

PADM7008

ICT Policy, Law & Institutions

**A core course in the degree of
Master of Management
in the field of ICT Policy & Regulation**

Convenor: Charley Lewis

11 – 15 May 2010

			Learning Information Networking Knowledge
			Wits University Graduate School of Public and Development Management

CONTENTS

1 Content overview

This core course examines the legal environment and institutional structures within which policy formulation and regulation for the ICT sector are located. Policy and regulation is conceptualised against constitutional foundations and legal frameworks, and in the context of the legal principles of separation of powers and administrative justice. National legislation governing telecommunications, broadcasting and the Internet is contextualised and reviewed in relation to legal principles and its impact on policy, institutions and regulatory practice in the sector.

2 Session Summary

	Date	Topic	Presenter
Tues 11 May			
1	09:00 – 12:00	Reform of the ICT sector in South Africa: an overview	Charley Lewis
2	13:00 – 16:00	Constitutional and Legal Frameworks for ICT Policy, Law and Institutions	Kerron Edmundson
Weds 12 May			
3	09:00 – 12:00	Competition Policy, Legislation and Institutions in South Africa	Ryan Hawthorne / Keith Weeks
4	13:00 – 16:00	Electronic Communications Legislation in South Africa: telecommunications policy, legislation & institutions	Carla Raffinetti
Thurs 13 May			
5	09:00 – 12:00	Policy analysis and evaluation	Fanie Cloete
6	13:00 – 16:00	Electronic Communications Legislation in South Africa: broadcasting policy, law & institutions	Silas Dziike
Fri 14 May			
7	09:00 – 12:00	Electronic Commerce legislation in South Africa	Michael Silber
8	13:00 – 14:30	Group presentations	Syndicate Groups
9	15:00 – 16:00	ICT Policy, Law and Institutions: Issues and Conclusions	Charley Lewis
Sat 15 May			
10	09:00 – 12:00	Examination	Charley Lewis

3 Course Outcomes

On completion of this course, participants will be able to:

- describe the constitutional and legal frameworks within which national ICT legislation is located, including the constitution, bill of rights, administrative law, etc;
- describe the relationship between policy, law and regulation;
- articulate the impact of the principles of separation of powers and administrative justice on ICT policy formulation;
- articulate the roles of key stakeholders in respect of policy formulation parameters and processes;
- discuss the key regulatory issues that are dealt with in the legislation governing broadcasting, telecommunications;
- analyse the impact and implications of specific ICT legislation on the development of the ICT sector.

4 Core Readings

The following readings are recommended for the course. Be aware that the book by Thornton et al deals with the legal environment *predating* the 2005 Electronic Communications Act.

- Limpitlaw, J (2009) 'South Africa', Chapter 30 in Long, C (ed) (2006) *Global Telecommunications Law and Practice*, Sweet & Maxwell, London **[e-mail - attachment]**
- Thornton, L, Carrim, Y, Mtshaulana, P & Reburn, P (2006) *Telecommunications Law in South Africa*, STE Publishers, Johannesburg, available online at <http://link.wits.ac.za/papers/TeleLaw-full.pdf>

For a more general and global perspective, the following book provides a very detailed overview:

- Walden, I (ed) (2009) *Telecommunications Law and Regulation*, Oxford University Press, Oxford, available for use only in the Law Library, west campus

5 Required Readings

One or more required readings will be provided for each session. The majority of these are available online, and details of them will be e-mailed out to you well in advance of the course. You will be expected to access, download or print these, and read them **in advance** of the course start date. Lecturers will assume familiarity with their content, and will pitch their sessions accordingly. You may also be tested as regards the content of the required readings. Other readings are printed out and included in your course pack.

You should also have with you during the course copies of the relevant legislation, which will be compiled into a booklet and made available to you. You can also consult the website www.polity.org.za for Acts, Bills, Documents for Public Comment, Notices and Regulations, and Policy Documents.

Lecturers / facilitators who use teaching aids or provide additional material, will distribute these notes to you as they become available. These notes should be added to your course file and included as part of your course materials. Copies of presentations and other material may instead be made available to you electronically.

6 Additional Readings

An electronic library of course notes and additional reference material relevant to this course is made available via the Wits Ignite web site at <http://ignite.wits.ac.za>. You will be given a logon ID and password to allow you to access this material, which is loaded under the folder 'PADM5078 Universality & Quality of Service Regulation'. You are strongly encouraged to make extensive use of resources and features of this course extranet site.

You may also be required to contribute to online discussions or to complete assignments and other forms of assessment via this web site.

Note that many of these readings are presented in Acrobat Reader format, which will require you to have Acrobat Reader installed on your computer.

7 Preparation Requirements

Your preparation work – mainly reading - should be done individually before you come on the course. Questions to guide your reading have been provided for this reason. Please note that there may be tasks to prepare for specific sessions. These will assist you to work through the conceptual and theoretical understandings in each of the readings and begin to apply these to cases and issues. Read through each session outline carefully to ensure that there are no mishaps.

