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# Reimagining Audiovisual Media Platform Regulations Through Policy Principles: A Case Study of Taiwan's Endeavor in Crafting Legislation for OTT TV

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## Abstract

In September 2020, the NCC initiated an investigation into the video service “Hualien Haokan” provided through a dedicated set-top box and held a public briefing to draft regulations classifying this service as a cable television service. Such new types of services often face unclear positioning issues globally. Some regulations are based on policies and frameworks established by traditional media, while others are “temporary” strategies specifically designed to address new media issues. These regulations, formed through compromises or expedient measures, cause significant challenges for the development of the audiovisual media services industry and result in substantial regulatory discrepancies between different industries.

Picard & Picard (2017) proposed “Policy Principles for the Digital Age,” intending to offer guidance to regulatory authorities or policymakers in various countries. These principles, based on normative foundations and values, aim to provide responses that are adaptive to the rapid changes in technology, policy, economy, and society while maintaining continuity. The paper intends to analyze the appropriateness of Taiwan's audiovisual media service regulations and the relationship between specific administrative measures and regulations using Picard & Picard's Policy Principles. Furthermore, it seeks to propose suitable legislative models for imposing obligations, offering feasible legal suggestions for future amendments to audiovisual media service regulations.

## I. Introduction

The Swiss Institute for Management Development (IMD) in the report entitled “*Digital Vortex 2021: Digital Disruption in a COVID World*” pointed out that digital disruption, formed by the convergence and collision of digital technologies and business models, has become a major force across industries. The report collected and analyzed opinions from over 1,200 global business leaders and used the concept of the digital vortex to understand the impact of digital disruption. The results show that industries closer to the center of the vortex experience greater speed and magnitude of change, with media, entertainment, and telecommunications industries having the highest degree of digitalization (IMD, 2021). As various industries face digital disruption due to digital convergence, communication and broadcasting regulatory agencies in different countries are playing an active role in leading the development of the communication and broadcasting industry and legal reforms under the challenge of “digital transformation” involving spectrum resources, smart connectivity, and data application difficulties.

In 2011, Taiwan's communication and broadcasting regulatory agency—the National Communications Commission (NCC)—encouraged new entrants to the market by opening up cross-regional operations for cable television, making the market increasingly competitive. However, due to the “red line” restriction in the Cable Television Act that a single cable television system operator's subscribers

cannot exceed one-third of the total national subscribers. The scale of cable television businesses is much smaller compared to telecommunications businesses (Liu & Chuang, 2015). But services always find their own way. In 2020, TWM Broadband, a subsidiary of the largest cable television multi-system operator Fubon Group, attempted to provide a new video service called “Hualien Haokan” in Hualien County, a non-primary operating area. This “TV-like” service allows broadband users to watch 80 bundled channel programs through a proprietary set-top box. However, this creative operational model was reported by a local competitor, Hualien Cable TV, who claimed that the service was an unlicensed cable television service (CATV).

When new service emerge, the pivotal questions revolve around their potential negative impact on public interests, specifically viewers’ rights, and whether regulation is warranted. “Hualien Haokan” defies the original CATV framework and differs somewhat from conventional perceptions of OTT TV. In response to challenges posed by market competition, advancements in telecommunications technology, digital media, emerging audiovisual platforms, and social media, regulatory agencies worldwide have intensified their policy efforts. Some agencies draw from traditional media policies, while others adopt “temporary” strategies to address new media challenges.

Moreover, policies in the field of ICT transmission technologies lack consistency, with strategies often conflicting even for the same technology. The fundamental values of these policies are often unclear and rarely based on universal principles. Instead, they tend to stem from narrow interests or expediency, as seen in the regulatory considerations for “Hualien Haokan” or the significant legal differences between CATV and IPTV. There is an urgent need for academic analytical approaches to synthesize and review the regulatory (normative) purposes of audiovisual media services. This includes examining whether specific measures align with their regulatory purposes and assessing the feasibility of adjusting legal structures or future legislative actions.

Against this backdrop, this paper preliminarily attempts to find the core of regulatory policies through a comparison of media regulatory legal systems in the European Union and the United States. Using the research approach of legal policymaking and referencing the “Digital Age Policy Principles” proposed by scholars Robert G. Picard and Victor S. Picard from the Reuters Institute for Journalism at the University of Oxford, the paper seeks to find suitable core normative values. Based on the list of core policy items outlined in the policy principles, it engages in extensive discussions and feedbacks to modify suggestions, developing them into a tool to aid decision-makers (Picard & Picard, 2017a). Through this, the paper reviews the challenges encountered in Taiwan’s 2020 OTT TV draft controversy and strives to explore how Taiwan can reconstruct its regulatory framework and potential strategies for audiovisual media platforms.

