



2024 AVIA Regulating for Growth – OCC TV Matrix for the United States

Questions	OCC TV	Foreshadowed changes?
1. How regulated? <i>Details of regulator/s</i>	<ul style="list-style-type: none"> No regulatory body or legislation regulates the OCC TV sector, though the sector is required to comply with general federal laws such as those governing obscene material and copyright. Neither the FCC nor state or local jurisdictions have registration or licensing requirements for online video distribution service providers (OCC). 	<ul style="list-style-type: none"> The Obama administration proposed extending the FCC's regulation of Multichannel Video Programming Distributors (MVPDs) beyond traditional cable, satellite and terrestrial broadcast television to include OCC providers¹. The FCC could revisit this proposal, as it has been urged to do by broadcast TV stations in the context of must carry requirements² and a push by traditional cable providers to require OCC providers to pay carriage fees. The Biden administration has pushed and been pushed for the FCC to extend the Cable Acts of 1984 and 1992 to cover OCC, though those laws have generally been interpreted as not extending to that technology. However, as Trump has been elected, it is likely that such regulations will not be a priority.
2. Copyright protection?	<ul style="list-style-type: none"> Copyright law is equivalently applied to pay TV and OCC TV. Domestic copyright laws, e.g. the Digital Millennium Copyright Act (DMCA),³ provide generally strong protection with civil and criminal penalties. The government regularly brings lawsuits against “onshore” infringers. There is no specific exemption from copyright law for news programming to use sports clips. Using the clips for news or 	<ul style="list-style-type: none"> Some OCCs offer retransmission of local terrestrial broadcast channels to subscribers based on broadcast market zones without paying the compulsory licensing fees for such content required of MVPDs.

¹ See [Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services](#), FCC Notice of Proposed Rule Making, MB Docket No. 14-261, ¶ 28 (2014)

² [Notice of Ex parte Communication with Chair Ajit Pai by ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, NBC Television Affiliates](#), GN Docket No. 20-60; MB Docket No. 18-349; MB Docket No. 14-261; MB Docket No. 10-71 (filed 18 June 2020)

³ [The Digital Millennium Copyright Act](#)

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	<p>commentary could be allowed under the “fair use” exception for copyright infringement, which allows for limited use of copyrighted materials without permission “for purposes such as criticism, comment, news reporting, teaching ... scholarship, or research.”⁴ However, because such use is context-specific and heavily litigated in court, pay TV providers likely cannot rely on the fair use doctrine for routine use of sports clips.</p> <ul style="list-style-type: none"> • In 2020, California enacted Penal Code Section 593d⁵ that targets IPTV, illegal live streaming that can result in significant fines or prison. Since enacted the FBI and other law enforcement agencies have used the law to target and shut down streaming services such as iStreamitAll, Gears Reloaded and other IPTV sites. • However, there is no provision for site blocking and therefore protection against offshore piracy is inadequate. • Developers and sellers of devices designed for streaming pirated content routinely face civil litigation and sometimes criminal charges. • OCCs must make royalty payments when distributing copyrighted works. Copyright law does not specifically require these payments go to collection societies. However, in practice, many content creators join collection societies to collect royalties and negotiate licences on their behalf. • Although not regulatory action per se, the MPAA and other entertainment/content-related trade associations have lobbied OCCs to put additional safeguards in place to ensure copyright protections. OCCs have generally agreed to such requests by implementing mechanisms such as encryption of content and through location-based restrictions on accessing content based on a user’s IP address or payment method. 	

⁴ [17 U.S. Code § 107](#)

⁵ [California Penal Code Section 593d](#)

