</i>
Chapter 9	HONG KONG 122
	<i>Simon Berry and Viola Jing</i>
Chapter 10	INDIA 136
	<i>Atul Dua, Rahul Goel and Anu Monga</i>

Chapter 11	ITALY 148 <i>Stefano Macchi di Cellere</i>
Chapter 12	JAPAN 160 <i>Hiroki Kobayashi, Richard Fleming, Saori Kawakami and Chiyo Toda</i>
Chapter 13	KOREA..... 175 <i>Wonil Kim and Kwang-Wook Lee</i>
Chapter 14	LEBANON..... 187 <i>Souraya Machnouk, Rania Khoury and Ziad Maatouk</i>
Chapter 15	LUXEMBOURG..... 198 <i>Franz Fayot and Linda Funck</i>
Chapter 16	MEXICO..... 216 <i>Jaime Deschamps</i>
Chapter 17	NORWAY 227 <i>Olav Torvund, Jon Wessel-Aas and Magnus Ødegaard</i>
Chapter 18	OMAN 235 <i>Syed Ali Naveed Arshad and Stephen T Sayer</i>
Chapter 19	PORTUGAL 245 <i>Joana Torres Ereio, Joana Mota and Raquel Maurício</i>
Chapter 20	SINGAPORE 258 <i>Ken Chia and Koh See Khian</i>
Chapter 21	SOUTH AFRICA..... 280 <i>Zaid Gardner</i>
Chapter 22	SPAIN..... 292 <i>Pablo González-Espejo and Leticia López-Lapuente</i>
Chapter 23	SWEDEN 307 <i>Erik Ficks and Björn Johansson</i>
Chapter 24	SWITZERLAND 318 <i>Michael Isler</i>

Chapter 25	TAIWAN 332 <i>Arthur Shay and David Yeh</i>
Chapter 26	TURKEY 343 <i>Serra Başoğlu Gürkaynak, Begum Yavuzdoğan, M Onur Sumer and Bentley J Yaffe</i>
Chapter 27	UNITED ARAB EMIRATES 356 <i>Joby Beretta</i>
Chapter 28	UNITED KINGDOM..... 369 <i>Omar Shah and Gail Crawford</i>
Chapter 29	UNITED STATES 388 <i>John P Janka and Jarrett S Taubman</i>
Appendix 1	ABOUT THE AUTHORS 405
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS ...426

EDITOR'S PREFACE

The digital revolution continues to alter both local culture and the world in ways that few could have imagined when the seeds of the Internet were sown more than 40 years ago. The Internet allows ideas, news and other information to flow more freely than ever before, making it increasingly difficult for nations to control this flow at their geographical borders. Moreover, the Internet is forcing changes in many long-standing business models. It now serves for many as the preferred means of communication and media delivery, displacing or supplementing other means, such as traditional copper phone service, print media, subscription TV services and broadcast networks, in the process. The Internet now also serves as a new marketplace for goods and services, as well as a primary research tool for many.

New technologies place into our hands more computing power than was used by astronauts when the Internet was in its infancy. The proliferation of these mobile devices – smartphones and tablet computers – leads many to employ texting, e-mail and blogging instead of communicating by the spoken word. We expect to have constant access to the networks that we use in this manner to stay in contact with our social circles and the rest of the world. And our most intimate thoughts are often now memorialised for the long term, in ways that can be potentially used by third parties for purposes we have not truly anticipated.

The legal frameworks in many jurisdictions are now straining under these disruptive changes. The old adage that technology outpaces the law is more true today than ever. No doubt, the ‘hands-off’ approach to the Internet that many lawmakers and regulators once took has facilitated many of these developments. At the same time, policymakers are now struggling with new types of concerns, as broadband Internet access service becomes more and more essential to our lives. Is the marketplace responding to the needs of consumers? Are broadband networks being deployed everywhere that they are needed? Are the capabilities of those networks adequate? If not, how should government ensure that none of its citizens is left behind? Is it appropriate for government to invest in broadband infrastructure in a manner similar to its historical investment in roads,

bridges, and other critical infrastructure? Is it fair to liken broadband service to a utility, or does the state of competition make that an unfair analogy? Can government provide the best overall solution, or should it just fill in any infrastructure 'gaps' not closed by commercial providers? Should government establish 'ground rules' upfront, or should it intervene when it perceives that abuses of market power exist? How does government avoid skewing the competitive marketplace by (inadvertently or otherwise) preferring one type of technology over another and thus effectively picking the winners and losers who otherwise might emerge in the marketplace, and challenge the incumbents? Who are the new 'gatekeepers' in the Internet broadband distribution chain, and is it enough to focus on regulating the network operators when others further up the chain, such as application service and equipment providers, have more influence than ever before on what information we access and how we access it?