## **II. Regulatory Dilemmas Faced by Emerging Audiovisual Services in Taiwan**

In 2020, Taiwan’s major cable television system operator “TWM Broadband” launched the service “Hualien Haokan,” an OTT TV-like service via broadband network, which drew the attention of the National Communications Commission (NCC). Driven by digital convergence and technological evolution, audiovisual platform operators are exploring diverse business models and collaborations, giving rise to “black swans” in the audiovisual service domain (Taleb, 2010) (Figure 1). The nature of “Hualien Haokan” blurred the lines between cable television and OTT TV. In 2021, the NCC held a public hearing to determine whether it falls under the scope of the Cable Television Act or is merely a regular OTT TV service. A question arose: if it is classified as a regular OTT TV, should new laws be enacted to regulate this service?

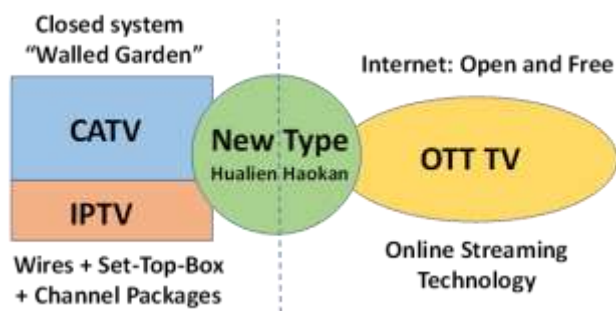


Figure 1: Conceptualization of new type audiovisual service  
Source: Author

The NCC considered that to classify “Hualien Haokan” as a CATV service, it must simultaneously meet three conditions: (1) the proprietary set-top box needs to be bundled or promoted with a single cable network operator; (2) the provided service must include a channel combination equivalent to basic CATV channels; (3) the channel services must be accessed through a proprietary set-top box. During the 2021 public hearing, scholars, experts, and the public generally opposed these conditions. Their main argument focused on cable TV having its inherent definition, emphasizing that the judgment should be based on the “closed system nature from the headend to the subscriber.”

In the traditional regulatory framework “Silo” model, the regulator considers different technologies and system architectures, and manages the audiovisual services differently based on their respective regulatory needs. However, with the rapid convergence of services and increasingly blurred market boundaries, to promote fair and effective competition among different platforms, based on the principles of equality and technological neutrality, in 2015 the NCC proposed the “Draft Statute for Cable Multi-channel Video Platform Services.” It considered that networks via cable wires can provide telecommunications services such as voice, video, and broadband Internet, and that the bundled cable multi-channel services provided by cable networks have immediacy, penetration into households, and the power to shape social and democratic awareness. Therefore, it proposed to include the operation of cable TV multi-channel platform services under special telecommunications regulations. However, this

draft was not submitted to the congress for review.

In the audiovisual service market, both cable multi-channel services and IPTV belong to multi-channel audiovisual platform services provided based on “cable network,” and their main business is linear programs unilaterally provided by operators. They differ significantly from OTT TV in terms of network openness and user choice, hence the difference in regulatory density. However, what kind of platform does “Hualien Haokan” belong to? The NCC stated in the media that this service is neither a closed-type cable TV nor a fully open OTT TV, but rather a “multi-channel video program operator” intermediate between the two, similar to what the U.S. calls a virtual multichannel video programming distributor (vMVPD), referring to services with pre-scheduled and continuous channels and linear streaming functions.

In the “Hualien Haokan” controversy, the NCC introduced the draft of “Online Audiovisual Service Management Act” (OTT TV Law) in July 2020, initially emphasizing a light-touch regulatory “registration” for management. At first, the draft aimed to control the data related to business and introduce incentive mechanisms, but later evolved to abandon mandatory registration and propose a “graded management” approach. This applies to operators with a commercial base or significant connection in Taiwan and engaged in OTT TV services of a certain scale. The applicable operators are only required to comply with general obligations for disclosing basic information, appointing local agents, complying with services content specifications, and allowing access to internal data, etc. However, due to strong opposition from local and global OTT television operators, the draft of OTT TV Law was ultimately suspended in mid-2022.