We assume that for every 1 hour that you spend in the classroom, 30 in total, you will need to spend approximately 4 additional hours in preparation. This includes reading, writing assignments and examinations.
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8 Syndicates and Group Learning

An interactive and intensive learning methodology is utilised, which involves a combination of lectures, case studies, group and individual projects. Given that many participants are active in shaping the telecommunications sector, the P&DM endorses the "syndicate method" of teaching, which requires that some of the learning will be done in groups. This approach is designed to enable course participants to contribute to the course, bringing in their own practical experience, knowledge and expertise together with those of their peers to create a rich learning environment.

Each participant will be assigned to a syndicate group. Syndicates and group work are a vital component of the learning process and attendance at all syndicate meetings is required and compulsory.

Syndicate meetings will be organised by the group members at a time and place suitable to them in accordance with the programme's schedule. Although the P&DM will make syndicate meeting rooms available, these meetings need not be held on campus. Syndicate meetings and interactions may also take place virtually, through the course WebCT site and via the mailing lists which will be made available for this purpose.

Problems within syndicate groups are to be reported timeously to the Academic Convenor of this course, so that steps may be taken to resolve them. Syndicates will only be able to change their syndicate group composition under exceptional circumstances, and at the sole discretion of the Academic Convenor.

9 Course Assessment

There are several components to the assessment for this course, viz:


- individual online assessment - 15%
- group assignment - 15%
- individual examination - 70%

The group assignment, which is done in syndicate groups during the week, will be distributed at the beginning of the week, and will count 15% towards your final mark for the course. Its due date for submission is Friday 14 May 2010.


The written examination will take place on Saturday 15 May 2010 and will count 70% towards your final mark for the course. Your lecturers will discuss its requirements during the course of the week. It is likely to be in open-book format with respect to the legislation only, designed to test application of concepts and theoretical tools, rather than to focus on rote learning.

9 Information on Content Sessions

Session 1: Reform of the ICT Sector in South Africa	
Presenter	Charley Lewis, LINK Centre
Outcomes	<p>Participants will be able to:</p> <ul style="list-style-type: none"> • Describe key features of the inherited telecommunications and broadcasting environment in SA; • Articulate the roles and positions of key stakeholders shaping ICT sector reform; • Analyse the major developments in ICT policy and legislation over the last decade.
Content	<ul style="list-style-type: none"> • Posts, telecommunications and broadcasting in SA prior to 1990; • Transitional reforms in telecommunications and broadcasting; • Reshaping telecommunications for a democratic South Africa; • Tinkering with telecommunications and broadcasting in the new millennium.
Core Readings	<ul style="list-style-type: none"> • Ayogu, M & Bayat, F (2010) 'ICT governance: South Africa', <i>Telecommunications Policy</i>, No 34, pp 244 – 247, Elsevier, New York [e-mail] • Gillwald, A (2002) 'Experimenting with institutional arrangements for communications policy and regulation: the case of telecommunications and broadcasting in South Africa', <i>The Southern African Journal of Information and Communication</i>, Vol 2 No 1, LINK Centre, University of the Witwatersrand, Johannesburg, available online at http://link.wits.ac.za/journal/j0201-ag.htm [e-mail] • Horwitz, R & Currie, W (2007) 'Another instance where privatization trumped liberalization: The politics of telecommunications reform in South Africa - A ten-year retrospective', <i>Telecommunications Policy</i>, No 31, Elsevier, New York [e-mail]
Additional References	<ul style="list-style-type: none"> • Ayogu, M & Hodge, J (2002) 'Understanding Telecom Sector Reforms in South Africa: A Political Economy Perspective', <i>Journal of Contemporary African Studies</i>, No 20, 2002 • Cogburn, D (1998) 'Globalization and State Autonomy in the Information Age: Telecommunications Sector Restructuring in South Africa', <i>Journal of International Affairs</i>, Vol 51 No 2, Spring 1998 • Cohen, T (2003) 'Rethinking (Reluctant) Capture: The Development of South African Telecommunications 1992-2002 and the Impact of Regulation', <i>Journal of African Law</i>, Vol 47 No 1, 2003 • Fokane, T (2003) 'The transformation of broadcasting in South Africa: A history of the Campaign for Open Media (COM) and the Campaign for Independent Broadcasting (CIB)', Freedom of Expression Institute, Johannesburg, available online at http://www.fxj.org.za/PDFs/PDFs/Other/earchive/transformation.pdf • Horwitz, R (2001) 'Negotiated Liberalization': Stakeholder Politics and Communication Sector Reform in South Africa', in Morris, N & Waisbord, S (eds) (2001) <i>Media and Globalization: Why the State Matters</i>, Rowman & Littlefield, pp 37-55, pre-publication version available online at http://arxiv.org/html/cs/0109097v1 • Horwitz, R (2001) <i>Communication and Democratic Reform in South Africa</i>, Cambridge University Press, 2001

