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Articles

FINANCING TELECOMMUNICATIONS PROJECTS IN ASIA: A PROMISING REGULATORY PERSPECTIVE
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Asia's telecommunications market has long been viewed as lucrative and fast growing. As the benefits of a competitive telecommunications market become apparent, many Asian governments recognize that global corporations require, and in fact demand, state-of-the-art telecommunications infrastructure. After several years of strong growth, however, the severe economic crisis that affected all industry segments in Asia caused investors to pause and reevaluate the risks involved in financing infrastructure projects. Despite the recent Asian economic crisis, the overall picture for Asian telecommunications infrastructure projects remains promising. Asian governments continue to liberalize their regulatory schemes, thus reducing regulatory and political risks to investors. This Article focuses on the regulatory risk involved in financing any telecommunications project. It provides country-specific analyses of countries with more developed, "investor friendly" regulatory schemes and countries with less developed, but potentially favorable regulatory schemes based on the regulatory principles previously identified.

PRIVATIZATION AND THE FREEDOM OF INFORMATION ACT: AN ANALYSIS OF PUBLIC ACCESS TO PRIVATE ENTITIES UNDER FEDERAL LAW
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Congress drafted the Freedom of Information Act to ensure that the public would always be able to keep track of the events happening behind governmental agency doors. In an age of privatization of governmental services in the name of efficiency, the Act needs to be adapted to ensure that its original purpose remains sound. Thus far, courts have not kept pace with this purpose by interpreting agency and agency record under the Act too narrowly. This may very well result in government secrecy as services are farmed out to entities not covered under the Act. This Article analyzes the various approaches under the

Freedom of Information Act and suggests that a test focusing on the public function of the entity or the nature of the information in its records, rather than their technical location or the attributes of the entity holding them will preserve congressional intent and comport with the spirit of the Freedom of Information Act.

THE BATTLE FOR PORTLAND, MAINE
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In 1985, when the FCC began the competitive process of deciding who would be licensed to provide cellular telephone service to Portland, Maine, chaos and irony reigned. Thirteen years later, after a bitter legal battle among local telephone companies, a provider was finally selected. At one point or another, all three branches of government became involved. The license itself changed hands three times during the case and, in essence, three different telephone systems were constructed. Ultimately, the case was decided on the basis of whether the FCC complied with a preexisting federal law, the Paperwork Reduction Act, in adopting the regulation and not whether the cellular telephone service provider complied with the financial showing regulation. This Article unfolds this complex, engaging saga from a first-hand perspective.

Notes

SHRINKWRAP AND CLICKWRAP AGREEMENTS: 2B OR NOT 2B?
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Several problems plague typical mass-market software licensing agreement, specifically that the public is powerless to negotiate and the terms often are perceived as exceedingly broad and restrictive. The Uniform Computer Information Transactions Act is designed to remedy those problems and establish the general enforceability of such agreements, with certain qualifications related to unconscionability, assent, and other caveats. UCITA, however, does not resolve, or even purport to resolve, the tension between federal copyright law and state contract law. This Note analyzes UCITA's attempt to resolve the enforceability issue; argues for an approach to preemption that promotes clarity and preserves the objectives of Congress established by the Copyright Act; discusses whether UCITA remains relevant in light of the preemptive power of copyright law; and proposes that additional federal legislation is a more appropriate solution to the problems surrounding computer software reproduction and use.

THE CONSTITUTIONALITY OF THE DRIVER'S PRIVACY PROTECTION ACT: A FORK IN THE INFORMATION ACCESS ROAD
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The Driver's Privacy Protection Act, instituted in 1997, regulates the disclosure of personal information in motor vehicle records. New controversy surrounds it today as the U.S. Supreme Court evaluates the arguments presented in November 1999 regarding its constitutionality. A split among circuit courts, coupled with the tremendous growth in technology and subsequent new in-roads for information access, draw increased attention toward the Act. The concern for information access in light of the Act, however, reaches beyond the courts' elucidated concerns

about dual sovereignty and the public's right to privacy. This Note argues that there is a forgotten argument: the Act's effect on the First Amendment. This issue should not only be considered as a serious factor, but scrutinized carefully within the discussion surrounding the Act's constitutionality, especially since the Act's ramifications now have spread into virtually every corner of the news-gathering process.

STRIKE TWO: AN ANALYSIS OF THE CHILD ONLINE PROTECTION ACT'S CONSTITUTIONAL FAILURES
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Congress's first attempt to regulate minors' access to sexually explicit material via the Internet failed. Congress responded with the Child Online Protection Act, which, despite its narrower scope, cannot withstand constitutional scrutiny. This Notes delves into the constitutionality of Congress's second attempt by addressing the difficulty of applying the vague "harmful to minors" definition to the Internet medium and the economic and technological unavailability of the Act's affirmative defenses. This Note concludes with an explanation as to why legislation is an ineffective mechanism to address the problem of minors' access to online pornography.

FEDERAL COURT JURISDICTION OVER PRIVATE TCPA CLAIMS: WHY THE FEDERAL COURTS OF APPEALS GOT IT RIGHT
By Kevin N. Tharp 189

The Telephone Consumer Protection Act of 1991 protects the privacy interests of residential telephone subscribers by placing restrictions on unsolicited, automated telephone calls to the home and facilitates interstate commerce by restricting certain uses of facsimile machines and automatic dialers. Since the statute is silent regarding federal district court jurisdiction over private TCPA claims, federal courts scramble in search for existing law to support their conclusions that the TCPA divests federal district courts of jurisdiction over private TCPA claims. In addition to the reasoning offered by the circuit courts, this Notes discusses the jurisdiction issue and adds an important reason for choosing state courts as the only venues available for private TCPA claims: state courts provide a cheap and easy enforcement of the Act.

Comment

CABLE INTERNET UNBUNDLING: LOCAL LEADERSHIP IN THE DEPLOYMENT HIGH SPEED ACCESS
By Marcus Maher 211

With the pending merger of TCI and AT&T and their promise of "one-stop" television, Internet, and telephone service, the cable Internet issues move to the forefront. The desire of traditional Internet Service Providers to gain access to new high-speed technologies for Internet access led to requests for unbundling or open access to cable systems. Despite the heated debate on the need for unbundling that has occurred at the federal level, local authorities have taken the lead in requiring open access to cable for competing ISPs. General anticompetitive concerns with cable Internet dominated by the cable company could be alleviated in large part by requiring open access to cable for Internet Service Providers.