### **III. Comparative Study of Communication Convergence Regulatory Frameworks in Europe and the United States**

#### **1. European Union: Dual Regulatory Framework for Communications and Broadcasting**

Examining important policy and legal documents issued by the EU since the mid-1980s, while the EU advocated digital convergence, it still adopted a dual regulatory framework for communications and broadcasting. In 1987, the European Community (predecessor of the EU) published the “Green Paper on the Development of the Common Market for Telecommunications Services and Equipment” (Commission of EC, 1987), establishing the direction of telecommunications liberalization. In 1999, it published the document entitled “1999 Communications Review: Towards a New Framework for Electronic Communications Infrastructure and Associated Services”, proposing the concept of a horizontal-level telecommunications regulatory framework (Commission of EC, 1999, p.21).

By 2002, the published regulatory framework (European Communities, 2002) consolidated telecommunications regulatory directives from the original 20 to 6, completing a new electronic communications regulatory framework. In 2009, the Lisbon Treaty came into effect, with the European Union (EU) taking over the status and tasks of the EC, announcing the “Telecom Reform Package” (European Communities, 2009), which not only reviewed and amended existing directives but also established the “Body of European Regulators for Electronic Communications” (BEREC) to assist in implementing relevant regulatory directives. In 2018, it announced the “Electronic Communications Package,” further consolidating the existing framework, authorization, access, and universal service directives into the so-called “European Electronic Communications Code” (EECC) (European Union, 2018).

Despite high convergence in telecommunications, media, and information

industries driven by digital technology, the EU has not incorporated broadcasting television content services into the regulatory framework of electronic communications. This is because the EU believes that although broadcasting television content services or information society services like e-commerce use the “electronic communications services” defined in the 2003 and 2009 Framework Directives to transmit information content, these services have their own legal interests to protect and values to maintain (European Communities, 2002). Therefore, for broadcasting television program content with editorial control, a dual regulatory framework of “transmission and content separation” is adopted, regulated separately by the Audiovisual Media Services Directive (AVMSD) (European Union, 2010).

In 2007, the EU amended the 1989 “Television Without Frontiers Directive” and renamed it the “Audiovisual Media Services Directive” (AVMSD). The most important change was that regardless of the device consumers use for audiovisual media services, the principle of “the same services are regulated in the same manner” is applied. Using the concept of “audiovisual media services,” it brought the original “television broadcasting” and the “on-demand audiovisual media services,” which originally fell under the “E-Commerce Directive,” into the regulatory scope of the 2007 version of the AVMSD (European Union, 2007).

However, as the forms of audiovisual media services and people’s viewing behaviors have greatly changed, the EU passed the 2018 version of the AVMSD on October 3, 2018 (European Parliament, 2018), incorporating “video-sharing platforms” into the regulatory scope. It requires appropriate measures to protect vulnerable groups like children and assumes specific obligations to avoid hate speech. But compared to “audiovisual media services,” due to “video-sharing platforms” not bearing editorial responsibility for user-uploaded content, the regulatory intensity is relatively lower.

## 2. United States: A Regulatory Framework Centered on Competition

The U.S. Communications Act of 1934 establishes the regulatory framework for the communications industry with competition at its core. From the law's structural arrangement, it adopts a vertical regulation or so-called "silo" framework. However, if we look at the substantive content of the legal provisions, even for telecommunications and broadcasting services that both use radio transmission technology and are listed under "Title III - Provisions Relating to Radio," the law still adopts a dual regulatory model. That is: telecommunications service providers are listed as common carriers and regulated like public utilities such as water, electricity, gas, or mass transportation, which cannot refuse service without just cause. As for those providing broadcasting services using radio waves, because it involves freedom of speech and freedom of the press, they are protected by the First Amendment under the U.S. Constitution.

The Communications Act of 1934 distinguishes between telecommunications and broadcasting based on whether the service provider has editorial discretion over the information content carried or held. If determined to be a broadcasting television service, the service provider can exercise editorial discretion and decide on the information content they wish to transmit or schedule. Under the premise of high protection for freedom of speech by the First Amendment to the U.S. Constitution, Section 326 of the Communications Act of 1934 further stipulates that the Federal Communications Commission (FCC) has no authority to review broadcast content. When radio or television broadcasts obscene or indecent content, the government can only penalize the broadcasting service provider according to the provisions on broadcasting obscene language in Section 1464 of Title 18 (Crimes and Criminal Procedure) of the U.S. Code.

