

### 2024 AVIA Regulating for Growth – OCC TV Matrix for the Philippines

Questions	OCC TV	Foreshadowed changes?
<p>1. How regulated? <i>Details of regulator/s</i></p>	<ul style="list-style-type: none"> <li>Established in June 2016, the Department of Information and Communications Technology (DICT), together with the National Telecommunications Commission (NTC) and other agencies attached to them, are the Philippine administrative entities that have oversight and central charge over planning, developing, and promoting Information and Communication Technologies (ICT), which includes Online Curated Content (OCC). Despite the thriving free and pay-OCC industry in the Philippines, the DICT has yet to issue rules and regulations governing OCC-services. The proposed NTC implementing guidelines for OTT/OCC providers failed to be finalised.</li> </ul>	<ul style="list-style-type: none"> <li>In 2019, iWant, an OCC provider owned by ABS-CBN Corporation, a well-known media corporation in the Philippines, signed the ASEAN Subscription Video-on-Demand Industry Content Code for Self-Regulation of OCC Platforms. As long as there are no state regulations for OCC content and the MTRCB's jurisdiction has not been expanded to cover online content, it is likely that the OCC industry will remain self-regulated and adopt the ASEAN Code or similar codes.</li> <li>Lawmakers have proposed that the Movie and Television Review and Classification Board (MTRCB) be empowered to regulate and censor movies and programmes streamed through OCC providers. In the meantime, the MTRCB acknowledges that the current law is unclear as to whether OCC programmes fall within its mandate and presently does not screen/classify online content. It may be anticipated that any OCC regulation will include technological standards which may mirror the content classification ratings of the MTRCB.</li> </ul>
<p>2. Copyright protection?</p>	<ul style="list-style-type: none"> <li>Copyright protection is granted in the Philippines without need of prior registration. Current laws do not specifically provide for infringement of copyrighted material accessed through OCC platforms; general copyright law shall apply.</li> </ul>	<ul style="list-style-type: none"> <li>Telecommunications networks are now involved in the push towards appropriate OCC regulation, especially in terms of online pirated content. Such participation could be a driving force to expedite the DICT's or NTC's active regulation of OCCs.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Copyright infringement is the violation of the economic or moral rights of the copyright holder. One of the economic rights of the copyright holder is the right to communicate his/her work to the public. Under R.A. 10372 amending R.A. 8293 or the Philippine Intellectual Property Code (IP Code), communication to the public means any communication to the public, including broadcasting, rebroadcasting, retransmitting by cable, broadcasting and retransmitting by satellite, and includes the making of a work available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them.</li> <li>• The IP Code punishes: (i) direct infringement; (ii) knowingly benefitting from an infringing activity; and (iii) knowingly contributing to the infringing conduct of another. Penalties for administrative, criminal, and civil copyright infringement include injunction, payment of fines, seizure and impounding of prohibited materials, destruction of prohibited materials, and imprisonment (for criminal cases only).</li> <li>• Most government efforts in updating laws/rules on copyright enforcement are targeted towards online infringement and addressing copyright issues on new technology platforms.</li> <li>• Under the implementing rules and regulations of Republic Act No. 10175 or the “Cybercrime Prevention Act of 2012” and of Republic Act No. 8792 or the “Electronic Commerce Act”, a service provider merely providing access to computer data shall not be criminally or civilly liable for the making, publication, dissemination, or distribution of computer data or any statement made in such computer data, including possible infringement of any rights subsisting in, or in relation to, such computer data, provided that: (i) they had no actual knowledge that the act is unlawful; (ii) they did not knowingly receive financial benefit directly attributable to the unlawful or infringing activity; and (iii) they did not directly commit any infringement or unlawful act, nor induce another to commit the same.</li> <li>• The Cybercrime Prevention Act of 2012 imposes a higher penalty for crimes committed using information and communication technologies, including violations of the Intellectual Property Code (IP Code). Violations may be</li> </ul>	<ul style="list-style-type: none"> <li>• With the recent bills seeking the taxation of OCCs/OTTs, it is also likely that the future OCC regulation will be driven by the government’s need to generate income.</li> <li>• Various ASEAN countries have also been lobbying for OCC regulations. In Singapore, the High Court has issued site-blocking orders against several online platforms streaming pirated content. In Bangkok, streaming platforms must inform the National Broadcasting and Telecommunications Commission of their business details, and in turn, the Commission shall issue them permits to operate. In Indonesia, censorship measures are being put in place to regulate OCCs. Considering the sociopolitical climate in the Philippines, the country would do well to adopt the site-blocking orders of the Singaporean government in regulating the OCCs consumed by the Filipino public. In fact, consumer advocacy groups such as Citizens Watch Philippines share the same sentiment, since site-blocking has proven to be widely effective in other jurisdictions in mitigating the negative effects of online piracy.</li> <li>• Proposed amendments to R.A. 8293 allowing for specific regulatory site blocking provisions, passed through the House of Representatives in 2023. Mirror legislation, SBN 2651 is now at the Hearing stage in the Senate and is expected to pass before the term of the current Congress ends.</li> </ul>

