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ASIA VIDEO INDUSTRY ASSOCIATION

OTT TV POLICIES IN ASIA

SUMMARY REPORTS

About the Asia Video Industry Association

The Asia Video Industry Association (AVIA) is the trade association for the video industry and ecosystem in Asia Pacific. It serves to make the video industry stronger and healthier through promoting the common interests of its members. AVIA is the interlocutor for the industry with governments across the region, leads the fight against video piracy and provides insight into the video industry through reports and conferences aimed to support a vibrant video industry. AVIA evolved from Casbaa in 2018.

Hong Kong Executive Office
20/F Leighton Centre
77 Leighton Road
Causeway Bay
Hong Kong
Tel +852 2854 9913
www.asiavia.org

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FOREWORD

Welcome to the latest update from the Asia Video Industry Association (AVIA) of the regulatory picture for the video industry across Asia. This time, we have turned the spotlight more specifically on over-the-top (OTT) services, and the regulation thereof, in an effort to capture the emerging challenges that Asian governments, like others, are facing in trying to regulate this evolving industry.

The video industry is all converging in the OTT arena. There are native OTT companies, pay TV platforms, content providers, telcos and companies from the gig economy all devising OTT strategies and launching services. Some services have a global reach, while others are focused regionally or nationally. Some are broad in their content proposition, some are focused on specific niches. But what is clear is that demand for OTT services continues to grow exponentially as consumers demand content when they want and where they want.

Given this, we believe it is more important than ever that governments look carefully at how regulation impacts business models.

Collaborating with our panel of expert Knowledge Partners across the Asia-Pacific region, AVIA has refreshed our collective database on the regulatory picture for both OTT and pay TV across Australia, Cambodia, China, Hong Kong, India, Indonesia, Japan, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, South Korea, Sri Lanka, Taiwan, Thailand and Vietnam, with data from the United Kingdom and the United States included as comparators.

Using this data, we have produced, in this initial report, brief summaries for each of the countries and regions we surveyed. Our focus has been very much on what, if anything, has changed in terms of regulation across the region. We found that while the policy approach of governments is evolving, it is not always in the direction we would like to see.

The regulatory information used to prepare the analyses was correct as of 1 January 2018. In some jurisdictions, legislative or policy changes have been announced and much-discussed; we have done our best to obtain clarity on what is really being done but this has not always been possible. (The detailed information on the specific policies of each market is available to AVIA members only and can be found in the online database at www.asiavia.org/advocacy)

A report of this scope would be impossible without the assistance of our Knowledge Partners who provided regulatory information, industry data and market insights to support this study. However, the judgements and evaluations in this report are the responsibility of AVIA alone and have not been reviewed/approved by our Knowledge Partners, nor by individual AVIA member companies.

HIGHLIGHTS OF THE 2018 OTT REGULATORY SURVEY

The arrival of legitimate, professionally curated OTT television services in Asia in 2014-16 has permanently “changed the game” both for video industry operators and for governments and regulators. Broadband-connected Asian consumers now enjoy the ability to select from among a rapidly growing array of commercial offers, delivering both linear TV channels and extensive VOD libraries to them at the time, place and device platform of their choosing.

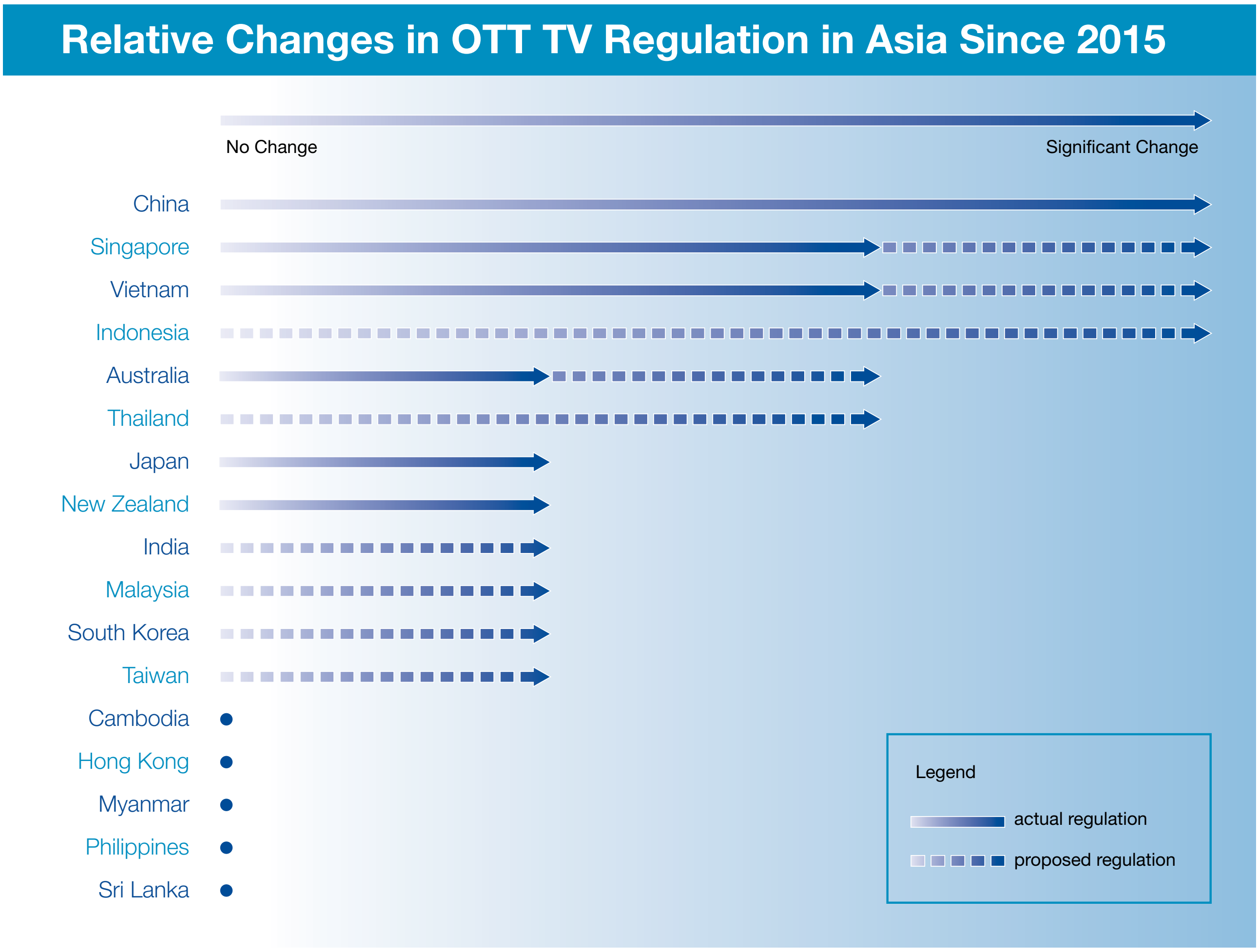
Our Association began tracking Asian regulation for OTT services in 2014-15, at the time legitimate curated services were just starting up. (Before that there was already plenty of pirated OTT, and user-generated video, available.) As reported in our book “Same Same but Different[1]”, our initial survey found that very few Asian governments had taken any steps to implement policy frameworks for the new commercial reality that was going to transform their TV/video markets.