## IV. A Policy-Oriented Perspective on Communication Law - Policy Principles for the Digital Age

The paper focuses on exploring communication convergence legal issues centered on audiovisual media platforms, rather than simply deducing and inducing legal texts or performing textual interpretations of judgments. It provides some research orientations in the field of legal policymaking. Legal policymaking originally belongs to the public policy research domain, studying the interrelationship between policy and legislation. For decades, legal dogmatics shaped under positivism has had its limitations. As a result, legal policymaking has risen in response, with legal scholars re-asserting the importance of policy jurisprudence, legislative studies, or legal policymaking. They no longer adopt a model of understanding law solely from legal provisions but place the research focus on the process from policy formation to law enactment. After the law is implemented, they further pay attention to its effects, critiquing the state of law implementation and its gap with social needs. Their research perspective shifts from the traditional "theory of interpretation" to the modern "theory of legislation" and "theory of execution."

The premise of legal policymaking is that "law is a tool to achieve policy goals." (Chen, 2002, p.73) It involves identifying under what conditions law is most likely to cause people to change existing behavior patterns, comply with the law, and exhibit new behavior patterns, thereby moving society towards the direction sought by legislators and policymakers. These conditions are intermediate variables, influencing the effect of the independent variable (law) on the dependent variable (social change, policy goals). Intermediate variables include: the interface between policy and law, the design of transforming policy into law, and issues concerning law effectiveness and effects. However, these intermediate variables may not necessarily achieve the goals expected by policymakers, but they may change (strengthen or weaken) the energy of law and legislation to achieve policy goals.

Table 1: Picard & Picard's Policy Principles for the Digital Age

1. Addressing Basic Communication and Content Needs	<ul style="list-style-type: none"> <li>➤ Promote freedom of expression and other communication rights</li> <li>➤ Provide emergency and disaster prevention communication infrastructure</li> <li>➤ Address the market failures of system and infrastructure</li> <li>➤ Promote production of public goods, public interest, content, information, and entertainment content</li> <li>➤ Facilitate citizen participation in debates on issues affecting social development</li> </ul>
2. Providing Effective Abilities for Public Use of Media and Communication	<ul style="list-style-type: none"> <li>➤ Provide universal access to infrastructure</li> <li>➤ Ensure affordable use of basic technology and service levels</li> <li>➤ Provide equal/inclusive support for those with visual, auditory, or other special access needs</li> <li>➤ Provide interconnectivity and interoperability of all technologies and services through open architectures</li> </ul>
3. Promoting Diversity and Pluralism in Media Ownership and Content Availability	<ul style="list-style-type: none"> <li>➤ Seek diversity in providers and types of content</li> <li>➤ Avoid extension and abuse of communication monopoly power</li> </ul>
4. Providing Protection for Users and Society	<ul style="list-style-type: none"> <li>➤ Protect children and vulnerable groups from exposure to adult and inappropriate content</li> <li>➤ Protect personal privacy and data security, avoid intrusive monitoring or misuse by corporations and states</li> <li>➤ Provide adequate consumer protection and enforcement mechanisms in communication</li> <li>➤ Prevent incitement, crime, and racial hatred/violence</li> </ul>
5. Providing Transparency and Accountability	<ul style="list-style-type: none"> <li>➤ Provide transparency and comparative information on service terms, service prices, data collection</li> <li>➤ Provide transparency in media ownership</li> <li>➤ Provide information to ensure consumers understand the influence of algorithms and other automated technologies on content selection</li> <li>➤ Promote communication accountability through legal and self-regulatory mechanisms</li> </ul>
6. Pursuing Developmental and Economic Benefits	<ul style="list-style-type: none"> <li>➤ Provide incentives to stimulate private investment in infrastructure, services, and innovation</li> <li>➤ Promote competition among communication product and service providers</li> </ul>
7. Pursuing Fair and Effective Policy Outcomes	<ul style="list-style-type: none"> <li>➤ Promote meaningful public consultation and participation in policy processes</li> <li>➤ Adopt multiple policy mechanisms and tools to achieve goals</li> </ul>

Source: Picard & Picard (2017a)

According to Robert G. Picard and Victor S. Picard's proposed "Digital Age Policy Principles," the aim is to help global policymakers formulate regulations by identifying core normative values. The method is to use these suggested principles as a basis for broad discussion, incorporating feedbacks and corrective suggestions, ultimately evolving into a decision-making tool (Picard & Picard, 2017). This process includes building consensus gradually through consultation and dialogue with communication policy experts, focusing on standards that actively promote positive outcomes rather than merely setting conditions.