This expectation of instant and continuous mobile connectivity, and the development of bandwidth-intensive 'apps', create an increasing demand on the limited radio frequency spectrum asset. While digital technologies allow more efficient use of spectrum than ever before, the laws of physics still render some spectrum bands more valuable than others for mobile communications. The demand for wireless spectrum outstrips the supply in many markets, and regulators are increasingly being forced to 'refarm' spectrum bands that were designated for other purposes before the mobile broadband revolution was a glimmer in anyone's eye.

This third edition of *The Technology, Media and Telecommunications Review* provides an overview of the evolving legal constructs that govern these types of issues in 29 jurisdictions around the world. Although the authors cannot fully address each of these topics in the following articles, we hope this book provides a helpful framework for starting your analysis.

John P Janka

Latham & Watkins LLP

Washington, DC

September 2012

LIST OF ABBREVIATIONS

3G	Third-generation (technology)
4G	Fourth-generation (technology)
ADSL	Asymmetric digital subscriber line
ARPU	Average revenue per user
BIAP	Broadband Internet access provider
BWA	Broadband wireless access
CATV	Cable TV
CDMA	Code division multiple access
CMTS	Cellular mobile telephone system
DAB	Digital audio broadcasting
DDoS	Distributed denial-of-service
DoS	Denial-of-service
DSL	Digital subscriber line
DTH	Direct-to-home
DTTV	Digital terrestrial TV
DVB	Digital video broadcast
DVB-H	Digital video broadcast – handheld
DVB-T	Digital video broadcast – terrestrial
ECN	Electronic communications network
ECS	Electronic communications service
EDGE	Enhanced data rates for GSM evolution
FAC	Full allocated historical cost
FBO	Facilities-based operator
FCL	Fixed carrier licence
FTNS	Fixed telecommunications network services
FTTC	Fibre to the curb
FTTH	Fibre to the home
FTTN	Fibre to the node

FTT _x	Fibre to the <i>x</i>
FWA	Fixed wireless access
Gb/s	Gigabits per second
GB/s	Gigabytes per second
GSM	Global system for mobile communications
HDTV	High-definition TV
HITS	Headend in the sky
HSPA	High-speed packet access
IaaS	Infrastructure as a service
IAC	Internet access provider
ICP	Internet content provider
ICT	Information and communications technology
IPTV	Internet protocol TV
ISP	Internet service provider
kb/s	Kilobits per second
kB/s	Kilobytes per second
LAN	Local area network
LRIC	Long-run incremental cost
LTE	Long Term Evolution (a next-generation 3G and 4G technology for both GSM and CDMA cellular carriers)
Mb/s	Megabits per second
MB/s	Megabytes per second
MMDS	Multichannel multipoint distribution service
MMS	Multimedia messaging service
MSO	Multi-system operators
MVNO	Mobile virtual network operator
MWA	Mobile wireless access
NFC	Near field communication
NGA	Next-generation access
NIC	Network information centre
NRA	National regulatory authority
OTT	Over-the-top (providers)
PaaS	Platform as a service
PNETS	Public non-exclusive telecommunications service
PSTN	Public switched telephone network
RF	Radio frequency
SaaS	Software as a service
SBO	Services-based operator
SMS	Short message service
STD-PCOs	Subscriber trunk dialling—public call offices
UAS	Unified access services
UASL	Unified access services licence
UCL	Unified carrier licence
UHF	Ultra-high frequency
UMTS	Universal mobile telecommunications service
USO	Universal service obligation

UWB	Ultra-wideband
VDSL	Very high speed digital subscriber line
VHF	Very high frequency
VOD	Video on demand
VoB	Voice over broadband
VoIP	Voice over Internet protocol
WiMAX	Worldwide interoperability for microwave access

Chapter 17

NORWAY

Olav Torvund, Jon Wessel-Aas and Magnus Ødegaard¹

I OVERVIEW

Norway is not a member of the European Union, but is associated through the EEA Agreement.² Norway implements all EU Directives and regulations in the TMT sector. For all practical purposes, Norway is in the same position as the EU Member States when it comes to regulations in these sectors.

