



## 2024 AVIA Regulating for Growth – OCC TV Matrix for New Zealand

Questions	OCC TV	Foreshadowed changes?
1. How regulated? <i>Details of regulator/s</i>	<ul style="list-style-type: none"> <li>• <b>Advertising Standards Authority (ASA)</b> is an industry created body that self-regulates most advertisements. The ASA creates Codes of Practice and issues Guidelines around those Codes, and has a Complaints Board that can determine complaints within the ASA's <a href="#">jurisdiction</a> and an Appeal Board that can hear appeals from the Complaints Board.</li> <li>• <b>Broadcasting Standards Authority (BSA)</b> is a government agency that can determine complaints around advertisements alleged to breach the Code of Broadcasting Standards that have been broadcast on television (excluding on demand services). There is also a specific <a href="#">Pay Television Code</a> administered by the BSA.</li> <li>• <b>Commerce Commission</b> is a government agency that monitors and can enforce breaches of the Fair Trading Act 1986 (misleading and deceptive conduct) and some other specialist statutes. The Commission has recently taken action in respect of advertisements around telecommunications and homeware/building supplies.</li> </ul>	<ul style="list-style-type: none"> <li>• In 2017 the Digital Convergence Bill was paused.</li> <li>• In 2023 there was a recommendation by the Department of Internal Affairs for a single regulator that would monitor and regulate all forms of media and online content. The BSA also recommended statutory/regulatory amendment. However, the new National-led government has decided not to proceed with this proposal, given its views on regulating speech.</li> </ul>
2. Copyright protection?	<ul style="list-style-type: none"> <li>• Copyright Act 1994 provides strong protection of copyright material in New Zealand.</li> <li>• Recent amendments in 2022 as a result of free trade agreements have strengthened protections of communicating sound recordings (Section 174B).</li> <li>• Amendments in 2008 imposed prohibitions on Technological Protection Measures (TPMs) circumventions, and those prohibitions have been enforced to block advertising streaming devices (Kodi boxes) intended to circumvent subscription TV services. But loopholes permit the use of VPNs to avoid geoblocking.</li> <li>• Amendments in 2011 created a graduated response mechanism to address online copyright infringement. However, due to the cost, that mechanism has been used infrequently.</li> </ul>	<ul style="list-style-type: none"> <li>• In 2018-2021, there was a <a href="#">Review of the Copyright Act 1994</a>. That review potentially heralded a significant upgrade of protections and making many of the provisions technologically neutral.</li> <li>• However, that review has been put on hold and has not progressed.</li> </ul>

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3. Convergence and new technologies	<ul style="list-style-type: none"> <li>No restrictions.</li> <li>A number of streaming platforms and online services have entered the market recently.</li> </ul>	
4. Licensing of foreign channels <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>Unregulated.</li> </ul>	
5. Licence fees and taxation	<ul style="list-style-type: none"> <li>For linear television or streaming services, the broadcaster has to pay a levy to the BSA if the broadcaster's total revenue from broadcasting in New Zealand exceeds \$500,000. <a href="#">The levy to the BSA is calculated as total review x 0.00051</a>. For on-demand services, no levy is payable.</li> <li>Goods and Services Tax (GST) of 15% applies to online services, which include OCC TV services, sold by overseas businesses. Offshore suppliers are required to register and return GST if their supplies of services to New Zealand-resident consumers exceed the threshold of NZ\$60,000 in a 12-month period.</li> </ul>	<ul style="list-style-type: none"> <li>The new Media and Communications Minister has <a href="#">noted</a> that the playing field needs to be levelled between traditional media and streaming providers but has yet to identify what that might mean. It may be that an option will be to impose a licence fee on overseas OCC TV services to be used to support domestic OCC TV services or New Zealand-created programming.</li> </ul>
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"> <li>None.</li> </ul>	
7. Programme packaging <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>No restrictions.</li> <li>There is a common practice of broadband providers bundling broadband services with streaming services for a period of time.</li> </ul>	
8. Restrictions on advertising <i>Including localisation rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>Restrictions on advertising are through: <ul style="list-style-type: none"> <li>ASA's Codes, provided the OCC TV provider is a member of the ASA;</li> <li>BSA's Standards, which apply regardless of membership but do not apply to on-demand content;</li> <li>Consumer protection legislation (e.g. Fair Trading Act, Consumer Guarantees Act); and</li> <li>Sector-specific legislation or rules (e.g. Smokefree Environment Act, Gambling Act, Australia New Zealand Food Standards Code)</li> </ul> </li> <li>No regulatory limits on minutage.</li> </ul>	