	<ul style="list-style-type: none"> • Janisch, H and Kotlowitz, D (1998) 'African Renaissance, Market Romance: post-apartheid privatisation and liberalisation in South African broadcasting and telecommunications', unpublished symposium paper, Columbia University, 1998 • Kaplan, D (1990) <i>The Crossed Line: The South African Telecommunications Industry in Transition</i>, Wits University Press, Johannesburg, 1990 • RSA (1995) <i>Telecommunications Green Paper</i>, Republic of South Africa, Pretoria, available online at http://www.polity.org.za/html/govdocs/green_papers/telecomms.html • RSA (1996) <i>White Paper on Telecommunications Policy</i>, Republic of South Africa, Pretoria, available online at http://www.polity.org.za/html/govdocs/white_papers/telewp.html
<p>Activity</p>	
<p>About your Lecturer</p>	<p>Charley Lewis is a Senior Lecturer at the LINK Centre at the University of the Witwatersrand. In addition to his role as degree leader for the Master of Management in the field of ICT Policy & Regulation, he is engaged in researcher and consultancy work in the broad ICT arena. His areas of interest include: ICT sector policy and regulation; universal service and access; consumer protection regulation, the Internet, labour, work and ICT; and contact centres and business process outsourcing. He has lectured and presented widely, on a number of ICT policy, regulation and development issues. He has undertaken research in a number of areas, including the Internet, call centres, e-learning and universal access and service. He holds the degree of Master of Commerce in the Management of Information Systems from the University of the Witwatersrand.</p> 

Session 2: Constitutional and Legal Frameworks for ICT Policy, Law and Institutions	
Presenter	Kerron Edmunson, Attorney & Solicitor
Outcomes	<p>Participants will be able to:</p> <ul style="list-style-type: none"> • Understand the process of Constitution making; • Analyse the key rights in the Bill of Rights that impact upon the ICT sector; • Undertake a limitations clause analysis of rights-related issues; • Understand the key constitutional concepts of separation of powers and constitutional supremacy; • Describe the principles for the public service; • Analyse the particular constitutional situation of ICASA; • Understand how transparency and rules regarding administrative justice aid in substantive decision-making; • Describe the grounds of judicial review available in terms of legislation; • Analyse when different administrative process provided for in legislation are to be used; • Describe key issues regarding administrative action, natural justice and the right to administrative justice generally.
Content	<ul style="list-style-type: none"> • Constitutional framework for communications regulation • The Bill of Rights • Section 192 of the Constitution • Section 195 of the Constitution • The principle of separation of powers between the three branches of government • Law versus regulation • Stakeholder roles: government, the regulator, operators • Inter-governmental relationships • The Constitutional role of ICASA • Policy formulation parameters and processes • Administrative justice and ethics • Constitutional provisions regarding administrative justice • Detailed analysis of the provisions of the Promotion of Administrative Justice Act
Legislation & Regulations	<ul style="list-style-type: none"> • RSA (1993) <i>Constitution of the Republic of South Africa</i>, Republic of South Africa, Pretoria, available online at http://www.constitutionalcourt.org.za/site/constitution/english-web/ Or at www.polity.org.za • RSA (2000) <i>Promotion of Administrative Justice Act, 3 of 2000</i> (as amended), Republic of South Africa, Pretoria, available online at http://www.constitutionalcourt.org.za/site/constitution/english-web/

<p>Core Readings</p>	<ul style="list-style-type: none"> • Currie, I & Klaaren, J (2001) 'Introduction to the Promotion of Administrative Justice Act', in Currie, I & Klaaren, J (2001) <i>The Promotion of Administrative Justice Act Benchbook</i>, Siber Ink Publishers, Cape Town [e-mail - attachment] • Delaney, S (2009) 'The Constitutional Fate of ICASA in a Converged Sector', Eversheds, Johannesburg, October 28 2009, available online at http://www.hg.org/article.asp?id=7451 [e-mail] • Edmunson, K (2009) 'NAFCOC and etv: DTT Migration Regulations', mimeo • Thornton, L (2006) 'Telecommunications Law – an Overview', in Thornton, L, Carrim, Y, Mtshaulana, P & Reburn, P (2006) <i>Telecommunications Law in South Africa</i>, STE Publishers, Johannesburg, available online at http://link.wits.ac.za/papers/telelaw12.pdf [e-mail]
<p>Additional References</p>	<ul style="list-style-type: none"> • Currie, I (2007) <i>The Promotion of Administrative Justice Act: A Commentary</i>, Siber Ink Publishers, Cape Town • Currie, I & de Waal, J (2004) 'Just Administrative Action ', in Currie, I & de Waal, J (2004) <i>The Bill of Rights Handbook</i>, 5th edition,
<p>Activity</p>	
<p>About your Lecturers</p>	<p>Kerron Edmunson is a qualified attorney and solicitor operating a consultancy business in Johannesburg, offering strategic legal, regulatory and commercial support to clients in the information and electronic communications industries (formerly known as telecommunications and broadcasting); and to corporate commercial clients in utility and other industries, working in the public and private sector. Kerron qualified with a BA LLB in 1994 and has since held the position of director at Edward Nathan (Pty) Ltd (SA), been appointed a senior solicitor in the Royal Mail (UK) legal department, been employed as a senior solicitor in private practice at Denton Wilde Sapte (UK) for 4 years and worked as in-house legal counsel for one of the mobile telecommunications operators in South Africa.</p> 


