



ICLG

The International Comparative Legal Guide to:

Telecoms, Media & Internet Laws & Regulations 2015

8th Edition

A practical cross-border insight into telecoms, media and internet laws and regulations

Published by Global Legal Group with contributions from:

Alain Bensoussan Avocats Selas

Attorneys at law Borenus Ltd

Camilleri Preziosi

Castillo y Castillo

Chajec, Don-Siemion & Zyto sp.k. – Legal Advisors (“CDZ”)

Colibri Kazakhstan

Cugia Cuomo & Associati

Davies Ward Phillips & Vineberg LLP

Dr. Norbert Wiesinger, Law Offices

Gjika & Associates Attorneys at Law

Heuking Kühn Lüer Wojtek

Hogan Lovells (CIS)

King & Wood Mallesons

Kromann Reumert

Langlet, Carpio y Asociados, S.C.

Lisa Thornton Inc

Mehmet Gün & Partners

Melchior, Micheletti & Amendoeira Advogados

Mori Hamada & Matsumoto

NautaDutilh N.V.

Olswang LLP

Pachiu and Associates

Sanchez Elia & Associates

Sébastien Fantì

Shay & Partners

Sociedade Rebelo de Sousa & Advogados Associados, RL

Squire Patton Boggs

SyCip Salazar Hernandez & Gatmaitan Law Offices

Tilleke & Gibbins

Udo Udoma & Belo-Osagie

Webb Henderson

Wigley & Company

Wilkinson Barker Knauer, LLP

GLG

Global Legal Group

Contributing Editor
Rob Bratby, Olswang LLP

Head of Business Development
Dror Levy

Account Directors
Antony Dine, Florjan Osmani

Senior Account Managers
Maria Lopez, Oliver Smith, Rory Smith

Sales Support Manager
Toni Wyatt

Editor
Gemma Bridge

Senior Editor
Suzie Levy

Group Consulting Editor
Alan Falach

Group Publisher
Richard Firth

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Information Press Ltd
August 2014

Copyright © 2014
Global Legal Group Ltd.
All rights reserved
No photocopying

ISBN 978-1-910083-14-7
ISSN 2050-7607

Strategic Partners



General Chapters:

1	An Overview of the EU Regulatory Framework – Blanca Escribano & Purvi Parekh, Olswang LLP	1
2	The Trans-Atlantic Divide: Differences between Europe and the United States in their Approaches to Consolidation in the Mobile Sector – Jonathan Jacob Nadler & Cathal Flynn, Squire Patton Boggs	11

Country Question and Answer Chapters:

3	Albania	Gjika & Associates Attorneys at Law: Gjergji Gjika & Evis Jani	19
4	Argentina	Sanchez Elia & Associates: Juan Sanchez Elia	26
5	Australia	King & Wood Mallesons: Renae Lattey & Neil Carabine	32
6	Austria	Dr. Norbert Wiesinger, Law Offices: Dr. Norbert Wiesinger	41
7	Brazil	Melchior, Micheletti & Amendoeira Advogados: Silvia Regina Barbuy Melchior	47
8	Canada	Davies Ward Phillips & Vineberg LLP: George Addy & Elisa Kearney	59
9	China	King & Wood Mallesons: Rui Wang	67
10	Denmark	Kromann Reumert: Torben Waage & Julie Bak-Larsen	76
11	Dominican Republic	Castillo y Castillo: Maria Jesus Velázquez & Sylvio Hodos	83
12	Finland	Attorneys at law Borenius Ltd: Jukka Airaksinen & Henriikka Piekkala	92
13	France	Alain Bensoussan Avocats Selas: Frédéric Forster & Edouard Lemoalle	100
14	Germany	Heuking Kühn Lüer Wojtek: Dr. Dirk Stolz & Dr. Lutz Martin Keppeler	110
15	Hong Kong	King & Wood Mallesons: Joshua Cole	117
16	Italy	Cugia Cuomo & Associati: Fabrizio Cugia di Sant'Orsola & Silvia Giampaolo	125
17	Japan	Mori Hamada & Matsumoto: Hiromi Hayashi & Akira Marumo	137
18	Kazakhstan	Colibri Kazakhstan: Zhanar Abdullayeva & Azamat Bussurmanov	145
19	Malta	Camilleri Preziosi: Henri Mizzi & Sharon Xuereb	151
20	Mexico	Langlet, Carpio y Asociados, S.C.: Enrique Ochoa de G. Argüelles & Esteban Cardoso González	159
21	Netherlands	NautaDutilh N.V.: Piet Sippens Groenewegen & Paul M. Waszink	166
22	New Zealand	Wigley & Company: Michael Wigley	174
23	Nigeria	Udo Udoma & Belo-Osagie: Olajumoke Lambo & Godson Ogheneochuko	180
24	Philippines	SyCip Salazar Hernandez & Gatmaitan Law Offices: Rose Marie M. King-Dominguez & Ruben P. Acebedo II	187
25	Poland	Chajec, Don-Siemion & Zyto sp.k. – Legal Advisors (“CDZ”): Andrzej Abramczuk & Mariusz Busiño	194
26	Portugal	Sociedade Rebelo de Sousa & Advogados Associados, RL: Octávio Castelo Paulo & Luís Neto Galvão	201
27	Romania	Pachiu and Associates: Remus Ene & Ioana Iovanesc	209

Continued Overleaf ➔

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

 Global Legal Group	28	Russia	Hogan Lovells (CIS): Natalia Gulyaeva & Julia Gurieva	218
	29	Singapore	Webb Henderson: Anisha Travis & Chris Taylor	225
	30	South Africa	Lisa Thornton Inc: Lisa Thornton	234
	31	Switzerland	Sébastien Fanti: Sébastien Fanti & Cédric Bocquet	240
	32	Taiwan	Shay & Partners: Arthur Shay & David Yeh	247
	33	Thailand	Tilleke & Gibbins: David Duncan & Ahmet Yesilkaya	254
	34	Turkey	Mehmet Gün & Partners: Başak Gürbüz & Begüm Yavuzdoğan Okumuş	262
	35	United Kingdom	Olswang LLP: Purvi Parekh & John Enser	271
	36	USA	Wilkinson Barker Knauer, LLP: Bryan N. Tramont & Natalie G. Roisman	280

EDITORIAL

Welcome to the eighth edition of *The International Comparative Legal Guide to: Telecoms, Media & Internet Laws & Regulations*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of telecoms, media and internet laws and regulations.

