

## 2024 AVIA Regulating for Growth – OCC TV Matrix for Thailand

Questions	OCC TV	Foreshadowed changes?
<p>1. How regulated? <i>Details of regulator/s</i></p>	<ul style="list-style-type: none"> <li>Under supervision of the National Broadcasting and Telecommunications Commission (NBTC), an independent organization, established under the Act on the Organisation to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services B.E. 2553 (2010), as amended.</li> <li>The NBTC comprises of seven commissioners selected by a scrutinising committee, approved by the Senate and finally appointed by the royal command of the King. The term of an NBTC commissioner is six years.</li> <li>Legally, regulatory initiatives are required to have a public hearing in advance for all interested persons to propose comments before publishing them in the government gazette.</li> </ul>	<ul style="list-style-type: none"> <li>The commissioners started their 6-year terms in 2022 and will complete them in 2028. However, the Secretary General position has been vacant since September 2020.</li> </ul>
<p>2. Copyright protection?</p>	<ul style="list-style-type: none"> <li>The Thailand Copyright Act 1994, as amended in 2022, applies to the copyright protection of OCC TV content. Under Section 61, if any OCC TV content is first created or released in a country which is a party to the convention for the protection of copyright, or the convention for the protection of performers' rights to which Thailand is also a party, or a copyright work of an international organisation of which Thailand is a member, it shall be protected under this Act.</li> <li>There are potential strong punishments under the said Act, for example, copyright infringement undertaken for commercial purpose will be liable to an imprisonment of six months to four years or a fine from THB 100,000 (approx. USD 2,750) to 800,000 (approx. USD 22,000), or both.</li> <li>However, relatively poor enforcement of the Act has seen copyright piracy at high levels in recent years. Most content rights owners may not be able to achieve effective protection due to poor enforcement and minimal penalties for violators as adjudged by the IP Court under the said Act.</li> </ul>	

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	<ul style="list-style-type: none"> <li>• Most copyright infringement cases are criminal, which can also include claims for monetary damages. The ExpatTV case of 2019 showed that such damages can be substantial at THB 15 million (approx. USD 410,000).</li> <li>• Since the offences under the Act are compoundable offences, the copyright owner has to initiate legal action by first lodging a criminal complaint with the police against the infringer, before the government can join in order to take further action.</li> <li>• In terms of online infringement, section 43/6 of the Act, provides for notice and takedown procedures. These provisions were amended in 2022 to clarify the notice and takedown procedures, in theory making it easier for rights holders to report infringements, and to clarify ISP safe harbours. The 2020 amendments also revised the Technical Protection Measures (TPMs) narrowing the exceptions, strengthening the enforcement options.</li> <li>• Section 33 of the said Act provides a specific exemption for use of short extracts of sports clips in news programming provided that (i) there must be an acknowledgement or credit of the copyright owner in such work and (ii) such use does not conflict with a normal exploitation of the copyright work by the copyright owner and does not unreasonably prejudice the legitimate interests of the copyright owner.</li> <li>• In terms of site blocking, section 20 of Thailand's Computer Crime Act, 2007, as amended in 2017, empowers the Ministry of Digital Economy and Society (MDES), with the approval of the Minister, to file a petition for a court writ to suppress the dissemination of or remove online content which is an offence under the copyright law. Whilst the desired end result of these procedures is to ensure effective site blocking practices, in reality, they have not been as effective as intended.</li> <li>• There are no legislative requirements for payments to collecting societies for broadcast of programming over Pay TV platforms.</li> <li>• There are no significant differences in how copyright law is applied to the pay TV sector versus the OCC TV sector.</li> </ul>	
3. Convergence and new technologies	<ul style="list-style-type: none"> <li>• Currently NBTC has no specific regulations for OCC TV contents transmitted over the internet.</li> </ul>	

