

# Same Same but Different?

Video Policies for Asian Pay-TV and OTT



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### **About CASBAA**

CASBAA is the Asia Pacific region's largest non-profit media association, serving the multi-channel audio-visual content creation and distribution industry. Established in 1991, CASBAA has grown with the industry to include digital multichannel television, content, platforms, advertising, and video delivery. Encompassing some 500 million connections within a footprint across the region, CASBAA works to be the authoritative voice for multichannel TV; promoting even-handed and market-friendly regulation, IP protection and revenue growth for subscription and advertising, while promoting global best practices.

For more information, visit [www.casbaa.com](http://www.casbaa.com)

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# Foreword

With the assistance of expert Knowledge Partners across the Asia Pacific region, CASBAA has been studying the regulation of pay television and “over-the-top” video services in Australia, Cambodia, China, Hong Kong, India, Indonesia, Japan, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, South Korea, Sri Lanka, Taiwan, Thailand and Vietnam (as well as international benchmarks in the United States and the United Kingdom).

What we have found is that the same content is treated differently, both in terms of applicable rules and in terms of enforcement, depending on the platform (traditional cable-, satellite- or IPTV-based pay television on the one hand, or “over-the-top” internet television on the other), where the operator is based (local or offshore) and whether the service is legitimate or illegitimate in respect of copyrights. As a result, licensed, tax-paying local pay television operators are subject to a much stricter regulatory regime, placing them at a significant competitive disadvantage to other operators, particularly – at the other extreme – offshore, over-the-top television services supplying pirated content.

Our investigations produced comprehensive summaries of a host of regulatory policies and issues. We present our findings in this book on a country-by-country basis. Each country’s entry commences with a short commentary reporting recent developments of note. The commentary is followed by a detailed matrix setting out the rules applying to pay television and over-the-top television respectively.

The regulatory information used to prepare the analyses was current as of November 2015. In some jurisdictions, legislative or policy changes have been announced since that time, and the report does not take account of them. Additional changes in the regulatory environment being introduced (for example, in Vietnam) will be noted online at [www.casbaa.com/rfg](http://www.casbaa.com/rfg).

A report of this scope is only possible because of the assistance of our knowledge partners, which provided regulatory information, industry data and market insights to support this study.

However, the judgments and evaluations herein are the responsibility of CASBAA alone, and have not been reviewed/approved by its knowledge partners, nor by individual CASBAA member companies.

CASBAA gratefully acknowledges the participation of Janine Lapworth, BA (Hons), LLB (Hons), whose regulatory and industry expertise provided vital contributions to this report, in her role as lead researcher and drafter.



# Introduction – Same Same but Different

In recent years, television has undergone a comprehensive transformation. Delivery network digitization, the wide availability of high-speed broadband, and technological developments enabling digital devices, particularly mobile telephones, to handle data-heavy applications, have combined to revolutionize television.

More and more of CASBAA's member companies – content companies and network operators – are adopting multi-faceted business models – seeking to deliver content to consumers via OTT as well as traditional platforms. Investments are being made that will determine the future shape and capabilities of networks in Asia.

Investment decisions are influenced by the policy environment – sometimes in ways governments do not anticipate. CASBAA is acutely aware of the complex policy environment for video distribution; we have been examining and explaining the regulation of pay television in Asia for the last decade. Four years ago, we added “over-the-top” video services. The present study is an extension of that work, with more detailed information and insights about how policies are developing over time. (Although beyond the scope of this study, a comparative analysis of free-to-

air television and OTT television regulation would also be instructive, given that free-to-air television is typically subject to the strictest regulatory requirements of the various television platforms.)

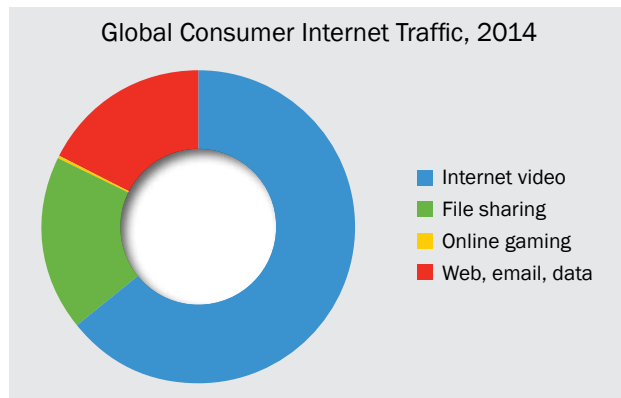
For the purposes of this study, we refer to “pay television” as the established pay television platforms of cable, satellite and IPTV, where operators provide both network infrastructure and content to their customers.

By “over-the-top” video, we mean video services supplied by businesses that do not necessarily provide the networks over which the video is being transmitted, although sometimes they do. Over-the-top (OTT) video providers use internet infrastructure to deliver content to consumers. OTT services are diverse, covering local and international services; using various business models including free, subscription-based or advertising-based; being standalone services or linked to services supplied over other television platforms; featuring professionally-created or user-generated content, or both; and supplying legitimate or illegitimate content, as in pirated or illegal content, or all of these.

	DESCRIPTION	EXAMPLES
<b>Legal services</b>	Catch-up television for local free-to-air or pay-TV services Linear online simulcasts of local free-to-air or pay-TV channels “TV Everywhere” ancillary online offerings for pay-TV subscribers International live streaming services with subscription revenue base Embedded video in online news websites and in official websites for local free-to-air or pay-TV services Video-on-demand offered by pay-TV providers Transactional video-on-demand services Subscription video-on-demand services International video services with advertising revenue base	BBC iPlayer, TVB.com, iwantv.com.ph ABC iview, SKY GO StarHub GO, Singtel TV GO Willow.tv ninemsn.com.au now Video Express iTunes Netflix, Quickflix, Hulu Youtube, Dailymotion
<b>Illegal services</b>	Cyberlockers Live streaming Peer-to-Peer BitTorrent networks Closed peer-to-peer networks	ziddu.com justin.tv Popcorn Time TVPad



Already, a high and growing proportion of consumer Internet traffic worldwide consists of OTT video.



Source: Cisco Visual Networking Index, 2015 Report  
(Note: Cisco defines peer-to-peer traffic as “file sharing”, even if it originates on a commercially-oriented site. Most of this “file sharing” traffic comprises video content.)

It has been predicted that Internet video streaming and downloads will grow to over 80% of all consumer Internet traffic by 2019. In the Asia-Pacific region, it is predicted that video will comprise approximately 78% of all consumer Internet traffic by 2019, up from 62% in 2014.

### Approaches to the regulation of pay television and OTT television services

CASBAA last conducted an in-depth study of the regulation

of pay television and OTT television across the Asia-Pacific region in 2012. Since our last review, there have been few major changes in the regulation of these platforms, despite significant changes in the market. Typically, OTT video has remained subject to generally light-touch regulation of Internet services, whilst pay television is subject to a higher degree of regulation.

The current state of regulation can be summed up in the well-known regional phrase, “Same same but different”: the same content (for example, a television series) is subject to a range of different rules and different enforcement mechanisms, depending on the delivery platform, whether the service provider is local or offshore and whether the service is legitimate or illegitimate. Such differences in treatment lead to competitive distortions and – in a world characterized by communications convergence – are increasingly difficult to justify.

The comparative levels of regulation for pay television and OTT television in each country may be mapped on a continuum of regulation, with light regulation on the left moving towards strict regulation on the right. Whilst a necessarily crude means of representing complex regulatory regimes, it illustrates the different, and at times, contradictory, approaches taken to regulation of the various platforms. Comparing a government’s position on the two tables is illuminating.

PAY TELEVISION CONTINUUM OF REGULATION					
Light					Heavy
	Cambodia	Hong Kong	Australia	India	China
	Myanmar	Japan	Malaysia	Indonesia	
	Sri Lanka	NZ	Philippines	Vietnam	
			Singapore	Taiwan	
			S. Korea		
			Thailand		

OTT TELEVISION CONTINUUM OF REGULATION					
Light					Heavy
Cambodia	India	Australia			China
Hong Kong	Japan	Malaysia			
Indonesia	NZ	Singapore			
Myanmar					
Philippines					
S. Korea					
Sri Lanka					
Taiwan					
Thailand					
Vietnam					



Meanwhile, numerous OTT television offerings – local, regional and international – are being launched across the Asia-Pacific region. The subscription OTT giant, Netflix, launched in Australia, New Zealand and Japan in 2015, followed by Cambodia, Hong Kong, India, Indonesia, Malaysia, Myanmar, the Philippines, Singapore, South Korea, Sri Lanka, Taiwan, Thailand and Vietnam in early 2016. Regional OTT services launched in 2015 include iflix, HOOQ and Viu. A variety of local services are also offered on a country-specific basis, often supplied by or partnered with established pay television and free-to-air (FTA) platforms and mobile phone networks.

The diversity of OTT television services gives rise to a range of practical responses to local regulatory regimes. Established broadcasters, network operators and other content suppliers respect clear rules; compliance is implicit in the broadcasting ethos as well as their institutional cultures, and is necessary to maintain brand reputation

– and value. Such businesses may in fact exceed the strict requirements of the law for reputational or other reasons. International services may do so for operational efficiencies, so that the one service complies across all relevant jurisdictions.

In addition, some local regulators are seeking to require a higher standard; some pay television network operators, for example, may be compelled to extend pay television content rules to the operator's related OTT television services, although other local OTT television services are not required to do the same.

Of course, the OTT television industry also includes businesses without the same reputational investments to protect, such as pirate sites and pornography sites. For these businesses, there is no question of compliance.

The following table shows some examples, by no means exhaustive, of the interaction of the various OTT television services with local regulatory requirements.

## Responses of OTT television services to local regulatory environments

TYPE OF OTT TELEVISION SERVICE	RESPONSE
Local streaming or subscription video-on-demand (SVOD) service, geo-blocked	Complies with local rules applicable to OTT services
Local streaming or SVOD service, not geo-blocked	May comply with local rules in home jurisdiction, but not necessarily with rules in other jurisdictions where content may still be accessed
Local catch-up television service	May import stricter rules from original platform (free-to-air, pay television) for convenience, although some online platforms might show uncensored version of content
OTT television services related to a local platform (free-to-air, pay television)	Related online services may comply with stricter rules of original platform, whether for reputational reasons, efficiency or as may be required by local regulator
International subscription or advertising-based video service (e.g. YouTube, Netflix)	May adopt general rules consistent across all jurisdictions, stricter than some particular jurisdictions may require, though laxer than others might require, with ability to comply with additional requirements in specific jurisdictions Alternatively, may launch country-specific offerings to manage local regulatory requirements, licensing constraints and local language preferences and to offer locally-targeted advertising
Local or international video service supplying pirated or illicit content	Ignores applicable rules

The above table illustrates some of the challenges facing regulators in respect of OTT television services. The first challenge is how to regulate, at a local level, international content services which may not have any physical presence

in the jurisdiction. Another is how to regulate the same content made available over multiple platforms, each with its own rules.



### Same content – different rules

From studying the regulatory frameworks in the various jurisdictions, it is clear that a video stream, delivered over a pay television network (such as cable, satellite or IPTV), must comply with various rules and restrictions. When the same video stream is delivered over the top of a broadband Internet connection, it is not typically subject to the same constraints.

### Content regulation

In respect of content regulation, pay television operators in many Asia-Pacific countries must comply with:

- Content rules, ranging from self-regulatory codes to censorship schemes;
- Local content quotas and foreign content restrictions;
- Classification procedures and labelling requirements;
- Scheduling rules for children's and adult programming;
- Language restrictions and translation requirements;
- Captioning and audio description requirements or targets; and
- Restrictions on advertising certain goods and services.

In certain jurisdictions (Malaysia, Indonesia and Vietnam), “Made in ...” advertising regimes also apply, restricting foreign advertising on pay television channels.

Few of the above requirements and restrictions also apply to OTT video services, with the situation in China being a notable exception. At the other end of the continuum, in various developing jurisdictions, there simply are no content rules; pay-TV operators follow in-house guidelines and total discretion is allowed the OTT operator. In other countries, while rules are not generally strict, minimum requirements apply, such as prohibitions on obscene or indecent material or on tobacco advertising.

The difference in regulatory frameworks for pay television and OTT television leads to results that are contradictory to say the least, and even absurd at times. In Indonesia, pay television content is held to the same strict standards as free-to-air television, even though the same content, available online, is completely unregulated and unrestricted. In China, uncensored video versions earn literally billions of views, while pay-TV is required to broadcast the same content in versions where plots are altered according to censors' whims.

The rules and restrictions applicable to pay television operators are a legacy of earlier regulatory approaches to broadcasting services. When television was simply a mass media platform, involving content being programmed and scheduled by broadcasters and with consumers exercising little choice or control over the content being viewed,

strict content regulation was justified by reference to the protection of vulnerable viewers, such as children. Most regulators tended to recognise that free to air television services, being freely available and accessible to all, required the strictest content rules.

Pay television services were typically subject to rules which, whilst not as strict, were still extensive. This may have made sense in the analogue era, when subscribers typically received, as a minimum, a basic pack of specific channels providing scheduled, linear broadcasts and when there were no technical means to control access to particular channels or content.

However, pay television services have evolved considerably in recent years. Whilst some content is still “pushed” through scheduled linear broadcast of channels, it can also be “pulled” by viewers accessing catch-up television or video on demand functionality. Through digitisation, there is greater scope for subscribers to individualise their viewing experience and channel selections and to use parental controls and other access restrictions to protect vulnerable members of their households. In effect, pay television services now operate like OTT television services, with customers exercising a high level of control over the content they wish to view.

With the same content available on both highly regulated pay television platforms and lightly regulated OTT television platforms, and with similar technical tools available to control access, it is no longer appropriate to require of pay television operators that they comply with stricter content standards for all of their product lines. To continue to insist upon higher standards places local pay television operators at a considerable disadvantage to their online competitors.

### Economic regulation

The competitive disadvantage for local pay television operators is particularly obvious when examining economic regulation. In each jurisdiction studied, pay television operators are subject to a range of constraints on their commercial operations which may include:

- Regulation of wholesale and retail rates, particularly in India and Taiwan, with operators in several other jurisdictions subject to regulatory supervision;
- License fees, often calculated as a percentage of annual revenue;
- Additional taxation, such as that imposed on satellite DTH pay television services in India;
- Advertising minutage caps and, in Australia and Singapore, advertising revenue caps;
- Local investment requirements such as investment in local content and the “Made in ...” advertising regimes;



- Foreign investment restrictions and local incorporation or residency requirements;
- Constraints on business models, such as the bundling of certain channels or a la carte supply;
- Restrictions on exclusive content arrangements, such as the cross-carriage scheme in Singapore and the prohibition on exclusivity in India; and
- Mandatory sharing of certain sports broadcasts with free-to-air broadcasters.

In a very few jurisdictions, local OTT television operators may have to comply with licensing requirements or foreign investment restrictions as in China, or class licence conditions in Singapore, but OTT television operators are largely free to structure and finance their businesses and service offerings as they see fit. They are not subject to any of the constraints listed above.

In addition, pay television operators have to fund and maintain their network infrastructure, a major ongoing cost that OTT television operators do not have to bear.

CASBAA believes it is imperative that the regulation of pay television services be reviewed and substantially reduced in order to enable pay television operators to fairly compete with their OTT counterparts, whether local or offshore.

### Same content – different enforcement

To the extent that there are rules governing OTT television services – with copyright laws being an obvious example (and we focus on this topic separately below) – the rules are not enforced consistently against all OTT television operators. There is a very clear dichotomy between local operators and offshore operators, with the latter often being beyond the reach of local regulators. This is not surprising given the limits of national governments' ability to impose their will on internet broadcasts, but the practical effect is that offshore OTT television services can, and do, act with impunity and without consequence.

Having said that, we see more jurisdictions adopting mechanisms to block local access to some non-compliant offshore websites. This is, in fact, the major development since CASBAA's last comparative study of the pay television and OTT television regulation, published in 2012. Australia, India, Indonesia, Malaysia, Singapore, South Korea, Thailand and Vietnam have adopted site-blocking procedures to address content issues and/or copyright piracy. The specific procedures vary from country to country, with some countries opting for administrative processes and others requiring court orders to be obtained. Interestingly, site blocking proposals were vigorously opposed by major Internet website operators in the United

States, no doubt for a mixture of idealistic and mercenary reasons.

It is too early to say whether site blocking mechanisms in the various forms can be made effective for purposes of regulating offshore OTT television services. Government use of, or refusal to use, these mechanisms has proven to be controversial in several jurisdictions, including India, Malaysia and Thailand. Two common issues are transparency (or lack thereof) in the application of site-blocking procedures and resistance from internet network operators who must actually implement blocks.

There is also the complaint that site-blocking, without more, does no more than encourage the offshore operator to commence operations from a different Internet location. Viewed from this perspective, it is, at most, an inconvenience to the operator and does not deter the operator's illegitimate or unlawful activities.

However, site-blocking is the prevailing solution offered by regulators to address non-compliance by offshore OTT operators.

### Enforcement of copyright laws

The enforcement of copyright laws in many Asian jurisdictions is already challenging due to a number of factors: weak copyright laws particularly in respect of digital infringement, cultural indifference to intellectual property protection and significant resource constraints on enforcement authorities, to name a few.

The offshore dimension of copyright piracy makes enforcement of national copyright laws even more difficult. Approaches taken in various jurisdictions include site-blocking, taking action against local end users rather than the offshore suppliers of the pirated content, and consumer education. However, these approaches have not been sufficient to reduce, or indeed eliminate, the online flow of pirated content across borders.

In the current environment, offshore pirated content services have a substantial competitive advantage over both local and international legitimate services. Advertising represents a lucrative source of income for pirate services, and legitimate services can find themselves competing directly for ad dollars as well as indirectly for viewers' eyeballs. Often, the pirate services compete against legitimate services using exactly the same content, but without the burden of copyright licence fees, regulatory compliance costs or tax obligations. With such an advantage, pirated content services present an attractive business proposition for criminal operators and discourage investment in legitimate services, to the detriment of the industry and consumers alike.



As one CASBAA member has expressed the issue:

“You cannot separate piracy from OTT services and it remains a main concern for companies:

- investing in OTT content and services
- making a credible business case (e.g. a real P&L)
- wanting to place a headquarters and/or invest in or obtain an operating license in a jurisdiction that doesn’t address piracy.”

In our last study of pay television and OTT television regulation in 2012, we proposed online copyright piracy be addressed by:

- Cutting revenue flows to piracy syndicates through restricting payments by advertising services and credit card processors;
- Removing pirate programming and pirate sites from Internet search engines so that they are less accessible;
- Educating consumers as to legitimate content sources and the detrimental impact of copyright piracy;
- Introducing “repeat offender” processes to deter serial downloading by consumers;
- Encouraging governments to actively enforce copyright laws within their jurisdictions, particularly in respect of large-scale online copyright violations; and
- Blocking access to the most egregious pirate sites located offshore.

Although site-blocking mechanisms have been introduced in jurisdictions such as Australia and Indonesia, and a “three-strikes” program for serial downloaders is on the books in New Zealand, there is still much that needs to be done to address online piracy.

By contrast, the United Kingdom has over the past two years stepped up its anti-piracy efforts, with some success. Its strategy involves a dedicated police unit, voluntary agreements with the local advertising industry and local ISPs, a consumer education campaign and engagement with pirate sites. It is only through such a comprehensive strategy, properly resourced over the long term and involving cooperative action by government and businesses in the Internet, advertising, content and business services industries -- and, we would add, across borders -- that enforcement will have the best chance of success.

### Same content, same opportunities?

It is clear that the current state of affairs – with pay television and over-the-top television services being regulated in such different ways – will not be sustainable over the long term. The competitive advantages enjoyed by over-the-top video services – particularly offshore services supplying pirated content – will only increase over time as pay television services remain burdened by restrictions which are no longer necessary nor appropriate. Outdated regulation and competitive disadvantage discourages investment in local networks and content, to the ultimate detriment of consumers.

We believe that governments should review their regulatory regimes for pay television services and determine whether any of the existing restrictions are still required given the evolution, across all platforms, of the television market in recent years. Governments should also consider how to stem the growth and proliferation of illegitimate OTT services, particularly those located off-shore.

We recognize that it is problematic to propose blanket solutions across the Asia-Pacific region given the range of economies, political systems and cultures and given local variances in broadband penetration rates and industry development. Each government must consider these issues and possible solutions in the context of their country’s unique circumstances.

However, CASBAA believes that future regulation should aim to enable legitimate content services to thrive. We see this as a process of “levelling the playing field”, by reducing unnecessary restrictions on pay television services and by removing the advantages currently enjoyed by illegitimate online pirate businesses, wherever they may be. The cost of inaction will be diversion of investment funds away from legitimate onshore businesses, and the hollowing of creative industries starved for remuneration as eyeballs turn to pirated content streamed from abroad.















# Australia

There has been much discussion about regulatory reform in Australia in recent years, with little change so far to the rules on the books. The Convergence Review in 2012 recommended sweeping changes, whilst a 2013 Law Reform Commission Report on copyright statutory licences recommended, relevantly, that the broadcast retransmission scheme should remain in its current form and be considered by the government when developing its broader media and communications policy. No action has been taken by the Australian government following these reviews. Currently, the role of the regulator, the Australian Communications and Media Authority (the ACMA) is being reviewed, as is Australia's intellectual property regime. The compulsory captioning scheme is also scheduled for review in 2016.

Further, after a much-reported review a couple of years ago, the extensive regime regulating designated sporting events (the so-called "anti-siphoning" list) remains in place, constraining pay-TV's ability to buy rights to a huge number (over 1000) of sporting events.

Nevertheless, the regulatory stasis has not affected the pace of change in the market. Existing free-to-air and pay television broadcasters have expanded their content offerings by launching several subscription video on demand services in addition to their online catch-up services. Additional streamed content services are now available through several standalone and bundled set top boxes. The major pay-TV provider has reduced its entry-level subscription fees in response to the increased competition.

## Anti-piracy reforms

One area where some legislative action has been taken is in respect of online piracy.

Amendments to copyright laws in mid-2015 permit a rights holder to apply to the Federal Court for an injunction to require ISPs to disable access to online locations outside Australia which infringe, or facilitate infringements, of copyright. Observers are waiting to see which pirate web services get blocked first.

At the industry level, Australian ISPs and rights holders have developed a voluntary Code of Practice for a Copyright Notice Scheme, whereby a rights holder may notify an ISP of suspected infringements by a customer of that ISP. The ISP in turn notifies that customer of the alleged infringement. If a customer has received three such notices in a 12-month period, and the rights holder applies to the relevant court for preliminary discovery to identify that customer, the ISP agrees to act reasonably in

relation to that application (presumably by not vigorously opposing it). The ACMA is considering the proposed Code. Meanwhile, negotiations continue at industry level as to the apportionment of the costs of the scheme; this issue continues to obstruct implementation. The intended commencement date of 1 September 2015 has now passed and it is not clear when it will come into effect.

The Productivity Commission has embarked on an economic review of Australian intellectual property laws and is due to report in August 2016. However, given the terms of reference for the review, it is unlikely to address the site-blocking provisions or the industry notice scheme mentioned above.

## Convergence

In March 2012, the Convergence Review recommended:

- establishing a new statutory regulator as well as an additional regulator for news reporting;
- replacing the current local content rules applicable to pay-TV and free-to-air TV broadcasters with rules applying across all platforms to large professional content service providers meeting certain Australian audience and revenue thresholds; and
- empowering a new statutory regulator to block changes in control of large, professional content service providers of national significance by applying a "public interest" test.

Following the 2013 national elections, no government action has been taken in response to the review. As a result, media regulation remains fragmented, with online content providers enjoying a much lower level of regulation compared to pay-television and free-to-air television broadcasters.

## Content regulation in respect of over-the-top television services

The Australian legislature has, however, sought to manage content regulation of both domestic and offshore online content services through a two-part scheme based on public complaints. If the ACMA receives a complaint that online video content is X-rated or refused classification, or is R- or MA15+ rated without access restrictions, the ACMA may:

- in respect of online content hosted within Australia – require the content to be removed; and
- in respect of online content hosted outside Australia – notify ISPs to deal with the content pursuant to the prevailing industry code or standard (e.g. by filtering the content) or, in the absence of a relevant code or standard, direct ISPs to take all reasonable steps to prevent end-users from accessing the content.



The ACMA has reported that in the financial year from 1 July 2014 to 30 June 2015, it took action in respect of almost 7,000 items of online content hosted outside Australia. In the same year, no take-down notices were issued in respect of content hosted in Australia, an indication that Australian online providers are effectively self-regulating.

### Restrictions on exclusivity

Restrictive “anti-siphoning” provisions require the broadcast rights for a large number of sporting events to be offered

first to free-to-air television. Pay-television broadcasters may only acquire the rights if those rights have not been acquired by a free-to-air broadcaster within 12 weeks of the start of the event, or if the rights have also been acquired by either of the national broadcasters or by free-to-air broadcasters reaching more than half of the Australian population.

The list of designated sporting events is very extensive. This regime places pay-television at a significant competitive disadvantage vis-a-vis both free television and online content services, in respect of which the rules do not apply.