Since then, governments in the region have begun to come to grips with the policy challenges posed by these technological and commercial developments. Whereas three years ago, the majority of Asian governments had no clear policy directions, we now find that the majority have begun the process of developing and implementing new policies designed to create a set of rules for OTT TV.

AVIA, an association of companies involved in all aspects of the video business, both “traditional” and OTT, believes that governments should focus on creating a level playing field for competition across all technology platforms, only by re-examining, reducing, and removing now-outmoded restrictions on pay TV. Those rules are the legacy from the dawn of the terrestrial broadcasting era, characterized by scarcity of spectrum, limited consumer access, and limited consumer choice. Such conditions no longer apply, and the policy frameworks developed to suit them are no longer fit for purpose.

A few governments, mostly in well-connected economically developed markets, have moved towards a more level playing field, such as Singapore, Hong Kong, and New Zealand – albeit in highly limited ways. Other governments have begun speaking (worryingly) about trying to force OTT services to follow “all the same rules as traditional broadcasters” – an approach that will damage the growth prospects of both the traditional pay TV operators and the nascent OTT industry. The biggest losers from such an approach, if actually implemented, would be consumers, deprived of the great increase in choice and viewing options that legitimate OTT can offer. The biggest winners would be pirate services offered over the internet, which – being illegal already – have no incentive to follow other rules on taxation, content standards, child protection, or any of the many other goals governments seek to promote via regulation.

1 https://asiavia.org/pub-same-same-but-different-2015/



In making policies for OTT services and traditional pay TV, governments should bear in mind the harsh competitive reality of the streaming piracy ecosystem; the more regulatory burdens placed on legitimate services, the more governments create the conditions for piracy – with all its connections to abuse, exploitation and transnational crime – to flourish.

One of the encouraging parts of our survey is that the last three years have indeed seen a rising level of consciousness among Asian governments about the problem of streaming piracy, and the need to prevent it from dominating the Asian video scene. A substantial majority of governments in the region have actually tweaked their rules or, in some cases, launched unprecedented enforcement actions against piracy networks based on illicit streaming devices (ISDs) and apps. These efforts are not yet sufficient to "move the dial" on piracy and at the moment, what we discern is best characterised as a slow swell of rising consciousness – perhaps provoked by the increasingly vocal howls from the legitimate TV industry. We can only hope it continues.

Asian Differences

With respect to regulation of OTT services, we found Asian governments focusing at this point on three major goals:

- Content standards – governments want OTT players to adhere to local-market standards with respect to morality, nudity, politics, social harmony, etc.
- Taxation – governments want OTT players to pay their fair share of taxes;

- Control – sovereign governments, accustomed to regulatory frameworks flowing from terrestrial FTA broadcasting, frequently attempt to control mass media, despite the very real tension between this goal and that of maintaining citizens' access to the benefits of the international internet.

In the last couple of years, Asia has seen numerous attempts to establish regulation of OTT services pointed at one or more of these goals. We expect that these attempts will continue in many places – but not all – for the foreseeable future, and that the tension between technological openness, commercial choice, and political control will continue to be very evident. In the new world of broadband content flows, there is no way that new regulations can ever be as effective as the legacy broadcasting rules were, and this is going to be an uncomfortable reality for governments to embrace.

The approach which makes the most sense is for governments to adopt a "light touch," and to seek industry co-operation via a self-regulatory framework, in meeting basic content and decency standards. Professional OTT services offered by legitimate media companies (whether "onshore" or "offshore") have every interest in recognising the differences in different markets, and in making sure their content is acceptable to customers and governments so their business can prosper. Governments can ensure co-operation of significant legitimate players, wherever based on the global internet, by leveraging this enlightened self-interest.

This has been the approach of a few governments who started out with light-touch policy orientations, that have served them well in integrating OTT services into their information ecosystems: Hong Kong, Japan, and New Zealand stand out in that respect. (Some others, such as Cambodia, Myanmar, and Sri Lanka, are sufficiently far back on the "broadband development" curve that their policymakers have not seen the need to grapple with OTT policy yet. They have a "light touch" by default.)

At the other extreme, some policymakers in countries like India, Indonesia, the Philippines, South Korea, Thailand and Vietnam have at various times expressed the view that OTT services should just be regulated by the same rules in place for traditional broadcasting. This of course is not a realistic approach (barring major de-regulation of traditional broadcasting) and this may be why none of those governments have actually moved in practice to impose that kind of framework on internet video/OTT services. Quite a few policymakers in Asia are content to adopt a hortatory approach, maintaining that their rules apply (or "should apply") to OTT services in theory, even though everyone can see that the application of the rules has not been pressed in practice.

And then there is China, which does indeed apply its rules in practice. China has sought to cope with the policy tension generated by online content supply by prioritising state control over all other goals. This has led the authorities to embrace an autarkic approach to internet development, cutting its citizens off in substantial ways from international interactions behind the "Great Firewall", and thereby giving a huge boost to the piracy industries. China's growing wealth and huge population have fed the growth of the national ecosystem, despite its isolation, emulating but not interacting with global services. This is, so far, *sui generis* – an approach that has not been emulated by any other government (except perhaps North Korea, a place that was not included in our survey).

Onshore versus Offshore

Attempts to use existing regulatory frameworks to govern OTT services have produced odd misalignments of incentives in some Asian countries, where our 2015 survey showed a few governments seeking to continue existing content control, taxation and other policies for OTT services operated by in-country entities (usually traditional pay TV companies), even while allowing "offshore" OTT services to escape the same level of regulation.

Fortunately, in recent months some key governments (eg Singapore, South Korea) seem to have recognised that the resulting lighter regulation and lower taxation on overseas competitors creates incentives for their home market to be served from overseas, raising the possibility of a hollowed-out domestic industry. Insofar as possible, maintaining a level playing field between onshore and offshore entities is particularly important for fair competition and balanced industry development. Singapore recently made a clear move to a more level playing field with its Content Code for OTT services, which is being applied to onshore and offshore services alike. This constituted a move to a lighter touch for onshore services, and it is to be hoped that other governments in the region will see the wisdom in this approach.

Final thought……some necessary distinctions

In discussing policy for OTT television, it is well to define precisely what is being discussed: the term "OTT" can refer to several different types of services, which share the common characteristic of being offered to all consumers via the public internet and not via a "walled-garden" telecom network. These include telecom services such as VOIP and messaging, social media and user-generated content services such as YouTube and Facebook, as well as professionally managed/curated video services. Policymakers need to take account of the very different characteristics of these distinct types of services. In this publication, we use the term "OTT" to refer to the latter category only – professionally curated video services, whether linear, paid video-on-demand or ad-supported video-on-demand, and whether offered by new entrants to the TV distribution market, or traditional players upgrading and offering new services.

It seems quite clear that for the foreseeable future the biggest issue in TV regulation throughout Asia will be how governments treat OTT television. In keeping with our vocation as representative for the legitimate, professional Asian video distribution industry, AVIA will continue to engage with governments and with neighboring industries (eg motion pictures, mobile operators, content creators) to advocate for light-touch policy approaches and for fair competition among various delivery technologies. It will take time and effort to persuade many Asian governments to move beyond their legacy regulatory approaches for video and, while the process is underway, we hope our research and analysis work will help our members navigate the changes in what still remains a very tilted playing field.

