

## Market Summary – Taiwan

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20/04/2022

## Digital Services Act

We understand that the Digital Services Act, which the NCC has as yet not formally published but is anticipated to make available in June 2022, is expected to draw substantially from the provisions of the Digital Services Act proposed by the European Commission last year. Its chief objective is to set out the responsibilities and obligations of digital service platform operators. While intermediaries such as Yahoo, Meta and Google were given an opportunity to review and provide feedback on the draft provisions, the online curated video content industry was not given such an opportunity and the assumption therefore was that SVOD would not be caught within the scope of the legislation. Discussion on the ground though seems to indicate that this is not definitive and that some of the draft provisions (which AVIA has not had sight of) might be a little too broadly constructed and SVOD could inadvertently be caught within the scope. We will monitor carefully and update you as soon as the draft becomes available.

## Internet Audiovisual Service Management Act – OTT TV Act (Part 1)

You may recall that back in September 2020, AVIA made a [submission](#) in response to the draft 'Internet Audiovisual Service Management Act' (to regulate OTT operators that provide such services in Taiwan). In the draft proposal, the NCC designed a new framework to address the competition between pay TV and OTT services, which would require the prior registration of OTT service providers subject to the NCC's approval and the full disclosure of their terms of use for consumer protection purposes. Further, certain service providers could be subject to special obligations regarding local content production. The draft was put on hold and may now be revived by June 2022. We are not aware of any substantial changes that have been made since our submission. We will keep you posted on developments.

## Copyright Amendment Act

This has been in development for some time, the intention of the Taiwan Intellectual Property Office being to bring [Taiwan's copyright regime](#) into line with best international practices given Taiwan's planned accession to the CPTTP, which it applied to join back in September 2021. Prior to the amendment, which was passed by Taiwan's Congress on 15 April 2022, and which will come into force on a date to be determined by the Government, copyright infringements were only indictable upon a complaint being made. To bring the law in line with CPTTP standards, copyright infringement will only be a non-indictable offence in certain circumstances, amongst others, where the work is provided by the copyright owner for a fee, the infringement involves exploitation of the work in its entirety and in its original form or the infringement results in NT\$ 1 million or more damage to the copyright owner. This last category may cause some difficulty as, at the commencement of any action and prior to any investigation, it will be almost impossible to establish the extent of the damage suffered by a copyright owner. One especially beneficial amendment for copyright owners however, is that the amendment would make it an act of copyright infringement for pirated goods to be advertised online.

## Retention period for programmes

**Article 39** The regulatory agency may, if it deems necessary, request a satellite broadcasting business and the branch office or agent of a foreign satellite broadcasting business to provide a program or an advertisement within 20 days after the transmission of the said program or advertisement.

You may recall that we recently made a submission on the proposed extension of retention period from 20 days to 1 year. We understand that for now, this proposal has been shelved.

07/06/2022

## [Internet Audiovisual Service Management Act – OTT TV Act \(Part 2\)](#)

As we mentioned in our last policy update email, we are awaiting the publication of both the OTT TV Act (full name: Internet Audiovisual Service Management Act) and the Digital Services Act. We are still waiting for further information on the latter although recent discussion on the ground seems to indicate that the NCC anticipates that SVOD players will not be covered by the DSA which will apply to other OTT players and intermediaries. What has been of some concern for us though is that the NCC has recently published a new draft of the OTT TV Act, which goes beyond the voluntary nature of registration within the previous draft. It imposes general obligations on all OTT players but requires compulsory registration with the NCC by those players who have a “large user base”. That term is yet undefined. An invitation-only meeting was held with the NCC yesterday (6 June 2022). Some of our members were invited to attend and we accordingly put together a list of talking points (attached above) which we hoped those members might be able to share during the meeting. There will be another opportunity to present these points in a more formal manner as we understand a public consultation will be announced with stakeholders being invited to lodge written submissions. We will touch base with those who were able to attend and report back shortly to members.

