

2024 AVIA Regulating for Growth – OCC TV Matrix for Hong Kong

Questions	OCC TV	Foreshadowed changes?
<p>1. How regulated? <i>Details of regulator/s</i></p>	<ul style="list-style-type: none"> There is generally no specific regulation of internet-based content: The Telecommunications Ordinance (Cap. 106) focuses on the means of provision of services, while the Broadcasting Ordinance (Cap. 562) specifically excludes "services provided on the service commonly known as the internet" from being classified as television programme services. In 2018, the government conducted a review of Hong Kong's existing broadcasting regulatory regime, and the regulation of internet-based content was one of the focal points. However, it was eventually concluded that internet-based TV (such as OTT and OCC TV services) should remain exempted from the licensing regime under the Broadcasting Ordinance for now. However, OCC TV services are subject to general laws, such as but not limited to those prohibiting: <ul style="list-style-type: none"> anti-competitive conduct under the Competition Ordinance (Cap. 619); the distribution of certain prohibited materials, including child pornography under the Prevention of Child Pornography Ordinance (Cap. 579) and obscene images under the Control of Obscene and Indecent Articles Ordinance (Cap. 390). materials pirated or otherwise amounting to an infringement of copyright under the Copyright Ordinance (Cap. 528) and/or the Prevention of Copyright Piracy Ordinance (Cap. 544). 	<p>None.</p>
<p>2. Copyright protection?</p>	<ul style="list-style-type: none"> The Copyright Ordinance provides for a technology neutral "communication right" that restricts unauthorised communication of a copyright work to the public through electronic or other means. Violation of the communication right may result in both civil and criminal penalties. Copyright protection is technology-neutral in relation to both traditional TV platforms and programmes that are provided solely over the internet under the "communication right". Online piracy is rampant; there is no meaningful protection against online streaming of OCC or FAST TV channels. 	<p>The Hong Kong Government expects to conduct a consultation within 2024 to explore amendments to the Copyright Ordinance in light of rapid developments in AI technology.</p>

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3. Convergence and new technologies	<ul style="list-style-type: none"> OCC TV services are specifically excluded from the broadcasting regulatory regime under the Broadcasting Ordinance. 	None.
4. Licensing of foreign channels <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> Channels broadcast under OCC TV services (whether domestic or foreign in origin) are specifically excluded from the broadcasting regulatory regime under the Broadcasting Ordinance. 	None.
5. Licence fees and taxation	None.	None.
6. Rate regulation <i>Including wholesale and retail rate regulation and whether there are any price controls on eg. basic tier</i>	None.	None.
7. Programme packaging <i>Including tiering, bundling, any mandatory a la carte</i>	None.	None.
8. Restrictions on advertising <i>Including localisation rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> No rules on localisation, revenue or minutage for advertising. However, advertisements broadcast under OCC TV services in Hong Kong are still subject to specific technology-neutral advertising regulations such as those in the Undesirable Medical Advertisements Ordinance (Cap. 231), the Public Health and Municipal Services Ordinance (Cap. 132), the Gambling Ordinance (Cap. 148), the Banking Ordinance (Cap. 155), the Smoking (Public Health) Ordinance (Cap. 371), the Residential Properties (First-Hand Sales) Ordinance (Cap 621), the Non-local Higher and Professional Education (Regulation) Ordinance (Cap 493), the Education Ordinance (Cap. 279), the Food and Drugs (Composition and Labelling) Regulations (Cap. 132W), and the Trade Descriptions Ordinance (Cap. 362). Advertisements should also not fall foul of the Control of Obscene and Indecent Articles Ordinance which regulates the circulation, etc. of any content considered indecent or obscene. Advertisements deemed to "endanger national security" are prohibited under the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region and the Safeguarding National Security Ordinance under Article 23 of the Basic Law. 	None.

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9. (a) Content regulation <i>Including local content quotas, content control and insertion of classification and other content labels into international feeds,</i>	<ul style="list-style-type: none"> No local content quotas. However, OCC TV content will be subject to the requirements under the Control of Obscene and Indecent Articles Ordinance, which regulates the publication and public display of obscene and indecent articles. In particular, the distribution of any obscene materials through a website based in Hong Kong would be an offence. Content that is deemed to "endanger national security" is prohibited under the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region and the Safeguarding National Security Ordinance under Article 23 of the Basic Law. 	None.
9. (b) Content regulation <i>Including languages, dubbing/subtitling and captioning</i>	None.	None.
10. Programme supply restrictions <i>Including must provide rules and other restrictions on exclusivity and anti-siphoning rules</i>	<ul style="list-style-type: none"> There are no specific program supply restrictions applicable to OCC TV operators. However, OCC TV operators are required to ensure that their commercial activity does not constitute anti-competitive conduct or otherwise violate any requirements under the Competition Ordinance. 	None.
11. Restrictions on FDI <i>Including platforms and wholesale supply of programming and cross-media ownership restrictions</i>	None.	None.
12. Retransmission arrangements <i>Including must carry and remuneration</i>	None.	None.
13. Consumer protection <i>Including cooling-off period, termination rights and payment mechanism</i>	<p>Under the Trade Descriptions Ordinance:</p> <ul style="list-style-type: none"> Any false trade descriptions, false marks and misstatements in respect of services sold (i.e. OCC TV services) are prohibited. All key information relating to the services should be provided to consumers (where the omission of such information would constitute a misleading omission). 	None.

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	<ul style="list-style-type: none"> The operator may not engage in aggressive commercial practices (e.g. where a customer intends to terminate a broadcasting service contract or exercise his rights under the contract, and the operator imposes non-contractual barriers that are onerous or disproportionate). <p>The Competition Ordinance also generally prohibits any anti-competitive conduct carried out by all persons, including OCC TV operators, to ensure healthy commercial competitive rivalry which will benefit consumers in the long run.</p>	
14. Entering a new market: FAST TV	No licence is required to operate a FAST TV service.	None.
15. Data handling	<ul style="list-style-type: none"> There are no data localisation requirements that may be applicable to OCC TV operators. All OCC TV operators which collect, use or transfer personal data in Hong Kong for its own purposes will be considered a “data user” and be subject to the requirements under the Personal Data (Privacy) Ordinance (Cap.486) (PDPO). In summary, all data users have to comply with the six data protection principles under the PDPO which relate to the following issues: <ul style="list-style-type: none"> - Purpose and manner of collection - Accuracy and duration of retention - Use of personal data - Data security - Openness and transparency - Access and correction <p>The PCPD recently issued the Artificial Intelligence: Model Personal Data Protection Framework (the Framework) in June 2024 to guide businesses on the use of AI in relation to personal data. While the Framework acts as a non-binding guideline for data users to practically comply with the PDPO, data users’ efforts to implement the Framework will be taken into consideration (vis-à-vis their compliance with the PDPO) in the event of an investigation.</p>	Section 33 of the PDPO regulates the transfer of personal data outside of Hong Kong, though it has not yet come into effect since the passing of PDPO in 1996. There is no announced timetable for its implementation at present, though the PCPD has stated that it will be undertaking a consultation in 2024 to propose revisions to the PDPO.
Other country-specific information not already covered	None.	None.