## Policy Environment

Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>The Australian Communications and Media Authority (ACMA) is an impartial and independent regulator, but key policy decisions are made by the federal Ministry of Communications.</li> <li>The ACMA is responsible for regulating telecommunications, broadcasting, radio communications and online content. However, while it has one converged administrative structure, it continues to implement different legislative frameworks for broadcasting and telecoms.</li> </ul>	<ul style="list-style-type: none"> <li>The ACMA regulates content matters in respect of online content generally; otherwise there is currently no regulation of OTT TV services.</li> </ul>
<b>Copyright Protection</b>	<ul style="list-style-type: none"> <li>Unauthorized use of pay-TV broadcasts for commercial purposes is a criminal offence.</li> <li>Unauthorized use at home is also a criminal offence, since 2007.</li> <li>Effectiveness of enforcement varies, because of differences in state legislation and shared responsibilities between different federal/state agencies.</li> </ul>	<ul style="list-style-type: none"> <li>Unclear whether, under Australian law, the transmission of a live event on an OTT TV service would be protected as a “broadcast” under copyright legislation. Otherwise, legislative protection strong.</li> <li>From 2015, rights holders may apply to the Federal Court for an injunction to require ISPs to disable access to online locations outside Australia which infringe, or facilitate infringements, of copyright.</li> </ul>
<b>Convergence and new technologies</b>	<ul style="list-style-type: none"> <li>Alternative “convergence” distribution platforms can be authorized under a subscription TV licence.</li> <li>However, programming is also being provided by Internet providers under telecom licenses.</li> </ul>	<ul style="list-style-type: none"> <li>OTT-TV providers not subject to licensing.</li> <li>A number of subscription video on demand providers have launched services during 2014-2015.</li> </ul>
<b>Licensing of foreign channels</b> <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>No restrictions on retransmission of foreign channels.</li> <li>No meaningful restrictions on uplink/downlink; licenses readily granted.</li> </ul>	<ul style="list-style-type: none"> <li>No licensing requirement for domestic nor foreign OTT TV services.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Licence fees and taxation</b>	<ul style="list-style-type: none"> <li>Minimal.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Rate regulation</b> <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>None, other than under general competition law.</li> </ul>	<ul style="list-style-type: none"> <li>None, other than under general competition law.</li> </ul>
<b>Program packaging</b> <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>
<b>Restrictions on advertising</b> <i>Including localization rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>Subscription fees must be pay-TV's predominant source of revenue. No more than 50% of pay-TV operators' total revenues can come from advertising.</li> <li>Ad minutage unlimited by government.</li> <li>Ad content is governed by industry Codes of Practice.</li> </ul>	<ul style="list-style-type: none"> <li>No ad revenue limit applies to OTT services, whether free or subscription.</li> <li>Ad content is governed by industry Codes of Practice.</li> </ul>
<b>Content regulation</b> <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"> <li>10% of total program expenditure on drama channels must be spent on new Australian/New Zealand dramas. Flexibly administered; a shortfall in one year can be made up during the next year</li> <li>Self-regulation according to Codes of Practice devised and published by the industry association.</li> </ul>	<ul style="list-style-type: none"> <li>Currently no local content quotas.</li> <li>In respect of OTT TV content hosted outside Australia, if ACMA receives a complaint that the content is X-rated, or R- or MA15+ rated without access restrictions, ACMA may notify ISPs to deal with the content pursuant to the prevailing industry code or standard (e.g. by filtering the content).</li> <li>In respect of OTT TV content hosted within Australia, if ACMA receives a complaint that the content is X-rated, or R- or MA15+ rated without access restrictions, ACMA may require the content to be removed.</li> </ul>
<b>Regulations on languages, dubbing/subtitling and captioning</b>	<ul style="list-style-type: none"> <li>Prescribed annual captioning targets apply to pay television services under broadcasting legislation. Targets vary according to category of service (e.g. movies, news, sports, music).</li> </ul>	<ul style="list-style-type: none"> <li>General anti-discrimination legislation in principle requires closed-captioning of audio-visual material. However, at this stage the government has not put forward any implementing proposals in respect of OTT TV.</li> </ul>
<b>Program supply restrictions</b> <i>Including must provide rules and other restrictions on exclusivity and anti-siphoning rules</i>	<ul style="list-style-type: none"> <li>No general restraints on exclusivity.</li> <li>Restrictive "anti-siphoning" provisions require many sporting events to be offered first to free-to-air TV.</li> </ul>	<ul style="list-style-type: none"> <li>No restraints on exclusivity other than under general anti-trust law.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and wholesale supply of programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>• Specific foreign acquisitions of media assets are reviewable under general foreign investment policy. Media sector (including television and internet sites that broadcast or represent television) is categorised as a “sensitive sector”, meaning that all foreign investments of 5% or more are subject to approval.</li> <li>• No specific restrictions on content providers other than general competition laws.</li> <li>• No specific cross-media ownership restrictions other than general competition laws.</li> </ul>	<ul style="list-style-type: none"> <li>• As for pay-TV for domestic OTT services. Offshore services not affected.</li> </ul>
<b>Retransmission arrangements</b> <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>• No government must-carry rule.</li> <li>• Retransmission of free-to-air broadcasts subject to payment of equitable remuneration to underlying rights holders pursuant to a statutory licence.</li> </ul>	<ul style="list-style-type: none"> <li>• Broadcast retransmission scheme does not apply to online retransmissions of free-to-air broadcasts. Australian OTT platforms would have to negotiate carriage commercially.</li> </ul>
<b>Consumer protection</b> <i>Including cooling-off period and termination rights</i>	<ul style="list-style-type: none"> <li>• Subscription Broadcast Television Codes of Practice registered with the ACMA (which may compel compliance as a condition of licence) require: <ul style="list-style-type: none"> <li>– “Plain English” agreements with subscribers;</li> <li>– Rental agreements for domestic reception to allow for customer to terminate on one month’s notice;</li> <li>– A high quality service to be available to subscribers, including timely response to reported service faults;</li> <li>– Referral of subscribers to State consumer advisory services if subscriber not satisfied with disputes about fault repairs, credit management or billing.</li> </ul> </li> <li>• General consumer protection laws also apply.</li> </ul>	<ul style="list-style-type: none"> <li>• No specific rules (other than general consumer protection law).</li> </ul>

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The Australian Subscription Television and Radio Association (ASTRA) is the peak body representing the subscription television industry in Australia.

ASTRA spearheads the development of industry codes of practice in consultation with the Australian Communications and Media Authority.

ASTRA actively represents the industry on regulatory and policy issues, its members in the media and conducts conferences and forums.

The annual ASTRA Awards celebrate and recognise the diversity, quality and continued growth of the subscription television industry in Australia.











# Cambodia

Cambodia's fast pace of development is reflected in its pay television and online content industries. In addition to incumbent cable television services and a digital terrestrial pay television service, several over-the-top television services are entering the market, mainly in response to the uptake of smartphones.

Domestic regulation remains focussed on the "traditional" pay television platforms. Such regulation focuses on basic principles and content control; it does not restrict foreign channel availability, program supply and packaging arrangements or advertising; nor does it impose requirements in respect of rates, languages or captioning. However, notable in Cambodia is the combination of government control regarding domestic content, and an openness to foreign investment.

## Intellectual property

Historically, piracy has been a major problem in Cambodia and this remains an issue. In addition to cable and signal piracy, the online distribution of and access to pirated content is widespread. Enforcement of copyright laws is uncommon.

Legislation has been drafted to protect encrypted satellite signals and is under review.

## Convergence

There are various pieces of legislation, in draft form or in the process of being drafted, which may have an impact upon the provision of content services over mobile and online platforms. These include a Law on Telecommunications and a Law on E-Commerce.

## Content control

The Ministry of Information and the Ministry of Fine Arts and Culture regulate content on pay television platforms.

The Ministry of Information has in the past implemented ad hoc broadcasting rules, particularly during election periods. As a result, the regulatory environment, while commendably light-touch in theory, can be somewhat unpredictable.

In addition, content creators tend to exercise caution in reporting on public affairs as defamation and the insulting of public officials are criminal offences under Cambodia's Penal Code.

In respect of online content, the Ministry of Information established a working group in late 2014 to investigate restricting online access to immoral content. Around the same time, the government announced the establishment of a Cyber War Team to monitor online activity "to protect the government's stance and prestige."

A cybercrime law drafted in 2014 prohibited online publications which were damaging to moral and cultural values, challenged the integrity of the government or were defamatory. The proposed penalties were fines and imprisonment. The draft law was withdrawn in late 2014, but remains under consideration by the Ministry of Post and Telecommunications.

These recent developments evidence the Cambodian government's increased interest in controlling content available online.

## Foreign investment

Despite State ownership of various media assets, including free-to-air television channels and newspapers, foreign direct investment is not restricted, although subject to the administrative requirement of registration.

However, media companies do not have access to various tax benefits and duty concessions that are afforded to foreign investment activities in other sectors.

## Policy Environment

Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>TV and radio broadcasts, including pay-DTT and cable TV, are regulated by the Ministry of Information.</li> <li>Mobile phones or other devices that may deliver content are regulated by the Ministry of Posts and Telecommunications.</li> </ul>	<ul style="list-style-type: none"> <li>There is currently no regulation of OTT TV services.</li> <li>It remains unclear whether the Ministry of Post and Telecommunications would require a license or permit to be obtained in order to provide an OTT TV service in Cambodia, with existing services assessed on a case by case basis.</li> </ul>



## Policy Environment

Regulatory Regime Review	Pay TV	OTT TV
<b>Copyright Protection</b>	<ul style="list-style-type: none"> <li>Unauthorized use of any copyrighted work is an act of copyright infringement.</li> <li>Copyright infringement is a criminal offence and penalties include imprisonment and/or fines.</li> <li>No specific copyright provisions relating to broadcasting.</li> <li>In practice, copyright laws are rarely enforced.</li> </ul>	<ul style="list-style-type: none"> <li>Cambodian copyright protections apply in theory to online platforms.</li> </ul>
<b>Convergence and new technologies</b>	<ul style="list-style-type: none"> <li>There is a pay-DTT operator that is regulated according to the same rules as cable.</li> <li>No IPTV nor mobile broadcast in Cambodia yet (although 3G phones are used to watch television programming, often through proxy servers).</li> <li>3G licensing is governed by the Ministry of Posts and Telecommunications.</li> </ul>	<ul style="list-style-type: none"> <li>New technologies regarding internet content are governed by the Ministry of Posts and Telecommunications.</li> <li>It remains unclear whether a license or permit would be required to provide OTT TV services in Cambodia.</li> </ul>
<b>Licensing of foreign channels</b> <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>Operators have negotiated commercial contracts for retransmission of foreign channels.</li> <li>No regulations/restrictions in respect of uplink/downlink.</li> </ul>	<ul style="list-style-type: none"> <li>No regulations exist.</li> </ul>
<b>Licence fees and taxation</b>	<ul style="list-style-type: none"> <li>None.</li> </ul>	<ul style="list-style-type: none"> <li>No regulations exist.</li> </ul>
<b>Rate regulation</b> <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>No regulations/restrictions exist.</li> </ul>	<ul style="list-style-type: none"> <li>No regulations exist.</li> </ul>
<b>Program packaging</b> <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>No regulations/restrictions exist.</li> </ul>	<ul style="list-style-type: none"> <li>No regulations exist.</li> </ul>
<b>Restrictions on advertising</b> <i>Including localization rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>No regulations/restrictions exist.</li> </ul>	<ul style="list-style-type: none"> <li>No regulations exist.</li> </ul>
<b>Content regulation</b> <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"> <li>The Ministry of Information has discretion to regulate content quotas. To date, there are no specific implementing regulations affecting foreign channels on Cambodian pay-TV systems. However, Cambodian domestic channels are required to broadcast only domestic films between 7 and 9 pm.</li> </ul>	<ul style="list-style-type: none"> <li>No regulations exist.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Content regulation</b> <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"> <li>The Ministry of Information and Ministry of Culture and Fine Arts have the authority to regulate content.</li> <li>Nudity is not allowed on pay-TV nor free-to-air TV in Cambodia.</li> </ul>	
<b>Regulations on languages, dubbing/subtitling and captioning</b>	<ul style="list-style-type: none"> <li>No regulations/restrictions exist.</li> </ul>	<ul style="list-style-type: none"> <li>No regulations exist.</li> </ul>
<b>Program supply restrictions</b> <i>Including must provide rules and other restrictions on exclusivity and anti-siphoning rules</i>	<ul style="list-style-type: none"> <li>No regulations/restrictions exist.</li> </ul>	<ul style="list-style-type: none"> <li>No regulations exist.</li> </ul>
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and wholesale supply of programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>No industry-specific regulations or restrictions.</li> <li>General foreign investment rules apply. The approval of the Council for the Development of Cambodia (CDC) is required for, relevantly, foreign investment in projects involving capital investment of US\$50 million and above and certain infrastructure projects. Media activities are specifically excluded from investment projects which may be eligible for certain government incentives.</li> <li>No cross-media ownership restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>No regulations exist.</li> </ul>
<b>Retransmission arrangements</b> <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>No regulations/restrictions exist.</li> </ul>	<ul style="list-style-type: none"> <li>No regulations exist.</li> </ul>
<b>Consumer protection</b> <i>Including cooling-off period and termination rights</i>	<ul style="list-style-type: none"> <li>No regulations/restrictions exist.</li> </ul>	<ul style="list-style-type: none"> <li>No regulations exist.</li> </ul>
<b>Other country-specific information</b>	<a href="http://www.information.gov.kh/">www.information.gov.kh/</a> <a href="http://www.mptc.gov.kh/">www.mptc.gov.kh/</a>	<a href="http://www.mptc.gov.kh/">www.mptc.gov.kh/</a>

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BNG Legal is a leading law firm with offices in Phnom Penh and Yangon providing comprehensive legal services to foreign and local clients. Our diverse team of legal professionals combine international standards with local expertise for a business-focused approach to client service.

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# China

China continues to impose the most intensive and extensive controls over media in the Asia-Pacific region, with strict licensing regimes, censorship and restrictions on foreign participation extending to all platforms. The regulatory environment is complex, given the number of local and national government agencies exercising authority. At the national level, these agencies include the Ministry of Industry and Information Technology, the State Administration of Press, Publication, Radio, Film and Television (SAPPRFT), the State Internet Information Office and the Ministry of Culture.

Copyright piracy, the heavy involvement of the State – particularly in terms of media ownership and content control – and the restrictions on foreign programming and foreign investment still operate to constrain the domestic pay television industry. Heavy restrictions on pay-TV have given an enormous boost to growth of online content distribution – both legal and illegal.

## Copyright protection

Recent enforcement activities by the Chinese government have been welcomed by rightsholders, including the regular “Sword-Net” campaigns investigating and prosecuting online copyright infringement. The successful prosecution of online piracy services, such as the streaming website QVOD which received a US\$42 million fine in June 2014, is notable. Other prosecutions resulted in fines and prison sentences as well as the closure of several notorious piracy services.

However welcome the above enforcement activities, piracy remains a major issue in respect of both individual programs and intercepted pay television channel transmissions. In addition to widespread copyright infringement occurring within China, local businesses are facilitating copyright infringement beyond China’s borders through the manufacture and export of “black boxes” (streaming media set-top-boxes), which make available vast quantities of pirated programming transmitted online. The software which facilitates access to the infringing content is either pre-loaded or supplied after-sale. China has taken steps to control domestic distribution of “third-party” apps (those not under control of the box distributor or its partners), but millions of boxes which enable piracy continue to be exported.

## Convergence

The State Council has announced a plan to integrate telecommunications, broadcasting and Internet networks. The plan would permit certain pay-TV platform operators to operate in the telecom and internet sectors (for example, as internet service providers) and telecom businesses to produce and transmit television and radio programming other than current affairs and politics.

A pilot program commenced in a number of cities in 2011, and this program is intended to be expanded nationally. The government has proposed preparing legislation and policies to support this integration, although no draft laws have been released at the time of publication.

## Content regulation

Stringent content control is well-established in China on traditional and new media platforms, both in terms of censorship and access to foreign content. While online content supply was initially relatively less regulated, recent developments are tending to extend the State’s restrictive approach to online platforms.

SAPPRFT has issued a draft amendment to the regulation on OTT TV, to consolidate existing rules applying to various networks such as IPTV, mobile TV, internet TV and OTT TV. The draft amendments would prohibit the making of news programs by online content providers and would require online broadcasters to engage program censors.

In respect of foreign content, regulations issued by SAPPRFT in September 2014 required online distributors of foreign films and television dramas to have foreign content censored by SAPPRFT and to limit foreign content to 30%, among other requirements.

## Foreign investment

The Chinese media landscape is characterised by substantial levels of State ownership, and foreign investment in pay television and OTT TV content services is prohibited.

The draft amendments to the regulation of OTT TV (see above) propose to lift the prohibition on foreign investment but require the online service provider to be state-owned or controlled. These amendments, along with other recent regulatory developments noted in this report, suggest that China intends to maintain its control of media for the foreseeable future.



## Policy Environment

Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>Overlapping government-controlled regulatory agencies including Ministry of Industry and Information Technology (telecommunications and broadcast satellite and internet infrastructure) (MIIT), the State Administration of Press, Publication, Radio, Film and Television (SAPPRFT) (television and radio content and coaxial cable infrastructure) and the Ministry of Culture (online content).</li> <li>Administrative review (by a higher level administrative body) and judicial review of regulatory decisions technically available but rarely sought.</li> </ul>	<ul style="list-style-type: none"> <li>The regulatory regime for “over-the-top” television services distinguishes between audio-visual programming delivered via the Internet to either: (i) physical television sets with or without set-top boxes (<b>Internet TV</b>); or (ii) other devices such as mobile phones, websites, etc. (<b>OTT TV</b>).</li> <li>Various government regulatory agencies exercise overlapping authority, including MIIT (value-added telecoms services such as internet content providers or information service providers), SAPPRFT, State Internet Information Office (internet news and monitoring of online content) and Ministry of Culture (online transmission of “Internet culture products” including music and gaming).</li> </ul>
<b>Copyright Protection</b>	<ul style="list-style-type: none"> <li>China’s copyright law grants protection in respect of copyright works (including audiovisual works). However, online content piracy is widespread despite recent improvements in enforcement.</li> <li>No effective legal penalties to deter China-based international circumvention networks.</li> <li>Unauthorized overseas content received by millions of Chinese consumers using illegal satellite dishes.</li> <li>Like Cable and DTH, IPTV and mobile TV services are subject to SAPPRFT license. Foreign invested entities are prohibited from providing such services.</li> </ul>	<ul style="list-style-type: none"> <li>Online content piracy widespread. Pre-2010, Internet TV manufacturers worked with online video companies to build up their own platforms for OTT TV operation, causing online piracy to spread to Internet TV. However, most partnerships between Internet TV manufacturers and online streaming websites terminated with the introduction of the SAPPRFT permit system, given its strict requirements for content (as for traditional TV platforms), indirectly bolstering copyright protection.</li> <li>Despite government controls, China has become a hub for streaming of intercepted international programming onto the global Internet, pushed by criminal syndicates profiting from subscriptions, sales of internet-linked set-top boxes, and from advertising.</li> </ul>
<b>Convergence and new technologies</b>	<ul style="list-style-type: none"> <li>Like Cable and DTH, IPTV and mobile TV services are subject to SAPPRFT license. Foreign invested entities are prohibited from providing such services.</li> </ul>	<ul style="list-style-type: none"> <li>OTT players must obtain the relevant License for Spreading Audio-visual Programs via Information Network issued by SAPPRFT (the AVSP) depending on the type of content of the audio-visual programs.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
Convergence and new technologies	<ul style="list-style-type: none"> <li>Government committed to convergence of telecommunications, broadcasting and Internet and to expand ongoing experimental measures from pilot areas to nation-wide by the end of 2015.</li> </ul>	<ul style="list-style-type: none"> <li><b>Internet TV:</b> Only those holding AVSP for content and aggregation services relating to Internet TV may engage in Internet TV services (<b>Internet TV AVSP</b>). However, SAPPRFT has issued only a few Internet TV AVSPs to its affiliated entities and traditional domestic TV stations.</li> <li><b>OTT TV:</b> The operators of OTT TV businesses must obtain a value-added telecom service permit from the MIIT or its provincial level counterparts.</li> </ul>
Licensing of foreign channels <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>Retransmission of foreign channels generally prohibited. However, with regulatory approval, foreign TV channels may be transmitted in hotels rated 3-stars or above and in designated areas where foreigners predominantly reside.</li> <li>The importation or re-broadcasting of foreign content requires prior approval from SAPPRFT.</li> <li>Foreign advertising must comply with domestic advertising rules.</li> <li>Uplinking and downlinking permission required for all channels (for foreign channels, transmission and dealings with SAPPRFT must be done through the only SAPPRFT-designated agent, a wholly owned subsidiary of China International Television Corporation). Severe restrictions imposed on foreign channels and to date uplink/downlink has been required to be via the Apstar-6 satellite.</li> <li>Establishment of domestic pay-TV channels subject to approval by SAPPRFT or its local counterparts.</li> </ul>	<b>Internet TV</b> <ul style="list-style-type: none"> <li>Theoretically, Internet TV is subject to same restrictions as traditional TV. Re-transmission of foreign channels is prohibited; any import and re-broadcasting of foreign content on Internet TV requires the prior approval of SAPPRFT.</li> <li>This rule is ignored by the Internet TV streaming piracy syndicates, whose content is available both inside and outside China.</li> </ul> <b>OTT TV</b> <ul style="list-style-type: none"> <li>Domestic providers of OTT TV are subject to the SAPPRFT import review system in respect of certain foreign content, such as foreign television dramas and films. Foreign films and teleplays may only be screened over OTT TV when (i) the films and teleplays have been duly examined by SAPPRFT, and (ii) the relevant SAPPRFT Licence has been obtained.</li> </ul>
License fees and taxation	<ul style="list-style-type: none"> <li>No industry-specific licence fees.</li> </ul>	<ul style="list-style-type: none"> <li>No industry-specific licence fees have been made known.</li> </ul>
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>Basic cable prices determined by local NDRC bureaus in consultation with SAPPRFT.</li> <li>Pricing of value-added cable service or digital TV services above the basic level can be solely determined by the operators.</li> <li>No wholesale rate regulation.</li> </ul>	<ul style="list-style-type: none"> <li>No government-determined rates in this area.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Program packaging</b> <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>No specific restrictions on tiering or bundling, however customers must be able to subscribe to basic cable packages only (with prices regulated by the NDRC – see above under ‘Retail rate regulation’) and not be forced to subscribe to additional channels or value-added services.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>
<b>Restrictions on advertising</b> <i>Including localization rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>Advertisements generally prohibited on domestic pay-TV channels unless the channel specialises in screening advertisements or if it is promoting pay TV channels.</li> <li>Generally-applicable advertising rules require, among other things, integrity of the program to be maintained and continual visibility of the channel’s mark. They also restrict, among other things, insertion of advertisements in the corner of the screen during a TV program.</li> <li>Minutage restrictions of 12 minutes per hour (or 18 minutes maximum during the two hour peak viewing period of 7pm – 9pm.)</li> <li>In-program advertising is not allowed, so ads should be broadcast before or after programs.</li> <li>As a matter of law, advertising on foreign channels is expected to comply with Chinese advertising laws. In practice, the advertising laws are not currently enforced against foreign channels on the hotel platform.</li> </ul>	<ul style="list-style-type: none"> <li>Taking a literal interpretation of the regulations, only the general restrictions on advertisements will apply to Internet TV and OTT TV. The specific restrictions on advertisements on TV broadcasts do not apply to Internet TV and OTT TV as Internet TV and OTT TV do not fall within the definition of traditional forms of TV and radio.</li> <li>However it is understood that the general industry practice among Internet TV and OTT TV players is to seek to comply with all advertising regulations in the PRC.</li> </ul>
<b>Content regulation</b> <i>Including local content quotas, content control and insertion of classification labels into international feeds</i>	<ul style="list-style-type: none"> <li>Foreign content must not exceed 30% of daily programming on a domestic pay TV channel. Cannot retransmit the entirety of a foreign channel on pay TV (i.e. must be done on a program-by-program basis).</li> <li>Domestic pay-TV channels must self-censor to ensure programs comply with stringent censorship requirements.</li> <li>All imported programming also subject to censorship and approval of SAPPRFT.</li> </ul>	<ul style="list-style-type: none"> <li>No local content quotas.</li> <li>General requirements regarding Internet content similarly apply to both Internet TV and OTT TV, including that such content should not violate basic principles specified in constitutional laws, harm the unity, sovereignty or territorial integrity of China, or harm the social morality and damage the cultural traditions of China.</li> <li>Movies and TV programs are subject to censorship and approval of SAPPRFT, as is required for cable TV.</li> </ul> <p><b>Internet TV</b></p> <ul style="list-style-type: none"> <li>Internet TV content aggregators have same obligations as TV channels. All imported programs subject to censorship and approval.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Content regulation</b> <i>Including local content quotas, content control and insertion of classification labels into international feeds</i>	<ul style="list-style-type: none"> <li>Scripts for TV programs produced by Sino-foreign cooperatives are subject to examination by SAPPRFT.</li> <li>Scripts for all movies need to be submitted to SAPPRFT for filing. However, according to recent guidance from SAPPRFT, only films that deal with particularly sensitive subject matter such as politics, foreign affairs or religion are subject to review and scrutiny.</li> </ul>	<b>OTT TV</b> <ul style="list-style-type: none"> <li>OTT TV content must also comply with strict content rules. Although imported programs are not yet subject to prior approval, SAPPRFT recently issued a circular requiring online content providers to closely self-regulate online video content.</li> <li>The annual total amount of foreign films and teleplays introduced by a single website for broadcasting shall not exceed 30% of the total amount of domestic films and teleplays purchased by the website for broadcasting in the previous year.</li> <li>Specifically, for websites introducing foreign films and teleplays, the operators of such websites are required to seek SAPPRFT's prior approval before making it available on the website.</li> </ul>
<b>Regulations on languages, dubbing/subtitling and captioning</b>	<ul style="list-style-type: none"> <li>Any foreign language channels require SAPPRFT approval.</li> </ul>	<ul style="list-style-type: none"> <li><b>Internet TV:</b> All foreign language content on Internet TV requires prior SAPPRFT approval.</li> <li><b>OTT TV:</b> Websites introducing foreign films and teleplays are required to seek SAPPRFT's prior approval before making them available on the website.</li> </ul>
<b>Program supply restrictions</b> <i>Including must provide rules and other restrictions on exclusivity</i>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>Foreign investment prohibited.</li> <li>No cross-media ownership restrictions, in the context of heavy state ownership and control.</li> </ul>	<ul style="list-style-type: none"> <li><b>Internet TV:</b> In principle, foreign investment is prohibited. However, some investors are involved at various points in value chain.</li> <li><b>OTT TV:</b> Foreign investment prohibited.</li> <li>Foreign investment also prohibited in online news businesses, online audio program services and all online culture businesses other than music.</li> <li>Providing technical services rather than content integration or supply for Internet TV and OTT TV is permitted to foreign investors.</li> <li>Above rules are ignored by piracy syndicates, some of whom appear to have significant foreign involvement.</li> </ul>
<b>Retransmission arrangements</b> <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>Although not required under written law, in practice, state-owned provincial satellite channels must re-transmit the CCTV evening news.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Consumer protection</b> <i>Including cooling-off period and termination rights</i>	<ul style="list-style-type: none"> <li>Customers must be allowed to subscribe to just basic cable packages only.</li> </ul>	<ul style="list-style-type: none"> <li>There are general obligations that apply to OTT service providers including the obligations to protect the rights and personal information of its users, to ensure that there are no unfair restrictions on the part of the users, and to make public disclosures of the charges and terms of the services (if any).</li> </ul>

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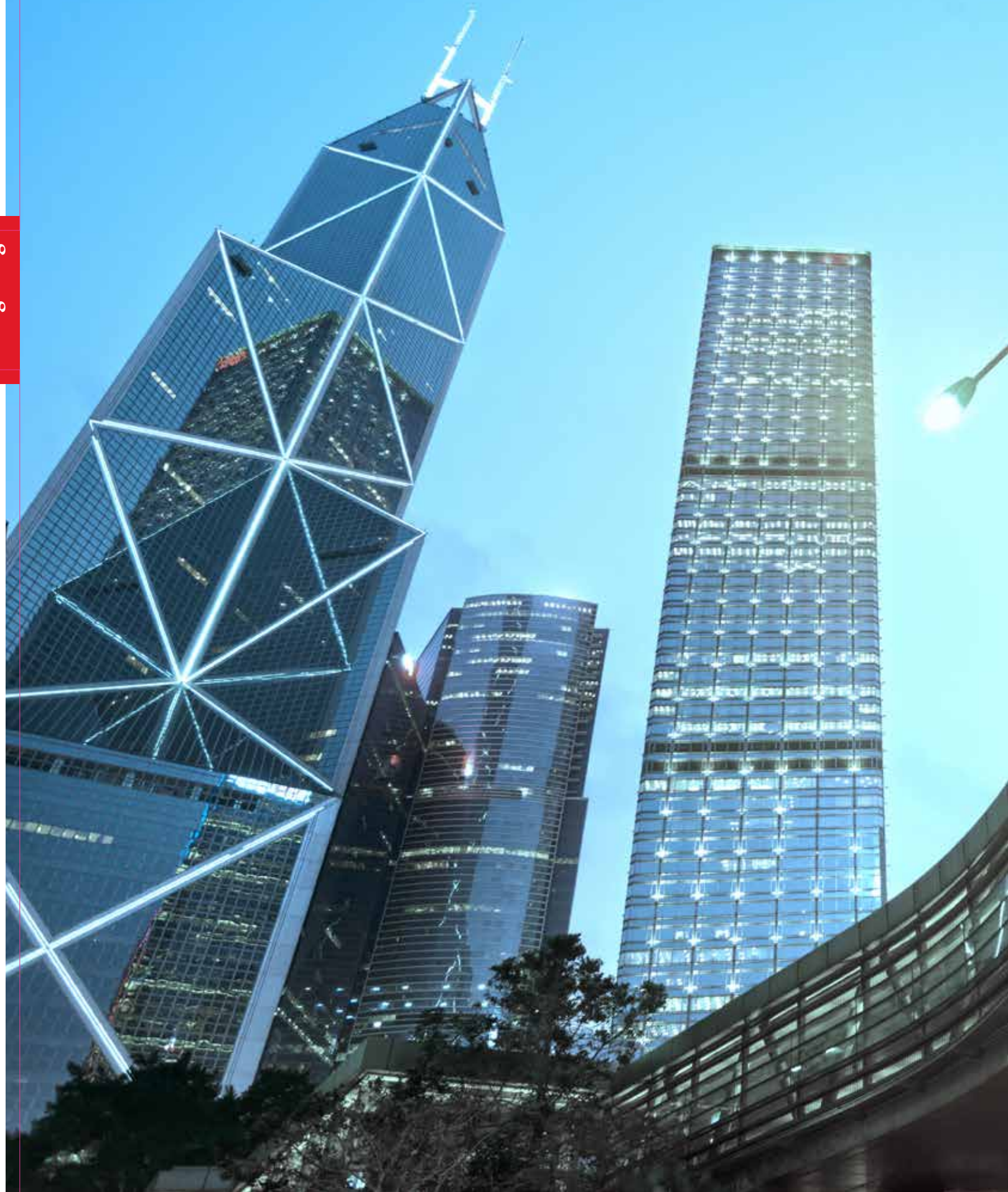
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Our global TMT practice is recognised as a top-tier practice that provides regulatory and commercial advice on all aspects of telecoms and broadcasting, including voice and data, fixed and mobile, and cable and satellite.











