

Guide to Media and Content Regulation in Asia Pacific

2012



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Editor's Note

Baker & McKenzie is pleased to provide you with this complimentary first edition of its ***Guide to Media and Content Regulation in Asia Pacific***, covering 12 jurisdictions.

The aim of the Guide is to provide a ready reference source for the laws which shape media regulation in key Asia Pacific jurisdictions. It considers a diverse range of legal areas relevant to media interests and investors in the region, including:

- ***Detailing the regulatory landscape:*** We identify and explain which media operations require which licences or permits, and the circumstances in which they may be obtained. We also analyse key foreign ownership restrictions and cross-media ownership limitations in what remains in many cases a highly regulated sector for investment.
- ***Describing key areas of liability in respect of content:*** We identify and detail major areas of content-related liability, including defamation and contempt, copyright, classification regimes and advertising limitations and controls.

In many jurisdictions, such laws are in an almost constant state of flux, as legislatures and regulators struggle to keep pace with a rapidly evolving media and technology landscape.

Consumers are being increasingly exposed to a dizzying array of choice as to how they receive and consume content. For example, audio-visual content, once largely limited to free-to-air television, is now available on demand, on myriad devices and via multiple distribution platforms and business models.

Accordingly, a key challenge for the evolution of media and content laws has been a structural one: the convergence of computing and other information technologies, media content and communication networks, which has arisen as the result of the progression and popularity of online digital distribution mechanisms, has meant legislatures throughout the region are questioning the most basic premises of their respective regulatory regimes.

Convergence has progressed beyond being a fashionable buzzword to being a reality in the average living room or study, or indeed wherever we choose to engage with content. It increasingly allows us to interact with others on a social level and use multiple media platforms to create new experiences, new forms of media and content that connect us socially, and not just to other consumers, but to the commercial producers of media in ways that have not been as readily accessible in the past.

This Guide attempts to provide a basis for comparison across jurisdictions as to how questions of convergence are being dealt with at a regulatory level. We commend it as an important resource for any organisation operating, or investing in, media and content businesses throughout the Asia Pacific region.

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Australia

Country	Australia	
Media Regulatory Authority	Australian Communications and Media Authority (the ACMA)	
Foreign investment controls or restrictions	Yes. The media is classified as a “sensitive sector” under Australia’s foreign investment regime and as such, all direct proposals by foreign investors in the media sector irrespective of size are subject to prior approval, along with portfolio shareholders of 5% or more.	
Cross-media ownership controls or restrictions to protect competition in the local media sector	Yes. Statutory control rules and restrictions on transactions that result in unacceptable media diversity.	
Forms of media that may be supplied without a government licence	Services delivered over the internet.	
	Print – newspapers, magazines etc	
	Note that public broadcasters are not licensed but instead operate under establishing legislation.	
Forms of media that may be supplied under a class licence	Subscription radio broadcasting services.	
	Open and subscription narrowcasting radio and television services.	
Forms of media that may only be supplied if an individual licence is obtained	Commercial television and radio broadcasting services.	
	Community television and radio broadcasting services.	
	Subscription television broadcasting services.	
	International broadcasting service (subject to dual licensing requirements).	
Primary legislation	<i>Broadcasting Services Act 1992</i> (Cth)	Broadcasting services and, to a lesser extent, online content services
	<i>Radiocommunications Act 1992</i> (Cth)	Radiofrequency spectrum
	<i>Telecommunications Act 1997</i> (Cth)	Telecommunications service providers (including carriers, carriage service providers and content service providers)
	<i>Copyright Act 1968</i> (Cth)	Copyright
	<i>Defamation Act 2005</i> (various states and territories)	Defamation
	<i>Competition and Consumer Act 2010</i> (Cth)	Competition law and consumer protection

Local Media Regulation

The Australian broadcasting industry is primarily regulated by the *Broadcasting Services Act 1992* (Cth) (**BSA**). The key Australian Government regulator of the media sector is the Australian Communications and Media Authority (**ACMA**).

A complete review of the Australian media and communications regulatory landscape has recently been completed in light of convergence in the Australian media and communications industries. A range of other more targeted reviews have also occurred recently, a number of which have been highlighted in the summary below. It is possible that this period of intensive review activity in the media sector could trigger changes in the approach to media regulation in Australia.

Licences

What Licences are Required?

Broadcasting Services

A licence is required under the BSA in order to provide a television or radio broadcasting service in Australia via any means. At present, the following are not considered to be broadcasting services under Australian law and, as a consequence, do not require a licence under the BSA:

- services providing data or text only, with or without associated still images (eg teletext or email);
- services that make programs available on demand on a point-to-point basis only;
- internet streaming services.

The term "internet" is not defined in the exclusion. This exclusion raises interesting questions in Australia as it acts to exclude services delivered via the internet from the key regulatory obligations that otherwise apply to broadcasting services.

There are various categories of broadcasting service in Australia, and each has different levels of regulation including different licensing requirements whereby:

- **national broadcasting services** (the Australian public broadcasters' free to air services, along with broadcasts of parliamentary proceedings) are not licensed under the BSA. These services are primarily regulated by their establishing legislation as follows:
 - broadcasting services provided by the Australian Broadcasting Corporation (**ABC**) are regulated by the *Australian Broadcasting Corporation Act 1983* (Cth);
 - broadcasting services provided by the Special Broadcasting Service Corporation (**SBS**) are regulated by the *Special Broadcasting Service Act 1991* (Cth); and
 - broadcasts of parliamentary proceedings are regulated by the *Parliamentary Proceedings Broadcasting Act 1946* (Cth).

However, subscription broadcasting services and subscription or open narrowcasting services provided by the ABC or SBS are primarily regulated with those categories of broadcasting service under the BSA, rather than as national broadcasting services;

- **commercial broadcasting services** (commercial television and radio services of general appeal and availability) require an individual licence to be issued under the BSA;
- **community broadcasting services** (not-for-profit television and radio services that have a community purpose and are generally available) require an individual licence to be issued under the BSA;
- **subscription television broadcasting services** (television services of general appeal that are only available in return for payment) require an to be issued individual licence under the BSA;
- **subscription radio broadcasting services** (radio services of general appeal that are only available in return for payment) can be provided under a class licence under the BSA;
- **subscription narrowcasting services** (limited / special interest services made available in return for payment) can be provided under a class licence under the BSA;

- **open narrowcasting services** (limited / special interest services made generally available) can be provided under a class licence under the BSA; and
- **international broadcasting services** (services delivered from Australia but targeted at audiences outside Australia) require an individual licence to be issued under the BSA. International broadcasting services may also fall under another of the categories outlined above and therefore can be subject to dual licensing requirements.

If a service provider supplies a service covered by a class licence, the conditions of the class licence will apply automatically and approval from the ACMA is required in order to provide such a service. Where an individual licence is required, a specific licence must be obtained from the regulator in order to provide the relevant service. The criteria for eligibility for such individual licences, and availability of such individual licences, differs between the different categories of broadcasting service.

The use of the broadcasting services bands (the part of the radiofrequency spectrum used for broadcasting services) is particularly restricted. As the broadcasting services bands are a limited resource, only a limited number of services are able to be delivered in this manner.

By way of example, there has been a moratorium in place for some time on the issue of any new licences for new commercial television broadcasting services to use the broadcasting services bands. As part of the switch-over to digital television in Australia, the position on new licences is to be reviewed before 1 January 2013. This review process will determine whether or not an additional broadcasting services bands commercial television broadcasting licence should be allocated (commonly referred to as the "sixth" commercial TV channel).

Other media licensing requirements

The BSA licensing requirements described above are the only licences required to be held in Australia to deliver media and content services. Consequently, licences are not required to deliver content via any non-broadcast services, print publications (such as newspapers and magazines) or the internet. Whilst there are no licensing obligations for print media, we note that an Independent Media Enquiry into press regulation in Australia has recently been completed, recommending an increase in regulation of press activities (in all forms, including broadcast media, print and online).

Service providers should also be aware of the licensing and regulatory regimes that can apply to the means of delivery (as opposed to the content service itself) including, in particular, the regimes under the *Radiocommunications Act 1992* (Cth) (**Radiocomms Act**) and the *Telecommunications Act 1997* (Cth) (**Telco Act**).

What content obligations / conditions are placed on licensees (e.g. minimum local content requirements, children's programming requirements etc)

Content obligations and conditions are placed on Australian broadcasting service licensees in a number of ways, primarily via the following mechanisms:

- **Licence conditions:**
 - Broadcast licence conditions are attached to broadcasting services licences. Some of these are found in the BSA, but the ACMA also has the power to impose or vary broadcast licence conditions. Some conditions apply to all broadcasting services, whereas some are broadcasting service category specific or even licence specific. There are a range of content obligations imposed by way of licence condition, with the specific obligations varying between licence type.
 - By way of examples only, content obligations that are imposed by way of licence condition include requirements and restrictions relating to tobacco and therapeutic goods advertisements, requirements for the broadcast of election materials and political matters and restrictions on advertisements and sponsorship announcements on community television.
 - One of the key content obligations that is passed through by way of licence condition is the anti-siphoning regime which seeks to ensure that certain specified events (significant sporting events) are available on free to air television. The regime also applies to national broadcasters under statute. Subscription television broadcasting licensees are prohibited, by way of licence condition, from acquiring rights to anti-siphoning events before those rights have been acquired by free to air broadcasters. Commercial television broadcasting licences contain licence conditions requiring licensees to comply with anti-hoarding rules and restricting commercial broadcasters from premiering anti-siphoning events on multi-channels. The anti-siphoning and anti-hoarding regimes have recently been reviewed and, at the time of writing, amendments to the regime are being considered.

- **Program standards:** The BSA requires the ACMA to determine program standards in a number of circumstances. Compliance with relevant program standards is itself a broadcasting services licence condition. Some key examples of program standards that have been determined by the ACMA include:
 - *Broadcasting Services (Australian Content) Standard 2005;*
 - *Television Program Standard for Australian Content in Advertising (TPS 23); and*
 - *Children's Television Standards 2009,*
 all of which apply to commercial television broadcasting licensees, along with standards relating to disclosure of commercial arrangements by commercial radio licensees.
- **Codes of practice:** The BSA sets up a co-regulatory regime whereby industry groups representing particular broadcasting service licensees develop codes of practice to govern those particular sections of the broadcasting services industry. There are a range of codes of practice in place, including a Commercial Television Industry Code of Practice (created by Free TV) and Subscription Broadcast Television Code of Practice (created by ASTRA). These codes of practice cover a range of requirements, including content obligations.

Foreign Ownership and Investment Restrictions

What are the restrictions (if any) on cross-media or broadcast market ownership

Although there has been a lessening in cross-media ownership restrictions in Australia in recent years, some restrictions remain. Some of the major restrictions are as follows:

- **the “number of voices” rule** requires a minimum of five media “voices” in a metropolitan licence area and four media “voices” in a regional licence area;
- **the “75% audience reach” rule** prohibits a person from being in a position to exercise control of commercial television broadcasting licences with combined licence areas exceeding 75% of the Australian population;
- **the “2 out of 3” rule** prohibits a person being in a position to control a commercial television broadcasting licence, a commercial radio broadcasting licence and a newspaper, in the same area;
- **the “2 to a market” rule** for commercial radio prohibits a person from being in a position to exercise control of more than two commercial radio broadcasting licences in the same licence area; and
- **the “1 to a market rule”** for commercial television prohibits a person from being in a position to exercise control of more than one commercial television broadcasting licence in the same licence area.

There are also restrictions on holding both a commercial broadcasting licence and certain licences relating to datacasting. The above restrictions do not apply to commercial television and radio broadcasting services that do not use the broadcasting services bands. There are also related restrictions on directors.

It is possible to obtain preapproval from the ACMA for some transactions that would otherwise breach the rules outlined above. These approvals apply only on a temporary basis whilst the situation (that would otherwise have been a breach) is rectified.

All media participants are also subject to general competition legislation in the form of the *Competition and Consumer Act 2010* (Cth).

What are the restrictions on foreign entity (person or company) ownership?

In recent years, there has been a lessening in regulatory restrictions on foreign ownership of the media. There are no longer specific restrictions under the BSA. Instead, foreign investment in Australia is regulated by the *Foreign Acquisitions and Takeovers Act 1975* (Cth), related regulations and the Australian Government's foreign investment policy. Investment proposals may be blocked if contrary to the national interest. The media sector is singled out as a “sensitive sector for foreign investment meaning that all direct investments in the media sector irrespective of size, and all portfolio shareholdings of 5% or more, are subject to prior approval.

There are also some requirements under the BSA for broadcasting licensees to be Australian companies, but this does not of itself prevent those companies being owned by foreign entities.

What are the restrictions on a foreign entity (person or company) entering a content supply agreement in Australia with a local organisation?

No specific restrictions however, as noted above, general competition law can have a role to play in some circumstances.

By way of example, the Australian Competition and Consumer Commission (**ACCC**) has accepted undertakings from Foxtel, the largest subscription television operator in Australia in connection with Foxtel's acquisition of Austar (a regional subscription television operator). The undertakings were proposed to address competition concerns raised by the ACCC by seeking to provide that during the term of the undertaking certain content rights cannot be acquired by Foxtel exclusively (meaning that such rights remain available to other operators in Australia). The undertakings will act as a restriction on the terms upon which some content suppliers could enter into a content supply agreement with Foxtel.

Regulatory Bodies

What are the agency(ies) responsible for administering regulation?

The primary regulator for the media and communications industries in Australia is the ACMA. Other regulatory bodies of relevance to the media industry include the following:

- Department of Broadband, Communications and the Digital Economy (relevant Federal Government department);
- ACCC (general competition regulator); and
- Classification Board and Classification Review Board (under the National Classification Scheme).

Content Regulation

Defamation

Defamation is generally regulated at a state and territory level (rather than federally) in Australia. However, on 1 January 2006, Australian defamation laws were amended to bring the *Defamation Act 2005* into force and introduce largely uniform defamation laws across all states and territories. The uniform regime amends, but does not replace the common law. For example, the regime and expressly preserves common law defences in addition to the statutory defences.

Liability for defamation can arise in any jurisdiction where the defamatory content is read, seen or heard (and, as a consequence, harm is caused). The person who has been defamed does not necessarily have to be Australian in order for the claim to be actionable in Australia.

Natural, living persons can sue for defamation. Generally, corporations cannot sue for defamation in Australia although there are limited exceptions for small corporations with less than 10 employees and not-for-profit corporations (other than Local Government bodies or other governmental or public authorities).

Liability will attach to publishers of defamatory content. In an increasing number of media contexts (including, in particular, in the online space) there can be a number of potential "publishers" of defamatory material and the question of whether or not a particular person is a "publisher" can be an important initial threshold consideration.

There are a range of defences to a defamation action (including without limitation defences of truth / justification, innocent dissemination, contextual truth, triviality, absolute and qualified privilege, honest opinion and fair reports of proceedings of public concern). Consideration should also be given to the BSA which provides a statutory defence to an intermediary who carries/hosts internet content in Australia and who was not aware that they were carrying/hosting a defamatory publication. The scope of the BSA protection is largely untested and it appears limited in a number of respects. Where intermediaries fall outside of the scope of the BSA protection, the availability and scope of the defence of innocent dissemination will be of particular relevance in an Australian context.

The uniform regime introduced provisions seeking to encourage the resolution of defamation disputes without resort to court proceedings (via offers to make amends and apologies). The 2006 amendments also capped damages for non-economic loss in defamation proceedings. This cap is adjusted annually and is, at the time of writing, set at \$324,000.

Contempt

Contempt laws aim to protect the public interest in the due administration of justice and can restrict publications that have a real or definite tendency to interfere with the administration of justice or to prejudice pending proceedings ("sub judice" contempt), publications that are calculated to undermine public confidence in the judicial process ("scandalising contempt") as well as a range of other forms of contempt, including refusals to disclose sources, disclosing jury deliberations and publications that breach suppression orders. This area of the law is largely governed by the common law in Australia and contempt proceedings against the press in Australia are relatively common.

Recent changes in the law in some jurisdictions in Australia have introduced certain limited protections for journalists against being required to identify sources in legal proceedings. These protections have not been introduced in all states and territories.

Copyright

In Australia, copyright is regulated under the *Copyright Act 1968* (Cth) which protects copyright in original works and other subject matter. Australia has no copyright registration or deposit system. Copyright arises automatically when the subject matter is created or published, if applicable criteria are met.

Subject to certain limited exceptions, the author is the first owner of copyright. For other subject matter such as films and sound recordings, the author is the "maker" or the person who "arranges the making", usually the producer. Where a work is made by the author in the course of employment, the first owner is usually the employer (although employed journalists retain certain limited rights in materials which they produce under their contracts of employment). The ownership rules can be varied by agreement. Moral rights are not assignable but individuals may consent to specific or general uses of their work products.

There are a range of circumstances that permit use of copyright material without approval from the owner. Some, in effect, amount to compulsory licences, for which the owner receives payment (for example, the statutory licence scheme relating to retransmission of broadcasts) whilst others are complete defences or exceptions to the otherwise unauthorized use of the copyright material. Some key examples in a media context in Australia are summarised below:

- **Fair dealing:** The Australian fair dealing exception is restricted, requiring the user to demonstrate that the use was "fair" and for one of a narrow list of permitted purposes (most significantly, criticism or review, research or study, reporting of the news or parody or satire).
- **"Time shifting":** A person will not infringe copyright in a broadcast, or any work or other subject matter included in a broadcast, if the person makes a copy of the broadcast solely for private and domestic use by watching or listening to the broadcast at a more convenient time.
- **"Format shifting":** There are a variety of provisions allowing an end user to "format shift" a legitimate copy of copyright material. While the terms of the various exceptions differ, all are limited to copies for personal and domestic use made from a legitimate copy of the material and permit certain lending within a family or household for private and domestic use.

The Federal Government has announced that the Australian Law Reform Commission will conduct a review of the exceptions in the Copyright Act throughout 2012 and 2013.

Sedition

Australian sedition laws have been amended relatively. New sedition offences were inserted into the *Criminal Code Act 1995* (Cth) in 2005 in response to concerns surrounding the rise of terrorism. The new sedition laws were the subject of considerable controversy in Australia on the grounds that they are overreaching, and in 2006 the Australian Law Reform Commission was issued terms of reference to review the law of sedition in Australia. As a result, the sedition offences in Part 5.1 of the Commonwealth Criminal Code have recently been amended again and now include offences relating to:

- urging the overthrow of the Constitution or Government by force or violence;
- urging interference in parliamentary elections or constitutional referenda by force or violence; and
- urging the use of violence or force against groups based on race, religion, nationality, national or ethnic origin or political opinion.

There is a good faith defence, which includes a defence for good faith publication of reports or commentary about a matter of public interest. In considering the defence, a court may have regard to any relevant matter, including whether the acts were done in the course of news or current affairs.

Misleading Advertising

Australia's primary source of regulation for misleading and deceptive conduct is contained in the *Competition and Consumer Act 2010* (Cth).

The Competition and Consumer Act prohibits conduct (in trade or commerce) that is misleading or deceptive or likely to mislead or deceive. There are a number of additional related prohibitions.

This prohibition has very wide application and applies to misrepresentations made in the course of private negotiations and contracts as well as to misrepresentations made to the public (such as in advertisements). This restriction constitutes one of the most litigated legislative provisions in Australia.

From a media perspective, it is important to note that there is a limited exception provided for "information providers" (persons who carry on the business of providing information, including broadcasting services licensees under the BSA) which can exempt some media activities from the operation of the prohibition. However, the scope of this exception is limited and it does not, for example, extend to the publication of advertisements.

In addition to the prohibition on misleading and deceptive conduct, the Competition and Consumer Act contains a range of other restrictions and prohibitions of relevance to the advertising industry (for example, requirements for country of origin claims).

There is also a self-regulatory regime for advertising in Australia, primarily via the Australian Association of National Advertisers (the **AANA**) which has developed a range of codes of practice, including a Code of Ethics, which are through an Advertising Standards Bureau and Advertising Standards Board. In addition, a number of particular industries have developed specific codes of practice relating to advertising in their respective areas. Some of these are mentioned in section 2.6 below.

Restricted Product Advertising

In addition to general advertising requirements and restrictions, and the BSA licence conditions mentioned above, the advertisement of a number of specific goods and services is also specifically regulated. For example:

- **Therapeutic Goods:** The *Therapeutic Goods Act 1989* (Cth) regulates the advertising and promotion of certain therapeutic goods, and contains a number of prohibitions and requirements. In addition, the BSA also contains licence conditions in this regard.
- **Alcohol:** The advertisement of alcoholic products is regulated by the Alcohol Beverages Advertising Code.
- **Tobacco:** There are a number of laws that regulate tobacco advertising in Australia (including, as noted above, the BSA). The *Tobacco Advertising Prohibition Act 1992* (Cth) creates a national prohibition on broadcasting and publishing tobacco advertisements.
- **Food and Beverages:** The AANA Food and Beverages Advertising and Marketing Communications Code and AANA Code for Marketing and Advertising to Children.
- **Other miscellaneous restrictions:** including restrictions on use of insignia associated with certain events (for example, the *Olympic Insignia Protection Act 1987* (Cth)).

A number of the codes of practice registered under the BSA also regulate advertisements falling in specific areas, including some of those outlined above.

Classification

Classification in Australia is regulated by a range of laws that, in effect, result in differing classification obligations for different forms of media and publications. It should be noted that the classification regime has recently been the subject of a significant review by the Australian Law Reform Commission.

As it currently exists, the regime operates as a cooperative scheme at both a federal and state level covering classification of films, publications and computer games. This is implemented via the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) and complementary state and territory enforcement legislation. Films, computer games and some publications must be submitted to the Classification Board for classification, with the Classification Review Board reviewing classification decisions on application. If a publication is refused classification it may not be distributed.

The Codes of Practice sitting under the BSA also extend classification obligations to broadcasters, although the actual obligations depend on the category of broadcasting service being provided. These requirements oblige relevant broadcasters to classify material prior to broadcast, and also to display classification information as part of broadcasts. Commercial television broadcasting licensees and community television broadcasting licensees are also subject to time-zone restrictions requiring that certain classified material only be shown at particular times of day.

There is no equivalent regime for internet content, although Schedule 5 and 7 of the BSA set up a separate regime relating to the treatment of prohibited content online, regulated by the ACMA. There is a complaints based, notice and take-down process for Australian-hosted prohibited content. Free PC-level filters are made available by internet service providers to protect against prohibited or potential prohibited content hosted offshore. Codes of practice are also in effect under Schedules 5 and 7.

Other Restricted Speech

Other restrictions in Australia include the following:

- There are restrictions on speech that is discriminatory or that otherwise vilifies others (for example, the *Racial Discrimination Act 1975* (Cth)).
- Obscenity and indecency are now largely prohibited by statute (for example, section 578C of the *Crimes Act 1900* (NSW)).
- Whilst there is no generally accepted right to privacy in Australia, the introduction of a tort for invasion of privacy has been considered recently as part of a number of reviews. In the absence of such a right, other laws operating in related areas can be of relevance and have been used from time to time to address “privacy” related concerns, including the following:
 - The actions for breach of confidence in Australia has, in some instances, been developed to address “privacy” related concerns.
 - Australia has data protection laws in place, primarily the *Privacy Act 1988* (Cth) which operate to protect “personal information”. These laws contain a number of limited exceptions, including for some media activities.
- Tort law (eg trespass) has been used, in some instances, to control access to particular places (for example, to restrict access to sports grounds so that only licensed broadcasters are permitted to enter and broadcast events). In addition, other laws can restrict filming in particular places. For example, a number of local councils around Australia impose obligations, including permit requirements, on public filming in their jurisdictions (particularly where there are related disruptions, for example a need for traffic control or for structures to be erected) and there are also laws restricting photography of particular places (for example, defence buildings and premises, and some indigenous, environmental and heritage sites).

China

Country	China	
Media Regulatory Authority	State Administration of Radio, Film and Television (SARFT) General Administration of Press and Publishing (GAPP) Ministry of Industry and Information Technology (MIIT) Ministry of Culture (MOC) Ministry of Commerce (MOFCOM)	
Foreign investment controls or restrictions	Foreign investment in television and radio (including subscription and cable) generally prohibited. Limited foreign investment permitted in some aspects of the wholesale or retail (but not publication) of print publications.	
Cross-media ownership controls or restrictions to protect competition in the local media sector	The majority of broadcasting services in China remain wholly state-owned and are heavily regulated. There is therefore limited capacity for private ownership.	
Forms of media that may be supplied without a government licence	None	
Forms of media that may only be supplied under a government licence	The majority of media outlets in the PRC are wholly state-owned and the private investment is highly restricted.	
Primary legislation	<i>Regulations for Administration of the Import and Broadcasting of Television Programmes from Outside the People's Republic of China (2004)</i>	Caps the import and broadcast of foreign programmes
	<i>Regulations on Administration of Radio and Television (1997) and Regulations for the Administration of Production of, and Dealing in, Radio and Television Programmes (2004)</i>	Broadcast content
	<i>Notice of the State Administration of Radio, Film and Television on Strengthening Control of the Content of Audio and Video Programmes on the Internet (2009)</i>	On-line content
	<i>Regulations for the Administration of Publishing (2002)</i>	Print content
	<i>Copyright Law</i>	Copyright
	<i>Advertising Law</i>	Advertising

Local Media Regulation

Licences

What licences are required?

Broadcasting - Television and Radio

The PRC government exercises strict control over the television and radio industry. The media regulator, the State Administration of Radio, Film and Television (**SARFT**) is responsible for supervising the industry, and among other functions, has the authority to issue permits and censor programmes.

Under China's Foreign Investment Catalogue, foreign investment is prohibited in television and radio stations, radio and television transmission coverage networks (transmission stations, relay stations, radio and television satellites, satellite uplink stations, satellite reception and relay stations, microwave stations, monitoring stations and cable radio and television transmission coverage networks). The prohibition on foreign investment includes restrictions on radio and television stations from leasing channels (frequencies) to foreign organizations, and from establishing equity or cooperative joint venture radio or television channels to run regular or live television programmes. Typically, foreign broadcasters and production companies have been able to participate in the broadcasting sector in a limited capacity by providing programming content or formats in return for advertising airtime. In addition, foreign investment in cable television stations and cable television networks is also prohibited. The prohibition also extends to the launching, broadcasting, integration, transmission or provision of access to subscription channels.

Free-to-air television stations remain wholly state-owned and are responsible for programme broadcasting. The stations have also formed separate production companies to produce and distribute programmes as well as sourcing programmes from private Chinese production companies. The 2004 *Provisional Regulations for the Administration of Chinese-Foreign Equity and Cooperative Enterprises Engaged in the Production of Broadcast Television Programmes*, provides for foreign participation in programme production by the establishment of joint venture production companies. However, soon after the release of these regulations, SARFT announced a moratorium on such applications, and at present, SARFT has placed all applications on hold. It is widely believed that conservative elements within the Communist Party of China (such as the Department of Publicity formerly known as the Department of Propaganda) have requested the moratorium due to concerns over the "negative" influences resulting from foreign participation in the PRC media sector.

Examples of specific services:

Cable TV

Like free-to-air television stations, cable stations in the PRC are state-owned and service an administrative area with the objective of disseminating propaganda as well as entertainment programming. Such cable stations are subject to licensing by SARFT and although participation by private Chinese enterprises is permitted to a limited degree, foreign investment is not permitted.

Satellite

Satellite broadcasting is strictly controlled by SARFT and the licensing system extends to the installation and use of all satellite receiving equipment. Applications by foreign broadcasters to "land" satellite programmes in the PRC must be approved by SARFT on the basis of reciprocity. The programmes must be carried on the dedicated SinoSat Platform for retransmission to specific areas. Retransmission is limited to stipulated areas such as guest houses and hotels ranked 3-stars or above that receive foreign guests and apartment buildings exclusively for office and residential use by foreigners. Only selected cable systems are allowed to re-transmit selected foreign channels, e.g. Shenzhen, Dalian, Suzhou, etc.

Subscription TV

The regulations governing subscription TV stipulate that only certain institutions are eligible to apply to SARFT to establish a pay channel. These are broadly limited to centralised, generally state-owned and provincial radio and television broadcasting institutions that have received special approval, as well as other central entities that have unique strengths in programme content resources.

Subscription TV channels can be broadcast by the TV broadcaster that launched the channel or by approved pay channel platforms such as provincial cable stations, etc. The regulations governing subscription TV also impose quota restrictions on foreign films, television dramas and cartoons. Notwithstanding the above, indications from SARFT suggests that foreign programming featuring scientific, documentary, technology and travel are more likely to be allowed into the PRC subscription TV market than general entertainment or music video programming.

Newspaper and publications

Newspapers, magazines, books, audiovisual and electronic publications are published according to “publishing units”. The State Council’s General Administration of Press and Publishing (**GAPP**) is responsible for supervising and regulating the industry.

Although foreign investment companies can qualify to participate in some aspects of the wholesale and retail of publications, publishing itself is prohibited to foreign investment.

As publishing units are either state-owned or wholly Chinese owned, and often part of a state-owned publishing group, new publishing units are rare. In recent years, GAPP has begun to rationalize the number of publishing units and reduce the number of smaller market players. In general, Chinese publishing units tend to specialize in specific genre, e.g., textbook publishing for schools, children’s books, medical, travel, etc. Due to the highly regulated industry, publishing units must submit their publication plans to GAPP for the record including the projected number of publications and subject matter. Publishing units (including online publications) are also required to employ editors who ensure that the content meets China’s censorship rules.

Online content

The broadcasting and ownership restrictions in place for television and radio extend to online content. SARFT requires the operator to obtain an Internet Audio/Visual Programme Transmission License, among many other licenses. As such, the broadcast of online content is limited to the main state-owned broadcasting stations.

Website operators must meet the qualifications and conditions of the telecommunications regulations, which set forth foreign shareholding and capitalization requirements. Although foreign participation is possible for provision of online content via a website (capped at 50%), such participation is limited to non-media businesses such as e-commerce, online gaming, online advertising, and online news aggregation and dissemination.

Foreign participation in online and mobile audio and video is prohibited. Foreign participation in online and mobile news offering is also prohibited. Although financial news offering on the internet and via the mobile phone is permitted in theory no foreign company has yet received the requisite approval from the relevant approval authority.

What content obligations/conditions are placed on licensees (eg minimum local content requirements, children’s programming requirements etc)?

Licensees are required to carry CCTV channels, public service programming, and content produced by the provincial and local stations. Specific PRC channels are dedicated to certain programming categories, e.g., education, children’s programming.

Foreign movies, television dramas, comedies and cartoons may not be shown during prime time viewing (19:00 to 22:00) without SARFT approval. There are also specific rules issued by SARFT that set caps on specific types of foreign programming, e.g. foreign cartoons, and the caps vary depending on whether it is a free-to-air channel or subscription TV channel.

Foreign programming shown on Chinese television stations is severely limited. The 2004 *Regulations for Administration of the Import and Broadcasting of Television Programmes from Outside the People’s Republic of China* caps the import and broadcast of foreign programmes by domestic stations that have been approved by SARFT to no more than 25% of a station’s total broadcast time, and no more than 15% of its prime time viewing hours (between 19:00 to 22:00). The regulations apply to foreign programmes produced outside the PRC and Sino-foreign co-productions filmed in China.

The 2003 *Provisional Measures for the Administration of Cable Television Digital Pay Channel Services (for Trial Implementation)* limits broadcast of foreign films, television dramas and comedies, and cartoon on subscription channels to no more than 30% of the daily total broadcast time of such channels.

Free-to-air TV / Cable TV / Subscription TV / Radio

Under the 1997 *Regulations on Administration of Radio and Television and the 2004 Regulations for the Administration of Production of, and Dealing in, Radio and Television Programmes*, radio and television stations are required to improve the quality of radio or television programmes. They must not produce or broadcast programmes which contain contents that:

- threatens national unity, sovereignty or territorial integrity;
- is contrary to the basic principles as stated in the constitution;
- threatens state security, honour and interest;

- incites ethnic division or damages ethnic unity;
- reveals state secrets;
- is obscene or superstitious or is excessively violent;
- propagates evil cults or superstition;
- spreads rumours and disturbs the public order or destroys public stability;
- propagates obscenity, gambling, or violence or instigates crimes;
- insults or libels others, or infringes upon the lawful rights and interests of others;
- contains other contents prohibited by laws, administrative regulations, or by the state.

Online content service

Similarly, under the 2000 *Measures for the Administration of Internet Content Provision* ("**ICP Measures**"), Internet information service providers may not produce, reproduce, disseminate or broadcast information with content that:

- opposes the fundamental principles determined in the constitution;
- compromises state security, discloses state secrets, subverts state power or damages national unity;
- harms the reputation or interests of the state;
- incites ethnic hatred or racial discrimination or damages inter-ethnic unity;
- undermines state religious policy or propagates heretical teachings or feudal superstitions;
- disseminates rumours, disturbs social order or disrupts social stability;
- propagates obscenity, pornography, gambling, violence, murder or fear or incites the commission of crimes;
- insults or slanders a third party or infringes upon the lawful rights and interests of a third party; or
- includes other content prohibited by laws or administrative regulations.

