

## **Development of Broadcasting Laws related to Satellite Television in the ASEAN Countries**

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### **Abstract**

Satellite broadcasting services in the Asean (South East Asia Nations) region are developing rapidly. The member countries, such as Thailand, Malaysia, Singapore, the Philippines, and Indonesia, each having their own satellite are at present updating their respective laws, in order to keep up with the fast development. Private participation to enhance competition domestically and regionally is essential. This paper will deal with the basic elements of the existing laws.

### **Introduction**

This paper is inspired by the papers and discussions presented at the seventh General Assembly and Conference of the ASEAN Law Association in Kuala Lumpur, Malaysia, in December 1995. Telecommunication services have increased tremendously in the last two decades in the South East Asian Region, (known as ASEAN.) so have sa -

tellite broadcasting and cable broadcasting services.

It is known that telecommunication and broadcasting laws related to satellite broadcasting in the more industrialized countries, such as the European countries, the US and Canada are more developed than similar laws in the ASEAN countries. The latter laws were often in the early stage drafted after the laws of those industrialized countries. However due to their different national goals and needs the ASEAN member countries now have each their own specific telecommunication and broadcasting laws. One thing they have in common is that their national laws are all in the process of updating and amending to keep in breast with the fast technological developments and the heavy competition faced in the region. It is interesting to note that the development of telecommunication in general and in particular satellite broadcasting and cable television are developing so rapidly, whilst the specific laws

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regulating to these activities often lack behind.

Moreover, other related laws such as the copyright laws of these countries should also be updated, and at the same time facing the requirements of the TRIPs (GATT) 1) the process of revising these laws become even more complicated.

It is widely known that the Indonesian PALAPA communication system, often referred to as the first regional telecommunication system in this area 2) has promoted the use of broadcasting via satellite in the ASEAN countries. Intended as a domestic satellite system, this system was first introduced in 1976 and since then was also used by its neighbouring countries, based on bilateral lease agreements of space segment capacity on the Indonesian Satellite System. The PALAPA system A series, followed by the B and the C series transponders are leased a.o. to Malaysia, the Philippines, Cambodia, Papua New Guinea, Vietnam as well as Australia, U.S.A. and New Zealand. 3) Before the launching of its own satellites, Thailand was one of its customers too. Indonesia will launch its direct broadcasting system in 1997.

Thailand has launched its own communication satellite system for domestic and broadcasting services: the THAICOM 1 in 1991 followed by THAICOM 2 in 1994.

With a lifetime of 15 years these satellite systems have footprints coverage over Thailand, Laos, Cambodia, Myanmar, Vietnam, Malaysia, the Philippines, Hongkong Korea, Japan and the East coast of China. Domestic telecommunications services are obliged

to be transmitted through the Thaicom transponders 4)

Malaysia owns its Malaysian satellite MEASAT 1 which provides the Malaysian public with more than 20 channels 5) Whereas Singapore is in the process of launching its ASIA PACIFIC MOBILE TELECOM (APMT) in 1998 and SINGAPORE TELECOM 1 (K.U - BAND) in 1998 too. And the Philippines owns its AGILA space communication system and will launch the MABUHAI system in 1998. 6)

With footprint coverages overlapping each other, one can envisaged the competition in this area at present and in the near future

## **Broadcasting Laws**

### **Thailand 7)**

Thai laws directly regulating space telecommunication services comprise the Radio Communications Act of B.E.249B (1955) as amended by the Radio Communication Act of B.E. 2535 of 1992. Television and cable broadcasting services are regulated by two principal laws, the Broadcasting Act B.E. 249B (1955), as amended in 1987 and the Royal Decree Establishing Mass Communication Organization of Thailand (MCOT)(1977) and several ministerial regulations, such as the Ministerial Regulation number 12 B.E. 253G (1993)

These laws are at present in the process of amendment to keep up with the development of television and cable broadcasting technology. The aim is also to give the opportunity for the participation of the private sector in the operation of state-owned basic television stations.