Session 3: Competition Policy, Legislation and Institutions in South Africa	
Presenter	Keith Weeks, Competition Commission & Ryan Hawthorne
Outcomes	<p>Participants will be able to:</p> <ul style="list-style-type: none"> • Describe the institutional structures set up in terms of the Competition Act; • Articulate key substantive issues in competition law as they effect the ICT sector; • Analyse the differences between competition law and public regulation; • Analyse the competition provisions in the 2005 Electronic Communications Act and their implications; • Debate jurisdictional questions raised by the presence of sectoral and competition regulators.
Content	<ul style="list-style-type: none"> • Principles of competition policy • Competition legislation in South Africa • Institutional framework governing competition in South Africa • Competition vs sector specific regulation • MoA between Competition Commission and ICASA • 2005 Electronic Communications Act (competition provisions)
Legislation & Regulations	<ul style="list-style-type: none"> • RSA (1998) <i>Competition Act, No 89 of 1998</i> (as amended), Republic of South Africa, Pretoria, available online at http://www.compcom.co.za/thelaw/ConsolidatedAct.doc • RSA (2005) <i>Electronic Communications Act, No 36 of 2005</i> (as amended), Republic of South Africa, Pretoria, available online at http://www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf • RSA (2009) <i>Competition Amendment Act, No 1 of 2009</i>, Government Gazette No 32533, 28 August 2009, Republic of South Africa, Pretoria, available online at http://www.compcom.co.za/assets/Files/Competition-Amendment-Act.pdf

<p>Core Readings</p>	<ul style="list-style-type: none"> • Competition Commission (2002) 'Memorandum of Agreement Entered into between the Competition Commission and the Independent Communications Authority of South Africa', Competition Commission, Pretoria • Intven, H, Oliver, J & Sepúlveda, E (2000) 'Competition Policy', in <i>Telecommunications Regulation Handbook</i>, Intven, H (ed), World Bank, Washington DC, available online at http://rru.worldbank.org/Documents/Toolkits/telecom_mod5.pdf [e-mail] • EC (2007) 'MEMO/07/274 Antitrust: Commission decision against Telefonica – frequently asked questions', European Commission, Brussels, 4 July 2007, available online via http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/274 • Thornton, L, Cupido, C & Edmunson, K (2007) 'Competition Matters under the Electronic Communications Act', mimeo, Lisa Thornton Inc, Johannesburg • Competition Commission (2004) 'Competition Commission refers Telkom complaint to Tribunal', Media Release No 6 of 2004, 24 February 2004, Competition Commission, Pretoria • McLeod, D (2008) 'Telkom wins competition dispute', 20 June 2008, available online at http://www.fmtech.co.za/?p=10116 • Mochiko, T (2008) 'Competition commission still gunning for Telkom', 22 June 2008, Business Report, Johannesburg, available online at http://www.busrep.co.za/general/print_article.php?fArticleId=446850 • Competition Commission (2009) 'Competition Commission refers abuse of dominance findings against Telkom', Media Release, 28 October 2009, Competition Commission, Pretoria, available online at http://www.compcom.co.za/assets/Uploads/AttachedFiles/MyDocuments/28-Oct-09-Competition-Commission-refers-abuse-of-dominance-findings-against-Telkom.pdf
<p>Additional References</p>	<ul style="list-style-type: none"> • Hodge, J (2001) 'Promoting Competitive Outcomes in the Fixed Line Telecommunications Sector in South Africa', unpublished conference paper, TIPS 2001 Annual Forum, Muldersdrift, available online at http://www.eepsea.org/uploads/user-S/11798688171Promoting_Compertive_Outcomes_in_the_Fixed_Line_Telecommunications_Sector_in_South_Africa.pdf • InfoDev (2007) 'ICT Regulation Toolkit Module 2: Competition, Interconnection and Price Regulation, Executive Summary', prepared by NERA Economic Consulting, InfoDev, Washington DC, available online at http://www.ictregulationtoolkit.org/en/Document.3732.pdf • ICN (2006) 'The Role For Competition In The Telecommunications Services Sector', International Competition Network • Ngwepe, W (2003) 'Serving two masters: Concurrent jurisdiction between the Competition Commission and the Independent Communications Authority of South Africa', <i>SA Law Journal</i>, Vol 120, Issue 2 • Supreme Court of the United States, October Term 2008, Pacific Bell Telephone Co. Vs Linkline Communications Inc.