The 2008 *Regulations for the Administration of Audio-Video Programme Services on the Internet* provides that audio-visual content relayed via the Internet must not:

- oppose the fundamental principles determined in the constitution;
- jeopardize the unification, sovereignty or territorial integrity of the state;
- disclose state secrets, endanger national security or damage the fame and interests of the state;
- instigate ethnic conflict or ethnic discrimination, damage ethnic unity;
- encourage cults or superstitions;
- disrupt social order or social stability;
- induce minors to commit crimes, or exaggerating violence, pornography, gambling or terrorist activities;
- insult or slander a third party, or infringe upon the individual privacy and other legitimate rights and interests of citizens;
- imperil social morality, or endanger excellent cultural traditions of the nation; or
- contain other contents prohibited by the related laws, administrative regulations and state provisions.

SARFT has further strengthened the content obligations of Internet audio-visual programme service entities by issuing the 2009 *Notice of the State Administration of Radio, Film and Television on Strengthening Control of the Content of Audio and Video Programmes on the Internet*. In addition to the prohibited contents set out above, Internet audio-visual programme service entities must edit or delete programmes that contain any of the following content:

- distortions of Chinese culture, Chinese history, and historical facts; distortions of the history of other countries, and disrespect to human civilization and the culture and customs of other countries;

- disparaging or mocking depictions of revolutionary leaders, heroes, important historical figures, and major domestic and foreign literary works and their main characters;
- disparaging depictions of the People's Liberation Army, people's armed police, the public security bureau or the judiciary; depictions of torture of prisoners or of the use of torture to extract confessions from criminals or suspects;
- display of arrogant criminal behaviour, detailed depictions of criminal activity, exposure of particular investigative techniques, or leaks of the appearance and voice of witnesses or individuals whose identity should be protected;
- calls for religious extremism, provocation of conflict between religions, religious sects, or between believers and non-believers, hurting the feelings of the public;
- promotion of palm-reading, fortune-telling, *feng shui*, divination, exorcism, and other feudal superstitious activity;
- mocking depictions of scenes of catastrophe, including major natural disasters, accidents, terrorist incidents, and war;
- detailed depictions of promiscuity, rape, incest, necrophilia, prostitution, solicitation, sexual perversion, and masturbation;
- depictions or suggestions of sexual activity, sexual process, sexual techniques, and excessive related physical contact;
- deliberate displays in which private parts are only obscured by limbs or small coverings;
- sexually suggestive or provocative content that leads to sexual thoughts;
- promotion of unhealthy content including extramarital affairs, love triangles, one-night stands, sexual abuse, and wife-swapping;
- use of "adult film", "pornographic film", "Category III film", "hidden camera", "indecent exposure" and other provocative words and pictures in the programme title or category;
- intense scenes of murder, bloodshed, violence, suicide, kidnapping, drug use, gambling, and the occult;
- excessively frightening images, text, background music, or sound effects;
- detailed depictions of cruelty to animals, or the capture, killing, and consumption of protected animals;
- content that violates personal privacy;
- depictions of fighting, humiliation, and obscenity affirmatively or in a manner that invites imitation;
- promotion of a negative or decadent outlook, world view, or value system, or deliberate exaggeration of the ignorance and backwardness of ethnic groups or social ills;
- clips that SARFT has cut from films and TV shows or has prohibited from being broadcast; or
- content that violates the spirit of the law and regulations.

Newspapers and Print Media

Under the 2002 *Regulations for the Administration of Publishing*, no publication (including newspapers, periodicals, books, etc.) may contain content that:

- opposes the fundamental principles determined in the constitution;
- jeopardizes the unification, sovereignty or territorial integrity of the state;
- reveals state secrets, endanger national security or damage the fame and interests of the state;
- instigates ethnic grudge or ethnic discrimination, damage ethnic unity, or infringe upon ethnic customs and habits;
- encourages cults or superstitions;

- disrupts social order or destroys social stability;
- propagates obscenity, gambling, violence, or incites the commission of crimes;
- insults or slanders a third party, or infringes upon the legitimate rights and interests of a third party;
- imperils social morality, or endangers excellent cultural traditions of the nation; or
- contains other contents prohibited by the related laws, administrative regulations and state provisions.

Mobile content service

The Ministry of Industry and Information Technology ("**MIIT**") has taken steps to control mobile content in recent years. In 2007 the MIIT promulgated a special action plan to address pornographic content disseminated via the Internet and mobile phone networks. The prohibited content replicates many of the categories set out in the ICP Measures (please refer to Section 1.1 (b) (ii) above).

In December 2009, the MIIT published a more in-depth anti-porn action plan setting out the various measures to further eliminate pornography. According to the plan, telecom operators, access service providers, information services operators, domain name registration and service entities, mobile phone search engine companies are required to take part in the inspection and rectification process in order to "purify" the mobile network.

Other (e.g., satellite or other broadcast technologies)

The 1997 *Measures for Administration of the Broadcasting of Television Programmes by Satellite Transmission*, prohibits the following content from being broadcasted by satellite transmission:

- threats to national unity, sovereignty or territorial integrity;
- threats to state security, honour and interest;
- incitation of ethnic division or damages ethnic unity;
- the revelation of state secrets;
- slander of a third party;
- obscene or superstitious or excessively violent material; and
- other content which is prohibited by law and administrative regulations.

Foreign ownership and investment restrictions

The Chinese government prohibits the establishment or operation of radio or television stations in the form of foreign-invested enterprises, Chinese-foreign equity joint ventures or Chinese-foreign cooperative joint ventures.

As noted above, the restrictions on foreign participation and foreign ownership of the media limits any form of foreign ownership of television and radio channels, and newspapers.

Cross-ownership of telecom and media assets by enterprises is restricted since central government policy aims to create specialised Chinese industry conglomerates and because of the influence of the specific industry regulators. Although foreign investment in the supply of equipment is not strictly regulated, the ownership of fixed assets is subject to ownership restrictions. Further, Chinese private companies (with no foreign investment) have only recently been permitted to engage in selected media activities (e.g. programme production companies). Chinese private enterprises can establish and operate cable television access networks and participate in the digitization of cable television receivers, but that for these business activities, state-owned capital must have the controlling interest of no less than 51% of the equity shareholding.

Due to the sensitive nature of the telecom and broadcasting sectors, Chinese regulations stipulate that Chinese private enterprises may not invest in the establishment and operation of among other things, radio stations and television stations (sub-stations), radio and television satellites, satellite up-link stations, microwave stations, trunk cable television transmission networks, radio or television frequencies or channels, or time slots. As such, the key services and assets are still under the control of state-owned enterprises.

The acquisition of content from foreign licensors is generally subject to some form of approval and depends on the nature of the cooperation. Licensing of programme format by a foreign production company to authorised PRC production companies and television stations is permitted. Such licensing to state-owned or private

Chinese production companies would be generally governed by commercial/contractual arrangements. However, the production companies must have the requisite scope of business approved by SARFT in order to engage in television programme production or distribution. In addition, production companies must obtain special licenses (e.g. Type A license) issued by SARFT before they can produce certain categories of programmes.

SARFT administers a separate licensing regime for imported programmes with approval being required either at the provincial or central level depending on whether the programmes will be imported by means of satellite as well as the themes contained in the programme. A distribution permit will be issued for the approved programmes.

Regulatory Bodies

What are the agency(ies) responsible for administering regulation?

The State Administration of Radio, Film and Television (**SARFT**) is the body responsible for approving the content of radio, films and television programmes, overseeing film imports and stipulating the proportion of time allotted for foreign TV programmes. SARFT also oversees the operation of China Central Television (**CCTV**), the national TV network; approves the establishment of cable channels and the installation of head-ends in cable networks; and controls the access to satellite and cable networks as well as supervising their operations.

The main functions of General Administration of Press and Publishing (**GAPP**) include the drafting of laws and regulations concerning press and publications as well as supervising and managing press and publication activities.

The Ministry of Industry and Information Technology (**MIIT**) is the authority overseeing the telecommunications and information technology industry in the PRC. It is also responsible for supervising Internet information services and shares responsibility with GAPP for online publishing activities.

One of the functions of the Ministry of Culture (**MOC**) is to take charge of the prior review and approval of cultural and artistic products before their online circulation and to supervise the online gaming services. The MOC is responsible for, among other things, the regulation of animated film and online game related industry planning.

The Ministry of Commerce (**MOFCOM**) is responsible for, among other functions, drafting laws and regulations governing domestic and foreign trade, economic cooperation and foreign investment in different industries and devising implementation rules and regulations.

Are there any other key issues impacting the regulatory body/regime (e.g. transparency of licensing and regulatory regime, impact of other government/regulatory bodies on the media regulator)?

The media industry in China is traditionally heavily influenced and controlled by the State Council's Propaganda Department.

Media regulation and licensing and censorship procedures are not transparent and Chinese regulations merely set out the prescribed documents but do not go into detail regarding the actual requirements in the content and the criteria for assessing an application.

Content Regulation

The PRC is governed by a one-party system. The Chinese Communist Party has been in power in the PRC since October 1, 1949. Political discussion and forums are instigated by the government and broadcasters are not permitted to address "political" issues without government approval. Political issues would include commentary on Taiwan, Tibet and other "sensitive" PRC sovereignty issues. Despite this, freedom of speech and information are, provisionally, protected under the Chinese Constitution.

Copyright

The National Copyright Bureau (**NCB**) is the administrative body in China responsible for administrative enforcement and policy making with respect to copyright. The NCB manages the work of local copyright bureaus that are responsible for enforcement at the regional level.

The *Copyright Law* protects works of PRC citizens, legal persons and other organizations, whether published or not. Foreigners or stateless persons enjoy copyright protection for a work published outside of the PRC, pursuant to either a bi-lateral agreement between their home country and the PRC or pursuant to an international treaty acceded to by both their home country and the PRC.

The term “works” includes works of literature, art, natural science, social science, engineering technology and the like which are expressed in the following forms:

- written works;
- oral works;
- musical works, operatic and dramatic works, works of Chinese folk art, choreographic works and acrobatic works;
- works of fine art and architecture;
- photographic works;
- cinematographic works and works created using methods similar to those used for the filming of cinematographic films;
- graphic works such as drawings of engineering designs, drawings of product designs;
- maps, schematic drawings etc. and model works;
- computer software; and
- other works as provided for in laws and administrative regulations (including, in practice, works recognized as meriting protection by the NCA).

The term of protection for the works of natural persons is the lifetime of the author and fifty years after his or her death - expiring on 31 December of the fiftieth year after the death of the author. In the case of a work of joint authorship, such term expires on 31 December of the fiftieth year after the death of the last surviving author.

The term of protection for works belonging to legal entities is fifty years - expiring on 31 December of the fiftieth year after the first publication of the work in question.

In the following cases, a work may be used without permission from, and without payment of remuneration to, the copyright owner, provided that the name of the author and the title of the work is mentioned:

- use of a published work for private individual study, research or enjoyment;
- incidental showing or quotation of a published work for the purpose of reporting current events;
- printing or broadcast of an already-published article on a current political, economic or religious topic, except where the author has declared that the printing or broadcast of such an article is not permitted;
- translation or reproduction of published works in small quantities for classroom teaching or scientific research, provided that the reproductions are for use by teachers or researchers and are not published and distributed;
- reasonable use of a published work by a state entity, where such use is for the purpose of carrying out official duties;
- reproduction by a library, archive, museum, art gallery etc., of a work in its collection, where reproduction is for the purpose of exhibiting or preserving an edition of such work;
- free performances of a published work, where no charge is collected from the public and no remuneration is paid to the performers for the performance;
- transformation of a published work into Braille and publication of the work as transformed; and
- in the case of software, use for the purpose of “study and research on design ideas and theory of the software through installing, displaying, transmitting or storing the software or any other means of use”.

Copyright owners or owners of neighboring rights can apply to the People’s Courts for a preliminary injunction against an act of infringement and for a property preservation order provided that the applicant can provide the required evidence.

When copyright or neighboring rights are infringed, violators are required to pay damages based on the owner's actual losses. Where such actual losses are difficult to calculate, the damages paid may be based on the illegal income earned by the infringer. The damages paid to the rights owner should also include the reasonable expenses incurred in halting the infringing act, including legal and investigation costs. In cases where the rights owner's damage or the infringer's profits cannot be determined, the *Copyright Law* provides for the payment of statutory damages up to RMB500,000.

Under the revised *Implementing Regulations of the Copyright Law*, courts are also permitted to impose fines against infringers of up to five times the illegal turnover, or in cases where it is difficult to determine the amount of illegal turnover, up to RMB100,000, the same amount as may be imposed by administrative authorities. However, civil courts only rarely impose fines in addition to compensation awards.

The revised *Criminal Code of the PRC* sets out various criminal penalties for copyright infringement. Where the amounts of illegal income involved are "relatively large" or where other "serious circumstances" exist, prison terms of up to three years may be imposed.

Defamation, Contempt, Sedition

The broad content restrictions set out above (see: 1.1 (b) (i);(ii); and (iii)) provide vague definitions of what might constitute defamation, contempt and sedition. Insulting or slandering a third party or harming an individual's reputation or honour is regarded as a violation of content restrictions contained in PRC media regulations. Sedition is also vaguely defined by the protections in place to preserve state security, state power and national unity.

Misleading advertising

The State Administration for Industry and Commerce (**SAIC**) is the overall authority in the PRC responsible for monitoring and regulating advertising issued via TV, radio, print or online media. The following government authorities are also involved in the supervision of advertisements:

- SARFT is involved in the supervision of advertisements broadcast on radio and television.
- GAPP is responsible for overseeing the publishing of advertisements in newspapers and other publications.
- MIIT is also responsible for supervising Internet information services and shares responsibility with GAPP for online publishing activities.

The *Advertising Law* is the main piece of legislation governing advertisements in the PRC. It provides that advertisements may not contain false information and may not deceive or mislead consumers. Advertisements published through the mass media should be marked as such and be differentiated from other non-advertising information, and should not confuse or mislead consumers. In other words, advertisements should be identifiable and recognisable by consumers as advertisements. To that end, the mass media may not publish advertisements in the form of news reports.

Restricted product advertising

Under the *Advertising Law* the relevant product / industry / medium-specific rules, the following advertising restrictions apply:

- Tobacco products: The publication of tobacco advertisements over the radio, in motion pictures, on television, in newspapers or in periodicals is prohibited. The placement of tobacco advertisements in public places such as all kinds of waiting rooms, cinemas, theatres, conference hall lobbies, stadiums and gymnasiums for sports competitions, etc. is prohibited.
- Alcoholic beverages: certain content is prohibited from appearing in advertisements of alcoholic beverages in China: content that promotes the unrestrained consumption of alcohol; the act of consuming alcohol; minors consuming alcohol, etc. There are also restrictions on advertisements of alcoholic beverages imposed for different media formats, including TV, radio, newspapers and journals. For example, under the 2010 *Measures for Administration of the Broadcasting of Advertisements on Radio and Television*, radio and TV stations are required to strictly control the advertisements of alcoholic beverages and should not broadcast such advertisements on frequencies, channels, or programmes mainly targeted at minors. TV stations are allowed to broadcast no more than 12 advertisements of hard alcohol per programmes per day, and that during the time slot of 19:00 – 21:00, no more than 2 advertisements of hard alcohol may be broadcast.

- All advertisements containing drug names and the ailment or symptoms, or other drug-related content should undergo examination before advertising. However, examination is not required for a non-prescription drug advertisement that only publicizes the name of the drug (including the general name and commodity name) or a prescription drug advertisement that only publicizes the name of the drug (including the general name and product name) in designated professional publications of medical science and pharmacy. Before releasing medical advertisements, a medical institution should apply for examination of the medical advertisements. Furthermore, restrictions are in place for the contents of medical advertisements – only the very basic information of the medical institution is allowed to be included in an advertisement while other information such as the medical technologies, diagnostic methods, names of diseases or drugs as well as cure rate, efficiency or other clinical results may not be included.
- Advertising of special pharmaceuticals such as narcotics, psychotropic drugs, toxic drugs and radioactive drugs as well as certain prescription drugs in the mass media is prohibited.
- Internet advertisements for drugs are subject to examination and approval. Websites providing drug information services over the Internet are not allowed to publish information about narcotics, psychotropic drugs, toxic drugs and radioactive drugs, anti-drug medicines or the preparation products of medical institutions.
- SARFT has recently issued a set of measures which bans the broadcasting of TV advertisements of the following products starting from January 1, 2010:
 - (a) tobacco products;
 - (b) prescription drugs;
 - (c) medicines, food, medical equipment and methods for the treatment of malignant tumours, liver diseases and sexually transmitted diseases and for the enhancement of sexual performance;
 - (d) advertisements for voice services, such as name analysis, fortune telling, compatibility test and chat room service; and
 - (e) milk products containing the words “breast milk substitutes”.

Classification (e.g. pornographic or adult material)

Although Chinese officials are known to be studying the various content classification and rating systems of other jurisdictions, the PRC has not issued a formal classification system for many media formats. Content which is deemed to be pornographic or unsuitable adult material will not be broadcast or published. The outright ban negates the need to implement a classification system.

Other restricted speech (including vilification, blasphemy, etc)

Restricted speech is covered by the broad definitions contained in the lists of prohibited content contained in PRC media legislation. It should be noted that the Chinese Communist Party will circulate from time to time, for internal purposes, specific subject matter which should not be covered in the Chinese media. Such content would fall under the general categories of “jeopardising the unification, sovereignty or territorial integrity of the state”, etc., for example, actions of religious groups, etc.

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Hong Kong

Country	Hong Kong	
Media Regulatory Authority	Broadcasting Authority, including the Television and Entertainment Licensing Authority Communications and Technology Branch of the Commerce, Industry and Technology Bureau	
Foreign investment controls or restrictions	Yes. There are a range of different restrictions on foreign ownership, control, management & directors of media licensees in Hong Kong.	
Cross-media ownership controls or restrictions to protect competition in the local media sector	Restrictions on 'disqualified persons' (including a range of other broadcasting licensees and proprietors as well as advertising agencies) holding domestic free and pay television licences. Restrictions may be lifted based on public interest considerations.	
Forms of media that may be supplied without a government licence	Online (although note that online newspapers must comply with registration requirements)	
Forms of media that may only be supplied under a government licence	Television broadcasting services, radio Newspapers must comply with registration requirements	
Primary legislation	<i>Broadcasting Ordinance</i> (Cap 562)	Licensing of television services
	<i>Telecommunications Ordinance</i> (Cap 106)	Transmission of television services
	<i>Generic Code of Practice on Television Programme Standards</i>	Content obligations placed on licensees
	<i>Defamation Ordinance</i>	Defamation
	<i>Copyright Ordinance</i> (Cap 528)	Copyright
	<i>Crimes Ordinance</i>	Sedition
	<i>Trade Description Ordinance</i> (Cap 362)	Misleading advertising / false trade description

Local Media Regulation

Licences

What licences are required?

Licences for broadcasting services (Free-to-air TV, Cable TV, Subscription TV)

Under the *Broadcasting Ordinance* (Cap 562), it is an offence to provide any broadcasting service without a licence. "Broadcasting services" cover four categories of television programme services in Hong Kong:

- domestic free television - defined as a service that is intended or available for reception by more than 5,000 domestic premises free of charge in Hong Kong and which primarily targets Hong Kong. Domestic free television is subject to the most stringent regulation;
- domestic pay television - defined as a service which primarily targets Hong Kong and that is intended or available for reception by more than 5,000 domestic households or hotel rooms in Hong Kong on payment of a subscription;
- non-domestic television - defined to include a service which does not primarily target Hong Kong. Factors which may be taken into consideration when deciding whether a service primarily targets Hong Kong, and therefore, whether the service falls outside the definition of non-domestic television, include whether the service can be received in Hong Kong, whether advertising and subscription revenues come mainly from Hong Kong, the language of the service, the nature and size of the audiences targeted by the service and whether the service is actively marketed in Hong Kong; and
- other licensable television which includes two sub-categories of television programme services: free or subscription based services received in Hong Kong by an audience of not more than 5,000 domestic households and television programme services for reception in hotel rooms.

The Chief Executive in Council may grant licences for domestic free television and domestic pay television programme services, upon recommendations from the Broadcasting Authority.

A licensee and any person in control of the licence must be and remain a fit and proper person, which involves a consideration of business and criminal records. In addition, the applicant must comply with certain residency and cross-media ownership restrictions.

The current domestic free licence holders are Television Broadcasts Ltd and Asia Television Ltd. The current domestic pay licence holders are Hong Kong Cable Television Ltd, PCCW Media Ltd and TVB PAY VISION Ltd. Further licences may be issued as there is no pre-set ceiling on the number of licensees.

Licences for non-domestic television programme services and other licensable television programme services are issued by the Broadcasting Authority.

The *Broadcasting Ordinance* only governs the **provision** of television programme services. For **transmission** of these services, in addition to the broadcasting service licences described above, telecommunications licences are also required under the *Telecommunications Ordinance* (Cap 106) where equipment is established or maintained in Hong Kong or alternatively, a licensee may use the transmission facilities of an existing licensee.

Satellite television uplinked from outside Hong Kong which does not primarily target Hong Kong and which does not charge a fee for viewing, is not regarded as a television programme service and is therefore exempt from licensing or regulation (Schedule 3 to the *Broadcasting Ordinance*). However, if the incoming satellite television service is on a subscription basis, a licence is required.

Radio

Sound broadcasting without a licence is prohibited. Licences are issued by the Chief Executive in Council under the *Telecommunications Ordinance* (Cap 106). The Broadcasting Authority makes recommendations to the Chief Executive in Council on the granting of sound broadcasting licences and regulation of the licensees.

Newspapers and other print publications

According to the *Registration of Local Newspapers Ordinance* (ROLNO, Cap 268), any newspapers printed or produced in Hong Kong, whether for sale or free distribution, must be registered with the Registrar for Newspapers.

The definition of a “newspaper” includes any paper or other publication available to the general public which contains news, intelligence, occurrences or any remarks, observations or comments on any other matter of public interest, and is published at intervals not exceeding six months. Certain types of publications are expressly excluded from the definition of newspapers, including academic journals, cartoons, sales catalogues and commercial advertisements.

Distribution of newspapers for sale must be done through distributors licensed by the Registrar for Newspapers.

Online content providers

A service provided on the internet is not regarded as a “television programme service” and is therefore not subject to broadcasting licensing or regulation by the Government (Schedule 3 to the *Broadcasting Ordinance*). However the ROLNO defines the term “newspaper” broadly. According to the executive arm of the Broadcasting Authority, the Television and Entertainment Licensing Authority (**TELA**), an online newspaper, even if not available in hard copy, is required to register with the Registrar of Newspapers. Further, an online newspaper provider should ensure that a hard copy of the newspaper is provided to TELA.

Other

If a person wishes to establish and maintain any telecommunications equipment in Hong Kong (i.e. for transmission of broadcasting services) then a licence from the Telecommunications Authority may be required.

What content obligations/conditions are placed on licensees (e.g. minimum local content requirements, children’s programming requirements etc)?

Licences for broadcasting services (Free-to-air TV, Cable TV, Subscription TV)

The *Broadcasting Ordinance* empowers the Broadcasting Authority to issue Codes of Practice specifying certain standards in relation to programme content, technical performance of broadcasts and advertising standards of television programmes. These must be complied with by all licensees and the failure to do so may result in sanctions that range from issuing directions to a licensee to revocation of licence.

The *Generic Code of Practice on Television Programme Standards* contains general principles and rules on scheduling, general programme standards (including taste and decency), as well as protection of children, use of language, and fairness and impartiality of information. The presentation of television programmes requires licensees to refrain from including any material which is indecent, obscene, likely to encourage hatred against or fear of any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, religion, age, social status, physical or mental disability or anything which is in contravention of the law.

Domestic free television programme services are controlled more strictly than other types of television services because of the influence they wield in the community. Licensees are required to:

- broadcast programs in both Chinese and English in accordance with minimum requirements;
- keep the aggregate time of advertising in each hour between the period from 5 pm to 11 pm each day under 10 minutes and at other times, keep the aggregate advertising time at less than 18% of the total time the service is provided during that period;
- not include in its service advertisements that are of a religious or political nature or concerned with an industrial dispute;
- broadcast no less than a stipulated minimum amount of children’s programmes (of which a proportion must be of local production); and
- broadcast Government supplied school programmes.

Domestic pay television service providers, non-domestic television service providers and other licensable service providers are subject to less stringent regulation. Section 20 of the *Broadcasting Ordinance* requires them to provide mandatory television programme locking devices, although hotel rooms and non-domestic free-to-air services are excluded from this requirement.

The Chief Secretary for Administration is empowered under section 36 of the *Broadcasting Ordinance* to apply for a court order prohibiting television programmes if the Secretary reasonably believes they are likely to incite hatred against any groups of persons defined by race, colour, sex or religion, nationality or ethnic or national origins; to result in a general breakdown in law and order; or to gravely damage public health or morals.

Radio

Sound broadcasting licences issued by the Chief Executive of Council contain general licensing conditions including requirements on licensees:

- to apply up-to-date technology to perfect the quality of sound broadcasting and comply with the broadcasting coverage requirements;
- to handle complaints and conduct training programmes to ensure that their staff are familiar with the broadcasting standards;
- to broadcast commercial free-to-air radio services with no less than a stipulated minimum amount of comprehensive news bulletins, current affairs, programmes for young persons and senior citizens and arts and culture programmes etc. within a specified period of time;
- to implement plans on capital investment and programme development as approved by the Broadcasting Authority; and
- to properly maintain their equipment and transmitting stations.

Radio licensees must also comply with similar standards and requirements as television licensees, as set out in the *Radio Code of Practice on Programme Standards*.

Newspapers and other print publications

Print media is largely unregulated in Hong Kong. Subject to certain restrictions on the publication of obscene or indecent articles enforceable by the Obscene Articles Tribunal, no statutory codes of practice or regulatory bodies exist in relation to print media.

Online content providers

Online content providers are largely unregulated in Hong Kong, other than the restrictions on the publication of obscene or indecent articles.

Foreign ownership and investment restrictions

What are the restrictions (if any) on cross-media or broadcast market ownership?

Broadcasting services (Free-to-air TV, Cable TV, Subscription TV, Radio)

There are restrictions on “disqualified persons” holding domestic free and pay television licences. Licensees of the following services (and their associates) will be considered disqualified persons:

- another domestic free television programme service provider;
- another domestic pay television programme service provider;
- a non-domestic television programme service provider;
- any other licensable television service provider;
- a sound broadcasting licensee;
- an advertising agency; or
- a proprietor of a local newspaper.

The Chief Executive in Council may lift this ban on cross media ownership upon application by the licensee. The Chief Executive will do this if it considers it to be in the public interest to do so. The “public interest” requires consideration of the effect on competition in the television services market, the diversity of television programme choices offered to the viewer, impact on the development of the broadcasting industry, and the benefits to the economy generally.

With respect to sound broadcasting licensees (radio), a “disqualified person” is one of the following:

- an advertising agent;
- a person who supplies material for broadcast to sound broadcasting licensees;
- another sound broadcasting licensee;
- a domestic free or domestic pay licensee (or their associates).

A “disqualified person” may not hold a sound broadcasting licence unless disclosed in the application.

Non-domestic television licensees and other licensable television licensees are not subject to any cross-media ownership rules. For example, a “non-domestic” television licensee may hold a domestic pay television licence at the same time without affecting the holding of the “non-domestic” licence. However, with respect to the domestic pay television licence, licensee will be a disqualified person.

More generally, sections 13 and 14 of the Broadcasting Ordinance prohibit a licensee from engaging in conduct that has the purpose or effect of preventing, distorting or substantially restricting competition in a television programme service market. Actions that may raise competition concerns include price-fixing agreements in the television programme services market, conduct that prevents or restricts supply of goods or services to competitors and market-share arrangements with other licensees.

Newspapers and other print publications

The restrictions on cross-media ownership on domestic free and pay television programme services mean that a newspaper proprietor is a “disqualified person” who cannot hold such a licence unless the Chief Executive decides otherwise. Again, this requires a consideration of whether it is in the public interest to do so (discussed above at 1.2(a)(i)).

What are the restrictions on foreign entity (person or company) ownership?

Licences for broadcasting services (Free-to-air TV, Cable TV, Subscription TV)

Foreign entity ownership in domestic free television licensees in Hong Kong is restricted. To hold a domestic free television licence, the licensee must be a company incorporated in Hong Kong and, unless prior approval has been granted by the Broadcasting Authority, the majority of the company’s directors and principle officers must be “ordinarily resident” in Hong Kong.

For a person to be considered “ordinarily resident” in Hong Kong, he must be currently residing in Hong Kong for at least 180 days in a year or 300 days in any two consecutive years and have been so resident for not less than seven years.

For a company to be considered “ordinarily resident”, the control and management of the company must be *bona fide* exercised in Hong Kong, and the majority of the directors who actively participate in the company’s affairs must be currently “ordinarily resident” in Hong Kong and have been so for at least seven continuous years.

Non-domestic television and other licensable television licensees are only required to have at least one director or principle officer satisfying the “ordinarily resident” requirement.

Radio

To hold a sound broadcasting licence, the licensee must be a company incorporated in Hong Kong and the licensee must be controlled by persons who are “ordinarily resident” in Hong Kong.

What are the restrictions on foreign entity (person or company) investment (and what limits by %, etc exist)?

An unqualified voting controller, i.e. one who is not ordinarily resident in Hong Kong, must obtain prior written approval from the Broadcasting Authority, before they hold, acquire or exercise voting control of more than 2% of a domestic free licensee. However, the exercise of voting control of an unqualified controller shall not exceed in aggregate 49% of the total voting control of such a licensee.

For sound broadcasting licences, an unqualified person may hold up to 49% of the voting shares of a licensee.

Regulatory bodies

What are the agency(ies) responsible for administering regulation?

Licences for broadcasting services (Free-to-air TV, Cable TV, Subscription TV, Radio)

Broadcasting policy is devised by the Communications and Technology Branch of the Commerce, Industry and Technology Bureau (**CITB**) of the Hong Kong Special Administrative Region Government. The powers and duties of regulating licensed television and radio broadcasters are vested with the Broadcasting Authority, a statutory body. The executive arm of the Broadcasting Authority is the Television and Entertainment Licensing Authority (**TELA**), a government department under the supervision of CITB. TELA is responsible for overseeing the implementation and observance of the codes of practice issued by the Broadcasting Authority.

Sound broadcasting is also regulated by the Broadcasting Authority.

Free-to-air TV, Cable TV, Subscription TV, Film, Radio

The authorities are the same referred to in 1.3 (a)(i) above. In addition, the Film Censorship Authority, which examines and classifies films for public exhibition, is a sub-division of TELA.

Newspapers and other print publications

The Newspaper Registration Section is a sub-division of TELA and is responsible for handling the regulation of local newspapers and news agencies, as well as issuing licences for newspaper distributors.

Online content provider

Online content producers are largely self regulated. Certain restrictions apply in relation to obscene and indecent content displayed online.

Are there any other key issues impacting the regulatory body/regime (eg transparency of licensing and regulatory regime, impact of other government/regulatory bodies on the media regulator)?

The Hong Kong Government has announced an upcoming merger between the Telecommunications and Broadcasting Authorities into a unified regulator known as the Communications Authority. This will be done using a 'staged approach'. In the first stage, the government will adopt new legislation to merge the existing telecommunications and broadcasting regulators into a Communications Authority. The new unified regulator will be empowered to enforce the existing telecommunications and broadcasting regulations. In the second stage, the new Communications Authority will review the existing 'sector-specific' laws and consolidate them into a unified Communications Ordinance.

The implementation of the proposal are in the final stages, and will soon be introduced into Legislative Council.

Content Regulation

Defamation

Defamation law in Hong Kong has developed through the common law. The *Defamation Ordinance* contains certain rules in relation to defamation. However, an action in defamation must be brought under the common law not under the *Defamation Ordinance*.

Hong Kong's Constitution, the Basic Law, states that "*Hong Kong residents shall have freedom of speech, of the press and of publication*". The Basic Law recognises the continued application of the *International Covenant on Civil and Political Rights (ICCPR)* which provides that everyone has the right to hold opinions without interference and the right to freedom of expression.

The Basic Law also recognises Article 17 of the ICCPR which provides that no one shall be subjected to arbitrary or unlawful interference with his/her privacy, family, home or correspondence, nor to unlawful attacks on his/her honour and reputation.

Hong Kong case law has described defamation as something which "*lowers another in the eyes of right-thinking members of society generally*" or "*something that leads the person affected to be regarded by others with hatred, ridicule, or contempt.*"

A person may bring a claim for libel or slander. Unlike slander, in a case of libel, the plaintiff need not show that he or she suffered damage from the libel. There are limited exceptions to this rule. There is an offence of criminal libel but no criminal offence of slander. An action for libel or slander cannot be brought more than six years after the publication.

