



2024 AVIA Regulating for Growth – OCC TV Matrix for Indonesia

Questions	OCC TV	Foreshadowed changes?
<p>1. How regulated? <i>Details of regulator/s</i></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> There is no overarching regulation on OTT (<i>Over-The-Top</i>) TV as a general application, nor is there any particular regulation on OCC (<i>Online Curated Content</i>) TV.<sup>1</sup> OCC TV remains outside of the scope of the Indonesian Broadcasting Law (Law No. 32 of 2022 on Broadcasting, as amended).<sup>2</sup></li> <li><input type="checkbox"/> That said, given the infrastructure and activities comprising OCC TV business, operation of OCC TV may be covered within the remit of several regulations (and accordingly several regulatory bodies), as follows:               <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Electronic System Provider:</b> as the operation of OCC TV relies on the use of electronic systems to provide digital content, OCC TV operator would be considered an “Electronic Systems Provider (ESP). ESP is subject to the provisions of EIT Law<sup>3</sup> and its implementing regulations, which falls under the authority of Ministry of Communication and Informatics (MOCI) now known as the Ministry of Communication and Digital (<i>Kementerian Komunikasi dan Digital – Komdigi</i>)<sup>4</sup>.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> The government is currently planning to amend the Broadcasting Law. The latest draft of the Broadcasting Law amendment was issued in October 2023, and to date no further updated draft is available.</li> <li><input type="checkbox"/> Based on the available draft and recent media reports, several key changes that are proposed to be introduced under the Broadcasting Law amendment is that the definition of broadcasting would expressly cover broadcasting via internet and introduction of “digital broadcasting platform” concept (which would likely capture OCC TV). Accordingly, OCC TV would be subject to various broadcasting standards and requirements, which would include content regulation.</li> <li><input type="checkbox"/> The amendment to the Broadcasting Law is included within Indonesia’s 2024 priority</li> </ul>

<sup>1</sup> In 2016, the Indonesian government (through the Ministry of Communication and Informatics (MOCI) published a draft of the OTT regulation (which would also capture OCC TV). That said, to date, the OTT regulation has never been enacted by MOCI, and there is no indication whether such OTT regulation will ultimately be issued.

<sup>2</sup> In 2020, two Indonesian television networks, i.e., RCTI and iNews TV, filed for a judicial review to contest the definition of “broadcasting” under the Broadcasting Law. The applicants argued that the scope of such definition under the law should also cover the OCC TV. However, the application was rejected by the Constitutional Court, stating that OCC TV should not be covered under the Broadcasting Law and the regulations applicable for OCC TV should already be covered under the EIT Law.

<sup>3</sup> Law No. 11 of 2008 on Electronic Information and Telecommunication, as amended (EIT Law).

<sup>4</sup> Previously the Ministry of Communication and Informatics prior to 21 October 2024.

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	<ul style="list-style-type: none"> <li>○ <b>E-Commerce Operator:</b> provision of paid digital content falls within the scope of e-commerce activity under Indonesian law. Accordingly, as an OCC TV service involves provision of paid digital content, it would be considered an E-Commerce Operator<sup>5</sup> or PPMSE. PPMSE is subject to the E-Commerce Regulation<sup>6</sup>, which falls under the authority of the Ministry of Trade (MOT).</li> <li>□ Given that many services also stream films, OCC TV services, in theory, should also be covered by Film Law<sup>7</sup> (and its implementing regulations) which fall under the authority of the Ministry of Education and Culture (MOEC). However, to date, we understand that MOEC has not strictly enforced the Film Law on OCC TV platforms.</li> <li>□ The key regulators for an OCC TV operator would be: <ul style="list-style-type: none"> <li>○ Komdigi – as the relevant regulator for ESP; and</li> <li>○ MOT – as the regulator for e-commerce operator.</li> </ul> </li> <li>□ OCC TV operator located in Indonesia would also be within the purview of BKPM (<i>Indonesia’s Investment Coordinating Board / Badan Koordinasi Penanaman Modal</i>), being the relevant regulator for domestic and foreign investment, as well as the administrator of Indonesia’s e-licensing system (i.e. the OSS-RBA system).</li> </ul>	<p>legislation programme. That said, it is not unusual for Indonesian government to delay the enactment of the law to the following year, particularly if the proposed bill still requires further discussion with various stakeholders. Until the amendment is officially enacted, it remains subject to further amendment/adjustment.</p>

<sup>5</sup> Indonesian: *Penyelenggara Perdagangan Melalui Sistem Elektronik (PPMSE)*.

