

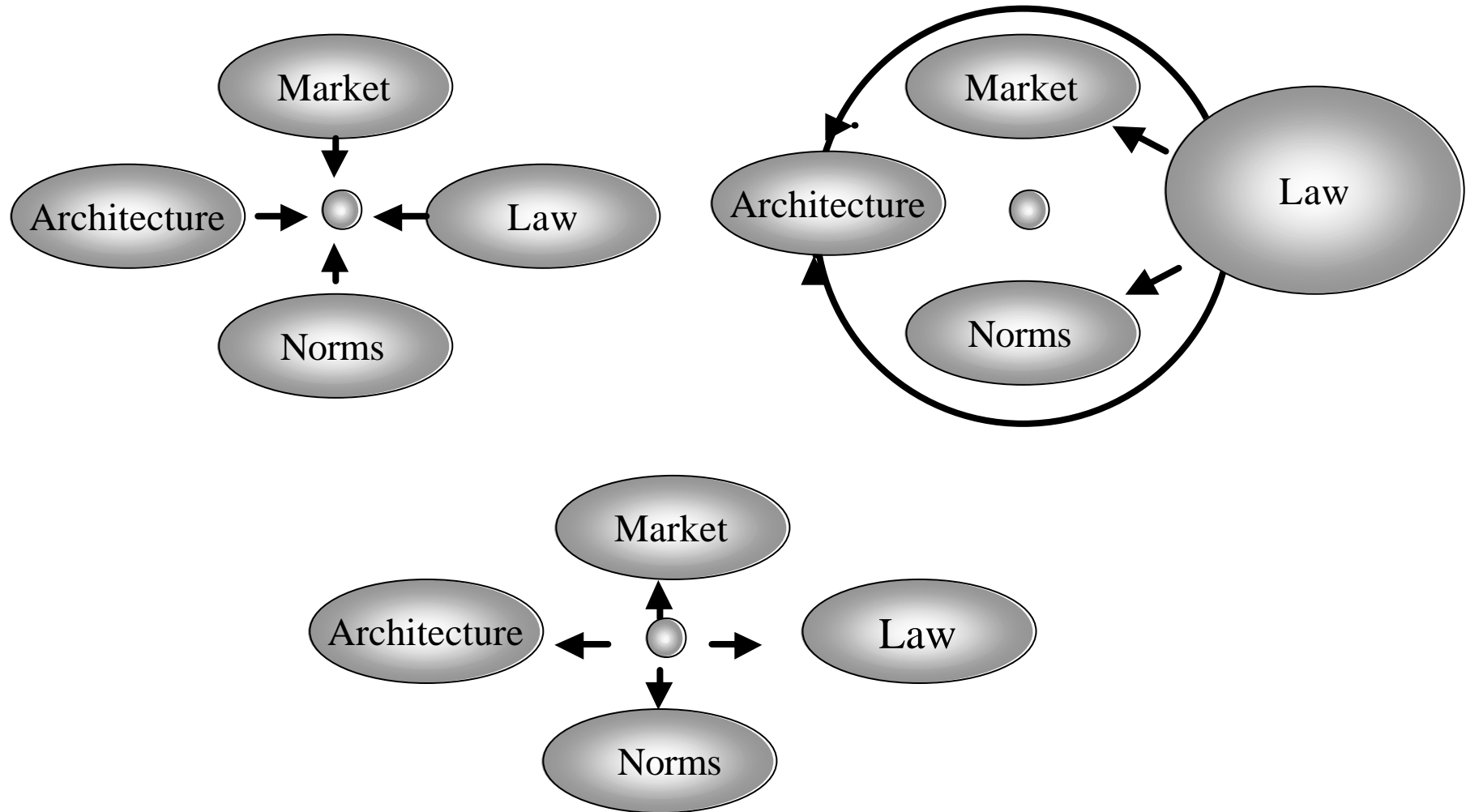
Doing Nothing is better than Doing Nonsense
-----A Comparison of the Internet Policy
between the United States and Japan