John Medeiros
Chief Policy Officer
Asia Video Industry Association

AUSTRALIA

Overview of Regulation

In general, Australia enjoys a light-touch regulatory environment. Broadcasting, online content and telecommunications are all regulated by a single authority — the Australian Communications and Media Authority (ACMA).

OTT

Whilst there are no specific regulation codes for OTT services, the ACMA still regulates content matters and ad content is governed by the industry Codes of Practice. However, there are currently no laws regulating the entry of OTT services into the market, and no licenses or approvals are required.

Copyright Protection

The unauthorised use of pay TV broadcasts for commercial or personal purposes is a criminal offence. However, it is still unclear whether the transmission of a live event on an OTT service would be protected as a "broadcast" under the copyright legislation. Otherwise, legislative protection is strong, but the effectiveness of enforcement actions varies. In 2015, Australia introduced a legal mechanism that allows rightsholders to apply to the Federal Court for injunctions to require ISPs to block access to infringing websites.

General Regulations for Pay TV

- There are no licensing requirements for stand-alone OTT services, or foreign channels. Uplinking and downlinking licenses are readily granted;
- Licensing fees for traditional pay TV services are minimal;
- There are no restrictions on program packaging, and rate regulations are limited to those under general competition law;
- Content regulation for pay TV is minimal compared to FTA TV, comprising quasi-regulation according to the Codes of Practice devised by the industry association;
- Restrictive anti-siphoning provisions require many sporting events to be offered first to FTA TV;
- There are no restrictions on cross-media ownership for pay TV or OTT services, other than general competition laws. For FDI, investments of more than 5% in traditional media companies must be approved by the government.

Future Changes

There are currently three government reviews underway into local content regulation. The reviews are considering quotas and incentives, and the extension of these to OTT providers. A review of intellectual property laws by the Productivity Commission recommended the introduction of a 'fair use' exemption and further consideration of extending safe harbour provisions. The government is consulting with stakeholders on these proposals.

ASTRA Subscription Television Australia

CAMBODIA

Overview of Regulation

Cambodia maintains a light-touch regulatory environment for both the pay TV and OTT TV industries. TV and radio broadcasting, including pay-DTT and cable TV, are regulated by the Ministry of Information (MoI). Telecommunications and new technologies regarding internet content, including OTT, fall under the helm of the Ministry of Posts and Telecommunications (MPTC).

OTT

There is currently no regulation of OTT, and, whilst the MPTC has the authority to regulate OTT TV, it remains unclear whether the regulator would impose licensing requirements or other regulations on these services; existing cases are assessed on a case-by-case basis.

Copyright Protection

Under Cambodian law, the unauthorised use of any copyrighted work is a criminal offence and this is applicable to both pay TV and OTT TV. However, there are no specific copyright provisions related to broadcasting. Penalties for copyright infringement include imprisonment and/or fines. In practice, copyright laws are rarely enforced.

General Regulations for Pay TV

- There are no license/taxation fees for domestic services;
- Foreign channels must negotiate commercial contracts with local operators. There are no restrictions with respect to uplinking or downlinking;
- Content regulations prohibit nudity on pay TV or FTA TV, and require domestic Cambodian channels to only broadcast domestic films between 7pm and 9pm;
- General foreign investment rules apply to the pay TV industry. Approval from the Council for the Development of Cambodia (CDC) is required for FDI projects involving capital investments of more than US$50 million.

Future Changes

New laws on telecommunications and consumer protection are in the process of being finalised, but these have been ongoing for a number of years and there is no clear timeline for completion. A new law on e-commerce is being drafted and may affect the provision of OTT TV services.

BNG LEGAL

CHINA

Overview of Regulation

A number of overlapping government agencies have regulatory control over both pay TV and OTT, including the Ministry of Industry and Information Technology (MIIT) and the State Administration of Press, Publication, Radio, Film and Television (SAPPRFT)[1]. Pay TV regulations were originally aimed at traditional cable TV service providers but OTT offerings may also be subject to those regulations.

OTT

The OTT regulatory regime is split into two categories: (i) content delivered via the internet to televisions and via private managed networks to other devices (OTT Type 1); and (ii) content delivered via the internet to devices other than televisions (OTT Type 2). However, regulations are fragmented. OTT providers must obtain a license for "Spreading Audio-visual Programs via Information Networks" (AVSP) but this is only available to state-owned enterprises. OTT Type 1 content aggregators are subject to the same restrictions as cable TV, (eg all imported programs are subject to censorship and SAPPRFT approval). On top of the SAPPRFT approval, OTT Type 2 providers are also limited to an annual cap of 30% for foreign films and teleplays on a single website.

Copyright Protection

Copyright law does grant protection in respect of copyright but online content piracy is widespread and China is a hub for the streaming of intercepted international programming supported by a thriving market for illicit streaming devices (ISDs).

General Regulations for Pay TV

- Retransmission of foreign channels on pay TV and OTT TV networks is generally prohibited although exemptions can be sought from SAPPRFT;
- Advertisements are generally prohibited on domestic premium TV channels (ie channels requiring additional fees to watch); otherwise minutage restrictions of 12 min/hr;
- Foreign content must not exceed 30% of daily programming on a domestic pay TV channel;
- In principle, TV channels should use standard Mandarin; SAPPRFT approval is required for other languages to be used.

Future Changes

It is anticipated that initiatives to improve copyright protection will be introduced in the next few years, along with regulatory reform to facilitate the convergence of the telecommunication network, the cable TV network, and the internet. This reform will be led by MIIT and SAPPRFT but no specific deadline has been announced.

1 SAPPRFT is to be abolished and replaced by a new agency under the State Council. As the new structures are not yet clarified we will use the old acronym in this publication.

HONG KONG

Overview of Regulation

Hong Kong continues to benefit from a relatively light-touch regulation of the pay TV industry. A single body, the Communications Authority (CA), oversees both broadcasting and telecommunications. There has been little regulatory reform since the CA was created in 2012 but the government has recently announced a review of both the Telecommunications and Broadcasting Ordinances. There are currently separate regulations for TV content and broadcasting network infrastructure, with telecoms facilities and frequencies licensed under a unified carrier regime.

OTT

Although the regulatory regime is technically technology-neutral, the government has no legal authority to regulate OTT TV, either domestic or foreign in origin. Theoretically, copyright laws do apply to OTT but the laws are outdated and infringement is widespread.

Copyright Protection

OTT piracy is extremely common. Infringement of copyright in broadcasting is usually treated as a civil offence. However, the Hong Kong prosecutors and courts have begun to tackle the rising issue of illicit streaming devices (ISDs). In a recent court case regarding ISDs, a court imposed heavy prison sentences against the sellers of ISDs based on charges of "providing circumvention device or service" and "conspiracy to defraud". The case could pave the way for more vigorous enforcement actions against content piracy, but so far the government has only prosecuted where a complete conspiracy in Hong Kong, including local content upload, can be proven.