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	<p>reported with the Department of Justice (DOJ), National Bureau of Investigation (NBI), or Philippine National Police (PNP).</p> <ol style="list-style-type: none"> <li>i. A complainant may file a report complaint with the DOJ Office of Cybercrime. The DOJ will issue preservation orders addressed to the service provider upon request of the NBI/PNP. The respondent will be summoned for further investigation. The DOJ/NBI/PNP will also conduct further forensic examination. Upon finding merit in the complaint, the DOJ/NBI/PNP shall file complaints with the National Prosecution Service.</li> <li>ii. To report a cybercrime with the NBI, the complainant will undergo preliminary interview and investigation. Upon finding merit, the NBI will issue an Authority to Investigate to gather evidence. Reporting of cybercrimes with the NBI may also be done through electronic mail.</li> <li>iii. To report a cybercrime with the PNP, the complainant will submit an incident report which will be referred to the Cyber Response Unit, Women and Children Cybercrime Protection Unit, and Cyber Financial Crime Unit, whichever is applicable. The unit concerned will proceed to gather evidence and apply for the necessary warrant with the court.</li> </ol> <ul style="list-style-type: none"> <li>• The recently enacted Internet Transactions Act imposes a subsidiary liability on the part of digital platforms if they fail, after notice, to act expeditiously in removing or disabling access to services that either infringe on another's intellectual property rights or is subject to a takedown order by an appropriate government agency. (Section 26 (b), R.A. 11967). Nonetheless, subject to the promulgation of the implementing rules, it remains to be seen to what extent will the Internet Transaction Act will affect the OCC TV business.</li> <li>• Intellectual Property Office of the Philippines (IPOPHL) Memorandum Circular No. 2023-025 authorises the IPOPHL to issue site blocking or takedown orders against ISPs where the infringing material is posted or uploaded. Under the Memorandum Circular, a pirated website is defined as a website that has the primary purpose or effect of infringing copyright or facilitating copyright infringement and/or that contains goods, materials, or contents which are made, produced, or replicated, without the consent of</li> </ul>	<ul style="list-style-type: none"> <li>• OCC providers themselves may incorporate their own copyright infringement policy into their subscription agreements/terms of service and implement the same as a contractual obligation with provisions on a voluntary dispute resolution process.</li> </ul>