**About your
Lecturers**



Session 4: Electronic Communications Legislation in South Africa: Telecommunications policy, legislation & institutions	
Presenter	Carla Raffinetti, Edward Nathan Sonnenbergs
Outcomes	Participants will be able to: <ul style="list-style-type: none"> • Analyse telecommunications licensing provisions, including how licences are granted and what the different licence categories mean, with regard to both telecommunications; • Distinguish between the regulator's differing powers and functions regarding broadcasting and telecommunications.
Content	<ul style="list-style-type: none"> • Overview of the regulatory landscape of telecommunications • Different types of telecommunications licences and their respective licensing processes • Frequency spectrum management • Type approvals • The Universal Service Agency, the Universal Service Fund and the Media Diversity and Development Agency • Differing powers between the Minister and ICASA with regard to telecommunications and broadcasting
Legislation & Regulations	<ul style="list-style-type: none"> • RSA (2000) <i>Independent Communications Authority of South Africa Act, No 13 of 2000</i> (as amended), Republic of South Africa, Pretoria, available online at http://www.internet.org.za/icasa-act.html • RSA (2005) <i>Electronic Communications Act, No 36 of 2005</i> (as amended), Republic of South Africa, Pretoria, available online at http://www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf or www.polity.org.za at 2005 • ICASA (2007) 'Regulations Regarding Standard Terms and Conditions for Individual Licences under Chapter 3 of the Electronic Communications Act, 2005 (No 36 of 2005)', Regulation Gazette No 8788, Government Gazette Vol 509, No 30530, Independent Communications Authority of South Africa, Johannesburg • ICASA (2009) 'Individual Electronic Communications Network Service Licence No 001/ECNS/JAN/09 Granted and Issued to Cell C (Pty) Ltd for the Provision of Electronic Communications Network Services', Independent Communications Authority of South Africa, Johannesburg
Core Readings	<ul style="list-style-type: none"> • Flanagan, A (2009) 'Authorization and Licensing', in Walden, I (ed) (2009) <i>Telecommunications Law and Regulation</i>, Oxford University Press, Oxford (excluding section 7.4) • InfoDev (nd) 'Summary of the EU Framework Directive', InfoDev, Washington DC, available online at http://www.ictregulationtoolkit.org/en/PracticeNote.514.html • InfoDev (nd) 'Summary of the EU Authorisation Directive', InfoDev, Washington DC, available online at http://www.ictregulationtoolkit.org/en/PracticeNote.1204.html

<p>Additional References</p>	<ul style="list-style-type: none"> • EU (2002) 'Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)', European Union, Brussels, available online at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:108:0021:0021:EN:PDF • EU (2002) 'Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)', European Union, Brussels, available online at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:108:0033:0033:EN:PDF • ICASA (2007) 'Regulations Regarding Standard Terms and Conditions for Class Licences under Chapter 3 of the Electronic Communications Act, 2005 (No 36 of 2005)', Independent Communications Authority of South Africa, Johannesburg • Thornton, L (2009) 'Lisa Thornton Inc', Presented at the 4th Annual Broadband Summit, 25 - 27 March 2009, The Wanderers Club, Johannesburg, Lisa Thornton Inc, Johannesburg
<p>Activity</p>	
<p>About your Lecturer</p>	<p>Carla Raffinetti is a director at the law firm Edward Nathan Sonnenbergs, where she specialises in communications law. Her areas of speciality include telecommunications, satellite, broadcasting and media law. Prior to joining Edward Nathan, Carla was employed as a specialist in Telkom's regulatory department and also served as a director at Cheadle Thompson & Haysom.</p> 

Session 5: Policy analysis and evaluation	
Presenter	Prof Fanie Cloete, University of Johannesburg
Outcomes	<p>Participants will be able to:</p> <ul style="list-style-type: none"> • Understand & use policy-relevant concepts and terms appropriately; • Understand the nature and limitations of policy processes in developing country contexts; • Understand & identify the various actors and phases in the policy process; • Critically engage with issues related to policy problem identification, options assessment, decision-making, implementation, monitoring and evaluation.
Content	<ul style="list-style-type: none"> • Introduction to public policy concepts and terminology • Policy contexts: developing countries and South Africa • Frameworks for understanding the policy process: cycles, models & approaches • Policy problem identification • Policy decision-making • Policy implementation, monitoring and evaluation
Core Readings	<ul style="list-style-type: none"> • Postma, T & Liebl, F (2005) 'How to improve scenario analysis as a strategic management tool?', <i>Technological Forecasting & Social Change</i>, No 72, pp 161 – 173 [e-mail] • UNEP (2009) <i>Integrated Policymaking for Sustainable Development</i>, United Nations Environmental Programme, Geneva, available online t http://www.unep.ch/etb/publications/publications/IPSD%20manual/UNEP%20IPSD%20final.pdf [e-mail]
Additional References	<ul style="list-style-type: none"> • Cloete, F, Wissink, H & De Coning C (2006) <i>Improving Public Policy: From Theory to Practice</i>, Van Schaik, Pretoria • Fox, W, Bayat, S & Ferreira, I (2006) <i>A Guide to Managing Public Policy</i>, Juta, Cape Town • Geva-May, I (2007) "'We seem to have always spoken in prose..." Policy Analysis is a Clinical Profession: Implications for Policy Analysis Practice and Instruction, <i>Policy Studies Journal</i>, Vol 35 No 2, pp 135 – 164 • Howlett, M & Ramesh, M (2003) <i>Studying Public Policy - Policy cycles and political subsystems</i>, 2nd Edition, Oxford University Press, Toronto • McKenzie, J, Woolf, N & Van Winkelen, C (2009) 'Cognition in strategic decision-making: A model of non-conventional thinking capacities for complex situations', <i>Management Decision</i>, Vol 47 No 2, pp 209 – 232 • Okumus, F (2003) 'A Framework to implement strategies in organizations', <i>Management Decision</i>, Vol 41 No 9, pp 871- 882 • Parsons, W (1995) <i>Public Policy: An Introduction to the Theory and Practice of Policy Analysis</i>, Edward Elgar, Cheltenham • Patton, C & Sawicki, D (1993) <i>Basic Methods of Policy Analysis and Planning</i>, Prentice-Hall, Englewood Cliffs • UNDESA (2007) <i>Civic Engagement in public policies: A Toolkit</i>, United Nations Public Administration Network, New York, available online at http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN028366.pdf
Activity	Applied exercise