## [Channel number update \(Part 1\)](#)

We understand that NCC has proposed that TV channels should be numbered using three digits instead of the current two, apparently on the basis that the current system blocks new channels from entering the cable market. Our understanding is that the rationale mainly stems from the fact that channels starting with the digit, “1” would fall into the must-carry/family group thereby offering local operators more of an opportunity to be part of that package and potentially generate additional revenue. The Satellite Television Broadcasting Association has suggested that the two number system be retained but that channels with three numbers be added. Other stakeholders have argued that this new numbering system will in no way affect the channel line ups chosen by the cable systems. Cable Broadband Institute CEO Claudia Peng articulated her view in The Taipei Times as follows:

“We hope the commission gives cable operators more freedom to arrange channel line-ups and lifts the cap on subscription fees to facilitate competition.”

## [Appointment of Minister of Digital Affairs](#)

We understand that Audrey Wang has been appointed as the Minister of Digital Affairs, the Ministry tasked with promoting the growth of the digital economy. The Ministry is expected to be launched in July, with a definitive date to be set by Premier Su Tseng-chang. The new ministry is to integrate policies on telecommunication, information, cybersecurity, the Internet and communication industries to facilitate the nation’s digital development, the office overseeing the setup of the Ministry, said. It remains unclear as to how this new Ministry will collaborate with the NCC and we understand this is still under discussion.

15/06/2022

## [Internet Audiovisual Service Management Act – OTT TV Act \(Part 3\)](#)

We had mentioned in the previous update that the NCC was due to have a meeting of industry stakeholders in Taiwan on 6 June 2022. You will recall that AVIA pulled together a few talking points (attached for ease of reference) about our concerns regarding the new proposals and asked those of our members who had been invited to attend that meeting, to raise those points on our behalf. We have now received feedback from that meeting and while there are certainly areas we would like to have addressed immediately, there seems to be clear consensus amongst the meeting attendees that the NCC is not open to further engagement with the industry until the new draft is published and stakeholders have been invited to lodge formal comments. A few key points to note from the meeting:

As we mentioned in our policy update, OTT players with “a large subscriber base” would be subject to additional obligations under the amended draft Internet Audiovisual Service Management Act – The question of what might constitute “a large subscriber base” was unclear in the original draft. NCC has now indicated that it envisages this term applying to service providers who: (i) have 1 million subscribers or more; (ii) are considered to be within the top 3 video service providers in Taiwan and (iii) offer a service which has the potential to affect the well-being or welfare of the general public. Our members are of the view that this proposal is largely rooted in the NCC’s eagerness to ensure a level-playing field with the local operators given its perception of the strength of market power and unlimited resources of the larger video service providers. We anticipate that the draft will be published by the end of June after which we will have at least 60 days in which to provide a formal written submission on behalf of our members.

## [Channel number update \(Part 2\)](#)

A further consultation was held with industry recently. Our understanding from members is that, despite industry recommendations that this initiative be abandoned, the NCC is still keen to move ahead with this proposal and has suggested two options to ensure viewers are not caught offguard during the transition- (a) the first is to allow the current and new cable numbering systems to coexist for two to three years, so if people want to watch TVBS on Channel 56, they can press either 56 or 556; (b) the second is to allow people to watch TVBS on Channel 556 by pressing only 56. No specific timeline for the transition to the new system has yet been indicated.

## [Music rights](#)

This is an issue which we did not address in the update, but which has recently been the subject of debate between local industry and the MUST. We understand that MUST is set on introducing a mechanism whereby OTT service providers will be required to pay 3.5% of total revenue for music contained on their platforms. We know that the OTT TV Association has been lobbying TIPO to review this 3.5% rate, but we have no clear insight into the OTT TV Association’s counter-proposal. We have heard speculation that a sliding scale may be one of the options with 3.5% only payable by the “bigger companies” but this remains unconfirmed so we will continue to monitor closely and keep you updated.