General Regulations for Pay TV

- No restrictions on retransmission of foreign channels;
- No meaningful restrictions on downlinking and special facilitation for non-domestic uplinks;
- License fees are set to cover administrative costs, currently HK$1.533m pa plus HK$4 per subscription for domestic pay TV; as low as HK$56,400 pa for non-domestic;
- No advertising minutage limit for pay TV but advertising legislation is governed by the Generic Code of Practice on Television Advertising Standards;
- However, OTT advertising is exempt from the Generic Code of Practice.

Future Changes

A process of consultation on the Telecommunications Ordinance and Broadcasting Ordinances was launched in early 2018. The government proposed relaxing cross-media ownership rules; refining FDI requirements to allow non-Hong Kong residents to own more equity in free TV companies; and, creating subsidiary licensee categories for free TV companies. As part of the consultation the government ruled out introducing licensing for OTT services.

Paul|Weiss
宝维斯

INDIA

Overview of Regulation

Two bodies regulate pay TV: the Ministry of Information and Broadcasting (MIB) and, the Telecom Regulatory of India (TRAI). There is currently no regulatory framework for OTT but internet content in general is regulated under the Information Technology Act of 2000.

OTT

OTT services, along with SVOD providers, are broadly unregulated in India. OTT platforms are free to distribute content, subject to content regulation laws under the IT Act which focus around depravity and obscenity. From an advertising perspective on OTT, compliance with the Advertising Standards Council of India Code (ASCI) is optional.

Copyright Protection

Copyright laws are strong and applicable to both pay TV and OTT TV content. However, enforcement is difficult and time-consuming. There have been incidents of pre-broadcast signals being intercepted and although site blocking has been used in an effort to tackle online piracy it remains a major problem due to weak enforcement.

General Regulations for Pay TV

- Every channel must be offered on an "a-la-carte" basis; distributors are required to offer a basic service bouquet of 100 "free" channels; other channels may be offered on a "premium pay" basis;
- Advertisements cannot exceed 12 min/hr and cannot violate the ASCI code;
- No local content quotas. Content regulation is not strict and based largely on self-regulation;
- "Must provide" obligations make it mandatory for broadcasters to make their channels available to all platform operators; live broadcasts of nationally important sporting events must be shared with the national broadcaster, Prasar Bharati;
- 100% FDI allowed, other than for news and current affairs channels, which are restricted up to 49% FDI through government approval route;
- Vertical integration restrictions place limits of 20% equity on ownership of a broadcast and a DTH company.

Future Changes

In February 2018, TRAI noted its preference for having a converged regulator for ICT and broadcasting sectors but no decision has yet been taken. MIB has revised its categorisation of TV channels into pan-India and regional, with different processing fees. TRAI is also considering whether TV channels should be auctioned — similar to the FM radio sector. Finally, there is currently a debate on uplinking and downlinking, with proposals from the national satellite operator to move towards a closed market favouring Indian-only satellites.

TRILEGAL

INDONESIA

Overview of Regulation

The pay TV industry in Indonesia is subject to a moderate level of regulation, with the exception of content standards, which are becoming stricter for pay TV despite consumption of growing volumes of unregulated online content. There are two main regulatory bodies for the pay TV sector: the Ministry of Communication and Informatics (MOCI) and the Indonesian Broadcasting Commission (KPI). The MOCI is responsible for licensing of pay TV and satellite operators, and the KPI regulates pay TV content. Currently, OTT TV is not regulated. However, a draft set of OTT TV regulations was published by the government in 2017.

OTT

OTT TV services are becoming increasingly popular in Indonesia, but the market is still small and developing. There is no specific regulation for OTT nor any designated regulatory body although draft regulation, not yet enacted, will require an offshore OTT provider to appoint a local agent.

Copyright Protection

Under the Indonesian Copyright Law, original works, including cinematographic creations, are granted copyright protection for 50 years from the date of publication, and broadcasting agencies own the economic rights over their programs for 20 years after they are first broadcast. Therefore, unauthorised re-broadcasting of any program before this time period has expired is theoretically illegal. In principle, the Copyright Law is applied in the same way to OTT services. In practice, however, it is rarely enforced.

General Regulations for Pay TV

- Local pay TV operators are responsible for obtaining a broadcasting license and paying income tax;
- Foreign channels are not required to obtain a license but must comply with content regulations. Generally, the affiliated local pay TV operator is responsible for ensuring both its foreign and domestic channels comply with Indonesian content regulations;
- Pay TV operators must devote a minimum of 10% of their channel capacity to FTA channels, and must provide one domestic channel for every 10 foreign channels;
- All local and international feeds must display the Indonesian Code of Program classification;
- KPI enforces a "watershed hour" policy from 10:00pm to 3:00am;
- FDI in a pay TV operator is limited to 20%; for telecommunications it is limited to 67%.

Future Changes

In 2017, the MOCI published a draft set of OTT regulations, however the draft has yet to be enacted. Under the current draft an offshore OTT provider must work with a local platform or agent in Indonesia to administer their business activity and the draft regulations would also impose licensing, content, tax and payment obligations on OTT providers.

Linklaters

JAPAN

Overview of Regulation

Japan remains a strong consumer market for both pay TV and OTT. Regulation of pay TV in Japan remains light-touch and OTT is not specifically regulated. The Ministry of Internal Affairs and Communications (MIC) administers the Broadcast Law and the Radio Wave Law. In parallel, the Japan Commercial Broadcasters Association (JCBA) plays the role of a self-regulatory organisation with specific content codes which many operators follow. The Broadcast Law is platform-neutral, requiring broadcasters to be licensed.

OTT

OTT in particular continues to grow its market share in Japan, leading the way in Asia for most major providers. The Broadcast Law does not define OTT services and most OTT services are not specifically regulated.

Copyright Protection

Copyright is protected for both pay TV and OTT by the Copyright Law which has a strong framework, effective enforcement and significant penalties.

General Regulations for Pay TV

- Japan does not have specific licensing requirements for foreign channels as long as the pay TV platform is licensed as a broadcaster;
- There are no specific restraints on channel up- or down-linking;
- MIC does not specifically regulate retail or wholesale rates, nor are there any price controls on any tier;
- There are minimal regulations on content, no content quotas, and no requirement to put classification labels in international feeds. The JCBA standards include some requirements on content of advertising (eg not to show or acknowledge underage smoking);
- The JCBA standards require a broadcaster to consider a possibility that children and young people view a program depending on broadcasting time, whilst OTT TV operators are required to put measures in place to protect children.

Future Changes

There is currently no plan to regulate OTT separately from pay TV. At the time of writing it is anticipated that services in Japan will start broadcasting in 4K/8K in late 2018, making it the first country to do so.

Mori Hamada & Matsumoto

MALAYSIA

Overview of Regulation

The principal regulator, the Malaysian Communications and Multimedia Commission (MCMC), is an agency under the Ministry of Communications and Multimedia, operating independently of all operators. Content is co-regulated by the Malaysian Communications and Multimedia Content Forum (CMCF), a designated industry body.

OTT

As for pay TV, the MCMC also regulates OTT TV, whilst the CMCF is the designated industry body regulating content. In theory the regulation of OTT TV is similar to pay TV, however, OTT TV is currently exempt from the licensing regime, rate regulation, local quota and "made in Malaysia" requirements.