It is divided into two main sections:

Two general chapters. These chapters provide overviews of the EU regulatory framework and of the different approaches and attitudes towards mobile network consolidation in the United States and Europe.

Country question and answer chapters. These provide a broad overview of common issues in telecoms, media and internet laws and regulations in 34 jurisdictions.

All chapters are written by leading telecoms, media and internet lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Rob Bratby of Olswang LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

Dominican Republic

Castillo y Castillo

Maria Jesus Velázquez



Sylvio Hodos



1 Overview

1.1 Please describe the: (a) telecoms; (b) audio-visual media distribution; and (c) internet infrastructure sectors in the Dominican Republic, in particular by reference to each sector's: (i) importance (e.g. measured by annual revenue); (ii) 3-5 most important companies; (iii) whether they have been liberalised and are open to competition; and (iv) whether they are open to foreign investment.

Up to 15 July 2014, 1,090,450 landline connections were officially registered in the Dominican Republic, as well as 9,200,410 mobile connections, and 3,459,810 internet connections (84.1% through mobile connections, 13.4% through DSL, and 1.2% through Wimax).

The Dominican telecommunications market is shared between:

- (1) Claro, representing 52.3% of the mobile connections and 69% of the landline connections;
- (2) Orange, representing 37% of the mobile connections (almost nonexistent on landline connections);
- (3) Tricom, representing 3.7% of the mobile connections and 22.6% of the landline connections;
- (4) Viva, representing 6.9% of the mobile connections and 6.3% of the landline connections; and
- (5) SkyMax, representing 1.8% of the landline connections (nonexistent on mobile connections).

Nonetheless, Orange and Tricom were recently acquired by Altice, S.A., for an amount almost reaching USD 2 billion, and may merge within a short term, and would then potentially approach Claro's supremacy, which is a strong competitor.

The market has been totally liberalised and open to competition since the General Telecommunications Law #153-98 (GTL) which was approved on 27 May 1998, and allows foreign investment, putting no limitation on foreign participation in the capital of public network operators as Altice's 100% acquisitions brought out; the only limitation being that concessions and licences may only be granted to companies duly incorporated in the Dominican Republic, though there are no restrictions on the participation of foreign investors in Dominican companies.

Nonetheless, regarding public radio broadcasting services, the investor must be a Dominican citizen in order to control a concessionaire broadcasting entity.

1.2 List the most important legislation which applies to the: (a) telecoms; (b) audio-visual media distribution; and (c) internet, sectors in the Dominican Republic.

The key legislation for the telecoms, audio-visual media distribution and internet sectors in the Dominican Republic relies on the General Telecommunications Law #153-98 (GTL), with its numerous complementary regulations and norms, regulating, amongst other things, the use of the radio-electrical spectrum through concessions and licences granted to the telecommunications providers, as well as special inscriptions.

Regarding the audio-visual media distribution, this sector is also regulated by the GTL, except regarding its content: broadcasting services are specifically regulated by the provisions of Decree 312-05, which established the functioning and organisation of the National Committee of Public Presentations and Radio Broadcasting.

On the other hand, the Electronic Commerce, Documents and Digital Signatures Law #126-02 applies to any digital document related to electronic transactions, as well as the High Technology Crimes and Offenses Law 53-07, regarding all criminal behaviour over the internet. Besides, a new Personal Data Protection Law #172-13 was enacted in January 2014, regarding the gathering, handling, accessing, transferring, updating and cancelling of personal information.

1.3 List the government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in the Dominican Republic.

Law 153-98 created the Dominican Telecommunications Institute (Indotel), which began regulating the telecoms, audio-visual media distribution and internet sectors in 1999. Its mission is to promote the telecommunications market's expansion, guarantee a fair and sustainable competition, protect consumer rights regarding telecommunications services, and to survey the correct use of the radio-electrical spectrum.

Besides, the Presidential Office for the Information and Communications Technologies (OPTIC) is in charge of the implementation of the e-Governance, by broadcasting and promoting the use of the Information and Communications Technologies.

1.4 Are there any restrictions on foreign ownership or investment in the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in the Dominican Republic?

Please see the answer to question 1.1.

2 Telecoms

General

2.1 Is the Dominican Republic a member of the World Trade Organisation? Has the Dominican Republic made commitments under the GATS regarding telecommunications and has the Dominican Republic adopted and implemented the telecoms reference paper?

The Dominican Republic is a member of the World Trade Organisation (WTO) and has committed to the GATS regarding telecommunications.

2.2 How is the provision of telecoms (or electronic communications) networks and services regulated?

As indicated in questions 1.2 and 1.3, the regulation is provided by the GTL, and supervised by the Indotel. The Indotel is also responsible for the drafting of the regulations to be applied, according to the GTL. The Indotel has introduced various regulations concerning the use of the concessions and licences granted to the telecommunications providers, and the use of the radio-electromagnetic spectrum regarding these concessions and licences, as well as special inscriptions.