Presented to RIETI Conference
October 19, 2001, Tokyo

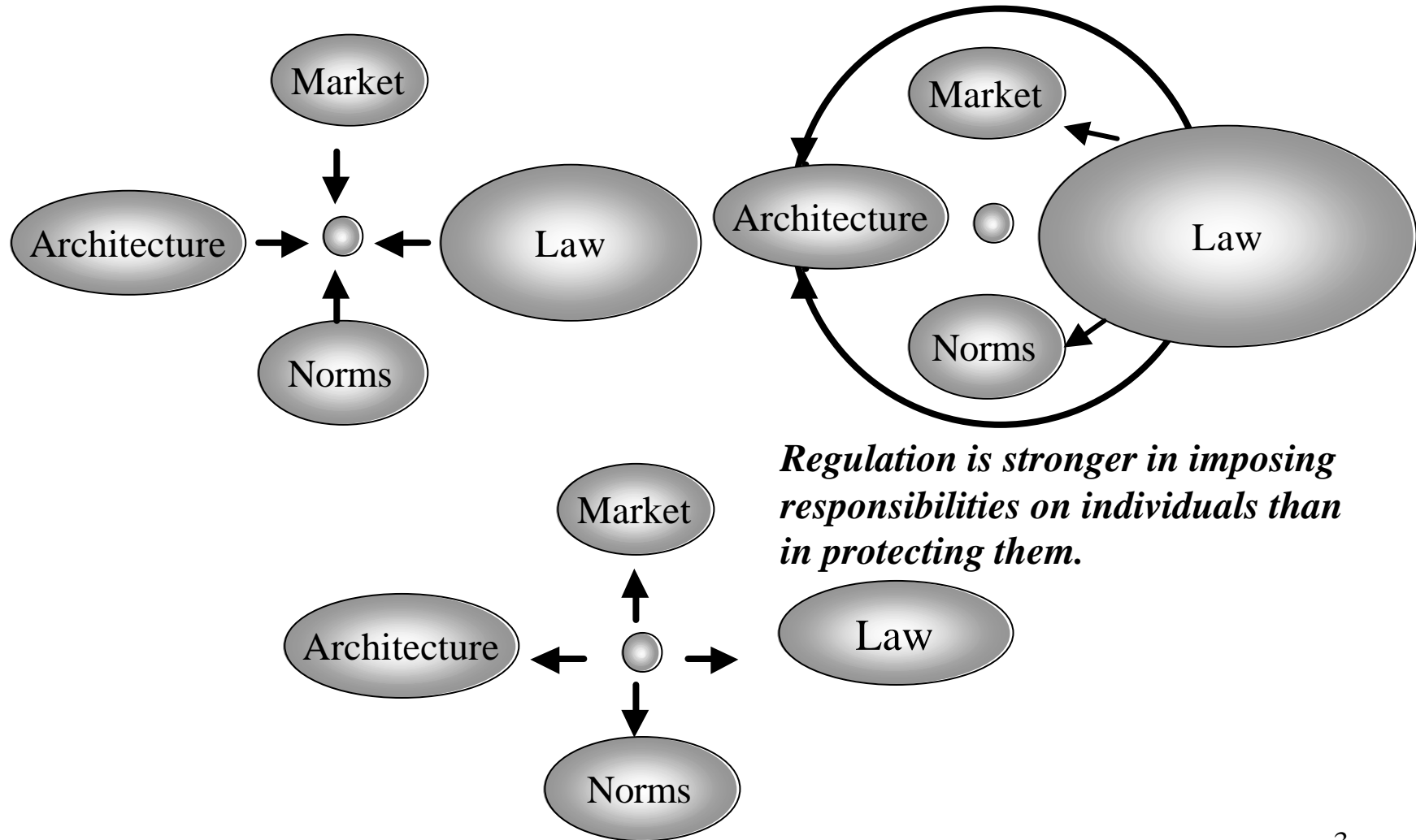
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LAWRENCE LESSIG [1999] “CODE” and other laws of Cyberspace”, Basic Books



Japanese Legal Environment in Imitation of Lessig [1999]



Some Examples of Nonsense

- 1. In 2000, ARIB (Association of Radio Industries and Businesses, incorporated under MPT authorization) established so-called BML (Broadcasting Mark-up Language), incompatible with HTML standards, thus alienating the digital broadcasting satellite (d-BS) from Internet connection.**
- 2. In 2001, Somusho (former MPT) requested public comments on L-mode, an easy Internet connection developed by East and West NTT, and issued an order to make necessary adjustment to be compatible with the demarcation between local and long-distance prescribed by NTT Law.**
- 3. In 2001, Somusho assigned 6MHz spectrum to each of the incumbent broadcasting companies for digital terrestrial TV, thus eliminating the possibility of using these spectra for Internet.**