Copyright Protection

The Malaysian Copyright Act of 1987 protects copyrighted works in broadcast, including online communication and broadcasts. A notice and takedown procedure applies to infringing online content on Malaysian websites and MCMC has directed ISPs to block access to various notorious foreign piracy websites. For pay TV, enforcement is split between two government agencies: the Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC) and the MCMC. The regulator lacks enforcement resources but is supported by the DTH operator, a partnership which leads to relatively good enforcement co-operation.

General Regulations for Pay TV

- Whilst online content is currently exempt from the licensing regime, pay TV content is subject to intensive local content control laws with prohibition on indecent, obscene, false, harassing, menacing or offensive content;
- All programming produced in Malaysia for pay TV must be submitted to the Censorship Board;
- The MCMC content code requires advertisements to comply with general content rules, to be honest, and not contain tobacco, gambling, pornography or other prohibited content;
- FDI in platforms is generally restricted to 30% (subject to the discretion of the MCMC), whilst there are no restrictions on cross-media ownership.

Future Changes

None known at this time.

Shearn Delamore &co.

MYANMAR

Overview of Regulation

Traditional pay TV services are regulated by the TV and Broadcasting Law of 2015 which expressly states it does not apply to internet and OTT services. Myanmar has two regulatory bodies: the National Broadcasting Development Authority, under the Ministry of Information (MOI), the government body responsible for developing national broadcasting policies and technical standards and the TV Broadcasting Council, an independent regulator, responsible for enforcing the TV and Broadcasting Law.

OTT

OTT TV services are still limited and remain unregulated.

Copyright Protection

The Burma Copyright Act of 1914 contains no laws that specifically ban the dissemination of pirated pay TV program streams. In practice, the Copyright Act is rarely enforced, and pay TV piracy is widespread, especially through unauthorised satellite re-transmissions.

General Regulations for Pay TV

- License fees for local pay TV operators are determined by the TV Broadcasting Council on a case-by-case basis. Foreign channels may be distributed by licensed pay TV operators;
- TV and broadcasting services are allowed up to 12 minutes of advertising for every hour of daily broadcasting;
- Content regulations require that a minimum of 30% of each channel's daily programming and 20% of a licensed commercial pay TV operator's total programming contain local content;
- In practice, pay TV operators generally perform internal censorship to comply with government content guidelines;
- Cross-media ownership of print media and broadcasting media requires approval from the MOI.
- The Consumer Protection Law provides for general consumer protection rights including rights against false advertising, although not specifically targeted at pay TV services.

Future Changes

The government has expressed an intention to amend the TV and Broadcasting Law of 2015; a public/private committee is studying possible amendments. In 2017, the Parliament published several IP-related bills, including a draft Copyright Bill. The Copyright Bill puts forward a voluntary copyright registration system that would allow some rightsholders to take criminal and/or civil action if their works were to be infringed.

RAJAH & TANN NK LEGAL
Myanmar

NEW ZEALAND

Overview of Regulation

New Zealand enjoys a light-touch regulatory environment and boasts healthy markets for both traditional pay TV and OTT TV services. There are no sector-specific regulations for the pay TV industry. The responsibility of regulating the pay TV industry is shared between several agencies, which are generally regarded as transparent, open and autonomous of both government and large corporate players. Many aspects of the pay TV industry are self-regulated following guidelines established by the aforementioned agencies.

OTT

The same regulatory framework that applies to traditional pay TV services also applies to OTT TV services. The framework is considered to be technology-neutral and even-handed. Legislation is in place for censorship of "objectionable" materials, although untested for offshore websites.

Copyright Protection

There are strong copyright laws in place under the Copyright Act of 1994. These laws apply to both traditional pay TV and OTT TV services. Generally, enforcement is considered to be good. A test case against a promoter/seller of an ISD box ("My Box") is now moving through the courts.

General Regulations for Pay TV

- License fees for traditional pay TV services are not burdensome. There are no license fees for OTT TV services, but both domestic and offshore services are required to pay a Goods and Services Tax (GST);
- Advertising is self-regulated by an industry body association, the Advertising Standards Authority (ASA) for both pay TV and OTT. But for OTT if the provider is not a member of the ASA then there is no avenue of complaint;
- No limit on FDI; however, where an ownership interest of more than 25% is being acquired in business assets valued at over NZ$100 million, government consent is required, based on transparent and non-restrictive criteria;
- General consumer protection legislation applies to pay TV.

Future Changes

The Copyright Act of 1994 is currently being reviewed by the Ministry of Culture and Heritage and the Ministry of Business, Innovation and Employment (MBIE). The ministries are currently consulting with stakeholders to inform an issues paper which is planned for release for public consultation in early 2018.

PHILIPPINES

Overview of Regulation

The principal regulator is the National Telecommunications Commission (NTC). The Department of Information and Communications Technology (DICT), along with the NTC, has oversight of ICT technologies, including OTT TV. However, the regulatory regime is outmoded and unclear and imposes serious regulatory risks on ventures involving new technologies.

OTT

Despite the growth of both free and pay OTT, currently the DICT has yet to issue rules or regulations governing OTT services. There are no licensing requirements for entities engaged solely in OTT, although the ISPs are regulated as telecommunications entities.

Copyright Protection

Laws on copyright provide both criminal and civil remedies for copyright infringement. OTT is not specifically covered although general copyright law is still applicable and the Electronic Commerce Act of 2000 provides additional penalties for online piracy and copyright infringement. However, for both pay TV and OTT, the rules are unclear and burdensome with long judicial delays. Piracy is rampant and enforcement is difficult to achieve.

General Regulations for Pay TV

- No rate regulations, local content quotas, or advertising minutage caps in place for either pay TV or OTT;
- Content is self-regulated in co-ordination with the Movie and Television Review and Classification Board (MTRCB) which, at times, has taken a hard line on some issues (eg tobacco, sexual content, and gender sensitivity around women);
- In principle, exclusivity is not allowed but, in practice, the rule is not enforced and it is common practice;
- In theory, no FDI is allowed in entities engaged in mass media; up to 40% FDI in telecommunications companies. This is also applicable to OTT services but the investment rules are uncertain as it is unclear whether OTT is to be classified as telecommunications or mass media.

Future Changes

Nothing currently due to be changed as of time of writing.

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The Firm

SINGAPORE

Overview of Regulation

The OTT TV and pay TV industries are regulated in Singapore by the Info-Communications Media Development Authority (IMDA), a statutory body that regulates the converging info-communications and media sectors.

OTT

The OTT TV market in Singapore has grown rapidly over the past two years. Both local and offshore OTT TV providers are automatically class licensed under the Broadcast (Class License) Notification and must comply with the associated Class License Conditions, the Internet Code of Practice and the newly-issued Content Code for Over-the-Top, Video-on-Demand and Niche Services (OTT Content Code) of March 2018. Local OTT TV providers may also be subject to licensing under the subscription television framework at IMDA's discretion. The new OTT Content Code effectively applies a lighter-touch (than pay TV) regulatory framework to both local and offshore OTT services, somewhat levelling the playing field among OTT TV providers.

Copyright Protection

Despite a robust intellectual property law framework, which applies equally to pay TV and OTT TV, and both criminal and civil enforcement mechanisms, piracy remains a major challenge, especially via ISDs. Beginning two years ago, the Copyright Act has been used by copyright owners to deploy site blocking against a few infringing websites.

