

2024 AVIA Regulating for Growth – OCC TV Matrix for **Australia**

Questions	OCC TV	Foreshadowed changes?
<p>1. How regulated? <i>Details of regulator/s</i></p>	<ul style="list-style-type: none"> The Australian Communications and Media Authority (ACMA) regulates content matters in respect of online content generally; otherwise, to this point, there is currently no explicit regulation of OCC TV services (but note the comments in the adjoining column – ‘<i>Foreshadowed changes?</i>’). The ACMA is an impartial and independent regulator, but key policy decisions are made by the federal Ministry. The ACMA is responsible for regulating telecommunications, broadcasting, radio communications and online content. However, while it has one converged administrative structure, it continues to implement different legislative frameworks for broadcasting and telecoms. The ACMA's decisions can be appealed, including to the Administrative Appeals Tribunal (and subsequently, through the Federal Courts). 	<ul style="list-style-type: none"> Following the completion of the Australian Competition and Consumer Commission’s (ACCC) Digital Platform Inquiry, and in response to the ACCC’s recommendation that a platform-neutral and harmonised media regulatory framework be developed and implemented to address the inconsistent operation of Australia’s overarching broadcast regulatory framework (which captures traditional and subscription broadcast television licensees, but does not apply to services that make available programmes using the internet (such as OCC TV services)), the Federal Government has indicated that it will take the first steps in regulating OCC TV services specifically by introducing local content obligations for OCC services which were supposed to be introduced by 1 July 2024 (discussed further below in relation to point 9, content regulation).
<p>2. Copyright protection?</p>	<ul style="list-style-type: none"> It is unclear whether, under Australian law, the transmission of a live event on an OCC TV service would be protected as a "broadcast" under copyright legislation. Otherwise, legislative protection is strong. Numerous site-blocking injunctions have been granted in Australia, including in relation to applications brought by pay TV providers. Recent surveys suggest a decline in the rate of Australians downloading copyright protected content. Australia's site blocking regime was expanded at the end of 2018, so that it is easier for rightsholders to block infringing sites overseas. 	<ul style="list-style-type: none"> Over the course of 2023, the Federal Attorney-General held a series of roundtables with key stakeholders on copyright priorities and emerging issues, in order to develop practical and achievable copyright reform proposals for government to consider and potentially take forward. Among other things, the roundtables considered the narrow definition of ‘broadcast’ under the Copyright Act – currently, the definition of ‘broadcast’ is restricted to television and radio programmes broadcast through traditional channels, and excludes OCC services. Whilst there was no immediate call for a reform to this definition (or the related definition of a ‘broadcasting service’ in the <i>Broadcasting Services Act (BSA)</i>, participants involved in the

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		<p>roundtables noted that any future reform process that could result in changes to these definitions under the Copyright Act and/or BSA should involve a detailed consideration of the relevant copyright issues.</p> <ul style="list-style-type: none"> • In February 2024, the Federal Attorney-General convened the first meeting of a Copyright and Artificial Intelligence Reference Group (CAIRG), which engaged with stakeholders across a wide range of sectors (including OCC providers such as Netflix) to better prepare for future copyright challenges emerging from AI. • The initial focus of the Attorney-General's consultation with the CAIRG was on the use of copyright material as inputs for AI systems. The Attorney-General has signalled that topics that could be explored by the CAIRG later in 2024 include issues such as potential copyright infringement in AI outputs, and the copyright status of AI outputs.
3. Convergence and new technologies	<ul style="list-style-type: none"> • Delivery platforms based on different technologies do not operate on an even playing field. For example, online platforms are not governed by the complex co-regulatory system of legislative restrictions, licensing conditions, standards and codes of practice that regulate broadcasters. Nor are they required to meet the minimum content quotas for Australian or local or children's content (though this is potentially set to change – note our comments in relation to question 9, content regulation below). 	<ul style="list-style-type: none"> • Following the completion of the ACCC's review into Digital Platforms in 2019, the Treasurer and in particular, its identification of the inconsistent operation of Australia's overarching broadcast regulatory framework – which captures traditional commercial and subscription broadcast television licensees, but does not apply to services that make available programmes using the internet (such as video-on-demand services) - the ACCC recommended that a platform-neutral and harmonised media regulatory framework be developed and implemented to ensure effective and consistent regulatory oversight of all entities involved in content production or delivery in Australia, including media businesses, publishers, broadcasters and digital platforms. • Rather than a comprehensive reform to the <i>Broadcasting Services Act 1992</i> (Cth) though, the Australian Government

