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Contents

*Focus Section:
International Law in the Information Age:
The Law and Policy of Communications Regulation*

<i>Klaus W. Grewlich: Access to Global Networks — European Telecommunications Law and Policy</i>	9
<i>Karl-Heinz Ladeur: Monitoring and Blocking Illegal Content on the Internet — a German and Comparative Law Perspective</i>	55
<i>Fred L. Morrison: Sex, Lies, and Taxes: New Internet Law in the United States</i>	84
<i>James M. West: Legal Regulation of Internet Communications in South Korea</i>	101
<i>Peter-Tobias Stoll/Bernd Goller: Electronic Commerce and the Internet</i>	128
<i>John King Gamble: New Information Technologies and the Sources of International Law: Convergence, Divergence, Obsolescence and/or Transformation</i>	170

Articles

<i>P. R. Ghandhi: The Universal Declaration of Human Rights at Fifty Years: Its Origins, Significance and Impact</i>	206
<i>Péter Kovács: Quelques considérations sur l'appréciation et l'interprétation de l'arrêt de la Cour Internationale de Justice, rendu dans l'affaire Gabčíkovo-Nagymaros</i>	252
<i>Alexander Böhmer: The Struggle for a Multilateral Agreement on Investment — an Assessment of the Negotiation Process in the OECD</i>	267
<i>Stefan Muckel: The 'Church of Scientology' under German Law on Church and State</i>	299
<i>Sabine von Schorlemer: Stolen Art</i>	317

Reports

<i>Karsten Nowrot</i> : The Activities of the International Criminal Tribunal for the Former Yugoslavia in the Years 1997 and 1998	344
<i>Martin Mennecke/Christian Tams</i> : Die Rechtsprechung des Internationalen Gerichtshofes in den Jahren 1997 und 1998	391
<i>Solveig Hansen/Birgit Kessler</i> : Die Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte in den Jahren 1997 und 1998	439
<i>Tilman Laubner/Fabian Marschall</i> : Die Tätigkeit des Ministerkomitees und der Parlamentarischen Versammlung des Europarates in den Jahren 1997 und 1998	492
<i>Jasper Finke/Christiane Wandscher</i> : Die Tätigkeit der International Law Commission in den Jahren 1997 und 1998	523

Book Reviews

<i>Bauer</i> : Effektivität und Legitimität. Die Entwicklung der Friedenssicherung durch Zwang nach Kapitel VII der Charta der Vereinten Nationen unter besonderer Berücksichtigung der neueren Praxis des Sicherheitsrats (<i>Nowrot</i>)	555
<i>Becker</i> : Der Tatbestand des Verbrechens gegen die Menschlichkeit (<i>Bodendiek</i>)	557
<i>Betten/Grief</i> : EU Law and Human Rights. European Law Series (<i>Hofmann</i>)	559
<i>Boyle/Anderson</i> (eds.): Human Rights Approaches to Environmental Protection (<i>Riedinger</i>)	560
<i>Brown Weiss</i> (ed.): International Compliance with Nonbinding Accords (<i>Riedinger</i>) ..	562
<i>Cohen/Deng</i> (eds.): Masses in Flight — The Global Crisis of Internal Displacement; The Forsaken People — Case Studies of the Internally Displaced (<i>Geissler</i>)	563
<i>Farber/Sherry</i> : Beyond All Reason: The Radical Assault on Truth in American Law (<i>Peters</i>)	565
<i>Fassbender</i> : UN Security Council Reform and the Right of Veto. A Constitutional Perspective (<i>Tams</i>)	567
<i>Gomaa</i> : Suspension or Termination of Treaties on Grounds of Breach (<i>Feist</i>)	571
<i>Grewlich</i> : Konflikt und Ordnung in der globalen Kommunikation (<i>Happ</i>)	573
<i>Hailbronner/Renner</i> (Hrsg.): Staatsangehörigkeitsrecht (<i>Hofmann</i>)	575