<sup>6</sup> Government Regulation No. 80 of 2019 on Trading Through Electronic Systems and the Minister of Trade Regulation No. 31 of 2023 (MOT Regulation 31/2023) on Business Licensing, Advertisements, Development and Supervision of Businesses in Trading Through Electronic Systems (collectively as the E-Commerce Regulation).

<sup>7</sup> Law No. 33 of 2009 on Film, as amended (Film Law).

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2. Copyright protection?	<input type="checkbox"/> OCC TV is subject to the general Copyright Law <sup>8</sup> , which applies to all industries in general. <input type="checkbox"/> In the past years, we have seen Komdigi (as the regulator responsible for the supervision of electronic systems in general, including the internet) become stricter in enforcing copyright protection, by blocking access to numerous web portals that provide unauthorised film streaming for free. <input type="checkbox"/> Since OCC TV is not considered a broadcasting service, an operator of OCC TV would not be able to enjoy the economic rights of a broadcasting agency as provided under the Copyright Law.	None.
3. Convergence and new technologies	<input type="checkbox"/> No specific regulation for OCC TV, particularly given that OCC TV is currently not considered broadcasting activities.	None.
4. Licensing of foreign channels <i>Allowed, prohibited or unregulated?</i>	<input type="checkbox"/> Foreign OCC TV platforms are currently permitted to operate in Indonesia, on an offshore basis. <input type="checkbox"/> GR 71/2019 <sup>9</sup> and MOCI Regulation 5/2020 <sup>10</sup> , as implementing regulations of EIT Law, provide that an offshore private ESP is required to register as an ESP in Indonesia with Komdigi if it (i) provides its services within the Indonesian territory, (ii) conducts business in Indonesia, and/or (iii) provides an electronic system that is utilised and/or offered within the Indonesian territory.	None.

<sup>8</sup> Law No. 28 of 2014 on Copyright (Copyright Law).

<sup>9</sup> Government Regulation No. 71 of 2019 on Implementation of Electronic System and Transaction (GR 71/2019).

<sup>10</sup> MOCI Regulation No. 5 of 2020 on Private Electronic System Provider (MOCI Regulation 5/2020).

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	<p><input type="checkbox"/> The E-Commerce Regulation provides that foreign PPMSEs that are deemed to have physical presence in Indonesia<sup>11</sup> would be required to establish a Foreign Trade Representative Office (FTRO) in Indonesia. This FTRO will be authorised to act for and on behalf of its foreign principal office (i.e., the foreign PPMSE) to: (a) handle affairs relating to customers/users in Indonesia; (b) conduct activities to support the development of local products; and (c) handle any disputes in Indonesia. The FTRO is not permitted to perform any other activities, including to enter into any commercial contracts/transactions with any parties in Indonesia. The FTRO must obtain the Business Identification Number (<i>Nomor Induk Berusaha / NIB</i>) and a FTRO Business Licence.</p>	
5. Licence fees and taxation	<p><input type="checkbox"/> In general, licensing in Indonesia is free of charge.</p> <p><input type="checkbox"/> At the moment, the key licences and registrations for OCC TV operator that operates within Indonesia are:</p> <ul style="list-style-type: none"> <li>○ NIB;</li> <li>○ Business Licence<sup>12</sup>; and</li> <li>○ ESP Registration with Komdigi.</li> </ul> <p>The above licences are free of charge.</p>	Commencing 1 January 2025, the VAT rate in Indonesia will be 12%.

<sup>11</sup> Under the E-Commerce Regulation, a foreign PPMSE is regarded to have physical presence in Indonesia if within a one-year period it has: (a) entered into transactions with more than 1,000 customers in Indonesia; (b) delivered more than 1,000 packages to customers in Indonesia; and/or (c) reached an amount of traffic or access by users at least 1% from the local internet users. In our view, a foreign OCC TV operator could likely be captured under category (a) or (c).

<sup>12</sup> Currently, OCC business would require a Business Licence for Trading Through Electronic System (*Surat Izin Usaha Perdagangan melalui Sistem Elektronik* or SIUPMSE). Any entities which have obtained the SIUPMSE prior to the enactment of the MOT Regulation 31/2023 are allowed to carry out their business with the pre-existing licences, so long as they are still valid and registered to the online single submission system. As for foreign OCC TV, its FTRO would be required to obtain a Business Licence for Foreign Trade Representative Office (*Surat Izin Usaha Perwakilan Perusahaan Perdagangan Asing* or SIUP3A) for trading in the electronic system sector.

