

## 2024 AVIA Regulating for Growth – OCC TV Matrix for The United Kingdom

Questions	OCC TV	Foreshadowed changes?
<p>1. How regulated? <i>Details of regulator/s</i></p>	<ul style="list-style-type: none"> <li>All UK linear pay TV channels need an Ofcom licence, including linear channels transmitted via online means.</li> <li>Non-linear services in the UK do not require a licence but on-demand program services (ODPS) providers must notify Ofcom before their service begins and advise if the service closes or undergoes significant changes. Ofcom maintains a <a href="#">list</a> of the ODPS it regulates.</li> <li>Content regulations applying to ODPS are less onerous than those for linear, although rules on harmful material, sponsorship and product placement do apply to on-demand broadcasters as well as certain administrative rules.</li> </ul>	<ul style="list-style-type: none"> <li>In May 2024, the Media Bill was given Royal Assent and officially became the Media Act 2024. There are some formal steps remaining, with most parts of the Media Act set to come into force on a date to be determined by the Secretary of State. Further, Ofcom will define and draft many of the high-level principles set out in the Media Act. Ofcom will undertake industry consultations on aspects of the new regime throughout 2024, with many of the changes currently scheduled to take place in 2025 and 2026. See below for further information on anticipated changes.</li> </ul>
<p>2. Copyright protection?</p>	<ul style="list-style-type: none"> <li>As for pay TV.</li> <li>Domestic copyright laws provide strong protection with significant penalties. However, online piracy remains a problem.</li> <li>Enforcement is good with the Police regularly bringing both private and public criminal prosecutions against pirate operators and obtaining both deterrent fines and prison sentences.</li> <li>For online piracy, world leading blocking orders that include orders which allow dynamic blocking of IP addresses of identified servers located outside the UK that are illegally live streaming sports matches.</li> <li>The Copyright, Designs and Patents Act 1988 (CDPA) provides various exemptions, including the use of short clips in news programming for the purpose of reporting current events.</li> <li>The Creative Content UK regime provides for internet service providers (at the instigation of film and music rights owners) to periodically notify internet users if they breach copyright law.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>

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3. Convergence and new technologies	<ul style="list-style-type: none"> <li>• As for pay TV.</li> <li>• Broadly speaking, regulation in the UK is technology-neutral. All types of competing platforms can be licensed and a level playing field exists between platforms.</li> <li>• The Ofcom Code of Practice on Electronic Programme Guides (EPG) regulates how EPG positions are granted. EPG providers are required to give “appropriate prominence” to the public service broadcasters’ core channels.</li> <li>• Pay TV operators are not required to obtain the regulator’s permission before offering ancillary services such as pay per view. However, providers of on-demand program services must notify Ofcom before their service begins and advise if the service closes or undergoes significant changes.</li> <li>• The receipt of television on different end devices is not subject to different regulation.</li> <li>• The Digital Economy Act 2017 has made provision for a broadband universal service obligation giving consumers the legal right to request a connection above a speed of a certain level. Consumers have been able to make such requests from 20 March 2020.</li> <li>• The Regulation on cross-border portability of online content services across the EU (the Portability Regulation) was revoked after the end of the transition period following Brexit (currently, 31 December 2020). UK online content service providers are no longer required to allow consumers to access and use online services paid for when travelling within other EU member states and EU service providers are no longer required to provide access to their consumers who are temporarily in the UK. Providers may do so voluntarily, if they have the requisite permission of the relevant rights holders.</li> </ul>	<ul style="list-style-type: none"> <li>• As for pay TV.</li> <li>• The Media Act 2024 introduces a framework to ensure Public Service Broadcasting (PSB) services are easily accessible and discoverable on major TV platforms and internet-connected devices. The Secretary of State will define the applicable devices, likely including smart TVs and set-top boxes. Ofcom will advise on the services and platforms to be regulated, based on their significant public usage for online TV content. The final decision on which platforms to regulate rests with the Secretary of State. Decisions regarding which PSB entities will be eligible are planned for spring 2025, with a publication of the qualifying list expected in the summer, followed by a list of designated platforms between October and December 2025.</li> </ul>

