

2024 AVIA Regulating for Growth – OCC TV Matrix for South Korea

Questions	OCC TV	Foreshadowed changes?
<p>1. How regulated? <i>Details of regulator/s</i></p>	<ul style="list-style-type: none"> OCC is interpreted as being outside the scope of broadcasting services as defined under the existing Broadcasting Act or the recently enacted Internet Multimedia Broadcasting Business Act (IMBBA) but is defined as a “value-added communications service” under the Telecommunications Business Act (TBA). However, OCC services are still relatively new and are currently not subject to explicit regulation. Since OCC services do not fall under the categories of ‘broadcast’ or ‘IPTV broadcast,’ OCC services are not subject to broadcasting laws and their regulation on market shares, fees, channel allocation, mandatory channels for public service delivery, content, and advertising. All OCC TV is subject to the content regulations provided under the Act on Promotion of Information and Communications Network Utilisation and Information Protection (Communications Network Act or CNA). The Korea Media Rating Board (KMRB) has designated OCC as a self-rating classification operator, and OCC assigns its own age ratings according to the KMRB's classification standards. As a service provider that transmits copyrighted works through the information and communications network, the OCC service provider is classified as an online service provider pursuant to the Copyright Act (Article 2(30) of the Copyright Act). The Ministry of Culture, Sports and Tourism regulates matters related to the Copyright Act. 	<ul style="list-style-type: none"> Due to the rapid growth of the OCC TV market, the issue of reverse discrimination against pay TV service providers was raised. Under the premise that OCC services are similar to broadcasting services, discussions have continued to take place to apply the Broadcasting Act to OCC businesses. For example, there have been ongoing discussions on the regulatory update to classify OCC services as broadcasting services through the enactment of the “Integrated Media Act” which encompasses all traditional and new media such as pay TV, OCC, etc. However, there are concerns that regulating OCC TV services may lead to issues of reverse discrimination against foreign operators. The key topics under discussion for the “Integrated Media Act” are as follows: <ol style="list-style-type: none"> (1) Granting OCC service providers the same status as a broadcasting service provider (Equal regulation for the same service); [KCC Key Operational Plan, p. 7] (2) Allowing bundled sales of broadcast and online advertisements; [KCC Key Operational Plan, p. 8] (3) Enhancing monitoring of unfair price increases on OCC platforms; [KCC Key Operational Plan, p. 10]

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2. Copyright protection?	<ul style="list-style-type: none"> Copyright laws protect online content. Online piracy remains a major problem, although the government has recently implemented a number of policies to address this problem. In particular, the Ministry of Culture, Sports and Tourism has utilised its site blocking powers against infringing offshore websites, as permitted by Korean copyright law. Should pirated content be transmitted through the information and communications network, the OCC service provider shall take the corrective measures ordered by the Minister of Culture, Sports and Tourism by (i) warning reproducers and interactive transmitters of pirated contents and (ii) deleting or suspending the interactive transmission of pirated contents (Article 133-2 of the Copyright Act). The Ministry of Culture, Sports and Tourism has previously requested the KCSC to block domestic internet access to foreign streaming link sites that massively infringe copyright through internet link methods, and such sites have been blocked accordingly. 	<ul style="list-style-type: none"> Discussions have continued to take place among various institutions on the necessity of amending the Copyright Act (e.g., establishing claim rights for additional compensation for creators), given the rapid growth of the OCC TV market. Starting July 2024, CDN operators with annual sales of over 1 billion KRW will be responsible for preventing the distribution of illegal information, including copyright-infringing content For habitual and commercial copyright infringement, the sentencing guidelines will be raised (from the current 1-3 years to up to the statutory maximum of 5 years), and a punitive damages system will be introduced for intentional copyright infringement (up to three times the damages incurred by the rights holder) [Development Plan p. 25]
3. Convergence and new technologies	<ul style="list-style-type: none"> As noted above, OCC services are classified as value-added communications services regulated under the TBA. Thus, to establish and provide OCC services in Korea, it is sufficient to only complete the report required for value-added communications services under the TBA. Since OCC service providers are not subject to the Broadcasting Act, it is easier for them to implement the new technology compared to that of the traditional pay TVs. 	
4. Licensing of foreign channels <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> Unregulated 	<ul style="list-style-type: none"> The government is considering expanding the Broadcasting Development Fund, imposed on pay TV operators, to include domestic and foreign OTT services.
5. Licence fees and taxation	<ul style="list-style-type: none"> Unregulated 	