**Responsible authority** : the licensing of applications under the Broadcasting Act and the MCOT lies with the Public Relations Department and the MCOT respectively . A license is required for the broadcasting of radio television . (Section 5 of the Broadcasting Act ). Pay-tv licenses are licensed by the Public Relations Department, however currently operating cable TV operators have entered into concession contracts with the MCOT ,and their service related activities were therefore not regulated under the Broadcasting Act.. The Radio Communication Act of B.E. 2535(1992) which regulates that a license is required for the manufacturing, possession, use, import, export or commerce of radio communication devices, is followed by Ministerial Regulation no 24 B.E. 2535 (1993) which explicitly exempt from obtaining a license for possession, use, import and export: a) a via satellite television receiver only (TVRO)-for household use only and b)a cable TV receiver-

**Definition of Broadcasting** : under the above Broadcasting Act and the Ministerial Regulation number 12 B.E. 2539 (1993), no person shall provide radio television broadcasting to service the public or community without the license from the licensing official. The broadcasting of radio television by transmitting hertzian waves into the atmosphere of which the programme is broadcast regularly or permanently and can be received by any person by using a television set provided or to be on sale in general shall be deemed the said broadcasting to service the public or community... Furthermore, this Act defined... "broadcasting of radio television to

service the public or community" ... (Section 5)... 1) being the broadcasting of programme to any community with the broadcast signal through wire or conductor at the level over 75 dBu and with more than one signal amplifier;... 2) being the broadcasting of programme by means of relaying, rebroadcasting or adapting the sound or radio television programme to be broadcast through the atmosphere or to be procured or produced by the broadcaster; ... 3) being the broadcasting of programme to members by means of subscription with or without subscribing fees, maintenance fees or any other consideration, or for free... Radio television service refers to broadcasting of radio television to the public.

Mr. Julponocgsathom 8) views that the above regulations do not cover pay-TV, as their main purpose was to regulate the basic free television services and not pay-TV. In reality Thai cable are broadcasting their programmes by micro waves since the commencement of operation and not over the cable as the name suggests. It is for this matter that the cable operators are licensed by the MCOT, which has the authority to carry out mass communication projects and to which the Broadcasting Act and the related regulations do not apply. This is one of the reasons that present broadcasting laws should be updated.

### **Malaysia 9)**

**Responsible Authority:** Malaysia 's broadcasting activities are regulated in the Broadcasting Act 338 of 1988. This Act specifically states that a license is required for the broadcast of any matter

in Malaysia. This Act also provides for the penalty in the case a person broadcasts without the required license. It includes a penalty fine or imprisonment. The Minister of Information is the responsible official for Broadcasting in Malaysia. The Ministry also controls private broadcasts.

**Definition of broadcasting** : This Act defines "broadcast matter" as any sign or signal transmitted by a broadcasting station whether for aural or visual reception or both, and includes any music, theatrical or other entertainment concert, lecture, speech, address, news and information of any kind so transmitted for reception by the general public.

Part IV regulates "television broadcast receiver" as any apparatus used for the visual and aural reception of broadcast matter transmitted by radio waves through either, wire and cable or by means of any other electro-magnetic waves in the electro-magnetic spectrum designated for broadcasting services. A license is required for activities of installing, working or dealing in radio broadcast receivers or television receivers. This Act also prohibits any person who is in possession of any radio broadcast receiver or television broadcast receiver or the occupier of any dwelling house or premises in which radio broadcast receiver or television broadcast receiver, without a license. It also refers to licenses in respect to the same matter issued under the Telecommunications Act of 1950.

Interesting to note is the Malaysian media ideology **10**) as stated in the operating policy of RTM channel 1 and 2, which operate under the following main objectives : a) to explain in

depth, and with the widest possible coverage, the policies and programmes of the government in order to ensure maximum understanding by the public; b) to stimulate public interest and opinion in order to achieve changes in line with the requirement of the government; c) to assist in promoting civic consciousness and fostering the development of Malaysian arts and culture; d) to provide suitable elements of popular education, general information and entertainment; and e) to aid national integration efforts in a multi-ethnic society through the use of the national language.

It seems that the use of parabol disks for household -use is not allowed, but this will be amended in the new law which is now under study in Malaysia. New guidelines will be set up governing transmission of television programs by private stations, as well as covering cable -tv broadcasting.

### **Singapore. 11)**

On October 1, 1994 the Singapore Broadcasting Authority Act was passed establishing the Singapore Broadcasting Authority (SBA) to regulate the broadcasting and cable industry in Singapore, which was revised in 1995 Cap .294. Whereas in 1992 by Act no 12 of 1992 the Telecommunication Authority of Singapore chapter 323 was promulgated, which was later amended in 1994.

**Responsible Authority** : under this Act it is established that the SBA has the powers to license almost every type of broadcasting and cable transmission activity known under the present state of

technology. The license is not transferable without consent of the SBA. The penalty fee for breach is high or imprisonment. The SBA Act also regulates the protection of cable operator's rights, and provides that no person shall in the course of any trade or business, import, manufacture, sell, offer for sale or let for hire any unauthorised decoder.