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<p>4. Licensing of foreign channels <i>Allowed, prohibited or unregulated?</i></p>	<ul style="list-style-type: none"> <li>• As for pay TV.</li> <li>• Prior to Brexit, channels based and licensed in other EU countries were exempt from additional UK licensing (i.e. they do not require a licence from Ofcom to be made available in the UK market). This is owing to the “country of origin principle” in the EU Audiovisual Media Services Directive (AVMSD).</li> <li>• Following Brexit, the UK is no longer a party to the AVMSD and is classed as a 'third country' under the terms of the Directive.</li> <li>• Subject to exceptions, the UK has now moved to a country of destination system, requiring television services available in the UK on regulated EPGs (currently the main DTT, satellite and cable platforms) to be licensed and regulated by Ofcom.</li> <li>• However, the “country of origin” principle under the European Convention on Transfrontier Television (ECTT), which has similar effect to the AVMSD, still applies to both foreign services being received into the UK and UK licensed services being received outside of the UK. There are, however, some fundamental differences between the ECTT and AVMSD, these include that: (i) only 20 of the 27 EU members are signatories to the ECTT and therefore countries that are not signatories to the ECTT cannot rely upon it (note some non-EU countries are also a party to the ECTT); and (ii) the ECTT does not apply to non-linear or internet-only services.</li> <li>• All linear channels available on a regulated Electronic Programme Guide (EPG) (currently only the main DTT, satellite and cable platforms are regulated) must be licensed, including those transmitted only over the internet.</li> <li>• Non-linear content providers based in the United Kingdom must merely notify Ofcom and pay a notification fee.</li> <li>• The ECTT does not apply to video-on-demand services. There is currently no “country of destination” style regulation for video-on-demand services and Ofcom will only regulate a service if both</li> </ul>	<ul style="list-style-type: none"> <li>• The Media Act 2024 has introduced a comprehensive video-on-demand (VoD) code which is set to bring “the largest, most TV-like” services like Netflix under new Ofcom regulations, aligning them more closely with the rules that govern traditional linear broadcasters. It establishes a tiered system, with 'Tier 1' services coming under higher levels of regulation by Ofcom including a new programme standards code (the “VoD code”). Ofcom is set to produce a report on the VoD market this year, which will inform the Secretary of State's decisions on 'Tier 1' service designations. The VoD Code, along with its guidelines, is planned to be implemented in 2025 after a consultation period. 'Tier 1' providers will have a 12-month grace period from the Code's publication or their designation as 'Tier 1' (whichever comes later) to comply fully, although the timeline is subject to change.</li> <li>• The outgoing UJK government had proposed extending the scope of regulated EPGs to include many connected TV platforms, particularly those with large UK customer cohorts. This would have had the effect of massively expanding the regulatory scope of Ofcom over non-UK linear channels. However, that development is currently on hold and it remains to be seen whether an incoming government will seek to resurrect the proposals. These proposals would also impact FAST channels (see section 14 below).</li> </ul>

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	<p>its head office and editorial decision-making capacity are based in the UK.</p> <ul style="list-style-type: none"> <li>Video-on-demand services not under UK jurisdiction that are currently available to UK audiences continue to be available with no UK regulatory oversight. For example, the UK does not regulate Netflix's UK service, which is based in the Netherlands. If issues arise with services based in other jurisdictions, the UK says that it will cooperate with the relevant regulator but has no formal powers.</li> </ul>	
5. Licence fees and taxation	<ul style="list-style-type: none"> <li>Ofcom charges regulatory fees for providers of UK-based ODPS using a tiered fee structure based on annual turnover. This structure was introduced in May 2017. Smaller ODPS providers (with an overall annual turnover less than £10 million) do not pay any fees.</li> </ul>	<ul style="list-style-type: none"> <li>Ofcom keeps the ODPS fee regime under review as required.</li> <li>Video-on-demand services becoming subject to the Media Act 2024's VoD Code (as set out above in question 4) are set to be required to pay regulatory fees to Ofcom to cover the costs of regulation.</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>As for pay TV.</li> <li>In general, there is no regulation of pricing of pay TV content in the United Kingdom. However, Ofcom has the power to regulate pricing where there are specific competition concerns.</li> <li>Operators must also comply with general competition law.</li> </ul>	<ul style="list-style-type: none"> <li>As for pay TV.</li> <li>The proposals mentioned above regarding PSB discoverability include must-offer/must-carry rules with a fallback regime for Ofcom to determine commercial terms of such distribution.</li> </ul>
7. Programme packaging <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>N/A for OCC TV. No relevant rules.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
8. Restrictions on advertising <i>Including localisation rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>The same advertising minutage restrictions found in COSTA apply to linear OCC platforms regulated by Ofcom.</li> <li>On-demand services that are not licensed by Ofcom do not have to comply with COSTA. However, advertising around VOD content must comply with the CAP (The Committee of Advertising Practice) Code as well as the Communications Act 2003. (The CAP Code is also called the UK Code of Non-broadcast Advertising and Direct &amp; Promotional Marketing.) Advertising on linear services</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>