<i>Hufnagel</i> : UN-Friedensoperationen der zweiten Generation. Vom Puffer zur Neuen Treuhand (<i>Nowrot</i>)	578
<i>Jenisch</i> : Bibliographie des deutschen Schrifttums zum Internationalen Seerecht 1982 - 1996 (<i>König</i>)	579
<i>Kiss/Shelton</i> : Manual of European Environmental Law (<i>Riedinger</i>)	580
<i>Kreutzer/Scheuing/Sieber</i> (Hrsg.): Europäischer Grundrechtsschutz (<i>König</i>)	582
<i>Lailach</i> : Die Wahrung des Weltfriedens und der internationalen Sicherheit als Aufgabe des Sicherheitsrates der Vereinten Nationen (<i>Tams</i>)	584
<i>Martenczuk</i> : Rechtsbindung und Rechtskontrolle des Weltsicherheitsrates (<i>Bodendiek</i>)	586
<i>Ress/Bröhmer</i> : Europäische Gemeinschaft und Medienvielfalt — Die Kompetenzen der Europäischen Gemeinschaft zur Sicherung des Pluralismus im Medienbereich (<i>Tietje</i>)	588
<i>Seelmann-Eggebert</i> : Internationaler Rundfunkhandel — Das Recht der World Trade Organization und der Europäischen Gemeinschaft (<i>Tietje</i>)	588
<i>Röben</i> : Die Einwirkung der Rechtsprechung des Europäischen Gerichtshofs auf das mitgliedstaatliche Verfahren in öffentlich-rechtlichen Streitigkeiten (<i>König</i>)	594
<i>Sander</i> : Der Europäische Gerichtshof als Förderer und Hüter der Integration: Eine Darstellung anhand seiner Einwirkungsmöglichkeiten auf die einzelnen Dimensionen des Einigungsprozesses (<i>Peters</i>)	597
<i>Scott</i> : EC Environmental Law (<i>Hofmann</i>)	599
<i>Talmon</i> : Recognition of Governments in International Law: With Particular Reference to Governments in Exile (<i>Buchenau</i>)	600
<i>Graf Vitzthum/Talmon</i> : Alles fließt. Kulturgüterschutz und innere Gewässer im Neuen Seerecht (<i>Nowrot</i>)	602

Books Received 605

List of Contributors 607

FOCUS SECTION:
INTERNATIONAL LAW IN THE INFORMATION AGE:
THE LAW AND POLICY OF COMMUNICATIONS REGULATION

**Access to Global Networks —
European Telecommunications Law and Policy**

By Klaus W. Grewlich

In the European Union, the development towards an 'Information Society',¹ distinguished by state of the art telecommunications² and prospering information content markets,³ was progressing slowly until the early 1990s. The advent of information networks with global connectivity,⁴ however, fundamentally changed the public perception of the commercial, cultural and political importance of the developing digital environment, for which the metaphor 'Cyberspace'⁵ is often used. It has only been since the appearance of the Internet and the World Wide Web⁶ in particular, that the basis of a commercial multimedia development has been formed.

¹ European Parliament, Resolution of 21 November 1996 on new policy priorities regarding the Information Society, Official Journal Eur. Comm., No. C 376, 1996, 1; *Alain Dumort/John Dryden*, *The Economics of the Information Society*, 1997.

² *Klaus W. Grewlich*, *Konflikt und Ordnung in der globalen Kommunikation — Wettstreit der Staaten und Wettbewerb der Unternehmen (Conflict and Order in Global Communications — Struggle among States and Competition between Enterprises)*, *Law and Economics of International Telecommunications (LEIT)*, vol. 33, 1997, 47 *et seq.*

³ *Fondation IDATE*, *La Société face au Multimédia — Enjeux économiques et culturels pour les Européens — Rapport 1995, 1998*; *Martin Bullinger/Ernst-Joachim Mestmäcker*, *Multi-Mediadienste — Struktur und staatliche Aufgaben nach deutschem und europäischem Recht*, *LEIT*, vol. 30, 1997, 20 *et seq.*

⁴ See Ministerial Conference, *Global Information Networks*, Bonn 6 - 8 July 1998, Background Report, 1997.

⁵ *Klaus W. Grewlich*, *Governance in 'Cyberspace' — Access and Public Interest in Global Communications*, 1999 (forthcoming).

⁶ *International Telecommunications Union (ITU)*, *Challenges to the Network — Telecoms and the Internet*, 1997; *ITU*, *World Telecommunication Development Report — Trade in Telecommunications*, *World Telecommunication Indicators*, 1997.

