

30 August, 2024
Hong Kong

RE: Comments on the proposed Thai Film Act

These comments are submitted on behalf of the Asia Video Industry Association (AVIA). AVIA is the trade association for the video industry and ecosystem in Asia Pacific. It serves to make the video industry stronger and healthier through promoting the common interests of its members. Our membership consists of a combination of local, regional and multi-national companies, many of which are substantial cross-border investors; creating and purchasing video content to meet rapidly expanding consumer demands and investing across Asia Pacific in communications and creative industries. We welcome the opportunity to provide belated comments on the proposed Film Act.

Do you agree or disagree with the establishment of the Thailand Film Industry Council to promote the film industry?

Whilst AVIA doesn't solely represent the film industry, the introduction of a Thailand Film Industry Council, with the noted private sector involvement, is to be welcomed, as long as the Council's role is clearly set out as outlined in the draft Film Act, i.e. purely a body that provides "opinions and recommendations to the government" without any legislative or regulatory powers.

A transparent platform where the private sector can actively participate in considering legislative/regulatory changes is crucial, as it would help to ensure that the voices of industry stakeholders are represented and considered in the policymaking process. This collaborative approach would help to lead to a more balanced and effective regulatory approach that meets industry needs and keeps to the overarching key principle of promoting a favourable business environment. The council has the potential to foster stronger partnerships between the government and the private sector, driving sustainable growth and innovation within the Thai film industry, and further Thai soft power globally. As can be seen in other markets, open, transparent and light touch, streamlined regulations will enhance Thailand's content industry competitiveness and increase the amount of investment into the sector

Do you agree or disagree with the roles and duties of the National Film Industry Promotion Committee and the establishment of policies and measures to promote the film industry?

AVIA is supportive of the creation of a Committee that aims to boost cultural development and foreign investment, and which highlights the importance of the industry to the national agenda. However, AVIA recommends that the government ensures the roles and responsibilities of this Committee are clearly defined and are complementary with the work of existing bodies so as to avoid any potential regulatory overlap between the Committee and pre-existing bureaucratic processes. A lack of clarity and transparency has the risk of posing additional regulatory burdens, creating uncertainty and becoming a disincentive for businesses to invest in Thailand. AVIA urges the Government to provide clarifications around the roles and responsibilities of the Committee, and to obtain the industry players' feedback on potential regulations/laws prior to implementation.

Do you agree or disagree with the promotion of Thai films?

We agree that all films, whether Thai or foreign films, benefit from promotion, but note that promotion should be left to the market and film owners to determine how best to promote individual films. An internally competitive market is crucial to attracting investment, enabling legitimate businesses to grow, strengthening best business practices, boosting the Thai economy, and promoting Thai culture to a global audience.

Do you agree or disagree with implementing a self-rating classification system by self-regulating certifiers who registered with the government, replacing the current review and approval system by the Film and Video Censorship Committee?

We recommend a self-rating classification system without the need to obtain self-regulating certification/registration for the Online Curated Content (OCC) / Video on Demand (VOD) industry.

We are aligned with the government on the importance of providing content ratings to customers so that they are empowered to make informed viewing decisions. This is why most, if not all, established international OCC services operating in Thailand invest heavily in building robust ratings systems and continue to refine them. Furthermore, in AVIA's Self Governance Framework for OCC services, the provision of clear content ratings and other content advisory messages are highlighted as key elements. We believe that the current self-rating practise is not only delivering results in terms of creating a safe viewing experience but also creates room for companies to innovate and create a better customer experience.

Given that OCC services are already conscientiously self-rating, and commit to engaging the government to discuss about their ratings practices and/or receive specific ratings feedback, we question the need for a self-rating certification/registration with the government. In addition, we advise against requiring all OCC services to use a standardised classification system in Thailand. As most OCC services are regional/international by nature, imposing a different and unique set of requirements in Thailand could cause significant challenges. The current self-rating practise provides operational certainty and a shorter time-to-market for content, and encourages the growth of creativity, innovation and high-quality programming in the content industry. It certainly improves the ease of doing business in Thailand, improves the efficiency of content distribution, and also supports the export of Thai content to international markets.

We wish to use this opportunity to point out that OCC services are curated libraries of professionally produced content. In addition to age ratings, OCC services already provide a variety of controls to prevent children from accessing age-inappropriate content, such as through "kids profiles", parental PIN controls, and password settings.

Do you agree or disagree with replacing the business licensing process with a registration system? (for film distributors: cinemas and film distribution businesses)?

AVIA is only in a position to comment on the OCC industry. In this respect, we recommend against introducing a licensing and/or registration process, as it is not a globally accepted practice and will have a deterrent effect on the industry development.

Do you agree or disagree with handling film operators who violate the law through administrative measures, an appeal process, instead of criminal penalties with administrative fines?

AVIA is only in a position to comment on the OCC industry and specifically related to this industry, we recommend that Thailand consider implementing an approach similar to that used in Malaysia which enables the Malaysia Content Forum (which sits under the Malaysian Communications and Multimedia Commission) to investigate disputed content ratings, which are self-rated. The Content Forum takes a consultative approach— i.e., there are due processes established to ensure that (i) there is dialogue between online curated content service providers and the relevant Thai body; and (ii) there is time for the online curated content service provider to rectify the situation. Administrative penalties should only be considered for only the most egregious cases – e.g., repeated violations or repeated failure to act on feedback within a reasonable timeframe.

The comments above should not be taken to apply to those who pirate and distribute film and tv content illegally, where criminal sanctions should remain. These sites worsen the market for legitimate sites and adversely affect the rest of the cultural sector. As such, it is imperative to have an effective deterrent measure, so such sites should face enforcement action (after due process).

Do you agree or disagree with the control over foreign film production in the Kingdom, including the appeal process and the implementation of criminal penalties for offenders?

No comment. AVIA is only commenting on parts of the draft Film Act that directly impact the OCC industry.

Do you agree or disagree with the Draft Film Act B.E.?

AVIA is grateful for the opportunity to provide inputs and our areas of agreement and disagreement have been listed in the preceding questions. More details on the Draft Film Act are required for industry players to have greater clarity. AVIA therefore encourages the government to conduct a comprehensive round of public consultations with relevant stakeholders (including, but not limited to OCC players, academia, film council, etc.) to share all the details and get the necessary feedback so that this Law can create a facilitative environment for the online curated content industry and does not create any unnecessary burdens. AVIA would be delighted to participate in any further consultations on this topic.

Other comments and suggestions (if any)

Nil