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	<p>must comply with the UK Code of Broadcast Advertising (BCAP Code).</p> <ul style="list-style-type: none"> <li>The Advertising Standards Authority (ASA) is the designated body for the enforcement of advertising rules relating to the CAP Code and BCAP Code.</li> </ul>	
<p>9. (a) Content regulation <i>Including local content quotas, content control and insertion of classification and other content labels into international feeds</i></p>	<ul style="list-style-type: none"> <li>As for pay TV.</li> <li>The Ofcom Broadcasting Code generally regulates content to ensure certain standards in programming, sponsorship/ product placement, fairness and privacy.</li> <li>Ofcom can impose <a href="#">sanctions</a> including requiring a broadcaster to broadcast a statement of Ofcom's findings or a correction or financial penalties.</li> <li>Broadcasters should not show material on TV that is unsuitable for children before 9:00PM or after 5:30AM. There are specific rules with regards to the watershed for premium film services. Since 1 January 2019, Ofcom has permitted scheduled television channels to show programmes, which previously could only be shown after the 9:00PM watershed, before this time, if mandatory daytime protection (i.e. PIN code protection) is in place.</li> <li>Ofcom does not have power to monitor or censor programmes before broadcast, but there is an obligation on broadcasters to ensure that programs they air are compliant with the regulatory framework.</li> <li>The Audiovisual Media Services Regulations (AVMSR) which came into force on 1 November 2020 implement the revised AVMSD into UK law.</li> <li>Under the revised AVMSD (incorporated into law by the AVMSR), TV broadcasters are required to reserve at least 50% of their transmission time (excluding time allocated to news, sports events, games, advertising, teletext services and teleshopping) for European works. TV broadcasters are also required to reserve at least 10% of their transmission time (excluding the time allotted</li> </ul>	<ul style="list-style-type: none"> <li>The video-on-demand providers to be subject to the Media Act 2024's VoD Code (as set out above in section 4) are set to be brought into Ofcom's regulatory remit in 2026, meaning that some or all of the content regulation set by Ofcom will also apply to applicable video-on-demand providers.</li> </ul>

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	<p>to the categories above), or at least 10% of their programming budget, for European works created by independent producers. These quotas only apply to TV broadcasts intended for national audiences.</p> <ul style="list-style-type: none"> <li>• The watershed applies only to linear content (including linear OCC services). Non-linear content (including non-linear OCC services) is not subject to the watershed.</li> <li>• Ofcom's rules and guidance for on-demand service providers contain a number of provisions relating to harmful material, sponsorship and product placement.</li> <li>• Offshore OCC services from outside the EU are in theory obliged to comply with UK standards in order to be receivable in the UK. In practice, the regulatory authorities are only likely to take enforcement actions in instances which are likely to give rise to child protection issues and in these instances there are formal arrangements with ISPs, which result in the relevant sites being blocked to UK users.</li> <li>• The Audiovisual Media Services Regulations (AVMSR) which came into force on 1 November 2020 implement the revised EU Audiovisual Media Services Directive (AVMSD) into UK law.</li> <li>• The content requirements from the amended AVMSD, incorporated into law by the AVMSR, apply to OCC services and include a requirement for on-demand service providers to secure at least a 30% share of European works in their catalogues and ensure prominence of those works.</li> </ul>	
9. (b) Content regulation <i>Including languages, dubbing/subtitling and captioning</i>	<ul style="list-style-type: none"> <li>• Ofcom is under an obligation to encourage non-linear content providers to ensure that their services are progressively made more accessible to people with disabilities.</li> <li>• Captioning requirements do not apply to offshore services.</li> <li>• The Digital Economy Act 2017 gives the Secretary of State the power (which it has not yet exercised) to require catch-up and on-demand services to provide subtitling and audio description.</li> </ul>	<ul style="list-style-type: none"> <li>• While Ofcom's best practice guidelines for video-on-demand providers are non-binding, those subject to the Media Act 2024's VoD Code (as set out above in question 4) will be brought into Ofcom's regulatory remit in 2026, meaning that some or all of the content regulation set by Ofcom will also apply to applicable video-on-demand providers.</li> </ul>