General Regulations for Pay TV

- All pay TV channels, both foreign and local, require approval from IMDA;
- Pay TV channels should comply with the IMDA Subscription Television Programme Code, Television Program Sponsorship Code and Television Advertising Code;
- OTT TV providers who are based in Singapore are regulated through the Internet Code of Practice and the new OTT Content Code;
- License fees for Nationwide Subscription Television Service licensees are 2.5% of total revenue annually, or SG$50,000, whichever is higher;
- Cross-carriage rules for pay TV apply, requiring exclusive content to be shared in its entirety. This has so far been applied to only a limited number of sporting events.

Future Changes

Reviews of the Copyright Act, the Films Act and the Broadcasting Act are in progress. The Minister for Communication and Information has publicly stated that a prime purpose for the latter two reviews is to clarify and codify application of content regulation to OTT platforms. In line with this there may be new requirements for OTT providers in the near future.

C/M/S/ Holborn Asia

SOUTH KOREA

Overview of Regulation

The regulatory scene has become increasingly complicated. The Korea Communications Commission (KCC) is responsible for programming and content standards, along with regulation of IPTV operators. The Ministry of Science and ICT is responsible for general communication and combined broadcasting policies but needs KCC consent before regulating new media. The Korean Communications Standards Commission (KCSC) administers content standards.

OTT

OTT is regulated by the KCC and KCSC. Although OTT TV is interpreted as being outside the scope of the Broadcasting Act and the Internet Multimedia Broadcasting Business Act, it is regarded as a "value-added communications service" under the Telecommunications Business Act. That being said, there are no explicit regulations for OTT. Content, however, is regulated under the Communications Network Act.

Copyright Protection

Copyright laws provide strong protection, including for online content, with significant penalties. However, online piracy is a major problem. Recent policies to tackle online piracy have been implemented, notably site blocking of offshore websites.

General Regulations for Pay TV

- For pay TV, re-transmitted programming is capped at 20% of an operator's total bouquet with no local ads or dubbing allowed in foreign re-transmitted channels;
- Cable and satellite broadcasting operators are subject to local content quota of more than 40% but less than 70% local content; calculated over a half-year;
- FDI in pay TV platforms is limited to 49% in cable/DTH operators and IPTV content providers; 20% in general channels; and, 10% in news channels;
- Cross-media ownership by newspaper groups is limited to 49% of cable/DTH operators and IPTV content providers; 30% of general channel providers (including news); 10% of terrestrial broadcasters.

Future Changes

There are currently no concrete plans to specifically regulate OTT TV although there has been much debate and the KCC are monitoring the industry.

BARUN LAW
법무법인(유한) 바른

SRI LANKA

Overview of Regulation

There is an active and competitive market for pay TV in Sri Lanka. Whilst the popularity of OTT TV services is growing, pay TV services are still largely provided by "traditional" network technologies – cable, satellite, and telco IPTV. The pay TV sector is regulated by multiple government authorities, including the Ministry of Mass Media (MMM), the Sri Lanka Rupavahini Corporation (SLRC), the Sri Lanka Broadcasting Corporation (SLBC) and the Telecommunication Regulatory Commission of Sri Lanka (TRCSL). The majority of pay TV regulations are enforced as conditions set forth in broadcasting licenses and are therefore not completely transparent.

OTT

The same regulatory bodies also regulate OTT services. Generally, OTT services are subject to the same regulations as traditional pay TV services. Licensing requirements for offshore OTT service providers will depend on the nature of their operations.

Copyright Protection

Intellectual property rights are protected under the Intellectual Property Act No. 36 of 2003. Copyright owners may seek injunction, damages and other remedies as approved by the court against any entity who has been found to be infringing their copyright. Punishments for copyright infringement may include fines and/or imprisonment. In practice, however, the government has taken little to no action against online piracy.

General Regulations for Pay TV

- Local pay TV operators require a license issued by the MMM in order to operate;
- Licensing fees for domestic OTT services are similar to pay TV, however the licensing requirements for offshore providers depend on the nature of their services;
- FDI in a mass communication business is limited to 40%, unless otherwise approved by the Board of Investment of Sri Lanka;
- Other regulations, such as rate regulations, program packaging rules and content regulations depend on the conditions set forward in individual broadcasting licenses issued by the MMM.

Future Changes

No future legislative changes are currently foreseen.

FJ&G de Saram
Attorneys-at-Law
Commenced 1841

TAIWAN

Overview of Regulation

Taiwan's regulatory system for pay TV is oriented toward heavy state control of the TV ecosystem. The regulator, the National Communications Commission (NCC), is independent and neutral but leaves little scope for private initiative. A cumbersome legislative process inhibits regulatory updates. Differential restrictions on cable, DTH and IPTV operators create an uneven playing field.

OTT

OTT is not yet regulated in Taiwan. A draft Digital Communication Act, issued in November 2017, will apply to all kinds of digital communications, including OTT TV. However, according to the draft, digital communications providers will not be required to obtain pre-approval from the authorities but, rather, certain responsibilities will be placed on digital communications providers in order to protect the public. For example, digital communications providers must disclose their basic business information and contact information as well as their privacy policy.

Copyright Protection

The current legal framework does not favour protection of pay TV signals, and copyright owners bear a heavy burden to stimulate enforcement with relatively low fines for violations. Commercial-scale online piracy is a growing problem, with only weak enforcement on IP laws, especially against offshore pirate OTT operators.

General Regulations for Pay TV

- Channel retransmission permitted for pay TV; licenses required.
- Extensive and rigid regulation of retail cable rates from central and local government bodies; rates for new digital packages and satellite DTH unregulated;
- No regulations prohibiting cross-media ownership among broadcasters but cable TV multi-system operators are prohibited from controlling more than one-third of national subscribers and not more than one-quarter of their own channels;
- Cable operators "must carry" five major analogue FTA channels but there are no similar rules for IPTV/DTH operators.

Future Changes

As noted above, the draft Digital Communication Act will apply to all kinds of digital communications, including OTT TV, once it comes into force. However, this will have limited impact on OTT TV. The NCC is also currently considering introducing revised tiering on cable TV which would change the structure and prices cable TV operators are able to offer. At the time of writing, the proposals are open to public consultation; any changes would not require legislation but could be adopted by the NCC under its own authority.

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THAILAND

Overview of Regulation

Pay TV is regulated under the supervision of the National Broadcasting and Telecommunication Commission (NBTC). NBTC licensing has brought greater clarity with DTH, cable and DTT platforms all licensed and IPTV services operated under a telecom operator license. NBTC commissioners are elected for a six-year period which expired in 2017. At the time of writing, the identities and plans of the new NBTC Commissioners are not known.

OTT

OTT services are currently unregulated with no licensing requirements and no legal authority to impose licenses or fees on channels broadcast over the internet, whether domestic or foreign in origin. There is little regulation of internet content and no published guidelines. The NBTC has attempted to draft some regulations, in line with the current Broadcasting Law, although they noted they would not be universally applicable, but only aimed at those OTT services actively targeting Thai consumers.