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		<p>appears to be addressing areas of concern on an issue-by-issue basis (as discussed further below).</p> <ul style="list-style-type: none"> For completeness and following the outcome of the ACCC's Digital Platform Services Inquiry, the Treasurer directed the ACCC to conduct a 5-year inquiry into markets for the supply of digital platform services, with interim reports to be delivered each March and September. To date, the Digital Platform Services Inquiry reports have not focused on OCC or pay TV platforms, though it remains to be seen whether they may be a topic of concern for future reports.
4. Licensing of foreign channels <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> No licensing requirement for domestic or foreign OCC TV services. 	
5. Licence fees and taxation	<ul style="list-style-type: none"> None. But offshore-based providers of digital services (including OCC service providers) are required to charge GST on their services delivered into Australia. 	
6. Rate regulation <i>Including wholesale and retail rate regulation and whether there are any price controls on eg. basic tier</i>	<ul style="list-style-type: none"> None, other than under general competition law. 	
7. Programme packaging <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> No restrictions. 	
8. Restrictions on advertising <i>Including localisation rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> No ad revenue limit applies to OCC services, whether free or subscription. The content of advertisements included in programming via OCC TV is regulated by a framework of laws, regulations and standards which are administered by certain regulatory bodies (see 'Advertising Matrix for Australia' for more in this regard). There are specific requirements that apply in relation to the advertising of certain goods and services including, for 	<ul style="list-style-type: none"> In June 2023, the Federal Government released a report titled 'You win some, you lose more', which followed an inquiry into online gambling and its impact on those experiencing gambling harm. The Report noted that, amongst other things, there is a growing community sentiment that there is currently too much gambling advertising, and that current restrictions are insufficient.

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	<p>example, alcohol, food and beverages, pharmaceutical goods and gambling (noting our comments in the adjoining column in relation to the future of gambling advertising in Australia – ‘<i>Foreshadowed changes?</i>’)</p> <ul style="list-style-type: none"> Tobacco advertising is prohibited in Australia. 	<ul style="list-style-type: none"> As part of the Report, the Committee recommended that the Federal Government implement a comprehensive ban on all forms of advertising for online gambling, to be introduced in four phases over three years (culminating in a complete ban on gambling advertising by 2026). Since then, the Australian Government has been involved in consultations with a number of stakeholders from the sports and media industry in Australia as it considers its response to the Committee’s recommendations. A number of key stakeholders from the industry, including, in particular, sporting codes, major media companies and wagering operators, have been engaged in significant lobbying efforts to persuade the Government not to implement a complete ban on gambling advertising, citing concerns relating to the likely impact of the reforms on their revenue and, in turn, their ability to invest in, and promote, Australian sports. On the other hand, supporters of the Committee’s recommendations continue to argue that a complete ban on gambling advertising is the only way to protect those individuals that are experiencing harm from online gambling. It is currently unclear how the Australian Government will respond to the Committee’s recommendations, but there are reports that it is considering making changes to gambling advertising laws which fall short of the complete ban on online gambling advertising and which include, for example, limiting gambling advertising to two spots per hour on TV until 10pm, banning gambling advertisements on social media and banning gambling advertisements on TV an hour before, during and after live sporting programmes. It has already been 15 months since the Committee published its report, but it looks like we will need to further await the Government’s response.