About your Lecturer

Professor Fanie Cloete (LLB, MA, DPhil) teaches Policy Analysis and Management in the Department of Public Governance at the University of Johannesburg. He is also an extra-ordinary Professor in the School of Public Management and Planning at the University of Stellenbosch. He is further an advocate of the Supreme Court of South Africa, a former member of the Presidential Review Commission on the Restructuring of the Public Service in South Africa and a policy management and institutional transformation consultant. He has extensive career and research experience in the South African public sector and abroad. He currently works on technological impacts on public policy management outputs, outcomes, and capacity-building, as well as on the improvement of public sector monitoring and evaluation practices as integrated higher order policy management dimensions.



Session 6: Electronic Communications Legislation in South Africa: Broadcasting policy, legislation & institutions	
Presenter	Silas Dziike, Pygma Consulting
Outcomes	<p>Participants will be able to:</p> <ul style="list-style-type: none"> • Analyse broadcasting licensing provisions, including how licences are granted and what the different licence categories mean; • Analyse key competition issues regarding broadcasting; • Analyse ownership concerns regarding broadcasting; • Analyse content concerns regarding broadcasting; • Distinguish between the regulator's differing powers and functions regarding broadcasting and telecommunications; • Describe the different regulatory matters provided for in the different pieces of legislation, including, signal distribution, frequency spectrum management.
Content	<ul style="list-style-type: none"> • The role of ICASA and the regulation of broadcasting • Broadcast licensing under the EC Act • Broadcasting content regulation under the EC Act • Regulation of broadcasting ownership and control under the EC Act • Digital migration • Public service broadcasting bill
Legislation & Regulations	<ul style="list-style-type: none"> • RSA (1999) <i>Broadcasting Act, No 4 of 1999</i> (as amended), Republic of South Africa, Pretoria • RSA (2000) <i>Independent Communications Authority of South Africa Act, No 13 of 2000</i> (as amended), Republic of South Africa, Pretoria, available online at http://www.internet.org.za/icasa-act.html • RSA (2005) <i>Electronic Communications Act, No 36 of 2005</i> (as amended), Republic of South Africa, Pretoria, available online at http://www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf • RSA (2009) 'Electronic Communications Act (36/2005): Public Service Broadcasting Bill, 2009: Charter of the Corporation and Charter of Community Broadcasting Services', Republic of South Africa, Pretoria • ICASA (2010) 'Digital Migration Regulations, 2010', Government Gazette No 32956 Vol 536 (Regulation Gazette No 9232), 15 February 2010, Independent Communications Authority of South Africa, Johannesburg
Core Readings	<ul style="list-style-type: none"> • Thornton, L, Cupido, C & Edmunson, K (2006) 'The Regulation of Broadcasting Services in South Africa under the Electronic Communications Act', Lisa Thornton Inc, Johannesburg