A company may sue for defamation if a statement affects its trading reputation, but not if the statement only concerns the company's individual employees or directors. The employees or directors may also potentially sue as individuals in such circumstances if their reputation, as opposed to the company's reputation, is affected.

It is a defence to an action in defamation if the defamatory statement in question was true or constituted a fair comment on a matter of public interest. The *Defamation Ordinance* also sets out certain special defences for the media including where a newspaper publishes a defamatory statement without "actual malice" or where a publisher does not intend the statement to refer to the plaintiff and the statement does not appear defamatory.

The principle remedy for an action in defamation is damages. An injunction may be awarded if there is a real possibility of the defendant repeating the defamatory statement. Interim injunctions to prevent the publication of material are less common in Hong Kong as they are considered a very serious limitation on freedom of speech.

Contempt

The source of law for contempt of court in Hong Kong is predominately the common law with certain statutory restrictions. While reporters are barred from entering in camera proceedings, it is not contempt to publish information relating to those proceedings, so long as the information does not violate statutory restrictions and has not been expressly prohibited from publication by the court (*Judicial Proceedings (Regulation of Reports) Ordinance, Cap 287*). An action in contempt may be brought for wrongful inference by the publishing of information.

Copyright

The *Copyright Ordinance* (Cap 528) sets out certain exclusive rights for creators of copyright works. Fair dealing with a work for the purpose of criticism, review or reporting current events will not infringe copyright in the work if it is accompanied by a sufficient acknowledgement. No acknowledgement is required in connection with the reporting of current events by means of sound recording, film, broadcast or cable program. In addition, copyright is not infringed by reporting the proceedings of the Legislative Council or judicial proceedings.

Public records may be copied and supplied to any person without any infringement of copyright.

Sedition

The laws on sedition are contained in sections 9 to 14 of the *Crimes Ordinance*. It is a crime to publish anything that brings "into hatred or contempt or to excite disaffection against...the Government of Hong Kong", or which promotes "feelings of ill-will and enmity between different classes of the population of Hong Kong," or which incites "persons to violence." Additionally, it is against the law to possess without lawful excuse, print, publish, sell, offer to sell, distribute, display, reproduce or import a seditious publication.

Description of Goods

Under *Trade Description Ordinance* (Cap. 362), false trade descriptions, false, misleading or incomplete information, false marks and misstatements in respect of goods are prohibited in advertisements. With regard to the publisher of the advertisement, it is a defence that "he received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence". The scope of the Trade Description Ordinance however is restricted to false descriptions applied in the sale or supply of goods only.

Misleading advertising

Broadcasting services (Free-to-air TV, Cable TV, Subscription TV)

The *Generic Code of Practice on Television Advertising Standards* is issued by the Broadcasting Authority and sets out programme, advertising and technical standards which apply to all licensees. The *Broadcasting Ordinance* requires all licensees to comply with all provisions in a Code of Practice which are applicable to it. No advertisements may contain any descriptions, claims or illustrations which expressly or by implication depart from the truth or mislead about the product or service advertised or about its suitability for the purpose recommended. Information conveyed must be accurate and not misleading with all significant facts clearly set out.

All claims should be capable of substantiation. Superlative adjectives such as “the best” and “safest” should not be used unless they can be adequately substantiated.

References to the results of research surveys or tests relating to the product or service to be advertised should be presented carefully, so as not to mislead viewers. Irrelevant data and scientific jargon must not be used to make claims appear to have a scientific basis that they do not actually possess. Statistics of limited validity must also not be presented in such a way as to make it appear that they are universally true.

Certain restrictions also apply in relation to advertisements which make claims relating to the nutritional and dietary effects of products.

The prohibitions contained in the *Trade Descriptions Ordinance* (Cap. 362) against false trade description of goods in the sale or supply of goods are also applicable.

In relation to voluntary advertising standards, the Association of Accredited Advertising Agents of Hong Kong (the “**4As**”) administers a set of Standards of Practice to regulate the conduct of its members in advertising. The general principle is that all advertising shall be legal, decent, honest and truthful. Any member found guilty of a contravention or non-compliance with the provisions laid down in the Standards of Practice will be penalized in accordance with the relevant Rules of the Association. However, copies of the Standards of Practice and Rules of the Association are only available to members of the 4As.

Radio

The *Radio Code of Practice on Advertising Standards* is issued pursuant to section 19 of the *Broadcasting Authority Ordinance* (Cap.39) and must be complied with by licensees. It stipulates that great care must be exercised by the licensee to prevent the presentation of false, misleading or deceptive advertising. No matter should be included in an advertisement which in any way departs from the truth. General statements should not be broadcast which may mislead listeners by omitting essential facts.

Additionally, statements should not be used in respect of any product or method of treatment that it is ‘the most successful’, ‘safest’, ‘quickest’ or similar use of superlative or comparative adjectives. Advertisements which make claims relating to the nutritional and dietary effects of products or services are also to be handled with care. Claims for the nutritional value of food must be supported by sound scientific evidence and must not give misleading impressions.

The prohibitions contained in the *Trade Descriptions Ordinance* (Cap. 362) against false trade description of goods in the sale or supply of goods are also applicable.

Newspapers and other print publications and online advertisements

The prohibitions contained in the *Trade Descriptions Ordinance* (Cap. 362) against false trade description of goods in the sale or supply of goods are applicable.

Restricted product advertising

The *Undesirable Medical Advertisements Ordinance* (Cap 231) restricts the advertising of abortion, medicines, surgical appliances and treatment for curing or preventing certain diseases or conditions.

In relation to tobacco products, the *Smoking (Public Health) Ordinance* (Cap. 371) restricts tobacco advertisements by transmission of visual images, in printed matter, via the internet and by other means.

Broadcasting services (Free-to-air TV, Cable TV, Subscription TV)

Under the Generic Code of Practice on Television Advertising Standards, all television advertising should be legal, clean, honest and truthful.

Advertising material must be clearly identifiable as an advertisement. Advertising is prohibited from being broadcast in the course of a religious service or other devotional programme and school programmes within the Educational Television (**ETV**) time slot supplied by the Government.

Advertisements for firearms, fortune-tellers, some undertakers, certain forms of betting, pay-per-call information services of a sexual nature and unlicensed employment services are not acceptable for inclusion in a licensed service. Advertisements for night clubs, massage parlours, sauna houses, bath houses or similar where hosts or hostesses are employed or in which shows involving sexual behaviour are presented are also deemed unacceptable. Advertisements which indirectly publicise the above services are also not permitted.

The Code also stipulates that disturbing material such as overly persistent repetition, and words and phrases implying emergency are to be avoided.

Additionally, certain restrictions are placed on the advertisement of alcoholic beverages, tobacco and tobacco related products, real property, financial services, medical preparation and treatment and films. Claims relating to the effects or treatment for conditions of health for which qualified medical attention or advice should be sought are deemed not to be acceptable.

Licensees of non domestic television programme services must observe the laws and programme and advertising standards of the relevant authorities of the countries and places.

Radio

The *Radio Code of Practice on Advertising Standards* administered by the Broadcasting Authority deems similar products to the *Generic Code of Practice on Television Advertising Standards* as unacceptable for advertisement (fortune-tellers, escorts, unlicensed employment services etc). The same restrictions also apply in relation to the advertisement of real property, financial services, medical preparation and treatment and films.

Political advertising that has not been approved by the Broadcasting Authority is prohibited.

Tobacco products must not be presented as prizes or gifts for radio contests. Advertising for certain tobacco related products and alcoholic beverages must only target an adult audience and such advertisements must not be presented by children or adolescents nor be broadcast in proximity to children's programmes or at times which may target persons under 18 years.

Additionally, advertisements for alcohol must not imply that drinking is a desirable experience or that it is closely associated with popularity or that refusal is a sign of weakness. Further restrictions on the advertisement of alcoholic beverages apply, including scheduling restrictions and restrictions on equating alcoholic beverages with soft drinks or fruit drinks.

Classification

Broadcasting services (Free-to-air TV, Cable TV, Subscription TV)

Under the *Generic Code of Practice on Television Programme Standards*, programmes on domestic free television which are not generally suitable for viewing by children must be classified into Parental Guidance Recommended (**PG**) and Mature (**M**) categories. Licensees are required to exercise due care, sensitivity and common sense in the process of classification, giving particular consideration to the merit of the production, its context, relevance, and purpose of a sequence and its treatment as well as the scheduling of the programme and the likely composition of the audience.

Aural and visual advice on the classification of programmes as well as the elements which have contributed to the classification and their intensity should be given before the start of the programme. Promotions of programmes classified as "PG" or "M" should not contain anything unsuitable for children when they appear between 4.30 pm and 8 pm.

The standards to be adopted in a "PG" or "M" programme are set out in the code.

For a thematic channel with programmes that are similar in nature but excluding drama and movie channels, the licensee should inform viewers of the nature of the channel by displaying an icon for the whole channel for at least four seconds in every clock hour, and at the switch of the channel.

For a channel showing drama series and movies, labelling for individual drama and movie programmes is required.

For services intended for hotel guests and other special interest groups, the licensee should ensure that any programme which may contain material unsuitable for children is preceded by a warning notice.

In the case of non-domestic television program services, there are no specific standards or rules relating to scheduling programmes for this category of television programme services apart from the requirement that programmes intended for viewing solely by adults must be clearly labelled as such.

For other licensable television services intended for members of the general public in Hong Kong, the licensee must comply with the same classification requirements as for domestic pay television programmes outlined above.

Radio

Under the *Radio Code of Practice on Programme Standards*, there are no equivalent classification requirements for radio service providers. However licensed providers, especially those who regularly target children and young adult viewers, should not schedule programmes targeting adult listeners at a time when it normally broadcasts children programmes. In addition, any programme that contains material likely to offend or disturb some people should carry a warning to that effect at the start of the programme.

Newspapers and other print publications

The *Control of Obscene and Indecent Articles Ordinance (COIAO, Cap 390)* regulates the publication of obscene and indecent articles and the public display of indecent matter. An “article” is defined by the COIAO to mean any thing consisting of or containing material to be read or looked at (or both), any sound recording, and any film, video-tape, disc or other record of a picture or pictures.

Articles may be classified by the Obscene Articles Tribunal into three categories. Class I articles are neither indecent nor obscene and their publication is not restricted. Class II articles are deemed indecent and the Tribunal has the power to impose conditions relating to their publication. Class III are obscene and are prohibited from publication. Authors, printers, manufacturers, publishers, importers, distributors, copyright owners or any person who commissions the design, production or publication of an article may submit articles to the Obscene Articles Tribunal.

Any person who possesses or imports for the purpose of publication, or publishes, an obscene article or publicly displays any indecent matter may be subject to significant fines and imprisonment. The defence of “public good” is available for both indecency and obscenity charges and requires a finding that the display or publication was in the interests of science, literature, art or learning or any other object of general concern.

Online content provider

The COIAO also regulates publication of obscene and indecent articles online.

Other

Films for public screening, as well as copies of these films, and videos shown on buses, trains, at piers, and in other public places are regulated by the *Film Censorship Ordinance (FCO, Cap 392)*. The FCO provides that films shall be approved by a censor and classified into one of the three categories. It is noteworthy that the classifications of the FCO and the COIAO are different. For example, under the FCO, films classified as Category III are restricted to persons aged 18 or above. On the other hand, under the COIAO, articles classified as Class III are obscene in nature and must not be published.

Other restricted speech

The *Emergency Regulations Ordinance* (Cap 241) governs measures used in times of emergency and public danger. In those circumstances, the Chief Executive in Council may censor, control or suppress publications and communications, as well as arrest, detain, exclude and deport persons, if he or she considers it desirable and it is in the public interest to do so.

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Indonesia

Country	Indonesia	
Media Regulatory Authority	Indonesian Broadcasting Commission Department of Communication and Information	
Foreign investment controls or restrictions	Yes - Foreign investors can own up to a maximum of 20% of shares in an Indonesian broadcasting company with a minimum of two foreign shareholders.	
Cross-media ownership controls or restrictions to protect competition in the local media sector	Yes - Law No 32 of 2002 limits cross media ownership	
Forms of media that may be supplied without a government licence	Online Content Providers, Newspapers, Portal Services	
Forms of media that may be supplied under a class licence	None	
Forms of media that may only be supplied if an individual licence is obtained	Free-to-air TV, Subscription TV, Radio, Mobile	
Primary legislation	<i>Broadcasting (No 32. of 2002)</i>	Regulates licensing, cross media and foreign ownership of television and radio broadcasting
	<i>Electronic Information and Transactions (No. 11 of 2008)</i>	Regulates online and mobile activities including content
	<i>Press (No. 40 of 1999)</i>	Regulates Newspapers and magazines
	<i>Telecommunications (No. 36 of 1999)</i>	Regulates Telecommunications
	<i>Broadcasting Code of Conduct (Regulation No. 2 of 2009)</i>	Regulates Broadcast Content
	<i>Broadcasting Program Standards (Regulation No. 3 of 2009)</i>	Regulates Program Standards

Local Media Regulation

Licences

What licences are required?

TV and radio broadcasting

The Indonesian Broadcasting Law requires both TV and radio broadcasters to obtain an Operational Broadcasting Licence. This occurs in the following stages for both free-to-air and subscription (including but not limited to cable) broadcasters:

- (a) An In-Principle Licence, is acquired, pursuant to which a company is required to undergo a trial period. This period consists of six months for radio broadcasters and one year for television broadcasters.
- (b) A Broadcasting Operational Licence is acquired. A broadcasting company may apply for this licence prior to the expiration of their In-principle Licence.

The Broadcasting Operational Licence is granted based on a government assessment that takes place during the trial period. It is valid for 5 years for radio and 10 years for television broadcasters, and may be extended at the request of the holder. This request, however, must take place prior to the expiration of the Broadcasting Operational Licence.

If, however, the entity is a foreign investment company, it must obtain an investment licence from the Capital Investment Co-ordinating Board. However, for broadcasting companies, this is only applicable after the company is established as Indonesian Broadcasting Law only allows only foreign investment post establishment.

Online content providers

Online content providers do not require any specific operational licences. If, however, the entity is a foreign investment company, it must obtain an investment licence from the Capital Investment Co-ordinating Board.

Newspapers

Newspaper publications are classified as Press Companies and do not require any specific operational licence. They do, however, need to obtain a general corporate licence suitable for a limited liability company under Indonesian law.

Other print publications

Any company conducting this activity will be classified as a Press Company. Accordingly, no specific operational licence is necessary.

Mobile

Under the Indonesian Telecommunications Law, mobile content falls under value-added telephony services, which require an operational licence from the Directorate General of Post & Telecommunications.

This licence will be issued in two stages:

- (a) An In-Principle Licence, which is valid for one year.
- (b) A Permanent Operational Licence, which is valid for an indefinite period (subject to evaluation every five years). A permanent licence will be given after the licence holder passes the operational worthiness test and applies for a permanent licence.

If, however, the entity is a foreign investment company, it must obtain an investment licence from the Capital Investment Co-ordinating Board.

Other activities

Other activities that may be relevant include (online) portal services. Despite their rapid growth in Indonesia, portal services do not require any specific operational licence. If, however, the entity is a foreign investment company, it must obtain an investment licence from the Capital Investment Co-ordinating Board.

What content obligations/conditions are placed on licensees?

Media freedom in Indonesia has increased significantly since the end of President Suharto's rule, during which the now-defunct Ministry of Communication and Information Technology monitored and controlled domestic media and restricted foreign media. It appears, however, that while the Constitution provides that everyone has the "right to freedom of opinion and expression," the journalistic activities of foreigners remain limited in accordance with a domestic policy that does not permit interference in domestic affairs or dissemination of "foreign ideologies" detrimental to the Indonesian system of government.

Free-to-air TV, Cable TV, Subscription TV & Radio

Article 8 of Government Regulation No. 50/2005 and Government Regulation No. 52/2005 stipulate that the Minister of Communication and Information Technology has the right to revoke a broadcasting licence if the station violates any program standards and guidelines issued by the Indonesian Broadcasting Commission (**KPI**). The revocation process includes a recommendation from the KPI, various reports and then requires a court ruling for completion.

Mobile and Online Content Provider

Mobile and online content providers are subject to the provisions of the Electronic Information and Transactions Law (No. 11 of 2008) (**EIT Law**). In particular, content that depicts any immoral substances or activities, gambling, defamation, extortion or threats is strictly prohibited. Any breach of these prohibitions may lead to criminal sanctions.

Newspapers and Other Print Publications

In September 1999, the Press Law (No. 40 of 1999) reversed more than a generation of repressive legislation by eliminating press licensing, thereby removing the ability of the government to ban publications and guaranteeing the freedom of the press. In addition, it called for penalties on those who would restrict press freedom and for the self-regulation of the media through an independent press council. Despite the above, there is still no constitutional guarantee that ensures the freedom of the press.

Foreign ownership and investment restrictions

What are the restrictions (if any) on cross-media or broadcast market ownership?

Law No. 32 of 2002 contains provisions which limit cross-media ownership. Press society representatives, however, have claimed that the measures would serve as a barrier for new television stations which sought to contest the then current ownership structure (whereby at least four of the nine existing private TV stations were partly owned by family members of former president Suharto).

What are the restrictions on foreign entity (person or company) ownership?

Broadcasting companies should be comprised of Indonesian shareholders at the time of establishment. See (c) below as to specific restrictions.

What are the restrictions on foreign entity (person or company) investment

According to the 2002 Indonesian Broadcasting Law, foreign investors can own a maximum of 20% shares in an Indonesian broadcasting company with a minimum of two foreign shareholders. This may only be done post establishment of the broadcasting company.

What are the restrictions on foreign entity (person or company) entering a content supply agreement in Indonesia with a local organisation?

The Broadcasting Law requires that at least 60% of material broadcast by public and private broadcasting organizations be of Indonesian origin. In addition, programs which are broadcast in foreign languages are also subject to restrictions. Specifically, public, private and subscription broadcasters must have at least 30% of their material which in its original form is in a foreign language dubbed into Indonesian as opposed to subtitled. Indonesian broadcasters that enter into a content supply agreement with a foreign entity must comply with local content regulations.

Regulatory Bodies

What are the agency(ies) responsible for administering regulation?

Indonesian Broadcasting Commission (**KPI**)

Department of Communication and Information Technology.

Are there any other key issues impacting the regulatory body/regime?

Given the emergence of IPTV and related business opportunities in Indonesia, the government is currently formulating regulations for electronic convergence. These regulations are still in the draft stage and are not yet available to the public. Despite this, there is some indication that they will be enacted immediately upon completion and may permit class licensing, allowing entities to conduct multiple electronic convergence (eg broadband internet and IPTV) under the one licence.

Content Regulation

In Indonesia any program that depicts immoral substances or activities, gambling elements, defamation, extortion or threats is prohibited under the EIT Law. Any violation could lead to a fine and/or imprisonment. In addition, the Broadcasting Law contains specific regulations, (KPI Regulation No.2 of 2009 on Broadcasting Code of Conduct and KPI Regulation No. 3 of 2007 on Broadcasting Program Standard), which are also applicable to content regulation. Both regulations restrict the broadcast of programs which contain violence, sex-related material, drugs, or any materials that disregards norms or religious values. In addition to the specific sanctions under the Broadcasting Law, any violation of these restrictions may subsequently affect the possibility of broadcasters extending their operational licence.

Defamation

Defamation laws are governed by the Indonesian Criminal Code (the **Criminal Code**)

Defamation of Head of State/government entities

Articles 134 & 137, 142 & 144, 207 & 208, 310 & 321 of the Criminal Code provide that it is unlawful to defame the President or Vice President of the Republic of Indonesia, the head of state of another country, or any Authority or Government Agency of the Republic of Indonesia.

Defamation of Individual

Articles 310 & 321 of the Criminal Code provide that it is unlawful to carry out any act of defamation regarding any individual in public, or by dissemination to the public media.

Contempt

The exact meaning of contempt of court in Indonesia is the subject of much debate. Most legal experts in Indonesia understand it to mean, behaving inappropriately towards the court, usually to the judge inside the courtroom.

Copyright

Copyright law in Indonesia is governed by Law No. 19 of 2002 on Copyright, which entered into force in July 2003.

Sedition

Under Articles 161, 162 and 163 of the Criminal Code, it is unlawful to publish any seditious material, which encourages people to participate in criminal acts, or promotes or offer services in criminal activity.

Restricted product advertising

Free-to-air TV, Cable TV, Subscription TV and Radio

In 2008, the Minister of Communications and Information Technology announced new regulation regarding the use of domestic resources in the production of advertisements for TV and radio. The regulation stipulates that, where

possible, advertising agencies must utilise only domestic actors and locations. This requirement is applicable to any television or radio advertisement. The following commercials are exempted from these regulations:

- (i) A tourism commercial that contains elements of the country of origin, and goods or services located in that country;
- (ii) Commercial properties, including houses, apartments and buildings located outside Indonesia.
- (iii) Commercials depicting international games, festivals, education or schools located outside Indonesia;
- (iv) Global brand commercials and/or commercials that carry a brand image with a certain individual associated with the character featured in that advertisement; and
- (v) Commercials with flagship characters and or activities of a certain country.

Online content provider, mobile, newspapers and other print publications

If an advertisement is broadcast via the internet or mobile networks, the content will be subject to the EIT Law. In addition, an Advertising Code of Ethics (**Code**), issued in 2005 by the Indonesian Advertising Agencies Association, is also applicable. This Code does not, however, have any legal status nor provide for sanctions in the case of a breach of its provisions. These are merely code of ethics.

Classification

Motion Pictures

Motion pictures shown in Indonesia must be reviewed by the Indonesian Film Censor Board, Lembaga Sensor Film (**LSF**). In addition to issuing classification certificates, the LSF also reviews and issues permits for film-related advertising, including movie trailers and posters. The LSF also retains the authority to cut scenes from films. Certificates are issued based on the following categories;

- SU** – “Semua Umur” - All/General
- A** – “Anak-anak” – Children
- BO** – “Bimbingan Orangtua” - Parental Guidance
- R** – “Remaja” – Teen
- D** – “Dewasa” – Adult

Free-to-air, Cable, and Subscription Broadcasting

The classification system outlined above is also applicable to free-to-air and subscription broadcasting services.

Other

Hate Speech

Articles 155 and 157 of the Criminal Code provide that any hate speech towards the government of Indonesia, or certain communities in Indonesia is unlawful. “Certain communities” includes certain religions, tribes and races.

Indecent Material

Article 282 of the Criminal Code provides that it is unlawful to publish or disseminate any words or pictures which violate common decency.

The Indonesian government is in the process of promulgating a law that specifically deals with the liability of internet service providers for content added to their service by third parties.

At present, the Indonesian Civil Code may be used to regulate cyberspace media providers. Internet media providers can be categorised as publishers for the purposes of Articles 483 and 484 of the Criminal Code. Under these articles, a publisher is liable for the content of the publication only if: (i) it cannot state the identity of the author of the content; or (ii) it realised or should have known at the time of publication that the author was outside Indonesia or cannot be tried by an Indonesian court.

The Government is also currently working on

- (i) a draft Code of Ethics for Indonesian Multimedia Content (**Code of Ethics**). The draft Code of Ethics acknowledges the “common carrier” concept, namely where a multimedia content provider does not have any editorial control over prohibited content disseminated through its network. Under the Code of Ethics, a multimedia content provider is defined as an individual, a group of individuals and/or a legal entity that creates multimedia content or operates by giving services, providing, displaying and spreading multimedia content. As the definition is quite vague, it most likely includes portal service companies. Despite this, the multimedia content provider is still required to undertake any necessary steps to reduce the possible dissemination of unlawful content. As of December 2011, it is still unclear when the draft will be finalised and promulgated; and
- (ii) a draft implementing regulation of EIT Law. The draft has been ongoing for approximately 2 years and there is no clarity when it will be finalised and promulgated. One of the key provisions of the draft implementing regulation is that every Electronic System Operator for “public service” must provide data center and disaster recovery center in Indonesia for law enforcement and sovereignty reasons. There is an ongoing debate as to what constitutes public service, although Indonesia has a separate legislation on public service i.e. Law No. 25 of 2009 on Public Service, the current draft implementing regulation does not specifically refer to Law No. 25 of 2009 and may catch all types of services to public. This has created concerns for banks, financial service companies and portal companies as they could fall under this category given the lack of clear definition.

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Japan

Country	Japan	
Media Regulatory Authority	Ministry of Internal Affairs and Communications	
Foreign investment controls or restrictions	Restricted to 20% voting rights in “Core Broadcasters” (see Section 1 below).	
	No restrictions for “General Broadcasters” (see Section 1 below) and non-broadcast media	
Cross-media ownership controls or restrictions to protect competition in the local media sector	Media owners are only permitted to control one broadcasting station. However, there are no restrictions on companies owning shares across various different media platforms.	
Forms of media that may be supplied without a government licence	Online content, newspapers, other print publications, mobile content	
Forms of media that may only be supplied under a government licence	License or registration is required for all television media and radio broadcasters	
Primary legislation	<i>Broadcast Law</i>	Nippon Hoso Kyokai and private (commercial) broadcasters, broadcasting via a telecommunications service (including IPTV), and cable TV
	<i>Radio Law</i>	Radio and private television broadcasting and licensing
	<i>The Act on Development of an Environment that Provides Safe and Secure Internet Use for Young People</i>	Online content
	<i>Penal Code</i>	Defamation
	<i>Unfair Competition Prevention Act</i>	Competition/injury to business reputation/misleading advertising
	<i>Civil Code 1896</i>	Defamation
	<i>Copyright Law</i>	Copyright

Local Media Regulation

Licences

What licences are required?

Free-to-air TV

The *Broadcast Law* governs Japan's national broadcaster, the Nippon Hoso Kyokai (**NHK**) and private (commercial) broadcasters.

NHK is a special, quasi-governmental corporation. NHK is legally independent from the government and is funded chiefly by mandatory consumer fees.

The private (commercial) entities which are involved in broadcasting of Free-to-air TV classified into the following categories:

- (a) broadcasters who conduct broadcasting by establishing and using broadcasting facilities;
- (b) radio station providers who are not broadcasters under the *Broadcast Law* and broadcast programs based on an entrustment by broadcasters who fall within category (c) below, by establishing and using the broadcasting facilities; and
- (c) broadcasters who entrust broadcasting of programs to others (who fall within category (b) above).

The broadcasters are further classified into "Core Broadcasters" or "General Broadcasters". All of Free-to-air TV in Japan are classified into "Core Broadcasters".

In order to conduct a service of the kind defined in (a) or (b) above (whether wireless and/or terrestrial broadcasting) a television station licence under the *Radio Law* must be obtained from the Ministry of Internal Affairs and Communications (**MIC**). In order to become a private broadcaster of the kind defined in (c) above, the private broadcaster must obtain an approval under the *Broadcast Law* from MIC. Private broadcasters must have their licences and approvals reviewed by MIC every three years.

Cable TV

Under the *Broadcast Law*, cable television service providers are classified as "General Broadcasters". In order to provide cable television services in Japan, either (i) a registration with MIC or (ii) a notification to MIC is required depending on the number of drop terminals of the television broadcasting facility.

Subscription TV

As with cable television, in order to establish any subscription television services, a registration with MIC or notification to MIC is required.

Radio

The *Radio Law* requires any person who wishes to establish a radio station to either obtain a licence from, or have the radio station registered with the MIC.

Online content service, Newspapers, Other print publications (e.g. magazines), Mobile content service

No licences are required in Japan.

What content obligations/conditions are placed on licensees (e.g. minimum local content requirements, children's programming requirements etc)?

Free-to-air TV

The *Broadcast Law* requires all broadcasters (both NHK and private commercial broadcasters) to ensure that domestic programs:

- (a) do not disturb public security;
- (b) are not contrary to good morals and manners;

- (c) are politically impartial;
- (d) broadcast news without distorting facts; and
- (e) put forwards all perspectives on controversial issues.

The *Broadcast Law* also requires broadcasting to include cultural, educational, news and entertainment content.

The implementation and interpretation of these broad principles is assisted by the use of content guidelines set out in a largely self-regulated code of practice. Each television channel is obliged to set up a program review board to ensure compliance with the code.

Other key content related obligations include the following:

- The *Broadcast Law* provides that when a Core Broadcaster conducts domestic broadcasting, it must conduct broadcasting which helps to prevent or reduce the damage caused by any natural disasters.
- When compiling broadcast programming for domestic broadcast, all broadcasters must offer as many broadcasting programs as possible that provide voices and other sounds to explain transient images of fixed or moving objects for blind persons, and providing characters or patterns to explain voices and other sounds for deaf persons.
- The *Broadcast Law* requires all private broadcasters (i.e. broadcasters other than NHK or the Open University of Japan) to take measures to enable the audience to clearly identify paid advertisements.
- The *Broadcast Law* provides that where a private Core Broadcaster conducts the broadcasting of educational programs intended for schools, the broadcast programs must not include advertisements deemed to be obstructive to school education.
- In addition to the *Broadcast Law*, the National Association of Commercial Broadcasters Broadcasting Standards (**Broadcasting Standards**) serve as guidelines for all broadcasters. Note that the Broadcasting Standards do not have the effect of law and failure to follow the Broadcasting Standards does not result in legal penalties for broadcasters.

Cable TV, Subscription TV and Radio and Other (e.g. satellite or other broadcast technologies)

Under the *Broadcast Law*, cable TV, subscription TV, IPTV, radio and satellite and digital terrestrial services are under the same obligations regarding content and conditions as free-to-air private broadcasters.

Online content service

Whilst licences are not required for online content services, service providers should note that in 2009, Japan passed the *Act on Development of an Environment that Provides Safe and Secure Internet Use for Young People*, which seeks to protect persons under the age of 18 from harmful online content.

Persons engaged in businesses related to the use of the internet by persons under the age of 18, such as software developers, manufacturers of equipment used to gain online access and server administrators, must take measures to reduce the chances of young people viewing harmful online content, and take measures to help young people acquire skills for the appropriate use of the internet.

Upon request, an internet service provider must provide software or services to filter online content that is harmful to young people.

However, there are no penalties for violation of the obligations set forth in this Act.

Newspapers

In addition to their being no licensing requirements, there are no specific content restrictions for newspapers under Japanese law. However most, if not all, major daily newspapers that report on general news in Japan are members of the Nihon Shinbun Kyokai (**NSK**), also known as the Japan Newspaper Publishers & Editors Association.

In Japan, self-regulation has been the sole form of regulation imposed on news coverage and the information-dissemination activities of newspapers since World War II. NSK's role in maintaining and elevating ethical standards is pivotal in the self-regulatory system in Japan, together with the internal control/compliance systems set up at each member newspaper, under which newspapers themselves take responsibility for their reporting activities without inviting outside intervention.

The NSK has developed a *Canon of Journalism*, which details the conduct expected of member newspapers. The Canon states that member newspapers must:

- have absolute freedom of expression in both their news coverage and editorial comment whilst, in exercising this freedom, being duly aware of their responsibility and being constantly mindful not to impair public interests;
- report accurately and fairly, without personal conviction or bias. Editorial comment should be an honest expression of the writer's belief, not intended to court popularity;
- uphold their independence in the interests of fair comment and free speech;
- pay utmost respect to the dignity of human beings, put a high value on individuals' honour and give serious consideration to their right to privacy;
- acknowledge errors and correct them promptly, and in cases when an individual or a group has been unjustly maligned, take adequate steps to rectify the situation, including the provision of an opportunity to reply; and
- be available for anyone to read anytime, anywhere. Member newspapers should maintain decency both editorially and in the area of advertising, and in their circulation practices they should at all times exercise moderation and good sense.

Mobile content service

Whilst licences are not required for mobile content services, service providers should note that the *Act on Development of an Environment that Provides Safe and Secure Internet Use for Young People* provides that where persons under the age of 18 enter into a contract for a mobile internet service or a mobile phone or other like device, the mobile internet service provider must provide its services on the condition that the young person use a service to filter online content considered harmful to young people. The exception to the rule is where the legal guardian of the young person requests the non-use of the service to filter content.

However, there are no penalties for violation of the obligations set forth in this Act.

Foreign ownership and investment restrictions

What are the restrictions (if any) on cross-media or broadcast market ownership?

Under the Ordinance of the MIC pursuant to the Broadcast Law, in principle, media owners are permitted to control only one broadcasting station.

"Control" is defined differently depending on the type of broadcast service being operated so that:

- a person will control a terrestrial Core Broadcaster if they possess more than 10% of voting rights;
- a person will control a terrestrial Core Broadcaster that does not have an overlapping broadcast service area (i.e. no other broadcasting services are provided in the same area) if they possess 20% or more of voting rights; and
- a person will control a satellite Core Broadcaster if they possess 33.33333% or more of voting rights.

However, there are no laws in Japan restricting companies from owning shares across various media platforms. For instance, many newspaper owners also have a majority shareholding in an affiliated television network.

