

Electronic Public Transmission Act of 2002

--- As the Minimum Regulations

on the Internet

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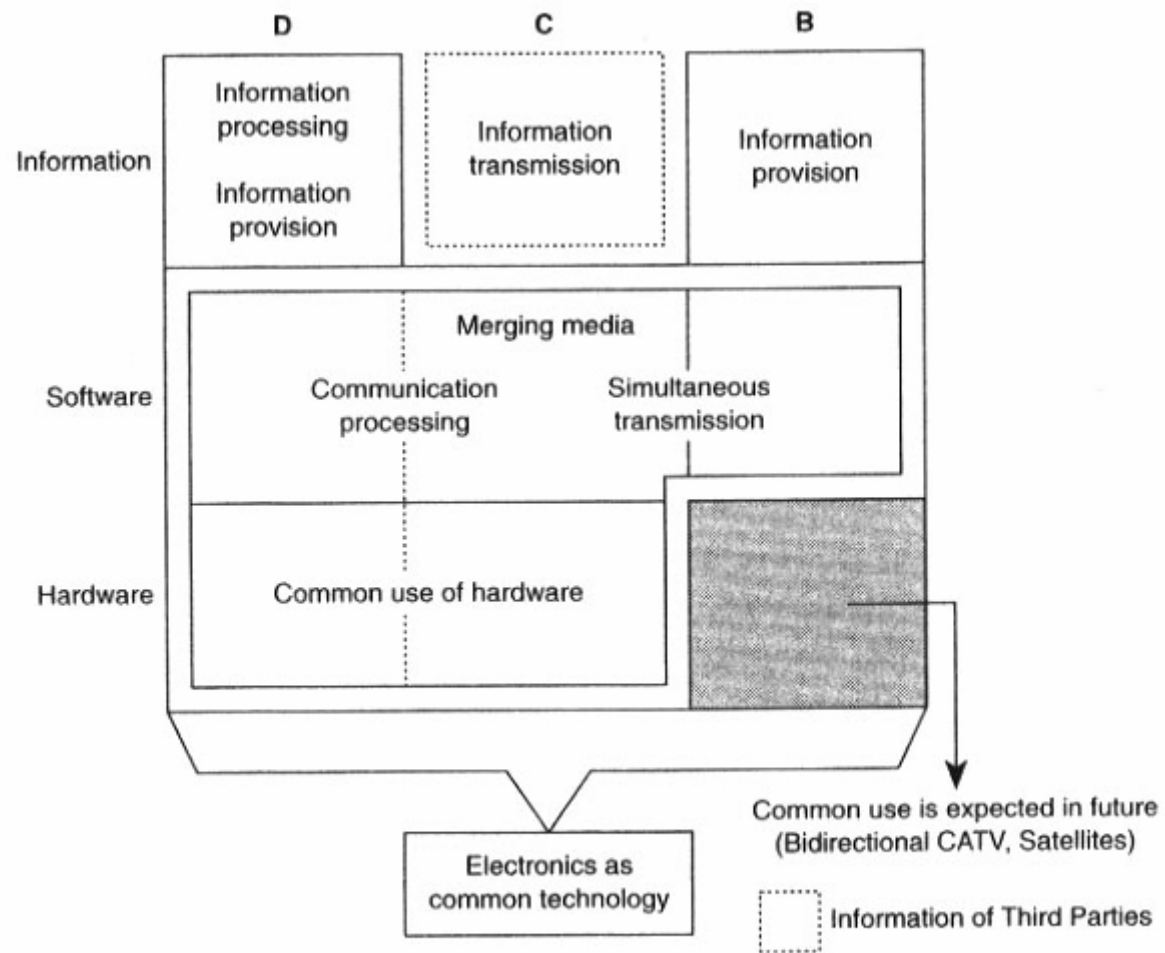


Figure 1 Dimensions for Merging Broadcasting (B), Communications (C), and Data Processing (D)

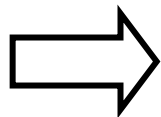
Source: Hayashi[1984]

Purposes of EPTA (Electronic Public Transmission Act)

1. Convergence of Telecommunications and Broadcasting ex: A Copyright Infringement Litigation on Audio Transmission via CS (Communications Satellite)

2. Astonishing Growth of the Internet

What is the best treatment for the Internet as a Medium?