Picard & Picard (2017) argue that policymakers rarely adhere to a single principle and are often influenced by multiple policy principles. Acknowledging the non-neutrality and potential controversy of these principles, policy-makers are urged to prioritize society's fundamental communication needs and consider the impact on all stakeholders. When considering economic and social benefits, any policy analysis must rank various principles, and this process usually depends on a nation's unique historical background and cultural factors. Whether certain principles are interrelated or complementary in considering specific issues requires a nuanced approach.

Picard & Picard advocate that coherent arguments built upon normative foundations and values can provide decision-makers with basic standard references. This allows them to respond to issues arising in different contexts with consistent actions, transforming policy principles into tangible policies and practices (Picard & Picard, 2017b). Picard & Picard list 7 main principles further divided into 23 independent principles, primarily based on fundamental values such as accountability, dignity, dialogue, equity, freedom, inclusiveness, openness, security, self-determination, reward, and responsibility (Table 1). These principles also anticipate diverse interpretations of shared values by individuals and organizations. However, when legislators and regulatory agencies consider these principles, they must focus on deep-rooted shared norms and

support principles that can reduce harm and increase benefits for society as a whole (Picard & Picard, 2017a, p.13).

## **V. Examining the Potential Guidance from Taiwan's Audiovisual Media Service Law and Policy Principles**

### **1. The Dilemma of Taiwan's Audiovisual Media Service Regulation**

Taiwan's audiovisual media service legal framework includes the basic law level's "Basic Law on Communications" the organizational law level's "National Communications Commission Organization Act," and the functional law level's "Telecommunications Act," "Telecommunications Management Act," "Broadcasting Act," "Cable Television Act," and "Satellite Broadcasting Act." The legislative purposes of these laws, based on the temporal and spatial background and social values at the time of legislation, have some similarities as they belong to the same communications law system. However, there are also instances where legislators arbitrarily added without legal logic or based on political party negotiations, resulting in inconsistencies.

**The public values behind Taiwan's audiovisual media service regulations and their policies are not clear.** Although the drafters of Taiwan's communication-related laws often specify the legislative purpose in Article 1, explaining the basic principles or policy concepts at the time of enactment, such as Article 1 of the Basic Law on Communications: "*This Basic Law is enacted to respond to technological convergence, promote the sound development of communications, safeguard the rights of the people, protect consumer interests, and enhance multicultural development,*" there is no complete information publicly available on what facts, considerations, tasks, goals, and consensus among legislators were based on. Rarely does it start from exploring the purposiveness of legal norms or policies. More often, it stems from narrow interests or expediency, resulting in a legal framework based on outdated policies that not



only fails to address the current complexity of the communication industry but also becomes the root of the problem itself. For example, the “withdrawal of political parties, government, and military from media” clauses (restriction clauses on media) in the three broadcasting laws is the typical example demonstrating the dilemma of legal norms or policies.

**Taiwan’s audiovisual media service legal framework is chaotic and struggles to respond to emerging services.** The formation of current three broadcasting laws (Broadcasting Act, Cable Television Act, Satellite Broadcasting Act) was originally a dispersed legislation approach in response to new technological developments, not adopting a single broadcasting law to encompass various forms of audiovisual media services. However, the subsequent development of CATV channel services and IPTV services provided by telecom operators took different paths due to the restriction clauses on media (the former under the Cable Television Act, the latter under the Telecommunications Act). Moreover, the long-standing interest entanglements between CATV and satellite channels have led to the emergence of “multi-system operators” (MSOs) and “channel agents” sandwiched between systems and channels, which are difficult for the law to handle. This has made the regulatory agency NCC’s choice of regulatory means increasingly strict and rigid. As a result, when online audiovisual service OTT TV appeared in the consumer market, it was not only difficult to categorize, but the NCC further attempted to exclude online content “entirely” from its jurisdiction, revealing the agency’s flustered behavior.

**Recent controversies in Taiwan’s Internet audiovisual media service regulatory bills.** The background of the NCC’s establishment was due to the trend of digital convergence causing the blurring of industry and service boundaries. Thus, the formulation of relevant policies should cover the entire picture of the convergence trend. However, faced with the dispersed legislation approach of broadcasting laws, if it is decided to include OTT TV after its

emergence, it would inevitably adopt an “open a new battlefield” approach to legislate for it separately. Sure enough, in July 2020, the NCC announced the draft of “Internet Audiovisual Service Management Act” (OTT TV Law), proposing to use a “registration system” with lower regulatory density as the management core. By grasping industry-related business information and supplemented by incentive mechanisms, the NCC could adopt measures favorable to the development of the OTT TV industry. However, after the OTT TV Law was proposed and two public hearings were held to consult public opinions, it faced unanimous opposition from most operators. Until the end of 2021, when the Legislative Yuan (congress) reviewed the NCC’s budget, the NCC was urged to submit a related OTT TV draft within six months. Thus, on May 25, 2022, the NCC announced the framework of the draft “Internet Audiovisual Service Management Act,” adopting a “hierarchical” management approach. However, the subsequent proposal progress of this draft was shelved by the NCC internally.