What are the restrictions on foreign entity (person or company) ownership?

Under the *Broadcast Law*, foreign investors are permitted to acquire 20% of all voting rights in Core Broadcasters, including satellite Core Broadcasters. Further, under the *Radio Law*, foreign investigators are permitted to acquire one third of all voting rights in radio station providers who broadcast programs based on an entrustment by broadcasters.

Foreign individuals and companies may still invest in the above companies beyond the maximum levels detailed above. However, they will not be able to be registered as shareholders and will therefore not be afforded the usual rights given to shareholders in Japan (e.g. voting rights, dividend rights, etc.).

In contrast, General Broadcasters are not subject to such restrictions.

The regulations relating to broadcasting are technical and fluctuate more than other regulations, and as such need to be closely considered prior to any substantial acquisition in such entities.

There are no foreign ownership restrictions for other non-broadcast media, such as newspapers, in Japan.

Regulatory Bodies

What are the agency(ies) responsible for administering regulation?

Broadcasting

As an arm of MIC, Japan's Information and Communications Bureau (**Broadcasting Bureau**) is responsible for planning and implementing broadcasting policy, and for licensing and supervising broadcasting stations. The Broadcasting Bureau's responsibility extends over all broadcasting (radio, free-to-air and cable television, and satellite broadcasting).

Newspapers

As discussed above, self-regulation has been the sole form of regulation imposed on news coverage and the information-dissemination activities of newspapers since World War II. Therefore, there are no information ministries or regulatory bodies that specifically regulate the content of the print media in Japan.

Most daily newspapers are members of NSK, a voluntary body that seeks to maintain and elevate ethical standards via Japan's self-regulatory system.

Online content

The *Act on Development of an Environment that Provides Safe and Secure Internet Use for Young People* provides for a Council for Promoting Measures Against Content Harmful to Young People on the Internet and Development of an Appropriate Environment (**Council**). The Council is made up of key cabinet ministers, including the Prime Minister, and has been entrusted with developing a basic plan setting out measures to promote safe and secure internet use by young people. However, at this stage there are no penalties for breach of obligations set out in the *Act on Development of an Environment that Provides Safe and Secure Internet Use for Young People*.

MIC is the body responsible for developing other policies with respect to the digital / online environment.

Are there any other key issues impacting the regulatory body/regime (eg transparency of licensing and regulatory regime, impact of other government/regulatory bodies on the media regulator)?

MIC has been the key regulatory body in the industry for many years. As such, the government has significant influence on media policy.

The Japanese Government has recently unveiled plans to create an independent regulator for the communications and broadcasting industries in a push to reduce political influence in the media.

The new commission, to be modeled loosely on the U.S. Federal Communications Commission, will eventually take over authority for the regulation of the communications and broadcasting industries from MIC.

A draft bill is likely to be presented to the Diet in 2011.

Content Regulation

Defamation

The *Penal Code* provides that a person who defames another by alleging facts in public shall, regardless of whether such facts are true or false, be punished by imprisonment with or without work for not more than 3 years or a fine of not more than 500,000 yen.

The *Unfair Competition Prevention Act* provides that acts of making or circulating a false allegation that is injurious to the business reputation of another person in a competitive relationship constitutes unfair competition. A person whose business interests have been infringed or are likely to be infringed by unfair competition may seek an injunction preventing such infringement. The person may also seek compensation for damages caused by unfair competition.

The *Civil Code* provides that a person who intentionally or negligently infringes another's rights or legally protected interests shall be held liable for damages arising from such infringement. Courts have found that one's reputation or honor is a protected interest, and that defamation of a person's character constitutes an actionable tort under Article 709 of the Civil Code. In addition to natural persons (e.g. individuals), legal persons (e.g. incorporated entities) may also be the subject of defamation.

In order to prove defamation, a plaintiff must prove that the plaintiff's honor (defined as the objective societal assessment of a person's character, morality, reputation, trust and other personal values) was adversely affected as a result of the content of the defendant's statement. The standard for whether the plaintiff's honor was adversely affected is based on the attentiveness and sensibilities of the average lay person.

Depending on the nature of the statement, a defendant may be able to raise the defence that:

- (a) the expressive conduct concerned a matter of public interest;
- (b) the purpose of the speech was solely to further a public interest; or
- (c) the statement made was truthful,

to defend a claim under the Civil Code. As noted above, these defences are not available under the Penal Code.

The *Penal Code* of Japan also provides that a person who insults another in public, even if facts are not alleged, shall be punished by misdemeanour imprisonment without work or a petty fine. It also may constitute a tort under Article 709 of the *Civil Code*.

Contempt of Court

There is no law regarding contempt of court in Japan.

Copyright

The law protecting copyrights is the Copyright Law (*Chosakuken Ho*, Law No. 48 of 1970, as amended; **Copyright Law**). Because Japan is a civil law country, no common law copyright action exists. The administrative body charged with enforcing the Copyright Law is the Agency for Cultural Affairs of the Ministry of Education, Culture, Sports, Science and Technology.

There is no requirement to register the ownership of a copyright under the Copyright Law. However, the Copyright Law permits the registration of a true name, the registration of the date of the first publication or first disclosure and the registration of assignment or establishment of a pledge with the Agency for Cultural Affairs. While insufficient to confer ownership upon the person filing for registration alone, the registration creates a presumption that the person who has registered his/her true name is the author of the work that is the subject of such registration, and that the date recorded is that of the first publication, broadcast, recitation or performance. Registration is also necessary to perfect a pledge or assignment against third parties.

The term of protection for authors right extends to a period of 50 years after the authors death. The duration of protection for works created by a corporation is 50 years after the publication. The duration for copyright in a cinematographic work is extended to 70 years. For neighbouring rights the term of protection starts when the work is created and extends to a period of 50 years from the beginning of the year following the creation of the work.

The Copyright Law contains a number of exemptions to acts or otherwise constitute an infringement. It is important to refer to this "Limitations on Copyrights" portion of the Copyright Law when considering using any works of authorship or utilizing copyrights, since such provisions, including those listed above, contain many detailed exceptions. Limitations on copyrights are listed under the Copyright Law and a general limitation is not provided by the current law, while it has been argued among authorities whether it should have such a provision.

Sedition

Advocacy of certain types of unlawful conduct is prohibited under a number of statutes. Prohibited activities include advocating the overthrow of the Government by violent force, advocating illegal strikes, advocating illegal disclosure of governmental secrets and advocating tax evasion.

The Courts have construed the word "advocacy", as used in the *Local Tax Act*, as an act "intentionally giving impetus to others by documents, pictures or conducts with such force as to bring about decision to accomplish these prohibited conducts or to prompt the decision already made".

Misleading advertising

Japan's *Act against Unjustifiable Premiums and Misleading Representations (UPMRA)*, which is enforced by the Fair Trade Commission, regulates advertisements and prohibits the use of exaggerated and deceptive advertising. The UPMRA also states that organizations may not make inaccurate representations with respect to their own products or the products of their competitors where such representations relate to price, quality, standards or the origin of the products being offered.

The *Unfair Competition Prevention Act* provides that misrepresenting goods or services (including in information detailed in an advertisement, document or correspondence used to sell such goods or services) in a manner that is likely to mislead the public as to the place of origin, quality, contents, manufacturing process, use or quantity of such goods, or the quality, contents, purpose or quantity of such services, constitutes unfair competition.

The use of "subliminal techniques" in broadcasting is also prohibited in general in Japan, although there is no specific regulation regarding surreptitious advertising or product placement.

Restricted product advertising

Broadcasting

The *Broadcast Law* requires private broadcasters clearly identify paid advertisements.

Where a private Core Broadcaster broadcasts educational programs intended for schools, under the *Broadcast Law* the broadcast programs must not include advertisements deemed to be obstructive to school education.

The *Broadcast Law* also prohibits a private broadcaster from entering into contractual arrangements pursuant to which a single sponsor supplies programs exclusively.

In addition to the Broadcast Law, the National Association of Commercial Broadcasters Broadcasting Standards (***Broadcasting Standards***) serve as guidelines for all broadcasters. Note that the Broadcasting Standards do not have the effect of law and failure to follow the Broadcasting Standards does not result in legal penalties for broadcasters.

There is no legal ban on tobacco or alcohol advertising on television in Japan. The Broadcasting Standards prohibit showing minors smoking or drinking alcohol in a favourable light. This restriction is general and not specifically directed towards advertising.

Tobacco and alcohol advertising are largely subject to self-regulation by industry bodies. The tobacco industry's self-regulating body, the Tobacco Institute of Japan has implemented rules for its members prohibiting the advertising of tobacco products on television, radio, in cinemas and on internet websites. The self-regulating association of alcohol manufacturers has published internal rules to regulate the advertising activities of member companies, for example advertising of alcohol products must state clearly that minors are not permitted to drink such products, and advertising of alcohol products cannot be shown during programs targeted at minors.

Medicine can be advertised on television (even those medicines available on prescription only). The Broadcasting Standards contain specific rules in relation to advertising medicines which aim to avoid misleading claims and to encourage responsible consumption.

Newspapers

Under the non-binding Newspaper Advertising Code of Ethics, the entire responsibility for the contents of advertisements lies, in the first place, with the advertiser. Newspapers, however, in publishing advertisements in their pages, must consider the social impact of newspaper advertising, eliminate improper advertising, defend the interests of readers and establish principles to maintain and enhance the credibility of newspaper advertising.

The member newspapers of the Nihon Shinbun Kyokai (The Japan Newspaper Publishers and Editors Association) must constantly strive to elevate ethical standards and must respond to the trust of readers. Accordingly, newspaper advertising must tell the truth, not damage the dignity of newspaper pages and not violate laws and regulations related to advertising, such as misleading advertising laws covered in the *Premiums and Representations Act*.

Classification (e.g. pornographic or adult material)

Broadcasters must clearly indicate which viewers a broadcast is aimed towards and make the content of the broadcast appropriate and instructive to such viewers. In addition, the broadcaster must provide the general public with the means to learn about the content of broadcasts in advance.

Free-to-air TV, Subscription TV, Radio, Online content service, Mobile content service

No classification requirements in Japan.

Cable TV

No classification requirements in Japan. However, in many cases, cable television broadcasters in practice provide functionality permitting their viewers to choose to restrict access to certain channels.

Other print publications (eg magazines)

Because, the *Criminal Law* prohibits the sale or distribution of obscene materials and regulations of local governments in Japan usually prohibit sales of harmful books and other printed publications (such as those which contain pornographic and detailed violence) it is common practice for publishers to voluntarily indicate where a book is for adult readers only.

Other (eg satellite or other broadcast technologies)

Computer software

The Computer Entertainment Rating Organization rates video games and computer software in Japan. The classification ratings are as follows:

- A (All Ages)
- B (Ages 12+)
- C (Ages 15+)
- D (Ages 17+)
- Z (Ages 18+)

In Japan, the only legally enforceable rating is the 18 and older rating (Z).

The system uses icons to show why a game was given a certain rating, including romantic themes, sexual content, violence, horror, gambling, crime, use of tobacco and alcohol, use of drugs, or language.

Film

Japan has a classification system under which films are classified into one of the following categories:

- **G:** General Audiences, all ages admitted.
- **PG12:** Some material may be inappropriate for children under the age of 12. Parental or adult accompaniment recommended.
- **R15+:** No children under 15 admitted. The film contains adult themes, nudity, strong language, violence, and/or sex, etc. which is inappropriate for people under 15.
- **R18+:** No children under 18 admitted. The film contains adult themes, detailed violence, explicit sex, sexual violence, pornographic content, hentai, and/or drug use, etc. which are unsuitable for people under 18.

Other restricted speech (including vilification, blasphemy, etc).

Freedom of expression is constitutionally guaranteed in Japan. Despite this, the *Criminal Law* prohibits the sale or distribution of obscene materials.

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Malaysia

Country	Malaysia	
Media Regulatory Authority	Malaysian Communications and Multimedia Commission Communications and Multimedia Content Forum Minister for Home Affairs Minister of Information, Communications and Culture Advertising Standards Authority Malaysia	
Foreign investment controls or restrictions	Yes	
Cross-media ownership controls or restrictions to protect competition in the local media sector	Yes. Controls with respect to broadcasting services. None regarding newspapers, other print publications, online content providers and mobile.	
Forms of media that may be supplied without a government licence	Online content providers	
Forms of media that may only be supplied under a government licence	Broadcasting services (including free-to-air TV, subscription TV, radio and satellite) require individual licences	
	Newspapers and other print publications require licences	
	Mobile content amounting to an internet content applications service is exempt from licensing; audiotext hosting services provided on an opt-in basis may be provided under class licence	
Primary legislation	<i>Communications and Multimedia Act 1998</i>	Licensing and content
	<i>The Printing Presses and Publication Act 1984</i>	Licensing
	<i>The Malaysian Communications and Multimedia Content Code</i>	Content and classification
	<i>Defamation Act 1957</i>	Defamation
	<i>Copyright Act 1987</i>	Copyright
	<i>Sedition Act 1948</i>	Sedition
	<i>Malaysian Code of Advertising Practice</i>	Advertising

Local Media Regulation

Licences

What licenses are required?

Licences for broadcasting services (Free-to-air TV, Cable TV, Subscription TV, Radio)

In Malaysia, the Communications and Multimedia Act 1998 (**CMA**) regulates content related services operating in Malaysia, by reference to the nature of the activity carried out by the relevant service provider rather than the type of technology used to carry out that activity. The following are licensable services under the CMA:

- network facilities;
- network services;
- application services; and
- content application services.

Broadcasters are defined as providers of content application services and are regulated as such by the CMA. Content application service providers supplying content that:

- (a) is made available to the general public and is likely to be of broad appeal; and
- (b) can be received by commonly available consumer equipment or is likely to exert a high degree of influence in shaping community views in Malaysia,

generally require an individual licence. This includes terrestrial free-to-air television services, terrestrial radio broadcasting services, satellite broadcasting services and subscription broadcasting services.

Licenses are granted by the Minister of Information, Communications and Culture on the recommendation of the Malaysian Communications and Multimedia Commission (**MCMC**).

Newspapers and other print publications

The Printing Presses and Publications Act 1984 stipulates that the Minister for Home Affairs may, in his absolute discretion, grant to any person a licence to keep for use or use a printing press. Any person who keeps for use or uses a printing press without a valid licence will be guilty of an offence.

The Minister for Home Affairs also has the absolute discretion to grant:

- (a) any person a permit to print and publish a newspaper in Malaysia; or
- (b) any proprietor of any newspaper in Singapore a permit allowing such newspaper to be imported, sold, circulated or distributed in Malaysia.

The Minister is also granted absolute discretion to refuse any application for such a licence or may at any time revoke or suspend such a licence. The Minister may also impose conditions on the grant of a permit requiring the proprietor of a newspaper in Singapore to establish and maintain a place of business within Malaysia or appoint persons within Malaysia authorised to accept service of any notice or legal process on behalf of the proprietor. In practice, this condition generally only applies to the publication of new newspapers and not those currently existing in Singapore. If the proprietor merely intends to offer an existing Singaporean newspaper in Malaysia, the Minister would then normally impose a licence condition requiring the appointment of a representative in Malaysia.

The Minister's decision to grant, revoke or suspend any licence or permit is final and is not permitted to be called into question by any court on any ground whatsoever.

Online content providers

Under the Communications and Multimedia (Licensing) (Exemption) Order 2000, a person who provides any internet content application service is exempt from being required to hold an individual licence or registering under a class licence pursuant to the CMA.

Mobile

Content provided via mobile devices that amount to an internet content application service is also exempt from being required to hold an individual licence or registering under a class licence pursuant to the CMA. If mobile content amounts to an audiotext hosting service and such a service is provided on an opt-in basis (i.e. where a customer applies in writing or by other means for the service to be made available), an applications service provider class licence is required.

What content obligations/conditions are placed on licensees (e.g. minimum local content requirements, children's programming requirements etc)?

Broadcasting services (Free-to-air TV, Cable TV, Subscription TV, Radio)

Section 211 of the CMA prohibits content which is indecent, obscene, false, menacing or offensive in character where provided with intent to annoy, abuse, threaten or harass any person. Contravention of this prohibition constitutes an offence.

The prohibition above is supported by the Malaysian Communications and Multimedia Content Code (**Code**). The Code, which the Communications and Multimedia Content Forum of Malaysia (**Content Forum**) has adopted, sets out guidelines and procedures for good practices and standards for online and broadcast content dissemination.

The Code applies to all content (including advertising content) capable of being created, manipulated, stored, retrieved or communicated electronically, such as broadcasts on the television or radio and content delivered via the internet.

Whilst the Code is voluntary, those subscribing to it have undertaken to uphold its objectives and principles, and the MCMC retains the power to direct any person to adhere to it. There is also a Complaints Bureau with whom members of the industry and the public may lodge complaints for any purported breaches of the Code.

Broadcasters must ensure that the content of news and current affairs programmes is presented accurately, fairly and objectively at all times with due care, sensitivity and respect for the likely composition of the viewing audience, cultural differences, the rights of any individual group and for the privacy of individuals. News must be presented in line with the government's principles and material received from foreign countries must not contradict national foreign policies.

In dealing with religious content, broadcasters must have regard to Islam as the official religion of the country and the constitutional rights to freedom of religion of all other communities. All religious programming on Islam must be approved by the relevant religious authorities prior to transmission. The propagation of any religion other than Islam, directly or indirectly, is not permitted. Broadcasters are, however, prohibited from showing content that is wrongful, fanatical, critical and insulting against any religion. In addition, broadcasters must not include content that is likely to create disharmony.

Newspapers and other print media

The Printing Presses and Publications Act 1984 grants the Minister for Home Affairs absolute discretion to prohibit or place conditions on printing, importation, production, reproduction, publication, sale, issue, circulation, distribution or possession of any publication of an article, caricature, photograph, report, notes, writing, music, statement or any sound, statement or any other thing, which is in any manner prejudicial to or likely to be prejudicial to public order, morality, security, the relationship with any foreign country or government, or which is or is likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to the public interest or national interest.

There are restrictions on prohibited publications as well as malicious publication of false news. The Ministry of Home Affairs has issued guidelines setting out a list of items prohibited from publication, including pictures or advertisements involving nudity, contraceptive tools, cigarettes, medicine (unless approved by the Ministry of Health) and Islamic-based publications that violate its historical facts. In addition, media coverage of criminal cases must avoid overwhelming exposure, the publication of photos of family members of the accused and must not affect public peacefulness.

Online content providers

The Code also applies to providers of online content and access to online content (including ISPs, hosts, developers, aggregators and link providers). However, content providers who provide access to content, but have neither control over the composition of such content nor any knowledge of such content, are deemed innocent carriers under the Code and are therefore not responsible for the content provided. Notwithstanding this, the specific

measures set out in the Code for the removal of prohibited content must be complied with to the extent that the provider has control over the content.

The Code governs online content which originates from Malaysia. The Code does not apply to:

- (a) ordinary personal email other than bulk or spammed email;
- (b) content transmitted solely by facsimile or voice telephony which is intended for private consumption; or
- (c) content that it not accessible to the public, such as a closed or limited content application service confined to a single dwelling or offered only to employees of a single company.

Mobile

Content provided via mobile devices must adhere to the same guidelines that relate to broadcasting content as outlined above. There are also specific content guidelines for audiotext hosting services in the Code.

Foreign ownership and investment restrictions

What are the restrictions (if any) on cross-media or broadcast market ownership?

The Ministerial Direction on General Licensing Policy (Direction No. 3 of 2001 dated 23 March 2001) provides that a holder of an applications service provider individual licence will not be granted a content applications service provider individual licence and vice versa. This effectively means that companies which provide applications services, such as public switched telephony network and public cellular services, will not be granted licences for terrestrial free-to-air television, terrestrial radio broadcasting or satellite broadcasting.

No such restrictions apply with respect to other media forms, such as newspapers, other print publications, online content and mobile content.

What are the restrictions on foreign entity (person or company) ownership?

Licences for broadcasting services (Free-to-air TV, Cable TV, Subscription TV, Radio)

Foreign companies, individuals, sole proprietorships and partnerships are ineligible to apply for a content applications service provider individual licence.

Newspapers and other print publications

The Minister may impose a condition on the grant of a permit requiring that the proprietor of a newspaper in Singapore (that is to be supplied in Malaysia) establish and maintain a place of business within Malaysia or appoint persons within Malaysia who are authorised to accept service of any notice or legal process on behalf of the proprietor.

Online content providers

Not applicable as internet content providers are exempted from licensing.

Mobile

Not applicable in respect of internet content applications services, which are exempted from licensing. However, in respect of applications service provider class licences required for audiotext hosting services, foreign individuals who are not permanent residents in Malaysia and foreign companies are ineligible to apply.

What are the restrictions on foreign entity (person or company) investment (and what limits by %, etc exist)?

Previously, under the Foreign Investment Committee's Guideline on the Acquisition of Interests, Mergers and Take-overs by Local and Foreign Interests (**FIC Guidelines**), a foreign investor was permitted to hold up to 70% of the shares in a Malaysian company, while the remaining 30% shareholding was to be held by Bumiputeras (persons indigenous to Malaysia). However, the FIC Guidelines have recently been repealed and therefore there is no longer a formal requirement for Bumiputeras to hold a 30% shareholding in a company. Notwithstanding this, the MCMC may for policy reasons still require such shareholding / Bumiputera equity as a criteria for licence holders depending on the type of licence.

What are the restrictions on foreign entity (person or company) entering a content supply agreement in Malaysia with a local organisation?

There are no specific restrictions on foreign entities entering into content supply agreements with Malaysian organizations. Such content must comply with local laws, regulations and industry codes (including those requirements for foreign sourced content described above).

Regulatory bodies

What are the agency(ies) responsible for administering regulation?

Broadcasting services (Free-to-air TV, Cable TV, Subscription TV, Radio), online content providers and mobile

The MCMC was established under the CMA to implement and promote the government's national policy objectives for the communications and multimedia sector. The Code is administered by the Content Forum.

Newspapers and other print publications

The Minister for Home Affairs is granted wide powers under the *Printing Presses and Publications Act 1984* to control the print media. The Minister plays a central role in the grant of licences and permits and in the prohibition of undesirable materials. He may also from time to time make rules for the administration of the Act.

Are there any other key issues impacting the regulatory body/regime (eg transparency of licensing and regulatory regime, impact of other government/regulatory bodies on the media regulator)?

No

Content Regulation

Defamation

In Malaysia, both libel and slander are civil and criminal offences.

The law of civil defamation is governed by the *Defamation Act 1957*. Under the Defamation Act defamation is established if a plaintiff is able to show that publication of the defamatory statement was done, or the defamatory statement made, with malicious intent and/or the words in the defamatory statement in their natural and ordinary meaning reflect a defamatory intention.

The defences of justification and fair comment may be available to the defendant. Additionally, a defendant may give evidence of an apology in mitigation of damages. Qualified privilege applies to newspapers in certain circumstances.

In criminal cases of defamation, sections 499 to 502 of the Penal Code apply. Criminal defamation will be established if it can be shown that the words, either spoken or read, make or publish an imputation with the intention to, or having reason to believe that such imputation will, harm the reputation of a person.

Contempt

Under the *Courts of Judicature Act 1964*, the Federal Court, the Court of Appeal and the High Court of Malaysia have the power to punish any contempt of court, defined as an act or omission calculated to interfere with the due administration of justice.

Copyright

Under the *Copyright Act 1987*, copyright protection is granted to categories of protected works, in most cases, for the life of the author plus 50 years after his or her death.

Certain protected activities listed in the *Copyright Act* such as education, research, the media and access to information are "permitted acts", that is, copyright works may be used for such activities without having to seek the permission of the copyright owner. Additionally, acts done by way of fair dealing for the purposes of private study, non-profit research, criticism, review or reporting of current events will not infringe copyright, if accompanied by appropriate acknowledgements. There is no defence of private use.

Sedition

Section 4 of the Sedition Act 1948 sets out the key offence with regard to sedition.

The Emblems and Names (Prevention of Improper Use) Act 1963 also prohibits the display of disrespect to national symbols including:

- the national flag;
- the King and Queen of Malaysia;
- the Public Seal;
- the Royal Coat of Arms of the Federation.

Displaying disrespect to the National Anthem is also prohibited under the *National Anthem Act 1958*.

Misleading advertising

Broadcasting services (Free-to-air TV, Cable TV, Subscription TV, Radio), online content provider and mobile

Guidelines for advertising content broadcast on TV and radio are contained in Part 3 of the Code.

Part 3 of the Code provides that all advertisements should be legal, decent, honest and truthful and should not mislead by way of inaccuracy, ambiguity, exaggeration, omission or otherwise. The Code further specifies that advertisements must not abuse the trust of the consumer or exploit his or her lack of experience or knowledge.

Advertisers must hold documentary evidence to prove that all claims made in an advertisement, whether direct or implied, are capable of objective substantiation. Claims that have not been independently substantiated should not exaggerate the value, accuracy, scientific validity or practical usefulness of the product advertised. Similarly, testimonials and endorsements must be genuine.

Obvious untruths or exaggerations that are unlikely to mislead are allowed, provided they do not affect the accuracy or perception of the advertisement in any material way. Any comparative advertisements must respect the principles of fair competition and should not mislead the consumer either about the product advertised or that with which it is compared. Furthermore, no advertisement should so closely resemble any other so that it misleads or causes confusion.

Any stated price must be clear and must relate to the product advertised. In making a free offer conditional on the purchase of other items, consumers' liability for any costs must be made clear in all material featuring the offer. Additionally, unavailable or unregistered products should not be advertised.

Advertisers, online publishers, broadcasters and owners of other electronic media must ensure that advertisements are designed and presented in such a way that it is clear that they are advertisements.

Newspapers and other print publications

Print advertising is regulated under the Malaysian Code of Advertising Practice (**MCAP**). The Advertising Standards Authority Malaysia (**ASAM**) administers the MCAP, which applies to all advertisements in any print media. The responsibility for observing the MCAP rests primarily with the advertiser but it also applies to any advertising agency involved in the publication of the advertiser's message to the public. Although the MCAP is not legally binding, there is an expectation that all advertisers and advertising agencies will adhere to it. If there is a breach of the MCAP, advertising space or time may be withheld. Further, there may also be adverse publicity as a result of actions of the relevant authority.

The general principles of the MCAP provide that all advertisements shall be legal, decent, honest and truthful. Advertisements containing comparisons with other advertisers or products are generally permissible under the MCAP in the interest of competition and public information, provided they comply with the terms of the MCAP. The basis of the comparison must be fair, substantiated and not confer an artificial advantage on the advertiser.

Restricted product advertising

Broadcasting services (Free-to-air TV, Cable TV, Subscription TV, Radio), online content provider and mobile

According to the Code, advertisements should generally not contain anything that is likely to cause serious or widespread offence. Particular care should be taken to avoid causing offence on the grounds of race, religion, sex, sexual orientation or physical or mental disability. Additionally, advertisements must not show or encourage unsafe practices (except in the context of promoting safety) or contain anything that condones or is likely to provoke violence or anti-social behaviour.

More specifically, the Code deems advertisement of the following unacceptable: cigarettes, tobacco and its accessories, the occult, fortune tellers, marriage agencies and friendship clubs, unlicensed employment agencies, gambling, betting, clothing printed with inappropriate messages, sexual scenes including kissing between adults, pornography, pig, pork products and its derivatives, fire crackers, any form of financial speculation intended to promote or attract interest in any stocks and shares, death notices, funeral and burial service notices, burial monuments, disco scenes and slimming products. Finally, advertisements for sanitary protection products and incontinence pads for adults must be treated with restraint and discretion.

Advertisements must not portray or refer to, by whatever means, any living person, unless their express prior permission has been obtained. This includes public figures and foreign nationals.

Advertisements for food or drink products that claim therapeutic or prophylactic qualities will be subject to prior screening. However, food and drink products that help improve, restore or maintain the consumer's general health, physical or mental condition will not be subject to prior screening. All advertisements must comply with the requirements in the *Food Act 1983 and Food Regulations 1985*.

Advertisements for medicines, remedies, appliances, skill and services relating to diagnosis, prevention and treatment of diseases or conditions come under the authority of the Medicine Advertisements Board, Ministry of Health Malaysia. Advertisements for pesticides come under the authority of the Pesticide Advertising Board and the Ministry of Agriculture. Such advertisements must be approved by the relevant boards before publication.

Advertisements for alcoholic drinks and liquor are not allowed. If an alcohol company is the title sponsor of an international sporting event held in Malaysia, it is only allowed to promote the event and not directly advertise its products. In addition to this, alcohol companies should only use the event's logo in the promotional on-air material.

Newspapers and other print publications

The MCAP regulates advertising in connection with a wide range of goods and services, including medical products, alcohol, slimming products, financial services, hair and scalp products, vitamins and minerals, motoring, environmental claims, database marketing, employment and instructional classes, property, audio text services and commemorative and limited edition items.

Classification

Broadcasting services (Free-to-air TV, Cable TV, Subscription TV, Radio)

The Code requires that television broadcasters endeavour to display classification labels at regular intervals during programmes, based on the following:

- **U:** The programme is intended for a broad general audience and is suitable for viewers of all ages. The programme contains little or no violence, no strong language and little or no sexual dialogue or sexual situations.
- **PG-14:** Parental guidance is required when allowing children below 14 to view this programme. The programme may contain mild physical violence, comedic violence, comic horror, special effects, fantasy, supernatural elements or animated violence. It may also contain some suggestive dialogue and mild sexual situations and innuendo, but depictions must be infrequent, discreet and of low intensity.
- **PG-18:** Parents/guardians are strongly cautioned to exercise discretion in permitting young persons below the age of 18 to view this programme without supervision. The programme may contain sophisticated themes, some sexual content, discreet sexual references, suggestive language and in some instances strong and coarse language and violence which are dominant elements of the storyline and justifiable within the context of theme and character development.

- **18 & above:** The programme is intended for adult viewing and may contain one or more of the following which is considered integral to the development of the plot, character or themes: intense violence and depictions of violence, graphic horror images, graphic language, mature themes, intense sexual situations and suggestive dialogue.

For free-to-air broadcasters, “U” and “PG-14” programmes may be shown any time of day. “PG-18” programmes can be shown any time after 7.30 pm and “18 & above” programmes can only be shown after 10 pm.

Promotional content which contains scenes of excessive violence or adult material intended for adult audiences must not be transmitted before 10 pm. As mentioned above, the Code is a voluntary code and thus broadcasters are required to endeavour to have their own “Content Control Unit” tasked with the responsibility of classifications and scheduling. However, all classification for television and radio must first be submitted to the National Censorship Board.

Appropriate warnings should be provided at the start of any programme or news report which might disturb younger children. Broadcasters must also ensure that clear and specific warnings are employed, especially after 10 pm, where there is a likelihood that some viewers may find a programme disturbing or offensive.

Newspapers and other print publications

There are no specific classification requirements in relation to newspaper and print publications.

Online content provider

There are no classification requirements for online content under the Code.

Mobile

The Code requires all audiotext hosting services to be classified as follows.

- **U:** information or entertainment services suitable for all ages. However, callers below 18 years of age must obtain permission from the person making payment for the use of the audio text hosting service.
- **18+:** services for the general public 18 years and above.

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New Zealand

Country	New Zealand	
Media Regulatory Authority	Ministry of Economic Development Broadcasting Standards Authority	
Foreign investment controls or restrictions	Yes. Foreign investment in significant business assets requires consent from the Overseas Investment Office.	
Cross-media ownership controls or restrictions to protect competition in the local media sector	The <i>Commerce Act 1986</i> contains general restrictions on acquisitions that involve, or are likely to involve, a substantial lessening of competition.	
Forms of media that may be supplied without a government licence	Online content service, newspapers, other print publications	
Forms of media that may only be supplied under a government licence	Free-to-air TV, Subscription TV, Radio, Satellite services. In addition to government licensing, private management rights holders are free to issue spectrum licences according to their own policies.	
Primary legislation	<i>Radiocommunications Act 1989</i>	Broadcaster licensing
	<i>Telecommunications Act 2001</i>	Mobile content service
	<i>Broadcasting Act 1989</i>	Broadcasting standards
	<i>Commerce Act 1986</i>	Cross-media ownership
	<i>Overseas Investment Act 2005</i>	Foreign ownership restrictions
	<i>Defamation Act 1992</i>	Defamation
	<i>Copyright Act 1994</i>	Copyright
	<i>Copyright (New Technologies) Amendment Act 2008</i>	Copyright and new technologies
	<i>Fair Trading Act 1986</i>	Trade practices/Competition
	<i>Films, Videos and Publications Classification Act 1993</i>	Censorship
	<i>Privacy Act 1993</i>	Personal information

Local Media Regulation

Licences

What licences are required?

Licences for transmitting radio waves (Free-to-air TV, Subscription TV, Radio and Satellite services)

Broadcasters require licences to transmit radio waves in New Zealand. The granting of these licences is regulated by the *Radiocommunications Act 1989* and *Radiocommunications Regulations 2001*. New Zealand has two types of licensing in operation for broadcasting: a radio licensing regime and a spectrum licensing regime. The regimes are mutually exclusive and all licences will fall within one or the other depending on frequency.