<p>Additional References</p>	<ul style="list-style-type: none"> • Armstrong, C & Collins, R (2004) <i>Digital Dilemmas for South African TV</i>, LINK Centre, University of the Witwatersrand, Johannesburg, available online at http://link.wits.ac.za/papers/ddtvcarc.pdf • DoC (2008) 'Electronic Communications Act (36/2005): Broadcasting Digital Migration Policy', Notice No 958, Government Gazette No 31408, 8 September 2008, Department of Communications, Pretoria • DoC (2009) 'PSB Discussion Paper', Department of Communications, Pretoria, 20 July 2009, available online at http://www.doc.gov.za/index.php?option=com_content&task=view&id=332&Itemid=457 • ICASA (2010) 'Reasons Document on Mobile Television Regulations', Notice 317 of 2010, Government Gazette No 33124, 16 April 2010, Independent Communications Authority of South Africa, Johannesburg, available online at http://us-cdn.creamermedia.co.za/assets/articles/attachments/27315_n_317.pdf • ICASA (2009) 'Discussion Document on Ownership and Control', Notice 1532 of 2009, Government Gazette No 32719, 17 November 2009, Independent Communications Authority of South Africa, Johannesburg, last seen at http://www.info.gov.za/view/DynamicAction?pageid=607&id=0 • ICASA (2010) 'Discussion Document on the Regulation of Internet Protocol Television (IPTV)', Notice 142 of 2010, Government Gazette No 32961, 16 February 2010, available online at http://www.info.gov.za/view/DownloadFileAction?id=117339 • Lloyd, L, Duncan, J, Minnie, J & Bussiek, H (2010) <i>Public Broadcasting In Africa: A Survey - South Africa Country Report</i>, Africa Governance Monitoring and Advocacy Project, Johannesburg, available online at http://www.mediamonitoringafrica.org/images/uploads/Annexure_D_-_Afrimap_Research.pdf • Meier W (2002) 'Media Ownership - Does it Matter?' in Mansell, R, Samarajiva, R & Mahan, A (eds) <i>Networking Knowledge for Information Societies: Institutions and Intervention</i>, Delft University Press, available online at http://www.lirne.net/resources/netknowledge/meier.pdf • Raboy M (2002) 'Media Policy and Public Interest', in Mansell, R, Samarajiva, R & Mahan, A (eds) <i>Networking Knowledge for Information Societies: Institutions and Intervention</i>, Delft University Press, available online at http://www.lirne.net/resources/netknowledge/raboy.pdf • Raboy, M (2003) 'Media and Democratization in the Information Society', in O'Siochru, S & Girard, B (eds) <i>Communicating in the Information Society</i>, United Nations Research Institute for Social Development, Geneva, available online at http://comunica.org/com_rights/raboy.pdf
<p>Activity</p>	

**About your
Lecturer**

Silas Dziike specialises in regulatory law, competition, consumer protection and administrative law in the electronic communications sector. He has participated in numerous projects in the broadcasting and telecommunications sector including assisting applicants for broadcasting licences in South Africa. In 2006 Silas joined Werksmans Attorneys' Media, Communications and Technology department researching on the national and international policy and regulation of the communications sector. In 2008 he joined Pygma Consulting as Senior Legal Consultant providing regulatory and legal support to clients in the information and electronic communications sector in the public and private sectors. Silas holds an LLB (2002) and LLM (2005) specialising in Communications Law from the University of the Witwatersrand.



Session 7: Electronic commerce legislation in South Africa	
Presenter	Michael Silber
Outcomes	<p>Participants will be able to:</p> <ul style="list-style-type: none"> • Discuss the legal factors inhibiting and promoting Electronic Commerce generally; • Describe the UNCITRAL approach to Electronic Commerce legislation; • Articulate the South African approach to Electronic Commerce legislation; • Analyse the approach in the Electronic Communications and Transactions Act with regard to: <ul style="list-style-type: none"> ○ Functional equivalence, ○ Media neutrality, ○ Electronic contracting, ○ Electronic signature, ○ Electronic evidence / storage etc.
Content	<ul style="list-style-type: none"> • Electronic Commerce in development • Analysis of Legal factors in Electronic Commerce • Overview of the UNCITRAL Model Law on Electronic Commerce and the UNCITRAL Model Law on Electronic Signature • Detailed analysis of the Electronic Communications and Transactions Act
Legislation & Regulations	<ul style="list-style-type: none"> • RSA (2002) <i>Electronic Communications and Transactions Act, No 25 of 2002</i>, Republic of South Africa, Pretoria, available online at http://www.internet.org.za/ect_act.html • RSA (2002) <i>Regulation of Interception of Communications and Provision of Communication-related Information Act, No 70 of 2002</i>, Republic of South Africa, Pretoria, available online at http://www.internet.org.za/ricpci.html • UN (1996) UNCITRAL Model Law on Electronic Commerce (1996) with additional article 5 bis as adopted in 1998 and Guide to Enactment, United Nations, Geneva, available online at http://www.uncitral.org/pdf/english/texts/electcom/05-89450_Ebook.pdf
Core Readings	<ul style="list-style-type: none"> • Cliffe Dekker (2008) 'Commentary on the Electronic Communications and Transactions Act', Cliffe Dekker Hofmeyr, Johannesburg, available online at http://www.cliffedekker.com/files/Cliffe_Dekker_Commentary_ECT_Act.pdf • Snail, S, (2009) 'Electronic Contracts in South Africa – A Comparative Analysis', <i>Journal of Information, Law & Technology</i>, Warwick, available online at http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2008_2/snail/snail.pdf <i>[e-mail]</i>