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<p>9. (a) Content regulation <i>Including local content quotas, content control and insertion of classification and other content labels into international feeds</i></p>	<ul style="list-style-type: none"> • Currently, there are no local content quotas which apply to OCC TV platforms, though it is anticipated this will be introduced in 2024 (see our comments in the adjoining column in this regard under ‘Foreshadowed changes?’). • Content is required to be rated according to the National Classification Scheme (which is administered under the Classification (Publications, Films and Computer Games) Act 1995 (Cth) and the related National Classification Code 2005 (Cth). • Whilst the classification of content takes place at a Federal level under the National Classification Scheme, the prosecution of offences relating to the sale, publication and advertisement of unclassified content actually takes place at a State and Territory level in Australia in accordance with the relevant laws in force in that jurisdiction. • In addition, if a complaint is lodged that content is Refused Classification (RC), or R18+ or MA15+ rated without access restrictions, the eSafety Commissioner can take the following action under the Online Safety Act 2021 (Cth): <ul style="list-style-type: none"> ○ request ISP to filter content for an OCC hosted outside Australia; or ○ require content to be removed if hosted inside Australia. • Since 2019, Netflix has been permitted to classify films which it broadcasts in Australia according to its own Self-Classification Tool. • In March 2024, the Federal Government amended the National Classification Scheme to allow other stakeholders (including other OCC platforms) to apply to be able to self-classify content using either in-house or third-party classifiers who have been trained and accredited by the government. 	<ul style="list-style-type: none"> • In 2022, the ACMA called for reform to out of date broadcasting codes, which do not apply to online content, even when that content appears on a broadcaster’s catch-up or an on-demand platform that is delivered via the internet. • In January 2023, the Federal Government unveiled plans for the ‘Revive’ National Cultural Policy. As part of the policy, new local content requirements will be proposed for OCC TV platforms. The Australian Government had indicated that it expected to introduce some form of legislation or regulation relating to these local content requirements to be in effect by 1 July 2024 but, as at the date of writing, no such reforms have been proposed or introduced by the Australian Government.

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<p>9. (b) Content regulation <i>Including languages, dubbing/subtitling and captioning</i></p>	<ul style="list-style-type: none"> • General anti-discrimination legislation may require closed captioning of audiovisual material (yet to be tested in Court). • However, at this stage the government has not indicated whether it will implement subtitling requirements for OCC TV platforms in the same way free-to-air (FTA) and pay TV providers are required to. 	
<p>10. Programme supply restrictions <i>Including must provide rules and other restrictions on exclusivity and anti-siphoning rules</i></p>	<ul style="list-style-type: none"> • No general restraints on exclusivity. • Anti-siphoning provisions under the BSA require many sporting events to be offered first to FTA TV providers before being offered to subscription TV and OTT providers. These events include: <ul style="list-style-type: none"> ○ Olympic Games ○ Commonwealth Games ○ Horse Racing ○ Australian Rules Football ○ Rugby League Football ○ Rugby Union Football ○ Cricket ○ Soccer ○ Tennis ○ Netball ○ Motor Sports • The Communications Legislation Amendment (Prominence and Anti-siphoning) Law 2024 (Cth) was passed in July 2024, and introduces two key changes: <ul style="list-style-type: none"> ○ expands coverage of the anti-siphoning scheme to prevent ‘media content service’ providers (including, but not limited to, online streaming service providers) from acquiring a right to provide coverage of an event that is listed on the anti-siphoning scheme (a ‘Listed Event’) 	

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	<p>until a free-to-air broadcaster has acquired a right to televise the Listed Event (previously, the scheme only restricted the acquisition of these rights by subscription television licensees (e.g. Foxtel)). Importantly though, a free-to-air broadcaster does not need to have acquired a right to provide coverage of the relevant Listed Event on a content service (such as BVOD) before another party can acquire a right which means that, once a right to televise a Listed Event has been acquired by a free-to-air broadcaster, there is relatively unimpeded access to BVOD (or other online) rights by media content service providers; and</p> <ul style="list-style-type: none"> ○ requires manufacturers of connected TV devices (e.g. smart TVs) to ensure that the TVs they manufacture carry specific services (i.e. preinstall) provided by FTA TV providers – including both their linear broadcast services and their respective OCC services – and are accessible to users in a way that meets a set of ‘minimum prominence requirements’ (there is an 18-month transitional period before these changes come into effect). 	
<p>11. Restrictions on FDI <i>Including platforms and wholesale supply of programming and cross-media ownership restrictions</i></p>	<ul style="list-style-type: none"> • There are no specific foreign investment restrictions which apply to OCC services. General foreign investment rules will apply. • Under the general rules, private foreign investors are required to seek prior government approval before acquiring a substantial interest in a corporation or control of an Australian business valued above certain various thresholds. All foreign government owned entities must 	