Radio Licensing Regime

The Chief Executive of the Ministry of Economic Development (**MED**) is authorised to grant radio licences in accordance with government policy under Part 13 of the *Radiocommunications Act*. These radio licences typically relate to a specific transmitter, are revalidated each year and specify the type of equipment and transmission methods that may be used.

Spectrum Licensing Regime

All other *radiocommunications* and broadcasting services in New Zealand are licensed under the Spectrum Licensing Regime, a tradable spectrum rights framework, in accordance with Part 2 of the *Radiocommunications Act*. There are two basic rights created under this regime: management rights and spectrum licences.

The spectrum licensing regime involves the creation of long term tradable property rights to use the radio spectrum. Management rights are granted over a block of radio frequencies by the New Zealand Government through a process of public spectrum auctions run by the MED. The holder of management rights may then grant spectrum licences for frequencies within the block covered by those management rights. Management rights do not themselves confer the right to make any transmissions.

Approximately one third of the current management rights are retained by the New Zealand Government. The Government grants spectrum licences within its block of management rights according to a mix of commercial and social policies. The remaining management rights are held within the private sector. Managers in these bands are free to issue spectrum licences according to their own policies.

Spectrum licences are granted by the owner of a management right and are typically assigned for a defined period of time. They are usually non-specific to equipment or transmission methods and define a spectrum envelope within which the licence holder is free to operate. Broadcasting (both sound and television) falls within the spectrum licensing regime.

General User Licences

New Zealand also has a system of general user licences which exempts certain limited uses of radio spectrum (eg maritime VHF radio and CB radio) from individual licensing and licence fee requirements. There are two forms of general user licence, one is a radio licence granted under regulation 9 of the *Radiocommunications Regulations 2001* and the other is a spectrum licence granted under section 48(3) of the *Radio Communications Act*.

Offences

The *Radiocommunications Act* prohibits all other transmissions (i.e. any unlicensed transmission of radio waves which is not covered by a general exemption.) If the transmissions interfere with broadcasting under a spectrum licence, general licence, or radio licence an injunction, fine or damages can be sought against the unlicensed transmitter.

Online content service, Newspapers, other print publications (magazines, etc.)

In New Zealand there are no licensing requirements for online content services, newspapers and other print publications (eg magazines).

Mobile content service

Mobile content services are regulated separately under the *Telecommunications Act 2001* and in accordance with the Telecommunications Carriers' Forum (**TCF**).

What content obligations/conditions are placed on licensees (e.g. minimum local content requirements, children's programming requirements etc)?

While there are no regulations regarding minimum levels of local content, the government broadcasting policy objectives make it clear that regular access to broadcasting representing New Zealand life is a key focus. NZ on Air, a Government broadcast funding agency receives over \$120m annually to invest in home grown television and radio programmes to sustain high levels of local content. The *Broadcasting Act* also created Te Reo Whakapuaki Iirangi (also known as Te Mangai Paho), a Maori broadcasting funding agency, dedicated to the promotion of Maori language and culture.

In terms of broadcast content, the Broadcasting Standards Authority (**BSA**), a body established by part three of the *Broadcasting Act 1989*, administers a broadcasting standards regime, determines formal complaints and encourages broadcasters to develop and observe appropriate Codes of Broadcasting Practice.

The formal complaints process overseen by the BSA involves a complainant (usually a member of the public) alleging that the broadcaster has failed in its responsibility to maintain one or more of the broadcasting standards set out in the relevant Code, as outlined below. A broadcaster can face a range of penalties if a complaint is upheld by the BSA.

Free-to-air TV

Free-to-air television is regulated by the *Broadcasting Act 1989* and the Free-to-air Television Code of Broadcasting Practice. This Code was prepared by the New Zealand Television Broadcasters' Council (on behalf of free-to-air service providers) creating a largely self-regulatory environment.

Subscription TV

The *Broadcasting Act 1989* also requires subscription television broadcasters to be responsible for maintaining specified programme standards in the preparation and presentation of content that subscribers pay a fee to receive as set out in the Pay Television Code of Broadcasting Practice, although subscription television generally enjoys a less restrictive environment than free-to-air television because of the special choice subscribers make in paying to receive broadcasts.

Radio

The *Broadcasting Act 1989* and the Radio Code of Broadcasting Practice requires every radio broadcaster to be responsible for maintaining standards of programming. The Radio Code, approved by the BSA, has been prepared by the Radio Broadcasters' Association (on behalf of commercial broadcasters) and Radio New Zealand. The Code aims to ensure compliance with the law, prevention of misleading or deceptive practices, and social responsibility.

Election Programming

The *Broadcasting Act* and the Codes of Broadcasting Practice apply equally to both radio and television broadcasting of election programming except in one major respect. Election programmes do not need to comply with standards requiring broadcasters to present a range of significant viewpoints on controversial issues of public importance.

Newspapers and other print publications

The Press Council was established in 1972 by newspaper publishers and by the then journalists' union. Its principal objects are to promote free speech and freedom of the press, to maintain the highest professional standards of the New Zealand press and to consider complaints directed at the editorial (not advertising) content of newspapers and other publications. The Press Council may also consider complaints about the conduct of persons and organisations towards the press.

The Press Council's only substantive penalty occurs automatically if it upholds a complaint: that is, the publication must itself publish the "essence" of the Press Council's ruling "giving it fair prominence". Short of this, the Press Council may criticise the behaviour of a publication, and even issue a reprimand, without upholding the complaint. It cannot award damages or costs.

Mobile Content Services

As previously mentioned, mobile content services are regulated separately under the *Telecommunications Act 2001* and in accordance with the TCF. They have a self-regulated Mobile Content Code which is designed to ensure that mobile content services are provided in a socially responsible manner.

Foreign ownership and investment restrictions

What are the restrictions (if any) on cross-media or broadcast market ownership?

In New Zealand there are no specific cross-media restrictions. However, the *Commerce Act 1986* prohibits the acquisition of shares or assets of a business if that acquisition “has, or is likely to have, the effect of substantially lessening competition” in any New Zealand market. The *Commerce Act* applies to acquisitions by foreign persons to the extent they affect a market in New Zealand.

What are the restrictions on foreign entity (person or company) ownership?

In New Zealand there are no specific restrictions on foreign ownership of the media and there is a high level of foreign media ownership.

However, the *Overseas Investment Act 2005* will apply in certain cases (see paragraph (c) below).

What are the restrictions on foreign entity (person or company) investment (and what limits by %, etc exist)?

Overseas investments in New Zealand assets require consent from the Overseas Investment Office (**OIO**), under delegation from the Chief Executive of Land Information New Zealand, if they are defined as sensitive within the *Overseas Investment Act 2005*. This requirement currently applies to overseas investments in sensitive land, significant business assets and interests in fishing quota.

Significant Business Assets

An “overseas investment in significant business assets” includes any of the following by an overseas person:

- (a) The acquisition of rights or interests in securities of a person (A) if:
 - i. as a result the acquisition, the overseas person (or associate) has a 25% or more ownership or controlling interest in A or an increase in an existing 25% or more ownership or controlling interest in A; and
 - ii. the value of the securities or consideration provided, or the value of the assets of A (or A and its 25% or more subsidiaries), exceeds NZ\$100 million.
- (b) The establishment of a business in New Zealand if:
 - i. the business is carried on for more than 90 days in any year (consecutively or in the aggregate); and
 - ii. the total expenditure expected to be incurred, before commencing in business, in establishing that business exceeds NZ\$100 million.
- (c) The acquisition of property (including goodwill and other intangible assets) in New Zealand used in carrying on business in New Zealand if the total value of the consideration provided exceeds NZ\$100 million.

Consent

Each overseas person making an overseas investment must apply to the OIO for consent to the overseas investment transaction. The timeframe to make a decision on a simple application is likely to take between two and three months and significantly longer for a more complex application.

Regulatory Bodies

What are the agency(ies) responsible for administering regulation?

- The BSA
- New Zealand Press Council
- Television Commercial Approvals Bureau (**CAB**)
- Advertising Standards Authority (**ASA**)
- The Association of New Zealand Advertisers (**ANZA**)

- Government ministries:
- Ministry of Culture and Heritage
- Ministry of State Owned Enterprises
- Ministry of Economic Development

Content Regulation

Defamation

Defamation is governed by the *Defamation Act 1992* and the common law which provide for civil liability in defamation for a statement which would tend to lower the plaintiff in the estimation of right-thinking members of society generally. There is no criminal liability for defamation in New Zealand.

A corporation cannot sue for defamation unless the publication has caused or is likely to cause pecuniary loss. There is no statutory cap on the amount of damages that can be awarded. There is however a statutory prohibition against specifying the sum of general damages sought against a media defendant. Defamation claims may be tried by a judge alone or by and judge and jury. As damages are often decided by a jury there is a large variance in awards of general damages. Most awards are relatively modest, but there have been a few examples of quite large awards to prominent plaintiffs.

The principal defences available are truth, honest opinion, and various kinds of absolute and qualified privilege. Note however that:

- the *Polly Peck / Lucas-Box* form of truth defence (in which the defendant may set up and establish the truth of a meaning different from that alleged by the plaintiff) is not available in New Zealand;
- there is authority that the *Reynolds* ("responsible journalism") defence is also not available;
- it has yet to be determined whether a "reportage" (neutral reporting) defence is available; and
- qualified privilege defences will be defeated by proof of malice.

Defamation law in New Zealand is accordingly weighted in favour of plaintiffs rather than publishers, despite the fact that there is a statutory guarantee of freedom of expression. There is however an innocent dissemination defence available for parties (such as internet service providers) who are processors or distributors (rather than publishers) and are unaware that the relevant information is likely to be defamatory (such ignorance not being due to negligence). There is also a defence relating to the publication of the opinions of other parties, if the publisher can prove that the opinion did not purport to be its opinion and it had no reasonable cause to believe that the opinion was not the genuine opinion of the author.

Contempt

The following are examples of conduct which may constitute a contempt of court in New Zealand:

- publication of any comment or material that is intended or likely to prejudice the fair trial or conduct of proceedings;
- publication of comment on pending legal proceedings which purports to prejudge the issues to be tried by the Court, including imputing guilt to, or asserting the innocence of an accused;
- any act done or writing published which is calculated to bring a court or a Judge into contempt, or to lower a Judge's authority, or to interfere with the due course of justice or the lawful process of the Court;
- questioning of jurors after a verdict and publishing any replies which comment on what transpired in the jury room, the manner in which the jury came to its conclusion or the reasons for a particular juror's finding.

The absence of an intention to prejudice pending proceedings is not a defence to an action for contempt. Criticism of a Judge's conduct or of the conduct of a Court, even if strongly worded, is not a contempt provided that the criticism is fair, temperate and made in good faith, and is not directed to the personal character of a Judge or to the impartiality of a Judge or Court.

Anyone who commits a breach of a non-publication order made by a court, or who evades or attempts to evade such an order, commits an offence, and may also be in contempt of court.

Details of Youth Court proceedings are automatically suppressed. There are also limitations around what may be reported with respect to Family Court proceedings in which young persons or “vulnerable persons” are involved. In particular, no “identifying information” may be published.

There is automatic suppression of the identity of an undercover police officer acting as a witness in a case of serious crime, for all victims of sex crimes and for all child witnesses in criminal cases. It is also an offence to publish the fact that any person is a member of the Security Intelligence Service.

Copyright

The key legislation comprising the copyright regime in New Zealand is the *Copyright Act 1994* and the *Copyright (New Technologies) Amendment Act 2008* which protects:

- (a) specified types of copyright works (literary, dramatic, musical or artistic works; sound recordings; films; communication works; and typographical arrangements of published editions);
- (b) moral rights; and
- (c) performers rights.

“Communication work” is the key type of work for present purposes and means a transmission of sounds, visual images, or other information, or a combination of any of those, for reception by members of the public, and includes a broadcast or a cable programme.

Copyright in a communication work expires at the end of the period of 50 years from the end of the calendar year in which the communication work is first communicated to the public. Copyright in a repeated communication work expires at the same time as copyright in the initial communication work expires. The first owner of copyright in a communication work is the person who makes it, which may be a natural person or a body corporate.

It is a primary infringement to copy, issue copies to the public, play or show the work in public, or to communicate the work to the public, in each case other than pursuant to a copyright licence (although there is an exception to infringement for free public playing or showing of a communication work). It is a secondary infringement for a person to import into New Zealand, or to possess or deal with, an object which is an infringing copy of a communication work, knowing or having reason to believe that it is an infringing copy; or to provide an object specifically designed or adapted for making copies of the work knowing or having reason to believe that it will be used to make such infringing copies; or to communicate the work to other persons knowing or having reason to believe that infringing copies will be made by means of the reception of the communication in New Zealand; or by the provision of apparatus for infringing playing or showing of the work in public knowing or having reason to believe that the apparatus was likely to be so used.

The importation into New Zealand of films within 9 months of their international release date is prohibited unless the film is for private or domestic use or the importer is the licensee of the copyright. (This prohibition is set to be repealed in 2013.)

Certain kinds of fair dealing with works for the purpose of reporting current events, research, private study and educational purposes are permitted, as is recording a communication work for the purpose of complaining to a complaint authority, and for some other permitted purposes. The making of personal copies of communication works in order to view or listen to the recording at a more convenient time (i.e. “time-shifting”) is also permitted, provided the recording is not retained for longer than is reasonably necessary to do that.

Immediate retransmission, by means of a cable programme service, of a broadcast made in New Zealand, to an area in which the broadcast was made for reception, is not an infringement, unless the broadcast was a satellite transmission or an encrypted transmission.

There are prohibitions on making or dealing in devices used to circumvent technological protection measures.

The liability of internet service providers (**ISPs**) for copyright infringement by users of the ISP’s services is limited by ‘safe harbour’ provisions. An ISP is not liable in respect of a user’s infringement of copyright merely because that person has used the ISP’s services without more. An ISP does not infringe copyright by storing infringing material provided by a user unless the ISP knows or has reason to believe that the material infringes copyright and does not, as soon as possible after becoming aware of the infringing material, delete the material or prevent access to it. These provisions do not limit the right of the copyright owner to injunctive relief. There are also provisions relating to the caching of material by ISPs.

If a copyright owner provides an ISP with information that identifies an IP address at which an infringement of its copyright is alleged to have occurred as a result of file sharing, the ISP must;

- (a) match the IP address with the account holder to whom it related at the time of the infringement; and
- (b) issue the appropriate infringement notice to the account holder no later than 7 days after receiving the information.

An account holder may challenge an infringement notice by sending a challenge, in the prescribed form, to the IPAP that issued the infringement notice.

A copyright owner may take enforcement action against an account holder who has been issued with an enforcement notice in respect of infringements against the copyright owner by applying to the Copyright Tribunal for an order for payment of an amount of up to \$15,000 by the account holder or to the District Court for an order suspending the account holder's Internet account.

Damages, injunctions, accounts, orders for delivery up, and any other kind of relief available for the infringement of any other property right are available for infringement of copyright; with the exception that a plaintiff is not entitled to damages, but is entitled to an account of profits, where a defendant proves that he did not know and had no reason to believe that copyright existed in the relevant work. Additional damages may be awarded in respect of flagrant infringements.

Sedition

Sedition is no longer a criminal offence in New Zealand.

Misleading advertising

Fair Trading Act 1986

The *Fair Trading Act* (the **Act**) provides that no person shall, in trade, engage in conduct that is misleading or deceptive, or is likely to mislead or deceive.

There is no statutory definition of what constitutes misleading or deceptive conduct, but it has been said that conduct is misleading or deceptive if it causes people to form a mistaken belief or impression. The intention of a person or entity who engages in misleading or deceptive conduct is usually irrelevant. In some cases the non-disclosure of information important to a consumer's decision making process may amount to misleading or deceptive conduct. However, mere "puffery" or obvious exaggerations that are unlikely to mislead anyone will not breach the Act.

The court has the discretion to provide a variety of remedies under the Act, including awarding damages, altering a contract, granting an injunction and ordering that corrective statements be published.

The Advertising Standards Authority Codes

The Advertising Standards Authority (**ASA**) is a nongovernmental organisation funded by the advertising and media industries. Its primary function is to self-regulate advertising in New Zealand.

The ASA has developed Codes of Practice that provide rules with which all advertisements should comply. The ASA also has an overarching Code of Ethics which provides (for example) that advertisements should not contain any statement or visual presentation or create an overall impression which is directly or indirectly misleading or deceptive. Members of the public and competitors may complain to the ASA about advertisements they believe breach one or more of the Codes.

Restricted product advertising

Restrictions on product advertising are largely imposed through self regulation of the advertising industry and enforced by the Advertising Standards Authority. In addition, further regulation of particular media industries is carried out by various industry-specific bodies and restrictions on the advertisement of particular goods and services are imposed through various statutes.

The Advertising Standards Authority

Although ASA membership is voluntary and the ASA has no statutory power, the ASA's members are bound by the decisions of the Authority and the industry generally accepts and complies with the ASA guidelines and the Complaints Board's decisions.

The self-regulatory regime includes pre-vetting systems operated by the Association of New Zealand Advertisers in relation to advertising of alcohol and of therapeutic products. Under this system the proposed advertisement is assessed against Code and regulatory standards prior to broadcast. A similar system is planned for food health claims. Part of the Association's involvement in self-regulation is to advise advertisers on whether a particular advertisement is in breach of the Codes. In particular the Advertising Standards Authority Codes will likely impact what broadcasters are prepared to broadcast and include guidelines regarding the promotion of liquor.

The *Broadcasting Act 1989* and the Broadcasting Standards Authority

The *Broadcasting Act 1989* regulates television and radio generally. The Act's main enforcement mechanism is through the complaints procedure where complaints are first made to the broadcaster concerned, with the BSA open to dissatisfied complainants for further appeal.

However, in respect of advertising, the BSA is only responsible for political party and Parliamentary candidate advertising. All other advertising is within the jurisdiction of the Advertising Standards Authority and subject to the Codes described in section 2.6(a) above.

Further, the *Broadcasting Act 1989* prohibits television advertising between 6am and 12 noon on a Sunday or Anzac Day, or any television or radio advertising on Good Friday, Easter Sunday and Christmas Day.

The Press Council

Like the Advertising Standards Authority, the Press Council is not governed by a legal framework but instead is a self-regulating body made up of print news industry members. The Council regulates the print news industry through a set of guiding principles.

Statutory Restrictions on Product Advertising

Various statutes regulate the advertisement of particular goods and services. Statutes restricting product advertising include the following:

- *Food Act 1981*
- *Human Tissue Act 2008*
- *Smoke-free Environments Act 1990*
- *Securities Act 1978*
- *Local Government Act 2002*
- *Adoption Act 1955*
- *Prostitution Reform Act 2003*
- *Gambling Act 2003*
- *Human Rights Act 1993*
- *Bill of Rights Act 1990*
- *Medicines Act 1981*
- *Medicines Regulations 1984*
- *Food Hygiene Regulations 1974*
- *Dietary Supplement Regulations 1985*
- *Fair Trading Act 1986*
- *Major Events Management Act 2007*

Additionally, pursuant to the *Unsolicited Electronic Messages Act 2007*, unsolicited electronic messages for commercial purposes must not be sent and commercial messages must include accurate sender detail and a free, functional unsubscribe system. Furthermore the Act imposes restrictions on address harvesting and the use of harvested address lists.

Application of (a) – (d) above in relation to particular media channels

The ASA and associated Codes of Practice apply to all media channels.

The *Broadcasting Standards Act 1989* and the BSA apply in relation to free-to-air television, subscription television and radio.

The Press Council and associated regulation apply in relation to newspapers and other print publications (e.g. magazines).

The statutory restrictions outlined above apply, in respect of the particular products and/or services that each contemplates, to all media channels.

Classification of Publications

Films, Videos, and Publications Classification Act 1993

In New Zealand censorship is chiefly carried out pursuant to the Films, Videos, and Publications Classification Act 1993. This Act applies to films, video recordings, books, and other publications. In addition to traditional forms of publications, the Act also applies to games, images, print and videos viewed on the internet as such files, when accessed on the internet, are usually copied by computers and stored in their hard drives. Classification pursuant to the Act is administered by the Office of Film and Literature Classification.

That Act requires that all **films** supplied to the public in New Zealand must be submitted to the Labelling Body, a sub-committee of the Office of Film and Literature Classification.

Publications other than films do not have to be labeled before being released to the public, but suppliers are responsible for ensuring that all material is supplied to the public appropriately and such supply may also be regulated by an industry-specific body such as the BSA or Press Council

After examining a film or other publication, the Office of Film and Literature Classification must classify the publication as objectionable, restricted, or unrestricted.

A publication is **objectionable** if it deals with matters such as sex, horror, crime, cruelty, or violence in a manner that would make the availability of the publication injurious to the public good.

A **restricted** publication is one which is objectionable unless its availability is restricted. A publication may be restricted in relation to age, classes of persons, or specified purposes. The restriction may also be in relation to use, for example, educational or scientific purposes.

Breaking the restrictions attached to the classification rules is an offence.

Offences under other Statutes

The distribution of any indecent object without lawful justification or excuse is a crime pursuant to section 124 of the *Crimes Act 1961*. Section 124 of the *Crimes Act 1961* prohibits the exhibition or presentation of an indecent show or performance in the presence of any person, in consideration or expectation of payment or other gain. Such an action is a criminal offence if it is done without lawful justification or excuse.

Pursuant to the *Human Rights Act 1993* it is unlawful to publish, broadcast, or otherwise disseminate to the public, matter or words likely to incite hostility against, or bring into contempt, any group of persons who are in, or who may be coming to New Zealand on the grounds of colour, race, or ethnic or national origins of that group of persons. It is also an offence under this Act to incite racial disharmony by publishing written matter which is threatening, abusive, or insulting and is an offence to incite racial disharmony by broadcasting words by radio or television, or by speaking words in public, which are threatening, abusive, or insulting.

The *Customs and Excise Act 1996* deems it unlawful to import into New Zealand any objectionable publication. The importation of all other indecent or obscene articles is also prohibited. The words “indecent” and “obscene” are to be construed in their ordinary and popular meaning.

The Broadcasting Standards Authority:

In addition to the *Films, Videos, and Publications Classification Act 1993* and the statutory offences mentioned above, the Broadcasting Standards Authority also enforces programme classification through the Codes of Broadcasting practice (as described above in paragraph 2.6(b)) in relation to television and radio.

Free-to-air TV Code: Broadcasters are responsible for ensuring that programmes they air have been appropriately classified by the Office of Film and Literature Classification, and that they adequately display programme classification information and adhere to the following guidelines:

- **“G – General:** Programmes which exclude material likely to be unsuitable for children. Programmes may not necessarily be designed for child viewers but must not contain material likely to alarm or distress them. (G programmes may be screened at any time.)
- **GR – Parental Guidance Recommended:** Programmes containing material more suited for mature audiences but not necessarily unsuitable for child viewers when subject to the guidance of a parent or an adult. (PGR programmes may be screened between 9am and 4pm, and after 7pm until 6am.)
- **AO – Adults Only:** Programmes containing adult themes and directed primarily at mature audiences. (AO programmes may be screened between midday and 3pm on weekdays (except during school and public holidays as designated by the Ministry of Education) and after 8.30pm until 5am.)
- **AO 9.30pm – Adults Only 9.30pm - 5am:** Programmes containing stronger material or special elements which fall outside the AO classification. These programmes may contain a greater degree of sexual activity, potentially offensive language, realistic violence, sexual violence, or horrific encounters.
- **Unclassified Programming:** *News and Current affairs are not subject to censorship or the strictures of the classification system, but producers are required to be mindful that young people may be among viewers and should give consideration to including warnings where appropriate.* Sports and Live Programming cannot be classified due to the ‘live’ nature of the broadcast, still the broadcaster must take all reasonable steps to ensure that the content of the programme conforms with the underlying time band in which the programme is broadcast.

Pay TV Code: The following classifications apply to all pay TV broadcast content (except for news and current affairs and live content):

- **G:** Approved for General viewing
- **PG:** Parental Guidance recommended for young viewers
- **M:** Suitable for Mature audiences 16 years and over
- **16:** People under 16 years should not view
- **18:** People under 18 years should not view

Further, visual warning labels should be broadcast immediately prior to content which is likely to distress or offend a substantial number of viewers, particularly where it is likely that viewers would not anticipate this effect due to the context or the nature of the content.

Visual warning labels will include the following classifications:

- **C:** Content may offend
- **L:** Language may offend
- **V:** Contains violence
- **VL:** Violence and language may offend
- **S:** Sexual content may offend

Verbal warnings should also be used when content is particularly likely to distress or offend a substantial number of viewers. When used, verbal warnings should screen at the start of the programme, with accompanying text if necessary.

Compliance with the appropriate time-bands is not necessary if a filtering technology is automatically available to subscribers free of charge, and regularly promoted by the broadcaster for subscriber use.

News, current affairs and live content is not, because of its distinct nature, subject to classification. However broadcasters must be mindful of children's interests and other broadcasting standards and include warnings where appropriate.

The Application of (a) – (c) above in relation to specific media channels:

The **Films, Videos and Publications Classification Act 1993** and associated Office of Film and Literature Classification apply in relation to any written, recorded or stored information or image. Since it first opened, the Office has classified many types of publications including Films, Videos, DVDs, CD-ROMs, Books, Magazines, Posters, Music recordings, Computer discs, Video games, Screen-printed t-shirts, Jigsaws, Playing cards, Billboards, Paintings, Photographs, Weekly newspapers and Computer files in a variety of formats. Therefore the classification system will apply, in the manner described above, to any of these publications whether published by way of any media channel.

The *Crimes Act 1961*, *Human Rights Act 1993*, and *Customs and Excise Act 1996* will apply to all publications whether published using any media channel.

The *Broadcasting Standards Act 1989* and the BSA apply in relation to free-to-air television, subscription television and radio.

Other restricted speech

General application of media content laws

Generally speaking, the media is required to comply with the laws of New Zealand. However, certain statutory provisions provide the media with exemptions from the general position.

Privacy Act 1993

The *Privacy Act 1993* provides requirements in relation to obtaining and dealing with personal information.

"Personal information" is widely defined as information about an identifiable individual. In order for the Act to apply, the information must be collected, held, or used by an "agency". However, the definition of "agency" in the *Privacy Act* expressly excludes any news medium in relation to its news activities. A "news medium" is further defined as any agency whose business, or part of whose business, consists of a news activity, but in relation to certain principles in the Act, does not include Radio New Zealand Limited or Television New Zealand Limited. "News activity" means the gathering of news or current affairs for the purpose of dissemination to the public, and the dissemination of that news or current affairs. Accordingly, the media are not constrained by the restrictions in the *Privacy Act* which relate to the manner of collection of personal information, the source of that information and the uses to which that information may be put.

The Law Commission has, however, recently undertaken a comprehensive review of the law of privacy in New Zealand. The review is set to proceed in stages, with reports being made at each stage. In stage one of the project, the Law Commission undertook a high level policy overview to assess privacy law. While the report did not contain substantive recommendations for law change, it noted that privacy law as it currently affects the media is "piecemeal and strangely incomplete". It is not yet known with any degree of certainty what (if any) changes will be made to the application of the *Privacy Act* with respect to the media.

Fair Trading Act

The *Fair Trading Act* also provides an exemption for the media. Section 15 states that sections 9 to 14 of the Act have only limited effect for the news media. The prohibitions against misleading or deceptive statements or statements which are likely to mislead or deceive the public apply only to the publication or broadcasting of advertisements or information relating to the supply or possible supply, or the promotion of the supply or use of goods or services, or the sale or grant or the possible sale or grant or the promotion of the sale or grant of an interest in land and promotion of land. As such, the media cannot be sued or prosecuted under sections 9 to 14 of the Act in respect of misinformation or misleading or deceptive representations in news items and features.

ISP liability for third party content

An internet service provider (**ISP**) is exposed to potential liability in a number of respects, most relevantly including:

- (a) Defamation (see section 2.1); but note that an innocent dissemination defence is available to an ISP when acting as a processor or distributor and unaware that the relevant information is likely to be defamatory, such ignorance not being due to negligence. An ISP which publishes opinions of others will have a defence to a defamation claim if it can prove that the opinion did not purport to be its own opinion, and it had no reasonable cause to believe that the opinion was not the genuine opinion of the author.
- (b) Copyright infringement (see section 2.3, and in particular the “safe harbour” provisions for ISPs).
- (c) Illegal content, e.g. pornography (see section 2.7); inciting racial disharmony (under the Human Rights Act); contempt of Court (eg breach of suppression orders; publications in relation to *sub judice* matters which are intended or likely to prejudice a fair trial; publications calculated to bring the Court into contempt). An ISP may technically be guilty of offences or otherwise liable in relation to such content but is unlikely in practice to be prosecuted in relation to material posted by users if it has no knowledge of the breach and co-operates promptly with any request from the authorities to remove such material.
- (d) Breach of privacy (see section 2.8(a)).

Incitement

It is an offence to incite, counsel or procure an offence.

Blasphemy

The publication of any blasphemous libel is an offence punishable by imprisonment, however:

- (a) no one may be prosecuted for this offence without leave of the Attorney General; and
- (b) it is not an offence to express in good faith and in decent language, or to attempt to establish by arguments used in good faith and conveyed in decent language, any opinion whatever on any religious subject.

Inciting racial disharmony

It is an offence to publish or broadcast statements which are threatening, abusive or insulting, those statements being intended and likely to incite hostility or ill will against, or bring into contempt or ridicule, any group of persons in New Zealand on the ground of the colour, race or ethnic or national origins of that group of persons.

There is a similar provision imposing civil liability, which does not have the same requirement of intentionality, breach of which can form the basis of a complaint to the Human Rights Review Tribunal.

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Philippines

Country	Philippines	
Media Regulatory Authority	National Telecommunications Commission (NTC): allocation of licences Movie and Television Review and Classification Board (MTRCB): regulation of content.	
Foreign investment controls or restrictions	Yes - Foreign ownership of any 'mass media' entity in the Philippines is prohibited under Article XVI of the 1987 Constitution. Foreign ownership of an entity engaging in advertising is limited to 30%, while foreign ownership in public utilities, including telecommunications, is limited to 40%.	
Cross-media ownership controls or restrictions to protect competition in the local media sector	Yes - Philippine Congress can prohibit monopolies of ownership under Article XVI of the Constitution <i>Republic Act No. 7925</i> prescribes that no single franchise shall authorize an entity to engage in both telecommunications and broadcasting.	
Forms of media that may be supplied without a government licence	Content distributed over the Internet	
	Free content distributed over mobile	
	Written publications	
Forms of media that may only be supplied under a government licence	Free to air TV; Cable TV; Radio; and content distributed as a Value Added Service	
Primary legislation	<i>1987 Constitution of the Philippines (Article XVI)</i>	Cross-media / foreign ownership
	<i>Regulatory Law of Broadcasting Companies; NTC Regulations</i>	Licencing
	<i>Revised Penal Code</i>	Defamation
	<i>Presidential Decree 1986 (MTRCB)</i>	Classification and Content
	<i>Intellectual Property Code of the Philippines (Republic Act no.8293)</i>	Copyright
	<i>The Anti-Photo and Video Voyeurism Act of 2009 (Republic Act. No. 9995); Anti-Child Pornography Act of 2009 (Republic Act. No. 9775); Anti-Trafficking in Persons Act of 2003 (Republic Act. No. 9208)The Consumer Act of the Philippines (Republic Act no. 7394)</i>	Content Restrictions
	<i>The Consumer Act of the Philippines (Republic Act no. 7394); Securities Regulation Code (Republic Act No. 8799) Presidential Decree 1986</i>	Misleading Advertising, Classification and Content
	<i>Tobacco Regulation Act of 2003</i>	Restricted Product Advertising

Local Media Regulation

Licences

What licenses are required?

Licences for broadcasting services (Free-to-air TV, Subscription TV)

The *Regulatory Law of Broadcasting Companies* (Act No. 3846 amended by *Commonwealth Acts* Nos. 365 and 571, and Republic Act No. 584) states that to operate a broadcasting station, a company or individual must first obtain a franchise from the Philippines Congress. A franchise is a special law passed by the Philippine Congress specifically authorizing an entity to engage in broadcasting services.

In addition, *Memorandum Circular No. 7-3-93* provides that a broadcasting company that has obtained a franchise must thereafter secure a "Certificate of Public Convenience" from the National Telecommunications Commission (**NTC**). The NTC is a government agency with the power to administer and enforce all laws, rules and regulations in the field of communications. It is under the administrative supervision of the Commission on Information and Communications Technology (**CICT**).

Cable TV

A company or individual must first obtain a franchise from the Philippines Congress to establish and operate as a cable television company.

In addition to the franchise, *Executive Order No. 205* – which governs the regulation of cable antenna television (**CATV**) in the Philippines – provides that cable television operators must obtain from the NTC a "Certificate of Authority", which authorizes them to operate for not more than fifteen years, and which can be renewed for a similar period.

