



2024 AVIA Regulating for Growth – Pay TV Matrix for Thailand

Questions	Pay TV	Foreshadowed changes?
<p>1. How regulated? <i>Details of regulator/s</i></p>	<ul style="list-style-type: none"> • Under supervision of the National Broadcasting and Telecommunications Commission (NBTC), an independent organisation, established under the Act on the Organisation to Assign Radio frequency and to regulate the Broadcasting and Telecommunications Services 2010, as amended. • 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. • 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. • Appeals are not available from the regulator’s decisions related to pay TV under the said Act. However, the pay TV operator against whom the regulator’s decision is made and who disagrees with the said decision will be entitled to bring the dispute to the Administrative Court under the Act on Establishment of Administrative Courts and Administrative Court Procedure 1999. 	<ul style="list-style-type: none"> • 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.
<p>2. Copyright protection?</p>	<ul style="list-style-type: none"> • The Thailand Copyright Act 1994, as amended in 2022, provides for protection of copyright infringement. 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. • 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. 	

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	<ul style="list-style-type: none"> • 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). • 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. • 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 2022 amendments also revised the Technical Protection Measures (TPMs) narrowing the exceptions, strengthening the enforcement options. • 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. • 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. • There are no legislative requirements for payments to collecting societies for broadcast of programming over pay TV platforms. • There are no significant differences in how copyright law is applied to the pay TV sector versus the OCC TV sector. 	

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3. Convergence and new technologies	<ul style="list-style-type: none"> DTH, cable TV and DTT platforms are now licensed. Some telecom operators are providing IPTV services under a telecom operator licence. 	
4. Licensing of foreign channels <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> Retransmission of a foreign channel requires operators to obtain a permit from the NBTC (“Landing Right”). Permits are readily granted. 	
5. Licence fees and taxation	<ul style="list-style-type: none"> Operators who obtain a licence from the NBTC must pay annual fees totalling 2% of gross revenue, before expenses, plus a progressive percentage to a Universal Service Obligation (USO) fund. Currently the progressive rates are: 0.5% on revenue less than THB 5 million 0.75% on revenue between THB 5 - 50 million 1% on revenue between THB 50 - 500 million 1.75% on revenue between THB 500 MB - THB 1 billion 2% on revenue greater than THB 1 billion. In April 2020 NBTC adjusted the percentage to the USO fund only for DTT operators to be as follows: 0.125% on revenue of THB 0 – 100 million 0.25% on revenue between THB 100 - 500 million 0.50% on revenue between THB 500 – 1,000 million 0.75% on revenue between THB 1 billion - THB 10 billion 1.00% on revenue between THB 10 billion – THB 25 billion 1.25% on revenue between THB 25 billion - THB 50 billion 1.50% on revenue exceeding THB 50 billion Licensed operators operating businesses in Thailand are subject to the corporate income tax. 	
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"> No regulation of retail or wholesale rates. 	

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7. Programme packaging <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> • Tiering is allowed. No a la carte requirements. 	
8. Restrictions on advertising <i>Including localisation rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> • Advertising on pay TV is limited to a daily average of 5 mins per hour, with no more than 6 mins in any one hour for pay TV, irrespective of foreign and domestic advertising. • Tight restrictions on ads for tobacco & alcohol. • No specific taxation on advertising. General taxation applies. 	
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"> • No local content quotas. • Pay TV services perform self-censorship based on published guidelines from a government regulator. • Parental rating logos (3+, 6+, 13+, 18+, general viewing) must be inserted on screen. This requirement only applies to TV operators who use over-the-air frequencies, analogue and digital, allocated by NBTC. Currently, there are no pay TV services using over-the-air allocated frequencies. • Foreign channels are required to pre-obtain a landing right licence from the NBTC. 	
9. (b) Content regulation <i>Including languages, dubbing/subtitling and captioning</i>	<ul style="list-style-type: none"> • NBTC regulations encourage, but do not mandate, dubbing or subtitling of international channels into Thai. 	
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"> • "Must Have" rules require specific sporting events to be broadcast only on free-to-air television channels (which are then also carried on pay TV). The list of sporting events includes: <ul style="list-style-type: none"> ○ Southeast Asian Games ○ Asian Games ○ Asian Para Games ○ Olympic Games ○ Paralympic Games • Non-Exclusivity List rules require any operator securing rights in respect of 7 other sporting events to share the broadcast rights at reasonable fees. 	<ul style="list-style-type: none"> • Although the NBTC board has voted to exclude the FIFA World Cup Final from the "must have" rules, it will only take effect once it has been published in the Thailand government gazette.

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<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"> • FDI in pay TV platforms and licensed Thai channels limited to 25% of the voting stock. (Limit for Telecoms is 49%.) • A 49% FDI limit applies to wholesale providers based in Thailand. • In practice, foreign holdings may be structured to allow foreign partners considerable indirect ownership. • The Broadcasting Act contains some cross-media ownership limitations, with ownership percentages to be specified by the national regulator. • NBTC rules on cross-media ownership took effect in January 2015. Radio and television licence holders wishing to take over or acquire more than 25% directly, or more than 50% indirectly, in another licensed company or to perform a cross-holding must submit their plan to NBTC for approval at least 60 days in advance. If approval is granted, ongoing reporting requirements apply. 	
<p>12. Retransmission arrangements <i>Including must carry and remuneration</i></p>	<ul style="list-style-type: none"> • NBTC has issued Must Carry Rules, requiring TV operators on all platforms to carry 21 digital free-to-air TV channels, without remuneration to the relevant free-to-air broadcaster. 	
<p>13. Consumer protection <i>Including cooling-off period, termination rights and payment mechanism</i></p>	<ul style="list-style-type: none"> • NBTC's Rule on Standard Subscription Contracts for pay TV mandates certain requirements for standard subscription contracts, such as a complaints process, etc. A subscriber may terminate the subscription contract any time without penalty by giving written notice to the pay TV operator not less than 5 days in advance. In the case of change of channel composition causing reduction of rights or benefits of the subscriber, the subscriber can terminate the subscription contract immediately. 	
<p>14. Entering a new market: FAST TV</p>	<ul style="list-style-type: none"> • Currently NBTC has no regulation for FAST TV. 	
<p>15. Data handling</p>	<ul style="list-style-type: none"> • N/A 	
<p>16. Other country-specific information not already covered</p>	<ul style="list-style-type: none"> • N/A 	
<p>Useful Links</p>	<ul style="list-style-type: none"> • NBTC https://www.nbtc.go.th/Home.aspx?lang=en-us • Department of Intellectual Property https://www.ipthailand.go.th/en/ • Ministry of Digital Economy and Society https://www.mdes.go.th/home 	