

2024 AVIA Regulating for Growth – OCC TV Matrix for Malaysia

Questions	OCC TV	Foreshadowed changes?
1. How regulated? <i>Details of regulator/s</i>	<ul style="list-style-type: none"> The Malaysian Communication and Multimedia Commission (MCMC), an agency under the Ministry of Communication and Multimedia, is responsible for regulating OCC TV. The Malaysian Communications and Multimedia Content Forum is the designated industry body for co-regulating content. 	<ul style="list-style-type: none"> The Home Ministry's proposal to amend the Film Censorship Act 2022 to empower the Film Censorship Board to regulate films and materials on OCC TV¹ has been met with strong public resistance, making it unlikely to move forward.
2. Copyright protection?	<ul style="list-style-type: none"> The Malaysian Copyright Act 1987 provides copyright protection to works including broadcasts. The avenue provided under the Copyright Act 1987 against an infringer includes civil and criminal actions. Copyright regulation for OCC TV content is similar to that of pay TV. A notice and takedown procedure apply to infringing online content on Malaysian websites. In 2021, the Kuala Lumpur Intellectual Property High Court declared that the acts of selling, offering for sale, distributing and supplying streaming television boxes that could provide unauthorised access to copyrighted works would constitute copyright infringement, punishable under Section 36 of the Copyright Act 1987. In 2022, the Copyright (Amendment) Act 2022 introduced Section 43AA (1)(c), which stipulates an offence relating to the sale of streaming technology that results in an infringement of copyright in a work. Anyone found guilty can be fined up to RM200,000, imprisoned up to 20 years, or both. Notably, the Ministry of Domestic Trade and Cost of Living has been proactive in enforcing this new provision. In line with these efforts, a Cyber Copyright Enforcement Programme has been established to combat digital film copyright infringement and piracy of digital films on the internet. 	N/A.

¹ <https://www.bernama.com/en/general/news.php?id=2281416>

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3. Convergence and new technologies	<ul style="list-style-type: none"> The growth of OCC TV services is heavily dependent on reliable and accessible telecommunications infrastructure and services. The Malaysian Technical Standards Forum Bhd recently published an Industry Study Report on Future Broadcasting Technology 2024. This report delves into the evaluation of technologies, particularly focusing on 5G implementation, to enhance future broadcasting and content services in Malaysia. 	N/A.
4. Licensing of foreign channels <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> OCC TV services are currently exempted from the licensing requirement. 	N/A.
5. Licence fees and taxation	<ul style="list-style-type: none"> OCC TV services are exempted from licensing as any person who provides any internet content applications services is exempted. The Royal Malaysian Customs Department's Guide on Advertising Services 2022 confirms that "<i>digital advertising</i>" qualifies as a "<i>digital service</i>" and is therefore subject to tax under the Service Tax Act 2018. 	N/A.
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"> According to the Communications and Multimedia Act 1998, a service provider may set rates in accordance with market rates. The established rates adhere to the following principles: (a) rates must be fair and not unreasonably discriminatory for similarly situated persons; (b) rates should be cost-oriented, generally eliminating cross-subsidies; (c) rates should not include discounts that unfairly prejudice the competitive opportunities of other providers; (d) rates should be structured and set at levels that attract investment into the communications and multimedia industry; and (e) rates should consider the regulations and recommendations of international organisations to which Malaysia belongs. However, the Minister may intervene to set rates for good cause or as the public interest may require. This authority has not been much used. 	N/A.
7. Programme packaging <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> No restrictions. 	N/A.

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8. Restrictions on advertising <i>Including localisation rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> The Content Code requires producers and transmitters of advertising to ensure advertisements comply with general content rules, are honest and do not concern tobacco, gambling, pornography or other prohibited content. The Malaysia Code of Advertising Practice by the Advertising Standards Authority Malaysia, provides for the regulation of commercial advertising for the supply of goods or services or the provision of facilities by way of trade. 	N/A.
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. The general rule should be no censorship of the internet, and responsibility for content provided online rests with the creator of the content. Extensive guidelines on content moderation are available for self-regulation by OCC services. Content that is indecent, obscene, false, menacing, or offensive in character, with the intent to annoy, abuse, threaten or harass any person, is generally prohibited. Content providers who do not have control or knowledge of non-compliant content will be deemed as innocent carriers. However, ISPs, content hosts and content aggregators should comply with a notice and take-down mechanism in respect of prohibited content. 	N/A.
9. (b) Content regulation <i>Including languages, dubbing/subtitling and captioning</i>	<ul style="list-style-type: none"> There are no requirements for subtitling or captioning. Service providers should exercise caution when contents include coarse language. The level of care should depend on the strength of the language, the context in which it is used, and community and cultural sensitivities. Coarse language, rude gestures, and gestures with sexual connotations must not be featured in U-rated programmes, as they can be easily imitated by young children. In P13-rated programmes, infrequent use of expletives, such as the "F" word, is permitted, provided it is not used in a contemptuous context. Stronger language is acceptable at higher ratings, with careful consideration of the degree of offensiveness and frequency of usage. 	N/A.
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 is no must carry or must provide restrictions. OCC service providers are currently exempted from the Communications and Multimedia Act 1998 competition regulation because such regulation only applies to a 'licensee'. 	N/A.

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11. Restrictions on FDI <i>Including platforms and wholesale supply of programming and Cross-media ownership restrictions</i>	<ul style="list-style-type: none"> No restrictions. 	N/A.
12. Retransmission arrangements <i>Including must carry and remuneration</i>	N/A.	N/A.
13. Consumer protection <i>Including cooling-off period, termination rights and payment mechanism</i>	<ul style="list-style-type: none"> There is a General Consumer Code of Practice issued by the Communications and Multimedia Consumer Forum of Malaysia (CMF). Compliance with the General Consumer Code is on voluntary basis. The General Consumer Code provides guidelines on termination and general procedures for customer's complaints. Section 188 of the Communications and Multimedia Act 1998 requires service providers to deal reasonably with consumers and adequately address consumer complaints. Failure to do so amounts to an offence. According to Section 17 of the Consumer Protection Act 1999, a "no refund and no cancellation" policy for future services contract is impermissible. 	N/A.
14. Entering a new market: FAST TV	<ul style="list-style-type: none"> The regulation does not make any distinction between regulation against OCC TV and FAST TV. 	N/A.
15. Data handling	<ul style="list-style-type: none"> The Personal Data Protection Act 2010 (PDPA 2010) provides that transfer of personal data out of the country may only be done to destinations that have been listed by the Minister or when subject to exceptions i.e. with consent of data subject. The Act applies to any person established in Malaysia or who uses equipment in Malaysia to process personal data. Consequently, the Act will also apply to foreign OCC TV that process personal data in Malaysia, regardless they have an actual physical presence in Malaysia. 	N/A.
Other country-specific information not already covered	N/A.	N/A.