The TMT markets in Norway are governed by different sets of sector-specific regulations, as well as general regulations on competition, data protection, copyright, etc.

The main regulation in the telecommunications market is the Electronic Communications Act,³ implementing the revised EU telecommunications framework.

There is a lot of competition in the broadband market, as telecommunications operators, power utilities companies, TV cable network providers and mobile operators all currently offer broadband services, and some mobile operators are now offering 4G networks in the more densely populated areas. There is also a high level of competition in the mobile market.

TV distribution is now digitised, by digital terrestrial network, cable or satellite. Radio distribution is also in the process of being digitised: the DAB network is in operation and covers most of the country. It has been announced that the FM network will be shut down in 2017.

1 Olav Torvund, Jon Wessel-Aas and Magnus Ødegaard are partners at Bing Hodneland Advokatselskap DA.

2 The European Economic Area, an agreement originally concluded between EU and the EFTA-states Austria, Finland, Iceland, Lichtenstein, Norway and Sweden. After Austria, Finland and Sweden joined the EU in 1994, only Iceland, Lichtenstein and Norway are parties to this agreement with EU.

3 Act No. 83 of 4 July 2003.

In the media sector, broadcasting is regulated in the Broadcasting Act. There is media-neutral legislation on ownership and on editorial freedom.

II REGULATION

i The regulators

The Norwegian Post and Telecommunications Authority ('the NPT') is an autonomous regulator organised under the Ministry of Transport and Communications. It has monitoring and regulatory responsibilities for the postal and telecommunications sectors in Norway. The NPT is self-financing, primarily through fees paid by the electronic communications operators.

The NPT monitors compliance with legislation, regulations and licence requirements. Further, it is the oversight body for the participants of the sectors within its purview. The NPT grants licences where required, and keeps a register of the participants in the postal and telecommunications sector.

The NPT supervises registries that assign domain names under Norwegian country code top-level domains (.no). It is also responsible for number management in other telecommunications areas. In addition, it supervises certification service providers, which issue qualified electronic certificates.

The NPT strives to promote standardisation and international collaboration in its field. It also provides advisory services to the Ministry of Transport and Communications.

The most important legislation in this respect is the Electronic Communications Act, and a number of regulations have also been issued (e.g., on the use of radio frequencies, on electronic communications networks and services, and on security with a view to electronic communications networks).

The Norwegian Media Authority is under the administrative auspices of the Ministry of Cultural Affairs. However, with the exception of decisions in cases regarding licences for nationwide broadcasting and nationwide broadcasting facilities, independent appeals bodies have been set up to deal with appeals on decisions handed down by the Norwegian Media Authority:

- a* the Media Appeals Board for appeals of decisions taken pursuant to the Broadcasting Act; and
- b* the Appeals Board for Media Ownership for appeals of decisions pursuant to the Media Ownership Act.

Norway has no act of legislation that governs the media in general, but the following acts apply specifically to media enterprises.

Traditional broadcasting – radio and TV – is governed by the Broadcasting Act (No. 127 of 12 April 1992) and the appurtenant regulations. First and foremost, it encompasses all broadcasting activities in Norway. The Act does not apply to traditional telecoms and computer services, but the details about the limitations with a view to digitisation and the use of telecom and data network for broadcast-like signals have not

yet been fully determined. The situation is expected to be clarified to a greater extent upon implementation of the EU's Audio-visual Media Services Directive.⁴

The Broadcasting Act establishes parameters, e.g. general licence requirements for anyone who wants to engage in broadcasting using ground-based transmitting facilities, as well as rules regarding advertising and sponsorship. The Act also regulates retransmission by way of cable networks, and lays down special rules for Norsk Rikskringkasting AS, Norway's state-owned public service broadcaster.