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3. Convergence and new technologies	<ul style="list-style-type: none"> • Delivery platforms based on different technologies are not treated even-handedly. OCC faces substantially less regulation than pay TV platforms based in traditional technologies such as cable and satellite. • The government is even-handed between foreign and domestic OCC entities. Neither is regulated. • There is an active and competitive OCC market. The number of OCC providers continues to increase. Large media companies and content owners are now creating their own OCC services to compete with the established OCC companies. • The FCC, in 2015, promulgated net neutrality rules prohibiting Broadband Internet Access Service (BIAS) providers from treating online content, apps, connected devices and services in a discriminatory manner and prohibiting paid prioritisation by broadband providers. • The prohibition on paid prioritisation was intended, in part, to protect OCCs from broadband access providers imposing premium charges on them to maintain certain necessary broadband speeds and quality for OCC subscribers accessing OCC video services. On 14 December 2017 (Trump administration), the FCC voted to repeal the 2015 net neutrality rules, which was upheld by the courts in 2019, and on 25 April 2024 (Biden administration), the FCC restored those rules. However, on 1 August 2024 stayed implementation of the rules pending a full appeal in a challenge by broadband providers.⁶ • OCC continues to grow as a competitive force with little regulatory oversight. A growing number of OCC services offer live programming. These virtual multichannel video programming distributors (vMVPD) place even more competitive force on traditional pay TV and blur the distinction between OCC and pay TV. 	<ul style="list-style-type: none"> • The number of households with a traditional pay TV subscription is projected to continue decline over the next decade. Currently, less than 50% of US households now have pay TV subscriptions, whereas in 2024 99% of US households subscribe to at least one streaming service. • Whether the net neutrality rules will be ultimately be implemented creates continuing uncertainty on whether OCC providers will be required to comply or could implement practices that prioritise their own OCC content over non-affiliated providers. • Some states, including California, Colorado, Maine, Oregon, Vermont and Washington. have implemented or are in the process of implementing their own net neutrality rules that would prohibit paid prioritisation. • If Harris is elected, it is expected the FCC will continue to push for implementation of the net neutrality rules whereas if Trump is elected it is expected the FCC will again rescind the rules.

⁶ See [In re MCP No. 185, Appeal No. 24-7000 \(6th Cir. 2024\)](#); [49 Fed. Reg. 45404 \(FCC May 22, 2024\)](#)

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4. Licensing of foreign channels <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> There are no licensing requirements or restrictions for OCCs distributing foreign programming, whether the operators are offshore or local. OCCs distributing informational materials on behalf of a foreign government may be required to register with the Department of Justice under the Foreign Agents Registration Act (FARA), 22 U.S.C. § 611 et seq. OCCs required to register must also label their programming according to FARA. Certain United States-based foreign media outlets that produce content for MVPDs must disclose to the FCC every 6 months their relationship with their foreign principles, including funding structure.⁷ 	<ul style="list-style-type: none"> Although the FCC had previously sought comment in 2014 on whether it should or could assert jurisdiction over foreign entities that provide IP-based OCC services, the FCC has not taken any action on this proceeding.
5. Licence fees and taxation	<ul style="list-style-type: none"> There are no licensing fees for domestic and foreign OCC providers. 	<ul style="list-style-type: none"> No significant changes expected.
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"> There are no rate regulations for OCC TV. 	<ul style="list-style-type: none"> No significant changes expected.
7. Programme packaging <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> There are no programme packaging restrictions for OCC TV. 	<ul style="list-style-type: none"> No significant changes expected.
8. Restrictions on advertising <i>Including localisation rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> There are few restrictions on advertising for OCC platforms. As with pay TV, online ads face some general restrictions. They cannot be false or deceptive. The Federal Trade Commission (FTC) has guidelines for how to meet those standards and customers may file complaints to the FCC about specific ads. The Food & Drug Administration (FDA) has similar jurisdiction for drug ads. Online tobacco ads are not explicitly banned, however, many publishers refuse to air them. Ads for controlled substances are banned. Consumer groups have asked the FTC to investigate OCC services for advertising unsuitable material to children. 	<ul style="list-style-type: none"> In 2021, Maryland passed a law taxing digital advertising. However, the law has been in litigation over whether it is constitutional (a ruling in July 2024 held it was). Other states have explored such taxes, but none have yet been implemented.

⁷ [47 U.S. Code § 624](#)

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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"> OCC TV has no content quotas and little content regulation. Obscenity laws apply to OCC TV. OCCs predominately rely on self-regulation. They voluntarily use the same content rating systems as television and the film industry. For television programmes, OCCs typically adhere to the TV Parental Guidelines. For movies, OCCs typically use Motion Picture Association’s recommended content advisories. Content labels are completely voluntary, carry no legal weight, and do not have to be inserted into international content. 	<ul style="list-style-type: none"> No significant changes expected.
9. (b) Content regulation <i>Including languages, dubbing/subtitling and captioning</i>	<ul style="list-style-type: none"> FCC requires closed captioning of full-length videos previously shown on TV in the US and posted online on the OCC’s own website or apps. No closed captioning requirements for user generated content shown online (unless also previously shown on TV in the US), for websites/streams offered by foreign websites or previously exhibited on television outside the US-only, or for short clips or outtakes. There are conflicting court rulings on whether OCC providers must provide visual descriptions or closed captioning for content not previously aired on TV.⁸ 	<ul style="list-style-type: none"> No significant changes expected, but court cases could impose accessibility requirements for the visually or hearing impaired on OCCs.
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"> OCCs have no “must carry” or “must provide” requirements from the government. The supply of programming to OCCs is not constrained by regulation. There are no specific competition regulations for OCC TV. General anti-trust laws, however, do apply. 	<ul style="list-style-type: none"> In October 2024, the National Association of Broadcasters again pushed the FCC to classify OCCs as MVPDs (and thus subject to the same must carry requirements as other MVPDs). However, the FCC has generally taken the position that the Cable Acts of 1984 and 1992 do not cover OCCs. Thus, it is likely that legislation will be needed before any change would be made.