Investigation into the Possibility of Comprehensive Act to cover Broadcasting, Telecommunications and the Internet

Conduit v. Content Economic v. Cultural

Regulation

Content \ Conduit	Yes	No
Yes	<u>B</u> roadcasting	<u>C</u> ommon Carriage
No	<u>C</u> ' (Internet)	<u>P</u> ublishing

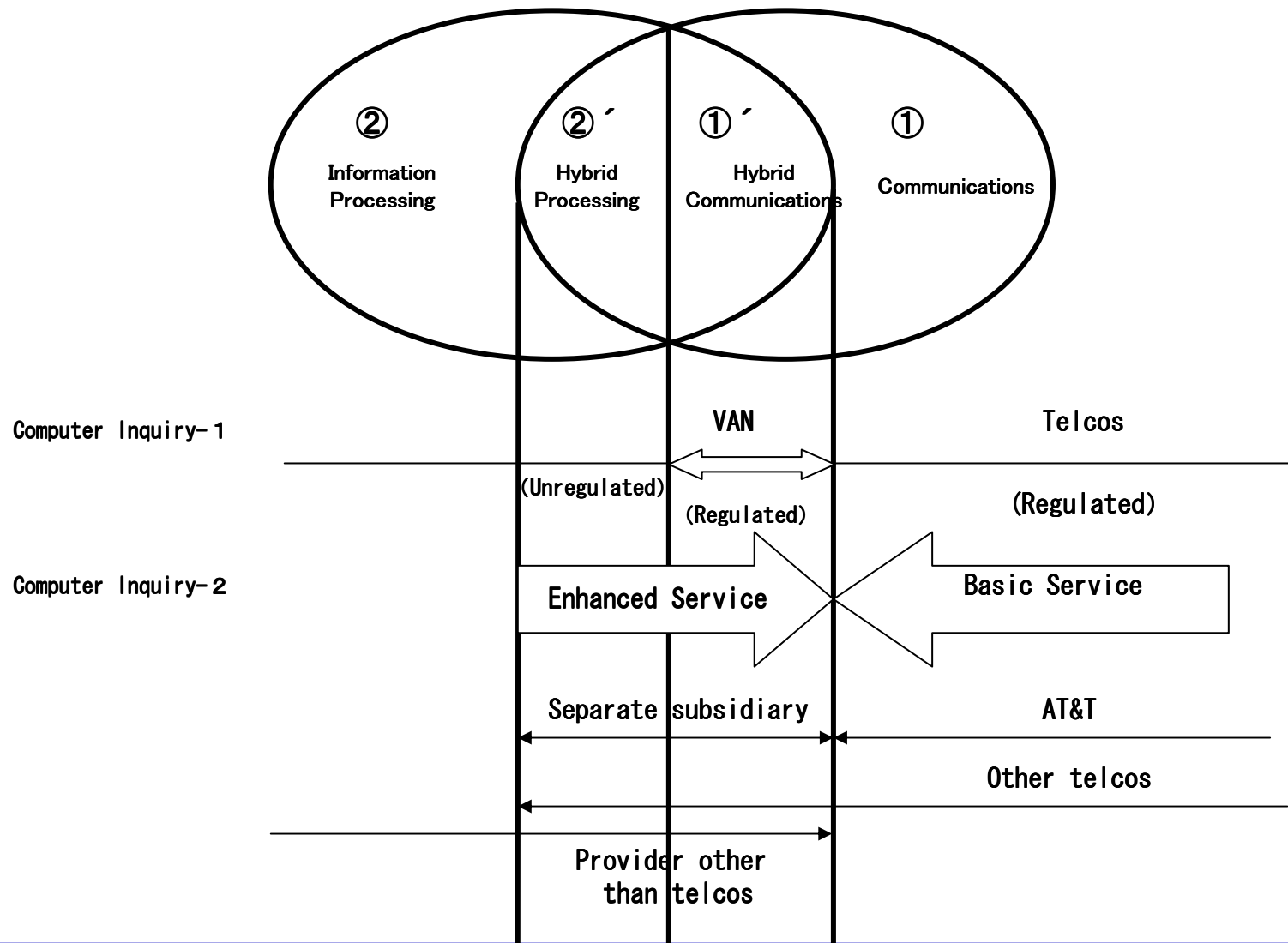
Yes means that there is a sector-specific law other than general laws such as criminal law or anti-trust law.