Under the Order, the President of the Philippines may use or possess, without compensation, any grantee's CATV system in times of war, rebellion, public peril or national emergency.

Under *Executive Order No. 436*, the operation of cable television systems shall be maintained separate and distinct from telecommunications or broadcast television.

Radio

No radio broadcasting station shall be established or operated without first securing a legislative franchise and a certificate of public convenience from the NTC.

These authorizations are granted provided that the applicant fulfils specified technical, legal and financial requirements.

Newspapers and other print publications

Though there is no formal requirement for the registration of print media, *Act No. 2580* requires the publication and recording in the Bureau of Posts of the names and post office addresses of editors, publishers, managers, owners and stockholders of newspapers in a sworn statement. Failure to comply with this requirement may result in a denial of mail privileges to the offending publication.

Republic Act No. 8047 likewise requires all persons and entities involved in book publishing to register with the National Book Development Board (**NBDB**), created under the Republic Act. Section 10 empowers the Department of Education to consult the NBDB in the making of the rules and regulations needed in the preparation of books required by the country's public, elementary and high schools.

Online content

There is currently no specific license required for distributing content online.

However, the service of providing internet connection to subscribers is considered a Value-Added Service ("**VAS**"), as provided for under Republic Act No. 7925 or the *Public Telecommunications Policy Act of the Philippines*. Thus, Internet Service Providers (**ISPs**) are considered telecommunications entities, and are subject to licensing requirements of the NTC. Note that except for VAS providers who do not put up their own networks, a franchise is required before any telecommunications entity can be authorized to operate by the NTC.

Mobile

In Memorandum Circular No. 03-03-2005a, the NTC has mandated all content providers, which is defined as an entity/organization that creates and/or maintains a database of information/data and which may offer services and products to the public for compensation, to register with the NTC.

What content obligations/conditions are placed on licensees?

Media content control measures are laid out in several Philippine laws.

Under the Republic Act No. 9006 or the *Fair Election Act*, candidates for political office shall have equal access to media time and space for political advertisements during the campaign period. No radio, television, or cable television station shall allow the scheduling of any program or permit any sponsor to manifestly favor or oppose any candidate or political party.

Under Republic Act No. 9775 or the *Anti-Child Pornography Act of 2009*, internet service providers (**ISPs**) are given specific duties in relation to child pornography accessed through the Internet. The law requires ISPs to report any such infraction to the NBI within seven (7) days from notice of any form of child pornography is being committed using its server or facility, and preserve evidence for investigation.

For television broadcast licensees, the following are the applicable regulations:

- (i) **Free-to-air TV:** Under the *Children's Television Act (Republic Act No. 8370)*, a minimum of fifteen (15) percent of the daily total air time of each broadcasting network shall be allotted for child-friendly shows within the regular programming of all networks granted franchises or as a condition for renewal of broadcast licenses.
Presidential Decree No. 576-A provides that every radio station or television channel shall allocate at least two hours a day to a program or programs rendering public service, during such broadcast hours as are normally regarded in the industry as prime time for a particular type of program and its appropriate audience. Public service refers to news, educational, and cultural presentations.
- (ii) **Cable TV:** *NTC Memorandum Circular No. 04-08-88* provides that cable television operators operating in a community which is within the field intensity contours of an authorized television broadcast station must carry the signals of the station.
- (iii) **Subscription TV:** Subscription TV is regulated on the same basis as CATV.
- (iv) **Radio:** Under *Executive Order No. 255*, all radio stations are required to broadcast a minimum of four (4) original Filipino musical compositions in every clock-hour of a program with a musical format. Failure to comply will subject the violator to a fine or, in case of repeated violations, suspension or cancellation of the Certificate of Registration and Authority to operate as a radio station.
- (v) **Other:** Direct-To-Home TV is regulated on the same basis as CATV.

Foreign ownership and investment restrictions

What are the restrictions (if any) on cross-media or broadcast market ownership?

Article XVI of the *Philippine Constitution* empowers the Philippine Congress to regulate or prohibit monopolies in commercial mass media when the public interest so requires.

Republic Act No. 7925 otherwise known as the *Public Telecommunications Act* prescribes that no single franchise shall authorize an entity to engage in both telecommunications and broadcasting.

Under *Executive Order No. 436*, the operation of cable television systems shall be maintained separate and distinct from telecommunications or broadcast television.

What are the restrictions on foreign entity (person or company) ownership?

Foreign ownership of any mass media in the Philippines is prohibited under Article XVI of the *1987 Constitution*, which limits media ownership to citizens of the Philippines, or to corporations, cooperatives or associations wholly owned and managed by such citizens.

Though the term of “mass media” is not specifically defined in the law, it is understood to refer to “any medium of communication, a newspaper, radio, motion pictures, television, designed to reach the masses and that tends to set standards, ideals and aims of the masses” (DOJ Opinion No. 24, Series of 1986)

Also, in its Opinion No. 95 (s. 1999), the Department of Justice held that cable television is a form of mass media. Accordingly, it must be owned and managed by Filipino citizens, or corporations.

What are the restrictions on foreign entity (person or company) investment (and what limits by %, etc exist)?

Article XVI of the *1987 Philippine Constitution* does not allow foreign entity to engage in the ownership and management of mass media.

The same provision however allows only up to 30% foreign equity in entities engaging in advertising.

For telecommunications companies, the *1987 Philippine Constitution* allows up to 40% foreign equity ownership, by reason that a telecommunication company is considered a public utility.

For online and mobile content, current NTC regulations require VAS providers to be at least 60 percent Filipino-owned, although there is contrary legal opinion from the Department of Justice (Opinion No. 002, Series of 2009) challenging this position.

What are the restrictions on foreign entity (person or company) entering a content supply agreement in Philippines with a local organisation?

There are no foreign equity ownership restrictions in entities entering into content supply agreements in the Philippines.

However, under the Implementing Rules and Regulations Governing CATV and Direct Broadcast Satellite (**DBS**) Services to Promote Competition in the Sector (*NTC MC No. 10-10-2003*), exclusive contracts between CATV and DBS operators and program/content providers and/or any behavior that is tantamount to exclusivity, including but not limited to discrimination in the supply of programs or content, are presumed to be anti-competitive and contrary to sound public policy, and therefore prohibited. However, the NTC may, upon petition and hearing, permit entry into an exclusive contract if it is shown that it is not anti-competitive, violative of sound public policy, or that such exclusive agreement serves the public interest.

Regulatory bodies

What are the agency(ies) responsible for administering regulation?

Licences for broadcasting services (Free-to-air TV, Cable TV, Subscription TV, Radio, film)

The NTC, is responsible for supervising, adjudicating and controlling all telecommunications services throughout the Philippines. However, its powers are limited only to the allocation of radio and TV frequencies and do not extend to supervision over content.

Content Classification

The authority responsible for implementing legal and official government regulation of television content is the Movie and Television Review and Classification Board (**MTRCB**) and the Appeals Committee in the Office of the President.

The MTRCB acts directly beneath the Office of the President of the Philippines, and is also empowered to regulate permits for the importation, export, production, distribution, sale, lease, or exhibition of all publicity materials for motion pictures and television programmes. There is an avenue of appeal to an Appeals Committee, which submits its recommendation to the President of the Philippines. The decision of the President on appeal is final. The MTRCB therefore acts as a censorship board.

In terms of self-regulation, the Kapisanan ng mga Brodkaster ng Pilipinas (**KBP**) is the self-regulatory board for broadcast media. It is the primary trade organisation in broadcasting as well as the regulatory body for the industry.

The KBP administers a Standards Authority that enforces standards in programming, advertising and trade practices through its *Radio and Television Codes*. The Radio and Television Codes prescribe the standards for programming to be followed by the members, the implementing rules and regulations and the corresponding

penalties for their violation. The members of the Standards Authority are appointed from the broadcast industry academia (usually from the University of the Philippines) and the advertising industry by the KBP board of directors (comprised of persons from the broadcast industry).

The Standards Authority is responsible for overseeing investigations, hearings and adjudications in cases involving violations of the *Radio and Television Codes*, and imposes penalties that can include suspension or permanent disqualification from KBP membership, and fines. However, because the penalties and fines enforced to date have been minimal, violations of the *Radio and Television Codes* by radio and television stations continue.

Other

The *Optical Media Act*, enacted in 2003, created the Optical Media Board (**OMB**). The OMB acts as the principal licensing and regulatory body for activities related to optical (ie digital storage media such as CDs and DVDs), as well as magnetic media. Their regulatory powers include the power to issue licences for the importation, exportation, acquisition, sale or distribution, and possession or operation of manufacturing materials used or intended for use in the mastering, manufacture or replication of optical media.

Content Regulation

Content Classification

Free-to-air TV, Cable TV, Subscription TV and Film

Presidential Decree 1986 empowers the MTRCB to act as the regulatory board for television broadcasting and film exhibitions.

Under the Rules and Regulations implementing *Presidential Decree 1986*, television programmes are to be classified as, “general patronage” (**G**), “parental guidance” (**PG**), and “not for public viewing” (**X**).

G programs must not contain anything unsuitable for children and minors, and may be viewed without adult guidance or supervision.

PG programs may contain adult material which are permissible for children to watch under the guidance and supervision of a parent or adult. An advisory to the effect that the program requires Parental Guidance and the reason for such a classification (e.g. language, violence, etc.) must be shown immediately before the opening credits of the particular television material classified as PG. Also, the phrase “Parental Guidance” shall be superimposed throughout the showing of such television material.

X programs cover any television program or motion picture that does not conform to the G and PG classification and shall be disapproved for television airing. Trailers and publicity/promotional materials for movies and television that do not fall within the G classification cannot be aired on television. A motion picture rated R-18 or R-13 is automatically disqualified from airing on television unless it has been made to fit into the G or PG classification.

In 2011, an additional classification of “strong parental guidance” SPG was imposed by way of Memorandum Circular 12-2011. The “SPG” rating is for shows “which may not be advisable for children to watch except under the very vigilant guidance and presence of a parent or adult.”

Defamation

Under Philippine law, libel is defined under Article 353 of the Revised Penal code as a public and malicious imputation of a crime or a vice or defect (real or imaginary), or any act, omission, condition, status or circumstance tending to cause the dishonour, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.

Libel is a criminal offence that carries imprisonment upon conviction under the Revised Penal Code (Articles 353 to 362). Prison terms range from one day to six years, in addition to the imposition of fines.

Further, under Article 354, every defamatory imputation is presumed to be malicious, even if it be true, except when it is made in a private communication to another person undertaking a legal, moral, or social duty; and when it is in a report on any judicial, legislative or other official proceedings or any act performed by public officers in the exercise of their functions.

Contempt

Under the *sub judice* rule, publication of criticisms, comments, disclosures or any material pertaining to judicial proceedings which are obviously malicious or evidently designed to influence the outcome of a case or pressure the court into acting one way or the other in any case pending before it may constitute contempt of court.

Copyright

Copyright law in the Philippines is principally covered by Republic Act No. 8293 or The *Intellectual Property Code of the Philippines (IP Code)*. This law is partly the result of an amalgamation of United States copyright law and the principles of the Berne Convention for the Protection of Literary and Artistic Works, and which also protects patents, trademarks, and other forms of intellectual property.

Other laws that protect copyrights in the Philippines include Republic Act No. 9239 or the *Optical Media Act of 2003*, which regulates the mastering, manufacture, replication, importation or exportation of optical and magnetic media, which may contain copyrighted music, movies, computer programs, and video games, and the Consumer Protection Act, which prohibits the counterfeiting of products or the sale of counterfeit products.

Republic Act No. 8792 or the *Electronic Commerce Act* deals specifically with piracy, which it defines as the unauthorized copying, reproduction, dissemination, distribution, importation, use, removal, alteration, substitution, modification, storage, uploading, downloading, communication, making available to the public, or broadcasting of protected material, electronic signature or copyrighted works including legally protected sound recordings or phonograms or information material on protected works, through the use of telecommunication networks, such as, but not limited to, the internet, in a manner that infringes intellectual property rights. Under the law, piracy shall be punished by a minimum fine of One Hundred Thousand pesos (P 100,000.00) and a maximum commensurate to the damage incurred and a mandatory imprisonment of six (6) months to three (3) years.

Philippine copyright law is enforced principally through the Intellectual Property Office (**IPO**), and its various branches, although civil and criminal remedies are also available. Copyright law is also implemented through the coordination of the IPO with the Copyright Division of the National Library of the Philippines.

It must be noted that under the IP Code, copyright protection is automatically granted to the copyright owner for creative works which fit into one of the 17 categories listed under the *Intellectual Property Code*. Moral rights are protected under Chapter 10 of the *Intellectual Property Code*. In the Philippines, the term of moral rights, unless they were waived, is the same as the term of copyright of a literary work (that is, lifetime plus 50 years).

Sedition

Under the *Revised Penal Code (Act No. 3815)*, sedition is committed by persons who seek to bring about the following objects:

- (a) to prevent the promulgation or execution of any law or the holding of any election;
- (b) to prevent the national government or any provincial or municipal government, or any public officer from freely exercising their functions;
- (c) to inflict any act of hate or revenge upon the person or property of any public officer or employee;
- (d) to commit, for any political or social end, any act of hate or revenge against private persons or any social class; and
- (e) to despoil, for any political or social end, any person, municipality or province, or the national government of all of its property or any part thereof.

Under the Code, a person will have incited sedition if they:

- (i) incite others to accomplish any act constituting sedition by means of writing; or
- (iii) write scurrilous libels against the government which tend to disturb the public peace.

On a related topic, the Philippines also has an important law which protects journalists from being forced to reveal their sources unless demanded by the security of the state (*Republic Act 53*). Section 1 of the *Republic Act 53* states that no one from a newspaper, magazine or periodical of general circulation can be compelled to reveal the source of any information or news report appearing in said publication unless the court or a house or committee of congress finds that such revelation is demanded by the security of the state.

Photo and Video Voyeurism

Republic Act. No. 9995 or *The Anti-Photo and Video Voyeurism Act of 2009* prohibits photo or video voyeurism. Under this law, the following acts are expressly prohibited:

- (a) To take photo or video coverage of a person or group of persons performing sexual act or any similar activity or to capture an image of the private area of a person/s such as the naked or undergarment clad genitals, pubic area, buttocks or female breast without the consent of the person/s involved and under circumstances in which the person/s has/have a reasonable expectation of privacy;
- (b) To copy or reproduce, or to cause to be copied or reproduced, such photo or video or recording of sexual act or any similar activity with or without consideration;
- (c) To sell or distribute, or cause to be sold or distributed, such photo or video or recording of sexual act, whether it be the original, copy or reproduction thereof; or
- (d) To publish or broadcast, or cause to be published or broadcast, whether in print or broadcast media, or show or exhibit the photo or video coverage or recordings of such sexual act or any similar activity through VCD/DVD, internet, cellular phones and other similar means or device.

Under this law, photo and video voyeurism is a criminal offense. Further, it provides that if the violator is a juridical person, its license or franchise shall be automatically be deemed revoked and the persons liable shall be the officers thereof including the editor and reporter in the case of print media, and the station manager, editor and broadcaster in the case of a broadcast media. Further, if the offender is a public officer or employee, or a professional, he/she shall be administratively liable. If the offender is an alien, he/she shall be subject to deportation proceedings after serving his/her sentence and payment of fines.

Child Pornography

Republic Act. No. 9775 or the *Anti-Child Pornography Act of 2009* provides for specific provisions regulating of online content relating to child pornography. It expressly prohibits any person to publish, offer, transmit, sell, distribute, broadcast, advertise, promote, export or import any form of child pornography.

The law further provides that an internet content host who shall knowingly, willfully and intentionally violate this provision shall be criminally liable.

Trafficking in Persons

Republic Act. No. 9208 or the *Anti-Trafficking in Persons Act of 2003* also provides for specific provisions regulating online content relating to trafficking in persons. Under the said law, the following act, among others, promotes or facilitates trafficking in persons, and is a criminal offense:

- (a) *To advertise, publish, print, broadcast or distribute, or cause the advertisement, publication, printing broadcasting or distribution by any means, including the use of information technology and the internet, of any brochure, flyer, or any propaganda material that promotes trafficking in persons;*

Misleading advertising

Republic Act No. 7394 or *The Consumer Act of the Philippines* protects consumers against deceptive sales acts and false representations in advertisements, and provides for criminal liability against offenders.

Related to this is misleading advertising in relation to securities as provided under Republic Act No. 8799 or the *Securities Regulation Code*. The implementing rules of the said law provides that disseminating false or misleading market information through media, including the internet, or any other means to move the price of a security in a direction that is favourable to a position held or a transaction, is considered a manipulative practice, and is prohibited.

Also, the advertising industry has a self-regulatory authority called the Advertising Standards Council (**ASC**). The ASC is an umbrella industry-based group which formulates and enforces advertising standards for both print and broadcast media. Under the Standards of Advertising of the, advertisements must be honest, truthful and accurate, not deceptive or misleading and created for the benefit of the consumer and general public.

Restricted product advertising

Republic Act No. 9211 or *The Tobacco Regulation Act of 2003* prohibits tobacco advertising on the internet, and other similar mediums, unless the Internet site is restricted to person eighteen (18) years of age or older. The statute provides that a site will be deemed restricted if a person cannot obtain access beyond the first page of the website unless the person has established that he or she is at least eighteen (18) years old. Further, it provided that such limitation applies to commercial communications and shall not prevent the use of company Internet websites to provide information regarding a company, its products and smoking and health related information.

Further, by way of self-regulation the ASC Standards of Advertising provide that:

- No pharmaceutical product may be advertised unless duly registered with the Food and Drugs Administration. Only non-prescription drugs may be advertised in the mass media; prescription drugs can only be advertised through publications solely intended for the medical and allied professions.
- Advertisements of alcoholic beverages shall not be aimed at or directed to minors as the target audience. People shown in advertisements of alcoholic beverages must be 21 years old and must look adult. The advertisements should prominently carry the advice "DRINK MODERATELY".
- No direct or indirect advertising or marketing of cigarettes or tobacco products is allowed. Advertising materials shall only be at the Point of Sale/Purchase and in accordance with law.
- Advertisement of gambling and other games of chance is not allowed, except those forms authorized by law, and in such case shall only be in the form of corporate advertising.

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Singapore

Country	Singapore	
Media Regulatory Authority	The Media Development Authority (MDA)	
Foreign investment controls or restrictions	Yes – Prior approval of the MDA must be sought.	
Cross-media ownership controls or restrictions to protect competition in the local media sector	Yes – Refer to the Media Development Authority of Singapore Act ss 20 to 23. See also the Code of Practice for Market Conduct in the Provision of Mass Media Services.	
Forms of media that may be supplied without a government licence	None	
Forms of media that may be supplied under a class licence	Audiotext, Videotext, Teletext, Broadcast data, VAN Computer Online Services, Computer Online Services provided by Internet Content Providers and Internet Service Providers.	
Forms of media that may only be supplied if an individual licence is obtained	All other forms of media – e.g. Free-to-air TV, Subscription TV, Radio.	
Primary legislation	<i>Broadcasting Act</i>	Regulates licensing of broadcasting services and apparatus
	<i>Media Development Authority of Singapore Act</i>	Establishes the MDA
	<i>Broadcasting (Class Licence) Notification</i>	Establishes a Class Licensing Scheme
	<i>Defamation Act</i>	Defamation
	<i>Copyright Act</i>	Copyright
	<i>Sedition Act</i>	Sedition
	<i>Consumer Protection (Fair Trading) Act</i>	Consumer Protection
	<i>Newspapers and Printing Presses Act</i>	Regulates licensing of newspaper companies

Local Media Regulation

Licences

What licences are required?

Broadcasting services (Free-to-air TV, Cable TV, Subscription TV, Radio)

Under the *Broadcasting Act* (Cap. 28), no person shall provide any licensable broadcasting service in or from Singapore without a broadcasting licence granted by the Media Development Authority (**MDA**). A list of these services is set out in the Second Schedule, and includes free-to-air and subscription TV and radio services.

The MDA has the power to determine the terms, conditions and duration of the broadcasting licence. The licensing process and considerations to be taken into account by the MDA are set out in the *Broadcasting Act* and its regulations. In addition, entities that wish to install, import, sell or operate broadcasting apparatus are also required to obtain the relevant licence from the MDA.

Online content providers

The provision of “computer on-line services” is a licensable broadcasting service under the *Broadcasting Act*. However, computer on-line services provided by Internet Service Providers (**ISPs**) and Internet Content Providers (**ICPs**) are subject to a class licensing scheme established under the *Broadcasting (Class Licence) Notification* (**Notification**).

Under the Notification, ISPs include Internet Access Service Providers (**IASPs**), or Internet Service Resellers (**ISRs**). All ISPs, except for ISRs providing Internet access to the public on a temporary basis or for purposes of demonstration, are required to be registered with the MDA. The provision of corporate internet access for business use is outside the scope of regulation.

Finally, all ISPs and ICPs are required to comply with the conditions of the class licence and the provisions set out in the Internet Code of Practice issued by the MDA (**Internet Code**).

Newspapers and other print publications

The *Newspapers and Printing Presses Act* (Cap. 206) (**NPPA**), provides that a permit from the MDA is required for the operation of a press for the printing of newspapers, magazines and other documents. Prior planning permission from the Urban Redevelopment Authority is also required in respect of the use of the premises housing the printing press.

Further, a newspaper permit is required if a person intends to:

- (a) print or publish a newspaper in Singapore at regular intervals or otherwise;
- (b) sell or distribute a Malaysian newspaper in Singapore; or
- (c) sell or distribute an offshore newspaper in Singapore.

Both “newspaper” and “offshore newspapers” are broadly defined in the NPPA.

While no permit is required for one-off publications or for online periodicals, a person publishing an online newspaper for a subscription fee or other consideration may potentially be required to register with the MDA under the Notification.

Both the printing press permit and the newspaper permit are issued free of charge by the MDA, and are valid for one year.

Mobile

A person providing content disseminated over the mobile network is subject to the regulatory regime described above, and would require the relevant licences from the MDA described in this section depending on the mode of distribution (e.g. a class licence as an ICP if circulated over the Internet). In addition, a service-based operator licence from the Infocomm Development Authority (IDA) may be required if a person leases telecommunication network elements to provide relevant services to third parties.

Others

Satellite Broadcasting

The MDA also issues satellite broadcasting licences for broadcasters who wish to uplink their broadcasting services from Singapore. Where the broadcaster wishes to operate its own satellite uplink facility instead of using commercially available satellite uplink facilities, a separate telecommunications licence would need to be obtained from the IDA.

Films, Videos and Video Games

The *Films Act* (Cap. 107) renders it an offence for any person to 'carry on any business, whether or not the business is carried on for profit, of importing, making, distributing or exhibiting films unless he is in possession of a valid licence'. The definition of "distribute" includes a supply 'not only in its physical form but also by means of the electronic transmission of the contents of the film'.

The MDA administers two types of licences in this regard:

- (a) the Film Exhibition Licence, which is required for the exhibition of films that are classified "R21", "M18" or "NC16" (no licence is required for the exhibition of films rated "G" or "PG"); and
- (b) the Film Distribution Licence, which is required for the distribution of videos (e.g. videotapes, VCDs, DVDs) in the course of business.

In addition, there is also a Film Distribution (Temporary) Licence for a period of up to 30 days.

No licence is required for the conduct of a business involving the importation, making, distribution and exhibiting of video games pursuant to an exemption granted under the *Films (Video Games Exemption) Notification*.

IPTV

In 2007, the MDA adopted a two-tier framework governing the licensing of Internet Protocol Television (***IPTV***) services. IPTV covers the transmission of television programming, whether in the form of scheduled programmes or video-on-demand content, to households via a broadband connection using Internet protocol. The licensing framework distinguishes between two broad types of service providers based upon their market reach. Generally speaking, IPTV service providers who have less than 100,000 subscribers in Singapore would only require the Niche Subscription TV Licence and are subject to a lighter regulatory regime, while IPTV service providers with more subscribers would require the Nationwide Subscription TV Licence.

There is some flexibility in that the MDA may allow a licensee targeting niche market segments (such as the expatriate community or hotels) to remain under the Niche Subscription TV Licence despite the fact that its subscriber base has grown beyond the threshold. The secondary criteria that the MDA would consider in this regard include:

- (a) whether the service is offered chiefly to specific non-residential locations in Singapore;
- (b) whether there is a high percentage of foreign language content; and
- (c) the reach and impact of the channels.

A person who wishes to conduct marketing or technical trials prior to the commercial launch of a new IPTV service can apply for a Temporary Subscription TV Licence.

What content obligations/conditions are placed on licensees?

Broadcasting services (Free-to-air TV, Cable TV, Subscription TV, Radio)

Broadcasters licensed by the MDA are required to comply with various codes issued by the MDA under the *Broadcasting Act*, including the Free-to-air Television Programme Code, Subscription Television Programme Code, Free-to-air Radio Programme Code (***Programme Codes***), Television Advertising Code, Radio Advertising Code (***Advertising Codes***) and Television Programme Sponsorship Code (***Sponsorship Code***).

The Programme Codes seek to impose guidelines which are consistent with national interests in upholding racial and religious harmony, observing societal and moral standards and promoting positive family values. However, it is recognised that standards may vary according to the time of the telecast and the target audience, as well as the

accessibility or otherwise of the programme. The Programme Codes also require broadcasters to maintain high standards of language and speech in the four official languages of Singapore, and to refrain from using localised English or other dialects.

The Advertising Codes seek to ensure that the interests of viewers/ listeners as consumers are protected. They prescribe that advertisements on television and radio must be truthful and lawful and should not contain any claims which may be misleading. All claims and comparisons must be capable of substantiation and should not in any way deceive or mislead. Advertisements should respect public taste and interests and uphold moral and social mores. In addition, the Advertising Codes stipulate that broadcasters should exercise discretion when scheduling advertisements to ensure that they are appropriate for the target audience.

The Sponsorship Code is concerned with aspects of television programme services which entail advertiser involvement in programming and promotional time. Besides exercising social responsibility, broadcasters are required to maintain editorial integrity and programming independence and should not be influenced by the sponsor on either the content or acquisition of a programme.

Online content providers

ISPs and ICPs class licensed under the Notification are required to comply with the conditions of the class licence set out in the Schedule of the Notification. Class licensees are also subject to the Internet Code which sets out other obligations and duties of licensees. Generally speaking, the Internet Code requires all licensees to ensure that no “prohibited materials” (i.e. material objectionable on the grounds of public interest, morality, public order, security, national harmony, or is otherwise prohibited by applicable Singapore laws) are broadcast via the Internet to users in Singapore.

The MDA has the power to order the removal of objectionable content, and if the licensee breaches such order, the MDA has the discretion to cancel or suspend the class licence in respect of such licensee for such period as it thinks fit and/or to require the payment of a fine of such amount as it thinks fit. However, the MDA generally applies a light-touch approach towards regulating services on the Internet.

In this regard, we note that the principles are set out in the MDA’s Internet Industry Guidelines.

- (a) ISPs are not required to monitor their users’ Internet activities or monitor or remove postings in newsgroups. However, ISPs are required to limit access to a list of 100 high-impact websites identified by the MDA.
- (b) Web publishers and server administrators are not required to monitor the Internet or pre-censor content. They are only required to deny access to prohibited materials when directed by MDA. The primary responsibility for the content remains with the author and not the publisher or server administrator.
- (c) ICPs who are not targeting Singapore as their principal market will not be subject to Singapore’s standards unless they are primarily in the business of distributing pornography. For example, movie sites which are hosted in Singapore can promote and carry movie clips, even those which do not meet Singapore’s standards.
- (d) ICPs will not be held responsible for mirror sites or hyperlinks which are found to contain prohibited material, but ICPs are encouraged to remove such links after their attention is drawn to the prohibited material.

Newspapers and other print publications

The content of local newspapers and other print publications is generally self-regulated by the industry. However, such content is subject to various restrictions found in other legislation such as the *Undesirable Publications Act* (Cap. 338).

The content of foreign publications is also industry self-regulated. Importers of foreign publications are registered with the MDA under the Registered Importers Scheme, and are trained to review the foreign publication to be imported in order to ensure that it is suitable for local distribution pursuant to the principles set out in the Content Guidelines For Imported Publication issued by the MDA.

Mobile

The content restrictions for online content should generally apply even where the content is accessed through a mobile phone (i.e. ICPs should be subject to the Internet Code regardless of whether the user is accessing the content on the Internet via the mobile network or wired broadband). Further, if the content is distributed to mobile users pursuant to a premium rate service by the service provider, the provisions of the Code of Practice

for Provision of Premium Rate Services (**PRS Code**) issued by the IDA may be relevant. However, the PRS Code seeks to regulate the provision of premium rate services and does not impose any restrictions on the content provided through such premium rate services.

The three local mobile operators in Singapore, MobileOne Ltd., Singapore Telecom Mobile Pte. Ltd. and StarHub Mobile Pte. Ltd, have issued a Voluntary Code for Self-regulation of Mobile Content in Singapore (**Mobile Content Code**), which seeks to establish a common framework for the development and marketing of mobile content by the mobile operators. The Mobile Content Code does not have the force of law, and does not cover subscriber-to-subscriber communications, third party content and content available over the Internet.

Other

Satellite Broadcasting

Satellite broadcasters who wish to import programming materials for use in their broadcasting services uplinked from Singapore are exempted from the requirements set out above, subject to their compliance with certain conditions set out in the exemption application form.

Films, Videos and Video Games

The *Films Act* provides that, subject to certain exempted categories, every film in the possession of any person shall be submitted to the Board of Film Censors (**BFC**) without any alteration or excision for the purpose of certification and censorship. It is an offence for any person to possess, exhibit, distribute or reproduce any film without such certification. Cinematograph films are classified up to “R21”, while videos are currently classified up to “M18” only.

Video games are required to be declared to the BFC, and may be required to carry an Age Advisory or “M18” label. To the extent that the video game is registered with the BFC and does not describe or depict any of the specified prohibited content outlined in the “Guidelines on Content that Cannot be Exempted”, the video game will be exempt from certain requirements in the *Films Act*, including the censorship requirement.

The Age Advisory label is generally applied to video games that contain controversial content such as moderate level of violence, portrayal of implied sexual activity, nudity without details, coarse language and depiction of illegal drug use. Such video games are not intended for those under 16 years of age, but retailers are not specifically required to enforce such restrictions.

Video games rated “M18” generally contain mature themes such as realistic depictions of violence and drug use, nudity and frequent use of strong coarse language, and retailers are required to conduct checks in order to ascertain the customer’s age at the point of sale. In extreme cases, video games may also be refused classification (i.e. Not Allowed for All Ratings or **NAR**) and should not be circulated in Singapore.

The MDA has also issued various guidelines regulating the display of publicity materials for the promotion of films, videos and video games.

There are also offences prescribed in the *Film Act* in respect of dealings in obscene films as well as the importation, making, distribution or exhibition of party political films.

IPTV

IPTV service providers licensed under the Nationwide Subscription TV Licence scheme are required to adhere to the Subscription Television Programme Code for scheduled television programmes. Content carried over services provided by such a licensee which allow consumers to view programmes upon request is regulated by a separate Video-On-Demand Programme Code.

Licensees holding the Niche Subscription TV Licence are required to comply with the guidelines set out in the Content Code for Niche Services for both scheduled and on-demand programmes.

Foreign ownership and investment restrictions

What are the restrictions (if any) on cross-media or broadcast market ownership?

Broadcasting services (Free-to-air TV, Cable TV, Subscription TV, Radio)

The *Broadcasting Act* regulates the ownership of broadcasting companies (as defined in the Act) in Singapore. There are specific controls on the shareholding and voting power of broadcasting companies. For example, substantial shareholdings (an aggregate of more than 5% of the nominal amount of all voting shares) in a

broadcasting company are subject to the Minister's approval as are any form of controlling shareholdings. Broadcasting companies in Singapore must also ensure that at least half of its directors are citizens of Singapore, unless the MDA approves otherwise. The MDA also has the right to approve the Chief Executive Officer of the broadcasting company as well as its directors and Chairman.

There are cross-ownership restrictions in the *Media Development Authority of Singapore Act* (Cap. 172), which provides that no regulated person shall be merged or consolidated with, or taken over by (i) any other regulated person; or (ii) any other person (not being a regulated person) carrying on business in any media industry, without the prior written approval of the MDA. Consolidations between players in the media industry are also regulated under the Code of Practice for Market Conduct in the Provision of Mass Media Services. Besides considering all relevant factors to determine the potential impact the consolidation may have on competition in the market, the MDA can also take into account public interest considerations in reviewing the consolidation application.

Newspapers and other print publications

The NPPA seeks to regulate the ownership and control of newspaper companies. Newspaper companies are required to be a public company limited by shares, and are required to issue two classes of shares: management shares and ordinary shares. The memorandum and articles of association of newspaper companies are also required to be submitted for review and approval. Prior approval of the Minister is also required before a person can acquire control of substantial shareholdings in a newspaper company, or become a 12% controller or indirect controller of a newspaper company.