Copyright Protection

Commercial-scale online piracy is becoming a growing problem with poor enforcement and minimal penalties. The Copyright Act of 1994, as amended, applies to internet broadcasts and enables site blocking of pirated content. New site blocking provisions recently came into force; their effectiveness is now being tested.

General Regulations for Pay TV

- No local content quotas. Pay TV operators perform self-censorship of content based on government guidelines, whilst there is little regulation of internet content;
- "Must have" rules require specific sporting events to only be broadcast on FTA channels; "must carry" rules require pay TV networks to carry FTA channels. Combination of these two have made it uneconomical for Thai operators to carry some expensive sporting content. As a result, government subsidies are reported to be planned for the 2018 FIFA World Cup.
- FDI in pay TV platforms limited to 25%, and 49% in telecoms and wholesale providers based in Thailand;
- Cross-media ownership rules require television license holders wanting to hold more than 25% directly, or 50% indirectly, in another licensed company to get NBTC approval.

Future Changes

The NBTC is currently drafting rules to regulate OTT TV services, although this is now dependent on approval and implementation by the newly appointed Commissioners; anticipated in place by mid-2018. Uncertainty persists over whether "new media" operators (mobile, broadband etc) will be required to separately get broadcasting licenses.

Vickery & Worachai Ltd. Lawyers

UNITED KINGDOM

Overview of Regulation

The UK maintains a strong and healthy pay TV market for both traditional and OTT TV services. It is considered a world leader in copyright protection and anti-piracy enforcement. All domestic pay TV services are regulated by Ofcom, an independent and transparent regulator. There is no distinction between how traditional pay TV services and domestic OTT TV services are regulated, however, linear and non-linear (ie on-demand) pay TV services are subject to different regulations. General rights of judicial review of decisions by a public body, and certain specific rights of appeal, are available in relation to Ofcom's decisions.

OTT

Ofcom is the sole regulator of "on-demand programme services" (ODPS), as well as linear channel services. All UK linear online channels need to be licensed, whilst non-linear services do not. Offshore services are not currently regulated in the UK.

Copyright Protection

Domestic copyright laws provide strong protection with significant penalties. Enforcement actions are effective and occur commonly. For online piracy, blocking orders requiring ISPs to restrict access to illegal streaming and/or download websites are available through the courts.

General Regulations for Pay TV

- All linear pay TV channels require a license from Ofcom to operate (including linear OTT TV channels) with the annual fees set to cover Ofcom's costs;
- Non-linear services do not require a license, but must notify Ofcom before their service begins, ends, or undergoes any significant changes. On-demand service providers based in the UK are charged an annual regulatory "notification" fee;
- Ofcom's Broadcasting Code regulates linear content, along with non-linear content under Part 3 of the Code, to ensure certain standards in programming, sponsorship, product placement, fairness and privacy are met;
- Cross media ownership is regulated by the Communications Act of 2003 so as to prevent, for example, the owner of a significant market share of UK newspapers from also controlling the major UK broadcasters;
- General competition laws apply in relation to rate regulations and contractual arrangements;
- Ofcom's Code on Television Access Services sets targets for the amount of television subtitling, signing and audio-description that broadcasters of linear content are required to provide.

Future Changes

None related to pay TV services. It is not yet clear what impact Brexit will have on foreign programming entering the UK. The Digital Economy Act of 2017 has empowered Ofcom to apply access requirements (subtitling, signing and audio-description) to non-linear content, in line with linear content; this is currently under consultation and recommendations are expected later this year.

C/M/S/ Law . Tax

UNITED STATES

Overview of Regulation

The US generally enjoys a light-touch regulatory environment for all television services, though some local authorities impose restraints on local cable services. Pay TV services are regulated by the Federal Communications Commission (FCC).

OTT

OTT TV services remain unregulated at both the national and state level but are expected to generally ensure compliance with advertising standards and closed-captioning requirements.

Copyright Protection

Copyright law is strong with both civil and criminal penalties for violators. Enforcement actions do occur with some significantly large penalties on ISD syndicates in particular. The Department of Justice (DoJ) is also actively enforcing laws against online piracy and there is good co-operation between the industry and OTT providers to implement additional safeguards. However, the copyright law needs updating for the streaming era, and to adjust "safe harbours" for internet services providers of various kinds.

General Regulations for Pay TV

- There are no meaningful restrictions for up- or down-linking, and licenses are readily granted;
- Local franchising authorities are responsible for cable licensing, and charge a fee of no more than 5% of revenue;
- Closed-captioning is required for the majority of English and Spanish-language pay TV programming;
- General anti-trust laws apply;
- FDI limit of 25% in terrestrial television broadcast licenses, although individual cases are reviewed for waivers by the FCC;
- Advertisements in children's programs are limited to 10.5 min/hr on weekends and 12 min/hr on weekdays;
- Pay TV providers distributing informational materials on behalf of a foreign government may be required to register with the DoJ under the Foreign Agents Registration Act (FARA). Once registered, providers must also label their programming according to FARA.

Future Changes

There is little appetite for regulatory change under the current administration. The FCC's repeal of net neutrality rules may result in OTT services coming under commercial pressure from US broadband providers. However, there is as yet no evidence of this, and the repeal decision is likely to be challenged in court.

PERKINS COIE
COUNSEL TO GREAT COMPANIES

VIETNAM

Overview of Regulation

Pay TV services are regulated by the Authority of Broadcasting and Electronic Information (ABEI) under the Ministry of Information and Communications (MIC). It is noted that VTC, one of the major players in the industry, was owned by MIC before being transferred to The Voice of Vietnam (VOV) under the Government of Vietnam. Regulatory restrictions are quite burdensome, worsened by uneven enforcement of regulations due to MIC's limited authority.

OTT

Domestic OTT TV services are also regulated by ABEI/MIC, which takes the position that most pay TV regulations also apply to domestic subscription OTT TV services. MIC have regulated internet information cross-border services since 2016, but remains vague on how this applies to OTT TV services.

Copyright Protection

Copyright laws meet basic international standards, but enforcement is very limited. That being said, ABEI has shown a willingness to cooperate with rightsholders on enforcement issues.

General Regulations for Pay TV

- If OTT TV is a subscription service, regulations for pay TV are applicable, however, the enforcement of this regulation remains unclear;
- Pay TV operators offering foreign channels require multiple licenses to operate, including: a license for provision of pay TV services; a certificate of registration of list of channels on pay TV; a license for production of Vietnamese channels; a certificate of registration for foreign channels on pay TV; and, a license to edit and translate foreign channels on pay TV;
- Every pay TV operator must pay a fee of 0.3% of total revenue;
- The number of foreign channels for any pay TV operator must not exceed 30% of all channels, though enforcement seems patchy;
- 100% of content on film, cartoon and documentary channels must be translated into Vietnamese;
- There are no stipulated limits on FDI for pay TV companies, but any amount must be approved by the Prime Minister.

Future Changes

Foreign-origin OTT video services featuring user-generated content have generated considerable controversy, and there have been repeated government attempts to control the content on those platforms. Professionally curated OTT services have been less controversial, but the government has still indicated frustration with what it views as non-responsive services. ABEI is working on draft regulations designed to bring curated OTT services into its regulatory ambit. It is not clear how comprehensive the regulatory net would be; blockage of small foreign-origin services seems unlikely.

Who is AVIA?