Underlying the perceived ‘convergence’⁷ of telecommunications, broadcasting, and computer networks/information technologies are the commercial, technological, legal and regulatory dynamics, that are driven by a multitude of factors, notably:

- *first* entrepreneurial vision and will,
- *second* the technological phenomenon of digitalization and the related economic importance of fast declining unit costs pertaining to switching, processing and storing of information, and
- *third* the commercial realignment of market actors both across sectors (horizontal) and along the multimedia value chain (vertical).

Intimately interrelated with these developments is the technical and commercial phenomenon that information, communication and entertainment content, whether voice data or images, will soon be ‘platform-independent’, thus allowing content to be transmitted in ways that are different from today’s approach.

The technological and economic developments in the field of telecommunications were interrelated with a pressure to reform the legal framework. As a result, by 1999 the regulatory system pertaining to the telecommunications infrastructure has been reformed to a considerable extent due to accomplishments in national,⁸ European,⁹ and international (notably WTO)¹⁰ legislation, regulation, agreements and arrangements. Global information networks, such as the Internet, had considerably increased this pressure to achieve appropriate legal and regulatory adjustments and reforms and now cause a shift of the focus of attention from technical transmission to *content*, so to speak from the ‘communication infrastructures’ to ‘knowledge based societies’.

⁷ See European Commission, Green Paper on the Convergence of the Telecommunications, Media and Information Technology Sectors, and the Implications of Regulation — Towards an Information Society Approach, COM (97) 632, 3 December 1997 (hereinafter Green Paper on Convergence).

⁸ For the member countries of the European Union see *Squire, Sanders & Dempsey/Analysis, Adapting the EU Regulatory Framework to the Developing Multimedia Environment — A Study for the European Commission (Directorate XIII), Annex 2, 1998*; for the United States see *Leon T. Knauer/Ronald K. Machtley/Thomas M. Lynch, Telecommunications Act Handbook, 1996*.

⁹ European Commission (Directorate XIII), Status Report on European Union Telecommunications Policy, 26 January 1998.

¹⁰ World Trade Organization (WTO), Agreement on Telecommunications Services (Fourth Protocol to General Agreement on Trade in Services), 15 February 1997, ILM, vol. 36, 1997, 354 (with introductory note by *Laura B. Sherman*); see also the assessment contained in ITU (note 6), 98 *et seq.*

Access was and remains a key element of the required regulatory adjustment, comprising access both at the technical and the market levels: *i.e.* notably access to networks and essential facilities; interconnection; access for consumers to the network and to content; access of market actors to the consumers; access of content producers and packagers to networks; access by different market actors to different forms of content.

I. Notions: Globalization — Information Society — ‘Cyberspace’ — Digitalization — Multimedia Value Chain — Convergence

Globalization, information society and ‘Cyberspace’ are political, economic and societal notions; digitalization is a technological phenomenon; and multimedia and convergence are both technological and commercial fields of action. All these notions and their implications must be clear, before the legal and regulatory issues pertaining to access to global information networks and European telecommunications law and policy in a cooperative international legal system can be properly addressed.

1. Globalization

‘Globalization’ is a multifarious notion. It implies particularly *first*, the worldwide effects of advanced technology in terms of communication and transport, *second*, free trade, free capital and financial flows, and *third*, an entrepreneurial and political outlook that is transnational in perspective. Globalization is not to be understood as a reality that has been achieved, but rather a description of a current development and an objective to be reached.

While global information networks would in principle allow for worldwide ‘information fulfilment’, and navigators, browsers and information brokers allow for ‘selection in the wealth of information’, many people in a number of countries still have difficulty grasping the extent and nature of the changes being brought about and the benefits that the ‘Cyber-age’ may bring to their lives. For many, these developments represent positive new opportunities and prospects. For some, however, the expected changes will introduce new insecurity and risk. The challenge is to maximize the opportunities while keeping the risks to a minimum.

At present, while many developed nations are experiencing a boom in telecommunications via the growth of new systems and technologies, like mobile cellular telephony and the Internet, the vast majority of the world’s people do *not* have easy access to a simple telephone. Only around 20 percent of the world’s 600 million phone lines are located in developing countries, yet these countries are home to 85 percent of the world’s population. This grossly uneven distribution of telecommu-