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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"> <li>No local content quotas.</li> <li>Content Control: no content control other than self-agreed content control.</li> <li>Classification: no classification required, although some providers have agreed to apply classifications either in accordance with the Broadcasting Standards or the New Zealand Media Council's Video-on-Demand Classification Code.</li> </ul>	<ul style="list-style-type: none"> <li>Local quotas: <ul style="list-style-type: none"> <li>With advertising spend in television media being impacted in New Zealand, there has been some suggestions by commentators that a local quota should be applied to all media.</li> <li>The new Media and Communications Minister has <a href="#">noted</a> that the playing field needs to be levelled between traditional media and streaming providers but has yet to identify what that might mean.</li> </ul> </li> <li>Content regulation: <ul style="list-style-type: none"> <li>See above, the Department of Internal Affairs' Review recommend a single regulator with updated and coherent legislation. However, that Review will not be adopted by the current National-led government.</li> </ul> </li> </ul>
9. (b) Content regulation <i>Including languages, dubbing/subtitling and captioning</i>	<ul style="list-style-type: none"> <li>No requirements for captioning.</li> <li>National broadcasting support fund NZ On Air: <ul style="list-style-type: none"> <li>contributes \$2.8 million annually to funding programming for minority and disabled audiences, such as captioning on selected programmes; and</li> <li>requires all programmes it funds to be captioned.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>In 2017 the then-Labour led government issued its <a href="#">Inquiry into Captioning in New Zealand</a> recommending that captioning would be required for NZ On Air funding.</li> <li>In 2019 there was a public petition from the National Foundation of the Deaf calling on mandating captioning.</li> <li>To date, there is no suggestion that captioning will be mandated by the government.</li> </ul>

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10. Programme supply restrictions <i>Including must provide rules and other restrictions on exclusivity and anti-siphoning rules</i>	No restrictions.	
11. Restrictions on FDI <i>Including platforms and wholesale supply of programming and Cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>No limit on FDI in platforms. Government review/consent based on transparent, non-restrictive criteria, including, relevantly, where a 25% or more ownership interest is being acquired in business assets valued at over NZD\$100 million. That criteria involves assessing whether the ownership is in the national interest.</li> <li>No limits on wholesale provision of TV programming for foreign entities.</li> <li>No cross-media ownership restrictions.</li> </ul>	
12. Retransmission arrangements <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>No requirements.</li> </ul>	
13. Consumer protection Including cooling-off period, termination rights and payment mechanism	<ul style="list-style-type: none"> <li>OCC TV is covered by general consumer protection legislation, including the Fair Trading Act and Consumer Guarantees Act.</li> <li>Consumers may report to the New Zealand Commerce Commission any unfair terms in standard form contracts for services even if those contracts are said to be governed by another country's law. The Commission may report these complaints to a court which has the power to prohibit the use of the term.</li> </ul>	
14. Entering a new market: FAST TV	No restrictions.	

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15. Data handling	<ul style="list-style-type: none"> <li>• All personal information collected about New Zealanders by a New Zealand or overseas agency carrying on business in New Zealand is subject to the Privacy Act 2020.</li> <li>• The Privacy Act places <a href="#">limits on what information may be collected, retained, used and disclosed and to whom that information may disclosed to</a>. The Privacy Act requires that when collecting and using personal information, the person must know that their information is being collected, why it is being collected, how it will be used and where it will go including how it will be stored.</li> <li>• The Privacy Act applies to personal information held outside New Zealand and also places significant restrictions on transferring personal information outside New Zealand. The Privacy Act also impose obligations on storage of that information requiring “security safeguards as are reasonable” to prevent loss, access, use, modification and other misuses.</li> </ul>	
Other country-specific information not already covered	<ul style="list-style-type: none"> <li>• Where the OCC TV service is using an online platform the service will be an “online content host” and subject to the <a href="#">Harmful Digital Communications Act 2015</a>. The Harmful Digital Communications Act prohibits disclosure of communications that causes harm to a person and would cause harm to an ordinary reasonable person.</li> </ul>	