**Definition of Broadcasting** is widely defined in this Act to include any programme signal transmitted by any means received by persons having appropriate equipment

Broadcasting service is defined as " a service whereby signs or signals transmitted, whether or not encrypted, comprise a) any programme capable of being received, or received and displayed, as visual images, whether moving or still; b) any sound programme for reception; or c) any programme, being a combination of both visual image (whether moving or still) and sound for reception or reception and display, by persons having equipment appropriate for receiving, or receiving and displaying, as the case may be, that service, irrespective of the means of delivery of that service"

In conjunction with the functions, duties and powers of the Authority and in particular with Part V11 of the 1994 Act on Frequency Planning, art.35 which states that ..(1) the Telecommunication Authority of Singapore, in consultation with the Authority (SBA), assign to the Authority specific frequencies in the electromagnetic spectrum and satellite orbits for the purpose of broadcasting having regard to the international allocation plans set by the International Telecommunication Union

as well as national requirements. ( 2) The authority may re-assign to any person the frequencies in the electromagnetic spectrum and satellite orbits assigned under subsection(1) in accordance with this Act. This makes it unequivocally clear that the Authority regulates and controls the use of satellite orbits and frequencies for cable and satellite broadcasting, and the Authority has the legal right to re-assign satellite orbits.12)

Any broadcasting service licensee licensed by the SBA may broadcast or transmit satellite signals from Singapore for distribution regionally or internationally. However it is an offense to operate a satellite antennae in Singapore without a license. Also any broadcasting service licensee may receive satellite signals from the region or internationally. Unlicensed use of TVRO antennae is an offence under the Act. Furthermore TVRO Antennae licensees may receive satellite signals, depending on the size of the satellite they install, and the programmes or satellites they are permitted to access.

The law also provides rules regarding to ownership and control of broadcasting companies in detail.

The privatization process started when Singapore' national broadcaster Singapore Broadcasting Corporation was privatised in 1994, this was to enable competition and encourage better production. Cable tv has been introduced in Singapore and these programmes are widely used in the neighbouring countries. Cable transmission is planned to wire homes in Singapore via fabric optic in 2005. In line with the Government's decision to promote Singapore as a broadcasting hub in this region, changes

in its Laws and related regulations are expected to come.

### **The Philippines 13)**

The writer was not able to acquire the Philippines broadcasting law in time for this paper. A relevant law available was the Republic Act no 7925, An Act to Promote and Govern the Development of Philippine Telecommunications and the Delivery of Public Telecommunications Services of 1995.

#### **Definition of Broadcasting:**

“Broadcasting” is referred to in this Act as an undertaking the object of which is to transmit over-the-air commercial radio or television messages for reception of a broad audience in a geographic area. The Act further states that a “Franchise” is a privilege conferred upon a telecommunications entity by Congress, authorizing that entity to engage in a certain type of telecommunication service. Taking into account that satellite broadcast is a part of telecommunications, and except regulated differently in other laws and regulations, in the writer’s view any person engaging in said satellite broadcasting activities should acquire a license for his operations. However this Act does not specify to whom a broadcaster should apply for a specific license to operate. Furthermore, this Act regulates that no single franchise shall authorize an entity to engage in both telecommunications and broadcasting, either through the airwaves or by cable.

The Philippines Telecommunication national policy states that telecom-

munication is essential to the economic development, integrity and security of the Philippines, and as such shall be developed and administered as to safeguard, enrich and strengthen the economic cultural, social and political fabric of the Philippines. Having said that, the writer believes that the relevant broadcasting laws of this country must have covered all the other aspects vital to broadcasting and in particular satellite broadcasting and cable tv. With the Agila and the Mabuhai systems (in 1998) in orbit their broadcasting laws will surely be updated to meet the new activities to come.

### **INDONESIA 14)**

At present Indonesia has tabled a new draft Law on Broadcasting to Parliament, which is expected to come into effect soon. Several ministerial decrees of the Ministry of Information on the operation of television broadcasting are still in force, a.o. the Decree no III/Kep/menpen/1990. This decree has modified earlier decrees, such as the Decree of the Director Jendral of Information no 18 of 1986 on the use and operation of the Parabol Antennae for receiving television broadcasting. A short review on the 1990 decree added with the proposed draft law on broadcasting will give us an inside on the broadcasting rules in Indonesia. Taking into account the practice of legal drafting in Indonesia, a basic Law often refers to implementing regulations issued by Government Decrees, which are drafted later and will contain more specific requirements. Awaiting these implementing regulations to come into

force the basic law often states that earlier decrees are still in effect, insofar they are not contrary to the contents of said basic law.

**Responsible Authority :** the Government of Indonesia cq. The Department of Information has the function and responsibility for the development and control of broadcasting in Indonesia.. A license to operate radio, television and pay-tv broadcasting activities is required by the Minister of Information This license may not be assigned to others.