## 2. Lessons from the Regulatory Systems in European Union and United States

Taiwan’s audiovisual media service regulations, known as the “Three Broadcasting Laws,” are structurally based on the framework of “silo” under the United States’ Communications Act of 1934. This dual regulatory model separates telecommunications and broadcasting, emphasizing freedom of speech and press in broadcasting. However, there are notable differences from the U.S. system. In Taiwan, regulatory authorities can impose administrative sanctions on broadcasters and television service providers for illegal or inappropriate content. Recently, the EU’s layered regulatory model has significantly influenced the development of Taiwan’s communications and broadcasting regulatory framework.

In the early 1980s, after the EU confirmed its direction toward telecommunications liberalization, it continuously introduced various

policy green papers, review reports, guidelines, and research documents. This proactive approach aimed to integrate divergent opinions among member states and find the greatest possible consensus. Once a policy direction was established, the legal framework underwent minor adjustments rather than significant changes, ensuring high policy continuity. Regarding audiovisual media services, the preamble of the 2002 Framework Directive states in paragraph 6 stating: “Audiovisual policy and content regulation are undertaken in pursuit of general interest objectives, such as freedom of expression, media pluralism, impartiality, cultural and linguistic diversity, social inclusion, consumer protection and the protection of minors.....” (European Communities, 2002) Legislation targeting specific industries aims to replace most regulatory controls with effective market competition. The established electronic communications regulatory framework adopts a layer model. This model covers the infrastructure network layer and service operation layer in telecommunications, while upper-layer content applications are handled according to sectoral regulations.

Traditional broadcasting services do not fall under the telecommunications regulatory framework and are instead managed by the Audiovisual Media Services Directive (AVMSD, Directive 2007/65/EC, formerly the Television without Frontiers Directive, TVwF, 89/552/EEC). The 2018 amendment to the AVMSD (Directive (EU) 2018/1808) included “video sharing platforms” (VSP) within its regulatory scope. The primary regulatory objectives adopted a proactive management approach aimed at protecting minors from harmful content and citizens from incitement to hatred, violence, and terrorism.

The layer model advocated by the EU is also often criticized by academics. For example, Economics Professor Martin Fransman at the University of Edinburgh believes that layer models mostly fail to recognize the role and function of relevant agencies in the legal, regulatory, and political processes that shape the structure and operation of the ICT industry

(Fransman, 2002). David Reed, a former FCC policy analysis expert, believes that dividing the communications industry into three layers of infrastructure, operation and content limits operators’ cross-layer operations, hindering their willingness to develop cross-layer services or technologies, which may not be beneficial to consumers (Reed, 2006). King & Wilding (2018) examine and analyze the deficiencies of this model from engineering bias, lack of flexibility, innovativeness, and market power and competition. They believe that while the layer model, originating from computer network architecture, is simple and easy to understand, it cannot serve as a basis for public policy debates on communication regulation. Moreover, the layer model is essentially a static structure, but the operation of the communication industry is a dynamic development process that requires additional analytical frameworks to understand, especially the differences between different layers. It cannot accurately grasp the differences within the same layer. For example, while providing audiovisual media services, the transmission technology, content production, and reception methods may differ. Layered differentiation is just an artificial legal barrier, and operators will inevitably pass on the costs of avoiding regulatory costs to consumers, which is not beneficial to consumers. Especially when infrastructure layer operators are usually required to not refuse access to the operational layer without justification, regulatory agencies will distort real market prices, leading to low efficiency. This view is also similarly analyzed by Professor Christopher Yoo of the University of Pennsylvania Law School (Yoo, 2013).

The NCC has proposed convergence legal frameworks multiple times in the past, but the structure largely does not deviate from the EU’s layer model. However, legislation still primarily focuses on regulatory goals and the problems it seeks to solve. **If it merely rigidly adjusts the existing vertical regulatory model to a layered horizontal regulatory model, it only brings the original problems to the layer model.** Cross-layer communication services are forcibly

cut into three segments, making matters worse, not only harming consumer rights but also providing no benefit to industry development and innovation.