Online content provider

No special restrictions (apart from what is set out in this section) apply in respect of online content providers.

Mobile

No special restrictions (apart from what is set out in this section) apply in respect of service providers who provide content via the mobile network. However, to the extent that such service providers are also telecommunication licensees regulated by the IDA, certain additional requirements under the telecommunications regime may potentially be applicable.

Other

IPTV

Licensees holding a Nationwide Subscription TV Licence are required to comply with the ownership and control restrictions applicable to broadcasting companies described above. However, these restrictions do not apply to a licensee holding a Niche Subscription TV Licence.

What are the restrictions on foreign entity (person or company) ownership?

Licences for broadcasting services (Free-to-air TV, Cable TV, Subscription TV, Radio)

There are controls in the *Broadcasting Act* relating to foreign participation in broadcasting companies. No company will generally be permitted to hold the appropriate licence if a foreign source holds 49% or more of the shares or voting power in the broadcasting company or its holding company, unless the Minister otherwise approves. A similar prohibition extends to persons having the direction, control or management of the broadcasting company or its holding company who are appointed by or informally acting on the directions of a foreign source.

Newspapers and other print publications

Management shares of a newspaper company may only be issued or transferred to citizens of Singapore or corporations approved by the Minister. All directors of a newspaper company must be citizens of Singapore.

Online content provider

No special restrictions (apart from what is set out in this section) apply in respect of online content providers.

Mobile

No special restrictions (apart from what is set out in this section) apply in respect of service providers who provide content via the mobile network.

However, to the extent that such service providers are also telecommunication licensees regulated by the IDA, certain additional requirements under the telecommunications regime may potentially be applicable.

Other**IPTV**

Licensees holding a Nationwide Subscription TV Licence are required to comply with the ownership and control restrictions applicable to broadcasting companies described above. However, these restrictions do not apply to a licensee holding a Niche Subscription TV Licence.

What are the restrictions on foreign entity (person or company) investment (and what limits by %, etc exist)?

Broadcasting services (Free-to-air TV, Cable TV, Subscription TV, Radio)

The *Broadcasting Act* requires prior approval of the MDA to be sought for the application of funds from a foreign source (which includes a foreign government, an entity not constituted under the laws of Singapore whether or not it has a local presence or a person who is not a Singapore citizen) for the purposes of financing, directly or indirectly, wholly or in part, any broadcasting service owned by a broadcasting company. The MDA will grant its consent if such funds are intended for *bona fide* commercial purposes.

Newspapers and other print publications

Likewise, approval of the Minister is required for the holder of a newspaper permit to receive any funds from a foreign source on behalf of or for the purposes of the relevant newspaper.

Online content provider

No special restrictions (apart from what is set out in this section) apply in respect of online content providers.

Mobile

No special restrictions (apart from what is set out in this section) apply in respect of service providers who provide content via the mobile network. However, to the extent that such service providers are also telecommunication licensees regulated by the IDA, certain additional requirements under the telecommunications regime may potentially be applicable.

Other**IPTV**

Licensees holding a Nationwide Subscription TV Licence are required to comply with the ownership and control restrictions applicable to broadcasting companies described above. However, these restrictions do not apply to a licensee holding a Niche Subscription TV Licence.

What are the restrictions on foreign entity (person or company) entering a content supply agreement in Singapore with a local organisation?

Local organisations in Singapore are not restricted from entering into a content supply agreement with a foreign entity, regardless of the medium involved.

Regulatory bodies

What are the agencies responsible for administering regulation?

The main government agency involved in regulating media companies and media content is the MDA.

The MDA is a statutory board under the Ministry of Information, Communications and the Arts (**MICA**).

The MDA serves both as a regulator as well as a promoter of the media industry. As the champion of the Singapore media industry, the MDA has put in place various initiatives and schemes in order to nurture content creation; promote Singapore media at key trade markets under the Singapore Media Fusion identity; raise Singapore's profile as a media exchange; upgrade business capabilities and talents; and encourage the test-bedding and deployment of innovative interactive digital media solutions and services.

Are there any other key issues impacting the regulatory body/regime?

Due to the continuing convergence of various media and the proliferation of media content in the mobile space, there is some speculation amongst commentators that MICA would follow the lead taken by some other jurisdictions, and merge the regulatory functions of the MDA (for media) and the IDA (for information and communications technology) in order to create a single, unified regulator. However, the Singapore Government has thus far stopped short of such a move, and has opted to maintain separate regulators for the broadcasting and telecommunications sectors, albeit under the auspices of the same parent Ministry (i.e. MICA).

Content Regulation

Defamation

In Singapore, defamation is regulated by both the common law and statute under the Singapore *Defamation Act* (Cap. 75). The law in Singapore recognises both libel and slander. Some possible defences to defamation at common law include a truth/justification defence, fair comment, and circumstances of privilege where statements are made without malice. The *Defamation Act* also provides statutory defences for the innocent publication. Possible remedies include injunctions to prevent further publication and damages. In addition to civil liability, the Singapore Penal Code (Cap. 224) provides for criminal liability for defamation, punishable by imprisonment for up to 2 years, a fine or both.

Criminal Contempt

The predominant source of law for contempt in Singapore is the common law. Criminal contempt of court includes anything done or published that is calculated to bring a court or a judge of the court into contempt or to lower his or her authority or to interfere with the due course of justice or the lawful process of the courts. It should be noted that fair criticism made in good faith of a judge in a particular case or the general administration of justice is permissible.

Copyright

Copyright is governed by the *Copyright Act* (Cap. 63), which provides that a person found guilty of copyright infringement may be liable for civil and criminal sanctions depending on the nature of the offending acts. Civil remedies include compensation in the form of monetary damages, and an account of any profits to the copyright owner. The copyright owner may also obtain an injunction to prevent further infringement. The *Copyright Act* also provides for the ordering of statutory damages as well as additional damages if the infringement can be shown to be flagrant.

In addition to civil remedies, criminal penalties can also be imposed from the sale and/or distribution of articles that infringe copyright. Being in possession of infringing articles for the purpose of trade or sale may also attract criminal penalties. Under the criminal statutory penalties for copyright infringement for the purpose of sale, fines of up to S\$10,000 for each infringing article or S\$100,000 whichever is lower may apply. The court may also impose a term of imprisonment not exceeding five years. Penalties for wilful copyright infringement also exist.

Sedition

The *Sedition Act* (Cap. 290) makes it an offence to commit a seditious act, being an act where a person:

- (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;
- (b) utters any seditious words;
- (c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or
- (d) imports any seditious publication.

A first time offender is liable to be fined up to S\$5,000 and/or imprisonment for a term not exceeding 3 years. A subsequent offender is liable to imprisonment for a term not exceeding 5 years. Any seditious publication is liable to be forfeited and may be destroyed or otherwise disposed of as the court directs. In addition, any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence.

Consumer Protection Legislation/Misleading Advertising

Consumer Protection (Fair Trading) Act (Cap. 52A) (**Fair Trading Act**)

The Fair Trading Act provides the legislative framework to increase information available to consumers and allow consumers aggrieved by unfair practices to have recourse through civil remedies. In particular, the Fair Trading Act provides that it is unfair practice for a supplier, in relation to a consumer transaction to make a false claim or say anything or omit to do or say anything, which might reasonably mislead a consumer.

Consumer remedies include the right to commence an action, a court declaration that the practice engaged in is unfair and an injunction to prevent the supplier from engaging in an unfair practice. These remedies, however, are only exercisable by the court on the application of a specified body such as the Consumers Association of Singapore (**CASE**) or the Singapore Tourism Board (**STB**). In addition, before making such an application, the CASE must first obtain the endorsement of an Injunction Proposals Review Panel which will review whether there is a public interest issue to be safeguarded by the injunction.

Consumer Protection (Trade Descriptions and Safety Requirements) Act (Cap. 53) (**Trade Descriptions Act**)

The Trade Descriptions Act protects consumers by prohibiting misdescriptions of goods supplied in the course of trade, and confers the power to prescribe requirements relating to informative marking and advertisement of goods, as well as requirements for the safe composition, construction or design of goods. Under the Trade Descriptions Act any person who in the course of trade or business applies a false trade description to any goods, or supplies any goods to which a false trade description is applied, is guilty of an offence. A trade description is deemed to be applied to goods if they are affixed on the goods themselves, on anything in, on or with which the goods are supplied, or if the trade description is used in any manner likely to be taken as referring to the goods.

Advertising

Additionally, the Advertising Standards Authority of Singapore (**ASAS**) outlines the industry codes for the advertising industry. In particular, the Singapore Code of Advertising Practice (**SCAP**) regulates advertising in newspapers, on television, radio and on the internet. All advertisements appearing in Singapore are required to comply with the Code regardless of their place of origin. The SCAP also provides that all descriptions, claims and comparisons that relate to matters of objectively ascertainable facts should be capable of substantiation. Advertisers and advertising agencies are required to hold that substantiation ready for immediate production without delay to the ASAS upon request. Furthermore, when a factual claim in an advertisement is said to be supported by the results of independent research or testimonial, the advertiser and sales promoter should be able to show that those responsible for the research accept the advertisement as accurate or that the testimonial is genuine.

Restricted product advertising

The ASAS, which is an Advisory Council to the SCAP, is the self regulatory body of the advertising industry and promotes ethical advertising in Singapore. The basic premise of the SCAP is that all advertisements should be legal, decent, honest and truthful and should not denigrate competitors unfairly. The SCAP sets out various guidelines according to these principles.

Although the SCAP has no legislative force, the ASAS has the power to impose sanctions on advertisers and advertising agencies for failure to comply with its requirements. The ASAS council comprises representatives from advertisers, advertising agencies, government agencies, media owners and other supporting organisations. It has the power to ask an advertiser to:

- (a) amend or withdraw any advertisement which is contrary to the SCAP; or
- (b) withhold such advertisement until it has been modified.

Anyone can submit a written complaint to the ASAS to request for a ruling against any form of advertising that is alleged to have contravened the SCAP.

Broadcast and Film/Classification

Radio

The general principles for radio broadcasts, per the Free-to-Air Radio Programme Code, are:

- (a) Programmes should not undermine public security interest or public confidence in the law and its enforcement in Singapore;
- (b) Matters pertaining to race and religion should be handled sensitively, and programmes should not be of a proselytic nature;
- (c) Songs must not contain vulgar lyrics or promote wrong moral values or lifestyles;
- (d) Broadcasters must be careful when handling content unsuitable for children (14 and below);
- (e) Broadcasters must provide advisory notices for potentially disturbing or upsetting content;
- (f) Programmes on crime or violence ought not be cynical, frivolous, callous, incitory, or in any way promote violence and anti-social behaviour;
- (g) Content with sex and nudity should be treated with discretion and consideration; and
- (h) Factual programmes are to present information in an objective, accurate and balanced manner.

No separate guidelines are issued for subscription-only radio.

Free-to-Air Television

The general guidelines for Free-to-Air TV (as set out in the Free-to-Air Television Programme Code) are the same as those listed above for radio. In addition broadcasters are required to broadcast family-appropriate shows between 6 to 10 pm and to place appropriate viewing advisories for shows after 10 pm. Language for programmes should also be proper regarding the syntax, pronunciation and vocabulary. Mandarin dialects are only to be used in proper contexts, and sparingly.

Subscription/Video-on-Demand/Niche TV – Premium Channels

Separate Codes apply in respect of subscription television, video-on-demand programs and niche services (niche TV providers are those who have 100,000 subscribers or less, or who satisfy the MDA's criteria). The guidelines in these Codes are broadly similar to those for Free-to-Air TV, although more relaxed guidelines in relation to programmes classified "16" and "18" are also provided. For example, moderate expletives and portrayals of sex and violence are permitted for the former, while strong expletives and portrayals of sex and violence are permitted for the latter.

"16" programmes are defined as those 'not suitable for viewers under 16', while "18" programmes are defined as those 'not suitable for viewers below 18 as they may explore mature themes and contain graphic images', and are only to be shown between 10 pm to 6 am. Classification information and advisories are to be shown prior to the programme.

Films

Films are classified by the Board of Film Censors, (**Board**) under the following categories:

- (a) **G**: for General (suitable for all ages);
- (b) **PG**: for Parental Guidance (suitable for all, but parents should guide their young);
- (c) **PG13**: for Parental Guidance 13 (suitable for persons aged 13 and above but parental guidance advised for children below 13);
- (d) **NC16**: for No Children Under 16 (suitable for persons aged 16 and above);
- (e) **M18**: for Mature 18 (suitable for persons aged 18 and above);
- (f) **R21**: for Restricted 21 (suitable for adults aged 21 and above).

Films are submitted to the Board for approval, and no broadcast may take place without a permit from the Board. The Board will accordingly classify the films and may impose such conditions as it sees fit. The Board has released the Film Classification Guidelines to raise awareness and understanding of the classification process. A distributor may appeal the Board's decision to the Films Appeal Committee. The decision of the Films Appeal Committee is final.

In addition, possession, exhibition/distribution and reproduction of uncensored films without a valid certificate from the Board, constitutes an offence under the *Films Act* (the **Act**). The Act further bans the making, distributing and exhibition of 'party political films' which are defined under the Act.

The following classifications of videos are exempted from censorship:

- (a) Educational or training materials
- (b) Advertising and promotional materials (but not promotional clips of non-exempted videos and film trailers)
- (c) Arts and cultural performances
- (d) Documentary
- (e) Sports
- (f) Children's Programmes
- (g) Recordings of local TV shows
- (h) Pre-1966 movies and music clips
- (i) Personal Recordings
- (j) Karaoke (but not MTV clips and live concerts)

Non-exemptible content is defined as:

- (a) Violence
- (b) Sex and Nudity
- (c) Drug Abuse
- (d) Words with obscene and vulgar connotations
- (e) Themes that are morally objectionable (including deviant and alternative sexual lifestyles), anti-social, pro- or anti-religion or which undermine public interest

Videos which contain objectionable content or which violate any laws of Singapore are not exempted. Distributors must first submit a copy of the video to the Licensing Services (Films and Publications) where an appropriate rating and certification will be given by the Board. Videos are only rated up to M18. A distributor may appeal the decision of the Board to the Films Appeal Committee, whose decision will be final.

Other restricted speech

Trade Libel/Malicious falsehood

The following elements must be established in a trade libel action: identification of product; actionable disparagement; falsity of statements; malice and damage.

Internal Security Act

Under the *Internal Security Act* (Cap. 143) the possession, communication or distribution of publications that have a subversive tendency or that compromise national interests, public order or security would generally constitute a punishable offence.

Undesirable Publications Act

Under the Undesirable Publications Act (Cap. 338), a person is prevented from importing, distributing or reproducing a publication that is obscene and objectionable. A publication is obscene if its effect or the effect of any one of

its parts, if taken as a whole, tends to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

A publication will be objectionable if in the opinion of any controller, any part of the publication involves matters such as sex, horror, cruelty, drug consumption, crime or violence that are likely to be injurious to the public good. Additionally, matters involving race or religion which may cause hatred and enmity amongst racial and religious groups in Singapore are considered objectionable. A number of factors will be taken into account when determining whether a publication is objectionable.

Newspapers and Printing Presses Act

The sale and distribution of a foreign publication may be restricted under the NPPA if it is deemed to be “interfering in domestic politics.” An example of such interference would be if the publication makes what may be considered by the government as an inappropriate comment or criticism of its policies. Such foreign publications cannot be imported, sold or distributed in Singapore without consent from the relevant Minister, whose approval may be granted upon conditions regarding the restriction of sale or distribution. Failure to adhere to such restrictions would constitute an offence.

Judicial Proceedings (Regulation of Reports) Act

Certain details of judicial proceedings may not be published under the *Judicial Proceedings (Regulation of Reports) Act* (Cap. 149). Particular care must be taken regarding the publication of indecent matter which would injure public morals. In addition, only limited details may be published in respect of judicial proceedings for divorce, dissolution of marriage, nullity of marriage, judicial separation or restitution of conjugal rights (as long as the publication of these particulars are not calculated to injure public morals).

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South Korea

Country	South Korea	
Media Regulatory Authority	Korea Communications Commission (KCC) Korean Communications Standards Commission (KOCSC) Ministry of Culture, Sports and Tourism	
Foreign investment controls or restrictions	Yes	
Cross-media ownership controls or restrictions	Yes	
Forms of media that may be supplied without a government licence	None	
Forms of media that may only be supplied under a government licence	All forms require approval from KCC except for online content providers and newspaper and periodical publishers, which require registration with local authorities.	
Primary legislation	<i>Broadcasting Law</i>	Broadcast licensing
	<i>Radio Law</i>	Radiocommunications
	<i>Law on Promotion of Newspapers</i>	Newspapers
	<i>Law on Promotion of Periodicals such as Magazines</i>	Magazines and periodicals
	<i>Framework Law on Broadcasting and Communications Development</i>	Data broadcasters
	<i>Internet Multimedia Business Law</i>	Internet multimedia (including IPTV)
	<i>Monopoly Regulation and Fair Trade Law</i> <i>Broadcasting Law</i>	Trade practices/competition of media and broadcasting businesses
	<i>Criminal Code</i>	Defamation
	<i>Law on Promotion of Use of Information Communications Network and Information Protection</i>	Defamation, online content and restricted speech
	<i>Law on Press Arbitration and Remedies</i>	Defamation, other restricted speech
	<i>Copyright Law</i>	Copyright
	<i>Fair Labelling and Advertising Law</i>	Misleading advertising
	<i>Law on the Promotion of Newspapers, Etc</i>	Restricted speech
	<i>Foreign Investment Promotion Law</i>	Foreign investment

Local Media Regulation

Under the South Korean *Broadcasting Law*, broadcasting is divided into four categories – TV, radio, data and mobile multimedia broadcasting (also known as digital multimedia broadcasting, **DMB**). Within these categories, broadcasters are categorised as either free-to-air broadcasters, comprehensive cable broadcasters, satellite broadcasters or program providers.

Free-to-air broadcasters are further categorised as either free-to-air television broadcasters or free-to-air radio broadcasters. DMB providers are also further categorised into free-to-air DMB providers that use ground waves and satellite DMB provided by a satellite broadcasting company. Further, the concept of “free-to-air mobile multimedia program provider” combines both free-to-air television, free-to-air radio and free-to-air DMB.

Newspapers and periodicals (magazines, etc.) are regulated in categories based on whether the publications are issued more than once a month (newspapers) or less frequently (periodicals).

Licences

What licences are required?

Free-to-air TV

Free-to-air television broadcasters require approval from the Korea Communications Commission (**KCC**). Such approvals are conditioned on compliance with the *Radio Law* and the *Broadcasting Law*.

The requirements prescribed by the *Radio Law* are concerned with technical issues and physical facilities while the *Broadcasting Law* is concerned with issues such as financial concerns, public interest concerns and management plans.

Cable TV

Cable television broadcasters are further subcategorised as either ordinary, comprehensive cable broadcasters or cable relay broadcasters that deliver free-to-air broadcasting or satellite broadcasting content to areas where free-to-air or satellite television reception is difficult.

Comprehensive cable broadcasters and cable relay broadcasters require an approval from the KCC. Such approvals require compliance with conditions prescribed by the *Broadcasting Law*.

A licence is also required for the broadcast of cable television services. Only a nominal fee is charged for this licence.

Pay TV

The term “pay television” refers to the broadcasting of individual programs or channels in return for payment from viewers. Such services may be provided by cable or satellite broadcasters without the need to obtain an additional licence or approval (but not by free-to-air broadcasters). Broadcasters must provide their standardized agreements for pay television services to the KCC and must obtain the KCC’s approval of the fees charged for such services.

Radio

Free-to-air radio broadcasting companies require approval from the KCC. Such approval is conditioned on compliance with conditions prescribed by the *Radio Law* and *Broadcasting Law*.

If radio broadcasts are delivered using satellite technology, the approval described below in section (ix) is also required.

Online content provider

Publishers of internet newspapers or internet news services (electronic publications that continuously carry news articles from newspapers, internet newspapers, foreign news agencies, broadcasts, periodicals) must be registered with local authorities at the location of the head office of the publisher in accordance with the *Law on Promotion of Newspapers, Etc.*, and its Enforcement Decree.

Newspapers

Newspaper publishers must be registered with local authorities (at the location of the head office of the publisher) under the *Law on Promotion of Newspapers, Etc.*, and its Enforcement Decree.

Other print publications (magazines, etc)

Magazine publishers and publishers of other periodicals must be registered with local authorities (at the location of the head office of the publisher) under the *Law on Promotion of Periodicals Such As Magazines, Etc.*, and its Enforcement Decree.

Mobile

Mobile multimedia broadcasters (DMB) require an approval from the KCC. This approval is subject to the fulfilment of conditions prescribed by the *Radio Law* and the *Broadcasting Law*. Note also the requirements for online content providers.

Other (including satellite or other broadcast technologies)

Satellite broadcasters require the KCC's approval under the *Radio Law* and the *Broadcasting Law*.

Program providers (being companies that provide programming to free-to-air TV broadcasters, comprehensive cable broadcasters or satellite broadcasters under an exclusive agreement) must register with the KCC. However, program providers that intend to engage in general programming services or specialized programming services for reports or product introduction and sale must obtain the approval of the KCC. Data broadcasting companies are also required to report on value-added communications services.

Internet multimedia broadcasting businesses (which includes IPTV services delivered via broadband) require the KCC's approval under the *Internet Multimedia Business Law*.

What content obligations/conditions are placed on licensees (e.g. minimum local content requirements, children's programming requirements etc)?

Restrictions are placed on obscene and violent content. However, this area is largely self-regulated and the content restrictions described in this section and in Part 2 below would not be regarded as conditions for obtaining or maintaining the licences mentioned above.

The Korea Communications Standards Commission (**KOCSC**) reviews programs and advertisements that have been broadcast for obscene and violent content. There is no obligation placed on broadcasters to review the content prior to broadcast. In practice, broadcasting companies review programs and advertisements voluntarily based on their own internal standards.

In addition, the *Broadcasting Law* and its Enforcement Decree prescribe detailed programming restrictions for free-to-air television, cable television, pay television, radio and mobile broadcasting. In summary:

- (a) Television and radio broadcasters may not devote more than 50% of broadcast airtime to entertainment programs each month. Specialized free-to-air broadcasters (i.e. companies concentrating on a particular category of programming) should include specialized programs for at least 60% of broadcast airtime. Specialized comprehensive cable broadcasters and specialized satellite broadcasters should include specialized programs for at least 70% of broadcast airtime. Specialized program providers should include specialized programs for 80% of broadcast airtime.
- (b) Free-to-air television broadcasters should include viewer participation programs for at least 100 minutes in each month. A viewer participation program is a program that is either planned and produced directly by viewers or planned by viewers and produced with support from the Broadcasting Development Fund.
- (c) A particular broadcaster (other than a broadcaster that receives 100% of its funding from the central or local governments) may not broadcast to more than 30% of the total viewing population.
- (d) Comprehensive cable broadcasters and satellite broadcasters must operate channels for public purposes (for use by the national government as necessary) and religious purposes.
- (e) In each quarter, broadcasters must meet local Korean content quotas prescribed by the KCC. These quotas may range from 60% to 80% of broadcast airtime for free-to-air broadcasters, 40% to 70% for comprehensive cable broadcasters and 20% to 50% for program providers.

- (f) Quotas are also set by the KCC for domestic films, animation and popular music content. These quotas may range from 20% to 40% of the total film broadcasting time, 30% to 50% of the total animation broadcasting time and 50% to 80% of the total popular music broadcasting time.

The *Notification on Broadcast Program, Etc. (KCC Notification No. 2008-135)* prescribes the specific criteria and percentages in further detail.

Online content provider

There are no particular content restrictions, but internet news service providers must clearly distinguish the articles delivered by such internet news services from opinions provided by readers to avoid any confusion.

Newspapers and other print publications (magazines, etc)

There is no obligation to review content for obscenity or violence before publication.

Foreign ownership and investment restrictions

What are the restrictions (if any) on cross-media or broadcast market ownership?

Free-to-air TV

There are some barriers in place to prevent telecommunications carriers in South Korea from participating in broadcasting industries.

A large corporation (with total assets of at least ten trillion Korean won) or an affiliate (as defined under the *Monopoly Regulation and Fair Trade Law*) that publishes daily newspapers or news communications may not own more than 10% of a free-to-air television broadcasting company. This restriction extends to certain related parties, such as company officers and family members.

Additionally, entities that publish daily newspapers with at least 20% market share may not hold any shares or ownership interest in a free-to-air television broadcasting company.

A free-to-air television broadcasting company may not own 7% or more of another free-to-air TV broadcasting company. This threshold is lower for certain related entities.

Cable TV

An entity that publishes newspapers or news communications may not own more than 49% of a comprehensive cable broadcasting company.

A satellite broadcaster may not own more than 33% of a comprehensive cable broadcasting company.

Radio

A large corporation, affiliate, daily newspaper or news communications company or a specially related party may not own more than 10% of a free-to-air radio broadcasting company.

Additionally, a publisher of a daily newspaper with at least 20% market share may not have any ownership interest in a free-to-air radio broadcasting company.

A free-to-air radio broadcasting company may not own 7% or more of another free-to-air radio broadcasting company. This threshold is lower for certain related entities.

Newspapers

A large corporation or an affiliate (including a specially related party) may not own more than 50% of an entity that engages in the publication of a daily newspaper.

Other (including satellite or other broadcast technologies)

An entity engaged in the publication of daily newspapers or news communications may not own more than 49% of a satellite broadcasting company. A free-to-air broadcaster may not own more than 33% of a satellite broadcasting company.

An entity engaged in the publication of daily newspapers or news communications may not own more than 49% of any internet multimedia broadcasting company. A large corporation (as defined) may not own more than 49% of any internet multimedia broadcasting content provider.

No particular restrictions

There are no cross-media or broadcast market ownership restrictions concerning subscription TV, online content providers, other print providers or mobile providers.

What are the restrictions on foreign entity (person or company) ownership?

Free-to-air TV, Cable TV, Radio, Mobile and Other (including satellite or other broadcast technologies)

Individuals and foreign corporations may not engage in broadcasting services. Only domestic corporations may provide broadcasting services.

However, there is no requirement that a relay cable broadcasting service must be a corporation although foreign governments and organizations are still prohibited from engaging in such services.

Subscription TV

There are no particular restrictions applicable to pay television.

Online content provider, newspapers and other print publications (magazines, etc.)

Foreign individuals, corporations, organizations, government agencies and entities having a representative who is not a Korean national, may not issue internet newspapers, newspapers or other print publications.

What are the restrictions on foreign entity (person or company) investment (and what limits by %, etc exist)?

Free-to-air TV, Radio and Free-to-air DMB

Free-to-air broadcasting companies (including radio and television) may not receive investment or contribution from (i) foreign government agencies or organizations; (ii) foreign nationals; or (iii) an entity that is more than 50% owned by foreign government agencies, organizations or individuals (**Foreigners**). However, asset contributions may be received from foreign organizations where they have the purpose of education, sports, religion, charity or another similar purposes relating to promotion of international relations, provided that approval is obtained from the KCC.

Cable TV

Foreigners may not own more than 49% of a comprehensive cable television broadcasting company.

Foreigners may not own more than 20% of a relay cable broadcasting company.

Pay TV

There are no particular restrictions applicable to pay television.

Online content provider

The relevant laws do not prescribe limits on the amount of foreign investment in online content providers. However, it appears likely that internet newspapers will be regarded as a type of newspaper and thus be subject to the same foreign investment restrictions as other newspapers. Internet news services are not likely to be subject to such restrictions.

Details of foreign investment should be reported to the Ministry of Knowledge Economy under the *Foreign Investment Promotion Law*, and documents evidencing such investment should be submitted to the relevant local government authorities.

Newspapers

Foreign individuals, entities and organizations may not own 50% or more of a newspaper publisher. A lower 30% limit applies to daily newspapers. Details of foreign investment should be reported to the Ministry of Knowledge Economy, and documents evidencing such investments should be submitted to relevant local government authorities.

Other print publications (magazines, etc)

Foreign individuals, entities or organizations may not own 50% or more of a publisher. Details of foreign investment should be reported to the Ministry of Knowledge Economy, and documents evidencing such report should be submitted to relevant local government authorities.

Other (including satellite and satellite DMB or other broadcast technologies)

Foreigners must not own more than 49% of a satellite broadcasting company. Foreigners must not own more than 20% of a general program provider and no more than 10% for program providers that specialize in news report programs.

What are the restrictions on foreign entity (person or company) entering a content supply agreement in South Korea with a local organisation?

Free-to-air TV, Cable TV, Radio, Mobile and Other (including satellite or other broadcast technologies)

If a foreign broadcasting company wishes to re-transmit its programming through domestic broadcasting companies, an approval from the KCC is required. The KCC will comprehensively review a number of factors, such as the impartiality of the programming as well as the likely effect on the domestic industry, national identity and international relations.

“Re-transmission” in this context refers to the complete re-transmission of the foreign broadcasting company’s channel (including commercials). While subtitles are inserted, voice dubbing is not permitted.

Subscription TV and Online Content Provider

There are no particular restrictions applicable to pay television or online content providers.

Newspapers and Other Print Publications

There are no particular restrictions applicable to newspapers and print publications. Any local branch office of a foreign newspaper company or other form of local presence established in South Korea should be registered with the Ministry of Culture, Sports and Tourism.

Regulatory Bodies

What are the agency(ies) responsible for administering regulation?

The KCC is responsible for developing broadcasting policy and regulation and communications service policy. The KCC not only regulates broadcasting but also regulates communications, including the regulation of internet websites under the *Law on Promotion of Use of Information Network and Information Protection, Etc.*

Newspapers and periodicals are mainly regulated by the Ministry of Culture, Sports and Tourism.

Are there any other key issues impacting the regulatory body/regime (e.g. transparency of licensing and regulatory regime, impact of other government/regulatory bodies on the media regulator)?

The KCC is required to establish a Broadcasting Development Fund for the promotion of broadcasting, culture and art in accordance with the *Broadcasting Law*. In order to secure necessary funds for the Broadcasting Development Fund, the KCC may collect (a) up to 6% of the advertising revenue from free-to-air broadcasters (the collection rate for Korean Broadcasting System (**KBS**) and Educational Broadcasting System (**EBS**) is 2/3 of the collection rate for Munhwa Broadcasting Corporation (**MBC**)); (b) up to 6% of the annual sales revenue from comprehensive cable broadcasters and satellite companies; and (c) up to 15% of the annual business profits from program providers.

Free-to-air TV

Two of the three major free-to-air television channels are owned by the Government. Among these, KBS is supported by Government funding. This means that all but one of South Korea’s nationwide free-to-air television channels are public corporations.

KBS was established by a 300 billion Korean won contribution from the Korean Government and is regulated by the *Broadcasting Law*. MBC was established by a contribution from the Foundation for Broadcast Culture. The KCC has the right to appoint the directors of the Foundation for Broadcast Culture.

Subscription TV

Korea Telecom had owned one of the two largest cable network operators. However, it sold its interest to other cable service providers. The owner of the other large cable network is a private enterprise named LG Dacom.

Radio

KBS and MBC also engage in radio broadcasting services.

No issues of special concern

There are no issues of special concern regarding cable television, newspapers, other print publications, mobile or satellite or other broadcast technologies.

Content Regulation

What is the local law relating to the regulation of content? Include discussion of:

Defamation

Under the *Criminal Code*, any person who defames another by making allegations with an intention to slander may be imprisoned for up to 3 years and fined up to 7 million Korean won. If the relevant allegation is false, the person may be imprisoned for up to 7 years, may have certain rights or qualifications suspended for up to 10 years (eg the ability to become a government official, a government official's right to vote or to run for office; and the ability to become a director, auditor or manager of a corporation) or could face fines of up to 15 million Korean won.

Under the *Law on Promotion of Use of Information Communications Network and Information Protection*, any person who openly makes allegations via an information communications network for the purpose of slandering a person and thereby damaging their reputation may be imprisoned for up to 3 years or fined up to 20 million Korean won. If such an allegation is false, the person may be imprisoned for up to 7 years, may have certain rights and qualifications of the kind described above suspended for up to 10 years or may be fined up to 50 million Korean won.

Further, under the *Law on Press Arbitration and Remedies, Etc.*, the press, internet news services and internet multimedia broadcasters are prohibited from violating certain rights of personality (eg life, freedom, body, health, honour, secrecy, privacy, image, name, voice, conversations, creative works, private documents and other rights related to human dignity). In addition, under the *Civil Code* and the *Law on Press Arbitration and Remedies, Etc.*, a court may order appropriate remedies such as requiring publication of a correction report, along with or instead of damages.

Despite the above, defences are available under the *Criminal Code* and *Law on Press Arbitration and Remedies, Etc.*, if the statement in question was made solely with an intention to benefit the public, and:

- the statement is proven to be true; or
- the maker of the statement exercised due care and had good reason to believe it was true (even although he/she is unable prove that it is true).

