BOOK REVIEW

Legal and regulatory aspects of telecommunication submarine cables

By Andrés Fígoli Pacheco, independently published (30 July 2024), 158 p., ISBN-13 979-8332883187.

Authors

Aldo Monaca[1] and Gioia Alessia Chiara Grazia Indelicato[1]

In the growing world of telecommunication infrastructure, submarine cables serve as the foundation of global connectivity, carrying nearly 99 % of transoceanic data traffic. Despite their critical role, the regulatory landscape governing these cables remains complex and, at times, fragmented. Andrés Fígoli *Pacheco's Legal and Regulatory Aspects of Telecommunication Submarine Cables* stands out as a key book that clarifies these complex aspects. The book addresses the essential legal and regulatory challenges facing this critical infrastructure and offers practical solutions to enhance its security, resilience, and functionality.

Andrés Fígoli brings a wealth of experience to this topic. As the director of Fígoli Consulting, he provides specialized legal and regulatory advice on all aspects of subsea cable work. Mr. Fígoli's academic background includes a law degree from the University of the Republic in Uruguay, earned in 2002, and a Master of Laws (LLM) from Northwestern University. His nearly 21 years of experience in submarine cable projects at a major wholesale telecommunications company, coupled with his role as Director and Member of the Executive Committee of the International Cable Protection Committee (2015–2023), lend him a deep and practical understanding of the subject matter.

Written with the intent of guiding cable operators, policymakers, legal professionals, and scholars, the book offers a comprehensive and accessible overview of the regulatory challenges and considerations surrounding submarine cables. Fígoli's book serves as a practical guide, not merely a theoretical work, to help readers navigate the complex legal landscape of submarine cable operations. The author has gathered a collection of articles, many of which appeared in *Submarine Telecoms Forum Magazine*, and complemented these with in-depth examinations of court cases and specific rules from different jurisdictions. The book is structured into categories and sub-chapters, each focusing on distinct legal aspects such as ownership, installation, operation, and maintenance of submarine cables. This layout allows readers to easily find their specific areas of interest, making it both a reference guide and a holistic introduction to the field.

Fígoli's book deals with several critical themes surrounding the legal and regulatory landscape of submarine cables, beginning with the urgent need to enhance the security and resilience of these infrastructures. He argues that the current international protection framework, rooted in an 1884 convention designed for telegraphy, is no longer fit for purpose. This outdated regulatory foundation, combined with the lack of coordinated international efforts, leaves submarine cables vulnerable to negligent damage, such as that caused by fishing or anchoring activities. Fígoli calls for countries to take immediate action to update their regulations to better protect these underwater assets. He suggests that governments, telecom regulators, and local navies should collaborate as part of a digital sovereignty strategy to safeguard these critical components of global connectivity. To further this cause, he proposes the development of a new international treaty, guided by the UN, to criminalize harmful activities targeting submarine cables – drawing parallels to existing international regulations in aviation and cyberspace.

The book also touches upon the intersection of geopolitics and business in the deployment of

✉ Aldo Monaca · a.monaca@oceanscables.com

[1] Oceans & Cables Ltd., Birkirkara BKR 9037, Malta

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new submarine cables. Fígoli notes that some government strategies focus more on geopolitical objectives, such as establishing a country as a communications hub, rather than prioritizing the practical protection of cables from everyday threats. He emphasizes that countries aiming for digital sovereignty must diversify their suppliers of cable-laying and maintenance services to avoid over-reliance on any single provider, which could lead to vulnerabilities. While geopolitical concerns are important, Fígoli stresses that they should not overshadow the need for robust measures to address more traditional threats to cables, such as fishing activities and anchor dragging—still the leading causes of cable damage globally. He argues that these two perspectives, geopolitical strategy and practical risk management, are not mutually exclusive and must be balanced to ensure the security of submarine cables.

A major theme in the book is the growing dominance of Over-the-Top (OTT) players in the global bandwidth market. Fígoli discusses how these companies have come to control the major routes of global data traffic, raising concerns about oligopolistic tendencies. He points out that the current environment makes it challenging for new submarine infrastructure projects to proceed without OTT involvement, as their financial power and scale can easily overshadow the efforts of traditional telecom operators. The book critically examines the implications of this trend for competition and national digital sovereignty. Fígoli calls for more vigilant oversight from telecom and antitrust regulators to ensure a fair and competitive market, especially when it comes to forming submarine cable consortiums and negotiating long-term capacity lease agreements or Indefeasible Right to Use (IRU) agreements.

The complexity of contracts and regulations in the submarine cable sector is another area of focus. Fígoli highlights how legal, engineering, and sales teams within cable companies often struggle with the intricacies of drafting and negotiating agreements, such as cable landing agreements and the various provisions required by financial stakeholders. He describes how these challenges are exacerbated by the increasing interdependence of legal work, technical specifications, and commercial considerations. The book offers tools and strategies to help industry professionals navigate these complexities, reduce litigation risks, and achieve more balanced and secure agreements. It also addresses the evolving nature of litigation in this field, noting the rise of more sophisticated fraudulent schemes are emerging, involving actors like opportunistic landowners, local backhaul providers, or even fishermen who might exploit legal and regulatory gaps.