Further, the Broadcasting Act encompasses Norway's implementation of the EU's Audiovisual Media Services Directive (Directive 2010/13/EU of the European Parliament and of the Council concerning the provision of audio-visual media services), but implementation has not yet been completed as of September 2012. Once implementation is completed, the Broadcasting Act will also cover certain 'broadcast-like' audio-visual services on the Internet.

The Act of 1 January 2008 relating to Editorial Freedom in the Media establishes the principle of editorial independence from a media enterprise's owners in respect of day-to-day editorial matters and decisions.⁵

ii Regulated activities

No licence is required to set up and operate a telecommunications network, but all providers of access to electronic communications networks that are used for public electronic communications services (e.g., telephony and broadband) are required to register with the NPT. Private networks that can facilitate communications between public networks and end users are not required to register; such networks must, nonetheless, also comply with current regulations.

All providers that install and maintain public and private electronic communications networks (e-com networks) must be authorised by the NPT. Providers (production, import and sales) and radio dealers are also required to register.

A licence is required to use radio frequencies. Frequencies are usually granted to anyone who applies, since there are sufficient frequency resources available. Transmission licences are granted for different frequency bands that are planned (e.g., for radio lines, satellite uplinks, professional mobile radio and certain low-power systems). Different procedures are followed for the FM band and for frequencies for mobile phones.

Some frequencies can be used freely pursuant to the regulations regarding the general authorisation for the use of frequencies.⁶

When a licence is required, the applicant must send an application to the NPT. In the FM band, frequencies are assigned in exceptional cases only. There are no vacant transmitter licences in areas with high population density.

4 Directive 2010/13/EU of the European Parliament and of the Council concerning the provision of audio-visual media services.

5 The Act codifies the substance of a self-regulating charter on editorial independence, which was ratified by the Norwegian Editors' Association and the Media Owners' Association in 1953.

6 For 2012-01-19 No. 77: Regulations concerning general authorisations for the use of radio frequencies (Free Use Regulations).

iii Ownership and market access restrictions

There are no provisions that limit market access. Nor are there any restrictions on direct or indirect foreign ownership. The NPT does, however, have the authority to intervene through market regulation should a player be in a position to abuse its dominant position in the market for electronic communications.

As well as the general competition legislation, the Media Ownership Act (Act No. 53 of 13 June 1997 relating to Media Ownership) contains special regulations on the ownership of media enterprises. The Act ensures a certain level of diversity in the media by preventing concentrations of ownership that run counter to the purpose of the Act. The Act applies to enterprises that operate daily newspapers, television, radio or electronic media, and to enterprises that, as owners, exercise an influence on such enterprises.

The Act is administrated by the Media Authority, which constantly monitors changes in the ownership of media enterprises. Such cases are followed up on an ongoing basis, and based on certain threshold values established in the Act, the oversight body ensures that acquisitions are not in contravention of the Media Ownership Act. Sometimes the parties involved ask the Media Authority for prior approval of acquisitions, but this is not mandatory.

At the end of each year, the Media Authority collects information from players about any ownership-related changes that have taken place in the preceding year, which are recorded in the Norwegian Media Registry, a database containing the names of all media enterprises and their owners.

Consent, usually from the NPT, is required to transfer the right to use radio frequencies.

III TELECOMMUNICATIONS AND INTERNET ACCESS

i Internet and Internet protocol regulation

Apart from the regulation of telecommunication infrastructure and telecommunication services in general, there is no specific Internet regulation.

A new survey conducted by the European organisation for the allocation of Internet addresses (RIPE NCC) shows that Norway now is the best-prepared country in the world with regard to the introduction of IPv6.

Some Internet services may be regulated under general regulation for these services. As an example, Linear webcasting may fall under the definition of broadcasting, and will be subject to general broadcasting regulation.

ii Universal service

The NPT has drawn up guidelines for net neutrality, based on the following principles:

- a* Internet users are entitled to an Internet connection with a predefined capacity and quality;
- b* Internet users are entitled to an Internet connection that enables them to:
 - send and receive content of their choice;
 - use services and run applications of their choice; and
 - connect hardware and use software of their choice that does not harm the network; and

- c* Internet users are entitled to an Internet connection that is free of discrimination with regard to type of application, service or content or based on sender or receiver address.