# Hong Kong

Under the “one country – two systems” approach in place since the handover of Hong Kong to China in 1997, Hong Kong’s pay television businesses have not been subjected to the same controls as their mainland counterparts. By contrast, they have in general enjoyed relatively positive, light-touch regulation with corresponding competitive benefits.

Current issues in this jurisdiction relate to the slow pace of copyright reform and adaptation of regulatory frameworks to digital convergence. There has been a rising level of public concern over press freedom, and pointed questions have been raised about political intrusions into the licensing process for free-to-air TV. However, the pay-TV and online TV frameworks have not been affected as yet.

## Copyright protection

Hong Kong copyright law currently does not include a generally-applicable communication right that would protect online exploitation of copyright material.

The Hong Kong government has introduced The Copyright (Amendment) Bill 2014, which would provide for such a right as well as introducing a “safe harbour” regime for online service providers on whose platforms infringing material is found. The Bill also clarifies when distribution of infringing content would constitute a criminal offence. At the time of publication, the Bill had not yet passed into law, having been subject to excessive delay due to ongoing debate over the scope of protection for internet parodies.

It remains to be seen whether the legislation, once passed, will have any real effect on enforcement of intellectual property rights: substantial additional work by the government – possibly with additional legislation – is likely to be necessary to achieve real protection of broadcast content from various forms of online piracy.

## Convergence

In 2012, the broadcasting and telecommunications regulators were merged to form the Communications Authority (CA) as the first step in the Government’s plan to address convergence, with legislative reform to follow.

However, despite the merger of regulators several years ago, telecommunications and broadcasting continue to be regulated separately and little progress appears to have been made on convergence legislation.

The Government now states that it is planning to review the telecommunications and broadcasting legislation over three years, commencing in early 2016.

## Content regulation

Compared to other jurisdictions in the region, the regulation of content on pay television and OTT TV is relatively light. However, regulations on television advertising are particularly outmoded and have not been updated in light of competition from online content supply.

## Policy Environment

Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>A single body oversees both broadcasting and telecommunications – the Communications Authority (CA), the executive arm of which is the Office of the Communications Authority (OFCA).</li> <li>CA is an efficient, transparent, statutory body, nominally independent but staffed by civil servants.</li> <li>Regulatory reform has stalled, as little progress made on an update of laws planned when the CA was established in 2011.</li> </ul>	<ul style="list-style-type: none"> <li>Governmental policy is technology neutral, but there is no economic regulation of internet-based services: The Telecommunications Ordinance focuses on the means of provision of services, while the Broadcasting Ordinance excludes “services provided on the service commonly known as the internet” from being classified as television programme services.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>• Separate regulations for TV content and broadcasting network infrastructure, with telecoms facilities and frequencies licensed under a unified carrier license regime.</li> <li>• Appeal possible to Chief Executive.</li> <li>• Judicial review available</li> </ul>	<ul style="list-style-type: none"> <li>• OTT TV services are, however, subject to general laws prohibiting the distribution of certain materials, including child pornography, obscene images and pirated materials.</li> </ul>
<b>Copyright Protection</b>	<ul style="list-style-type: none"> <li>• Infringement of copyright in broadcasting is usually a civil, not a criminal, offence.</li> <li>• Commercial transactions involving unauthorized decoders are a criminal offense, but enforcement is lax for decoders for international TV.</li> <li>• Online piracy is rampant; there is no meaningful protection against online streaming of TV channels.</li> <li>• Copyright law has not been updated in over a decade; inadequacies becoming more apparent.</li> </ul>	<ul style="list-style-type: none"> <li>• Copyright law in theory applies to internet broadcasts, but infringement is widespread.</li> <li>• Government has prosecuted uploaders of infringing content.</li> </ul>
<b>Convergence and new technologies</b>	<ul style="list-style-type: none"> <li>• Regulatory regime is technology-neutral as between traditional TV platforms.</li> <li>• Cable, DTH, IPTV and mobile distribution platforms all compete.</li> </ul>	<ul style="list-style-type: none"> <li>• Although regulatory regime is theoretically technology-neutral, the government has no legal authority to regulate OTT TV services.</li> </ul>
<b>Licensing of foreign channels</b> <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>• No restrictions on retransmission of foreign channels.</li> <li>• No meaningful restrictions on downlinking: channels not subject to downlink licensing, but operators' bouquets must be notified.</li> <li>• Special facilitation for "non-domestic" broadcast uplinks.</li> </ul>	<ul style="list-style-type: none"> <li>• Government has no legal authority to regulate channels broadcast over the internet, whether domestic or foreign in origin.</li> </ul>
<b>Licence fees and taxation</b>	<ul style="list-style-type: none"> <li>• Domestic pay TV annually: HK\$1.533 million plus HK\$4 per subs.</li> <li>• Non-domestic TV annually: as low as HK\$56,400.</li> <li>• Intention is that fee only covers all administrative costs.</li> </ul>	<ul style="list-style-type: none"> <li>• Government has no legal authority to impose licenses or fees on channels broadcast over the internet, whether domestic or foreign in origin.</li> </ul>
<b>Rate regulation</b> <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>• None.</li> </ul>	<ul style="list-style-type: none"> <li>• None.</li> </ul>
<b>Program packaging</b> <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>• No restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>• None.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Restrictions on advertising</b> <i>Including localization rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>• No minutage limit for pay-TV.</li> <li>• Specific legislation and the Generic Code of Practice on Television Advertising Standards contain a range of other restrictions on television advertising (including on pay-TV platforms).</li> </ul>	<ul style="list-style-type: none"> <li>• No limits on advertising.</li> <li>• Hong Kong law outlaws solicitation of bets (bookmaking) by unauthorized websites, including TV sites, whether they are located inside or outside Hong Kong. (However, as a practical matter, police are only able to take action against sites located within Hong Kong.)</li> <li>• Advertising restrictions in the Generic Code of Practice on Television would not apply to OTT TV services. However such services would be subject to the restrictions and prohibitions in firearms and smoking legislation.</li> </ul>
<b>Content regulation</b> <i>Including local content quotas, content control and insertion of classification labels into international feeds</i>	<ul style="list-style-type: none"> <li>• No local content quotas.</li> <li>• Platform operators (and channels) required to adhere to broad guidelines.</li> <li>• In addition to general TV content regulation, the Control of Obscene and Indecent Articles Ordinance (COIAO) regulates the publication and public display of obscene and indecent articles.</li> </ul>	<ul style="list-style-type: none"> <li>• No local content quotas.</li> <li>• Basic controls in the COIAO apply to Internet TV. Distributing obscene materials through a website based in Hong Kong would be an offense.</li> <li>• A Code of Practice commits internet service providers in Hong Kong not to allow their services to host material “likely to be classifiable as obscene.”</li> <li>• No extraterritorial reach to websites outside Hong Kong. No attempts are made to repress reception of obscene video from foreign sites.</li> </ul>
<b>Regulations on languages, dubbing/subtitling and captioning</b>	<ul style="list-style-type: none"> <li>• None.</li> </ul>	<ul style="list-style-type: none"> <li>• None.</li> </ul>
<b>Program supply restrictions</b> <i>Including must provide rules and other restrictions on exclusivity</i>	<ul style="list-style-type: none"> <li>• No restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>• None.</li> </ul>
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>• No limits on foreign investment, though a majority of directors must be HK residents.</li> <li>• Some constraints on control of multiple media outlets apply to both domestic and foreign investors.</li> </ul>	<ul style="list-style-type: none"> <li>• No regulatory restriction on foreign investment.</li> <li>• No limits of any kind on internet broadcasters, including cross-media ownership.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>A broadcast licensee cannot have control of other licensees (unless it is a non-domestic licensee controlling a domestic pay licence) nor can an advertising agency, sound broadcasting licensee, a proprietor of a newspaper produced in Hong Kong, a sound/television material transmitter, a domestic sound broadcasting licensee, a broadcast content provider, or a person who exercises control over the abovementioned categories of persons or the associate of these persons have control over a licensee without prior government approval.</li> </ul>	
<b>Retransmission arrangements</b> <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>None.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Consumer protection</b> <i>Including cooling-off period and termination rights</i>	<ul style="list-style-type: none"> <li>No mandatory cooling-off period in place; but a minimum 7 day cooling off period is recommended in a code of practice issued by the CA.</li> <li>Trade Descriptions Ordinance generally prohibits false trade descriptions, false marks and mis-statements in respect of services sold, and requires specific information to be provided to consumers for specified products.</li> <li>If a customer intends to terminate a telecommunications service contract or exercise his rights under the contract, and the operator imposes non-contractual barriers that are onerous or disproportionate, such behaviour may constitute aggressive commercial practices which are prohibited under the Trade Descriptions Ordinance.</li> <li>OFCA has no power or role in the settlement of contractual disputes between individual customers and operators.</li> </ul>	<ul style="list-style-type: none"> <li>Trade Descriptions Ordinance would theoretically apply to OTT TV services available locally as it applies generally to all commercial practices in Hong Kong.</li> </ul>

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Haldanes is a Hong Kong-based law firm experienced in serving the needs of clients, both locally and throughout the Asia region. Established in 1975, the partners have an extensive collective knowledge of legal practice in the region.

John McLellan is the partner in charge of Haldanes' commercial, media, sports and entertainment practice in Asia. He has acted in commercial transactions in most Asian jurisdictions including mergers and acquisitions, joint ventures and licensing arrangement, as well as more industry specific arrangement.











# India

Like China, India has one of the largest pay television markets in the world. Like China, the pay television market is subject to a high level of regulation; and in India's case, covering matters such as downlinking licenses, retail and wholesale rates and program supply and packaging. However, unlike China, strict regulation does not extend to content supply, and OTT television is lightly regulated.

In addition to the restrictive regulatory environment and onerous administrative requirements, the pay television industry is challenged by a lack of transparency; in particular, under-reporting of subscriber numbers by cable operators has been a major problem for many years. However, some progress is being made on the latter issue; the ongoing progressive digitization of India's cable networks is helping to address it to a large extent.

Ongoing copyright issues include cable and DTH signal theft and online piracy. Enforcement is possible through India's courts, but the processes are long. Whilst legislative convergence remains a work-in-progress, the Indian Government in November 2015 confirmed proposed changes to its foreign investment regime, lifting certain restrictions in the media sector.

## Copyright

Pay television piracy, particularly interception and redistribution of channel signals by tens of thousands of local cable operators, has been a particular problem in India. Although the digitization process should reduce cable signal theft, its impact is likely to be constrained by the use of inadequate technological protection measures in set top boxes and the continued supply of analogue cable services in many digital areas.

Online and mobile piracy has proven difficult to control and Indian law provides only a limited ability to block infringing websites. The courts have however, taken some initiative to put a hold on such activities. In 2014, the Delhi High Court issued orders to ISPs to disable access to some 400 websites; which were carrying and streaming pirated sports content online without authorization. John Doe orders were handed down, to put a ban on such websites.

Various proposals have been made by industry to amend the Copyright Act and the Information Technology Act, to bolster police capacity and to modernise court processes nationwide to enable more effective enforcement in similar copyright cases.

## Convergence

In late 2014, the Department of Telecommunications revived a plan to converge and reform the various regulatory agencies, but no legislation has been introduced to date. Content regulation remains the purview of the Ministry of Information and Broadcasting, while "carriage" regulation (including broad controls on content distribution and retail/wholesale rates) are in the hands of the Telecom Regulatory Authority of India (TRAI).

The Government is also considering the regulation of net neutrality, which may impact the provision and availability of OTT TV services in India. In March 2015, the Telecom Regulatory Authority of India (TRAI) issued a consultation paper on the regulatory framework for OTT services which explored regulatory approaches to net neutrality. The Telecom Ministry has also been considering these approaches; no government response to the numerous submissions made during the consultation process had yet been finalized at the date of publication.

## Foreign investment

In November 2015, the Government announced an easing of foreign investment restrictions, enabling 100% foreign ownership of network operators (cable television, DTH, HTS and mobile TV). However, it is understood that government approval will still be required for investment beyond 49%.

The FDI limit for Indian news channels has also been raised from 26% to 49%.

Although the changes have been received positively, it has also been noted that the administrative procedures for any required approvals may need to be streamlined for foreign investment to increase.



## Policy Environment

Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>Multiple agencies with overlapping responsibility: <ul style="list-style-type: none"> <li>Information Ministry (MIB) is part of the government</li> <li>Telecom Regulatory Authority of India (TRAI) is independent of the Ministry, though staffed by civil servants.</li> </ul> </li> <li>Regulators are independent of all operators.</li> <li>Judicial review available and regularly used.</li> </ul>	<ul style="list-style-type: none"> <li>Under the Information Technology Act, the Indian Computer Emergency Response Team (CERT) monitors online content, but agency has mandate limited to computer security. At present, no other regulatory agency involved.</li> <li>In the absence of any specific regulations for OTT, several local OTT operators have been voluntarily adhering to the same content code and advertising code as for cable television networks.</li> <li>In respect of objectionable content on offshore OTT services, the Indian Government may, in limited circumstances, have recourse to site-blocking powers under the Information Technology Act. However, site-blocking has proven controversial.</li> </ul>
<b>Copyright Protection</b>	<ul style="list-style-type: none"> <li>Domestic copyright laws on signal piracy are good, but enforcement lax, as local agencies not well educated on copyright matters.</li> <li>Piracy of DTH signals seems to be growing.</li> <li>Commercial fraud/underdeclaration has been rife – government hopes to address this problem by cable digitization program now underway.</li> </ul>	<ul style="list-style-type: none"> <li>Online piracy is very difficult to control. CERT is the de facto authority for addressing online issues including piracy, in absence of any other enforcement agency.</li> <li>Police have raided/prosecuted uploaders of pirated channel streams.</li> </ul>
<b>Convergence and new technologies</b>	<ul style="list-style-type: none"> <li>Disparate treatment, with telecoms favoured in a variety of ways.</li> <li>Different (non-convergent) frameworks being used to regulate IPTV and mobile.</li> <li>Not clear whether, or how, content rules (contained in cable legislation) will apply to other platforms.</li> </ul>	<ul style="list-style-type: none"> <li>No regulations.</li> </ul>
<b>Licensing of foreign channels</b> <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>Government permission required.</li> <li>Downlinking approval has burdensome applications requirements for channels. (Heaviest restrictions on news channels.)</li> <li>However, around 100 international channels now licensed. Licenses given for 10-year period.</li> </ul>	<ul style="list-style-type: none"> <li>No licensing regime.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>License fees and taxation</b>	<ul style="list-style-type: none"> <li>Nominal for Cable – 500 Rps.</li> <li>DTH – Non-refundable entry fee of 1,000,000 Rps plus 10% of gross revenues.</li> <li>HITS – 100,000,000 Rps non-refundable entry fee; no annual fees other than spectrum license fee of 1,000 Rps per fixed mobile station plus spectrum royalty calculated by multiplying 35,000 Rps by a factor determined by the particular bandwidth used.</li> <li>IPTV – annual fee ranges from 6-10% depending on license.</li> <li>Channel downlinking – annual fees range from 500,000 Rps (domestic-origin channels) to 1,500,000 Rps (foreign-origin channels). For downlinking foreign-origin channels 1,000,000 Rps to be paid at the time of grant of permission.</li> <li>An additional burden is the levying at State level of entertainment taxes on pay television service providers, with some taxes being excessively high – up to 50%.</li> </ul>	<ul style="list-style-type: none"> <li>No license fees.</li> </ul>
<b>Rate regulation</b> <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>Retail rates for cable controlled since 2004 in most non-digitized areas. (Small rate increments have been allowed.)</li> <li>Implementation of digital addressable systems brought greater flexibility; gradual cable digitization implies gradual removal of overall caps, except for basic tier of “FTA” channels whose price should be 100 Rps or less.</li> <li>DTH, IPTV, HITS and mobile retail rates not regulated, with the exception that each operator must offer a basic tier at a price not to exceed 150 Rps.</li> <li>Wholesale rates for cable frozen. (Small increments allowed.) Since 2006, in digital areas, wholesale prices set by government.</li> <li>Government and courts have fixed wholesale price ceilings for DTH and IPTV systems at 50%/42% (respectively) of the rate charged to non-digital cable operators.</li> </ul>	<ul style="list-style-type: none"> <li>No rate regulation.</li> </ul>
<b>Program packaging</b> <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>A basic service tier of at least 30 free-to-air channels is currently prescribed.</li> <li>In digital areas, a la carte channel offerings are mandatory at wholesale and retail levels.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Restrictions on advertising</b> <i>Including localization rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>• Minutage limited to 10 mins. per hour plus 2 promo mins. Applies to cable, DTH and IPTV.</li> <li>• Total ban on tobacco advertising and any depictions of smoking in programs must be accompanied by special tobacco warnings.</li> <li>• International news channels not allowed to carry local ads.</li> </ul>	<ul style="list-style-type: none"> <li>• No specific regulations applying to OTT TV.</li> <li>• The self-regulatory body, the Advertising Standards Council of India, seeks to regulate advertisements in any media, including online media, and industry convention is to voluntarily comply.</li> </ul>
<b>Content regulation</b> <i>Including local content quotas, content control and insertion of classification labels into international feeds</i>	<ul style="list-style-type: none"> <li>• No local content quotas.</li> <li>• Content regulation not restrictive – largely a self-regulatory approach.</li> <li>• Based on a published Program Code, with separate codes adopted by industry organizations.</li> </ul>	<ul style="list-style-type: none"> <li>• No local content quotas.</li> <li>• No regulations specifically applying to OTT.</li> <li>• Regulators expect OTT players to follow same content code as for cable television networks. Application to offshore OTT providers has not been tested.</li> <li>• In respect of objectionable content on offshore OTT services, the Indian Government may, in limited circumstances, have recourse to site-blocking powers under the Information Technology Act. However, site-blocking has proven controversial.</li> </ul>
<b>Regulations on languages, dubbing/subtitling and captioning</b>	<ul style="list-style-type: none"> <li>• None.</li> </ul>	<ul style="list-style-type: none"> <li>• None.</li> </ul>
<b>Program supply restrictions</b> <i>Including must provide rules and other restrictions on exclusivity</i>	<ul style="list-style-type: none"> <li>• Exclusivity not allowed for linear channels. “Must Provide” regulations in force, applying to all platforms – cable, DTH and IPTV.</li> <li>• Exclusivity is allowed for specific pieces of content on channels, and for VOD offerings. Many digital platforms using “VOD” channels to air exclusive content.</li> <li>• Restrictive “sports sharing” provisions require many sporting events to be given to the public broadcaster, since 2006.</li> </ul>	<ul style="list-style-type: none"> <li>• No regulations.</li> <li>• No applicable sports sharing rules in respect of major sporting events.</li> </ul>
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>• FDI is limited to: <ul style="list-style-type: none"> <li>– 74% in Teleports, DTH, Cable MSOs, HITS (49% automatic and FIPB approval required beyond 49% up to 74%).</li> <li>– 49% in last-mile cable operators.</li> <li>– 74% in Telecom, who can operate IPTV and mobile.</li> <li>– 100% for downlinked foreign channels.</li> <li>– 100% for uplinked Indian channels (non-news).</li> <li>– 26% for Indian news channels.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• No regulations.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>• Cross-holdings between DTH platforms, HITS licensees, mobile TV licensees and other types of broadcasters or cable operators limited to 20%. (These restrictions are not very effective according to TRAI.)</li> </ul>	
<b>Retransmission arrangements</b> <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>• Analogue cable systems must carry 9 mandatory channels including 2 national Doordarshan channels and two Parliament channels and a regional Doordarshan channel.</li> <li>• Digital cable, DTH and IPTV obliged to carry 21 Doordarshan channels and three other channels.</li> <li>• No remuneration for retransmission.</li> </ul>	<ul style="list-style-type: none"> <li>• No regulations.</li> </ul>
<b>Consumer protection</b> <i>Including cooling-off period and termination rights</i>	<ul style="list-style-type: none"> <li>• Consumers have various rights, including: <ul style="list-style-type: none"> <li>– Requesting terms and conditions of subscription and set top boxes and a Manual of Practice;</li> <li>– Requesting channels on an a-la-carte basis;</li> <li>– Requesting receipts and bill details;</li> <li>– Suspending a cable service for a limited period; and</li> <li>– Seeking redress under consumer protection and other legislation.</li> </ul> </li> <li>• Cable operator cannot discontinue exhibition of any channel without giving prior notice of fifteen days to its subscribers via local newspapers and scrolling notices on television screens.</li> </ul>	<ul style="list-style-type: none"> <li>• No regulations, although general consumer protection laws would theoretically apply.</li> </ul>

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# Indonesia

In recent years, the Indonesian pay-TV industry has enjoyed a relatively positive regulatory environment, with fewer restraints on pay-TV offerings than in other Asian countries and some legislative improvements in the protection of intellectual property rights online. However, uncertainty remains a challenge for the industry, with new broadcasting and convergence legislation being anticipated, but remaining unpassed, for several years. In addition, recent actions of the Indonesian Broadcasting Commission (KPI), demonstrate a very “blunt instrument” approach to content regulation issues, treating even premium pay-TV channels on a par with FTA TV that is available in every home. In particular, this has resulted in a considerably stricter approach being taken to advertising and content censorship.

## Legislative uncertainty

A draft of the Broadcasting Law was introduced to Parliament but not passed before the 2014 elections. A new draft is anticipated but is unlikely to be issued anytime soon. It is expected that the revised legislation will address matters including the division of authority between the Ministry of Communication and Information (Kominfo) and KPI, exclusive content arrangements and cross-media ownership.

At the same time, convergence legislation has been expected for several years as the existing broadcasting legislation does not address the online provision of content. The Minister has recently announced that he intends to study recent developments in Europe in respect of OTT services before addressing the subject domestically.

## Copyright reform

Indonesia’s new copyright legislation became law in October 2014 and implementing regulations were signed in July 2015. The legislation introduced a scheme to block access to websites containing infringing materials. The scheme allows members of the public to report copyright infringement, with a verification team assessing the case. If the verification team concludes that the site should be blocked, it reports to the Director General of Intellectual Property, who in turn makes a submission to Kominfo. Sites are then to be blocked within a period of 8 to 12 working days, depending on urgency. Kominfo publishes details of blocked sites and, where an entire site has been blocked, Kominfo must submit the matter to court review within 14 working days.

The site blocking scheme has been a positive development given the high incidence of online piracy in Indonesia. It is understood that the scheme will soon be effective, once Kominfo finalises certain technical processes.

On the other hand, the new copyright legislation also contains a new exception to copyright infringement for the dissemination of copyright content through online media for non-commercial or non-profit purposes or where the author has not objected to the dissemination. It is considered that this exception is inconsistent with Indonesia’s treaty obligations, undermines the rights of copyright owners and may dilute the effect of the website blocking scheme.

In addition, cable signal theft remains a significant problem throughout the country, and while there have been a number of successful enforcement actions launched by the Indonesian industry association APMI, the problem continues to grow. Government efforts to use cable licensing to require respect for IP rights are not sustained once the license is issued.

## “Made in Indonesia” advertising rules

“Made in Indonesia” advertising regulations have existed for several years in Indonesia, requiring local resources to be used in the production of most commercials targeted at the local market. However, the effect of these regulations was moderated by limited implementation and by permitted exceptions, such as advertising for international brands.

However, over the past twelve months KPI has taken a much stricter position, stating that the law requires foreign advertising to be replaced with domestic advertising, without exception. KPI’s position appears to be unique in the region and causes particular difficulty for foreign channels transmitted via regional feeds.

## Content regulation

In addition to its position on local advertising, KPI has also become more conservative in its approach to content regulation over the past year, requiring operators to implement parental controls and content labelling and to pre-censor content on all pay-TV channels. KPI’s approach is rooted in a requirement that pay-TV follow the same (strict) code promulgated for free-to-air TV, a requirement which runs counter to international practice.



A “temporary” ban has already been issued for one foreign channel, and KPI is now devoting particular attention to fashion and music channels. Operators are admonished to ensure inappropriate content is not aired.

To date, KPI has not imposed any sanctions. Potential sanctions on pay-TV operators range from 6 months to 12 years imprisonment and/or fines of IDR250mn to IDR6bn (US\$18,000 - 430,000).

KPI’s approach to advertising and content regulation negatively impacts the pay-TV industry, increasing costs, creating new barriers to entry and reducing consumer

choice. The Commission’s isolationist approach is ignoring regional and global best practices which recognize different content standards for pay-TV (where adult consumers choose to receive a channel or channels) and free terrestrial TV, which can be watched by all viewers. And at the same time, it is turning a blind eye to growing competition from totally unregulated (and frequently pirated) OTT content.

Together with the legislative uncertainty, the risk of investing in the Indonesian pay-TV industry has increased as a result of these developments.