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4. Licensing of foreign channels <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>• Presently there are no licensing requirements.</li> </ul>	
5. Licence fees and taxation	<ul style="list-style-type: none"> <li>• Presently the government has no legal authority to impose licences or fees on OCC TV content transmitted over the internet from overseas.</li> <li>• An OCC TV operator who does not have a permanent establishment in Thailand is not subject to corporate income tax.</li> <li>• Effective from 1 September 2021, foreign e-Service platform providers not registered in Thailand, earning income from such e-Services to users in Thailand of more than THB 1.8 million (approx. US\$50,000) per year are required to register the Value Added Tax (VAT) and pay VAT (currently at the rate of 7%) on the sale revenue to the Thai Revenue Department. Such e-Services are those including music and video streaming, gaming and hotel booking. Therefore, major players such as Apple, Google, Facebook, Netflix, Line, YouTube, TikTok are subject to VAT registration and payment.</li> </ul>	
6. Rate regulation <i>Including wholesale and retail rate regulation and whether there are any price controls on e.g. basic tier</i>	<ul style="list-style-type: none"> <li>• No regulation of retail or wholesale rates.</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> </ul>	
8. Restrictions on advertising <i>Including localisation rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>• No minutage restrictions.</li> <li>• Some restrictions on advertising alcohol, tobacco, firearms, medicine and foods, fortune-tellers, etc. online.</li> </ul>	
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>• Little regulation of internet content and no published guidelines. As a matter of law, some categories (obscenity, offending the monarchy) are illegal even on the internet.</li> <li>• Any enforcement would be stricter in respect to TV streams originating in Thailand than on internet broadcasts from overseas.</li> </ul>	

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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>• None.</li> </ul>	
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 specific restrictions of any kind on FDI for internet broadcasters. However, general rules for foreign investment in Thailand would apply.</li> <li>• No specific restrictions on cross-media ownership.</li> </ul>	
12. Retransmission arrangements <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>• No specific rules.</li> </ul>	
13. Consumer protection <i>Including cooling-off period, termination rights and payment mechanism</i>	<ul style="list-style-type: none"> <li>• No specific rules.</li> </ul>	
14. Entering a new market: FAST TV	<ul style="list-style-type: none"> <li>• Currently NBTC has no regulation for FAST TV.</li> </ul>	
15. Data handling	<ul style="list-style-type: none"> <li>• The OCC TV service operator is required to obtain prior written consent of the personal data owner before or at the time of collecting, using and/or disclosing the personal data. Also, in obtaining the written consent, the following issues must be informed to the personal data owner: <ul style="list-style-type: none"> <li>○ Purpose of collection, use or disclosure;</li> <li>○ Duration of time of collection, use or disclosure;</li> <li>○ Rights of the personal data owner, such as being able: <ul style="list-style-type: none"> <li>▪ To withdraw the consent at any time;</li> <li>▪ To access to and/or obtain a copy of the personal data held by the OCC TV service operator;</li> <li>▪ To transfer the personal data in the machine readable format to the other parties;</li> </ul> </li> </ul> </li> </ul>	

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	<ul style="list-style-type: none"> <li>▪ To object to the collection, use or disclosure of their personal data;</li> <li>▪ To delete their personal data;</li> <li>▪ To suspend the use of their personal data;</li> <li>▪ To ensure that their personal data remains correct, up-to-date, complete and not misleading;</li> <li>▪ To file a complaint in case there is any violation of the PDPA.</li> </ul>	
Other country-specific information not already covered	<ul style="list-style-type: none"> <li>• N/A</li> </ul>	
Useful Links	<ul style="list-style-type: none"> <li>• NBTC <a href="https://www.nbtc.go.th/Home.aspx?lang=en-us">https://www.nbtc.go.th/Home.aspx?lang=en-us</a></li> <li>• Department of Intellectual Property <a href="https://www.ipthailand.go.th/en/">https://www.ipthailand.go.th/en/</a></li> <li>• Ministry of Digital Economy and Society <a href="https://www.mdes.go.th/home">https://www.mdes.go.th/home</a></li> </ul>	