US-Japan Comparison

USA

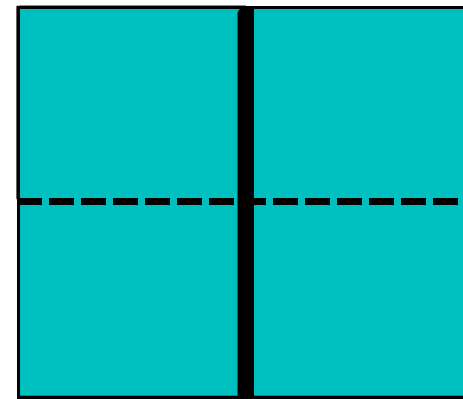
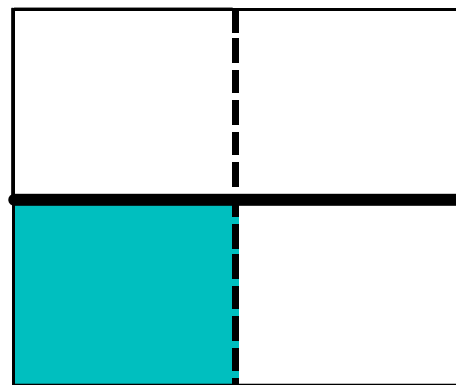
Japan