18/08/2022

## [Digital Intermediary Service Act](#)

The NCC, on 29 June 2022, released the [Draft Digital Intermediary Service Act](#) (formerly known as the Digital Communication Service Act). The deadline for submissions would be 29th of August (60 days). We understand from some of our members that, while our members' video on demand services are not formally regulated by the DISA, the NCC may use DISA as a reference point on how to impose obligations and penalties which could lead to a further amendment of the OTT TV Act. It has been our understanding that DISA is clearly targeted at social media/tech companies while OTT players are covered within the scope of the OTT TV ACT. That is not clearly expressed in any of the drafts and it may well be that a submission may be necessary to request confirmation and to ensure that our members are not inadvertently caught within the scope of both pieces of legislation. We are liaising with our members on the ground and will keep you posted on what may be the best way forward.

12/12/2023

## [Internet Audiovisual Service Management Act – OTT TV Act \(Part 4\)](#)

As you will recall from previous updates, Taiwan continues to talk about the OTT TV Act and, whilst it still remains very vague in terms of what it might cover and when it might progress, it is clear that the NCC are still keen to move forward with some form of regulation. We took the opportunity of having Commissioner Wang in Singapore last week to organise a small meeting for interested members, at which we raised the issue of the OTT TV Act and under-scored the value of a self-governance, or light touch, approach. Whilst Commissioner Wang did state that the OTT TV Act is still on the table, she noted there were a number of outstanding questions for the NCC to consider before they issued a draft. Of those outstanding questions, it is clear they are still considering the question of local content quotas and the need for registration. It is also clear they are not including user generated content; this Act will be clearly aimed at SVOD and is ostensibly being driven by a “consumer-safety” perspective. On the plus side, there will be a 60-day consultation period once the draft is issued. We will continue to monitor these discussions, as far as possible, and will continue to promote the value of a self-governance approach.

12/03/2024

## [OTT TV Act \(Part 5\)](#)

For those of you who joined the meeting that we hosted in Singapore in December with the NCC, you may recall that Commissioner Wang Yi-Hui noted that the OTT TV Act was still under active consideration by the NCC although unlikely to move forward until after the election dust settled. The Taiwanese elections have now concluded, so we anticipate organising a visit to Taipei to meet with the NCC in the next couple of months. We understand that the NCC has re-started their “questionnaire” approach to a few members, asking for apparently innocuous feedback, all of which suggests that the OTT TV Act is being discussed again. We hope that by visiting Taipei soon, we will be able to focus their attention on some of the key issues of concern, including local content quotas and a registration process. There will also be the chance for additional written feedback once any draft OTT TV Act is issued for consultation.

03/07/2024

## [Appointment of new NCC Commissioners](#)

As you may recall the National Communications Commission (NCC) was due to go through its periodic change, with a number of Commissioners, including the Chairman, reaching their end of term. The new Chairman and Commissioners have been nominated but require legislative approval before they can take up their roles on 31 July. Unfortunately, this process has subsequently fallen foul of ongoing political tensions with the opposition deploying a number of tactics to delay the nomination approvals and proposing amendments to the NCC Organisation Act to prevent automatic extension of Commissioner terms if the new Commissioners are not approved. We understand the motivation behind this approach is to try and ensure a more even political split of Commissioners, as well as use it for political leverage in other areas. As of today the nominations have not been advanced and it is possible that new nominations will instead be forthcoming. So at this stage it is not clear what the outcome will be, or when. We will continue to monitor this, not least as we are keen to engage with the new NCC Commissioners as soon as possible, but probably not before September now.

16/12/2024

## [Appointment of new NCC Commissioners & Amendment of NCC Organisation Act \(Part 2\)](#)

Whilst Taiwan remains a market that we are keen to actively engage with from a regulatory perspective, given their continued focus on a possible OTT TV Act, the political standoff post the election, has resulted in a change to the NCC Act, removing the automatic extension of term for NCC Commissioners. This has meant that there are now only 3 out of 8 Commissioners who remain in post, which does not give them a quorum. It is unclear when new Commissioners will be identified or approved. We were honoured to have one of the 3 Commissioners attend the Policy Roundtable so we were able to renew our relationship with them and continue raising key points about the value of self-regulation for the Online Curated Content industry.