## Policy Environment

Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>Regulatory jurisdiction shared between Ministry (Kominfo) and Broadcasting Commission (KPI).</li> <li>Kominfo has lead on licensing and market structure; KPI has lead on content regulation.</li> <li>Kominfo professional and even-handed, but KPI has recently taken a controversially hardline position against foreign channels.</li> </ul>	<ul style="list-style-type: none"> <li>Pure OTT television is not regulated. Unlike IPTV service providers, OTT operators are not required to be licensed nor to give a service level guarantee to customers.</li> <li>Indonesian regulators are aware of the disparity between traditional pay-TV and OTT TV services. Minister intends to study new European regulations before addressing OTT services in Indonesia.</li> </ul>
<b>Copyright Protection</b>	<ul style="list-style-type: none"> <li>Strong regulations on paper.</li> <li>Some enforcement actions taken, at the request of the local industry Association.</li> <li>Weak public understanding leads to much infringement, especially outside Java.</li> <li>Government used licensing process to exert pressure on cable industry to respect IP, but now even licensed operators backslide and carry illegal content.</li> </ul>	<ul style="list-style-type: none"> <li>Copyright protection for online content, or online infringement of copyright in audiovisual materials, remains untested in Indonesia.</li> <li>Under new Copyright Law, Kominfo has ordered blocks on access to some websites containing infringing materials, using implementing regulations signed in July 2015.</li> </ul>
<b>Convergence and new technologies</b>	<ul style="list-style-type: none"> <li>Regulations require separate licenses for pay-TV and telecom services.</li> <li>IPTV regulations (issued in 2009) continue this approach, requiring a consortium with licenses for a) pay-TV, b) ISP service, and c) network infrastructure.</li> </ul>	<ul style="list-style-type: none"> <li>No licensing of OTT TV services currently.</li> </ul>
<b>Regulation of OTT services</b>	<ul style="list-style-type: none"> <li>No specific regulation of OTT-TV services, other than certain content restrictions which have so far been enforced through blocking some pornographic websites.</li> </ul>	



Regulatory Regime Review	Pay TV	OTT TV
<b>Licensing of foreign channels</b>	<ul style="list-style-type: none"> <li>No licensing procedure for foreign channels. However, some channels risk exclusion because of KPI content censorship.</li> <li>KPI is increasingly placing restrictions on content broadcast on pay-TV and has mandated that operators internally censor to ensure no inappropriate content is aired.</li> <li>A requirement for satellite signal landing rights has been in force since 2007.</li> <li>The uplink station for DTH operators must be located within Indonesia.</li> <li>Uplink/downlink policy has not been a significant barrier; initial uncertainty about satellite “reciprocity” has given way to growing confidence, in light of steady and reasonable policy.</li> </ul>	<ul style="list-style-type: none"> <li>No licensing regime or restrictions on channel programming.</li> </ul>
<b>License fees and taxation</b>	<ul style="list-style-type: none"> <li>License fees for new pay-TV licenses are as follows:</li> <li>Applicants for a temporary initial license pay IDR15-50mn depending on the zone. This is a one time fee payable for each licensed coverage area.</li> <li>Recipients of permanent licenses pay IDR5.3 -17.7mn annually, depending on the zone. Fees are levied for each licensed coverage area.</li> </ul>	<ul style="list-style-type: none"> <li>None in respect of an OTT TV service.</li> </ul>
<b>Rate regulation</b> <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>None.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Program packaging</b> <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>Tiering is allowed and widely practiced. No a la carte requirement.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Restrictions on advertising</b> <i>Including localization rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>Until February 2015, although there were regulations on foreign-made ads (including a list of exceptions) the regulation was never implemented and foreign ads were aired on pay TV. In Feb 2015, KPI sought blanket replacement of foreign ads with domestic ads and in its interpretation did not permit the exceptions for “international brands” that were outlined in previous “Made in Indonesia” ad regulation.</li> <li>Unclear whether any sanctions for non-compliance have been imposed to date.</li> <li>No limit on minutage, or on ad revenue.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Content regulation</b> <i>Including local content quotas, content control and insertion of classification labels into international feeds</i>	<ul style="list-style-type: none"> <li>Pay-TV operators are required to broadcast 20% local channels (10% FTA and 10% local content). Broadcasting Commission has developed detailed content codes; in 2012 the codes for FTA TV and pay-TV were merged, greatly increasing strictures on pay-TV.</li> <li>Sensitivities on content issues are high.</li> <li>KPI is requiring pay TV operators to undertake internal censorship, broadcast the Indonesian program classifications and provide parental controls.</li> <li>KPI is taking an increasingly hard line with content that contravenes the Pornography Law, recently issuing a “temporary” ban against a foreign channel.</li> </ul>	<ul style="list-style-type: none"> <li>No local content quotas. The Indonesian Pornography Law requires ISPs to block all access to pornographic content. Government blocking lists are extensive, but do not cover some piracy sites which frequently contain pornography.</li> <li>The Electronic Information and Transactions Act contains some content restrictions, including in respect of content against propriety, defamatory content and content inciting racial or ethnic hatred, although there has not yet been any enforcement action against content providers under this legislation.</li> </ul>
<b>Regulations on languages, dubbing/subtitling and captioning</b>	<ul style="list-style-type: none"> <li>Foreign films must be sub-titled or dubbed.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Program supply restrictions</b> <i>Including must provide rules and other restrictions on exclusivity</i>	<ul style="list-style-type: none"> <li>Broadcasting Law is silent on exclusive content. However, the Ministry has taken a stance that “essential” content must be distributed through a transparent tender process.</li> <li>Anti-Monopoly law has also been interpreted to restrict some essential content from exclusive contracts.</li> <li>“Non-essential” programming may be exclusive.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>20% FDI permitted in pay-TV platforms; 49% in telecoms.</li> <li>No limits on wholesale provision of pay-TV programming.</li> <li>Companies may own directly or indirectly no more than: <ul style="list-style-type: none"> <li>one pay-TV company, one private radio station and one newspaper in the same region;</li> <li>one pay-TV company and one private FTA TV station with one newspaper in the same region;</li> <li>one pay-TV company, one private FTA TV station and one private radio station.</li> </ul> </li> <li>In reality only limits on direct ownership are enforced.</li> </ul>	<ul style="list-style-type: none"> <li>In reality, none, as OTT TV operators do not need to be registered in Indonesia.</li> <li>If the company is also a “multimedia service provider” (if so described in its articles of association, or if the Investment Coordination Board regards it as such) or ISP then there is a 49% foreign ownership cap.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Retransmission arrangements</b> <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>20% of each pay-TV operator's bouquet must be Indonesian channels (10% FTA and 10% local content). Virtually all operators comply with the 10% FTA requirement, whilst most of the larger operators comply with the local channel requirement.</li> <li>Must also carry government channel TVRI.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Consumer protection</b> <i>Including cooling-off period and termination rights</i>	<ul style="list-style-type: none"> <li>No specific regulation.</li> </ul>	<ul style="list-style-type: none"> <li>No specific regulation.</li> </ul>

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# Japan

In Japan, pay television competes against a strong free-to-air television sector. Various OTT television services have been available in Japan for several years, the most successful being supported by either existing television broadcasters or by mobile phone carriers.

Japan's regulatory approach to pay television is light-touch and OTT television is not specifically regulated. Features of Japan's regulatory environment include legislative convergence, effective copyright protection and self-regulation of advertising and content.

## Convergence

Japan's broadcasting laws were revised in 2010, when telecommunications, cable television and cable radio statutes were merged.

There are no plans for further legislative change as at the date of publication.

## Copyright protection

Copyright protection and enforcement is more effective in Japan than in most other countries in the Asia-Pacific region. Japanese copyright law does not provide for site-blocking to address online piracy, instead providing for criminal penalties (fines and imprisonment).

## Advertising regulation

The Japan Commercial Broadcasters Association, comprised of the major domestic television and radio broadcasters, supervises television advertising on a self-regulatory basis. Its template standards are typically incorporated into broadcasters' internal standards. In respect of advertising, the Association's standards set an 18% limit on the volume of advertising for both free-to-air television and pay television.

The Japan Interactive Advertising Association issues guidelines to member online ad media companies as a means of self-regulating online advertising.

One aspect of the advertising ecosystem in Japan is the limited availability of ratings information. Video Research Ltd remains the principal ratings company in the country. It is owned by a partnership of advertising agency Dentsu and the terrestrial broadcasters. It does not provide data for pay-TV that is comparable in scope or frequency with FTA TV data, and as such, it puts pay-TV advertising at a competitive disadvantage vis-a-vis free-to-air television advertising.

## Content regulation

The regulation of content is minimal in Japan: there are no local content quotas, nor requirements for local classification or other content labels to be inserted into international feeds. There are no content-sharing rules requiring certain content to be available on free-to-air television.

Broadcasting legislation sets basic content standards, requiring broadcasters to avoid harming public safety or morals, to be fair, to avoid distorting facts, to provide balance and to establish and disclose program standards.

The Japan Commercial Broadcasters Association has developed template standards.

In addition, the public broadcaster Nihon Housou Kyoukai (NHK) and the Japan Commercial Broadcasters Association comprise the Broadcasting Ethics & Program Improvement Organization (BPO) which deals with complaints and ethical issues. The BPO conducts investigations and issues opinions and recommendations to broadcasters.

In respect of OTT television, online service providers targeting teenagers are required by law to adopt measures to minimise young people's exposure to harmful content.

## Policy Environment

Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>The Ministry of Internal Affairs and Communications (the MIAC) administers the Broadcast Law and the Radio Wave Law. The MIAC is a government ministry and is therefore not autonomous from the government. MIAC formulates policies through consultative councils which may include industry representatives.</li> </ul>	<ul style="list-style-type: none"> <li>The Broadcast Law does not define OTT TV.</li> <li>Most OTT services are not specifically regulated. However some services (such as the NOTTV mobile service) have been categorized as broadcasting and required to get licenses.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>Further, the Japan Commercial Broadcasters Association (JCBA) plays the role of a self-regulatory organization, which maintains specific content standards required by the Broadcast Law. Commercial broadcasters usually incorporate or refer to the Association's codes in their own standards.</li> </ul>	
<b>Copyright Protection</b>	<ul style="list-style-type: none"> <li>Copyright is protected by the Copyright Law which has a strong framework and imposes significant penalties.</li> <li>There is effective enforcement and content protection. Online piracy is a violation of the Copyright Law which imposes criminal sanctions (imprisonment and fine). Criminal sanctions on illegal downloading were introduced in 2012. Generally speaking, the police are proactive in uncovering illegal uploading.</li> <li>Copyright collecting societies must register with the Commissioner of the Agency for Cultural Affairs, and submit to the Commissioner the terms and conditions on how third parties can use copyright. This applies whether the users are pay TV or online TV operators.</li> </ul>	<ul style="list-style-type: none"> <li>As for pay TV.</li> </ul>
<b>Convergence and new technologies</b>	<ul style="list-style-type: none"> <li>The Broadcast Law is platform-neutral and requires broadcasters to be licensed.</li> <li>Pay TV operators are not required to obtain the regulator's permission before offering ancillary services insofar as the services do not contradict the programming plan or the business plan submitted by them with their license application.</li> <li>No regulations govern the receipt of television on different end devices.</li> </ul>	<ul style="list-style-type: none"> <li>There is no specific regulation of OTT TV services.</li> </ul>
<b>Licensing of foreign channels</b> <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>No specific licensing requirements for foreign channels as long as the pay-TV platform has necessary licenses.</li> <li>No specific restraints on channel uplinking or downlinking to satellites.</li> </ul>	<ul style="list-style-type: none"> <li>As for pay-TV.</li> </ul>
<b>License fees and taxation</b>	<ul style="list-style-type: none"> <li>Broadcasters must pay a frequency usage fee if using transmission via radio waves. The fee varies depending on the frequency band.</li> <li>A registered carrier under the Telecommunications Business Law must pay a nominal administrative filing fee. Some cable TV operators may be classified as registered carriers.</li> </ul>	<ul style="list-style-type: none"> <li>No licensing or frequency usage fees.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Rate regulation</b> <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>Basic broadcasters (Kikan Housou Jigyousha) are required to submit their pay TV terms and conditions to the Minister of MIAC and disclose them publicly (e.g. on their websites); however, MIAC does not specifically regulate retail/wholesale rates.</li> <li>There are no price controls on any tier of pay TV service.</li> </ul>	<ul style="list-style-type: none"> <li>There are no specific regulations.</li> </ul>
<b>Program packaging</b> <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>Tiering/bundling of channels is allowed and utilized in practice.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>
<b>Restrictions on advertising</b> <i>Including localization rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>Advertising is permitted.</li> <li>No minutage restriction under the Broadcast Law, but JCBA's program standards require that the volume of advertising per week is 18% or less of total broadcasting hours.</li> </ul>	<ul style="list-style-type: none"> <li>Advertising is permitted and is generally not regulated by the Broadcast Law.</li> <li>JIAA (Japan Interactive Advertising Association; formerly Japan Internet Advertising Association) issues guidelines to members (online ad media companies) as a means of self-regulation.</li> </ul>
<b>Content regulation</b> <i>Including local content quotas, content control and insertion of classification labels into international feeds</i>	<ul style="list-style-type: none"> <li>There are no local content quotas; there are no requirements for the insertion of local classification and other content labels into international feeds.</li> <li>The Broadcast Law requires broadcasters to avoid harming public safety or morals, to be politically fair, to avoid distorting facts and to provide balance where there are conflicting viewpoints, and to establish and publicly disclose standards for television programs.</li> <li>The JCBA's program standards also require broadcasters to consider viewers' circumstances, such as broadcasting time, when making program content and ensure that viewers do not feel uncomfortable due to the program's content.</li> </ul>	<ul style="list-style-type: none"> <li>No local content quotas nor classification requirements.</li> <li>Under the Act on the Development of an Environment that Provides Safe and Secure Internet Use for Young People, operators who provide internet services to teenagers are to adopt measures for the minimum exposure of teenagers to harmful information, including information that induces them to commit a crime, stimulates sexual drive or contains atrocious descriptions such as graphic depictions of a murder.</li> </ul>
<b>Regulations on languages, dubbing/subtitling and captioning</b>	<ul style="list-style-type: none"> <li>Generally, broadcast programs cannot be dubbed more than once (programs for free-to-air TV may be dubbed up to 10 times).</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Program supply restrictions</b> <i>Including must provide rules and other restrictions on exclusivity</i>	<ul style="list-style-type: none"> <li>No "must provide" rules or other restrictions on exclusivity.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>Foreign investment is restricted to 20% for basic broadcasters (<i>Kikan Housou Jigyousha</i>).</li> <li>There are no foreign investment restrictions on "general broadcasters", such as 124/128 CS broadcasters, IP multicast broadcasters and cable broadcasters, nor in respect of producers or distributors.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>• There are no foreign investment restrictions on telecoms carriers, although foreign investments in fixed line carriers require prior notification to the relevant ministries.</li> <li>• The Broadcast Law restricts a basic broadcaster (<i>Kikan Housou Jigyousha</i>) from owning, directly or indirectly, multiple basic broadcasting businesses, with certain exceptions.</li> <li>• There is no specific restriction on vertical integration, subject to general competition laws.</li> </ul>	
<b>Retransmission arrangements</b> <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>• Designated cable operators are required to rebroadcast terrestrial TV channels broadcast by basic broadcasters (<i>Kikan Housou Jigyousha</i>) in areas of poor terrestrial reception. Whether any payment is required in respect of such rebroadcasting is a matter for negotiation.</li> </ul>	<ul style="list-style-type: none"> <li>• No specific arrangements.</li> </ul>
<b>Consumer protection</b> <i>Including cooling-off period and termination rights</i>	<ul style="list-style-type: none"> <li>• The Broadcast Law requires basic broadcasters (<i>Kikan Housou Jigyousha</i>) to: <ul style="list-style-type: none"> <li>– submit pay TV terms and conditions to Minister of the MIAC and disclose them publicly (e.g. on website);</li> <li>– notify users in advance before suspending or ceasing their business;</li> <li>– explain terms and conditions to users; and</li> <li>– deal with users' complaints or queries regarding the terms and conditions appropriately and promptly.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• No specific requirements.</li> </ul>
<b>Other country-specific information</b>	<ul style="list-style-type: none"> <li>• None.</li> </ul>	<ul style="list-style-type: none"> <li>• None.</li> </ul>

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# Malaysia

Regulation of Malaysia's pay television industry is generally positive, with a technology-neutral regime, no uplink/downlink restrictions on foreign channels, no program supply or packaging rules, no language restrictions and no retransmission requirements. However, extensive content control and "Made in Malaysia" rules for advertising and foreign investment restrictions restrain the industry, and create competitive inequalities vis-à-vis online content supply.

OTT television is theoretically subject to the same legislation governing pay television, although OTT television is currently exempt from many requirements, including the "Made in Malaysia" rules.

Outlined below are certain notable aspects of Malaysia's pay television and OTT television environment, being copyright enforcement, the introduction of a goods and services tax, the "Made in Malaysia" rules and content restrictions.

## Copyright protection

As in other Asian jurisdictions, online piracy rates are high.

Malaysian law provides various remedies to assist in addressing online copyright infringement: copyright legislation provides a notice and takedown procedure for infringing online content on Malaysian websites. A service provider who has received a notification of copyright infringement must remove or disable access to the infringing content within 48 hours from the time notification has been received.

In addition, the Malaysian Communications and Multimedia Commission has applied its administrative site blocking powers to require disabling of access to a limited number of notorious overseas piracy websites. However, these measures have not kept up with the growth of piracy.

## Taxation

The Malaysian government introduced a goods and services tax in 2015. Relevantly, the tax applies to satellite television subscription fees, television airtime advertisement services and to domestic OTT television services. Goods and services tax only applies to offshore OTT television services if used in Malaysia for business purposes.

The tax rate has been set at the relatively low rate of 6%.

## "Made in Malaysia" advertising rules

Malaysia is one of very few jurisdictions in the world which require most advertising to be made in-country, using local talent and with content in the local language. The Malaysian rules provide that at least 80% of a commercial must be local content. Local talent must be used.

The rules apply to advertising on foreign channels (including pass-through channels) as well as local channels, with foreign advertisements permitted (with an exemption certificate) for up to 30% of total advertising time. These rules pose a particular challenge for foreign channel providers wishing to supply the Malaysian market, as a customised feed, rather than an unedited regional feed, would be required.

## Content regulation

The Communications and Multimedia Act (CMA) prohibits the provision of content which is indecent, obscene, false, menacing or offensive in character.

Beyond this, the CMA contemplates that an industry body (in this case, the Malaysian Communications and Multimedia Forum, or CMCF) would act as content forum and prepare a content code which, whilst voluntary, can be enforced against members. The applicable Content Code provides further guidance on the CMA prohibition and sets out a content classification system covering free-to-air and pay television platforms. Online content providers are also subject to the Content Code. Although the content classification system does not apply to online content, service providers are subject to other procedures in order to manage content on their services.

MCMC has increased its scrutiny of content posted online, predominantly targeting social media and online news portals. It has proposed amendments to the Communications and Multimedia Act to assist in enforcement. These amendments may affect online services more generally, including OTT television services. Details of the proposed amendments have not been publicised as of the date of this report's publication, although registration of online news portals has been mooted.

MCMC has also used its site-blocking powers to restrict access to over a thousand pornography websites as well as websites discussing controversial political issues.

MCMC has indicated that it is reviewing the Communications and Multimedia Act more generally to take into account the changing media landscape.



## Policy Environment

Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>Principal regulator is the Malaysian Communications and Multimedia Commission (MCMC). The MCMC is independent of all operators.</li> <li>Political independence of the MCMC not assured as it is largely comprised of members of the executive government.</li> <li>Judicial review available in theory but never tested in practice.</li> <li>Malaysian Communications and Multimedia Forum (CMCF) is the designated industry body co-regulating content.</li> </ul>	<ul style="list-style-type: none"> <li>In theory, regulation of OTT TV is similar to pay-TV regulation. However, OTT TV is currently exempt from the licensing regime, rate regulation and local quota and “made in Malaysia” requirements.</li> <li>MCMC is the relevant regulator and the Malaysian Communications and Multimedia Forum (CMCF) is the designated industry body regulating content.</li> </ul>
<b>Copyright Protection</b>	<ul style="list-style-type: none"> <li>Malaysian copyright legislation protects broadcasts.</li> <li>Enforcement divided between government agencies namely the Ministry of Domestic Trade, Cooperatives and Consumerism and MCMC.</li> <li>Regulator lacks enforcement resources, but the DTH operator supports investigations in cooperation with Government.</li> <li>On balance, this public-private partnership has made for good enforcement.</li> </ul>	<ul style="list-style-type: none"> <li>Malaysian law protects online communication/broadcasts. A notice and takedown procedure applies to infringing online content on Malaysian websites.</li> <li>MCMC has directed internet service providers (ISPs) to block access to various notorious foreign piracy websites.</li> </ul>
<b>Convergence and new technologies</b>	<ul style="list-style-type: none"> <li>Goal of technology neutral regime.</li> <li>Regulator states it is attempting to “standardize” licenses, but some differences persist.</li> <li>No restrictions on type of platforms (except DTH exclusivity for current licensee).</li> <li>Several new licenses issued; competitive cable and IPTV networks now operating.</li> </ul>	<ul style="list-style-type: none"> <li>Online content services are currently exempt from the licensing regime.</li> <li>Several new OTT TV services have entered the market.</li> </ul>
<b>Licensing of foreign channels</b> <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>No uplink/downlink restrictions. Operators must notify channels for carriage to MCMC prior to launch.</li> <li>Television content subject to intensive local content control laws.</li> <li>Foreign advertisements (with Made-in-Malaysia “exemption certificates”) permitted only up to 30% of total advertising time; all other ads, even those in pass-through channel streams, must be replaced by ads meeting the “Made in Malaysia” requirements.</li> </ul>	<ul style="list-style-type: none"> <li>Online content services are currently exempt from the licensing regime.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>License fees and taxation</b>	<ul style="list-style-type: none"> <li>• Application fee of MYR 10,000 to obtain individual license for content application services and MYR 50,000 for upon grant of the license.</li> <li>• Pay-TV services are subject to 6% Goods and Services Tax (GST). Effective 1 April 2015 the GST net was extended to include satellite TV subscriptions and TV airtime ad sales.</li> </ul>	<ul style="list-style-type: none"> <li>• Currently no licensing fees as online content services exempt from licensing regime.</li> <li>• 6% goods and services tax is collected on payments to Malaysian OTT TV content providers. In respect of offshore OTT TV services, the local consumer to pay GST if the OTT TV service is used in Malaysia for business purposes. Personal use of OTT TV services is exempt from GST.</li> </ul>
<b>Rate regulation</b> <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>• Filing of retail rates only (after which an “investigation” could be opened by MCMC).</li> <li>• Technically, Minister may intervene to set rates for good cause or in the public interest but currently no intervention in respect of Pay TV.</li> </ul>	<ul style="list-style-type: none"> <li>• No filings required.</li> <li>• Technically, Minister may intervene to set rates for good cause or in the public interest, but currently no such intervention in respect of OTT TV services.</li> </ul>
<b>Program packaging</b> <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>• No restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>• No restrictions.</li> </ul>
<b>Restrictions on advertising</b> <i>Including localization rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>• Subject to “Made in Malaysia” requirement.</li> <li>• Foreign advertisements (with Made-in-Malaysia “exemption certificates”) permitted only up to 30% of total advertising time; all other ads, even those in pass-through channel streams, must be replaced by ads meeting the “Made in Malaysia” requirements.</li> <li>• Minutage limited to 10 minutes/broadcast hour/channel average over 24 hours.</li> <li>• The Content Code requires producers and transmitters of advertising to ensure advertisements comply with general content rules, are honest and do not concern tobacco, gambling, pornography or other prohibited content.</li> <li>• While voluntary, the MCMC is empowered to compel adherence to the Content Code.</li> </ul>	<ul style="list-style-type: none"> <li>• No minutage restrictions, nor “Made in Malaysia” requirements.</li> <li>• The Content Code (see left) applies on a voluntary basis, although the MCMC is empowered to require compliance by OTT TV service providers.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Content regulation</b> <i>Including local content quotas, content control and insertion of classification labels into international feeds</i>	<ul style="list-style-type: none"> <li>• No local content quotas.</li> <li>• Intensive content control guidelines. Prohibition on providing content which is indecent, obscene, false, harassing, menacing or offensive.</li> <li>• Pay-TV services can be “exempted”, allowed to perform self censorship based on detailed, published guidelines from Government.</li> <li>• The Content Code also contains a classification system.</li> <li>• All programming produced in Malaysia for pay-TV must be submitted first to the Censorship Board.</li> <li>• “U” and “PG-14” programmes may be shown at any time of the day. “PG-18” programmes can be shown any time after 7.30pm and “18 &amp; above” programmes can only be shown after 10pm.</li> </ul>	<ul style="list-style-type: none"> <li>• No local content quotas.</li> <li>• Prohibition on providing content which is indecent, obscene, false, harassing, menacing or offensive. Under the Content Code, providers should ensure content transmitted complies with general content control guidelines.</li> <li>• Content providers who do not have control or knowledge of non-compliant content will be deemed as innocent carriers. However, ISPs, content hosts and content aggregators should comply with a notice and take-down mechanism in respect of prohibited content.</li> <li>• No specific classification requirements apply.</li> </ul>
<b>Regulations on languages, dubbing/subtitling and captioning</b>	<ul style="list-style-type: none"> <li>• None</li> </ul>	<ul style="list-style-type: none"> <li>• None.</li> </ul>
<b>Program supply restrictions</b> <i>Including must provide rules and other restrictions on exclusivity</i>	<ul style="list-style-type: none"> <li>• No restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>• No restrictions.</li> </ul>
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>• Licensees must be incorporated in Malaysia.</li> <li>• FDI investments in platforms limited to 30%.</li> <li>• No FDI restrictions on wholesale supply of pay TV programming.</li> <li>• No restrictions on cross-media ownership (e.g. TV-newspapers) but restriction against cross-sectoral ownership (e.g. TV-telecoms).</li> <li>• However, the MCMC may, for policy reasons, still require shareholding restrictions / Bumiputera equity as a criteria for licence holders depending on the type of licence, which is decided on an ad hoc basis.</li> </ul>	<ul style="list-style-type: none"> <li>• No restrictions.</li> </ul>
<b>Retransmission arrangements</b> <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>• No requirement.</li> </ul>	<ul style="list-style-type: none"> <li>• No requirement.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Consumer protection</b> <i>Including cooling-off period and termination rights</i>	<ul style="list-style-type: none"> <li>General consumer protection is provided under CMCF's General Consumer Code, including model procedures for handling consumer complaints and disputes. Compliance with the General Consumer Code is mandatory.</li> </ul>	<ul style="list-style-type: none"> <li>No specific requirements, but General Consumer Code applies to OTT TV services.</li> </ul>
<b>Other country-specific information</b>	<ul style="list-style-type: none"> <li>Foreign channel providers cannot license channels directly to hotels in Malaysia, but must license them through the Ministry of Communications and Multimedia as sub-licensor.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>

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# Myanmar

Myanmar has experienced considerable internal turbulence over many decades. Since the 2010 general election and official dissolution of the long-standing military junta in 2011, Myanmar has undertaken a gradual process of reform. Relevantly for broadcasters, a new TV and Broadcasting Law was enacted by the Parliament in August 2015. Implementing regulations are yet to be published.

Regulation of pay television under the new broadcasting law is basic, with no uplink/downlink rules, rate regulation, constraints on program packaging or supply, retransmission requirements or language requirements. There are rules addressing advertising, content and foreign investment. Implementing regulations may introduce additional rules.

The TV and Broadcasting Law expressly does not apply to internet and OTT TV services, which remain unregulated.

Three aspects of particular note with respect to the Myanmar regulatory environment for broadcasting are the woeful state of copyright law, the new licensing regime under the TV and Broadcasting Law and content control.

## Copyright protection

Myanmar's 1914 copyright legislation is outdated and wholly inadequate. It does not protect the copyright of works created elsewhere. There is very little enforcement. As a result, copyright piracy is rife, including the use of unauthorised satellite dishes to illicitly access pay-television program streams.

The Myanmar Government commenced the process of modernising the country's intellectual property laws in 1998. Since then, many drafts have been produced. The current draft was scheduled for parliamentary debate during 2015 but remains off the statute books at the date of publication.

## Licensing

Prior to the enactment of the TV and Broadcasting Law, broadcasters could not be privately owned. Despite the theoretical prohibition, a number of privately-owned broadcasters were permitted to operate.

Under the new legislation, private ownership will be permitted, although licences will be subject to conditions such as foreign investment restrictions. It is unclear how many new licences the Government will issue.

## Content regulation

Content has in the past been strictly controlled by the government and this situation continues. In addition to following Government guidelines, broadcasters perform internal censorship. Broadcasters would also be conscious of the fact that Myanmar's Penal Code provides for criminal defamation.

Online, there are no rules specifically regulating content. However, the Government has applied criminal provisions of the Electronic Transactions Law and the Telecommunications Law to restrict online publication of undesirable material, such as satirical postings on Facebook. The Electronic Transactions Law created an offence of "creating, modifying or altering of information or distributing of information created, modified or altered by electronic technology to be detrimental to the interest of or to lower the dignity of any organization or any person." Similarly, the Telecommunications Law contains a provision restraining a person from "extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening to any person by using any telecommunications network." Along with criminal defamation, these provisions would constrain the range of content made available online.