Internet Content

- ① Obscene (Indecent) material
- ② Libel (Defamation)
- ③ Copyright infringement

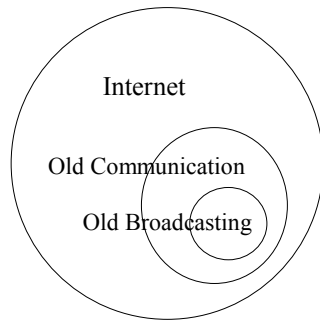
Original idea came from Pool [1983]

Demarcation between Communications and Information Processing



Four Methods

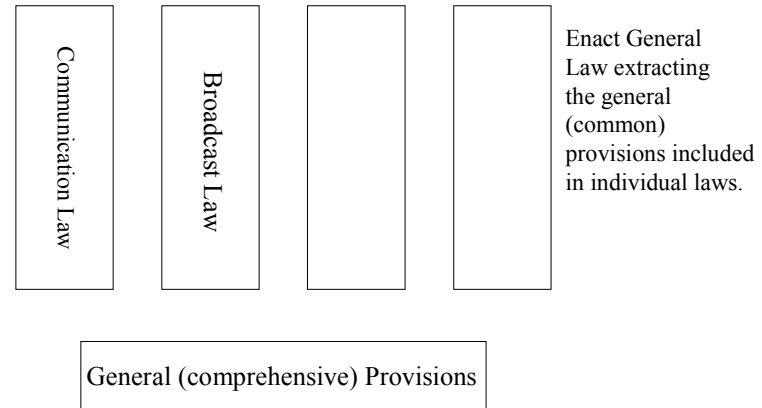
Plan A: Internet-type Communication Inclusion



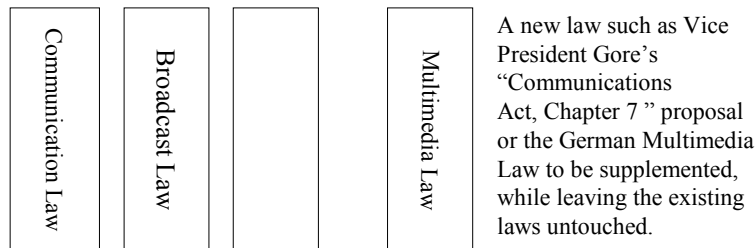
Let non-regulatory Internet absorb the old communication and broadcasting* which is a part of communication in a broad sense. Legally, only confirmation is possible. No active action will be taken (can be taken).

* “ Wireless transmission aiming to be directly received by the public ” (Section 1 of Article 2, Broadcast Law; Section 4 of Article 5, Radio Law)

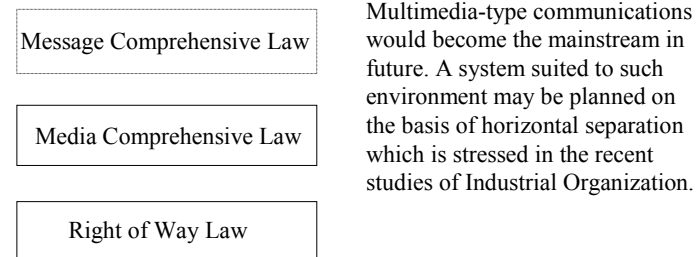
Plan C: General Provisions Extracted



Plan B: Multimedia Law Supplemented



Plan D: Horizontal Separation (Trisection of Messages, Media, and Right of Way)