Before issuing a regulation, the Indotel carries out a consultation process to all the relevant parties, publishing a provisional text, and all interested parties have a 60-day period to submit their observations. A definitive text will be adopted afterwards.

2.3 Who are the regulatory and competition law authorities in the Dominican Republic? How are their roles differentiated? Are they independent from the government?

Anti-competitive practices are usually regulated by the *Pro-Competencia* authority; however its application has not come into force yet.

Nonetheless, the competition law authority regarding the telecoms sector is especially entrusted to the Indotel, and anti-competitive practices are regulated through the GTL, the Regulation on Fair Competition for the Telecommunications Sector and the GIR.

2.4 Are decisions of the national regulatory authority able to be appealed? If so, to which court or body, and on what basis?

The Indotel's decisions can be appealed to administrative courts, starting with the *Tribunal Superior Administrativo* (Administrative Court), and then to the *Suprema Corte de Justicia* (Supreme Court of Justice).

The decisions of the Indotel's Executive Director and those of its Board of Directors can be subject to reconsideration recourse as set forth in the GTL.

Licences and Authorisations

2.5 What types of general and individual authorisations are used in the Dominican Republic?

Licences from the Indotel are mandatory in order to be able to use the radio-electrical spectrum (except in some specific cases, like Wi-Fi frequencies, etc.).

Alongside this, concessions are granted to be able to provide telecommunications services to third parties.

Finally, special services, such as:

- (a) Value-Added Services, such as internet access upon third-parties' networks, e-mail, voice mail, etc.;
- (b) Amateur Radio Services;
- (c) Mobile Air Services;
- (d) Mobile Sea Services;
- (e) Resale Services;
- (f) Private Telecommunications Services; and
- (g) Satellite Access Services, through partnership with an authorised concessionaire (with the respective licences),

require an inscription on an Indotel Special Registry. More precisely, in those cases the registrar can be a foreign entity. Besides, if a licence is needed, the provider must comply with the general application rules for licences.

2.6 Please summarise the main requirements of the Dominican Republic's general authorisation.

Concessions applications require an exhaustive list of general, legal, financial and technical documents. The concession (or licence) attribution generally results from a public tender, divided into two phases: first, an offer qualification; and then an offer comparison.

The concession (or licence) will then be attributed to the more convenient offer, according to the legal standards.

Concessions are then granted for a period of between five and 20 years, renewable for identical periods.

2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded.

Licences are attributed for the use of a specific radio frequency bandwidth (for instance, 850 or 900 MHz), within a certain technology (2G, 3G, 4G).

Licences will have the same duration as the concession or inscriptions to which they are linked. If additional frequencies are granted to the licensee, the duration of the new licences will be for the remaining time of the corresponding concession or inscription. On the other hand, the renewal of a licence comes along with a concession or an inscription renewal.

Regarding special inscriptions, they are granted for a period of one to five years, also renewable for identical periods.

Regarding concessions, licences or inscriptions trade or transfer, they must be previously authorised by the Indotel.

Public and Private Works

2.8 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

Telecoms providers have a right of way on public roads and properties, and hold an easement over private properties. In cases involving a historical estate, the network should be underground.

Regarding private properties, telecoms providers may privately contract the right of way with the landlord. If an agreement is not reached, and the right of way is absolutely necessary, the Indotel can declare an expropriation, by justified ruling, with adequate compensation.

Access and Interconnection

2.9 How is network-to-network interconnection and access mandated?

The network-to-network interconnection and access services are regulated by the GTL and the General Interconnection Regulation (GIR). The GIR provides the principles and minimum legal requirements of an interconnection agreement, defines the duties and responsibilities of each party intervening in the interconnection technical process, and establishes the economic principles applicable to the interconnection cost calculation.

2.10 How are interconnection or access disputes resolved?

The GTL provides the freedom of negotiation principle, letting the parties at ease to discuss the interconnection details.

However, the Indotel may settle in case of disagreement. Indeed, a disagreeing party shall require the Indotel's intervention, which will set forth the prices of interconnection, taking into account the costs plus a reasonable return rate.

2.11 Which operators are required to publish their standard interconnection contracts and/or prices?

All interconnection agreements must be published before entering into force.

2.12 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?

As stated before, charges are set freely between the service providers, based on the principle of rate freedom and competitive markets established in the GTL. Nonetheless, the Indotel shall regulate that such charges are not discriminating, and comply with an efficient competition framework, eventually by setting forth such charges, through a justified ruling taking into account the Regulation for Rates and Costs of Services.

2.13 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

No accounting, functional or legal separation is required between an operator's network and service activities. Such a separation is not yet legally implemented in the Dominican Republic.

2.14 Are owners of existing copper local loop access infrastructure required to unbundle their facilities and if so, on what terms and subject to what regulatory controls? Are cable TV operators also so required?

The local loop access infrastructure is regulated by the GIR in the Dominican Republic.

2.15 How are existing interconnection and access regulatory conditions to be applied to next-generation (IP-based) networks? Are there any regulations or proposals for regulations relating to next-generation access (fibre to the home, or fibre to the cabinet)? Are any 'regulatory holidays' or other incentives to build fibre access networks proposed? Are there any requirements to share passive infrastructure such as ducts or poles?

Currently, the Dominican Republic has no specific law or resolution regarding Next Generation Networks.

Nonetheless, the GTL implemented a specific fund called the Contribution for the Development of Telecommunications (CDT), for the promotion and development of projects related to the expansion of telecommunications. A 2% tax is paid by the final consumer upon telecoms services provided, in order to finance such fund. Some projects are then periodically financed for such purpose.