Enhanced

Enhanced

Basic

Basic



Facility - based(*) Non-facility-based

Type-1

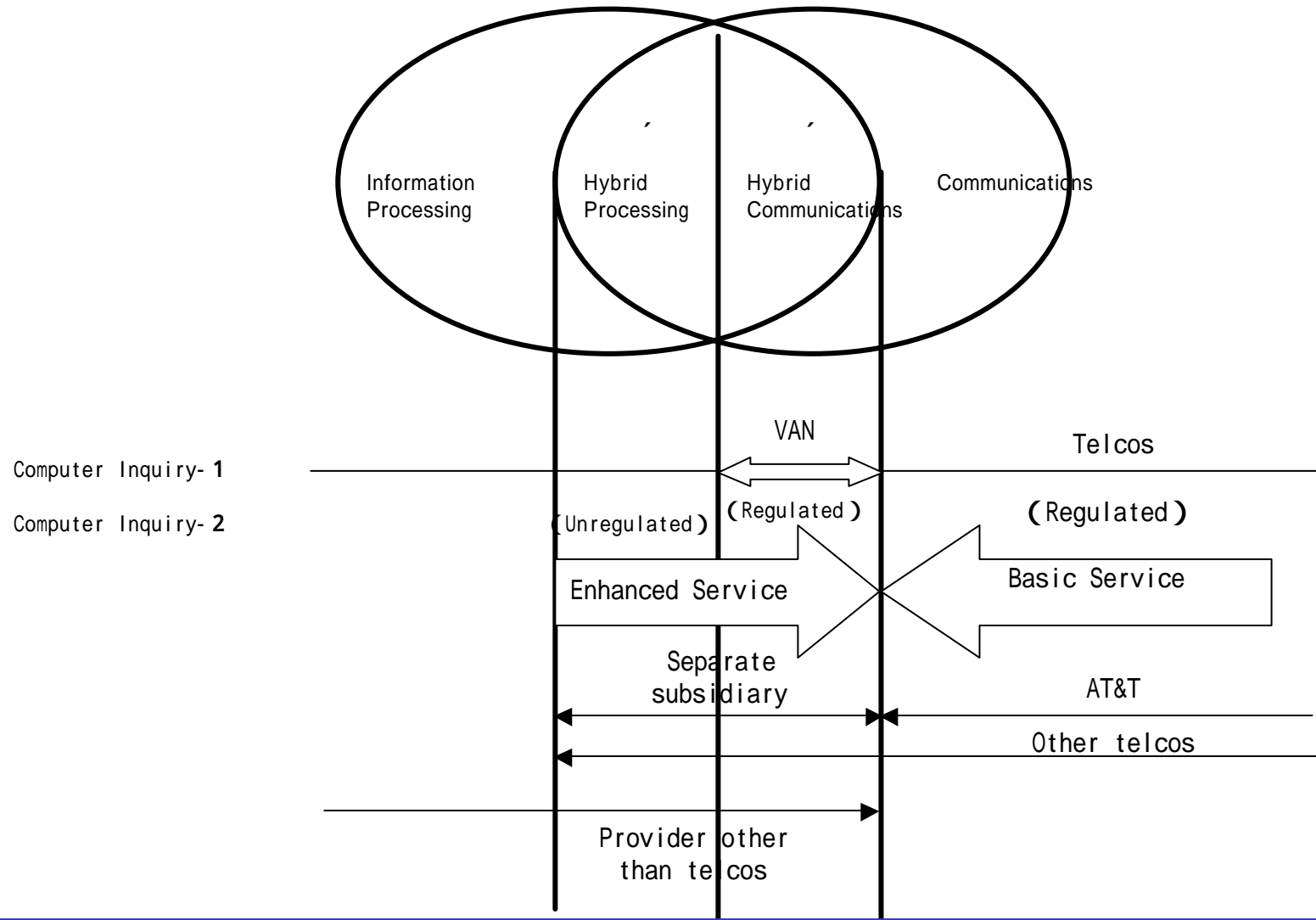
Type-2



Regulated and gradually deregulated area

(*)includes those who are publishing the tariffs and marketing under their own names

Demarcation between Communications and Information Processing



Unregulation ¹ Deregulation

- 1. “No” regulation from the beginning and toward the future of the industry concerned**
- 2. Computer manufacturing and computer services are the typical examples.**

Source (1): Diamond & Sandler [1983]

Source (2): Oxman [1999]

Conduit v. Content Economic v. Cultural

Regulation

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

Internet Content

Obscene (Indecent) material
Libel (Defamation)
Copyright infringement

Original idea came from Pool [1983]

Layered Model* for Internet (Un)Regulation = Computer Inquiry I, II & III

| | Voice Telephony | Internet including VoIP |
|-----------------|-----------------|-------------------------|
| Content | G ? | M ? |
| Service | G | M |
| Interconnection | G | M |
| Facility | G | M |
| Right of way | G | |

G:Government Intervention, M:Market Mechanism

/:Not applicable

* I am grateful to Werbach[2000] and other authors, but my idea mainly comes from Hayashi[2000](in Japanese) and Hayashi[2001](in English).

“Unregulation” Manifesto in 1996 Telecom Act (1)

SEC. 230 [47 U.S.C. 230] PROTECTION FOR PRIVATE BLOCKING AND SCREENING OF OFFENSIVE MATERIAL

(a) Findings. - The Congress finds the following:

(1)The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2)These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3)The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4)The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5)Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

“Unregulation” Manifesto in 1996 Telecom Act (2)

(b) Policy. - It is the policy of the United States -

(1)to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2)to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3)to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4)to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children’s access to objectionable or inappropriate online material; and

(5)to endure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

Several Problems in Gray Zone

•Internet Content Regulation

•Universal Service Fund

•Reciprocal Compensation

•Mandatory Interconnection

•Asymmetry between RBOCs and CATV

operators regarding Open Access (unbundling)

Evaluation of the “Unregulation”(1)

(a) Separation of “enhanced” from “basic” telecommunication service and liberalization for the former removed uncertainties, stimulated business activities, and encouraged computer-related industries.

(b) Liberalization of the CPE (Customer Premises Equipment) also contributed to the development of various applications.

(c) ISPs (Internet Service Providers) were exempted from the burden of interconnection as well as contributions to the USF (Universal Service Fund), which indirectly incubated start-up companies.

Evaluation of the “Unregulation”(2)

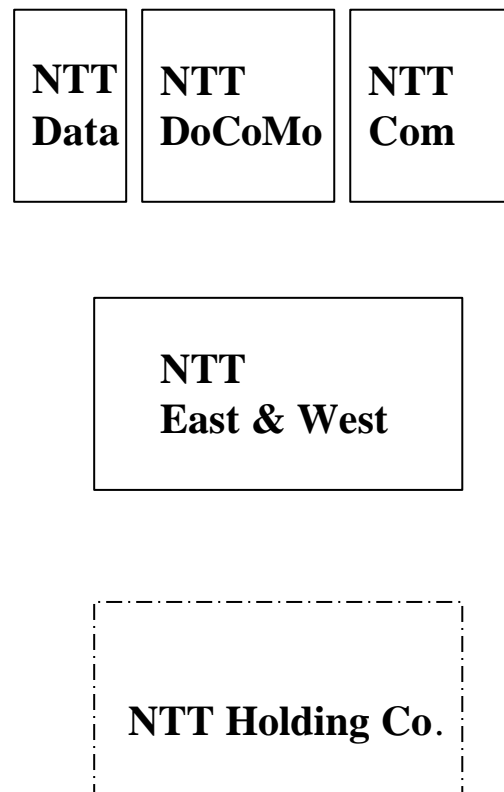
(d) Flat-rate service for local calls, once considered to be out-of-date in the 70’s and 80’s, conversely became suited for the Internet in the 90’s

(e) “Forbearance” policy for “basic” service, also generated an atmosphere conducive to and the tendency toward liberalization of computer-related businesses.