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	<ul style="list-style-type: none"> <li><input type="checkbox"/> Local OCC TV operators would also be subject to Income Tax and VAT.</li> <li><input type="checkbox"/> The current VAT rate in Indonesia (which commenced on 1 April 2022) is 11%.</li> <li><input type="checkbox"/> The Ministry of Finance (MOF) issued a regulation on imposition of VAT on digital services (including OCC TV) provided by foreign PPMSEs for transactions within the Indonesian territory.<sup>13</sup> The collection of VAT may be done by e-commerce operator appointed by the MOF, and which meets the following criteria: <ul style="list-style-type: none"> <li><input type="checkbox"/> the transaction value with the Indonesian purchasers have exceeded IDR600 million in one year, or IDR50 million in one month; and/or</li> <li><input type="checkbox"/> the number of traffic or access in Indonesia has exceeded 12,000 in one year, or 1,000 in one month.</li> </ul> </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>	No specific regulation for OCC TV.	None.
7. Programme packaging <i>Including tiering, bundling, any mandatory a la carte</i>	No specific regulation for OCC TV.	None.
8. Restrictions on advertising <i>Including localisation rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li><input type="checkbox"/> An e-commerce platform (which would include an OCC TV platform) is subject to the requirements under the EIT Law and E-Commerce Regulation on advertisement, such as:</li> </ul>	None.

<sup>13</sup> MOF Regulation No. 60/PMK.03/2022 on Procedures for the Collector Appointment, Collection, Payment and Reporting of VAT Imposed on Utilisation of Intangible Taxable Goods and/or Taxable Services Originating from Overseas Within Customs Area Through E-Commerce.

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	<ul style="list-style-type: none"> <li>○ It should not contain misleading and/or fake information that causes losses to a consumer in an electronic transaction;</li> <li>○ it should ensure that the substance / content of such electronic advertisement does not violate the applicable laws and regulations;</li> <li>○ the advertisement must provide an option for users to close, or skip, the advertisement, which can be easily identified and accessed by such user.</li> <li>□ Advertisements through online media must also observe the requirements under the Indonesian Advertising Code of Ethics (latest version issued in 2020), among others: <ul style="list-style-type: none"> <li>○ cannot be broadcast repeatedly and continuously more than two times;</li> <li>○ must not interrupt the interaction of users and the relevant platform;</li> <li>○ must be free from any threat, such as virus, spyware, malware, bugs, phishing and/or harmful script; and</li> <li>○ must comply with the ad industry's general code of practice and other applicable regulations.</li> </ul> </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>□ No specific regulation for OCC TV, particularly given that OCC TV is currently not considered broadcasting activities and film activities.</li> <li>□ OCC TV operators however still need to observe the restrictions set out under the EIT Law. For example, OCC TV shall not display pornographic and racist content.</li> </ul>	<p>See discussion in No. 1 above regarding proposed amendment to the Broadcasting Law.</p>

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9. (b) Content regulation <i>Including languages, dubbing/subtitling and captioning</i>	<input type="checkbox"/> No specific regulation for OCC TV, as OCC TV is currently not subject to the Film Law and Broadcasting Law. <input type="checkbox"/> The Film Law however provides requirements for film importers to dub films into Indonesian language, <i>except</i> for educational purposes. As such, if the OCC TV operator sources its films from film importer, it shall ensure that the film complies with the requirement under Film Law.	See discussion in No. 1 above regarding proposed amendment to the Broadcasting Law.
10. Programme supply restrictions <i>Including must provide rules and other restrictions on exclusivity and anti-siphoning rules</i>	<input type="checkbox"/> No specific regulation for OCC TV, particularly given that OCC TV is currently not considered broadcasting activities. <input type="checkbox"/> The same prohibition that exclusivity should not result in any monopolistic practice would also apply on the provision of OCC TV.	See discussion in No. 1 above regarding proposed amendment to the Broadcasting Law.
11. Restrictions on FDI <i>Including platforms and wholesale supply of programming and cross-media ownership restrictions</i>	<input type="checkbox"/> There is no foreign investment limitation for an onshore OCC TV operator – i.e. an onshore OCC TV operator can be owned up to 100% by non-Indonesian parties. <input type="checkbox"/> No specific regulation on cross-media ownership with respect to OCC TV operator.	None.
12. Retransmission arrangements <i>Including must carry and remuneration</i>	No specific regulation for OCC TV, particularly given that OCC TV is currently not considered broadcasting activities.	None.
13. Consumer protection <i>Including cooling-off period, termination rights and payment mechanism</i>	No specific regulation for OCC TV.  That said, OCC TV operator must still observe the provisions of Consumer Protection Law <sup>14</sup> , which applies to all industries in general.	None.

<sup>14</sup> Law No. 8 of 1999 on Consumer Protection.