Although Taiwan's legal system is closer to continental Europe, if the development context of communication law systems and political, economic, social, and cultural systems between the two is not deeply investigated, citing the EU's legislative system and policy direction may not necessarily handle various domestic communication industry controversies. However, if policy formulation can use general, universal values as principles, and make decisions and prioritize based on the greatest consensus of various stakeholders, it may be possible to sort out specific issues with context, find appropriate legal normative purposes, and implement them in concrete legal provisions.

### 3. Potential Guidance from Policy Principles

Since the 2015 revision of the three broadcasting laws, Taiwan's broadcasting regulatory framework has not substantially changed. At that time, many major and unresolved issues were left, such as the regulatory convergence of CATV and IPTV, and the controversial restriction clauses on media. Currently, the three common types of audiovisual media service platforms, including CATV, IPTV, and OTT TV, have varying degrees of regulatory content and regulatory gaps in terms of transmission channels, platform nature, operational management, service characteristics, content supervision, and regulatory challenges. For issues that are existing or potential for individual different platforms, such as license types, horizontal integration, price regulation, political investment restriction, and channel agents, there is a need for further inventory and analysis.

The paper analyzes and clarifies the legislative purposes of Taiwan's audiovisual media service regulations one by one, analyzes the basic values and common norms (purpose appropriateness) of each regulation through corresponding policy principles advocated by

Picard & Picard. Through the principle of law-based administration constructed by administrative law, it examines the relevance between the purpose of Taiwan's audiovisual media service regulations and specific administrative measures. As for the legal framework path, whether to adopt a model of sectoral law or a model of convergent law, these involve discussions at the level of legislative theory and are not within the scope of this paper. However, observing the norms in Taiwan's regulation of audiovisual media service, there has always been a preference for setting different regulatory norms for different communication channels (such as the three broadcasting laws), choosing independent legal norms based on differentiation, which is merely a matter of choice and not necessarily good or bad. However, when separate legal norms encounter blurred or even overlapping boundaries between each other, it becomes necessary to review and adjust current laws, perhaps even abolish old laws and establish new ones, or formulate new laws while maintaining old ones.

If we observe the focus of audiovisual media service regulation, Taiwan has always had "imposing obligations" as its policy core, such as price regulation, emergency disaster broadcasting, business data reporting, horizontal or vertical integration, channel planning, differential treatment regulation, etc. From the perspective of audiovisual media service regulations adopting the EU's layer model, through three levels of infrastructure network layer, operational management layer, and content application layer, Professor Solum argues that lawmakers should observe the current situation and trends of industry development from an appropriate angle, then introduce the layer model into the communication industry regulation to ensure that the level where the law is intended to produce effects is consistent with the level where the directly regulated objects are located (Solum & Chung, 2004, p.817). However, Taiwan's audiovisual media laws often encounter the following controversial issues among each other, such as:

(1) the business relationship between

participants and upstream and downstream markets (*e.g.*, CATV systems and channels);

- (2) the intertwined relationship between economic and non-economic activity regulation (*e.g.*, must-carry channels);
- (3) the financial relationship between upstream and downstream operators and with consumers (*e.g.*, channel licensing fees, subscription fees);
- (4) the relationship between the two operational management layers of broadcasting and telecommunications (*e.g.*, differences between IPTV and CATV);
- (5) the complex relationship of cross-platform channel listing and delisting (CATV channels delisting from IPTV), and
- (6) whether the aforementioned renting of broadband networks to provide programs belongs to CATV services (Hualien Haokan case).

In the future, Taiwan's audiovisual media service regulations could emulate the EU's distinction between common norms and individual norms[1], or refer to the categorization of obligation norms of the Telecommunications Management Act into general obligations, special obligations, and designated obligations, to clarify the types and degrees of obligations for video media services.

Communication issues often change rapidly with the times and technological innovations, but the original characteristics do not necessarily disappear entirely. It can avoid proposing hasty regulatory solutions for merely temporary problems through the analytical logic process of Picard & Picard's policy principles:

**[Principle thinking] → [Consensus building] → [Policy goals] → [Concrete norms]**

Picard & Picard points out that basic policy principles are statements with continuity based on normative foundations and values, proposing guiding principles through dialogue and consensus, with the spirit of accountability, dignity,

dialogue, equity, freedom, inclusiveness, openness, security, self-determination, reward, and responsibility (Picard & Picard, 2017b).