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	<ul style="list-style-type: none"> <li>In April 2024, Ofcom announced minor changes to its Access Services Code and associated best practice guidelines. The best practice guidelines include, for the first time, video-on-demand providers, and subscription services like Netflix and Amazon Prime Video. However, the guidelines remain non-binding, serving as general recommendations.</li> </ul>	
<p>10. Programme supply restrictions <i>Including must provide rules and other restrictions on exclusivity and anti-siphoning rules</i></p>	<ul style="list-style-type: none"> <li>As for pay TV.</li> <li>In general, conclusion of contracts for exclusive carriage of content is permitted, and such agreements are common in the market. Contractual arrangements (including between operators) are subject to general competition law and to scrutiny by Ofcom in relation to competitiveness and the effective functioning of markets.</li> <li>Public service broadcasters must make their core channels available to all platforms.</li> <li>The government maintains a list of specific sporting events considered to be of major national importance and which must be provided free-to-air, including the Olympic Games and FIFA World Cup finals. The list of events can be found <a href="#">here</a>.</li> <li>Domestic online platforms are also subject to restrictions on the exclusive broadcasting of events considered to be of national importance. The restrictions would not apply to offshore services.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<p>11. Restrictions on FDI <i>Including platforms and wholesale supply of programming and cross-media ownership restrictions</i></p>	<ul style="list-style-type: none"> <li>As for pay TV.</li> <li>100% foreign investment is permitted in pay TV platforms and in content providers.</li> <li>The Communications Act of 2003 and the Broadcasting Act of 1990 regulate cross-media ownership so as to prevent, for example, a newspaper operator with 20% or more of the market share for print newspapers from holding a Channel 3 licence or a stake in a Channel 3 licensee that is greater than 20%.</li> <li>Mergers and acquisitions, including vertical integration, are subject to general competition law. The government may also intervene on public interest grounds relating to media plurality.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>

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	<ul style="list-style-type: none"> <li>• The National Security and Investment (NSI) Act came into force on 4 January 2022. The NSI Act gives the government powers to scrutinise and intervene in business transactions, such as takeovers to protect national security. The mandatory regime requires qualifying transactions to be notified for approval before they take place, which includes certain communications-related transactions.</li> <li>• Foreign investors are legally required to submit a mandatory notification if any of the following apply. The entity being acquired either: <ul style="list-style-type: none"> <li>○ is a public electronic communications network or service (PECN/S) with a UK turnover of at least £50 million</li> <li>○ makes available an ‘associated facility’ to a PECN/S with a turnover of at least £50 million (exceptions apply, see below)</li> <li>○ owns a building where its main purpose is to host active telecommunications equipment</li> <li>○ owns a submarine cable system with a UK turnover of at least £50 million</li> <li>○ owns a cable landing station which is used by a PECN/S with UK turnover at least £50 million</li> <li>○ owns a repair or maintenance service for submarine cable systems or cable landing stations which is used by PECN/S with UK turnover at least £50 million.</li> <li>○ has a top-level domain name registry, domain name system resolver, authoritative hosting service or internet exchange points subject to certain thresholds</li> <li>○ provides broadcast infrastructure for either: <ul style="list-style-type: none"> <li>▪ the BBC</li> <li>▪ Channel 3 (ITV and STV)</li> <li>▪ Channel 4</li> <li>▪ Channel 5</li> <li>▪ S4C</li> </ul> </li> </ul> </li> </ul>	



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12. Retransmission arrangements <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>OCC services are neither required to retransmit UK public service content nor entitled to do so (in the absence of a commercial agreement with the relevant public service broadcaster). Neither are they entitled to require that any particular network or distributor provides access (other than under general net neutrality rules).</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
13. Consumer protection Including cooling-off period, termination rights and payment mechanism	<ul style="list-style-type: none"> <li>As for pay TV.</li> <li>There is no specific consumer protection in relation to pay TV services (unlike, for example, telecommunications services). However, general consumer protection law will apply, for example the inclusion of informational requirements and a cooling-off period of (typically) 14 days.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
14. Entering a new market: FAST TV	<ul style="list-style-type: none"> <li>As for pay TV.</li> <li>Channels distributed online, namely free ad-supported streaming television (FAST) do not come under the same regulatory regime as linear channels available on regulated EPGs.</li> <li>As such, unless a FAST channel is available on one of the regulated EPGs, there is currently no regulation of FAST channels. Some FAST channels are offered on regulated EPGs (such as Virgin Media's integrated EPG) and these are subject to the same Ofcom regulation as linear channels.</li> </ul>	<ul style="list-style-type: none"> <li>As for pay TV.</li> <li>In September 2023, the outgoing UK government launched a consultation on proposals to expand the list of regulated EPGs to to include many connected TV platforms, particularly those with large UK customer cohorts. This would have had the effect of bringing unregulated FAST channels into scope of Ofcom's Broadcasting Code. However, the status and potential progression of this proposal remains uncertain.</li> </ul>
15. Data handling	<ul style="list-style-type: none"> <li>As for pay TV.</li> <li>Following Brexit, the the General Data Protection Regulation (GDPR) was retained in the UK at the end of the transition period (31 December 2020) and incorporated into UK law as the "UK GDPR", which sits alongside an amended version of the Data Protection Act 2018 (DPA 2018).</li> <li>Data must be handled in accordance with the UK GDPR and the DPA 2018. The UK GDPR restricts the transfer of personal data to receivers outside of the UK where that country is not covered by UK adequacy regulations (i.e. a country that the UK government does not regard as providing adequate protection for individuals' personal data).</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>

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Other country-specific information not already covered	<ul style="list-style-type: none"> <li>None.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>