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14. Entering a new market: FAST TV	<ul style="list-style-type: none"> <li><input type="checkbox"/> Currently, there is no specific regulation on FAST TV (i.e. free ad-supported streaming television).</li> <li><input type="checkbox"/> In general, a FAST TV operator (such as YouTube) will also be considered to be an “Electronic Services Provider” and an “E-Commerce Operator”, and will therefore generally be subject to the same requirements as an OCC TV operator.</li> </ul>	<p>The proposed amendments to the Broadcasting Law (see the first row above) will – if enacted in their current form – expand the definition of broadcasting to cover broadcasting via the internet and introduce the concept of a “digital broadcasting platform”.</p> <p>Given the nature of FAST TV, which under Indonesian law would be similar to OCC TV, FAST TV may also be subject to the broadcasting standards and requirements, which would include content regulation.</p>
15. Data handling	<ul style="list-style-type: none"> <li><input type="checkbox"/> OCC must comply with the general requirements on personal data protection provided under the PDP Law<sup>15</sup> and other regulations on personal data protection in electronic systems.</li> <li><input type="checkbox"/> The key principle under the applicable regulations is that the collection and use of personal data must be based on certain legal basis - this could be in the form of express consent, implementation of contractual obligation, vital interest, implementation of laws, performance of public duties, or other legitimate interest.</li> <li><input type="checkbox"/> An OCC TV operator would qualify as a “private ESP”, which is allowed to place its electronic systems and data outside Indonesia.</li> <li><input type="checkbox"/> For the transfer out of Indonesia of personal data from an onshore data controller (in this case, the relevant OCC TV operator):</li> </ul>	<p>The PDP Law provides a 2-year transitional provision, i.e. at the latest by 16 October 2024, for its full enforcement.</p> <p>The PDP Law also contemplates certain implementing regulations (including on cross-border data transfer). To date, no such implementing regulation has been issued. That said, in principle, these implementing regulations should be issued by 16 October 2024.</p> <p>The PDP Law also envisages the creation of an independent personal data protection institution. However, such institution has not been established to date.</p>

<sup>15</sup> Law No. 27 of 2022 on Personal Data Protection (PDP Law).



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	<ul style="list-style-type: none"> <li>○ such OCC TV operator must notify the data transfer plan to Komdigi – to date, to the extent of our knowledge, Komdigi has not strictly enforced this requirement; and</li> <li>○ upon the full enforcement of the PDP Law, the OCC TV operator will also be subject to certain requirements for cross-border transfer, i.e.: (a) the receiving party must have equivalent or higher standard of personal data protection with Indonesia; or (ii) there is sufficient and binding personal data protection standard applicable to the recipient (e.g. based on agreement); or (iii) (in the absence of (i) and (ii)) obtain consent from the relevant data subject.</li> </ul>	
Other country-specific information not already covered	N/A	N/A
<b>Useful links (for reference)</b>	<p><b>Law No. 11/2018 and its amendments (in Indonesian language)</b></p> <ul style="list-style-type: none"> <li>- <a href="#">Law No. 11/2018</a></li> <li>- <a href="#">Law No. 19/2016</a></li> <li>- <a href="#">Law No. 1/2024</a></li> </ul> <p><b>E-Commerce Regulation (in Indonesian language)</b></p> <ul style="list-style-type: none"> <li>- <a href="#">GR 80/2019</a></li> <li>- <a href="#">MOT Regulation 31/2023</a></li> </ul> <p><b>Film Law and its amendments (in Indonesian language)</b></p> <ul style="list-style-type: none"> <li>- <a href="#">Law No. 33/2009</a></li> <li>- <a href="#">Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation</a> (“<b>Job Creation Law</b>”)</li> </ul> <p><b>Copyright Law (in Indonesian language)</b></p> <ul style="list-style-type: none"> <li>- <a href="#">Law No. 28/2014</a></li> </ul> <p><b>Broadcasting Law (in Indonesian language)</b></p>	

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	<ul style="list-style-type: none"> <li>- <a href="#">Law No. 32/2022</a></li> <li>- Job Creation Law</li> </ul> <p><b>ESP (unofficial English version)</b></p> <ul style="list-style-type: none"> <li>- <a href="#">MOCI Regulation 5/2020</a></li> </ul> <p><b>Consumer Protection Law (in Indonesian language)</b></p> <ul style="list-style-type: none"> <li>- <a href="#">Law No. 8/1999</a></li> </ul> <p><b>PDP Law (in Indonesian language)</b></p> <ul style="list-style-type: none"> <li>- <a href="#">Law No. 27/2022</a></li> </ul>	