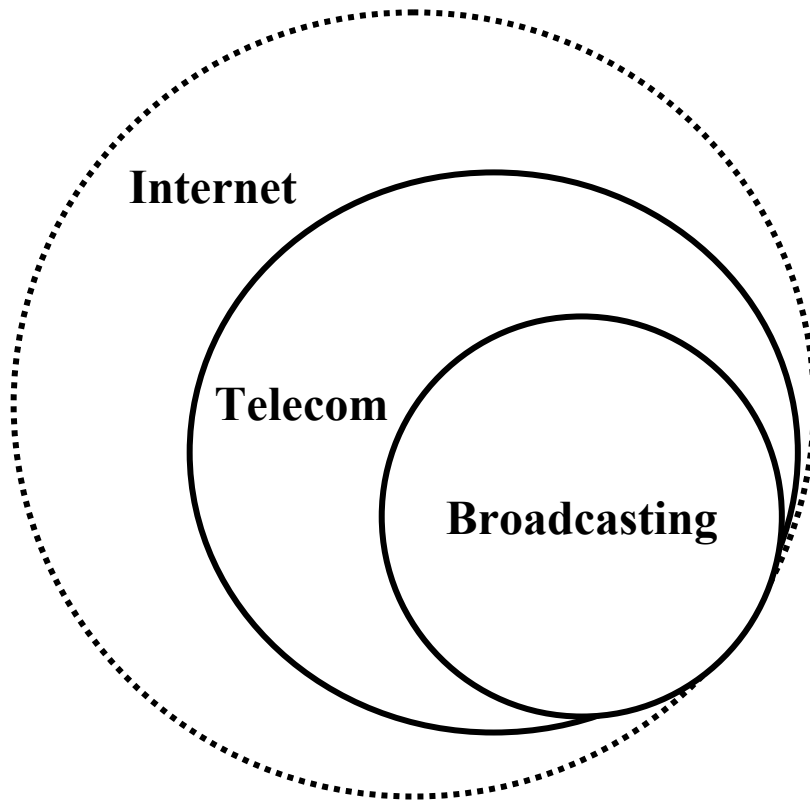


Pros and Cons of Each Plan

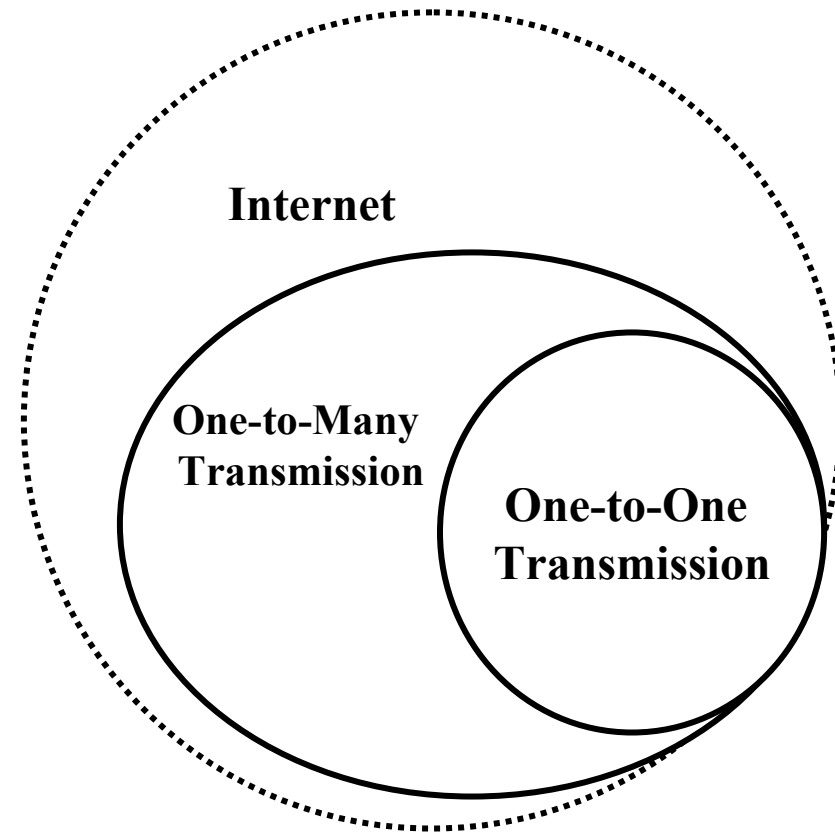
Plan	Pro	Con	General Evaluation
Plan A Internet-type Communication Inclusion	Special actions not necessary.	No orientation as a policy. Unexpected bad effects may arise.	Bad
Plan B Multimedia Law Supplemented	Orthodox way to enact new law. Legislation comparatively easy.	The US example shows that just supplementing new law is not effective, without weakening vested interests.	Mixed
Plan C General Provisions Extracted	Appropriate as the process to reach consensus among concerned industries.	Doubtful to realize, as even the Radio and Broadcast Laws could not be streamlined for nearly 50 years. No bill is possible if the stakes are not well accommodated.	Bad
Plan D Horizontal Separation	Methodology suitable in the age of Multimedia. Activation of media industries expected by a new system which may be better than that of the other leading nations.	No orthodox way. Wisdom of various fields required to be focused.	Good