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	<p>the copyright owner, rights holder, or person duly authorized by the rights holder. Based on a meritorious complaint, the Supervising Director of the Intellectual Property Rights Enforcement Office of the IPOPHL (IEO-IPOPHL) may issue a request to an ISP to block or disable the access to the pirated website. If the ISP does not comply, the matter shall be referred to the NTC for appropriate action. As a safeguard, the Memorandum Circular provides for a safe harbor provision wherein no administrative, criminal, or civil proceedings shall lie against the ISP/s in the regular performance of its duties done in good faith provided:</p> <ul style="list-style-type: none"> <li>○ The ISP/s does not have actual knowledge or is not aware of the facts or circumstances from which it is apparent, that the making, publication, dissemination, or distribution of such material is unlawful or infringes any rights subsisting in or in relation to such material;</li> <li>○ The ISP/s does not knowingly receive a financial benefit directly attributable to the unlawful or infringing activity, and</li> <li>○ The ISP/s does not directly commit any infringement or other unlawful act and does not induce or cause another person or party to commit any infringement or other unlawful act and/or does not benefit financially from the infringing activity or unlawful act of another person or party.</li> </ul> <ul style="list-style-type: none"> <li>• The IPOPHL has also signed Memorandum of Understanding with players belonging to different industries, such as e-commerce platforms, healthcare providers, and entertainment and media companies, to facilitate cooperation in proactive monitoring and enforcement of intellectual property rights.</li> <li>• At present, the NTC has no specific set of rules or guidelines regarding procedures for the takedown of online pirated content. However, Republic Act 7925 authorises the NTC to collaborate with government agencies to promote intellectual property rights and protect the public from consuming pirated content. Hence, the NTC may do so in the exercise of its regulatory powers.</li> </ul>	

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3. Convergence and new technologies	<ul style="list-style-type: none"> <li>Neither the DICT nor the NTC have developed a specific framework or system of rules for regulating OCCs. Thus, technology development remains unhampered by restrictive regulation but limited by the capacity of private stakeholders.</li> <li>At present, various big players in the OCC industry have already launched their streaming platforms in the Philippines, making it an active and competitive OCC market.</li> </ul>	
4. Licensing of foreign channels <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>Allowed. No regulations.</li> </ul>	
5. Licence fees and taxation	<ul style="list-style-type: none"> <li>Under Republic Act No. 12023, which amended the National Internal Revenue Code, any person who, in the course of trade or business, leases goods or properties, renders services, including digital services, and any person who imports goods (the “digital service provider”) shall be subject to twelve percent (12%) value-added tax (VAT) based on the gross sales derived from the sale or exchange of services, including digital services, and the use or lease of properties.</li> <li>Digital services shall refer to any service that is supplied over the internet or other electronic network with the use of information technology and where the supply of the service is essentially automated. It includes (a) online search engine, (b) online marketplace, (c) cloud service, (d) online media and advertising, (e) online platform, and (f) digital goods. It does not include (a) educational services rendered by private educational institutions, duly accredited by the Department of Education (DepEd), the Commission on Higher Education (DepEd), the Commission on Higher Education (CHED), the Technical Education and Skills Development Authority (TESDA), and those rendered by government educational institutions; and sale of online subscription-based services to DepEd, CHED, TESDA, and educational institutions recognized by said government agencies, and (b) service of bank, non-bank financial intermediaries performing quasi-banking functions, and other non-bank financial intermediaries, including those rendered through different digital platforms.</li> </ul>	