## Policy Environment

Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>The TV and Broadcasting Council under the Ministry of Information (MOI) is responsible for regulating the television and broadcasting sectors in Myanmar.</li> <li>It is formed with 9 members who are selected from 18 members proposed by the President, Chairman of the Upper House and of Lower House of Parliament.</li> </ul>	<ul style="list-style-type: none"> <li>The TV and Broadcasting Law expressly states that it does not apply to internet and OTT TV services.</li> <li>The concept of OTT TV is still novel in Myanmar given the country's low internet penetration rates. Although there are no existing rules specific to OTT TV, it is likely that such services will fall under the purview of the MOI if the Myanmar Government is minded to regulate OTT TV in future.</li> </ul>
<b>Copyright Protection</b>	<ul style="list-style-type: none"> <li>Under the 1914 Burma Copyright Act, copyright infringement is a criminal offence, and civil remedies are also available to the copyright owner.</li> <li>There are no laws expressly banning the dissemination of pirated pay-TV program streams.</li> <li>In practice, copyright laws are rarely enforced and there is reportedly widespread pay-TV piracy, particularly through the use of unauthorised satellite dishes.</li> <li>The TV and Broadcasting Council has the power to cancel the licence of a TV and Broadcasting Service if the licensee is found to use "overspill broadcasts".</li> </ul>	<ul style="list-style-type: none"> <li>Please see comment under "How Regulated".</li> </ul>
<b>Convergence and new technologies</b>	<ul style="list-style-type: none"> <li>No specific regulations on convergence, but at present there are few new media services available in Myanmar.</li> </ul>	<ul style="list-style-type: none"> <li>Please see comment under "How Regulated".</li> </ul>
<b>Licensing of foreign channels</b> <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>Foreign channels and advertisements may be distributed by licensed pay-TV operators.</li> <li>No specific uplink/downlink rules.</li> </ul>	<ul style="list-style-type: none"> <li>Please see comment under "How Regulated".</li> </ul>
<b>License fees and taxation</b>	<ul style="list-style-type: none"> <li>Licence fees are determined by the TV and Broadcasting Council on a case-by-case basis, depending on the nature and scope of the TV and Broadcasting services to be provided.</li> </ul>	<ul style="list-style-type: none"> <li>Please see comment under "How Regulated".</li> </ul>
<b>Rate regulation</b> <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>No regulations.</li> </ul>	<ul style="list-style-type: none"> <li>Please see comment under "How Regulated"</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Program packaging</b> <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>No regulations.</li> </ul>	<ul style="list-style-type: none"> <li>Please see comment under “How Regulated”.</li> </ul>
<b>Restrictions on advertising</b> <i>Including localization rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>Commercial TV and Broadcasting Services are allowed up to 12 minutes of advertising for every hour of broadcasts.</li> </ul>	<ul style="list-style-type: none"> <li>Please see comment under “How Regulated”</li> </ul>
<b>Content regulation</b> <i>Including local content quotas, content control and insertion of classification labels into international feeds</i>	<ul style="list-style-type: none"> <li>The TV and Broadcasting Law contains a requirement that at least 30% of each channel’s daily programming and 20% of a licensed commercial TV and Broadcasting Service’s total programming must contain local content. The local content quota applies in principle to all channels, but in practice international channels without Myanmar content continue to be retransmitted on pay-TV platforms.</li> <li>In general, the content of programmes must comply with Government guidelines aimed at ensuring moral standards, safeguarding Myanmar’s traditions and culture, and maintaining public order and stability.</li> <li>Internal censorship is performed by TV and Broadcasting Services under their own internal guidelines.</li> </ul>	<ul style="list-style-type: none"> <li>Please see comment under “How Regulated”.</li> </ul>
<b>Regulations on languages, dubbing/subtitling and captioning</b>	<ul style="list-style-type: none"> <li>No regulations.</li> </ul>	<ul style="list-style-type: none"> <li>Please see comment under “How Regulated”.</li> </ul>
<b>Program supply restrictions</b> <i>Including must provide rules and other restrictions on exclusivity</i>	<ul style="list-style-type: none"> <li>No regulations.</li> </ul>	<ul style="list-style-type: none"> <li>Please see comment under “How Regulated”.</li> </ul>
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>Foreign companies are not allowed to invest in more than 30% of the total capital investment in a commercial TV and Broadcasting Service. Such investments are further subject to approval from the MOI.</li> <li>Government approval is required for cross-ownership of print media and broadcasting media.</li> </ul>	<ul style="list-style-type: none"> <li>Please see comment under “How Regulated”.</li> </ul>
<b>Retransmission arrangements</b> <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>No specific “must carry” regulations.</li> <li>However, in practice the principal channel (MRTV) of the State broadcaster is carried on all pay-TV platforms.</li> </ul>	<ul style="list-style-type: none"> <li>Please see comment under “How Regulated”.</li> </ul>
<b>Consumer protection</b> <i>Including cooling-off period and termination rights</i>	<ul style="list-style-type: none"> <li>The Consumer Protection Law (CPL) provides for general consumer protection rights and responsibilities of both consumers and service providers. Advertisers in particular who engage in any false advertising of goods and services may be held liable under the CPL.</li> </ul>	<ul style="list-style-type: none"> <li>Please see comment under “How Regulated”.</li> </ul>



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# New Zealand

New Zealand's pay television market is small, with one dominant pay television provider. Historically, competition has come from free-to-air broadcasters, but more recently a number of over-the-top services have entered the television marketplace, including catch-up, subscription video on demand and transactional video on demand services.

The light-touch regulatory framework, typically favouring market forces and self-regulation, is a contributing factor to the dynamic quality of the television industry.

Of particular interest in this jurisdiction are the “graduated response” mechanism to deal with repeat infringers of copyright; the Government's work on convergence reform and recent legislation aimed at preventing harmful communications online.

## Copyright protection

In 2011, the New Zealand copyright legislation was amended to introduce a “graduated response” mechanism to assist in enforcement against online infringers of copyright. If a copyright holder became aware of a user infringing copyright online, the copyright holder could request the user's ISP to send an infringement notice to the user. After three such notices, the copyright holder could approach the Copyright Tribunal for relief against the user.

However, the mechanism has not been particularly effective. Only a small number of cases have been brought before the Tribunal; those that have proceeded to a decision have involved small awards in the order of several hundred dollars. The various industry players have found that the high costs involved discourage them from utilising the scheme in any significant way. There does not appear to have been any lasting impact on the levels of piracy, with many users appearing to circumvent detection through the use of virtual private networks and other tools.

It is anticipated that the Government will undertake a review of copyright legislation following the recent conclusion of the Trans-Pacific Partnership negotiations. This review is expected to consider the effectiveness of the legislation in addressing infringement using digital technologies.

## Convergence

The New Zealand government has been considering convergence over several years. In 2011, the Law Commission proposed that new content streamed online be subject to the same rules as broadcast material. The New Zealand government rejected the proposal, stating that it would further observe the impact of technological convergence on news media before making a decision on any legislative change.

More recently however, the New Zealand Government has embarked on a convergence program, examining issues such as broadband infrastructure, cybersecurity, spectrum management, telecommunications regulation, intellectual property laws, cross-border taxation issues and content regulation. As part of this review, the government specifically indicated it would consider relaxing existing constraints on pay- and free- broadcasting, where there was a substantial asymmetry with online video regulation. The program is ongoing.

## Content regulation

In mid-2015, the Harmful Digital Communications Act was passed by the New Zealand Parliament. The legislation was originally intended to address online bullying. Among other things, the Act introduced a notice and take-down mechanism for content that was the subject of complaint and imposed penalties on online content providers hosting “harmful communication” (being a communication made with the intent of causing the recipient serious emotional distress) or failing to remove such communications upon complaint. The broad wording of the Act could capture pay television services provided via broadband and OTT TV services. It remains to be seen how the legislation will operate in practice.



## Policy Environment

Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>No sector-specific regulation.</li> <li>Authority divided between several agencies, which are generally regarded as transparent, open and autonomous of both government and large corporate players.</li> <li>Judicial review available.</li> </ul>	<ul style="list-style-type: none"> <li>As with pay-TV.</li> <li>Department of Internal Affairs enforces censorship legislation by prosecuting New Zealanders who trade objectionable material via the internet. Publications categorised as 'objectionable' are automatically banned by the Films, Videos, and Publications Classification Act 1993.</li> <li>The same legislation in theory applies to offshore websites, but this has not been tested to date.</li> </ul>
<b>Copyright Protection</b>	<ul style="list-style-type: none"> <li>Strong copyright laws under the Copyright Act 1994 with good enforcement.</li> <li>Improvements introduced in 2008, but there are significant loopholes on circumvention devices, including omission of coverage for access controls.</li> <li>Graduated response mechanism introduced in 2011 to address online copyright infringement, but it has been used relatively little due to heavy cost burdens on complainants.</li> </ul>	<ul style="list-style-type: none"> <li>As with pay-TV: Copyright Act 1994 applies.</li> <li>2011 amendment allows copyright owner to take action against the internet account holder before the Copyright Tribunal for online file sharing that infringes copyright, provided that after two infringement notices are issued, the third notice is issued within 9 months (this applies only to peer-to-peer file sharing, and not to online streaming of content).</li> </ul>
<b>Convergence and new technologies</b>	<ul style="list-style-type: none"> <li>Framework is technology-neutral and even-handed.</li> <li>Small size of market limits competition.</li> <li>Several online on-demand services have begun operating.</li> <li>SKY TV's new service "SKY GO" enables users to live stream a range of content to any device.</li> </ul>	<ul style="list-style-type: none"> <li>The market is currently open to OTT TV players, with many emerging very recently.</li> </ul>
<b>Licensing of foreign channels</b> <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>
<b>License fees and taxation</b>	<ul style="list-style-type: none"> <li>Not burdensome.</li> </ul>	<ul style="list-style-type: none"> <li>No licence fees nor OTT TV-specific taxes.</li> </ul>
<b>Rate regulation</b> <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>None</li> </ul>	<ul style="list-style-type: none"> <li>None</li> </ul>
<b>Program packaging</b> <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>No restrictions.</li> <li>Packing of programming into differentiated packages is a common practice in the market.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Restrictions on advertising</b> <i>Including localization rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>Self-regulated by an association of industry bodies known as the Advertising Standards Authority (ASA).</li> <li>No regulatory limits on minutage.</li> </ul>	<ul style="list-style-type: none"> <li>As with pay-TV.</li> <li>If OTT TV provider is not a member of the ASA, then no avenue of complaint via the Advertising Standards Complaints Board (ASCB).</li> <li>The Broadcasting Standards Authority (BSA) has jurisdiction over an advertising programme in linear broadcasts (e.g. streaming, but not on-demand content), if neither the broadcaster nor the advertiser recognise the ASCB's jurisdiction in relation to a complaint.</li> <li>These self-regulatory rules in theory apply to offshore websites, but this has not been tested to date.</li> </ul>
<b>Content regulation</b> <i>Including local content quotas, content control and insertion of classification labels into international feeds</i>	<ul style="list-style-type: none"> <li>No local content quotas.</li> <li>System of self-regulation works well. Codes of practice for Pay-TV less restrictive than for free-to-air TV.</li> <li>Backed up by appeal to BSA.</li> </ul>	<ul style="list-style-type: none"> <li>No content quotas.</li> <li>Self-regulated, subject to the Broadcasting Act 1989. This legislation contains broad definitions of "broadcasting" and "programme", causing it to apply to programmes broadcast online, other than on-demand content.</li> <li>No Codes of Broadcasting Practice specific to OTT TV.</li> <li>Appeal to the BSA available for linear broadcasts (including an online stream), but not available for "on demand" content available online only.</li> <li>The same self-regulatory rules in theory apply to offshore websites, but this has not been tested to date.</li> </ul>
<b>Regulations on languages, dubbing/subtitling and captioning</b>	<ul style="list-style-type: none"> <li>No restrictions.</li> <li>National broadcasting support fund NZ on Air contributes \$11 million annually to funding programming for minority and disabled audiences, such as captioning on selected programmes.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>
<b>Program supply restrictions</b> <i>Including must provide rules and other restrictions on exclusivity</i>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>• No limit on FDI in platforms. Government review/consent based on transparent, non-restrictive criteria, including, relevantly, where a 25% or more ownership interest is being acquired in business assets valued at over NZD\$100 million.</li> <li>• No limits on wholesale provision of TV programming for foreign entities. NZ entities potentially subject to same criteria as platforms.</li> <li>• No cross-media restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>• As with pay-TV.</li> </ul>
<b>Retransmission arrangements</b> <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>• No requirements.</li> <li>• Retransmission of FTA channels is negotiated commercially.</li> </ul>	<ul style="list-style-type: none"> <li>• No requirements.</li> </ul>
<b>Consumer protection</b> <i>Including cooling-off period and termination rights</i>	<ul style="list-style-type: none"> <li>• Pay TV is covered by general consumer protection legislation.</li> <li>• Consumers may report to the New Zealand Commerce Commission any unfair terms in standard form contracts for services. The Commission may report these complaints to a court which has the power to prohibit the use of the term.</li> <li>• Pay TV services have been specifically mentioned by the New Zealand Commerce Commission as an area of focus for unfair terms in standard form contracts. In particular, the Commission has referred to clauses affecting the termination of the contract as being a type of term that may be unfair. However, any fees for early termination of a contract would not be unfair if it was a reasonable estimation of the loss suffered due to the termination.</li> </ul>	<ul style="list-style-type: none"> <li>• As with pay TV.</li> </ul>
<b>Other country-specific information</b>	<ul style="list-style-type: none"> <li>• Freedom of expression is protected under the New Zealand Bill of Rights Act.</li> </ul>	<ul style="list-style-type: none"> <li>• As with pay-TV.</li> </ul>

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Malcolm Webb is a law firm, focusing on advising corporate and government clients engaging in technology-driven change. We provide legal and regulatory advice to media and telecoms clients in New Zealand and throughout the Asia Pacific and Middle East regions. Our recent experience includes advising on level playing field policy initiatives across the media, telecoms and transportation sectors.











# Philippines

The regulation of the pay television industry in the Philippines is relatively positive, although a major restraint is the constitutionally-enshrined requirement that mass media be locally owned and managed. In addition, as a developing country with relatively low rural incomes, pay television penetration is lower than in many other countries in the region and content piracy is an ongoing problem.

Whilst broadband penetration is also very low and the quality inconsistent (especially outside the Manila region), the uptake of smartphones is considerably higher.

It is therefore not surprising that the numerous television services launching in the Philippines recently have mainly been over-the-top services which are not subject to the same ownership restrictions, which take advantage of mobile internet accessed by smartphones and which are typically affiliated with an existing telecommunications provider. Such over-the-top services are minimally regulated at present.

Issues of note include developments in intellectual property protection, the regulation of online content and the foreign ownership rules for pay television.

## Intellectual property

In recent years, the Intellectual Property Code has been updated to some degree, introducing a public communication right and providing recourse against circumvention of technological measures and tampering with rights management information. Legislation was also passed in 2013 prohibiting unauthorised interception of cable television signals.

In addition to the criminalisation of online piracy under the Electronic Commerce Act of 2000, a proposed anti-piracy bill was introduced into Congress, but has not passed into law.

Despite these developments, and the removal of the Philippines from the US Trade Representative's Priority Watch List in 2015, the domestic copyright law still requires modernisation, with respect to addressing technological change and improving enforcement and judicial procedure.

## Online content regulation

There are few laws or standards that apply to over-the-top television. That said, there are several local laws which do specifically apply to the content available online, such as the Anti-Child Pornography Act of 2009 and the Cybercrime Prevention Act of 2012. Notably, the latter statute extended the operation of criminal libel to the online environment. (This legislation survived a Supreme Court challenge on the grounds that it was unconstitutional for restricting freedom of speech.)

Other than these specific pieces of legislation and the general laws relating to obscenity, there are neither laws nor self-regulatory standards that apply to over-the-top television.

## Foreign ownership

The Filipino Constitution requires mass media to be locally owned; as a result, no foreign direct investment has been permitted with respect to cable operators, DTH operators or terrestrial broadcasters. However, the same restriction does not apply to telecom operators (including those supplying mobile television and IPTV services), which are subject to a 40% FDI limit, and the restriction has not been restrictively interpreted with respect to a telco's control of the major DTH broadcasting platform operator.

It remains unclear how long the undefined status of OTT television will continue; in the future it is possible that the Congress or the principal regulator, the National Telecommunications Commission, will treat over-the-top television services unambiguously as broadcasting services or telecommunications services.



## Policy Environment

Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>Principal regulator for broadcasting as well as telecom is the National Telecommunications Commission.</li> <li>The powers and authority of NTC are unclear. As an agency established under the Office of the President, it is not independent of government and is subject to influence by major operators.</li> <li>Judicial review of NTC decisions available, but the judicial process is slow and the courts have been used to stymie effective regulatory action.</li> <li>MTRCB, the filmed-content regulator, also has a role in regulating television content.</li> </ul>	<ul style="list-style-type: none"> <li>NTC would also be regulator for OTT television, but there are no regulations dealing with domestic or foreign OTT TV since there has been no definitive pronouncement (from Philippine Congress and NTC) whether OTT TV should be regulated as broadcast or telecoms.</li> <li>Free and pay-OTT services are now operating in the Philippines.</li> <li>In the Philippine legal context, any future NTC regulation is likely to apply to all services available in the Philippines, including international services, despite the challenges of enforcement against offshore service providers.</li> </ul>
<b>Copyright Protection</b>	<ul style="list-style-type: none"> <li>The current laws on copyright provide for both criminal and civil remedies in instances of copyright infringement. Penalties include prohibitory injunction, payment of fines, destruction of prohibited materials, and imprisonment.</li> <li>However, piracy is rampant despite government efforts to address it.</li> <li>Unclear and burdensome procedural rules; judicial complaints subject to long delays.</li> <li>In practice, enforcement very difficult to achieve.</li> </ul>	<ul style="list-style-type: none"> <li>The current laws do not specifically provide for infringement of copyrighted material accessed through OTT; it may be assumed that the same rules, as regards copyright, would most probably apply.</li> <li>In addition, the Electronic Commerce Act of 2000 provides additional penalties for online piracy and copyright infringement.</li> </ul>
<b>Convergence and new technologies</b>	<ul style="list-style-type: none"> <li>Digital Terrestrial Television Broadcasting has recently been introduced; so far it is used only for free (ad supported) broadcasting.</li> <li>Several DTH platforms licensed.</li> <li>A “demo” mobile platform operated for a while, but commercial operations were impeded by licensing. Operators then abandoned mobile broadcasting in favor of 3G / 4G video.</li> <li>Regulatory regime outmoded and unclear, imposing serious regulatory risk on such new ventures.</li> </ul>	<ul style="list-style-type: none"> <li>Online distribution services (pay and free) are in operation, with no licensing requirement.</li> <li>NTC has not developed a specific framework or system of rules for regulating such services.</li> </ul>
<b>Licensing of foreign channels</b> <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>License fees and taxation</b>	<ul style="list-style-type: none"> <li>Nominal for Cable (about US\$100 annually).</li> <li>Only slightly more for DTH (about \$400 annually).</li> </ul>	<ul style="list-style-type: none"> <li>No regulations.</li> </ul>
<b>Rate regulation</b> <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>No restrictions.</li> <li>Tiering is now a common practice in the market.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>
<b>Restrictions on advertising</b> <i>Including localization rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>No minutage caps except campaign advertisements during election period.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>
<b>Content regulation</b> <i>Including local content quotas, content control and insertion of classification labels into international feeds</i>	<ul style="list-style-type: none"> <li>No local content quotas.</li> <li>Self-regulatory system administered by the Association of Broadcasters of the Philippines (KBP) in coordination with MTRCB. Non-KBP members subject to regulation by NTC.</li> <li>MTRCB at times has taken unrealistically stringent position on rules relating to tobacco, sexual content and gender sensitivity in depicting women on TV.</li> </ul>	<ul style="list-style-type: none"> <li>No local content quotas.</li> <li>General anti-obscenity laws would arguably apply to internet distribution. A 2009 law banning child pornography was specifically written to apply to internet distribution.</li> <li>No other general regulation.</li> </ul>
<b>Regulations on languages, dubbing/subtitling and captioning</b>	<ul style="list-style-type: none"> <li>None</li> </ul>	<ul style="list-style-type: none"> <li>None</li> </ul>
<b>Program supply restrictions</b> <i>Including must provide rules and other restrictions on exclusivity</i>	<ul style="list-style-type: none"> <li>In principle, exclusivity is not allowed, although operators may seek an exemption from the NTC. In practice, no requirements are enforced.</li> <li>Exclusivity is a common practice in the TV industry; Philippine broadcasters jealously guard their exclusive content.</li> </ul>	<ul style="list-style-type: none"> <li>No regulations.</li> </ul>
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>In theory, no FDI allowed in cable operators, DTH or terrestrial broadcasters. However, some indirect foreign holdings have been tolerated.</li> <li>40% FDI allowed in telecom operators. IPTV and mobile TV are generally regarded as telecom services.</li> <li>Law prohibits use of telecom franchises to engage in broadcasting and vice versa. However, in practice awards of dual franchises to related entities have been tolerated, enabling some level of indirect participation in both platforms.</li> <li>No specific restrictions on content providers for wholesale provision of programming.</li> </ul>	<ul style="list-style-type: none"> <li>As it is not yet clear whether OTT TV would be classified as broadcasting or telecommunications, investment rules are uncertain. (If broadcasting, no FDI allowed; if telecoms, a maximum of 40% FDI would be allowed.)</li> <li>Several existing OTT services are operated by telcos under the telecom rules.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Retransmission arrangements</b> <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>Cable TV operators required to carry all terrestrial UHF and VHF channels within their locality. The must-carry rule also applies to DTH services, but not to IPTV.</li> <li>Cable TV operators must also include a free access channel for government, health, educational, cultural and civic purposes. In theory, this requirement should also apply to DTH, but the NTC has not expressly ruled on this. The regulations requiring a free access channel have not been made applicable to IPTV.</li> </ul>	<ul style="list-style-type: none"> <li>No requirements.</li> </ul>
<b>Consumer protection</b> <i>Including cooling-off period and termination rights</i>	<ul style="list-style-type: none"> <li>The NTC has issued Regulations to ensure the protection of consumer rights. Broadcast, CATV, and Content Providers, among others are required to charge consumers only for uninterrupted service. Notice requirements are also imposed when the need to change or amend the service agreement arises. Mechanisms for filing complaints are also available.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>

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Castillo Laman Tan Pantaleon & San Jose was founded in 1981. It counsels both local and international clients in all aspects of Philippine law. The firm excels in both advisory and implementation work, provides efficient, value-added legal service and assists multi-sectoral clients in understanding Philippine law and implementing their objectives.

Through the years, the firm has structured itself to meet the complex needs of clients in the rapidly evolving Philippine environment by carefully ensuring a high level of client involvement and professional legal expertise, encompassing a broad range of capabilities in practically every area of Philippine law practice.











# Singapore

Singapore is highly regarded internationally for ease of doing business. The Singaporean government is also known for its promotion of the information, communications and media sectors, including its investment in a nationwide Next Generation Broadband Network, its “Smart Nation” initiative and its Infocomm Media 2025 Plan. However, whilst its copyright regime is stronger than those of most other Asian countries, its media laws have not been updated to take account of online content supply, and they contain a variety of restrictions affecting content, exclusive arrangements and foreign investment which apply to pay-TV but not online platforms.

Over-the-top television and other online content services are subject to an Internet Code of Practice and the Media Development Authority’s (MDA’s) Class Licence Conditions, which apply automatically. Whether operators with a subscription-based business model must obtain a Niche TV Licence or Nationwide Subscription TV Licence is effectively at the discretion of the MDA.

Of note are recent amendments to Singapore’s copyright legislation, as well as the government’s announced intention to merge regulatory bodies in an effort to deal with issues of convergence.

## Copyright protection

The Copyright Act was amended in 2014, providing for injunctive relief to block overseas websites which are being used to “flagrantly commit or facilitate” copyright infringement. The amendments, which took effect in December 2014, were intended to reduce the high levels of consumption of infringing content within Singapore.

At the time of publication, there have not yet been any decisions of the High Court involving the new provisions.

## Convergence

Singapore’s Broadcasting Act is already drafted sufficiently broadly to include some aspects of online content services and the MDA has taken the approach that such services should generally be subject to an automatic class licence. However, over-the-top television operators with a subscription-based business model may be required by the MDA to obtain a Niche TV Licence or Nationwide Subscription TV Licence. As at the date of publication, it is not known whether Netflix, launched in Singapore in January 2016, is to be subject to any licence other than the automatic class licence. However, existing nationwide licensees are expected to comply with the Nationwide Subscription TV Licence conditions in respect of their ancillary over-the-top television services.

Issues of convergence were considered in a government-

initiated Media Convergence Review in 2012. The Media Convergence Review Panel recommended that all broadcast and online content services, excluding user generated content and private communications, and wherever located, be subject to specific licensing under the Broadcasting Act if such services targeted the Singapore market.

The Media Convergence Review Panel also recommended that all content providers of a certain scale be required to invest a minimum percentage of either content expenditure or revenue in local content creation.

The Review’s recommendations on these matters have not been implemented to date. However, the government has stated it is planning to propose amendments to the Broadcasting Act, which could introduce such measures. The government also announced a plan to merge the two regulatory bodies (Media Development Authority – MDA, and Infocomm Development Authority – IDA ), a process that is to be completed by mid-2016.

## Online content regulation

As mentioned above, online content services are subject to the Internet Code of Practice, which prohibits the publication of material which is objectionable on the grounds of public interest, public morality, public order, public security, national harmony or is otherwise prohibited under Singapore law.

In May 2015, the MDA suspended the class licence in respect of the website located at [www.therealsingapore.com](http://www.therealsingapore.com) for publishing prohibited material. Notably, the two editors had previously run the website from outside Singapore and the MDA regarded them to be outside the jurisdiction of the Broadcasting Act at that time. However, when the operations were moved within Singapore, they came within jurisdiction. The editors were also charged with publishing seditious articles.

## Program supply restrictions

Singapore’s cross-carriage regime is unique in the region, requiring pay television licensees to cross-carry content that would otherwise be exclusive to one pay television provider. The regime was a regulatory response to the exclusive content strategies of the two nationwide pay television licensees, StarHub and Singtel, especially with regard to football (soccer) matches. In 2013, the MDA directed Singtel to allow Starhub to cross-carry live matches of the English Premier League over three seasons (2013-2016).

The cross-carriage regime was scheduled for review in 2013. Although the review did not occur at the time, it is understood that it is now being assessed by the MDA.