EPTA depending mainly upon Plan D

<Tradition>



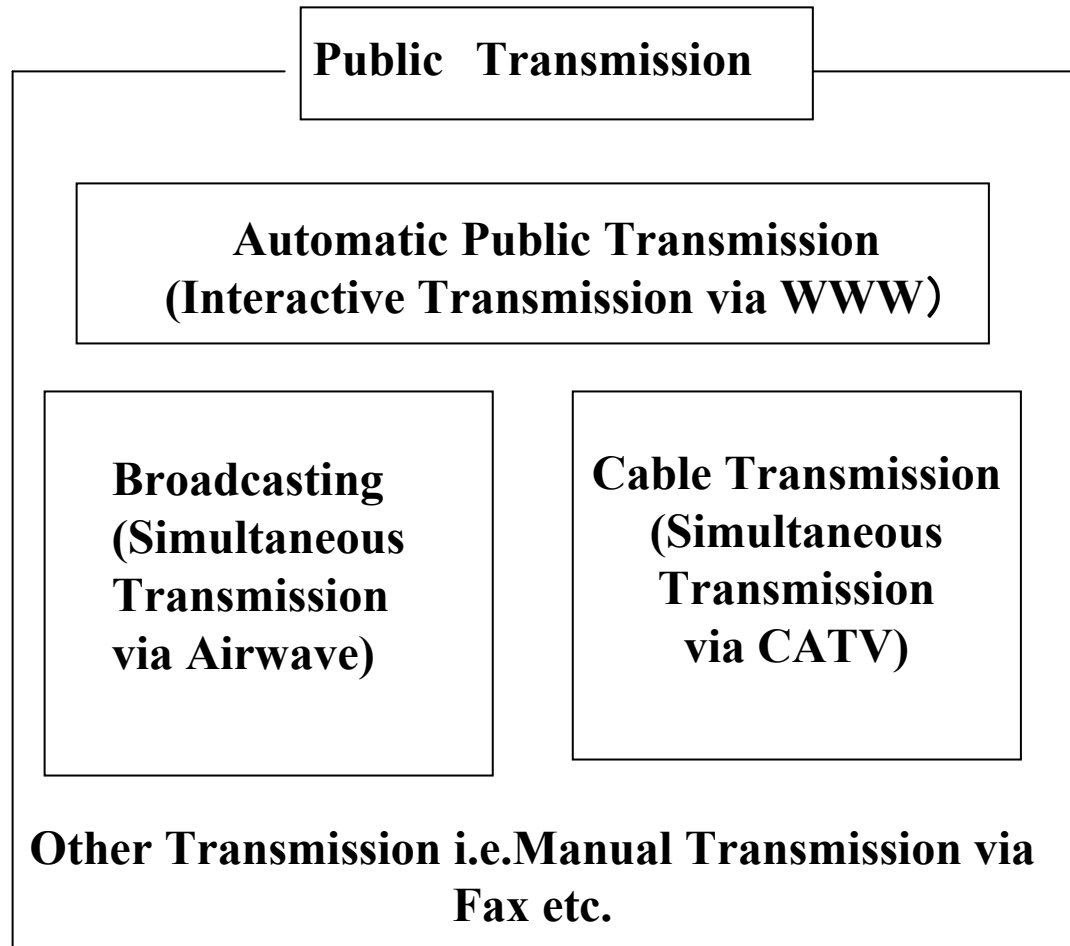
<New Idea*>



— Regulated
..... Unregulated

•Receivers' Right prescribed explicitly
Spam

“Public Transmission” Concept in Copyright Law



General Public

General Meaning:
“an unspecified large number of persons excluding those concerned with specific legal relationships”

Copyright Law:
“includes a specific and a large number of persons”

If extended:
may include “one person”

Major Provisions in the Act

I. General Rules for Anyone

- 1. Freedom of Speech and Prohibition of Censorship**
- 2. Protection of Privacy**
- 3. Freedom of Reception**
- 4. Prohibition of Unauthorized Access**