As of September 2011 (the most recent figure available), 99.7 per cent of all households and businesses had or could get broadband access; 67 per cent had access to broadband with 25Mb/s or higher speed. Areas not covered are generally sparsely populated areas with difficult topography, making radio and satellite reception very difficult. Although it is a political goal to reach 100 per cent coverage with higher speed, there is no specific timetable for achieving this goal.

iii Restrictions on the provision of service

There is no regulation on prices charged to end users, or other Internet services. service provider with significant market power may, however, be ordered by the authorities to give others access to their networks.

As mentioned in Section III.ii, *supra*, the NPT has drawn up guidelines for net neutrality, but so far, these are only guidelines that are not legally binding. If network owners decide to favour certain content, etc., it will not be in compliance with these guidelines, but not illegal. To our knowledge, however, no network owners have so far done this.

iv Security

Norwegian law does not contain any general cybersecurity regulation, but the Norwegian Centre for Information Security, a government body established to address information security issues in civil society, works according to the following goals:

- a* raising awareness about information security through training and information;
- b* compilation and creation of guidelines and tutorials concerning information security topics; and
- c* establishing overall awareness about information security.

The protection of personal data and privacy is generally regulated in the Data Protection Act,⁷ and is administrated by the Data Protection Authority. The Data Protection Act incorporates the EU Data Protection Directive,⁸ and accordingly, the processing of individuals' personal data, has to be based either on the explicit consent of the individual in question, or on explicit legal provision.

Furthermore, the Electronic Communications Act – which incorporates, *inter alia*, the EU Privacy in Electronic Communication Directive⁹ – includes provisions obliging the respective service providers to secure protection of traffic data and other personal data processed as a necessary part of delivering services. These provisions

7 No. 31 of 14 April 2000.

8 95/46/EC.

9 2002/58/EC.

include, *inter alia*, requirements of confidentiality and of deleting personal data as soon as they are no longer necessary for the purposes of the service in question.

Law enforcement authorities can generally only intercept (by wiretap, etc.) the actual contents of electronic communications after having obtained a warrant by court order, in which case the service providers are obliged to facilitate the required interception. In the case of traffic data, it suffices for law enforcement authorities to apply to the NPT to relieve the service provider in question of its confidentiality obligation.

However, the Norwegian Parliament has passed legislation to implement the EU Data Retention Directive,¹⁰ by amending the Electronic Communications Act and several other acts, so as to oblige service providers to register and keep users' traffic data for six months, rather than requiring them to delete them as is currently the case. The implementation is not yet in effect, as not all the details regarding, *inter alia*, the question of who is to cover the costs involved, have been resolved. Once implemented, accompanying amendments to the Criminal Procedure Act will require law enforcement authorities to obtain a warrant by court order also to access traffic data.

IV SPECTRUM POLICY

i Development

There have not been any major changes in spectrum policy, but for the first time, some frequencies will be awarded by auction.

ii Flexible spectrum use

Frequencies are licensed for specific use, but some frequency bands are licensed with a use specified as 'flexible', either as the sole use or in combination with other usages.

iii Broadband and next-generation mobile spectrum use

So far this has been left to the market. The mobile operators are constantly increasing the capacity in their networks, and frequency bands have been allocated. This year, frequencies in the 2GHz band have been auctioned, but the results are not available at the time of writing.

iv Spectrum auctions and fees

Spectrum user fees are imposed to cover part of the administrative costs at the NPT. According to Section 8 of the Regulation on Administrative Charges, radio frequency licensees are divided into five different categories and those holding licences included in the different categories must pay a specific fraction of the total radio frequency-related administrative charges.

Several categories are calculated on the basis of two components: one component is allocated among radio frequency licensees independent of the amount of radio

10 2006/24/EC.

frequencies they have the right to use, and one the other is dependent on the amount and spectral position of radio frequencies they have the right to use.

In 2012, frequencies has for the first time been auctioned out (2GHz band), but the results are not available at the time of writing.

V MEDIA

i Restrictions on the provision of service

There are no general restrictions on the provision of services in the media sector, except with regard to access to the terrestrial TV network (digital as of 1 December 2009, see Section V.ii, *infra*) and to the FM band for radio, which requires a licence (see Section II.i and ii, *supra*), due to scarcity of bandwidth and frequencies.