In fact, looking back in February 2020 at the "Communication Policy White Paper" (2020 White Paper) published by the NCC to address challenges and issues arising in the field of digital convergence communication, it reviewed how to promote regulatory harmony between competing platforms, took a light-touch regulatory stance on OTT TV, and concerned the issues such as copyright infringement, business registration/appointment of delegates of foreign company, and taxation. The 2020 White Paper was considered at the time to propose appropriate and reasonable solutions, or at least strategic directions helpful in improving related issues, showing that the NCC was aware of the potential impact of emerging audiovisual media services on existing audiovisual services. The eight major issues proposed in the white paper to be resolved, especially the resolution strategies or strategic directions proposed for legal framework structure (**first item**: regulatory harmony between competing platforms), protection of national culture (**fifth item**: revitalization of film and television production and protection of national culture), and content regulation (**sixth item**: content regulation and media literacy), corresponding to the draft OTT TV Law formulated by the NCC in 2022 with the concept of "one law moves the whole body" but later shelved. There is still room for further discussion in terms of considering the degree of market competition, consumer viewing rights, and protecting the subjectivity of national audiovisual culture. Through this, the legislative direction of Taiwan's audiovisual media service regulations can be established.

This paper found that the NCC's 2020 White Paper observed the context of OTT TV industry regulation: the characteristics of OTT TV being cross-border and cross-industry, its diverse business models bringing multiple business opportunities and challenges, and further impacting the development of existing local audiovisual media service industry. To achieve the

goals of protecting the audiovisual rights for the public and safeguarding national cultural communication rights, it proposed to adopt a “light-touch regulation, self-regulation oriented” direction, and finally formulated the draft of OTT TV Law. Although the draft has been temporarily shelved, its substantive content (including OTT TV definition, registration, requirements for domestic content production and broadcast proportion, incentive, and guidance measures, etc.) still has certain research value.

## **VI. Conclusion: Research findings and suggestions**

The case “Hualien Haokan” exemplifies the digital disruption caused by the convergence of digital technology and business models, breaking the existing framework of audiovisual media services. The NCC attempted to interpret this type of service as falling within the scope of CATV through textual interpretation but was unsuccessful. Meanwhile, this case also sparked the NCC’s imagination regarding the regulation of overall OTT TV services. Consequently, they hastily proposed an immature draft law the following year, which faced considerable criticism.

Reviewing the history of audiovisual media service regulation in Taiwan, it appears quite similar to the regulatory context of the US, though significant differences in national circumstances and culture remain. The EU’s layered regulatory model has also provided substantial inspiration for the NCC in telecommunications regulation, but this experience is difficult to replicate in the regulation of audiovisual media services.

This article finds that issues related to broadcast media frequently change rapidly due to factors like technological advancements and changing times, though their fundamental characteristics may not completely disappear. Through the analytical process of Picard & Picard’s policy principles, we understand that the norms and values of their policies have continuity. Based on the principles of accountability, dignity, dialogue, equality, freedom, inclusion, openness,

safety, self-determination, reward, and responsibility, a consensus is gradually formed through broad discussion, feedback, and suggested revisions. This process allows for consistent actions in response to issues arising from different contexts, transforming them into concrete policies and measures. These principles can serve as a reference for policy decision-makers.

Taiwan’s regulatory authorities have attempted to manage audiovisual media services through regulations. Before this, they observed the regulatory context of the OTT TV industry through a policy white paper, analyzing various factors such as industry development and the impact on film and television rights. Ultimately, they proposed a direction of “light regulation, self-regulation oriented.” Although this law has been temporarily shelved, it is still possible to review whether there are aspects in the previous white paper that need further data collection and verification analysis. Coupled with the policy principles of dialogue and consensus, there remains the potential for a resurgence in the future.

## **Footnote**

[1] After the 2018 EU Audiovisual Media Services Directive (AVMSD) incorporated the concept of Video Sharing Platforms (VSP), it gradually aligned the content regulation density of linear and non-linear services. According to the forms of television broadcasting, video-on-demand, or VSP, it distinguishes between common norms (providing service information, ownership structure, program rating system, accessibility for people with disabilities, commercial advertising restrictions, etc.) (Revised AVMSD, art. 5, 6, 6a, 7, 10, 11) and individual norms (for example, the television section stipulates that advertising and teleshopping should be clearly distinguishable from editorial content; video-on-demand stipulates that program menus should have at least 30% European works and present them prominently; VSP stipulates adopting appropriate measures to protect children and minors, avoid exposing viewers to videos and commercial advertisements involving violence, terror, hatred, and criminal

behavior, etc.) (Revised AVMSD, art. 13, 28b).

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