II. Obligation for Electronic Public Transmission Operators

II-1. Obligations for Operators in General

- 1. Security of Essential Transmission**
- 2. Security of Requisite Services**

II-2. Obligation for Business Operators

- 1. Protection of Personal Information**

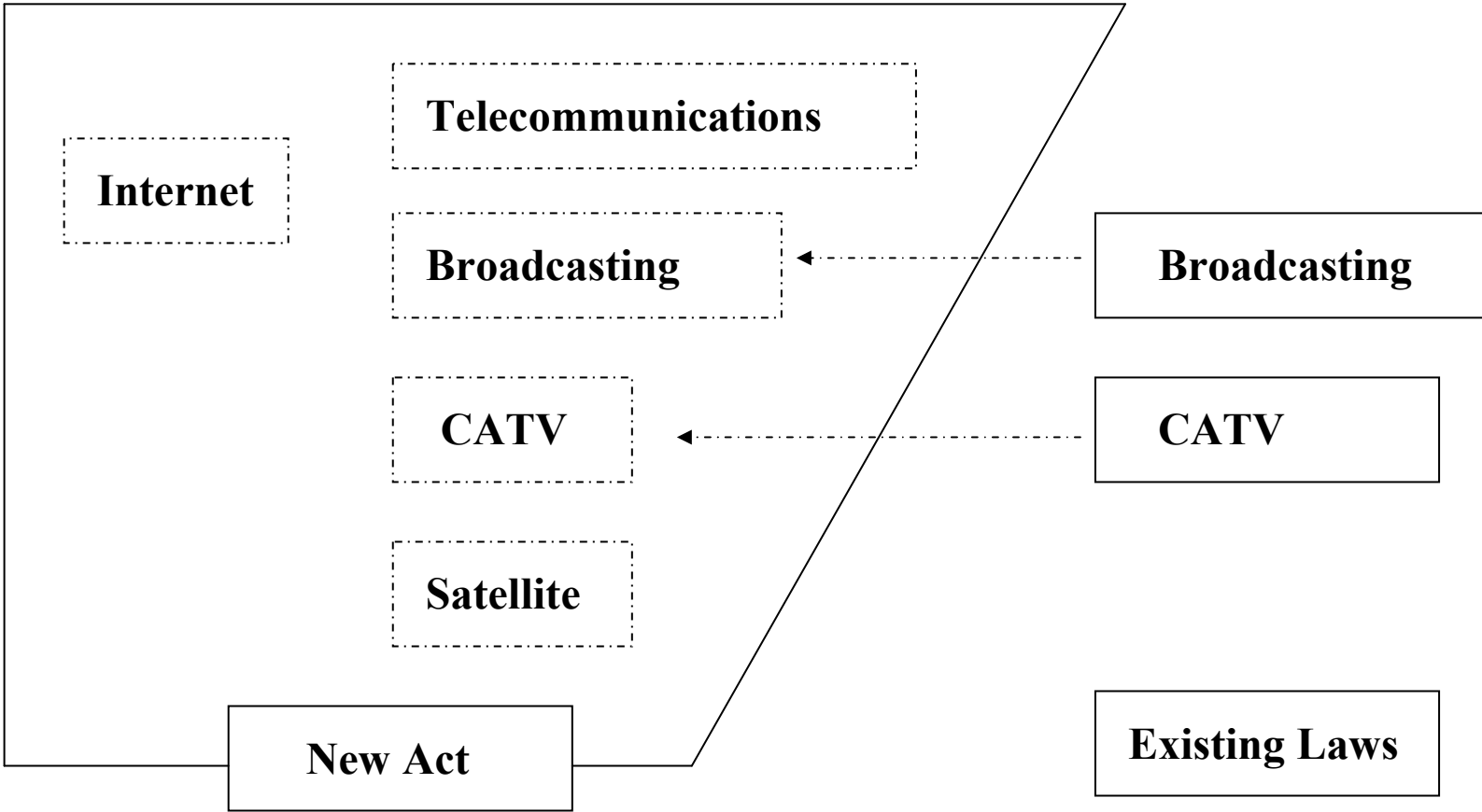
II-3. Obligations for Large-scale Business Operators

- 1. Guaranteeing of Open Access**
- 2. Interconnection with other Service Providers**