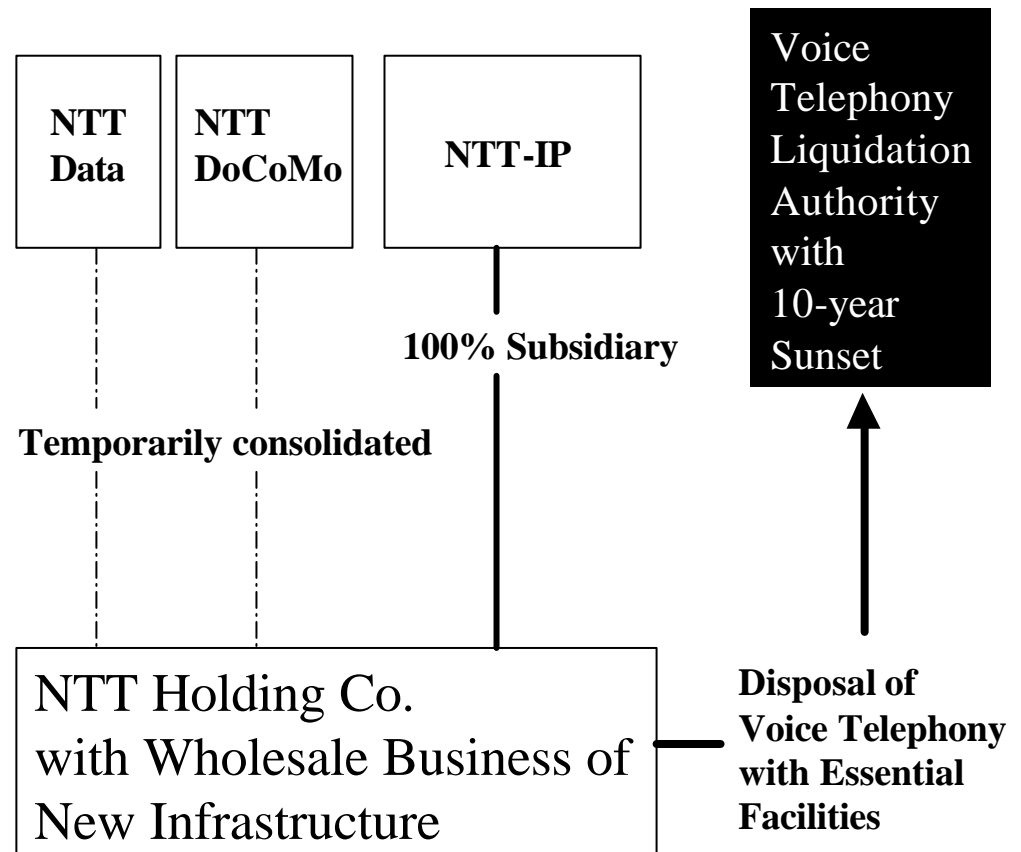
(f) To the contrary, regarding “content-regulation”, US opinions seem to me divided into two radical schools; Puritanic paternalism versus First-Amendment advocate.

Implications for NTT Divestiture Debate

<Traditional View>



<Ikeda & Hayashi [2001]>



Short Comments on Lemley = Lessig[2000]

Agree:

- 1. Competition is a requisite for innovation.**
- 2. "Third Party Access*" facilitates competition and innovation.**
- 3. Asymmetric regulation between RBOCs and CATV is irrational and to be amended as far as Telephony is concerned.**
- 4. Their proposal is a minimum requirement.**

Disagree:

- 1. I put more value on "Computer Inquiry".**
- 2. "Unregulation" is better than imposing "Unbundling" regulations on CATV as far as Internet is concerned because "Unregulation" is accompanied by troublesome regulatory procedure.**
- 3. "Ex post" action is better than "ex ante" intervention.**

*** includes both "Unbundling" under Open Network Architecture (ONA) and Open Systems as e2e (end-to-end)**

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