Price and Consumer Regulation

2.16 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

There are no retail price controls imposed on an operator, as per the principle of rate freedom and competitive markets. However, in case of insufficient effective competition, the Indotel can exceptionally regulate the retail prices. In such case, the retail prices will be fixed according to the Regulation for Rates and Costs of Services.

2.17 Is the provision of electronic communications services to consumers subject to any special rules and if so, in what principal respects?

The Transparency principle in the GTL, the Rules for the Protection of Users and Consumers of Telecommunication Services, as well as the General Consumer Protection Law 358-05 protect the consumer by compelling providers to a proper price communication in advertisements, and adequate information of the terms and conditions, in particular, in case of recurring charges, announcement of rates prior to the commencement of a telephone service, etc. Besides, customer terms and conditions of end-user contracts must comply with the minimum standards set forth by the Indotel in the aforesaid Rules.

On the other hand, the Electronic Commerce, Documents, and Digital Signatures Law 126-02 regulates e-Commerce, protecting consumers regarding electronic transactions.

Numbering

2.18 How are telephone numbers and network identifying codes allocated and by whom?

As a member of the North American Numbering Plan (+1 prefix), the Indotel (in coordination with the other North American Numbering Plan countries) is in charge of allocating numbers and network identifying codes.

2.19 Are there any special rules which govern the use of telephone numbers?

Up to July 2014, the prefixes attributed to the Dominican Republic by the North American Numbering Plan are 809, 829, and 849 (+1). No difference is made between mobile connections and landline connections to distinguish the user through its phone number.

2.20 Are there any obligations requiring number portability?

A specific resolution 99-06 was issued in 2006 about the Regulation of Number Portability, which established that number portability between networks is mandatory.

The cost of the portability measures was paid by all telecoms users (approx. US\$2 per activated mobile line), but this measure was recently declared unconstitutional, as all users' details were collected, instead of only the ones who actually wanted their number ported. A mechanism has been recently put in place to reimburse the improperly charged users.

3 Radio Spectrum

3.1 What authority regulates spectrum use?

The Indotel is in charge of deciding, applying and resolving all matters arising in connection with the frequencies allocation and migration, on the grounds of the GTL and the National Plan of Attribution of Frequencies (PNAF) approved by the Executive Power and the international norms and recommendations (Art. 66 of the GTL).

3.2 How is the use of radio spectrum authorised in the Dominican Republic? What procedures are used to allocate spectrum between candidates - i.e. spectrum auctions, comparative 'beauty parades', etc.?

The use of the radio-electrical spectrum is authorised in the Dominican Republic by the Indotel, subject to the conditions set forth in the GTL, its regulation, the PNAF, as well as international norms and recommendations, especially those from the international bodies of which the Dominican Republic is a party, such as the International Telecommunications Union (ITU). The Indotel must call to public tenders ("*Concursos Públicos*") in order to grant concessions or licences whenever there is a requirement for the use of the radio-electrical spectrum, attributed to public radio communication services, except in cases of emergency justified before the regulator (Art. 24.1 of GTL).

Chapter VII of the Regulation on Concessions, Inscriptions in the Special Registries and Licences to provide Telecommunications Services in the Dominican Republic contained in Resolution 007-02, issued by the Board of Directors of the Indotel (as amended by Resolution 129-04) ("*Resolution 007-02*") sets forth provisions related to: general dispositions; bid; confidentiality; notice of public auction or tender; period for questions and comments and filing of bids; general, juridical, technical and economical specifications of the public auction or tender; stages of the public auction or tender; qualification of the public auction; adjudication; payment; consequences of non-compliance in the payment; issuance of licences related to a concession; and/or inscription in Special Registry (Arts. 50-61 of Resolution 007-02).

3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions?

In accordance with Art. 38.1 of Resolution 007-02, the use of the spectrum shall be licence-exempt in the cases set forth in the General Regulation for the Use of the Radio Electric Spectrum approved by Resolution 128-04 of the Board of Directors of the Indotel ("*Resolution 128-04*"). No licence shall be required for: the radio communications systems qualified for low frequencies; those that use frequencies in the bands attributed to low frequencies broadcast; and industrial, scientific and medical applications ("*ICM*") that use frequencies contained in the bands attributed for those purposes, in accordance with the General Regulation for the Use of the Radio Electric Spectrum (Art. 40.9 of Resolution 007-02).

Art. 28 of Resolution 128-04 lists the systems exempted from the requirement of obtaining a licence as follows:

- (1) radio communications systems with apparent radiation potency, referring to vertical antennae lower than one eighth of the length of a wave equal or lower than: 500 milliwatts in the band of frequencies comprising between 30 kHz and 30 MHz; 100 milliwatts in the band of frequencies comprising between 30 and 3000 MHz; and 10 milliwatts in frequencies higher than 3000 MHz;
- (2) industrial, scientific and medical applications that use radio-electrical frequencies contained in the bands attributed to that effect, by the PNAF;
- (3) sound broadcasting systems that are operated by non-profit institutions; and
- (4) radio communications systems authorised by the Indotel, by means of motivated resolution, to expressly operate without said requirement.

No licences shall be granted in favour of applications, in any case, regarding those segments of the spectrum that the PNAF has reserved for the exclusive use of the State (Art. 44 of Resolution 007-02).

3.4 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

The use of frequencies of the spectrum is subject to an annual payment destined to its management and control (Art. 67.1 of GTL). The forms of use and the methods of calculation of the right applicable to each of the uses and services are set forth in the General Regulation on the Use of the Radio Electric Spectrum, based on objective and non-discriminatory criteria (Art. 67.2 of GTL).