<p>Additional References</p>	<ul style="list-style-type: none"> • Bawa, N (2006) 'The Regulation of the Interception of Communications and Provision of Communication Related Information Act', in Thornton, L, Carrim, Y, Mtshaulana, P & Reburn, P (2006) <i>Telecommunications Law in South Africa</i>, STE Publishers, Johannesburg, available online at http://link.wits.ac.za/papers/telelaw13.pdf • Dempsey, J (2003) 'Creating the Legal Framework for ICT Development: The Example of E-Signature Legislation in Emerging Market Economies', Global Internet Policy Initiative, Washington, DC, available online from http://www.internetpolicy.net/e-commerce/ • Gereda, S (2006) 'The Electronic Communications and Transactions Act', in Thornton, L, Carrim, Y, Mtshaulana, P & Reburn, P (2006) <i>Telecommunications Law in South Africa</i>, STE Publishers, Johannesburg, available online at http://link.wits.ac.za/papers/telelaw12.pdf • Hughes, B (2008) 'Electronic Litigation and the Strategic Value of Metadata during Legal Proceedings', <i>Journal of Information, Law & Technology</i>, Warwick, available online at http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2008_2/hughes/hughes.pdf • Mann, C, Eckert, S & Knight, S (2000) 'Overview', Chapter 1 in Mann, C, Eckert, S & Knight, S (2000) <i>Global Electronic Commerce: A Policy Primer</i>, Institute for International Economics, available online at http://www.piie.com/publications/chapters_preview/318/1ie2741.pdf • Mann, C, Eckert, S & Knight, S (2000) 'Government and the Environment of Certainty and Trust', Chapter 7 in Mann, C, Eckert, S & Knight, S (2000) <i>Global Electronic Commerce: A Policy Primer</i>, Institute for International Economics, available online at http://www.piie.com/publications/chapters_preview/318/7ie2741.pdf • Moodley, S, Morris, M & Velia, M (2003) 'E-commerce for exporting garments from South Africa: "digital dividend" or leap of faith?', IDS Working Paper No 182, Institute for Development Studies, Brighton, available online from http://www.gapresearch.org/production/Wp182form.pdf • RSA (1999) <i>Discussion Paper on Electronic Commerce Policy</i>, Republic of South Africa, Pretoria, available online at http://www.polity.org.za/html/govdocs/discuss/ecom.html • Sibanda, O (2008) 'Anti-spam: A Comparative Appraisal of Canadian, European Union, and South African Regulatory Regimes', <i>Journal of Information, Law & Technology</i>, Warwick, available online at http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2008_2/sibanda/sibanda.pdf • UNCTAD (2004) 'Overview' in UNCTAD (2004) <i>E-Commerce and Development Report 2004</i>, United Nations Conference on Trade and Development, Geneva, available online at http://www.unctad.org/en/docs/ecdr2004_en.pdf
<p>Activity</p>	

About your Lecturer

Michael Silber is an admitted attorney (non-practising) and has worked in the area of intersection of law, policy and technology for a number of years. Michael trained and worked at a leading South African law firm and one of the leading multi-disciplinary practises and was the General Manager of the South African Post Office's Trust Centre before starting his own consultancy. Michael has acted for numerous South African information and communication technology companies and organisations, serves on the board of the South African Domain Name Authority and the Nominating Committee of the Internet Corporation for Assigned Names and Numbers (ICANN) and is involved in a number of industry and standard setting bodies.



Session 9: ICT Policy, Law and Institutions: Issues and Conclusions	
Presenter	Charley Lewis, LINK Centre
Outcomes	<p>Participants will be able to:</p> <ul style="list-style-type: none"> • Describe the constitutional and legal frameworks within which national ICT legislation is located, including the bill of rights & administrative law; • Describe the relationship between policy, law and regulation; • Articulate the impact of the principles of separation of powers and administrative justice on ICT policy formulation; • Articulate the roles of key stakeholders in respect of policy formulation parameters and processes; • Discuss the key regulatory issues that are dealt with in the legislation governing broadcasting, telecommunications; • Analyse the impact and implications of specific ICT legislation on the development of the ICT sector.
Content	<ul style="list-style-type: none"> • Constitutional and legal frameworks for ICT policy & regulation in SA; • ICT legislation in SA; • ICT reform in SA; • Stakeholder perspectives and roles; • Impact and implications of ICT legislation.
Core Readings	<ul style="list-style-type: none"> • Gillwald, A (2005) 'Good intentions, poor outcomes: Telecommunications reform in South Africa', <i>Telecommunications Policy</i>, Volume 29, Issue 7, August 2005 • Bauer, J (2010) 'Regulation, public policy, and investment in communications infrastructure', <i>Telecommunications Policy</i>, Vol 34, Nos 1-2, Elsevier <i>[e-mail]</i>
Additional References	<ul style="list-style-type: none"> • Esselaar, S & Gillwald, A (2007) '2006 South African ICT Sector Performance Review, LINK Centre Public Policy Research Paper No 8, LINK Centre, Johannesburg, available online at http://link.wits.ac.za/papers/TSPR2007.pdf • Garnham, N (2005) 'Contradiction, Confusion and Hubris: A Critical Review of European Information Society Policy', in Verhoest, P (ed) (2005) <i>Contradiction, Confusion and Hubris: A Critical Review of European Information Society Policy</i>, European Network for Communication & Information Perspectives, Brussels, available online at http://www.scribd.com/doc/3610744/Contradiction-Confusion-and-Hubris-A-critical-Review-of-European-Information-Society-Policy • Janisch, H (2006) 'Freer Markets, More Rules: Confronting the Paradox of Telecommunications "Deregulation"', public lecture, LINK Centre, Johannesburg, March 15, 2006, available online at http://link.wits.ac.za/papers/janisch-200603-Freer-Markets.pdf
Activity	
About your Lecturer	See above