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	<p>apply to the government for approval of any acquisition of Australian assets, irrespective of the asset value.</p> <ul style="list-style-type: none"> • A foreign person with company interests of 2.5% or more in an Australian media company must notify the ACMA, with any such interests to be listed on the relevant register. • A foreign person with company interests of 10% must also register his/her interest on the Register of Foreign Ownership of Australian Assets. • The restrictions regarding the purchase of an Australian media business referred to in the pay TV matrix do not apply to OCC media businesses. • No specific restrictions on content providers other than general competition laws. 	
12. Retransmission arrangements <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> • Broadcast retransmission scheme does not apply to online retransmissions of free-to-air broadcasts. • As noted at question 10 above, amendments passed under the <u>Communications Legislation Amendment (Prominence and Anti-siphoning) Law 2024</u> (Cth) in July 2024 will oblige manufacturers of connected TV to ensure that connected TVs carry specific services (i.e. preinstall) provided by FTA TV providers – including both their linear broadcast services and their respective OCC services – and are accessible to users in a way that meets a set of ‘minimum prominence requirements’. 	
13. Consumer protection Including cooling-off period, termination rights and payment mechanism	<ul style="list-style-type: none"> • No specific rules (other than general consumer protection law, including unfair contract terms requirements which regulate, for example, terms and conditions entered into with consumers). • In November 2023, the unfair contract terms regime under the <i>Australian Consumer Law</i> (ACL) was amended in order to introduce a new prohibition in relation to the use of unfair contract terms in standard form consumer and small business contracts (which can include, for example, 	

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	<p>unilateral variation rights, unilateral termination rights and one-sided liability and indemnity provisions). Importantly, the reforms introduced include significant new pecuniary penalties in relation to the use, or proposed use, of unfair contract terms. These penalties (in the most serious cases) can be up to the greater of:</p> <ul style="list-style-type: none"> ○ \$50 million; or ○ three times the value of the benefit of the unfair contract term; or ○ 30% of the annual turnover of the body corporate in the preceding 12-month period (if the value of the benefit cannot be determined by a court). 	
14. Entering a new market: FAST TV	<ul style="list-style-type: none"> • It is open for OCC TV platforms to enter the FAST TV market – there is no specific laws regulating the entry of participants into FAST TV. • FTA TV providers have already entered the FAST TV market, with 9Now, 10Play and 7Plus all examples of OCC platforms which operate FAST TV channels alongside their traditional FTA linear broadcast offerings. • Based on our observations, other paid OCC offerings such as Netflix are moving towards cheaper (rather than free) ad supported offerings. Note that the requirements on pay TV providers to have a majority of their revenue derive from subscription fees (as opposed to ads – see the Pay TV Matrix) do not apply to OCC TV providers and thus will not operate as an impediment in relation to the entry by those OCC providers into the FAST TV market in Australia. 	
15. Data handling	<ul style="list-style-type: none"> • No data localisation obligation in Australia, although there are obligations regarding transfers of personal data overseas. • There is an exemption for media organisations in relation to certain privacy obligations, where the relevant activity is done in the course of journalism and the media 	<ul style="list-style-type: none"> • In February 2023, the Federal Attorney-General publicly released a report following the review of Australia's Privacy Act. The Federal Government then released its response to the Privacy Act Review Report in September 2023. • As part of the response, the Federal Government has agreed that the journalism exemption should continue and

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	organisation is publicly committed to observe standards that deal with privacy in the context of the activities of a media organisation.	<p>agrees-in-principle that the Office of the Australia Information Commissioner (OAIC) should develop a template privacy standard.</p> <ul style="list-style-type: none"> • The Federal Government also agreed-in-principle that, notwithstanding the operation of the journalism exemption, media organisations should be required to keep personal information secure, destroy it when it is no longer needed, and report eligible data breaches to the OAIC. • The Federal Government has committed to introducing legislation to amend the Privacy Act in 2024.
Other country-specific information not already covered		