The license to use radio frequencies and or broadcasting equipment and other transmission devices is regulated by Law no 3 1989 on Telecommunication Services ,and should be obtained from the Ministry for Tourism, Post and Telecommunication. A severe fine or imprisonment is provided for unlicensed users.

**Definition of Broadcasting :** means the operation of sending broadcast through broadcasting facilities or transmission facilities on land or in space by means of the use of electromagnetic waves , cable transmission, fibre optic and or other media for the reception of the public with the use of radio broadcasting receivers and or television broadcasting receivers ,either with or without the assistance of an apparatus.

These services may be operated by government owned bodies and private owned Indonesian companies.

Prohibited is to set up private owned broadcasting companies for the interest of a single political party, ideology,

religion, or personal interest or group interest. Ownership or control over private owned broadcasting companies leading to or establishing a monopoly is prohibited. Cooperation among Indonesian broadcasting ,technical and service providers companies are allowed with the approval of the government. Foreign programmes imported from abroad have to comply to the same rules applicable to domestic television broadcasters and need a permit from the National Censorship Board. Program content should not be detrimental to the relationship between Indonesia and other countries. Cable tv may be operated by both government owned and private companies with the approval of the government.

Furthermore, foreign companies may undertake broadcasting activities in Indonesia with the approval of the Ministry of Information , they may set up representatives offices or place their correspondences and the Indonesian satellite facilities for international broadcast services , both for "up link" as well as using "portable up link" transmissions. Foreign broadcasters who intend to market their services in Indonesia should operate with Indonesian companies

Each broadcasting company shall acquire a right of broadcast for every program in accordance to the Laws on Copy Rights of Indonesia The use of parabol antennae by the public is allowed as they are privately owned . For commercial use a approval is needed from the government. The public may also use parabol antennae for distribution purposes. Private companies and provincial government offices may have their own privately financed parabol

system distribution at places not covered by TV-RI ( the government owned broadcasting company). A license is needed for such a construction,also for Close Circuit Systems.

Spill over of foreign broadcasting programs into Indonesian territory as well as Indonesian programs into foreign territory should be avoided.

Unintentional or intentional spillovers should be regulated based on bilateral agreements between the receiving and broadcast sending states

## Conclusions

This short and not in-depth study shows that the above countries' laws may not have the answers to all the existing legal issues present . However as stated earlier these laws are in the process of amending . Private sector participation will be encouraged to meet the competition faced both domestically and in the region. National policies will be redrafted to devise new guidelines encouraging private participation to meet the challenge of information and telecommunication technology. Copy rights law will be updated in line with international conventions and other related laws. Finally, it is sufficient to conclude that the ASEAN region is "broadcast friendly".

## Footnotes

- 1) See, GATT/ TRIPs rules, a.o. art.9, 11, and art. 14; etc.
- 2) John L. Mclucas, **Space Commerce** , Harvard University Press,Cambridge, 1991,pp.84-85
- 3) Mieke Komar Kantaatmadja,**An Overview of the Existing Laws and Regulations relating to Satellite and Cable Television in Indonesia**,The seventh General Assembly and Conference,Asean Law Association, Kuala Lumpur , Malaysia, Dec 6-10, 1995(abbr.A.L.A. Gen.Ass. 1995)
- 4) Piyatida Julponocgsathom, **Development of Law in the Asean Countries in the Context of Satellite/CableTelevision - Thailand**, A.L.A. Gen.Ass., 1995.
- 5) Abu Bakar Munir, **Satellite/Cable Television:The Development of Laws-Malaysia**, A.L.A. Gen. Ass.1995
- 6) Data from P.T.Telkom Indonesia,
- 7) Piyatida Julponocgsathom, supra no 4.
- 8) idem
- 9) Abu Bakar Munir, supra no 5.
- 10) idem
- 11) Linda Nai,**Development of Satellite Broadcasting and Cable Television in Singapore**, ALA.Gen Ass.1995.; Gerald Chew, **The Development of Laws in Asean Countries in the Context of The Singapore Position**, ALA.Gen.Ass 1995.  
The Singapore Broadcasting Authority Act no 15 of 1994,re.ed. 1995 cap.294 ; Telecommunication Authority of Singapore Act, Chapter 323, Act no 12, 1992, am. By 15 of 1994.
- 12) Gerald Chew, idem
- 13) Republic Act no 7925,An Act to Promote and Govern the Development of Philippine Telecommunications and the Delivery of Public Telecommunications Services ,25 1994.
- 14) Mieke Komar Kantaatmadja, supra 3 ;