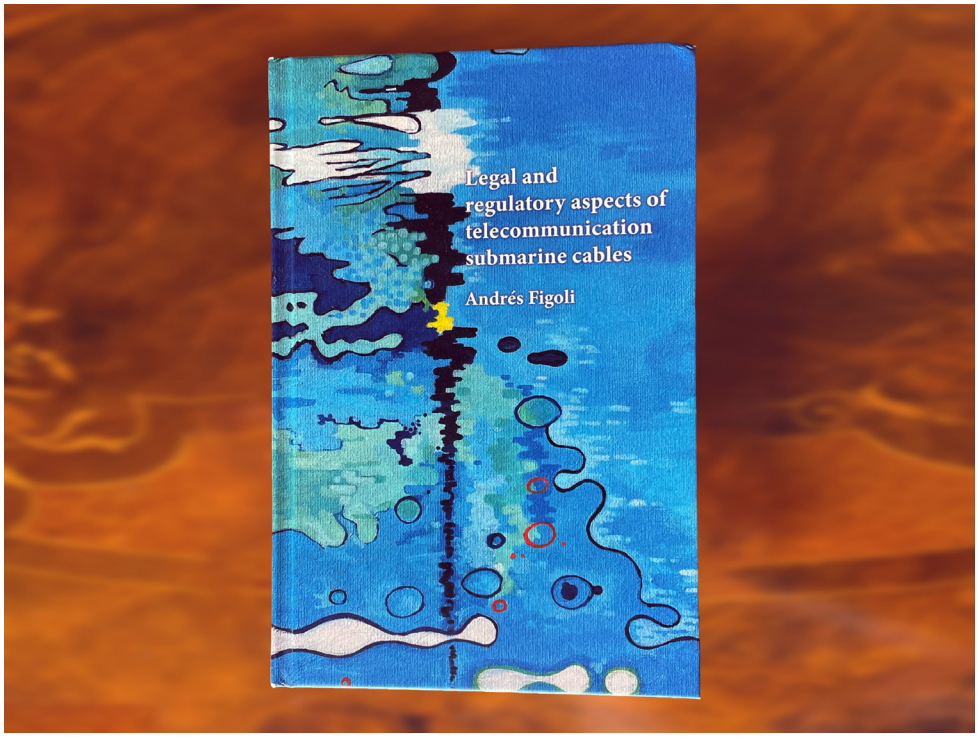
Fígoli looks ahead and talks about how the global submarine cable market might grow. He believes that new companies can still join as long as antitrust and telecom regulators keep the system safe from unfair business practices. He also advocates for the submarine cable industry to take part in maritime planning initiatives to ensure the coordinated and sustainable use of the seabed alongside other activities such as mining or fishing. He raises the idea of SMART cables, which integrate traditional telecom functions with marine scientific research. These cables offer additional benefits, such as early tsunami detection and enhanced cable protection measures. Fígoli views SMART cables as a paradigm shift for the industry but also emphasizes that they require a new regulatory framework to maximize their potential benefits while ensuring legal clarity and environmental sustainability.

A recurring theme throughout the book is the need to harmonize legal frameworks across regions to ensure the integrity of submarine cable networks. Fígoli argues that the fragmented legal systems currently governing these cables pose a significant risk to their stability and calls for a coordinated global effort to protect these critical infrastructures. He introduces three tests to assess the level of digital sovereignty in any given country, encouraging stakeholders to engage in open discussions aimed at improving policies and strategies. Additionally, the book explores Maritime Spatial Planning (MSP) as a tool for managing ocean activities in a sustainable way, balancing the need to protect submarine cables passing through Exclusive Economic Zones (EEZs) with respect for national rights and environmental concerns.

Overall, Fígoli's book raises critical awareness about the environmental, legal, and competitive challenges facing the submarine cable industry. He critiques the practice of greenwashing, where superficial environmental measures are adopted without genuine impact, and calls for more transparent and meaningful sustainability practices. The book also provides practical recommendations for improving the legal frameworks governing submarine cables, from enhancing IRU agreements and Cable Supply Agreements (CSAs) to tackling antitrust concerns. It serves

as both a call to action for stakeholders in the industry to engage in meaningful dialogue and a strategic guide for navigating the complexities of this critical infrastructure.

As the reliance on global digital connectivity continues to increase, the importance of the legal frameworks governing submarine cables cannot be overstated. Fígoli's book provides a timely reminder of the necessity for robust, harmonised regulations that safeguard these vital infrastructures while facilitating innovation and international collaboration.



Cover of the book “Legal and regulatory aspects of telecommunication submarine cables” by Andrés Fígoli Pacheco.

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