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	<ul style="list-style-type: none"> <li>The digital service provider, whether resident or non-resident, shall be liable for assessing, collecting, and remitting the value-added tax on the digital services consumed in the Philippines. In line with this, digital service providers are required to register with the Bureau of Internal Revenue (NIRC), either electronically or manually, for value-added tax.</li> <li>Non-resident digital service providers, which pertains to those that do not have physical presence in the Philippines, shall be liable for the remittance of value-added tax on the digital services that are consumed in the Philippines, if the consumers are non-VAT registered. However, if the consumers are VAT-registered, the consumer shall be liable to withhold and remit the value-added tax due on its purchase of digital services consumed in the Philippines from non-resident digital service providers to the Bureau of Internal Revenue. Digital services delivered by non-resident digital service providers shall be considered performed or rendered in the Philippines if the digital services are consumed in the Philippines. Failure to comply with the registration requirement shall result in the blocking of digital services performed or rendered in the Philippines by a digital service provider implemented by the DICT through the NTC. Failure to file the tax return or pay the correct tax shall result to imposition of penalties prescribed under the NIRC.</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>No regulations.</li> </ul>	
7. Programme packaging <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>No regulations.</li> </ul>	
8. Restrictions on advertising <i>Including localisation rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>No restrictions.</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>Child pornography on the internet is prohibited. NTC Memorandum Circular No. 03-07-2015 in relation to Memorandum Circular No. 0101-2014, requires Internet Service Providers (ISPs) to install technology, programs or software that will block access or filter all websites carrying child pornography materials.</li> <li>Department of Information and Communications Technology (DICT) issued Circular No. 015, series of 2020 entitled "Prescribing the Child Online Safeguarding Policy for the Free Internet Access in Public Places Program Under Republic Act No. 10929" which provides that owners of content that may be accessed online through free public internet under the FIAPP Program must, among others, comply with the prohibitions against child pornography under Republic Act No. 9775 or the "Anti-Child Pornography Act of 2009"; ensure that their content, material, goods or services that are inappropriate for children or otherwise regulated are marked as such online and made available only after effective age verification.</li> <li>Penal laws against libel, obscenity and sedition, among others, also apply to content on the internet or made available through ICT, by virtue of the Cybercrime Prevention Act of 2012.</li> <li>No other general regulation.</li> </ul>	
9. (b) Content regulation <i>Including languages, dubbing/subtitling and captioning</i>	<ul style="list-style-type: none"> <li>None</li> </ul>	
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"> <li>No regulations.</li> </ul>	

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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"> <li>It is still unclear whether OCCs are classified as mass media, or as part of telecommunication services. Consequently, investment rules are uncertain. If OCC services are deemed mass media services, then no FDI is allowed in entities engaged in such. However, if it is part of telecommunications, 100% FDI would be allowed. Under Republic Act No. 11659 which amended Commonwealth Act No. 146 or the Public Service Act, telecommunications are now categorised as public service, which can have 100% foreign ownership.</li> <li>The Securities and Exchange Commission (SEC), however, considers internet or online media as mass media subject to the zero foreign equity restriction under the Philippine Constitution.</li> <li>In practice, OCC services are currently operated under telecommunication rules and regulations.</li> </ul>	
12. Retransmission arrangements <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>No retransmission requirements.</li> </ul>	
13. Consumer protection <i>Including cooling-off period, termination rights and payment mechanism</i>	<ul style="list-style-type: none"> <li>The DICT is empowered by law to promulgate rules and regulations for consumer protection in ICT services. However, the DICT has yet to issue rules specific to OCC service providers. Nonetheless, general consumer protection provisions under the Consumer Act of the Philippines, particularly against unfair or unconscionable acts of service providers, should apply to OCCs.</li> </ul>	
14. Entering a new market: FAST TV	<ul style="list-style-type: none"> <li>Since 2022, media corporations have introduced FAST-oriented streaming services into the country. However, the NTC and MTRCB have yet to issue guidelines in relation to FAST TV and content regulation thereon.</li> </ul>	<ul style="list-style-type: none"> <li>Since FAST TV services is analogous to cable, satellite, or traditional TV albeit streamed online, it will likely be regulated similar to other OCC media providers.</li> </ul>
15. Data handling	<ul style="list-style-type: none"> <li>No data localisation requirements.</li> <li>OCC providers must comply with standard data protection requirements under Republic Act 10173 or the Data Privacy Act of 2012.</li> <li>The Department of Information and Communications Technology (DICT) issued Circular No. 015, series of 2020 entitled “Prescribing the Child Online Safeguarding Policy for the Free Internet Access in Public Places Program Under Republic Act No. 10929” which provides that any person who operates an online service, domain or web site located on the Internet, and who</li> </ul>	



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	<p>collects or maintains personal information from or about the users of or visitors of such online service, domain or web site, or on whose behalf such information is collected or maintained, or offers products or services for sale through that online service, domain or website, where such online service, domain or web site may be accessible through the free public Internet under the FIAPP programme, must provide notice on the type of information it collects from children and how it uses the same; obtain verifiable parental consent prior to such collection, use or dissemination; provide reasonable means for parental review or refusal of permission; and establish and maintain reasonable procedures to protect the security of information collected from children, among others.</p>	
Other country-specific information not already covered		