## Policy Environment

Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>The Media Development Authority (MDA) is a separate legal entity, independent of all operators, active and neutral across all technologies.</li> <li>MDA decisions may only be appealed to the Minister. Under law, the Minister can give directions to the MDA.</li> <li>Judicial review available, but Singapore courts seldom challenge government actions.</li> <li>Infocomm Development Authority of Singapore in charge of spectrum regulation and management.</li> </ul>	<ul style="list-style-type: none"> <li>Local and offshore OTT TV providers (being Internet Service Providers/Internet Content Providers) are automatically class licensed and in principle must observe MDA's Class Licence Conditions and the Internet Code of Practice.</li> <li>However, in practice there is no mechanism in place to require offshore OTT operators to observe the conditions and the Code.</li> <li>There is no special regulatory provision for OTT licenses. At the discretion of the authorities, OTT TV providers with a subscription-based business model could also be required to obtain a Niche TV Licence (if it has a daily reach of up to 100,000 unique viewers per channel, or up to 250,000 unique viewers per broadcaster) or Nationwide Subscription TV licence if it is a mass-market service provider (i.e. the number of unique viewers exceed the limits stated above) in which case all regulations in relation to foreign channels, rate notification, content standards, packaging/program supply, as well as restrictions on languages, advertising and investment, would apply.</li> <li>A Singapore-based content provider providing content outside of Singapore is also regulated by the MDA, however certain content regulation codes (e.g. Singapore Code of Advertising Practice) may not apply where content is not available in Singapore. For such providers, as well as offshore OTT providers, the comments below apply.</li> </ul>
<b>Copyright Protection</b>	<ul style="list-style-type: none"> <li>Generally good strong laws that are effectively enforced.</li> <li>Criminal offence to install, sell, import or possess unlicensed broadcasting apparatus or unauthorised decoder, or to wilfully receive or rebroadcast pirated pay-TV broadcasts.</li> </ul>	<ul style="list-style-type: none"> <li>It is a criminal offence to infringe works and other subject matter (e.g. by reproduction of TV broadcasts).</li> <li>The criminal provisions regarding unlicensed broadcasting apparatus or unauthorised decoders do not apply to reception over the internet.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Convergence and new technologies</b>	<ul style="list-style-type: none"> <li>• New licensed IPTV and mobile operators have entered the market.</li> <li>• Government has instituted relaxed conditions as an incentive for “niche” operators.</li> <li>• Ongoing implementation of fiber-based broadband network provides potential foundation for additional competition.</li> </ul>	
<b>Licensing of foreign channels</b> <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>• Channels require government approval. Government expects channels to comply with content regulation codes (e.g. Singapore Code of Advertising Practice, Subscription TV Programme Code).</li> <li>• Save for specific exceptions, approval not granted for most channel transmissions in dialects, but VOD operators are allowed to broadcast dialect content up to a maximum of 50% of their offerings (unless otherwise approved by the MDA).</li> <li>• Licences required for providing and operating a satellite uplink and downlink service for broadcasting purposes.</li> </ul>	<ul style="list-style-type: none"> <li>• In practice, channel pre-approval requirements are not imposed on offshore OTT broadcasts received in Singapore.</li> <li>• In principle, all OTT TV providers must observe MDA’s Class Licence Conditions and the Internet Code of Practice. Content regulation codes (e.g. Singapore Code of Advertising Practice, Subscription TV Programme Code) should also be complied with, where applicable.</li> </ul>
<b>License fees and taxation</b>	<ul style="list-style-type: none"> <li>• 2.5% of revenues for all niche or nationwide subscription TV service providers whether they use a traditional pay-TV or OTT model.</li> </ul>	<ul style="list-style-type: none"> <li>• Class Licence fee for domestic OTT-TV services: annual fee of SGD\$1,000.</li> <li>• Niche TV Licence or Nationwide Subscription TV Licencees who offer OTT: 2.5% of revenues. Offshore OTT providers do not pay this tax.</li> </ul>
<b>Rate regulation</b> <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>• Retail rates are filed, but no rate control at present.</li> <li>• This notification process is required of all niche and nationwide subscription television service providers including for their OTT service offers.</li> <li>• No wholesale rate regulation.</li> </ul>	<ul style="list-style-type: none"> <li>• In practice, no requirements have yet been imposed on OTT operators including offshore.</li> <li>• In principle, if the operator were required to obtain a Niche TV Licence or Nationwide Subscription TV licence, the same rules as pay-TV would apply.</li> </ul>
<b>Program packaging</b> <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>• Cross-carriage system imposes regulation of bundling and pressure for a-la-carte.</li> <li>• Also foresees regulation of channel numbering, but no steps have been taken in that direction.</li> <li>• Regulator requires notification of channels in channel line-ups.</li> </ul>	<ul style="list-style-type: none"> <li>• In practice, no requirements have yet been imposed on any OTT operators.</li> <li>• In principle, if the operator were required to obtain a Niche TV Licence or Nationwide Subscription TV licence, the same rules as pay-TV would apply.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Restrictions on advertising</b> <i>Including localization rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>Under the MDA TV Advertising Code, advertising time limited to 14 minutes per hour for channels with scheduled programming. Time limit does not apply to Video-on-Demand content and interactive advertising services.</li> <li>Under Nationwide TV licence conditions, no more than 25% of the operator's total revenue can come from advertising.</li> <li>Singapore Code of Advertising Practice issued by Advertising Standards Authority of Singapore and the MDA Television Programme Sponsorship Code also apply.</li> </ul>	<ul style="list-style-type: none"> <li>Singapore Code of Advertising Practice applies to all advertising appearing in Singapore, regardless of the place of origin of the advertisement.</li> <li>No rules are applied in practice to offshore OTT services received in Singapore.</li> </ul>
<b>Content regulation</b> <i>Including local content quotas, content control and insertion of classification labels into international feeds</i>	<ul style="list-style-type: none"> <li>No local content quotas.</li> <li>Comprehensive content regulations through Content Codes: depending on the type of services offered, the Subscription-TV Programme Code or the Niche Services Code apply to niche or nationwide subscription television service providers including their OTT offers.</li> <li>In general, content on subscription TV is to be rated according to Film Classification Guidelines.</li> <li>The MDA does not generally pre-vet individual programs of pay TV service providers.</li> <li>Programmes rated NC16 and M18 are required to adhere to certain rules: M18 programmes should only be broadcast between 10pm and 6am; and pay TV service providers offering programmes rated NC16 and over must offer a parental lock.</li> </ul>	<ul style="list-style-type: none"> <li>No local content quotas for OTT TV services.</li> <li>The Internet Code of Practice arguably applies, in addition to the other content regulation codes as may be applicable, for example, the Subscription TV Programme Code in relation to those providers licensed under the Niche TV Licence or the Nationwide Subscription TV Licence.</li> <li>The Internet Code proscribes content which is racist, incites hatred, is anti-national, or contains explicit nudity/sexual activity.</li> <li>The Internet Code is not usually enforced against foreign providers but the government has the right to block foreign sites and has blocked pornographic / gambling sites in the past.</li> <li>Whilst the Internet Code doesn't expressly apply to domestic providers communicating content outside of Singapore, the Singapore Government may require compliance with the Internet Code.</li> </ul>
<b>Regulations on languages, dubbing/subtitling and captioning</b>	<ul style="list-style-type: none"> <li>Transmission of programs on channels in dialects is tightly controlled for all niche and nationwide subscription television service providers, including their OTT offers.</li> <li>VOD operators are permitted to broadcast dialect content up to 50% of programming offered on any one service.</li> </ul>	<ul style="list-style-type: none"> <li>In practice, no requirements have yet been imposed on OTT operators including offshore providers.</li> <li>In principle, if the operator were required to obtain a Niche TV Licence or Nationwide Subscription TV licence, the same rules as pay-TV could apply.</li> </ul>
<b>Program supply restrictions</b> <i>Including must provide rules and other restrictions on exclusivity</i>	<ul style="list-style-type: none"> <li>Regulatory mandate that pay TV operators must cross carry each other's exclusive content effectively bans exclusivity in the cable industry. (Applies where the content rights are for Relevant Platforms which currently include cable and fibre networks.)</li> </ul>	<ul style="list-style-type: none"> <li>No requirements have yet been imposed on any OTT operators. (An OTT provider would not be a "relevant platform.")</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Program supply restrictions</b> <i>Including must provide rules and other restrictions on exclusivity</i>	<ul style="list-style-type: none"> <li>• “Cross-carriage” mandate requires that pay TV operators must widen the distribution of exclusive content by offering it to other subscribers through the set-top boxes of other Nationwide Subscription licensee operators.</li> <li>• In addition, MDA maintains a list of essential content (largely sports events), for which subscription TV providers are prohibited from obtaining exclusive rights.</li> </ul>	
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>• Foreign investment in local broadcasters restricted – 49% cap unless otherwise approved by Minister.</li> <li>• Subject to government approval of substantial shareholders, (calculated with different limits according to voting power or size of shareholding) directors and CEOs.</li> <li>• Foreign funding for the purposes of financing any broadcasting service owned or operated by any broadcasting company also subject to prior Government approval.</li> <li>• No specific cross-media ownership restrictions, but general requirements for government approval of shareholdings greater than 5%.</li> <li>• In practice, the government owns, through its investment holding companies, controlling shares in both pay-TV and free-to-air TV operators as well as other media.</li> </ul>	<ul style="list-style-type: none"> <li>• In practice, no requirements have yet been imposed on OTT operators including offshore providers.</li> <li>• In principle, if the operator were required to obtain a Niche TV Licence or Nationwide Subscription TV licence, the same rules as pay-TV would apply, with relaxed conditions for niche licensees.</li> <li>• If only class licensed, or if operating offshore but received in Singapore, then no restrictions.</li> </ul>
<b>Retransmission arrangements</b> <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>• Nationwide subscription television service providers required to carry all licensed FTA channels.</li> <li>• Such carriage is exempted from payment of copyright licensing fees.</li> </ul>	<ul style="list-style-type: none"> <li>• In practice, no requirements have yet been imposed on OTT operators including offshore providers.</li> <li>• In principle, if the operator were required to obtain a Nationwide Subscription TV licence, the same rules as pay-TV would apply.</li> </ul>
<b>Consumer protection</b> <i>Including cooling-off period and termination rights</i>	<ul style="list-style-type: none"> <li>• The MDA’s Media Market Conduct Code includes the following conditions applicable to any niche or nationwide subscription television service providers including their OTT offers: two-year maximum length of subscription contracts; protection against excessive charges for early termination; and subscribers to have procedures for disputing charges reasonably believed to be incorrect.</li> </ul>	<ul style="list-style-type: none"> <li>• The MDA Media Market Conduct Code applies to all “regulated persons” who hold television broadcasting licences and thus would in principle apply to all niche or nationwide subscription television service providers who offer OTT TV services.</li> <li>• In practice, no requirements have yet been imposed on other OTT operators including offshore.</li> </ul>



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# South Korea

Although South Korea's broadband and smartphone penetration rates are amongst the highest in the world, its domestic pay television market remains focussed on free-to-air television and the established pay television platforms of cable, satellite and IPTV. Convergence of regulation is yet to occur, with IPTV being the subject of separate legislation. The regulatory regime in South Korea is particularly protective of local content, as evidenced by the range of restrictions on retransmitted foreign programming as well as mandatory local content quotas.

The over-the-top television market remains at an early stage of development and there is some uncertainty as to the legislation applicable to local and offshore OTT TV services. This is further discussed below, as is South Korea's online copyright enforcement processes and recent developments in respect of convergence, advertising and foreign investment.

## Copyright

In 2009, South Korea amended its copyright legislation to introduce a graduated response mechanism for online copyright infringement. The mechanism empowers Korean authorities to suspend online access of repeat copyright infringers. It has been reported that no suspensions of user accounts have been necessary in recent years as users have responded to initial warnings from the relevant authority.

In addition to the graduated response mechanism, site-blocking powers have been used to block access to some offshore infringing websites.

## Convergence

The Korean government has recently introduced an amendment to the Broadcasting Act. The proposed amendment would repeal the current Internet Multimedia Broadcasting Business Act by merging it with the existing Broadcasting Act, effectively bringing cable television, satellite television and IPTV together to be regulated under the one statute.

Meanwhile, over-the-top television services have not yet been the subject of explicit regulation in Korea as the market for these services is still nascent. However, current legislation such as the Telecommunications Business Act and the Internet Multimedia Broadcasting Business Act (in respect of for-profit services only) are drafted in such a way that either could arguably apply. The application of the legislation to specific services has not been tested to date, although the Korea Communications Commission (KCC) takes the view that OTT TV services are "value added telecommunications services" under the Telecommunications Business Act. It is not clear whether the proposed amendment to the Broadcasting Act would resolve the existing uncertainty.

## Advertising regulations

In July 2015, a new "Advertisement Cap" system took effect. It sets a maximum cap on the total duration of advertisements aired, at an average of 17% of program duration but no more than 20% of any specific program's duration. In-program advertising is generally limited to one minute, with the balance of advertising appearing prior to and following the program.

## Foreign investment

Following ratification of the US-Korea Free Trade Agreement, restrictions on foreign investment in program providers (except for general channels, news channels, and shopping channel) is being relaxed.



## Policy Environment

Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>Regulatory scene has grown increasingly complex as pay-TV has diversified.</li> <li>Korea Communications Commission (KCC) is responsible for programming and content standards; broadcasting production and channel policies; oversight of investigatory productions; user protection and privacy and regulation of broadcast frequencies.</li> <li>KCC also responsible for certain regulation of IPTV operators, including business approval for program providers of news and general programming channels and compliance with fair trade and viewer rights provisions of the Internet Multimedia Broadcasting Business Act.</li> <li>Ministry of Science, ICT &amp; Future Planning (Ministry of ICT) responsible for general communication policies, combined broadcasting communication policies and new media (cable broadcasting, satellite broadcasting, IPTV and OTT broadcasting), but must obtain KCC consent before regulating new media or revising new media approval procedures.</li> <li>The Korea Communications Standards Commission (KCSC) is an independent body that administers content standards in broadcast programs, in mobile communications and online.</li> </ul>	<ul style="list-style-type: none"> <li>KCC regulates OTT TV services. KCSC also involved in administering content standards.</li> <li>As OTT TV services are relatively new to South Korea and do not yet have a substantial presence, they have not been the subject of explicit regulation.</li> <li>However, it is arguable that if the OTT TV service is operated for profit, it would be governed by the Internet Multimedia Broadcasting Business Act (IMBBA), which applies to “broadcasting programs over broadband networks” (including on a scheduled linear basis or an on-demand basis). Such an application of the IMBBA has not been tested to date.</li> <li>Alternatively, OTT TV services may be “value-added telecommunications services” under the Telecommunications Business Act (the TBA), particularly if the services are not operated for profit. If so, the IMBBA regulations listed below would not apply.</li> </ul>
<b>Copyright Protection</b>	<ul style="list-style-type: none"> <li>Copyright laws provide strong protection with significant penalties.</li> <li>Online piracy is a major problem; competes with pay-TV.</li> <li>Acrimonious disputes over “retransmission consent” of FTA channels have resulted in government intervention.</li> </ul>	<ul style="list-style-type: none"> <li>Copyright laws protect online content.</li> <li>Online piracy remains a major problem, although the government has recently implemented a number of policies to address this problem.</li> <li>In particular, the Ministry of Culture, Sports and Tourism has sought to require internet service providers and online content portals to ensure that only legitimate content is accessible by users.</li> <li>The Ministry has utilised its site blocking powers against infringing offshore websites as permitted by Korean copyright law.</li> </ul>
<b>Convergence and new technologies</b>	<ul style="list-style-type: none"> <li>Fully level playing field does not yet exist.</li> <li>IPTV is regulated separately from cable and satellite.</li> <li>Regulator treats terrestrial broadcasters differently than cable.</li> </ul>	<ul style="list-style-type: none"> <li>It is arguable that OTT TV services would be regulated under the IMBBA (as for IPTV), but this has not been tested to date.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Licensing of foreign channels</b> <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>• Prior individual authorization (from the Ministry of ICT) for each channel is required.</li> <li>• Retransmitted programming capped at 20% of each operator's bouquet.</li> <li>• No local ads or dubbing allowed in foreign retransmitted channels.</li> <li>• In respect of uplink/downlink policy, in principle, transmission facilities for joint-venture channels should be in Korea, but exceptions can be granted.</li> <li>• No restriction on location of facilities for foreign channels.</li> </ul>	<ul style="list-style-type: none"> <li>• It is arguable that the same regulations apply to for-profit OTT TV services pursuant to IMBBA, although this has not been tested to date.</li> </ul>
<b>License fees and taxation</b>	<ul style="list-style-type: none"> <li>• Fee charged for obtaining, renewing, registering, and amending Cable TV or satellite TV licenses.</li> <li>• Pay-TV operators must contribute to a Broadcasting Promotion Fund fees that are calculated by multiplying the fee rate designated and disclosed by the Ministry of ICT to not more than 6% of the operator's broadcasting and advertising revenues for the previous year.</li> </ul>	<ul style="list-style-type: none"> <li>• It is arguable that the same rules apply to for-profit OTT TV services pursuant to IMBBA, although this has not been tested to date. If applicable, new OTT TV services will be exempt for three years from contributing to Broadcast Promotion Fund.</li> </ul>
<b>Rate regulation</b> <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>• Former rate caps on retail rates have been eliminated.</li> <li>• However, retail rates remain subject to requirement of KCC approval for any changes.</li> <li>• No wholesale rate regulation.</li> </ul>	<ul style="list-style-type: none"> <li>• It is arguable that the same oversight for rate changes applies to for-profit OTT TV services pursuant to IMBBA, although this has not been tested to date.</li> </ul>
<b>Program packaging</b> <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>• Tiering and bundling are allowed and are common.</li> <li>• Korean operators offer some premium channels a la carte but there is no regulatory requirement.</li> </ul>	<ul style="list-style-type: none"> <li>• No restrictions.</li> </ul>
<b>Restrictions on advertising</b> <i>Including localization rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>• Advertising on domestic and joint-venture channels allowed.</li> <li>• Foreign retransmitted channels may not include ads for the Korean market.</li> <li>• From 1 July 2015, the "Advertisement Cap System" is in effect, imposing maximum cap on total duration of advertisements aired, regardless of the type of advertisement – advertisements lasting for 17% of program duration on average may be aired, but no more than 20% of each program's duration.</li> <li>• In particular, in-program advertising limited to 1 minute of ads per airing of the program (with the balance of advertising appearing prior to and following the program), although the number of times a program ad may be aired may vary according to the length of the program.</li> <li>• A self-regulatory system of advertisement review is administered by the Korea Advertising Review Board (KARB).</li> </ul>	<ul style="list-style-type: none"> <li>• It is arguable that the general advertising provisions of the IMBBA apply to for-profit OTT TV services, although this has not been tested to date.</li> <li>• The law does not distinguish between local and offshore OTT TV services and the KCC may order the blocking of an offshore OTT TV service which does not comply with the relevant advertising rules.</li> <li>• Self-regulatory system administered by KARB also is intended to apply to OTT TV services, although this does not appear to have been tested to date.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Content regulation</b> <i>Including local content quotas, content control and insertion of classification labels into international feeds</i>	<ul style="list-style-type: none"> <li>• Mandatory local content quotas applicable to domestic (not foreign) channels.</li> <li>• Different quotas for different genres. Following implementation of the US-Korea FTA, local programming requirements now 20% for films and 30% for animations.</li> <li>• Cable broadcasting operators and satellite broadcasting operators are subject to separate local content quota (more than 40% but not more than 70% of the total broadcasting for each half of the year is to be local content, i.e. content produced in Korea).</li> <li>• Self-regulatory approach to content regulation by pay-TV operators, with supervision and standards-setting by the KCSC.</li> <li>• Broadcasting operators must display the age rating for the program determined by the KCSC during the broadcast of the program. Local pay-TV providers are responsible for inserting age ratings into foreign programming.</li> </ul>	<ul style="list-style-type: none"> <li>• It is arguable that the local content quotas, the general content rules and the age rating rules apply to for-profit OTT TV services pursuant to the IMBBA, although this has not been tested to date.</li> <li>• The law does not distinguish between local and offshore OTT TV services and the KCC may block an offshore OTT TV service which does not comply with the relevant content rules.</li> </ul>
<b>Regulations on languages, dubbing/subtitling and captioning</b>	<ul style="list-style-type: none"> <li>• Dubbing prohibited on foreign retransmitted channels but subtitling is allowed.</li> <li>• For domestic channels only, subtitling is subject to restrictions related to timing and size of subtitling.</li> <li>• Pay-TV providers required to utilize sign language, closed captioning, audio descriptions, etc. to assist disabled viewers.</li> <li>• There are certain target percentages for disability assistance set for different types of broadcasting operators, which are to be achieved by 2016, as follows: i) for General Service Program Providers (“jonghap-pyunsung” Program Providers), 100% closed captioned, 10% audio description assistance, and 5% sign language assistance; ii) for satellite TV operators, 70% closed captioned, 7% audio description assistance, and 4% sign language assistance; iii) for IPTV operators and program providers, 70% closed captioned, 5% audio description assistance, and 3% sign language assistance.</li> </ul>	<ul style="list-style-type: none"> <li>• None.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Program supply restrictions</b> <i>Including must provide rules and other restrictions on exclusivity</i>	<ul style="list-style-type: none"> <li>No regulation of exclusive carriage contracts for channels.</li> <li>Requirement to share broadcast public events of widespread popularity or great significance, as specified in Broadcasting Act and related enforcement regulations. (Relevant specified sporting events include the Summer and Winter Olympics, the FIFA World Cup, the Asian Games, the World Baseball Classic and national team football matches.)</li> </ul>	<ul style="list-style-type: none"> <li>It is arguable that the content sharing rules apply to for-profit OTT TV services pursuant to the IMBBA, although this has not been tested to date.</li> </ul>
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>Foreign Investment in pay-TV platforms limited to: <ul style="list-style-type: none"> <li>49% in cable operators, DTH operators and IPTV content providers (being persons receiving internet broadcasting content and providing such content to users)</li> <li>20% for general channels, which have no restrictions on the broadcast genres;</li> <li>10% for news channels.</li> </ul> </li> <li>Cross-media ownership by newspaper groups or conglomerates limited to: <ul style="list-style-type: none"> <li>49% of cable operators, DTH operators and IPTV content providers</li> <li>30% of general channel providers, news channel program providers for television platforms (including IPTV)</li> <li>10% of terrestrial broadcasters.</li> </ul> </li> <li>There are also market share restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>It is arguable that the following investment rules apply to for-profit OTT TV services pursuant to the IMBBA, although this has not been tested to date: <ul style="list-style-type: none"> <li>Foreign Investment in OTT-TV operators limited to 49%</li> <li>Cross-media ownership of OTT TV services by newspaper groups or conglomerates limited to 49%.</li> </ul> </li> </ul>
<b>Retransmission arrangements</b> <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>Cable, IPTV and DTH platform operators required to carry 2 terrestrial channels (KBS1, EBS), as well as more than 2 news channels and more than 1 general channel.</li> <li>Acrimonious disputes over “retransmission consent” of FTA channels have resulted in government intervention.</li> </ul>	<ul style="list-style-type: none"> <li>It is arguable that the rules relating to carriage of channels apply to for-profit OTT TV services pursuant to the IMBBA, although this has not been tested to date and it is not clear how it would be intended to work in practice.</li> </ul>
<b>Consumer protection</b> <i>Including cooling-off period and termination rights</i>	<ul style="list-style-type: none"> <li>For traditional pay-TV platforms, broadcasting business operators must supply their programs at a fair and reasonable market cost, in order to ensure the general viewing rights of the public.</li> <li>For IPTV platform pursuant to IMBBA, to ensure that the general public has equal access to content, the KCC designates certain programs as “key broadcasting programs” and the provider must supply such programs at a reasonable cost.</li> </ul>	<ul style="list-style-type: none"> <li>It is arguable that the rules relating to “key broadcasting programs” pursuant to the IMBBA apply to for-profit OTT TV services, although this has not been tested to date and it is not clear how it would be intended to work in practice.</li> </ul>



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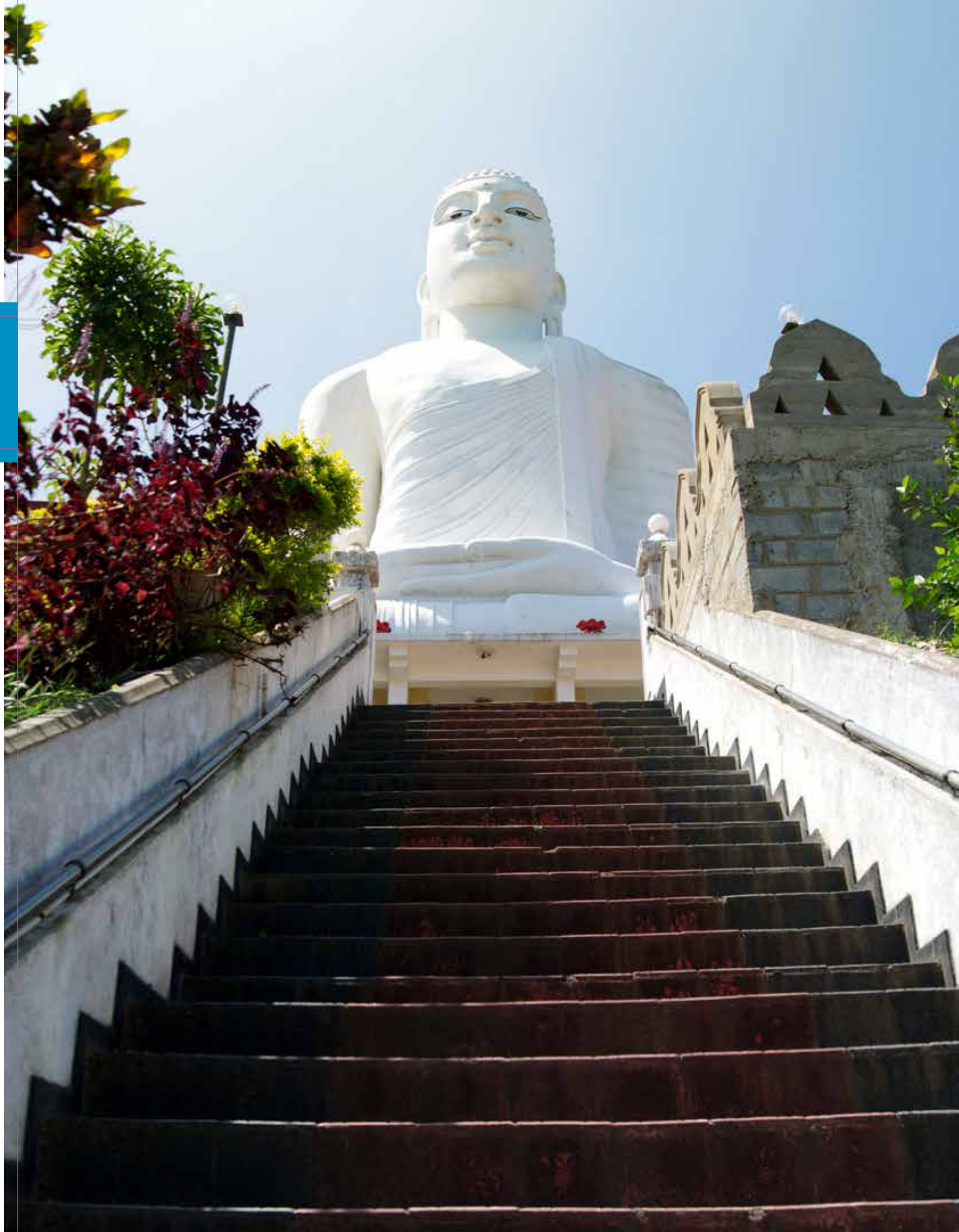
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# Sri Lanka

Despite the Sri Lankan pay television industry's relative youth and small size, it has embraced technological change. IPTV was introduced in 2008, and the first video on demand and subscription video on demand services a few years later. In mid-2015, the Sri Lankan government signed a Memorandum of Understanding with Google X to explore the provision of universal WiFi internet access from stratospheric balloons. At the same time, the Ministry for Mass Media is reviewing its policies to address next-generation television networks, including over-the-top television services, which currently remain outside the regulatory framework.

Nevertheless, the regulatory environment is still developing, with considerable improvements still to be made in respect of regulatory agencies' independence and transparency.

Current issues for Sri Lanka include intellectual property rights protection, licensing conditions, content regulation and foreign ownership rules.

## Intellectual property protection

The Sri Lankan copyright legislation is up to date in many respects: the 2003 intellectual property statute provides a right of communication to the public and anti-circumvention measures. However, there is no mechanism to directly address online copyright infringement, such as site blocking.

Pay-TV broadcast piracy, particularly involving overspill transmissions from India, remains common in Sri Lanka; the Ministry of Mass Media and Information reported in mid-2014 that over 300,000 Sri Lankans had been using illegal satellite equipment. To put this number in perspective, legitimate pay television subscribers numbered almost 700,000 at the end of 2014.

## Licensing conditions

Certain regulatory requirements for pay television services are not set out in generally applicable rules, but in licence conditions which vary by platform and by operator. (Variable licence conditions are not as transparent, consistent or predictable as rules of general application, and would operate as a barrier to entry for new service providers.)

## Content regulation

Although freedom of speech is constitutionally protected in Sri Lanka, political interference in the media has been reported. Historically, news media were controlled through the Press Council, a body established by legislation with the power to impose penalties, including imprisonment, on journalists. More recent examples involve politicians' use of civil defamation law and, in some instances in 2014, site-blocking for political reasons by the Telecommunication Regulatory Commission.

Licence conditions for pay television operators contain general prohibitions on content that is detrimental to national security, incites ethnic or religious hatred, is morally offensive and/or indecent or breaches Sri Lankan law. In light of this, and given the historical context, media operators are said to practise self-censorship.

## Foreign ownership rules

Foreign direct investment in "mass communication" businesses is limited to 40% of issued capital, although the Board of Investment may approve a higher limit. Removal of this barrier to foreign participation would be likely to increase competition in the pay television industry.