The procedures for calculating and paying the right of use (in Spanish “*Derecho de Uso*” or “*DU*”) as well as the value of the radio-electrical reserve unit (in Spanish “*Unidad de Reserva Radioeléctrica*” or “*URR*”), collection procedures, among others, are set forth in General Regulation on the Use of the Radio Electric Spectrum approved by the Indotel’s Resolution 128-04.

3.5 What happens to spectrum licences if there is a change of control of the licensee?

The change of control of the licensee must be performed, under penalty of forfeiture, with prior authorisation of the regulating authority, the Indotel, whose authorisation may not be denied without justified cause. The acquirer shall meet all the conditions imposed on the grantor and shall be ruled by the same obligations as the concessionaire or licensee (Art. 28 of GTL).

Pursuant to letter (d) of Article 62.1 of Resolution 007-02, any natural or legal person, as the case may be, shall obtain an authorisation from the Indotel when seeking a sale or assignment of shares or any other transaction that implies, directly or indirectly, the loss or possibility of losing, by the seller or assignor, the social control, or the possibility of forming the corporate will of said entity (Art. 62.1.d of Resolution 007-02).

The Indotel shall not authorise the change of control operation if: the licence is in a revocable situation; there are any pending payments of rights, taxes, or non-compliance charges; or when the operation implies concentration of the telecommunications services market in the hands of one telecommunications public service concessionaire, or consolidates or can cause an abusive dominant position in the cable broadcasting service market in the hands of one concessionaire of said services. The Indotel shall prevent concentrations against free competition or avoid abuses resulting from dominant positions (Art. 24.3 of Indotel’s Resolution 160-05).

3.6 Are spectrum licences able to be assigned, traded or sub-licensed and if so on what conditions?

Spectrum licences can be assigned subject to the prior authorisation of the Board of Directors of the Indotel (Art. 62.2 of Resolution 007-02). Every proposed acquirer, assignee, lessee or holder of a right of use or a lien, shall meet the requirements imposed on the original holder of the concession, inscription or licence, and shall be ruled by its same obligations (Art. 62.3 of Resolution 007-02). The authorisation process shall be governed by Resolution No. 007-02.

In accordance with Art. 28 of GTL, transfers shall not be authorised:

- In cases where there is a lack of compliance by the concessionaire with the minimum plan of expansion foreseen in its concession contract, both in terms of quality and timing.
- When the concession is in a state that justifies its revocation.
- While there is the pending of any payment of rights, charges for non-compliance or taxes foreseen by the GTL.

The Indotel has approved transfer, assignment or change of control of a concession on various cases such as: (i) change of control from the concessionaire *Tricom, S. A.* and *TCN Dominicana* in favour of *Hispaniola Holdings Ltd.* (2009-2010); (ii) change of control from the concessionaire *Verizon Dominicana, C. por A.*, in favour of *America Movil, S. A. de C. V.* (2006); (iii) change of control of concessionaire *Centennial Dominicana (All American Cables / Radio, Inc. Dominican Republic)* in favour of *Trilogy International Dominican Republic, LLC* (2006-2007); (iv) change of control of

concessionaire *Tricom, S. A.* to *Altice Dominican Republic, S.A.S.* (2014); and (v) change of control of concessionaire *Orange Dominicana, S. A.* to *Altice Dominican Republic II, S.A.S.* (2014).

Any transaction involving economic concentration in the telecommunications sector must be authorised by the Indotel as set forth in the Regulation of Free and Fair Competition approved by Resolution 022-05 of the Board of Directors of the Indotel (Art. 12.3 of Resolution 022-05).

4 Cyber-security, Interception, Encryption and Data Retention

4.1 Describe the legal framework (including listing relevant legislation) which governs the ability of the state (police, security services, etc.) to obtain access to private communications.

Law 76-02 on the Criminal Procedure Code requires a judicial authorisation in order to be able to intercept, receive and record communications, messages, data, images or sounds transmitted through the public or private telecommunications networks by the defendant or any other person that can reasonably provide relevant information to determine a punishable fact, whatever the technical means known to them (Art. 192 of Law 76-02).

Law 53-07 on High Technology Crimes and Offenses (“*Law 53-07*”) provides that the District Attorney, subject to prior compliance with the formalities set forth in the Criminal Procedure Code, has the authority to order: (i) any natural or juridical person to hand in the information in its system or in any of its components; and (ii) any service provider, including internet service providers, to supply information of the data related to a user that it may have under its possession or control (Art. 54 of Law 53-07).

Law 72-02 on Money Laundering in the Dominican Republic sets forth certain obligations regarding: (i) clients’ identification; (ii) third-party beneficiaries; and (iii) keeping the documents containing the operations of the entity and the identity of the natural or juridical persons doing business or related to the same; among others, for a period of 10 years (Art. 41 of Law 72-02).

Law No. 172-13, which is of public order, sets forth the obligation to obtain the prior written consent of the owner of the data. The investigation and intelligence organisms of the Government are exempted from the obligation to obtain said consent, subject to the prior authorisation of the competent judicial authority allowing the gathering of data.

Law 267-08 on Terrorism provides that the special competent authorities can, with or without filing an application to the District Attorney or to the National Antiterrorism Headquarters, order special measures of interception of communications and correspondence, including internet, inspection of bank accounts, DNA testing, biometric, polygraph and medical psychiatric evaluations, as well as any similar measure that supports prevention, prosecution and punishment of terrorist activities (Art. 46 of Law 267-08).

4.2 Summarise the rules which require market participants to maintain call interception (wire-tap) capabilities. Does this cover: (i) traditional telephone calls; (ii) VoIP calls; (iii) emails; and (iv) any other forms of communications?