With regard to broadcasting, the Broadcasting Act also includes some content regulation; such as rules on commercials and sponsorship and on protection of children (e.g., watershed rules). When implementation of the EU Audiovisual Services Directive is completed, the revised Broadcasting Act's regulations on content will also apply to 'broadcasting-like' services on the Internet.

ii Digital switchover

By 1 December 2009 the switchover from an analogue to DTTV network was completed. The transition process was completed within a period of two-and-a-half years. This transition was a commercial operation, without financial support from the government. The entire population now has access to digital television.

Norway was the first country to choose MPEG-4 as the encoding (compression) standard for vision and sound, which means that the digital network in Norway is ready for HDTV services.

For those households covered by the main network: three multiplexes are available offering 25 TV and 15 radio services. The public service broadcaster, NRK, operates one multiplex with three services (four including the sign language service). All NRK services are 'free to air'. The two other multiplexes are managed by the commercial pay-TV operator RiksTV, including local TV.

Both cable TV and satellite viewing have a strong position in Norway, but roughly one-third of TV viewers use the DTTV network.

iii Internet-delivered video content

Broadband penetration is high in Norway, and almost every household has a broadband connection. Prices are also relatively low for a population with a comparatively high and evenly distributed income. Therefore, the move to internet video distribution has not had any marked negative effect on consumers.

With regard to ISPs, it is up to their contractual freedom to choose to negotiate differentiated compensation for content providers delivering audio-visual content through their networks, according to how much bandwidth this uses, and such discussions have been ongoing between the major service providers and the major content providers. It remains to be seen, however, what these discussions result in.

iv **Mobile services**

Although the penetration of mobile media services is high, due to the same factors as mentioned in Section iii, *supra*, the regulation of infrastructure still leaves it to the market to accommodate growing demand within the parameters of the respective networks.

VI THE YEAR IN REVIEW

With regard to new legislation, nothing of major importance has been passed or put into effect in 2012, but of both the implementation of both the EU Audiovisual Services Directive and of the EU Data Retention Directive is expected to be completed within the coming year.

The media group A-pressen bought Edda Media, both major players in print media and TV, making the merged media group a significant player in the Norwegian media market. Consent from the Norwegian Media Authority is required for the merger, and as consent was only given on certain conditions, this decision has been appealed. At the time of writing, there is no decision on this appeal.

VII CONCLUSIONS AND OUTLOOK

Although certain local variations exist, the regulation of the Norwegian TMT market is to a large extent harmonised with the basic regulations found in the rest of Europe, due to Norway's obligations via the EEA Agreement with the EU, incorporation of the ECHR and transposition of other international treaties and conventions. Norway is usually among the first states to implement EU Directives, covered by the EEA Agreement, and is therefore quite up to date in that regard.

As for developments in the near future, there are some initiatives that should be mentioned. The first is a white paper on media liability, which looks into the need to have a more platform-neutral approach to media regulation with regard to, for instance, editorial liability or protection of sources, in light of the emergence of Internet-based new media; this has been subject to a public consultation, and is currently being reviewed by the Ministry of Cultural Affairs. It is, however, not clear yet if or when any legislative proposals will come as a result of this.

Furthermore, with regard to Norway's implementation of the EU Data Retention Directive, it is still not entirely clear which players in the telecom and ISP market will be covered by the detention obligation. Neither is it clear how, or, indeed, if, the costs involved are to be divided between them and the state. Once this is resolved and the implementation is put into effect, it will be challenged in the courts, with regard to both its constitutionality and its compatibility with the ECHR, due to the inherent interference with citizens' right to privacy and to communication.

Appendix 1

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Olav Torvund is partner at Bing Hodneland. He graduated from the University of Oslo in 1983, got his doctoral degree in 1993 (on a thesis on payments systems) and became professor of law at the University of Oslo, Norwegian Research Centre for Computers and Law in 1994. Professor Torvund has written extensively on intellectual property, ICT contracts, payments and financial obligations, and electronic transactions. He has been an adviser to the Ministries of Justice and Finance as well as the Central Bank of Norway on ICT contracts, electronic securities trading and payments. He has also advised the EU, UN/ECE and UNCITRAL on e-commerce and electronic transactions. Professor Torvund has also done extensive consulting work. He was a partner at Bing & Co prior to its merging with Hodneland in 2011, and has been a full-time partner at Bing Hodneland since 2012.

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