## Policy Environment

Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>Ministry for Mass Media and Parliamentary Affairs is responsible for media policy, codes of ethics and licensing private television broadcasting services.</li> <li>Telecommunications Regulatory Commission (TRC) licenses television distribution platforms.</li> <li>The various regulatory agencies are not independent from the Ministry, forming part of the Sri Lankan Government.</li> <li>Judicial review of regulatory decisions is available and cost-effective, though time-consuming.</li> </ul>	<ul style="list-style-type: none"> <li>No regulation of OTT TV services at present.</li> </ul>
<b>Copyright Protection</b>	<ul style="list-style-type: none"> <li>Telecommunications Act makes signal theft and unlicensed pay-TV operations a crime. Police have pursued enforcement activities.</li> <li>However, piracy, particularly involving overspill DTH transmissions from India, is common and unchecked.</li> </ul>	<ul style="list-style-type: none"> <li>Copyright legislation addresses online copyright infringement but there have been no reported cases to date.</li> </ul>
<b>Convergence and new technologies</b>	<ul style="list-style-type: none"> <li>The TRC issues licences for pay television distribution platforms in Sri Lanka, including DTH and cable.</li> <li>Licence conditions vary from one platform to another and from one licensee to another.</li> </ul>	<ul style="list-style-type: none"> <li>There is currently no licensing regime applicable to OTT TV services.</li> </ul>
<b>Licensing of foreign channels</b> <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>No regulatory restraints on retransmission of foreign channels.</li> <li>A broadcasting license may restrict the operator's programming to particular genres, such as educational or family programming.</li> <li>No uplink/downlink rules.</li> </ul>	<ul style="list-style-type: none"> <li>No regulatory restraints on retransmission of foreign channels on OTT TV services.</li> </ul>
<b>License fees and taxation</b>	<ul style="list-style-type: none"> <li>Application fee for a broadcasting licence is Rs. 100,000.</li> <li>Licence fee payable upon grant varies from licence to licence.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Rate regulation</b> <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>Retail rates are approved as part of the pay television operator's license. Any change in rates requires regulatory approval.</li> <li>No wholesale rate regulation.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Program packaging</b> <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>No regulatory requirements. Tiering permitted.</li> </ul>	<ul style="list-style-type: none"> <li>No regulatory requirements.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Restrictions on advertising</b> <i>Including localization rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>No restrictions on minutage.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>
<b>Content regulation</b> <i>Including local content quotas, content control and insertion of classification labels into international feeds</i>	<ul style="list-style-type: none"> <li>No local content quotas.</li> <li>No advance censorship.</li> <li>Restrictions contained in television broadcasting licenses include prohibitions on programmes: <ul style="list-style-type: none"> <li>– detrimental to national security;</li> <li>– inciting ethnic or religious hatred;</li> <li>– morally offensive and/or indecent;</li> <li>– breaching Sri Lankan law.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>
<b>Regulations on languages, dubbing/subtitling and captioning</b>	<ul style="list-style-type: none"> <li>None.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Program supply restrictions</b> <i>Including must provide rules and other restrictions on exclusivity</i>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>Limit of 40% of issued capital applies to foreign investment in mass communication businesses. Additional foreign investment may be allowed, with approval of the Board of Investment of Sri Lanka.</li> <li>No cross-media ownership restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>
<b>Retransmission arrangements</b> <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>No must-carry rules.</li> <li>Pay television operators pay free-to-air broadcasters for retransmission of free-to-air channels.</li> </ul>	<ul style="list-style-type: none"> <li>No must-carry rules.</li> </ul>
<b>Consumer protection</b> <i>Including cooling-off period and termination rights</i>	<ul style="list-style-type: none"> <li>No specific regulations</li> </ul>	<ul style="list-style-type: none"> <li>No specific regulations.</li> </ul>

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# Taiwan

Taiwan's system of pay television regulation is known for its complexity, involving multiple levels of government and differing rules for the various platforms. Cable operators are subject to heavy control of rates, packaging, advertising, local content and foreign investment; DTH and IPTV operators are less constrained. OTT TV services are not yet subject to regulation, although legislation has been proposed by the regulator, the National Communication Commission (NCC).

Current issues in Taiwan include the proposed regulation of OTT TV services, cable rate and packaging regulation, content regulation for cable services and online content services, and retransmission rules.

## Proposed regulation of OTT TV services

Some members of the NCC have proposed amendments to the Satellite Broadcasting Act to address the regulation of OTT TV services. If passed, the amendments would require pre-approval of OTT TV services available in Taiwan, including (in theory) those located offshore. The pre-approval process would include a review of the proposed rates and content mix for OTT TV services.

In addition, the amendments contemplate capping advertising on regular programming on OTT TV services and limiting foreign direct investment in a local OTT TV licensee to 50%, similar to the rules applicable to satellite broadcasting businesses.

However, it is not yet clear which online content services would be regulated nor how the rules would be enforced against offshore operators.

## Cable rate and packaging regulation

Unlike DTH and IPTV services, cable services are subject to extensive rate and packaging regulation. At present, analogue cable services are required to carry a prescribed basic package of up to 100 channels.

The NCC has called for a restructuring of this regulation, premised on full digitization of cable services. The new structure would involve a basic channel package of at least 11 channels, including must-carry channels and public television channels. The retail price of the basic package would be capped at NT\$200 (approximately US\$6) per month. Operators would be expected to also offer bundles of other channels and premium channels; further price regulation has also been proposed on these bundles.

## Content regulation

Currently, a cable system operator and its affiliated enterprises cannot supply more than 25% of the channels available to that system operator's subscribers. This restriction is intended to restrain vertically integrated control of programming. It has been proposed that this rule be amended to allow only 10% of channels to be supplied by the system operator or its affiliates.

In respect of online content regulation, the NCC is considering the creation of a foundation to develop new rules to protect minors from harmful internet content. This may involve the introduction of online classification or mandatory filtering and access controls.

## Retransmission arrangements

The scope of Taiwan's retransmission rules are the subject of ongoing dispute. Under the cable television legislation, cable operators must retransmit terrestrial television channels. There is no similar requirement for DTH or IPTV operators.

As terrestrial operators have digitized, they have offered subsidiary channels in addition to their main channels. Whilst cable systems remained predominantly analogue, the NCC permitted cable operators to retransmit only the terrestrial operators' main channels. However, as cable systems are also being digitized, the NCC expects cable operators to retransmit all terrestrial television channels.

Debate continues within the industry as to whether the retransmission rules remain necessary and appropriate.



## Policy Environment

Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>Regulatory system has heavy state-control orientation.</li> <li>Regulator (NCC) is neutral and independent of operators, but leaves little scope for private initiative.</li> <li>Cumbersome legislative process delays and inhibits needed regulatory updates.</li> <li>Politicization and vested interests particularly at the local level also block reform efforts.</li> </ul>	<ul style="list-style-type: none"> <li>Not yet regulated, although some NCC members have proposed drafting legislation in this area.</li> </ul>
<b>Copyright Protection</b>	<ul style="list-style-type: none"> <li>Weak but improving general enforcement of IP laws.</li> <li>Legal framework does not favor protection of pay-TV signals. Copyright owners bear heavy burden to stimulate enforcement. Fines for violations are too low.</li> <li>Government has no ability to enter into major IPR conventions but there are bilateral copyright agreements that help protect content owners.</li> <li>Commercial-scale online piracy is a growing problem.</li> </ul>	<ul style="list-style-type: none"> <li>Taiwan copyright law should protect online television broadcasts and programmes broadcast online. However, in practice there is no enforcement possible against overseas websites.</li> </ul>
<b>Convergence and new technologies</b>	<ul style="list-style-type: none"> <li>Several DTH systems authorized, and government licensed one ADSL-based system. Mobile TV is available over 3G/4G systems.</li> <li>Playing field is not level; differential restrictions bind cable, DTH and IPTV operators.</li> <li>IPTV operator and some cable firms have various handicaps from restrictions rooted in government shareholding.</li> </ul>	<ul style="list-style-type: none"> <li>Not yet regulated.</li> </ul>
<b>Licensing of foreign channels</b> <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>Channel retransmission permitted. Downlinking requires government “landing rights”, with application through a local office. Most licenses readily granted, but some applicants have been delayed for non-transparent reasons.</li> <li>Ads on premium cable channels cannot be retransmitted, in theory. (Not applicable to satellite or IPTV.)</li> <li>Burdensome restrictions on graphic advertising inserts sometimes enforced.</li> </ul>	<ul style="list-style-type: none"> <li>Not regulated.</li> </ul>
<b>License fees and taxation</b>	<ul style="list-style-type: none"> <li>Various nominal and transparent fees charged for license application and renewal.</li> <li>In addition, 1% of annual revenue is charged to a development fund, whose proceeds are used by the government to benefit pay-TV, free-to-air TV, and local cultural facilities.</li> </ul>	<ul style="list-style-type: none"> <li>Not regulated.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Rate regulation</b> <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>• Extensive and rigid regulation of retail cable rates from central and local government bodies.</li> <li>• No market orientation. Cable rates have been manipulated for political purposes, especially at the local level.</li> <li>• Rates for new digital packages are unregulated, as are satellite DTH rates.</li> <li>• No direct wholesale regulation, but strong government interference.</li> <li>• Wholesale market is heavily cartelized.</li> </ul>	<ul style="list-style-type: none"> <li>• Not yet regulated.</li> </ul>
<b>Program packaging</b> <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>• For analogue cable, mandatory carriage of large, prescribed basic package (90-100 channels).</li> <li>• Programs provided by system operators and their affiliated enterprises shall not exceed 25 percent of channels.</li> <li>• Above cable basic level, and for all IPTV: a la carte prices must be set but in practice some bundling has been permitted, with prices lower than the sum of a la carte rates.</li> <li>• Packaging/bundling not subject to approval.</li> </ul>	<ul style="list-style-type: none"> <li>• Not regulated.</li> </ul>
<b>Restrictions on advertising</b> <i>Including localization rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>• In theory, no advertising permitted on “pay” premium channels but enforcement unclear.</li> <li>• On basic tier channels, minutage is limited to 10 mins per hour.</li> </ul>	<ul style="list-style-type: none"> <li>• Not yet regulated.</li> </ul>
<b>Content regulation</b> <i>Including local content quotas, content control and insertion of classification labels into international feeds</i>	<ul style="list-style-type: none"> <li>• Cable must provide at least 20% local programming in its mix. (There is ample local supply, so this requirement is not burdensome.) DTH, IPTV and mobile have no similar requirement.</li> <li>• General guidelines on content control.</li> <li>• Overall controls not burdensome but there are substantial political issues.</li> <li>• Regulator is becoming more interventionist on content standards, motivated by concerns about content quality.</li> </ul>	<ul style="list-style-type: none"> <li>• Not yet regulated.</li> </ul>
<b>Regulations on languages, dubbing/subtitling and captioning</b>	<ul style="list-style-type: none"> <li>• None.</li> </ul>	<ul style="list-style-type: none"> <li>• None.</li> </ul>
<b>Program supply restrictions</b> <i>Including must provide rules and other restrictions on exclusivity</i>	<ul style="list-style-type: none"> <li>• No restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>• No restrictions.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>Theoretical limit of 20% direct foreign ownership of domestic cable operators, with total direct and indirect foreign investment capped at 60% of total shares. (Does not apply to “offshore” DTH broadcasters). Foreign shareholdings in satellite broadcasting business to be less than 50%.</li> <li>In practice, foreign holdings are structured to allow higher levels.</li> <li>No regulation of cross-media ownership, but in practice such ownership has been controversial and seems to be discouraged.</li> </ul>	<ul style="list-style-type: none"> <li>Not yet regulated.</li> </ul>
<b>Retransmission arrangements</b> <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>Cable operators must carry four major analogue FTA channels. No copyright licensing payments are required.</li> <li>No similar rules for IPTV or DTH operators.</li> </ul>	<ul style="list-style-type: none"> <li>Not yet regulated.</li> </ul>
<b>Consumer protection</b> <i>Including cooling-off period and termination rights</i>	<ul style="list-style-type: none"> <li>System operators are required to set up a channel carrying the system operator’s name, logo, license number, telephone number of subscribers’ complaint hotline, business address, a list of all channels, the license period for each channel, and the programs transmitted on each channel.</li> <li>The contract with the customer must include: <ul style="list-style-type: none"> <li>Rates and restrictions on fee adjustment;</li> <li>Numbers and names of channels, and the expiration date of each channel contract;</li> <li>Restoration of reception of terrestrial programming in certain circumstances;</li> <li>Compensation for certain service disruptions and cancellations;</li> <li>Subscribers’ complaint hotlines; and</li> <li>Other items required by the regulator.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Not yet regulated.</li> </ul>
<b>Other country-specific information</b>	<ul style="list-style-type: none"> <li>None.</li> </ul>	<ul style="list-style-type: none"> <li>Not yet regulated.</li> </ul>

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Lee and Li is a full-service law firm who is constantly refining and expanding practice areas in response to the rapid developments in trade and technology. Over the decades, Lee and Li has built the largest intellectual property right practices in Taiwan, and have been involved in the phenomenal growth of foreign direct investment since 1970s. Lee and Li was a pioneer in developing banking and capital market practice in the 1980s, and played a pivotal role in the formation of technology law practice in the 1990s. Lee and Li is also active in public construction, government procurement, merger and acquisition, and many of the most important lawsuits concerning intellectual property in Taiwan.











# Thailand

The development of Thailand's pay television industry is hampered by weak intellectual property enforcement and restrictions on advertising and foreign investment. In other respects, the regulatory framework has improved with the National Broadcasting and Telecommunications Commission (NBTC) assuming its role as converged regulator in recent years. The Minister of Information and Communications Technology continues to supervise internet-transmitted content and there is minimal regulation of OTT-TV services. However, political instability has brought a level of uncertainty, with further reforms mooted, which would affect the scope of the NBTC's powers.

Recent developments in Thailand involve amendments to the copyright law to assist (apparently unsuccessfully) in online copyright infringement matters, ongoing convergence, industry challenges to the "must carry" rule, and controversy over cross-media ownership rules.

## Copyright protection

As in many other Asian countries, online copyright piracy, streaming media box piracy and cable and satellite signal theft are widespread and the government's poor enforcement efforts have not been assisted by recent political turmoil.

The National Legislative Assembly passed amendments to the Copyright Act in late 2014. The amendments came into effect in mid-2015. Relevantly, the amendments introduced protection of rights management information, anti-circumvention provisions and a mechanism intended to assist in taking down online content suspected of infringing copyright.

The new mechanism enables a right holder to seek a preliminary injunction against an internet service provider if the right holder reasonably believes that a copyright work has been infringed on a computer system. If a court grants the injunction, it will specify a period of time within which the service provider must comply with the court order and within which the right holder must commence proceedings against the alleged infringer. However, following an initial series of court injunctions, internet service providers have refused to follow the orders, without apparent consequences.

Prior to this amendment, copyright owners had informal arrangements with Thai internet service providers to block access to infringing online material. It is likely that this practice will continue as a more convenient and less expensive remedy than the preliminary injunction process.

## Convergence

It remains unclear in Thailand whether mobile or online content services are required to obtain licences. To date, the NBTC has not required online content service operators to be licensed.

It has been reported that the NBTC is drafting rules to regulate online content services in Thailand, although little is publicly known about the progress of this work.

## "Must-carry" rules

In 2012, the NBTC introduced "must-carry" provisions, under which all platforms had to carry both public service and commercial free-to-air television channels. The NBTC amended the rules in late 2015 to require all 36 FTA channels to be grouped together, reserving channels 1 to 36 on set-top boxes. These amendments were challenged in separate court proceedings commenced by various groups, including cable and satellite operators and certain channel operators. As of the date of publication, the challenges have not yet been successful, but some of the cases are ongoing.

## Investment regulation

In January 2015, new NBTC regulations came into effect governing media mergers and acquisitions and cross-media ownership. The rules require prior NBTC approval of any proposal of a radio or television licence holder to acquire more than 25% directly, or more than 50% indirectly, in another licensed company. If the proposal is approved, the purchaser must report to NBTC on a six-monthly basis for two years, providing updated financial, market and company structure details to the regulator.

The Thai broadcasting law also contains provisions limiting all NBTC licensees to 25% foreign ownership. This rule has constrained investment in the broadcasting sector.



## Policy Environment

Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>Under supervision of the National Broadcasting and Telecommunications Commission (NBTC).</li> </ul>	<ul style="list-style-type: none"> <li>Internet-transmitted content is under supervision of the Minister of Information and Communications Technology (MICT).</li> <li>There is no economic regulation of internet-based services; the principal law governing providers is the Computer Crime Act 2007, which also involves the Police Department.</li> </ul>
<b>Copyright Protection</b>	<ul style="list-style-type: none"> <li>Poor enforcement and minimal penalties for violators.</li> <li>Commercial-scale online piracy is a growing problem.</li> </ul>	<ul style="list-style-type: none"> <li>Copyright law in theory applies to internet broadcasts, but infringements are widespread.</li> <li>Government has prosecuted some uploaders of content, but for the most part, civil suits by copyright owners themselves are required.</li> <li>2015 Copyright Act amendments empower courts to order blocking of piracy websites.</li> </ul>
<b>Convergence and new technologies</b>	<ul style="list-style-type: none"> <li>NBTC licensing has brought greater clarity; DTH, cable TV and DTT platforms are now licensed. An IPTV service is also operated by a telco, under its telecom operator license.</li> </ul>	<ul style="list-style-type: none"> <li>NBTC has not attempted to license online content distributors.</li> </ul>
<b>Licensing of foreign channels</b> <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>No restriction.</li> <li>Retransmission now requires operators to obtain permit from NBTC; permits are readily granted.</li> <li>No restraints on channel uplinking or downlinking.</li> </ul>	<ul style="list-style-type: none"> <li>No licensing requirements.</li> </ul>
<b>License fees and taxation</b>	<ul style="list-style-type: none"> <li>NBTC licensees must pay annual fees totalling 4% of gross revenue before expenses, half constituting the annual license fee and the other half constituting a fund contribution. Partial reductions of annual licence fee portion are available depending upon the broadcast's content mix.</li> </ul>	<ul style="list-style-type: none"> <li>Government has no legal authority to impose licenses or fees on channels broadcast over the internet, whether domestic or foreign in origin.</li> </ul>
<b>Rate regulation</b> <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>No regulation of retail or wholesale rates.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Program packaging</b> <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>Tiering is allowed. No a la carte requirements.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Restrictions on advertising</b> <i>Including localization rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>Legal ban on advertising on pay TV has been relaxed, but unusually strict time limits remain: a daily average of 5 mins per hour, with no more than 6 mins in any one hour for pay-TV.</li> <li>Tight restrictions on ads for tobacco &amp; alcohol.</li> </ul>	<ul style="list-style-type: none"> <li>No minutage restrictions.</li> <li>Domestic gambling websites are proscribed but there is no control over foreign websites.</li> <li>Some restrictions on advertising firearms, medicine and foods, fortune-tellers, etc. online.</li> </ul>
<b>Content regulation</b> <i>Including local content quotas, content control and insertion of classification labels into international feeds</i>	<ul style="list-style-type: none"> <li>No local content quotas.</li> <li>Pay-TV services perform self censorship based on published guidelines from a government regulator.</li> <li>Parental rating logos (3+, 6+, 13+, 18+, general viewing) must be inserted on-screen. This requirement only applies to TV operators who use a frequency wave, analogue and digital, allocated by NBTC. Currently, there are no pay TV services using an allocated frequency wave.</li> <li>Adult programming is only permitted to be broadcast between midnight and 5am.</li> </ul>	<ul style="list-style-type: none"> <li>No local content quotas.</li> <li>Little regulation of Internet content, and no published guidelines. As a matter of law, some categories (obscenity, offending the monarchy) are illegal even on the Internet.</li> <li>Any enforcement would be stricter in respect of TV streams originating in Thailand than on internet broadcasts from overseas.</li> </ul>
<b>Regulations on languages, dubbing/subtitling and captioning</b>	<ul style="list-style-type: none"> <li>NBTC regulations encourage, but do not mandate, dubbing or subtitling of international channels into Thai.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Program supply restrictions</b> <i>Including must provide rules and other restrictions on exclusivity</i>	<ul style="list-style-type: none"> <li>Must-carry rules require specific sporting events to be only broadcast on free-to-air television channels (which are then also carried on pay-TV).</li> <li>Non-Exclusivity List rules require any operator securing rights in respect of 7 other sporting events to share the broadcast rights at reasonable fees.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>FDI in pay-TV platforms and licensed Thai channels limited to 25% of the voting stock. (Limit for Telecoms is 49%.)</li> <li>A 49% FDI limit applies to wholesale providers based in Thailand.</li> <li>In practice, foreign holdings may be structured to allow foreign partners considerable indirect ownership.</li> <li>The Broadcasting Act contains some cross-media ownership limitations. Allows ownership percentages to be specified by the national regulator.</li> </ul>	<ul style="list-style-type: none"> <li>No specific limits of any kind on internet broadcasters, including in respect of cross-media ownership.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>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.</li> </ul>	
<b>Retransmission arrangements</b> <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>NBTC has issued Must-carry Rules, requiring TV operators on all platforms to carry free-to-air TV channels, without remuneration to the relevant free-to-air broadcaster.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>
<b>Consumer protection</b> <i>Including cooling-off period and termination rights</i>	<ul style="list-style-type: none"> <li>NBTC's Rule on Standard Subscription Contract 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.</li> </ul>	<ul style="list-style-type: none"> <li>No specific rules.</li> </ul>

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Established in 1975, Vickery & Worachai Ltd. is a broad-based commercial and business practice acting primarily for multinational corporations conducting operations in Thailand.

Vickery & Worachai Ltd. provides general legal advisory and litigation services and also advises financial institutions and borrowers on project financing and takes an active role in assisting clients in contract and concession negotiations with Thai government entities. The firm also handles broadcast, telecom, merger, acquisition, reorganization, restructuring expatriate formalities, labour dispute and resolution and etc.











# United Kingdom

The television and online content markets in the United Kingdom are competitive and diverse. In addition to a strong free-to-air sector, pay-television services are available on satellite, cable and IPTV platforms. Local pay television operators have also launched several online television services to compete against standalone services such as Netflix and Amazon Prime.

Rule-making at the European Union level is a feature of regulation in the United Kingdom. Several current proposals and investigations of the European Commission are relevant to the broadcasting industry, in addition to reviews by the local regulator, Ofcom.

Of particular note are local strategies to combat online copyright piracy, Ofcom reviews relating to convergence and retransmission arrangements and the consideration of program supply restrictions by the European Commission.

## Copyright protection

The United Kingdom government has implemented a range of strategies to combat online piracy.

Court orders are available to require ISPs to block access to illegal websites based outside the jurisdiction which infringe online copyright. Such orders have been obtained on a number of occasions, particularly in litigation commenced by members of the Motion Picture Association of America and the British Phonographic Industry.

The “Creative Content UK” campaign was launched in 2015 with an educational campaign on the benefits of purchasing legitimate content. A voluntary notification scheme, involving ISPs warning users who access infringing content, is expected to commence imminently.

The Police Intellectual Property Crime Unit has been running a multi-year campaign known as “Operation Creative”, aimed at reducing the revenue obtained by the operators of infringing sites from advertising appearing on their sites. The campaign involves the compilation and verification of a list of infringing websites (the IWL), which the advertising industry then uses to ensure that clients’ advertising is not directed to those sites. In addition, the Police Intellectual Property Crime Unit engages with the operators of infringing sites and, where an operator does not cooperate, may seek to suspend the site via the site’s domain name registrar.

In December 2015, the European Commission proposed to modernise copyright rules, including by developing a “follow-the-money” framework for addressing online copyright piracy, by improving enforcement and by improving the processes for ISP removal of infringing content.

## Convergence

Ofcom recently launched a Strategic Review of Digital Communications, considering issues of competition and investment in converged communications infrastructure. Although the review is not intended to consider content services as such, it is expected to address the relationship between communications infrastructure and the delivery of content; in particular, bundled pay television services. Ofcom is expected to issue the report in early 2016.

## Program supply restrictions

The European Commission has recently been examining territory-based exclusive arrangements in various forums.

In 2014, the European Commission launched an antitrust investigation to examine provisions in agreements between several major US film studios and the largest European pay TV broadcasters which grant “absolute territorial exclusivity”. The investigation is ongoing.

In May 2015, it launched a sector inquiry into e-commerce, examining cross-border trade in goods and services including digital content. Its preliminary report is due in mid-2016.

As part of the Commission’s Digital Single Market Strategy, the Commission presented a proposal in December 2015 to allow for cross-border digital content service portability so that subscribers can access their content wherever they travel within the Union. It plans to implement the proposal as a Regulation in 2017, to coincide with the scheduled end of mobile phone roaming charges within the European Union.

## Retransmission arrangements

United Kingdom copyright legislation permits cable retransmission of the core public service broadcaster channels without the payment of licence fees to channel operators.

In March 2015, the United Kingdom government announced a consultation on the relationship between the public service broadcasters and television platforms. The consultation is intended to consider carriage fees and whether the cable retransmission copyright exception should be repealed. Submissions closed on 30 June 2015 and the Government had not released its response at the time of publication.

Local litigation involving unauthorised online streaming has raised questions about the application of the cable retransmission exception to online services. These proceedings are currently before the Court of Justice of the European Communities.