The Constitution of the Dominican Republic sets forth the inviolability of the correspondence, documents or private

messages in physical, electronic or any other types of formats. Private communications can only be intercepted by an order of a competent judicial authority, in compliance with legal procedures to substantiate matters to be decided in justice and preserving the secrecy of private matters not related to the corresponding process. The secrecy of the telegraphic, telephone, cable graphic, electronic, telematics, or in any other means, cannot be infringed, except with the authorisations granted by a judge or competent authority, in accordance with the law (Art. 44, number 3 of the Constitution).

A judicial authorisation must be obtained in order to be able to intercept, receive and record communications, messages, data, images or sounds transmitted through the public or private telecommunications networks by the defendant or any other person that can reasonably provide relevant information to determine a punishable fact, whatever the technical means used to try them (Art. 192 of Law 76-02).

4.3 How does the state intercept communications for a particular individual?

The state would need to obtain the prior judicial authorisation from a competent judge before proceeding to compel a provider to intervene or intercept the telecommunications for a particular individual in real time, in accordance with the procedure set forth in article 192 of the Criminal Procedure Code.

The Constitutional Court of the Dominican Republic decided in its Judgment TC/200/13 of 7 November, 2013, that in order to adopt any action to intervene in the communications of an individual, the following requirements must be complied with so that the same shall not infringe the right of secrecy and privacy of the communications: (i) the existence of a law providing the intervention procedures, that must adhere to the limitations set forth in the Constitution; (ii) the intervention must be decided by an order of a competent judge; and (iii) the order of the judge must be motivated due to the fact that said intervention involves, in principle, a transgression of the right of secrecy and privacy of the communications (translated from sections 9.6.5, 9.6.5.1., 9.6.5.2. and 9.6.5.3. of pages 36 to 66 of said Judgment).

4.4 Describe the rules governing the use of encryption and the circumstances when encryption keys need to be provided to the state.

Dominican Law 126-02 on Electronic Commerce, Digital Documents and Signatures of 4 September, 2002 and its ruling for its application approved by Decree 335-03 of 3 April, 2003, along with complementary rules to said law approved by the Indotel (technical specifications applicable to certificates X.509 V3 of use of the public key infrastructure in the Dominican Republic), provide for asymmetric encryption, which is the algorithm that uses a pair of keys, one private key for digital signature and its respective public key to verify said digital signature. This way, one key cannot operate without the other key and in such way that the user who knows the public key cannot derive the private key from the public key.

The state would need to request the encryption keys through the District Attorney, subject to the prior compliance by the latter with the formalities set forth in the Criminal Procedure Code and pursuant to Law 53-07.

4.5 What call data are telecoms or internet infrastructure operators obliged to retain and for how long?

Law 53-07 indicates that service providers must keep the traffic data, connection, access or any other information that would be useful to the investigation, for a minimum period of ninety (90) days. Law 53-07 provides that the Indotel shall create a regulation containing the procedure to obtain and preserve data and information from service providers. Said regulation shall take into account the importance of preserving the evidence, regardless of the amount of providers involved in the transmission or communication (Art. 56 of Law 53-07).

Article 6 of Resolution 86-11 of the Board of Directors of the Indotel, that approves the Regulation for Obtaining and Preserving the Data and Information by Services Providers by virtue of the provisions set forth in Law No.53-07 (“*Resolution 086-11*”), indicates that the service providers must keep the data mentioned under article 4 of said Resolution 86-11 for a period of time of not less than 90 days, and not more than two years from the date that said data is generated and kept.

Nevertheless, on 7 November, 2013 the Constitutional Court of the Dominican Republic declared the nullity of article 4 of Resolution 086-11 because it is not in accordance with the Constitution of the Dominican Republic.

5 Distribution of Audio-Visual Media

5.1 How is the distribution of audio-visual media regulated in the Dominican Republic?

From a technical standpoint, broadcasting services are essentially regulated by the GTL and the regulations approved by the regulator. In connection with the content of broadcasting services, they shall be governed by the provisions of the specific legislation that regulates the social communications media and by the laws that regulate copyrights, whether they are national laws or resulting from international conventions or agreements signed and ratified by the Dominican Republic (Art. 70 of GTL).

Broadcasting services, whether sound or television, are telecommunications services in which the communication is performed normally in a single direction to several points of reception simultaneously. Broadcasting services may include facilities that allow communication in inverse direction, that is, from the receiving set to the broadcasting station centre, so long as said communication does not constitute a service independent from the transmission service (Art. 18.1 of GTL).

Article 3.1 of the Indotel’s Regulation on Cable Broadcasting Service approved by Resolution 160-05 (“*Resolution 160-05*”), provides that said regulation shall apply to Cable Broadcasting Service systems using physical means to access end-users, such as coaxial cables and fiber optics for the distribution of television broadcasting signals, regardless of the title allowing for the establishment and exploitation of the same.

The Dominican Republic grants copyright protection to original broadcasting works, under the Copyright Law 65-00, modified by Law 424-06 for the implementation of the free trade agreement between the Dominican Republic, Central America and the United States of America (*DR-CAFTA*). Audio-visual work is defined as all creations expressed through a series of related images, that give the impression of movement, with or without built-in sound, essentially aimed to be shown through appropriate devices or any

other means of communication or projection of sound and image, regardless of the nature or characteristics of the material support that it contains. The audio-visual works include cinematography and to all those expressed by similar analogue means to cinematography (Art. 16.3 of Law 65-00).

Patents of invention, trademarks, service marks, commercial names, signs, logos, and commercial slogans are governed by Industrial Property Law 20-00, also modified by Law 424-06.

5.2 Is there a distinction between the linear and non-linear content and/or content distributed over different platforms?

At present, the broadcast technology in use in the Dominican Republic for the television broadcast is the North American standard analogue NTSC (National Television System Committee). Nevertheless, cable broadcast service providers use the European standard DVB-C (Digital Video Broadcasting Cable).