⁸ Contrast [Cullen v. Netflix, Inc., 600 F. App'x 508 \(9th Cir. 2015\)](#) (holding that the ADA does not apply to Netflix) with [Nat'l Ass'n of the Deaf v. Netflix, Inc., 869 F. Supp. 2d 196](#) (D. Mass. 2012) (holding that the ADA does apply to Netflix)

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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"> There are no FDI limits for OCC TV. There are no cross-media ownership restrictions for OCC TV. 	<ul style="list-style-type: none"> No significant changes expected.
12. Retransmission arrangements <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> OCCs have no must carry requirements. OCCs that want to broadcast local commercial stations must negotiate retransmission agreements. 	<ul style="list-style-type: none"> No significant changes expected unless the FCC asserts regulation of OCCs as MVPDs, as described above.
13. Consumer protection <i>Including cooling-off period, termination rights and payment mechanism</i>	<ul style="list-style-type: none"> The government does not regulate or mandate consumer payment protections for OCCs. 	<ul style="list-style-type: none"> No significant changes expected.
14. Entering a new market: FAST TV	<ul style="list-style-type: none"> No regulatory limitations on providing FAST TV services and currently around ½ of all US households use the services on a weekly basis. 	<ul style="list-style-type: none"> In 2023, the Coalition for Local News, backed by the major broadcast networks, advocated for an amendment of the rules to address the discrepancy between cable stations, which are required to carry local stations, and FAST platforms, which are not. No action has been taken, but such requirements could be required in the future.
15. Data handling	<ul style="list-style-type: none"> There are no domestic data localisation laws. The Video Privacy Protection Act (VPPA) restricts the processing of data that identifies a person as having requested or obtained specific video materials or services from OCCs. The VPPA prohibits disclosing video viewing data that rises to the level of “personally identifiable information” unless one of a few specific exceptions apply, including with the consumer’s consent or as required by law. There is no express “service provider” exception under the VPPA. The VPPA does permit sharing without consent if the sharing is incident to the “ordinary course of business” of the OCC. However, the list of 	<ul style="list-style-type: none"> U.S. lawmakers have proposed, but not passed, legislation to impose restrictions on collection of data by companies in China, Russia, or any other country designated by the Secretary of State) and imposes restriction on storage and transfer of data to those countries.⁹ Executive Order 14117 entitled "Bulk Sensitive Data and United States Government-Related Data by Countries of Concern" signed by Biden in February 2024 could have impacts on the

⁹ [National Security and Personal Data Protection Act of 2019, S. 2889, 116th Cong. \(2019-2020\)](#)

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	<p>permitted activities that falls under that exception is narrow and includes: “debt collection activities, order fulfillment, request processing, and the transfer of ownership.”</p> <ul style="list-style-type: none"> • OCCs must identify whether video of data can be disclosed and carefully consider how the video streaming service may be able to share this data with a service provider based on the current state of legal precedence, risks, and other legal and business considerations. • Children’s Online Privacy Protection Act (COPPA) prohibits online websites from collecting information from persons under age 13 without complying with certain protective procedures. 	<p>gathering of data in "designated" countries depending on how the order is implemented.¹⁰</p> <ul style="list-style-type: none"> • In addition, data protection laws enacted by several states, such as California, Virginia, Colorado, Utah and Connecticut, demonstrate a continuing appetite by lawmakers in the US to consider enacting limited data control requirements.
Other country-specific information not already covered	<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • N/A

¹⁰ See October 21, 2024, *FACT SHEET: t Moving Forward with Publishing a Proposed Rule to Protect Americans’ Sensitive Personal Data from Countries of Concern*