## Policy Environment

Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>Ofcom is the communications regulator in the UK.</li> <li>Ofcom is independent, transparent and well respected. Before making major policy changes it undertakes impact analyses and extensive consultations.</li> <li>General rights of judicial review of decisions by a public body, and certain specific rights of appeal, are available in relation to its decisions.</li> </ul>	<ul style="list-style-type: none"> <li>Ofcom had delegated authority to the Authority for Television On Demand (ATVOD) to regulate the editorial content of UK video on-demand services. From 1 January 2016, Ofcom will be solely responsible for regulating VOD services. The applicable rules otherwise remain unchanged.</li> <li>All UK linear pay TV channels need an Ofcom licence, including linear channels transmitted via online means.</li> <li>Non-linear services do not require a licence but there is a compulsory pre-notification to ATVOD.</li> <li>The regulations applying to broadcasters of on-demand programming are less onerous, although rules on harmful material, sponsorship and product placement do apply to on-demand broadcasters as well as certain administrative rules.</li> <li>Offshore OTT 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> </ul>
<b>Copyright Protection</b>	<ul style="list-style-type: none"> <li>Domestic copyright laws provide strong protection with significant penalties.</li> <li>Enforcement is good. For online piracy, blocking orders are available requiring ISPs to block access to illegal websites based outside the UK which infringe online copyright. However, enforcement against online piracy remains a problem.</li> <li>A new voluntary Creative Content UK regime provides for internet service providers to periodically notify internet users if they breach copyright law.</li> </ul>	<ul style="list-style-type: none"> <li>As for pay TV.</li> <li>Further, copyright protection in relation to unauthorised internet streaming of live television channels has been addressed in long-running litigation concerning a service known as TV Catchup. The initial ruling in this case found against the service provider (except in relation to the core PSB channels). However, aspects of the case are under appeal and were recently referred to the Court of Justice of the European Communities for consideration.</li> </ul>
<b>Convergence and new technologies</b>	<ul style="list-style-type: none"> <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 regulates how EPG positions are granted. EPG providers are required to give “appropriate prominence” to the public service broadcasters’ core channels.</li> </ul>	<ul style="list-style-type: none"> <li>As for pay TV.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Convergence and new technologies</b>	<ul style="list-style-type: none"> <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 regulates how EPG positions are granted. EPG providers are required to give “appropriate prominence” to the public service broadcasters’ core channels.</li> <li>Pay television operators are not required to obtain the regulator’s permission before offering ancillary services such as pay per view or on-demand television.</li> <li>The receipt of television on different end devices is not subject to different regulation.</li> </ul>	<ul style="list-style-type: none"> <li>As for pay TV.</li> </ul>
<b>Licensing of foreign channels</b> <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>Service providers established in the UK must obtain a license from Ofcom in respect of all linear channels, including foreign channels. Licences are not required for non-linear channels.</li> <li>Channels based and licensed in other EU countries are exempt from additional UK licensing. This is owing to the “country of origin principle” in the Audiovisual Media Services (AVMS) Directive.</li> <li>For non-EU satellite services, the location of the uplink takes precedence to determine which national regulations apply.</li> </ul>	<ul style="list-style-type: none"> <li>As for pay TV.</li> <li>All linear channels must be licensed, including those broadcast over the internet. Non-linear content providers based in the United Kingdom must merely notify ATVOD and pay a notification fee. In both cases, those based and licensed in other EU countries are exempt.</li> <li>Non-EU offshore services are not required to pay the ATVOD notification fee.</li> </ul>
<b>License fees and taxation</b>	<ul style="list-style-type: none"> <li>Fees are set annually to recover Ofcom’s costs using Ofcom’s fee scale.</li> <li>ATVOD charges regulatory fees for providers of UK-based on demand services using a fee tariff. ATVOD’s remit covers VOD services provided on a pay TV platform as well as OTT TV through an internet connection.</li> </ul>	<ul style="list-style-type: none"> <li>As for pay TV.</li> <li>Offshore services not required to pay ATVOD fee.</li> </ul>
<b>Rate regulation</b> <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>In general there is no regulation of pricing of pay television content in the United Kingdom. However, Ofcom has the power to regulate pricing where there are specific competition concerns, such as the “wholesale must offer” (WMO) obligation imposed on Sky in 2010 in light of a ‘fair competition’ concern concerning sports. Ofcom partially lifted the WMO obligation in November 2015.</li> <li>Operators must also comply with general competition law.</li> </ul>	<ul style="list-style-type: none"> <li>As for pay TV, but note that the Sky WMO obligation for sports does not extend to OTT TV platforms.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Program packaging</b> <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>• Packaging and bundling of pay television content, or content together with services such as telephony, is not subject to specific regulation in the United Kingdom, but must comply with general competition law.</li> <li>• Nonetheless, market practice is typically for pay television providers to bundle a basic tier package with tiered subscriptions to premium content such as movies and sports.</li> <li>• Ofcom also imposes rules relating to “minimum carriage requirements” which limit the ability of channel providers to dictate packaging terms to platforms. These requirements are rarely triggered in practice.</li> </ul>	<ul style="list-style-type: none"> <li>• As for pay TV.</li> </ul>
<b>Restrictions on advertising</b> <i>Including localization rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>• On pay TV channels, television advertising and teleshopping spots must not exceed an average of 12 minutes for every hour of transmission time across the broadcast day, of which no more than 9 minutes may be television advertising. A special formula is used for teleshopping channels.</li> <li>• Broadcasters must distinguish between advertising and editorial content. Product placement is generally permitted but not for news and children’s programmes. Sponsorship is also generally permitted if sponsorship credits do not contain advertising, but is not permitted for news and current affairs programmes.</li> <li>• Offshore services from within the EU are not subject to UK advertising rules due to the “country of origin” principle.</li> </ul>	<ul style="list-style-type: none"> <li>• As for pay TV.</li> <li>• The Ofcom Broadcasting Code applies to linear OTT channels but does not apply to VOD content. Advertising on VOD content must comply with the CAP (The Committee of Advertising Practice) Code.</li> <li>• The Advertising Standards Authority (ASA) is the designated body for the enforcement of advertising rules relating to VOD services.</li> <li>• The same advertising minutage restrictions apply to linear OTT platforms as for pay TV platforms, and can be found in Ofcom’s Code on the Scheduling of Television Advertising (COSTA).</li> <li>• The CAP Code and COSTA do not apply to offshore services, but advertisers targeting UK audiences via legitimate OTT TV sites are likely to comply with their provisions as major international advertising agency groups tend to be part of the ASA system.</li> </ul>
<b>Content regulation</b> <i>Including local content quotas, content control and insertion of classification labels into international feeds</i>	<ul style="list-style-type: none"> <li>• The Ofcom Broadcasting Code generally regulates content to ensure certain standards in programming, sponsorship/product placement, fairness and privacy.</li> <li>• Broadcasters should not show material on TV that is unsuitable for children before 9pm or after 5:30am. There are specific rules with regards to the watershed for premium film services. Ofcom does not have power to monitor or censor programs before broadcast, but there is an obligation on broadcasters to ensure that programmes they air are compliant with the regulatory framework.</li> </ul>	<ul style="list-style-type: none"> <li>• As for pay TV.</li> <li>• The watershed applies only to linear content (including linear OTT TV). Non-linear content (including non-linear OTT TV) is not subject to the watershed although the CAP Code and ATVOD rules do contain some protections for children watching on-demand TV.</li> <li>• The content requirements from the AVMS Directive apply in theory to OTT TV services as the Directive is technologically agnostic. The relevant UK legislation governs the different restrictions imposed on linear and non-linear content.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Content regulation</b> <i>Including local content quotas, content control and insertion of classification labels into international feeds</i>	<ul style="list-style-type: none"> <li>Broadcasters of pay TV services are subject to an obligation to ensure that the majority of programmes are European and at least 10% are produced independently, as stipulated in the Audiovisual Media Services Directive.</li> <li>Offshore services from within the EU are not subject to UK content regulation due to the “country of origin” principle except in very limited circumstances laid down in the AVMS Directive e.g. incitement to hatred.</li> </ul>	<ul style="list-style-type: none"> <li>Offshore OTT 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> </ul>
<b>Regulations on languages, dubbing/subtitling and captioning</b>	<ul style="list-style-type: none"> <li>No regulatory constraints on broadcast language.</li> <li>Ofcom requires linear pay TV broadcasters to meet following targets over 10 years from launch: generally 80% subtitling, 5% signing, 10% audio description.</li> <li>Small channels with 0.05% or lower annual viewing share (and, in respect of signing only, with less than 1% viewing share) are exempt. Ofcom publishes an annual list of broadcasters subject to these requirements.</li> <li>Offshore services from within the EU are not subject to UK subtitling rules due to the “country of origin” principle.</li> </ul>	<ul style="list-style-type: none"> <li>The targets set for pay TV will apply to linear OTT TV once the service reaches the viewing share threshold. ATVOD is under an obligation to encourage non-linear content providers to ensure that their services are progressively made more accessible to people with disabilities and has an Access Services Plan to improve access to non-linear content.</li> <li>Captioning requirements do not apply to offshore services.</li> </ul>
<b>Program supply restrictions</b> <i>Including must provide rules and other restrictions on exclusivity</i>	<ul style="list-style-type: none"> <li>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>Sky’s WMO requirement for sports is the result of such specific scrutiny.</li> <li>Public Service broadcasters (FTA) must make 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 subject to availability requirements, including the Olympic Games and FIFA World Cup finals.</li> </ul>	<ul style="list-style-type: none"> <li>As for pay TV.</li> <li>Domestic online platforms are also subject to potential restrictions on the exclusive broadcasting of events considered to be of national importance. The restrictions would not apply to offshore services.</li> </ul>
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>100% foreign investment is permitted in pay television platforms and in content providers.</li> <li>The Communications Act 2003 and the Broadcasting Act 1990 regulate cross-media ownership so as to prevent, for example, the owner of a significant market share of UK newspapers from also controlling the major commercial UK broadcasters.</li> </ul>	<ul style="list-style-type: none"> <li>As for pay TV.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <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> <li>There are very few examples of the application of the media plurality test. Ofcom previously expressed concerns regarding media plurality when a proposed cross-media take-over would have resulted in an increased market share of news consumption by 10% to 24%.</li> </ul>	
<b>Retransmission arrangements</b> <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>Retransmission (and relevant payments) for most pay-TV channels are decided by commercial negotiation.</li> <li>However, relevant legislation requires the PSBs to make their core channels available without fee on all major platforms (i.e. those networks used by a significant number of end-users as their principal means of receiving television programming).</li> </ul>	<ul style="list-style-type: none"> <li>The TV Catchup litigation (see above) has raised questions around the scope of the cable re-transmission exception in relation to online services, which have now been referred to the Court of Justice of the European Communities for determination.</li> </ul>
<b>Consumer protection</b> <i>Including cooling-off period and termination rights</i>	<ul style="list-style-type: none"> <li>There is no specific consumer protection in relation to pay television 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>As for pay TV.</li> </ul>
<b>Other country-specific information</b>	<ul style="list-style-type: none"> <li>None.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>

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# United States

Pay television regulation in the United States is fragmented, involving various levels of government and separate regulatory regimes for each platform. The key regulator is the Federal Communications Commission (FCC), which has been engaging with the industry on various proposals for reform.

By contrast, over-the-top video services are minimally regulated, encouraging the launch of numerous over-the-top services with a variety of content offerings and business models.

Some recent issues of note involve strategies to address online copyright piracy; the FCC's proposal to bring certain linear online television streaming services within the existing regulatory regime as "multichannel video programming distributors"; and reform of the retransmission consent process.

## Copyright

In 2011, a bill was introduced into the House of Representatives proposing to introduce a mechanism for blocking access to sites with infringing content. The Stop Online Piracy Act, as it was known, was vehemently opposed by Internet companies and it never passed into law.

Four years later, members of the Motion Picture Association of America commenced litigation against MovieTube, an infringing movie streaming site, seeking a preliminary injunction requiring ISPs and a range of other online intermediaries to block access to the site. Following the filing of a joint brief from several major Internet companies, the request for a preliminary injunction was dropped, although a narrower form of final injunction is still being sought in the matter. The court's decision is pending.

In late December 2015, the US Copyright Office announced an inquiry into the notice and takedown procedures under the Digital Millennium Copyright Act. The inquiry is part of a larger review of copyright law being undertaken by the House Judiciary Committee, commenced in 2013.

## Multichannel video programming distributors

The FCC issued a Notice of Proposed Rulemaking in late 2014, seeking comment on its proposal to treat certain linear television streaming services as "multichannel video programming distributors" (MVPDs) under the Communications Act. Under current legislation, MVPDs include providers of multichannel pay television services, such as cable operators and direct broadcast satellite operators. Bringing linear television streaming services within the MVPD definition would impose a range of rights and obligations on service operators, including the retransmission consent regime (see further below) and program carriage rules.

After receiving many submissions from Internet companies opposing the proposal, the Chairman of the FCC noted in a November 2015 hearing before the House Energy and Commerce Committee that the FCC was not proceeding with its proposal at this time.

## Retransmission consent

Under US law, television broadcasters may elect to either require cable systems to retransmit certain local television signals to local subscribers without remuneration (the "must carry" requirement) or to permit MVPDs to retransmit broadcast signals in return for a fee. When broadcasters and MVPDs negotiate over retransmission consent, they are required to do so in good faith. However, there have been many instances of blackouts, whereby a broadcaster has refused to allow retransmission of its signal until payment has been agreed, causing major disruptions for consumers.

Members of Congress and the FCC have been arguing for reform of the retransmission consent process as a result of the licensing disputes. Most recently, the FCC issued a Notice of Proposed Rulemaking in October 2015, this time to examine the requirement that television broadcasters and MVPDs negotiate retransmission consent in good faith. The FCC has yet to respond to the submissions it has received.



## Policy Environment

Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>FCC is independent, bipartisan, transparent and has a long history of regulating video programming services.</li> <li>Judicial review is readily available.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Copyright Protection?</b>	<ul style="list-style-type: none"> <li>Domestic copyright laws provide strong protection with civil and criminal penalties and sufficient enforcement.</li> <li>Cable signal theft, including wilful unauthorized use of encrypted overspill signals, is a criminal offence as well as a civil copyright infringement.</li> <li>Courts have levied some large penalties on circumvention box syndicates: \$628 million and \$121 million.</li> </ul>	<ul style="list-style-type: none"> <li>Department of Justice has actively pursued action to address online piracy, including charges and criminal sentences against founders of Megaupload and other online piracy sites.</li> </ul>
<b>Convergence and new technologies</b>	<ul style="list-style-type: none"> <li>DTH is licensed and regulated by FCC.</li> <li>Confused regulatory situation for IPTV; federal, state and local authorities all seeking to regulate. About half of states have created statewide franchising (for cable as well as IPTV). In most cases, this is beneficial to cable as well as IPTV.</li> <li>OTT internet video is growing as a competitive force, with no regulatory clarity.</li> <li>Outlook is unclear.</li> </ul>	<ul style="list-style-type: none"> <li>FCC has sought comment on proposal to treat OTT services provided by traditional pay TV providers as a separate Multichannel Video Programming Distributor (MVPD) service, not a cable services. However, this proposal has not moved forward.</li> </ul>
<b>Licensing of foreign channels</b> <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>No meaningful restrictions on uplink/downlink; licenses readily granted.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>License fees and taxation</b>	<ul style="list-style-type: none"> <li>Local franchising authorities charge a fee of no more than 5% of revenue.</li> <li>Platforms offering VoIP service also required to pay modest contributions to Universal Service Funds.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Rate regulation</b> <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>In most areas there is now no rate regulation: FCC has adopted a rebuttable presumption that cable operators are subject to “effective competition,” requiring local regulators to demonstrate that this competition does not exist before regulating basic cable rates.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Program packaging</b> <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Restrictions on advertising</b> <i>Including localization rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>No minutage limits in general programming.</li> <li>Ads in children's programmes limited to 10.5/12 min/hour (weekends/weekdays).</li> </ul>	<ul style="list-style-type: none"> <li>Applicability of FCC restrictions is not clear.</li> <li>Consumer groups have asked the FTC to investigate an OTT service (the YouTube Kids app) for unfair and deceptive marketing practices.</li> </ul>
<b>Content regulation</b> <i>Including local content quotas, content control and insertion of classification labels into international feeds</i>	<ul style="list-style-type: none"> <li>No local content quotas.</li> <li>Pay-TV services perform self regulation based on individual channel standards and guidelines.</li> <li>At FCC, only basic anti-obscenity rules apply to pay-TV.</li> </ul>	<ul style="list-style-type: none"> <li>No local content quotas.</li> <li>Many OTT services offering "catch up" or VOD voluntarily utilize same parental ratings/content labels as pay-TV, but there is no regulatory requirement.</li> </ul>
<b>Regulations on languages, dubbing/subtitling and captioning</b>	<ul style="list-style-type: none"> <li>Requirement for closed-captioning for hearing-impaired viewers applies to most new English and Spanish-language programming.</li> <li>Requirements for captioning of "old" programming being gradually phased in.</li> <li>New requirement for audio description for visually-impaired consumers to begin phase-in.</li> </ul>	<ul style="list-style-type: none"> <li>FCC requires closed captioning of video clips that are both shown on TV and posted online on distributors' own websites or apps. Requirements begin January 1, 2016 and continue into 2017.</li> <li>No closed captioning requirements for user generated content shown online unless also shown on TV, nor for websites/streams offered by non-TV operators and foreign websites.</li> </ul>
<b>Program supply restrictions</b> <i>Including must provide rules and other restrictions on exclusivity</i>	<ul style="list-style-type: none"> <li>General antitrust laws apply.</li> <li>Under those laws and FCC rules, affiliated or vertically integrated carriers and channel providers cannot do exclusive contracts.</li> <li>Regulation of vertically-integrated channels extended from satellite channels to include "terrestrially-distributed" regional sports channels.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>No FDI limit for cable systems, but a limit of 25% foreign private investment in television broadcast licensees (although FCC reviews exceptions on a case-by-case basis).</li> <li>Some constraints on cross-ownership of newspapers and terrestrial broadcast stations; no rules for pay-TV operators.</li> </ul>	
<b>Retransmission arrangements</b> <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>Licensed "full power" terrestrial broadcasters have the right to mandatory carriage of one digital program stream on local cable systems. Broadcasters who exercise this right give up right to licensing fees.</li> <li>Other channels subject to "retransmission consent," i.e. negotiation of carriage agreements with fees.</li> <li>Satellite systems carrying any local stations must carry one feed from each of them.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Consumer protection</b> <i>Including cooling-off period and termination rights</i>	<ul style="list-style-type: none"> <li>Limited applicability. Consumers can complain to franchising authorities.</li> </ul>	



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# Vietnam

The regulation of Vietnam's pay television industry is characterised by a high level of government involvement, with dominant State ownership (wholly owned or majority stake) in the largest cable television networks, major telcos, and the largest satellite operator in Vietnam. Government agencies also conduct close scrutiny of foreign channel retransmission licenses, maintain intensive content and advertising controls and impose "must-carry" requirements in respect of channels serving "national political tasks". By contrast, OTT TV services are effectively unregulated.

However, the Government has been considering a draft Decree on Management, Supply and Use of Radio Broadcast and Broadcast Services and it is anticipated that it will be signed imminently (the "draft Decree"). The draft Decree is expected to introduce new rules for OTT TV services as well as amending various existing rules governing pay television services. Please see [www.casbaa.com/rfg](http://www.casbaa.com/rfg) for updated information regarding the draft Decree.

## Copyright protection

As with other countries in the region, online copyright piracy and pay television signal theft are rife in Vietnam, with limited enforcement by the Vietnamese government. It is understood that the Government is working on various improvements to intellectual property rights enforcement.

One recent change has involved the transfer of responsibility for enforcement against online copyright infringement from the Ministry of Culture, Sports and Tourism to the Ministry of Information and Communications (MIC). In September 2015, a notorious local pirate site, [hayhaytv.vn](http://hayhaytv.vn), was shut down by the MIC and the operators fined.

## License fees

Existing regulations require payment of license fees, which have not yet been specified.

The draft Decree provides that the income from providing pay-TV services is proposed to be the basis for calculating the license fees for pay-TV services.

The Ministry of Finance is likely to issue guidance on this matter.

## Rate regulation

There is currently no rate regulation in Vietnam, however, the draft Decree provides for MIC to "manage" pay television pricing. If the signed Decree includes these provisions, the MIC will have a legal basis to issue regulations controlling prices of pay television.

## Advertising

According to the text of existing regulations, advertising is not permitted on foreign channels unless such advertisements have been "inserted" into programming within Vietnam. This is taken to mean that there has to be some kind of in-country transaction (resulting in payment of tax obligations), but the requirement remains unclear.

Advertising is otherwise subject to a range of restrictions, on both pay television and OTT TV platforms.

## Content regulation

Since the existing pay-TV regulations (contained in Decision 20/2011) came into full effect in 2013, foreign channel operators have been required to appoint a local, registered agent and to have foreign programming censored by a local "editing" agency. This requirement has raised a number of concerns as to editorial independence, particularly in respect of foreign news channels. As a practical matter, the two major editing firms are operating at capacity and have very limited capacity to edit additional channels. In addition, under existing regulations, the number of "editing" licenses granted for foreign channels to serve the market has been constrained by the government, with the appropriate licenses awarded for only about 40 foreign channels, a much smaller number than are available in neighboring countries.

With respect to online content services, a site-blocking mechanism is used to enforce censorship and to restrict the availability of other objectionable content, such as sexually explicit content.



## Policy Environment

Regulatory Regime Review	Pay TV	OTT TV
<b>How regulated?</b> <i>Details of regulators</i>	<ul style="list-style-type: none"> <li>• The Ministry of Information and Communication (MIC) is the primary operational regulator of communications in Vietnam.</li> <li>• The MIC is an agency of the government and is not independent. It takes guidance from the Party Committee on Popularization and Education (CPE), which has ultimate decision-making power.</li> <li>• Enforcement of regulations is difficult as the authority currently exercised by the MIC over multiple government-linked players and ministries is limited.</li> <li>• The nascent competitive system is seeing multiple players jostle for broadcast rights in the most popular telecast areas.</li> <li>• Possible conflicts of interest may arise as MIC is itself the owner of one of the major players within the industry (VTC).</li> <li>• The Government is considering a draft Decree on Management, Supply and Use of Radio Broadcast and Broadcast Services and it is anticipated that it will be signed imminently. It is expected to affect various existing pay-TV rules. Please see <a href="http://www.casbaa.com/rfg">www.casbaa.com/rfg</a> for updated information regarding this Decree.</li> </ul>	<ul style="list-style-type: none"> <li>• The Ministry of Information and Communication (MIC) is the primary government regulator. The Administration for Broadcasting and Electronic Information (ABEI) of MIC oversees TV on the Internet.</li> <li>• The Party Committee on Popularization and Education (CPE) has ultimate decision-making power.</li> <li>• Effectively unregulated, although in theory regulated by outdated rules on internet content which have no specific provisions covering OTT TV.</li> <li>• The Government is considering a draft Decree on Management, Supply and Use of Radio Broadcast and Broadcast Services and it is anticipated that it will be signed imminently. It is expected to introduce new rules for OTT TV services. Please see <a href="http://www.casbaa.com/rfg">www.casbaa.com/rfg</a> for updated information regarding this Decree.</li> </ul>
<b>Copyright Protection</b>	<ul style="list-style-type: none"> <li>• Legal framework of copyright is fairly strong, and includes protection of broadcasts. However, compliance is weak due to limited enforcement.</li> <li>• Broadcasts on pay-TV (other than those reflecting government political priorities) must meet copyright requirements, including               <ul style="list-style-type: none"> <li>– having documentary evidence of legitimate copyright; and</li> <li>– content must remain intact though it may be amended to avoid violation of Vietnamese law.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• The current laws do not have specific rules governing OTT-TV. However, all copyright regulations are applicable to OTT-TV.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Convergence and new technologies</b>	<ul style="list-style-type: none"> <li>The current regulations on pay-TV are applied to all types of pay-TV services, namely, cable television services (analogue, digital, IPTV), digital terrestrial television, satellite television services (DTH) and mobile television. In addition, the receipt of television on different end devices (e.g. television screen, mobile handset, and tablet) is subject to the same regulations.</li> <li>Digital terrestrial TV, IPTV, WebTV and mobile TV are already operating.</li> <li>For Pay Per View or On Demand Television services via pay-TV platforms, pay-TV operators are entitled to supply: <ul style="list-style-type: none"> <li>Programs belonging to program channels supplied on pay-TV (programs provided or edited by content providers); and</li> <li>Film programs or music programs provided by companies licensed under the press law for operations in the television field.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>See above comments regarding regulation of OTT-TV services.</li> </ul>
<b>Licensing of foreign channels</b> <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>Licenses for retransmission of foreign channels (required by the regulations) are not routinely granted; application is a time-consuming and non-transparent process which has substantially reduced overall channel availability and prevented some channels from obtaining licenses.</li> <li>The current regulations require all channels to obtain new landing licenses as well as “editing” licenses. Foreign channels must have a local agent as well as a local “editing” agency to censor content.</li> <li>Hotels are expected to purchase “edited” channels from local pay-TV operators wherever possible. A specific hotel licensing system is in place for unedited programming that is not available locally. Enforcement of these rules is lax; use of pirated overspill channels by hotels still occurs.</li> </ul>	<ul style="list-style-type: none"> <li>In the case of domestic service providers, the supplying of OTT-TV will be treated as providing “specialised application websites”. In such cases, a license for providing this service is not required. However, the management, provision and use of content on such websites must comply with the press and intellectual property (copyright) laws.</li> </ul>
<b>License fees and taxation</b>	<ul style="list-style-type: none"> <li>The regulations require payment of license fees, as yet unspecified.</li> <li>No license fee is required for local program channels serving political tasks, or providing local essential propaganda information (local public television channels).</li> </ul>	<ul style="list-style-type: none"> <li>No license fees for free OTT TV services.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Rate regulation</b> <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>There is no official regulation of either retail or wholesale rates, although in practice it is difficult to raise rates because of market pressures.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Program packaging</b> <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> <li>The current laws set out two types of program packages: basic service package and advanced service packages. <ul style="list-style-type: none"> <li>The basic service package includes, at a minimum, a prescribed list of local and national channels serving “political tasks” and providing essential propaganda information at the lowest price rate.</li> <li>Advanced service packages have different programs with different fees, supplied at subscribers’ request.</li> </ul> </li> <li>Tiering has not been prevalent in the analogue cable industry because of low consumer spending power and preferences to receive the entire range of channels available. However, growing DTH, IPTV and digital cable platforms all have program tiers.</li> <li>IPTV services also provide VOD and interactive content.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Restrictions on advertising</b> <i>Including localization rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>Advertising activities on domestic program channels are allowed while in theory, advertising activities on foreign program channels are not, unless such advertisements are inserted into the programming (in a technical sense) within Vietnam.</li> <li>In practice, MIC has taken this to mean some sort of payment is to be made in-country. However, the concrete scope of this restriction (and the amount of required payments) is still unclear.</li> <li>Advertisements must be in Vietnamese unless they are broadcast on program channels that use languages of ethnic minorities in Vietnam or in foreign languages.</li> <li>An advertisement’s content must be truthful, accurate and clear and must not cause loss or damage to producers, business persons and advertising recipients.</li> <li>Advertising is limited to 5% of air time over a 24-hour period, with no more than 2 ad breaks (max 5 minutes each) per film, and 4 breaks (max 5 minutes each) in other entertainment programs. Enforcement of these requirements is not stringent.</li> <li>Advertisements are not permitted within news programs or live radio or television programs showing special political events or ceremonies of nationally important events.</li> </ul>	<ul style="list-style-type: none"> <li>In principle, advertisements on OTT-TV are to comply with provisions of laws on press and advertising, for instance: <ul style="list-style-type: none"> <li>Advertisements should be in Vietnamese unless the website is licensed to be published in languages of ethnic minorities in Vietnam or in foreign languages;</li> <li>An advertisement’s content should be truthful, accurate and clear and should not cause loss and damage to producers, business persons and advertising recipients; and</li> <li>Advertisements should not be designed or arranged to insert into items of news; advertisements at unfixed positions to be designed so that readers may themselves open or close the advertisements and the maximum period for awaiting opening or closure of an advertisement to be one and a half seconds.</li> </ul> </li> <li>In practice, enforcement of the above rules is lax.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Content regulation</b> <i>Including local content quotas, content control and insertion of classification labels into international feeds</i>	<ul style="list-style-type: none"> <li>For censoring of programs: <ul style="list-style-type: none"> <li>except for program channels reflecting government political priorities, all domestic programs and channels must be provided by “content providers” that have a license for press operation in the television field and a license for producing paid television programs.</li> <li>except for live broadcasting of sport competitions, all foreign program channels must be edited by “content providers” that have a license for press operation and a license for editing foreign program channels on pay-TV.</li> </ul> </li> <li>Some politically sensitive programs (e.g. news or films) are “blanked out” or replaced in foreign channel streams.</li> <li>The Cinema Law and its implementing decree provide official “encouragement” for local movies to make up at least 30% of movies broadcast by each operator and for most local movies to be broadcast between 8pm and 10pm. Similar official encouragement is provided for movies for children to account for at least 5% of total movies broadcast by each operator and should end by 10pm.</li> </ul>	<ul style="list-style-type: none"> <li>No local content quotas.</li> <li>ICP (internet content providers) and ISPs exercise day-to-day control over content under direction from several government agencies, which have the power to fine/punish offending operators (both ICPs and ISPs).</li> <li>Censorship is enforced against anti-State, anti-communist party, religiously/racially charged content, and sexually explicit content, among others. IP address/site blocking is the preferred method of punishment, especially for foreign ICPs using offshore servers.</li> </ul>
<b>Regulations on languages, dubbing/subtitling and captioning</b>	<ul style="list-style-type: none"> <li>Certain channel genres must be translated, whether by dubbing or subtitling. The proportion of programming required to be translated varies by genre, ranging from 100% for film channels to 0% for news channels.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>
<b>Program supply restrictions</b> <i>Including must provide rules and other restrictions on exclusivity</i>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>
<b>Investment restrictions</b> <i>Including foreign direct investment in platforms and programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>No stipulated limit for pay TV platforms. Provincial investment departments consider pay-TV proposals on the same basis as other investments. However, in practice the government has so far applied a 49% FDI limit. Licensees must be incorporated in Vietnam.</li> <li>Limits for wholesale distribution are the same as for distribution platforms.</li> <li>No express restrictions on cross-media ownership. However, each type of media requires a separate license, giving the government a high degree of effective control.</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions.</li> </ul>



Regulatory Regime Review	Pay TV	OTT TV
<b>Retransmission arrangements</b> <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>• Pay-TV service providers must broadcast channels that serve “national political tasks” and provide national essential propaganda information.</li> <li>• Pay-TV service providers, whose transmission technology enables them to insert local channels for broadcast, must broadcast channels that serve “local political tasks”. Where technology permits, operators must also carry inserted messages from the local authorities.</li> <li>• Operators must also carry certain national programs as requested by the government (e.g. national evening news), and also the national news agency channel VNA-TV.</li> <li>• Many operators carry the national broadcaster’s “entertainment” channels without authorisation or payment, despite the absence of any “must carry” requirement.</li> </ul>	<ul style="list-style-type: none"> <li>• No requirements.</li> </ul>
<b>Consumer protection</b> <i>Including cooling-off period and termination rights</i>	<ul style="list-style-type: none"> <li>• The current regulations do not clearly stipulate a “cooling-off period”. However, they do grant subscribers the right to: <ul style="list-style-type: none"> <li>– refuse to use part or the whole of a pay-TV service; and</li> <li>– to complain on price and service quality.</li> </ul> </li> <li>• In addition, under the regulations on pay-TV and pursuant to the Law on Protection of Consumers’ Rights, subscribers have the right to: <ul style="list-style-type: none"> <li>– Choose their pay-TV service provider;</li> <li>– Request pay-TV service providers to provide essential information related to using pay-TV service, the provider and the contract;</li> <li>– Use the pay-TV service consistently with the quality, price and other specifications in the contract;</li> <li>– Expect private information to be treated confidentially;</li> <li>– Obtain compensation if the pay-TV service is inconsistent with the contract; and</li> <li>– Complain or take other action to protect their rights.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• OTT-TV subscribers in theory have the same general rights under the Law on Protection of Consumers’ Rights.</li> </ul>



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