Executive Power Decree 407-10 sets forth that the Digital Terrestrial Television standard to be implemented in the Dominican Republic is the North American model ATSC (Advanced Television System Committee), and provides for a term of five years to execute the transition process from analogue television to digital terrestrial television.

The Dominican Republic has one regulation in force ruling the cable broadcasting service. In 2010, the Indotel started a process of public consultation to approve a regulation to provide broadcasting subscription services that has not been approved up to this date (Indotel Resolution 017-10).

Pursuant to Indotel Resolution 102-10, there is evidence that in recent years Dominican citizens have acquired digital televisions that are in use in the Dominican Republic (official numbers point out to an amount greater than 100,000 televisions, that could imply more than 5% of homes with televisions in the country); most of those televisions function under the ATSC standard, as a result of the high flow of citizens between the United States of America and the Dominican Republic.

Indotel Resolution 028-09 referring to the new technology of television over IP (IPTV) that allows for the possibility of providing jointly various communication services, such as digital television and unlimited music channels, *Personal Video Recording (PVR)*, *Pay-Per-View (PPV)*, *Screen Caller ID*, *Video-on Demand (VoD)*, among others, ordered provisionally, that the provisions regarding “*must carry*” obligations set forth in Resolution 160-05 be applicable to pay television offered in the Dominican Republic, if technically feasible.

5.3 Describe the different types of licences for the distribution of audio-visual media and their key obligations.

Indotel Resolution No.120-04, which approves the Regulation for Television Broadcast Service, provides that the licence for the use of the spectrum linked to the service shall be requested to the Indotel along with the corresponding concession that shall be issued by the Indotel in addition to the concession contract (Art. 16.1). The Indotel can order migration of frequencies allocated to a concessionaire to others that shall be assigned when appropriate because the spectrum is a limited and scarce resource of the Government (Art. 16.2). The concession can be granted for a period of time of not less than five (5) years and not greater than twenty (20) years, in the understanding that the licence linked to the concession shall have the same duration as the concession and shall

be revoked for the same reasons that cause the revocation of the concession (Art. 16.3). The licence linked to the concession shall be renewed along with the renewal of the concession contract (Art. 16.4). The concession renewal procedure is set forth under Article 28 of Resolution 007-02. The concessionaires of the broadcast television service require a licence issued by the Indotel for each point of retransmission used to cover the service zone that has been authorised to the same (Art. 16.8).

A concession granted by the Board of Directors of the Indotel is necessary in order to provide cable broadcasting services, in accordance with Indotel Resolution 007-02, Law 153-98 and other legal and regulatory provisions (Art. 14.1 of Resolution 160-05). Concessions to provide cable broadcast services can be granted by the Indotel at the request of the party in interest for a minimum term of five (5) years and a maximum term of twenty (20) years. The concession can be renewed for equal maximum terms and the renewal procedure is set forth in Resolution 007-02 (Art. 23).

The certificate of inscription issued by the Registry of Importers, Distributors and Traders of Goods, Services or Equipments linked to Copyright or its related rights issued by the National Copyright Office (“*Oficina Nacional de Derecho de Autor*”) must be attached to the application for the concession to operate cable broadcasting public services or sound or television broadcast (Art. 20.B.2).

5.4 Are licences assignable? If not, what rules apply? Are there restrictions on change of control of the licensee?

In accordance with Resolution 160-05, which regulates cable broadcasting television services, the transfer, assignment, lease or granting of rights of use of any title or the creation of a lien on concessions to provide cable broadcasting services, shall require the prior authorisation of the Indotel. The Indotel’s decision is subject to the above mentioned provisions of Article 28 of GTL and the Regulation on Concessions, Inscriptions in Special Registries and Licences to provide Telecommunications Services in the Dominican Republic (Art. 24.2). The Indotel shall not authorise the mentioned operations if the concession is in a revocable situation, if there are any pending payments of rights, taxes, non-compliance charges, or when the operation implies concentration of the telecommunications services market in the hands of one telecommunications public service concessionaire, or consolidates or can cause an abusive dominant position in the cable broadcasting service market in the hands of one concessionaire of said services. The Indotel shall prevent concentrations against free competition or avoid abuses resulting from dominant positions (Art. 24.3).

The concessions granted as result of public auctions shall not be assignable for a term of 10 years (Art. 24 of Resolution 120-04 that regulates broadcasting television services).

6 Internet Infrastructure

6.1 How have the courts interpreted and applied any defences (e.g. ‘mere conduit’ or ‘common carrier’) available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

Content Crimes set forth under Chapter II of Law 53-07 include threats against a person’s life, high technology theft (Art. 13), obtaining illicit funds, electronic fund transfer, identity theft, child pornography, among others (Arts. 12-24). Few cases have been submitted in this matter to the Supreme Court of Justice.

Law 53-07 provides that the juridical person shall be considered liable from a civil standpoint when the negligence, omission, lack of vigilance or control or its legal proxy or employee has allowed for the commission of an unlawful act set forth in said law (Art. 60).

In connection with the obligation of providers to protect copyright, Dominican Supreme Court of Justice Judge Esther E. Agelán C. indicated that service providers are the entities that can and must put filters, radars and controls, to suspend the service to the users that infringe the law. The irregularities detected must be notified to the authorities of the department for the investigation of high technology crimes (“*Departamento de Investigación de Crímenes y Delitos de Alta Tecnología*” or “*DICAT*”) to evaluate the need to initiate an investigation. Since the approval of Law 53-07, in the year 2007 up to the end of the year 2008, statistics from the DICAT registered that three complaints for CD cloning songs and movies were received and resolved (*Ciberdelincuencia y Política Criminal: Internet: Nuevo reto jurídico-penal* (in English, *Cybercrime and Criminal Policy: Internet: new criminal legal challenge*), Esther E. Agelán C., Santiago de los Caballeros, Dom. Rep., 2011, Pages 99-100).