The Asia Video Industry Association (AVIA) is THE trade association for the video industry and ecosystem in Asia Pacific. It serves to make the video industry stronger and healthier through promoting the common interests of its members. Understanding global trends in media, AVIA is focused specifically on addressing issues in the video markets of Asia.

AVIA is:

- the interlocutor for the video industry with governments across the region
- dedicated to reducing video piracy and creating a more sustainable business environment for established as well as new video companies to innovate and grow
- a leading resource for insight and intelligence on trends and developments in the video industry in Asia, through publications, newsletters, conferences and seminars

Who We Are & What We Do

- AVIA is the association for all connected with the video ecosystem in Asia Pacific
- AVIA exists to make the video industry in Asia Pacific stronger, healthier more vibrant and to foster innovation in the industry
- AVIA has a large and diverse membership, and is a "must join" association for anyone connected to the video industry
- AVIA reaches out – and is relevant – to staff at all levels in member companies. All employees of member companies are considered to be our members
- AVIA brings the industry together and allow challenges that are common to all to be faced together
- AVIA speaks for the industry with one voice in consultations and dialogues with regulators and government bodies across Asia Pacific
- AVIA takes a leading role in developing tangible and measurable actions to reduce the effect of video piracy and works collaboratively with similarly like-minded organisations
- AVIA provides leading industry information and intelligence on developments in different markets, on developments in business models and developments in technology for the video industry
- AVIA is regional in focus, but with strong membership in every Asian market and active regular engagements in each market

Heritage and Evolution

AVIA has evolved from CASBAA, which was established in 1991 at the birth of the pay TV industry in Asia; a time when video was primarily distributed and received through cable and satellite. Today, the video industry has evolved and while linear pay TV, cable operators and satellite providers are still a big and important part of the industry, it equally encompasses all those who produce, curate and distribute video content in whatever format, to whatever device, and the entire ecosystem that surrounds the video industry.

Knowledge Partner Contact Details

Knowledge Partner: Holly Brimble
E admin@astra.org.au

AUSTRALIA
www.astra.org.au

Address:
5 Thomas Holt Drive
North Ryde, NSW, 2113
Australia

Knowledge Partner: Vannaroth Sovann
E vannaroth@bnglegal.com
T +855 23 217 510

CAMBODIA
www.bnglegal.com

Address:
No. 64, Street 111, Sangkat Boueng Prolit
Khan 7 Makara, Phnom Penh
Cambodia

Knowledge Partner: Adrian Fisher
E adrian.fisher@linklaters.com
T +65 9176 2856

CHINA
www.linklaters.com

Address:
1 George Street
#17-01
Singapore 04915

Knowledge Partner: David Lee
E asiapractice@paulweiss.com
T +852 2840 0300

HONG KONG
www.paulweiss.com

Address:
12/F Hong Kong Club Building
3A Chater Road
Central
Hong Kong

Knowledge Partner: Nikhil Narendran
E nikhil.narendran@trilegal.com
T +91 80 4343 4646

INDIA
www.trilegal.com

Address:
The Residency, 7th Floor
133/1 Residency Road
Bangalore 560025
India

Linklaters

Knowledge Partner: Adrian Fisher
E adrian.fisher@linklaters.com
T +65 9176 2856

INDONESIA

www.linklaters.com

Address:
1 George Street
#17-01
Singapore 04915

MORI HAMADA & MATSUMOTO

Knowledge Partner: Hiromi Hayashi
E hiromi.hayashi@mhmjapan.com
T +81 3 5220 1811

JAPAN

www.mhmjapan.com/en

Address:
Marunouchi Park Building, 2-6-1
Marunouchi Chiyoda-ku, Tokyo 100-8222
Japan

Shearn Delamore &co

Knowledge Partner: Timothy Siaw
Co-contributor: Elyse Diong
E timothy@shearndelamore.com

MALAYSIA

www.shearndelamore.com

Address:
7th Floor, Wisma Hamzah-Kwong Hing
No 1 Leboh Ampang
50100 Kuala Lumpur
Malaysia

RAJAH&TANN ASIA
RAJAH&TANN ASIA LAWYERS WHO KNOW ASIA

Knowledge Partner: Chester Toh
E chester.toh@rajahtann.com
T +65 6535 3600

MYANMAR

www.rajahtannasia.com

Address:
9 Battery Road
#25-01
Singapore 049910

M — B WEB

Knowledge Partner: Malcolm Webb
E mwebb@mwebb.co.nz

NEW ZEALAND

www.mwebb.co.nz

Address:
20 Seaview Road
Remuera, Auckland 1050
New Zealand

PHILIPPINES

www.thefirmva.com

Knowledge Partner: Bienvenido I. Somera Jr.
E bi.somera@thefirmva.com
T +632 988 6088

Address:
11th Avenue corner 39th Street
Bonifacio Triangle
Bonifacio Global City 1634, Metro Manila
Philippines

SINGAPORE

www.cms.law/en/SGP

Knowledge Partner: Matt Pollins
E matt.pollins@cms-cmno.com
T +65 6720 8278

Address:
7 Straits View
Marina One East Tower, #19-01
Singapore 018936

SOUTH KOREA

www.barunlaw.com

Knowledge Partner: Thomas P. Pinasky
E tom.pinansky@barunlaw.com
T +82 2 3479 7517

Address:
92 gil 7, Teheran-ro, Gangnam-gu
Seoul 06181
Korea

SRI LANKA

www.fjgdesaram.com

Knowledge Partner: Nirmitha Silva
E nirmitha.silva@fjgdesaram.com
T +94 11 4 605 100

Address:
216 de Saram Place
Colombo 10
Sri Lanka

TAIWAN

www.leeandli.com

Knowledge Partner: Michael Yang
E michaelyang@leeandli.com
T +886 2 27153300 ext. 2230

Address:
7F, 201 Tun Hua N. Road
Taipei 10508
Taiwan, R.O.C.

THAILAND

Vickery & Worachai Ltd. Lawyers

www.v-w.co.th

Knowledge Partner: Worachai Bhicharnchitr
E worachai@v-w.co.th
T +662 256 6311

Address:
16th Floor, GPF Witthayu Tower A
93/1 Wireless Road
Lumpini, Pathumwan
Bangkok 10330
Thailand

UNITED KINGDOM

CMS Law.Tax

www.cms.law/en/GBR

Knowledge Partner: John Enser
E john.enser@cms-cmno.com
T +44 20 73 67 3000

Address:
Cannon Place
78 Cannon Street
London EC4N 6AF
United Kingdom

UNITED STATES

Perkins Coie — Counsel to Great Companies

www.perkinscoie.com/en/index.html

Knowledge Partner: Marc Martin
E mmartin@perkinscoie.com

Address:
700 Thirteenth Street, N.W.
Suite 600
Washington DC 20005-3960
United States

VIETNAM

Hogan Lovells

www.hoganlovells.com

Knowledge Partner: Jeff Olson
E jeff.olson@hoganlovells.com
T +84 8 3829 5100

Address:
38th Floor Bitexco Financial Tower
2 Hai Trieu
District 1
Ho Chi Minh City
Vietnam

avia

ASIA VIDEO INDUSTRY ASSOCIATION

www.asiavia.org/advocacy

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