III. Electronic Public Transmission Commission

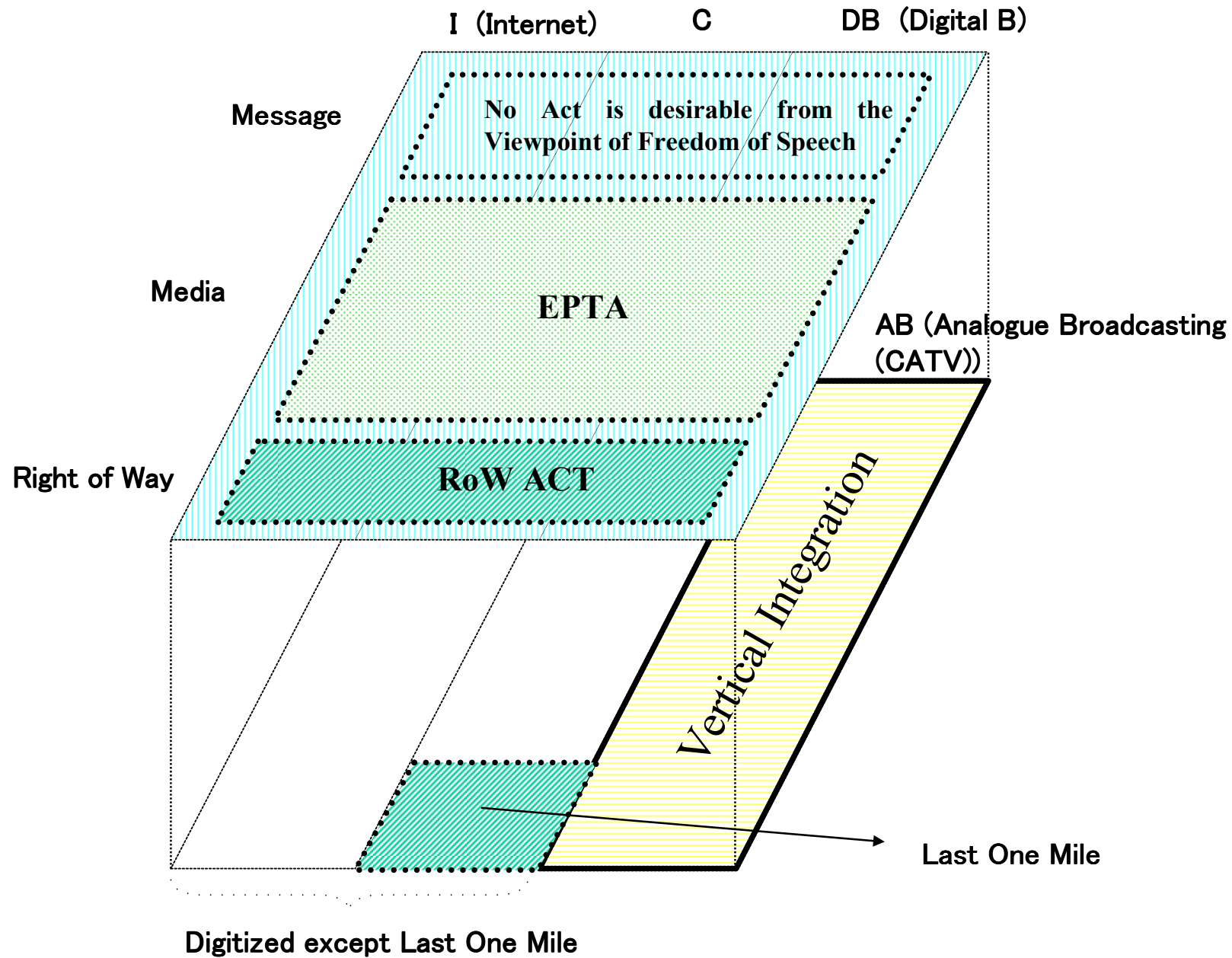
IV. Indemnification and Penalties

Electronic Public Transmission Act of 2002



New Act is a combination of Plan A, B and D shown in Chart 2

3DD (Three-Dimensional Plan-D)



Residual Differences =Privilege and Obligation for Broadcasting Operators

- **[Privilege]**

 - Neighboring Right to Copyright**

- **[Obligation]**

 - Fairness Doctrine**

Thank you for your attention.

More information at the following sites;

URL:<http://lab.iisec.ac.jp/~hayashi/hayashi.e.html>

Digital Works by Koichiro Hayashi

“Electronic Public Transmission Act of 2002 (Brown Bag Lunch Presentation at CITI, Feb. 11,2002)

“Electronic Public Transmission Act of 2002 as the Minimum Regulations on the Internet”

“Electronic Public Transmission Act of 2002 , Attached Materials”