Cybercrimes would be considered as complex because the crime occurs in cyberspace and each case would have to be analysed on a “*case by case basis*” and considered individually to determine the degree of liability or negligence of the internet service provider for content carried over its network.

6.2 Are telecommunications operators and/or internet service providers under any obligations (i.e. provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

Telecommunications operators and/or internet service providers are not obligated to assist content owners whose rights may be infringed, unless ordered to do so by judicial authorisation from a competent judge, in accordance with the procedure set forth in the Criminal Procedure Code.

6.3 Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks? Are there any ‘net neutrality’ requirements?

Telecommunications operators and/or internet service providers are able to differentially charge and/or block different types of traffic over their network as set forth in various regulations including Indotel Resolution 142-10, which approves the Amendments to the Fundamental Numbering Technical Plan.

On the grounds of the neutrality principle, the service must be provided taking into account its own conditionings, without distorting through discrimination or arbitrariness the functioning of other markets (Art. 1 of GTL). Public Carrier services are governed by the principles of transparency, non-discrimination, and neutrality, with respect to the services that they carry (Art. 15.2 of GTL). The entities providers of carrier, end and broadcast services, whether they provide value-added services or not, shall guarantee the principles of neutrality and non-discrimination *vis-à-vis* the value-added service providers who need to use their essential installations (Art. 17.2 of GTL). Interconnection Regulation is intended to be an effective instrument guaranteeing the principle of technological net neutrality in its scope of enforcement as mentioned in Indotel Resolution 038-11.

6.4 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content?

Telecommunications operators and/or internet service providers shall block access to child pornography sites or contents. The production, broadcast, sale or any other type of image trading and representations of children or adolescents of a pornographic nature shall be punished with two to four years of prison and sanction of 10 to 500 times the minimum wage (Art. 24 of Law 53-07).

6.5 How are ‘voice over IP’ services regulated?

Voice over IP is regulated pursuant to the GTL and its regulations, including Resolution 007-02. In order to provide local or international telecommunications services under the technology “*voice over IP*”, the provider must have the corresponding Indotel concession, licence or inscription in the Special Registries of the Indotel, or be an authorised reseller or distributor or an authorised concessionaire.

On 15 March, 2006 the Indotel published an “Important Notice” highlighting that all entities and persons offering local or international solutions under the technology “*Voice over Internet* (“*Voice over IP-VoIP*”)), not included in the Indotel’s mentioned lists or who were not authorised resellers or distributors, were infringing the legal telecommunications framework in force. The Indotel informed that illegal telephone services operations and internet access are “very serious faults” and warned with the closing and seizure of equipment used in illegal operations. The GTL provides that the rendering of telecommunications services without the corresponding concession, licence or inscription is a very serious fault (Art. 105.d of GTL).

**Maria Jesus Velázquez**

Castillo y Castillo
Ave. Lope de Vega No. 4
Santo Domingo
Dominican Republic

Tel: +1 809 562 3344
Fax: +1 809 563 0010
Email: mj.velazquez@castillo.com.do
URL: www.castillo.com.do

Ms. Velázquez advises international and domestic clients across a range of sectors including telecommunications, banking, project finance, capital markets, and equity issues, including IPOs. She focuses on complex financings, commercial transactions, technology and distribution. Her clients instruct her on the basis of her solutions-focused, personalised service, which takes into consideration each client's specific goals and constraints. Her experience includes being an active participant in the Dominican Republic telecommunications reform project that resulted in General Telecommunications Law No. 153-98. Ms. Velázquez is a Judicial Interpreter of the Court of First Instance of the National District in Santo Domingo.

**Sylvio Hodos**

Castillo y Castillo
Ave. Lope de Vega No. 4
Santo Domingo
Dominican Republic

Tel: +1 809 562 3344
Fax: +1 809 563 0010
Email: s.hodos@castillo.com.do
URL: www.castillo.com.do

Mr. Hodos provides advice on tax, corporate, intellectual property and media/IT legal issues for a wide range of international and domestic clients. He is the coordinator of the Tax department. His background in computer science and IP/IT enables him to understand the specific challenges faced by clients in the IP/IT and telecommunications sectors. Mr. Hodos was previously a Judicial Expert at Hubert BITAN in Paris, France, advising on technical judicial reports, legal consultations and technical jurisprudence. He is the current coordinator of Tax Law Masters at Pontificia Universidad Católica Madre y Maestra (PUCMM). In addition, Mr. Hodos is a Professor in Contract Law, Telecommunications and Intellectual Property at Pontificia Universidad Católica Madre y Maestra (PUCMM), Universidad Iberoamericana (UNIBE) and Universidad Acción Pro Educación y Cultura (APEC).



Established in 1933, Castillo y Castillo is a preeminent law firm dedicated to providing creative solutions to the most complex issues. The firm supports its clients' business goals across a range of sectors and industries, with practical advice tailored to their objectives.

The firm's multidisciplinary team represents major domestic and international companies in sophisticated, market-leading transactions.

Castillo y Castillo is consistently ranked among the region's leading law firms for its teamwork, high levels of client service, responsiveness and excellent attention to detail.

The firm's values and ethical principles are embedded into its culture and practice, reflecting its commitment to operate in compliance with the highest professional standards.

Current titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Recovery & Insolvency
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Environment & Climate Change Law
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Patents
- Pharmaceutical Advertising
- Private Client
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet Laws
- Trade Marks



59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk

www.iclg.co.uk