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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"> The TBA prohibits actions that significantly harm the interests of telecommunications users, such as providing telecommunications services in a manner that is detrimental to users and failing to explain or notify users of important matters such as service charges, contractual terms, and discounts (TBA, Art. 50; The Enforcement Decree of the TBA 42). 	<ul style="list-style-type: none"> The KCC is conducting a factual investigation into potential violations of the TBA prohibited activities, focusing on the details of price increases, terms of use, and user notifications by major OCC operators like Netflix.
7. Program packaging <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> Unregulated 	
8. Restrictions on advertising <i>Including localisation rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> Unregulated 	
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"> Since OCC content is not classified as “broadcasting” under the current law, it is not subject to the “Regulations on Review of the Broadcasting” which are the standards for assessing the broadcasting programmes. OCC TVs are subject to internet content regulations in the CNA, the Act on the Establishment and Operation of Korea Communications Commission, Regulations on Evaluation of Information and Communications, and the Copyright Act. Thus, unlawful content such as sexually indecent content, defamatory content, media content harmful to underage audiences and content in violation of the Copyright Act are prohibited. These rules are enforced by the KCC and the Ministry of Culture, Sports and Tourism. The law does not distinguish between local and offshore OCC services and the KCC and KCSC may block an offshore OCC service which does not comply with the relevant content rules. The Korea Media Rating Board (KMRB) has designated OCC as a self-rating classification operator, and OCC assigns its own age ratings according to the KMRB's classification standards. 	
9. (b) Content regulation <i>Including languages, dubbing/subtitling and captioning</i>	<ul style="list-style-type: none"> Unregulated. 	

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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"> Unregulated. 	
11. Restrictions on FDI <i>Including platforms and wholesale supply of programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> Unregulated. 	
12. Retransmission arrangements <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> Unregulated. 	
13. Consumer protection <i>Including cooling-off period, termination rights and payment mechanism</i>	<ul style="list-style-type: none"> Users of OCC services are classified as consumers and thus, the users are protected under general consumer-related legislation, including the Framework Act on Consumers and the Act on the regulation of Terms and Conditions. The TBA sets obligations for telecommunications operators to protect users. The KCC considers the size of the user base and the frequency of complaints to evaluate and publicise user protection performance for specific telecommunications businesses (including Netflix and Wavve as evaluation targets for 2024). Value-added telecommunications operators with an average of more than 1 million domestic users per day or generating more than 1% of total domestic traffic per day (Netflix in 2023) are required to ensure service stability. 	
14. Entering a new market: FAST TV	<ul style="list-style-type: none"> FAST TV is subject to the same regulations as OCC services. As noted above, OCC services are classified as value-added communications services regulated under the TBA. Thus, to establish and provide OCC services in Korea, it is sufficient to only complete the report required for value-added communications services under the TBA – i.e., completing the requisite requirements and procedures, and filing a report (which is relatively less complicated and restrictive than a permit) with the MSIT. 	

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	<ul style="list-style-type: none"> There have been some recent discussions on imposing additional restrictions of access on OCC services, given their relative ease in entering the market compared to traditional pay TVs. However, no concrete legislation or detailed discussions have yet taken place. 	
15. Data handling	<ul style="list-style-type: none"> There are no regulations on data localisation. As an OCC service provider is classified as an information and communications service provider pursuant to the CNA, it should take the technical and administrative measures to control and manage personal information in accordance with the CNA (Article 28 of the CNA). 	
Other country-specific information not already covered	N/A	