Statutory law does not provide for any defence of "fair comment" on matters of public concern. However, in practice, the South Korean courts have generally recognised such a defence based on the principle of press freedom articulated in the *Constitution*. In this respect, the Supreme Court has held that the principle of press freedom with regard to matters with inherent "public or social value" (especially with regard to the morality or integrity of public officials) must be more highly protected than any ability to make statements that intrude on private matters.

The Supreme Court has recently ruled against an operator of an internet portal website for failing to take steps to delete defamatory user generated postings (and to block similar postings) in circumstances where the postings were clearly unlawful, the operator was aware of their existence and the ability to manage and control such postings was technically feasible.

Contempt

There are restrictions on publishing the identity of people under criminal investigation. The Supreme Court has mandated that press reports containing such information must:

- be based on adequate factual material;
- be objective and fair;
- not give readers the impression that any person under investigation is guilty; and

- use acronyms in place of the actual names of any person under investigation, and take other necessary measures to de-identify the individual (except if he/she is a public figure).

South Korean statutory law does not contain any express restrictions with respect to the reporting of on-going criminal prosecutions.

Any person who has been publicly reported to be a criminal suspect or subject to criminal sanctions may require that the press issue a follow-up report in the event that they are found to be innocent.

Copyright

The *Copyright Law* in South Korea generally extends copyright protection to works during the author's lifetime and until the end of a period of fifty years after their death. Works of joint authorship are protected for a period of fifty years after the death of the last surviving author. There are some variations to these timeframes, depending on the nature of the work in question. "Broadcasts" are also granted specific protection – such protection extends for a period of 50 years from the beginning of the year following the date when the broadcast was made. [KCL Comment: The Copyright Law has been recently amended in connection with Free Trade Agreements that Korea has entered into with the U.S., European Union, Chile, etc. According to such amendment, the above 50 years will be extended to 70 years starting July 2, 2013 for copyrights that are still effective as of such date.]

The *Copyright Law* was recently amended to enhance the regulation of online service providers (**OSP**) and to more effectively deter online infringement.

The law now contains a "three strikes" rule, permitting the Ministry of Culture, Sports and Tourism to (i) order an OSP to delete or interrupt the transmission of infringing materials online and issue a warning to the sender; (ii) if any person who has been warned three times subsequently transmits infringing material again, order a suspension of such person's account for a period up to six months; and (iii) in some circumstances order suspension of an online posting service for a period of up to six months.

Under the *Broadcasting Law*, when a foreign broadcasting company requests approval for re-transmission in South Korea, the KCC may refuse to grant its approval if the content to be broadcast is likely to violate the *Copyright Law* and may revoke any approval if it finds that the re-transmitted content does in fact violate the *Copyright Law*.

Further, under the *Law on Promotion of Publication Industry*, the Ministry of Culture, Sports and Tourism may order any distributor of infringing publications to destroy such illegal reproductions.

Sedition

Under the *Law on Promotion of Use of Information Communications Network and Information Protection* distribution of information through the information communications network for the purpose of conducting, aiding or abetting a crime is prohibited.

In particular, if the information communications service provider, posting board manager or operator does not comply with the KCC's request for corrective measures (which may be issued upon the request of the relevant government agency), the KCC shall order the information communications service provider, board manager or operator to discontinue or restrict processing of the relevant information. Any party that violates such an order may be subject to imprisonment for up to 2 years or a fine of up to 10 million Korean won.

Misleading advertising

The KOCSC has authority to review all advertisements that are broadcast under the *Broadcasting Law*.

In addition, any labelling or advertising that would deceive or mislead consumers is prohibited under the *Fair Labelling and Advertising Law*.

Restricted product advertising

Free-to-air TV

The Rules for Review of Broadcast Advertising (**KOCSC Rules**) prohibit the broadcast of advertisements for the following:

- (i) entertainment bars;
- (ii) private investigation services and private investigators;
- (iii) marriage brokerage services and dating services;
- (iv) superstitious activities such as fortune-telling;
- (v) military weapons, explosives and realistic imitations;
- (vi) gambling and other speculative activities;
- (vii) cigarettes;
- (viii) fortified milk powder, fortified milk, baby bottles, teats;
- (ix) obscene publications, video works, performance materials, voice data, video data or text;
- (x) financial services that have not been approved or registered;
- (xi) massage parlours; (xii) fund raising;
- (xiii) alcoholic beverages with 17% or more alcohol content;
- (xiv) in the case of free-to-air television only, drinking water products that are made by processing underground water.

Broadcasters should clearly distinguish between advertising and other programming to avoid viewer confusion. Advertisements broadcast during children's viewing times should contain subtitles that inform viewers that the material is advertising, not programming.

Free-to-air broadcasters are subject to additional restrictions that prohibit broadcasters from devoting more than 10% of broadcast time to advertising and from including advertisements in program intermissions.

Cable TV and Mobile

The broadcast restrictions described above also apply. Further, no more than 10 minutes of advertising may be broadcast per hour (on average) and the number of advertisements broadcast may be restricted depending on the time of broadcast. Unlike free-to-air broadcasters, intermission advertisements may be broadcast.

Subscription TV

There are no particular restrictions for pay television.

Radio

The general broadcast advertising restrictions above also apply. Further, free-to-air radio broadcasters are subject to additional restrictions that prohibit broadcasters from devoting more than 10% of broadcast time to advertising and from including advertisements in program intermissions.

Online content provider

There are no particular restrictions on advertising. The Information Communications Review Committee regulates online content in accordance with the *Law on Promotion of Use of Information Communications Network and Information Protection*. The Information Communications Review Committee is currently preparing separate rules for regulating online advertisements.

Newspapers and Other print publications (magazines, etc)

There are no particular restrictions.

Other (including satellite or other broadcast technologies)

The general broadcast advertising restrictions above also apply to satellite broadcasters, program providers and internet multimedia broadcasters. Further, no more than 10 minutes of advertising may be broadcast per hour (on average) and the number of advertisements broadcast may be restricted depending on the time of broadcast. Unlike free-to-air broadcasters, intermission advertisements may be broadcast.

Classification (e.g. pornographic or adult material)

Free-to-air TV, Cable TV, Radio, Newspapers, Other print publications (magazines, etc), Mobile and Other (including satellite or other broadcast technologies)

The KOCSC reviews content in accordance with detailed standards prescribed by the KOCSC Rules. The KOCSC reviews are conducted after programs are broadcast. In practice, each broadcasting company conducts voluntary reviews before programs are broadcast based on internal standards.

The KOCSC may determine certain programs as harmful to juveniles, in which case a notice that “the program may be inappropriate for viewers under the age of 19” and the number “19” should be indicated in black inside a yellow circle in the top corner of the screen for at least five seconds before beginning the program.

Although there is no rating requirement except for those applied to broadcast content, the Juvenile Protection Committee has separate authority from the KCC to determine whether or not video works such as films, games, performances, music, newspapers and advertisements are harmful to juveniles.

The Korea Media Rating Board rates films and video content as “appropriate for all ages,” “not appropriate for viewers under 12,” “not appropriate for viewers under 15,” “not appropriate for juveniles” and “restricted.” However, these rating requirements apply to films and video content only and are not directly applicable to broadcasting. Broadcasting programs need not be reviewed by the Korea Media Rating Board.

Subscription TV

There are no additional restrictions on pay television.

Online content provider

The KOCSC has authority to regulate unlawful online information as described in section 2.8.

Other restricted speech (including vilification, blasphemy, etc)

Any online company that publishes news stories has its content regulated in the same way as a traditional media organisation. Further, controversially, the KCC has the power to immediately suspend publication of any article it finds to contain libelous or fraudulent material.

South Korea has a user identification system that applies to portals, internet press, specialized media services for user created content as well as to information communications service providers that have an average daily user base of 100,000. Any person seeking to make use of an online forum or chat room that falls into one of these categories is required by law to register personal details, including their real name.

In addition, under the *Law on Promotion of Use of Information Communications Network and Information Protection*, the distribution of the following types of information through the information communications network is prohibited: (i) any information related to the distribution, sale, lease or public exhibition of obscene content; (ii) repeated delivery of content that causes fear or anxiety; (iii) any information that damages, destroys, deletes, modifies or forges information communications systems, data or programs or interferes with their use without a justifiable reason; (iv) information that discloses national secrets.; (v) information related to speculative activities prohibited by law; and (vi) information that aims to achieve a crime or aids or abets others to commit a crime.

In this regard, the KCC has the authority to order the information communications service provider or the operator or manager of the relevant posting board to refuse, discontinue or restrict the processing of the foregoing information, subject to fulfilment of certain conditions. Any party that fails to comply with such an order may be subject to imprisonment for up to two years or a fine of up to 10 million Korean won.

South Korean law also generally restricts contact with North Korean persons.

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Thailand

Country	Thailand	
Media Regulatory Authority	The National Broadcasting and Telecommunications Commission (NBTC)	
Foreign investment controls or restrictions	Free-to-air TV; Cable; Radio - Business Broadcasters - Yes	
	Online Content - No	
	Newspapers - Yes	
Cross-media ownership controls or restrictions to protect competition in the local media sector	Yes – See the Act Relating to the Conducting of Broadcasting and Televisions Business 2008 (the Broadcasting Act) and the Act on Organization to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services (the NBTC Act).	
Forms of media that may be supplied without a government licence	Online content providers	
	Print publications other than newspapers	
Forms of media that may be supplied under a class licence	N/A	
Forms of media that may only be supplied if an individual licence is obtained	Free-to-air, cable and subscription TV, radio	
	Mobile Phone Service Providers	
Primary legislation	<i>Broadcasting Act 2008</i>	Licensing, foreign ownership
	<i>The NBTC Act 2010</i>	
	<i>Printing Recordation Act 2007</i>	Regulates Print Publications
	<i>Copyright Act 1994</i>	Copyright
	<i>Consumer Protection Act 1979</i>	Advertising standards
	<i>Computer Crime Act 2007</i>	Internet surveillance

Thailand has been facing difficulties establishing a regulatory body to oversee the broadcasting sector and no new licenses were granted for television channels utilizing unallocated frequencies. In the past, the broadcasting sector was overseen by the National Telecommunications Commission (the **NTC**) which had only limited authority according to the provisional measures sections (**Provisional Measures**) under the Act Relating to the Conducting of Broadcasting and Televisions Business 2008 (the **Broadcasting Act**).

However, the new Act on Organization to Assign Radio Frequency and Regulate the Broadcasting and Telecommunications Services (the **NBTC Act**) changed that when it came into force in 2010 and the Broadcasting and Telecommunications Commission (the **NBTC**) was established in October 2011. The NBTC is now in the process of adopting a new broadcasting master plan and spectrum allocation master plan (the **Master Plans**) for licensing and spectrum allocation.

Local Media Regulation

Licences

What licences are required?

All forms of media are subject to licence or registration requirements in Thailand.

Free-to-air TV

The Broadcasting Act requires that all free-to-air TV stations be subject to a license which will be granted by the NBTC after the Master Plans come into force.

Currently, there are five commercial terrestrial TV channels with concession agreements with State agencies under a joint operation scheme. The sixth channel, the Thai Public Broadcasting Service (the **TPBS**), is the only broadcasting channel established by law for the objective of public benefit. TPBS is also the only station that obtained a broadcasting license for public use.

Cable TV and Subscription TV

These forms of media are subject to the same licence requirements as free-to-air TV under the Broadcasting Act.

Nonetheless, full-blown licenses can be granted after the Master Plans come into force. Currently, only one-year interim licenses can be granted to certain cable TV stations (without frequency used) according to the Provisional Measures.

Radio

The Broadcasting Act also requires that all radio stations be subject to a license which will be granted by the NBTC after the Master Plans come into force. Currently, only one-year interim licenses can be granted to community radio according to the Provisional Measures.

Online content provider

Thailand has no specific licence requirements or regulations for online content providers. They may, however, be subject to registration requirements under specific laws, depending on the type of content they provide.

Newspapers

The *Printing Recordation Act 2007* (the **Printing Recordation Act**) requires that all newspapers be registered and satisfy the specified minimum information requirements outlined therein.

Other print publications

While there are no licence or registration requirements imposed on other print publications in Thailand, publications must satisfy the minimum information requirements specified in the Printing Recordation Act.

Mobile phone service providers are subject to licence requirements under the *Telecommunications Business Act 2001* (the **TB Act**).

What content obligations/conditions are placed on licensees (e.g. minimum local content requirements, children's programming requirements etc)?

Free-to-air TV

Under the Broadcasting Act, broadcasting frequencies are classified into:

- (a) public service;
- (b) community service; and
- (c) business-based operations.

To obtain a licence for a public service operation, a broadcaster must devote at least 70% of its content to education, arts and culture, health, sport and national security issues.

A non-profit organization (a group of local people) can apply for a licence to operate a community TV station if at least 70% of the content produced will be for the benefit of their localities.

In the case of business-oriented broadcasting, an operator must ensure that at least 25% of its content includes news and documentaries.

The content requirements must be met throughout the licence term, which is a maximum of 15 years for a TV station. Free-to-air TV stations are also subject to the general laws and regulations applicable to content.

Cable TV and Subscription TV

Pay TV and subscription TV platforms which utilise broadcasting frequencies are subject to the same obligations and conditions as free-to-air TV as discussed above.

Channels of cable TV and subscription TV platforms which do not utilise broadcasting frequencies must include:

- (a) news channel (local and international);
- (b) local channel for local business operators;
- (c) channel broadcasting content for education, health, arts and culture, children, ladies, elderly, public interests, the disabled, and underprivileged people; and
- (d) sports.

The ratio of these channels shall be as follows:

- At least 50% of total channels shall be Thai;
- At least 25% of total channels shall broadcast news and documentaries;
- At least 3 channels shall be reserved for broadcasting public interest programs; and
- Channels to re-broadcast other TV channels (as per license obtained).

Radio

Radio broadcasters are subject to the same content obligations as free-to-air TV specified above. These requirements must be met throughout the licence term, which is a maximum of seven years for radio stations.

Online content providers

While the Internet can be described as the most free media in the country, it remains subject to government surveillance. The government aggressively blocks Thai Internet service providers from accessing web pages outside Thailand that are offensive or violate Thai law. Specifically, websites that insult the King and the royal family, pornographic sites, political sites concerning the former prime minister Thaksin Shinawatra and those relating to the Southern Thailand rebellion are strictly monitored.

Newspapers

There are no specific requirements or restrictions imposed on content under the Print Recording Act. Newspaper publishers are still, however, subject to the general laws and regulations applicable to content.

Other print publications

Other print publications that defame, insult or threaten the King, Queen, Heir-apparent, Regent, or effect the internal security of Thailand, or the public peace or good morals of the Thai people may be prohibited from importation pursuant to the Print Recording Act.

Mobile

Mobile phone service providers are not subject to specific requirements or restrictions regarding their content.

Foreign ownership and investment restrictions

What are the restrictions (if any) on cross-media or broadcast market ownership?

Free-to-air TV

The Broadcasting Act's "anti-monopoly" provisions give wide latitude to the NBTC to promote free and fair competition and to prevent any monopoly, reduction or restriction of competition in the broadcasting business or related to cross-media ownership, if it so desires:

"Licensees are prohibited from holding businesses in the same category or cross-media ownership in TV and Radio Broadcasting businesses, that utilize radio frequency, in a proportion more than the portion set out by the NBTC".

In addition, the Broadcasting Act provides that:

"An act of monopoly, reduction or restriction of competition in the Broadcasting Business and Television Business shall mean to include the holding of related businesses or use of material or equipment specially installed for the receipt of sound or picture signals in a manner restricting fair competition".

According to the NBTC Act, the NBTC has the authority in relation to cross-media or broadcast market ownership as quoted below:

"Section 27: The NBTC shall have the powers and duties as follows:

...

(11) To prescribe measure for the prevention of anti-competitive conduct or unfair competition in sound broadcasting, television broadcasting and telecommunications services;

...

(17) To set forth regulation on merger, cross ownership-holding or broadcasting market dominance amongst mass media businesses or by any other person, which has the effect of impeding the liberty of the public in perceiving information or of obstructing public access to a diversity of information; ..."

Cable TV and Subscription TV, Radio

These forms of media are subject to the same "anti-monopoly" provisions as free-to-air TV.

Online content provider, Newspapers and other Print Publications

These forms of media are not subject to any specific forms of restriction.

Mobile

There are no specific restrictions imposed on mobile content providers apart from those that mobile phone operators are subject to the TB Act.

What are the restrictions on foreign entity (person or company) ownership?

Free-to-air TV, Cable TV, Subscription TV (Pay TV), Radio

Business-oriented broadcasters must have at least 3/4ths of their shares and voting rights held by Thai persons or Thai entities. In addition, at least 3/4ths of its total directors and the authorised director must be Thai.

Online content providers

There is no specific law governing foreign ownership in online content providers. However, operators of online content are still subject to the general laws regarding the operation of a business by a foreigner (as specified in the *Foreign Business Act 1999* (the **Foreign Business Act**)). The Foreign Business Act provides that a foreign service-provider is restricted from operating any service business in Thailand unless it obtains prior permission from the Director-General of the Department of Business Development, Ministry of Commerce, with the approval of the Foreign Business Committee. Under the Foreign Business Act, foreigners are defined to include not only legal entities incorporated in other countries but also legal entities incorporated in Thailand having at least half of their shares held by foreigners.

Newspapers

The Printing Recordation Act, provides that a newspaper house must have at least 70% of its shares held by Thai persons or entities.

Other print publications

The Printing Recordation Act does not provide any specific restrictions on the foreign ownership of printing houses.

There is no specific law governing foreign ownership of mobile content providers other than those who are also telecommunication service providers under the TB Act. Operators of online content would still be subject to the general law regarding operation of businesses by foreigners outlined in the Foreign Business Act.

What are the restrictions on foreign entity (person or company) investment?

Free-to-air TV, Cable TV, Subscription TV, Radio

Business oriented broadcasters must have at least 3/4ths of its total investment by Thai persons or entities.

Online content providers

There is no specific law providing restrictions on foreign investment in online content providers.

Newspapers, other print publications, mobile

The Printing Recordation Act does not specifically provide restrictions on foreign investment in newspapers houses.

What are the restrictions on foreign entity (person or company) entering a content supply agreement in Thailand with a local organisation?

Free-to-air TV, Cable TV and Subscription TV and Radio

The Broadcasting Act does not specify any restrictions on TV broadcasters who enter a content supply agreement with a foreigner.

Online content provider

There is no specific law restricting mobile content providers from entering into a content supply agreement with a foreigner.

Newspapers and other print publications

The Printing Recordation Act does not specify restrictions on newspaper houses who enter content supply agreements with foreigners.

Mobile

There is no law that restricts mobile content providers from entering into a content supply agreement with foreigners.

Regulatory Bodies

What are the agency(ies) responsible for administering regulation?

Free-to-air TV, Cable TV, Subscription TV, Radio

The NBTC Act provides the NBTC the authority to regulate both broadcasting and telecommunications sectors. The NBTC consists of 11 commissioners with different backgrounds (e.g. economics, telecommunications, law, broadcasting, etc). One commissioner shall be appointed as the Chairman and the others shall be equally divided between two sub-committees, the NBTC and the NTC in charge of the broadcasting sector and the telecommunications sector respectively.

Online content providers

Online websites are overseen by the government through various agencies which are in charge of applicable offences, for example, the Department of Information and Communication Technology and the Royal Thai Police.

Newspapers

Newspaper businesses are governed directly by the Prime Minister.

Other print publications

Printing businesses are governed directly by the Prime Minister. In addition, the Royal Thai Police also have the authority to ban prohibited content.

Mobile

No specific government agency regulates mobile content providers except the National Telecommunication Commission which regulates mobile service operators.

Are there any other key issues impacting the regulatory body/regime (e.g., transparency of licensing and regulatory regime, impact of other government/regulatory bodies on the media regulator)?

The delay in the establishment of the NBTC and the adoption of the Master Plans is a key issue impacting the new regulatory regime. Currently, licenses for each kind of TV and radio station either cannot be granted or can be granted but with certain limitations/conditions (as discussed in detail above).

Content Regulation

The Thai Penal Code (the **Code**) governs most content regulation and applies to all forms of content unless specific laws prescribe otherwise.

Defamation

Defamation is governed by the Code and extends beyond the defamation of individuals.

Defamation of the following persons, places and institutions is prohibited in Thailand:

- other persons;
- a religion;
- an object or place of religion;
- public officials;
- the court; or
- judges.

In addition, defamation of, insults to, or threats to the following persons and institutions is prohibited:

- the King, the Queen, the Heir-apparent or the Regent of the Kingdom of Thailand;
- the Sovereign, his Queen or her Consort, the Heir-apparent or the Head of a foreign State; or
- a foreign representative accredited to the Royal Court.

The Code also includes severe penalties for criminal libel.

Contempt

In Thailand, harsh penalties for contempt of court have helped to dampen public criticism not only of court rulings but of the work done by judges in general. In 1999, the Act on Establishment of Administrative Court and Administrative Court Procedure incorporated a section providing that reasoned criticism, in good faith, is not illegal (i.e. that criticism is not synonymous with contempt of court). However, the ordinary criminal courts remain less inclined to encourage debate about their role, and members of the public are still doubtful that they will not face reprisals if they speak out against judges.

Copyright

The Thai *Copyright Act 1994* contains significant changes compared to the previous *Copyright Act 1978* including:

- an expansion of the types of subject matter for which protection is available to include databases and computer programs which are to be protected as literary works;
- the creation of performers' rights;
- an improvement in the remedies available to provide for preliminary injunctions (which may be available prior to infringement) as well as providing for recovery of legal costs and illicit profits made by the infringer;
- the creation of a new intellectual property court which will be composed of three judges and two legal experts on intellectual property matters together with a judicial assistant who is to be skilled in computer software and science; and
- increased criminal penalties for copyright infringement.

Sedition

Under Thailand's Code dissemination of content which is likely to cause the following acts or situations is prohibited in Thailand:

- to bring about change in the laws of Thailand or the Thai government by the use of force or violence;
- to raise unrest and disaffection amongst the people in a manner likely to cause disturbance in Thailand; or
- to cause the people to transgress the laws of Thailand.

There is an exception to this prohibition if the content is consistent with the intentions of the drafters of the Constitution or the expression of an honest opinion or criticism.

Misleading advertising

While Thailand does not have comprehensive legislation that regulates advertising practices, a number of statutes and regulations impact upon advertising and promotion practices. The Thai *Consumer Protection Act 1979* (the **Consumer Protection Act**) applies to commercial advertising media, including newspapers and printed materials of all kinds, radio and television broadcasting, online and mobile media. The Consumer Protection Act is designed to protect consumers from media advertisements that are false or exaggerated, are materially misleading, encourage illegal or immoral acts or may cause disunity among the general Thai public. In some cases this legislation is overridden by specific legislation that applies to certain goods and services.

Restricted product advertising

Free-to-air TV

The following products are expressly prohibited from advertisement through any media in Thailand except in certain circumstances. It should be noted that advertisement of certain products and services are also restricted in Thailand such as medical products, health professional, etc. Thus, each advertisement must be examined before broadcasting in Thailand.

Alcoholic beverages

The Alcoholic Beverages Control Act 2008 (the **Alcohol Act**) prohibits any form of advertisement of alcoholic beverages in the manner of promoting alcohol consumption. The Alcohol Act, however, allows advertisements that provide knowledge and promote social welfare in which no image of the actual product or its container is shown. Further, any advertisement that originates from outside of Thailand will not be subject to the Alcohol Act.

Tobacco products

Under the Tobacco Products Control Act, 1992 (the **Tobacco Act**), any kind of advertisements of tobacco with names and marks of the tobacco products are prohibited. However, the Tobacco Act does not apply to live/real-time broadcast from overseas via radio or television and the advertisement of the tobacco products in media which is printed overseas but that is not intended to be distributed in Thailand.

Cable TV and Subscription TV

The prohibitions and/or conditions in *Free-to-air TV*, above, also apply to any forms of advertising, including advertisements on cable TV and subscription TV.

Radio

The prohibitions and/or conditions in *Free-to-air TV*, above, also apply to any forms of advertising, including advertisements on radio.

Online content provider

The prohibitions and/or conditions in *Free-to-air TV*, above, also apply to any forms of advertising, including online advertisements.

Newspapers; Other Print Publications; Mobile

The prohibitions and/or conditions in *Free-to-air TV*, above, also apply to any forms of advertising, including advertisements on newspapers, other print publications and mobile.

Classification (e.g. pornographic or adult material)

Under the Code, publication of pornography, obscene or adult content by any means, is prohibited.

Free-to-air TV

On 1 December 2006, the Television Classification System was introduced in Thailand. The System is a project of the Government Public Relations Department run by the Office of the National Broadcasting Commission and all six Thai free-to-air TV stations are required to abide by it in their self-classification. The main ratings are now displayed on screen before and for the duration of the program. Each rating must be displayed in a specified colour. The ratings used are as follows (translated into English):

- **PC3+ (Pre-school Children)**: made for children aged 3-5
- **C6-12 (Children)**: made for children aged 6-12
- **G (General)**: for all ages
- **PG13+ (Parental Guidance 13)**: Not suitable for children under 13
- **PG18+ (Parental Guidance 18)**: Not suitable for children under 18
- **A0: Adult Only (18+ only)**

Cable TV, Subscription TV, Radio, Online content, Newspapers, Other print publications, Mobile

No classification requirements are applicable to the above forms of media.

Other restricted speech

Free-to-air TV, Cable TV, Subscription TV (Pay TV), Radio

The Broadcasting Act prescribes that TV programs must not broadcast subject matter that: instigates the overturning of the democratic political system under a constitutional monarch; adversely affects national security, public morals and good order; includes activities that fall within the ambit of obscenity; or that may cause the moral or health deterioration of the public.

Online content provider

Thailand has no law exempting online service providers from liability in relation to third party illegal content on their service. An online service provider could be considered a supporter of a criminal offence committed by users of its service. Under the current practice, the existing Internet access service providers normally comply with requests to remove prohibited content. This cooperation is viewed as a demonstration of the unintentional availability of such prohibited content and the goodwill of the service providers.

The Ministry of Information and Communication (the **MCIT**) monitors Internet sites and regularly closes them down. The *Computer Related Offences Act 2007* (the **Computer Act**), focuses on computer crimes. The Act is designed to prevent criticism of the monarchy and the military. State authorities have tightened their surveillance of Internet sites since the coup on 20 September 2006, on grounds of national security. Internet censorship operates through the Royal Thai Police and the Communications Authority of Thailand. In addition, the information which is blocked and the criteria applied for blocking have not been disclosed by the government.

Further restricted content includes: pornographic data; fake or false data which causes damage to other persons or the general public; and data constituting an offence relating to the security of Thailand or terrorism.

Newspapers

The Printing Recordation Act does not specify additional restricted speech in newspapers.

Other print publications

The Printing Recordation Act also restricts speech in other print publications that defames, insults, or threatens the King, Queen, the Heir-apparent, or the Regent, or affects the internal security of Thailand, or the public peace or good morals of the Thai people.

Mobile

The Act governing the commission of offences relating to computers 2007 also applies to mobile content providers.

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Vietnam

Country	Vietnam	
Media Regulatory Authority	Ministry of Information and Communications (MIC) Ministry of Culture, Sports and Tourism (MCST)	
Foreign investment controls or restrictions	Ownership – Extensive investment controls; joint ventures are possible	
Cross-media ownership controls or restrictions to protect competition in the local media sector	None (there are joint venture requirements with local partners in certain sectors)	
Forms of media that may be supplied without a government licence	None (all foreign invested companies established by way of a discretionary licensing process)	
Forms of media that may only be supplied under a government licence	All press agencies require permits	
Primary legislation	<i>Press Law (dated 28 December 1989)</i>	Broadcasting and licensing
	<i>Publication Law, (No. 30/2004/QH11, dated 2 December 2004)</i>	Applies to publishing houses which fall outside the scope of the Press Law.
	<i>Telecommunications Law No. 41/2009/QH12 dated 23 November 2011</i>	Media Activities through Telecommunications Network
	<i>Decree No. 97, (No. 97/2008/ND-CP, issued by the Government on 28 August 2008)</i>	Internet
	<i>Decision No. 20, (No. 20/2011/QD-TTg dated 24 March 2011)</i>	Pay TV
	<i>Motion Picture Law, (No. 62/2006/QH11, dated 29 June 2006), amended under Law No. by Law No. 31/2009/QH12 dated 29 June 2009</i>	Motion picture classification, production, distribution and projection services
	<i>Law on Commerce, (No. 35/2005/QH11 passed on 14 June 2005)</i>	Advertising
	<i>Law on Competition, (No. 27/2004/QH11 passed on 25 December 2001)</i>	Advertising
	<i>Ordinance on Advertisement Ordinance (No. 39/2001/PL/UBTVQH10 dated 16 November 2001)</i>	Advertising

Local Media Regulation

Vietnam joined the World Trade Organization (the **WTO**) in January 2007 and its stated sector-specific commitments, combined with domestic laws and regulations governing these sectors, form the framework of Vietnam's regulatory regime. Many of the laws and regulations governing the telecommunications and broadcasting sectors, however, were issued prior to Vietnam's accession to the WTO. Following the WTO accession, a number of the regulations in the media and broadcasting sector were amended accordingly.

Licences

What licences are required?

The Press Law: Local Press Activities

The Press Law defines "Press in the Socialist Republic of Vietnam" as "the essential mass media for social life", "the speaking agency of the Party's organizations, state bodies, and social organizations", and "the People's forum". Implementing regulations of the Press Law clearly provides that only the Party's organizations, state bodies, and social organizations can apply for the establishment of press agencies or become the management agency of any press in Vietnam.

The term "press" under the Press Law covers printed press (newspapers, magazines, newsletter, news bulletins), audio press (radio programmes), visual press (TV programmes, audio and visual news programmes broadcast by various technical means) and electronic media.

Activity permit requirements are different for Vietnamese and foreign press. For Vietnamese press organisations, press activity permits are required in order to broadcast, print or upload media content. If press organizations wish to publish or broadcast programs not prescribed in their press activity permit, they must apply for permission from the MIC. Current regulations also require that Vietnamese press agencies obtain a written approval from the MIC before cooperating with foreign entities.

For foreign press activities, written approval from the Ministry of Foreign Affairs or the MIC is required.

A license from the MIC is also required for the publication of news, documents, leaflets, and press announcements on electronic boards.

The Publication Law: Publications Outside the Scope of the Press Law

The Publication Law applies to publishing houses which fall outside the scope of the Press Law. It requires publishing companies to register their publication plans for each year, and these plans must be certified by the MIC.

Moreover, an entity wishing to print non-commercial documents, including documents of foreign agencies and organizations, international organizations in Vietnam, and 100% foreign-owned enterprises that are not published through a publishing house, must apply for and obtain a licence from the MIC.

In addition, the MIC or provincial people's committee must grant a permit for foreign contracted printing when enterprises conduct printing for foreign entities. Organizational importation of publications, commercial importation of publications, and foreign cooperation on publication distribution also require permits.

Before publishing on the Internet, which is defined as "an act of publishing houses making public for the first time an entire book or document on the Internet", the publisher must register the publication plan with the Publication Authority under the MIC. It appears that this requirement applies to publication on Vietnamese domain name (.vn) websites.

Regulations on Foreign Television Programs

(i) Satellite TV: No Licence Required, But Limitations Still Apply

There are restrictions on the Reception of Satellite Signals beaming TV channels under Decision No. 20/2011/QĐ-TTg promulgating regulations on pay TV, issued by the Prime Minister on 24 March 2011 (**Decision No. 20**).

Only the following entities are allowed to receive satellite signals beaming TV channels launched by foreign providers:

- State organizations at central and provincial levels (party, state and political groups);
- Press agencies;
- Foreign organizations in Vietnam;
- Representative offices or residential offices of foreign press agencies in Vietnam; and
- Foreigners and organizations employing foreigners directly receiving foreign programs via satellite (if such programs are not already provided on a Vietnamese pay TV network at the location in which such organizations or individuals install their receiving equipment).

Notably, the above mentioned entities must conduct registration procedures with the local Department of Information and Communications where the receiving equipment is located. Decision No. 20 also provides the timeframe and documentation requirements for the registration procedures, the validity of the registration certificate, as well as procedures for amendment and supplementation of the registration certificate.

(iii) Cable and Subscription TV

Subscription/Pay TV under Decision No. 20 includes cable TV (e.g. analog, digital or IPTV), digital terrestrial TV (e.g. DVB-T), direct-to-home TV (**DTH**) and mobile TV.

Businesses providing pay TV service are categorized into five groups: (i) pay TV content providers, (ii) agents for foreign TV channels, (iii) pay TV editors and translators, (iv) pay TV service providers, and (v) pay TV network infrastructure providers. Companies planning to be parts of these groups must be established legally under the laws of Vietnam. Business activities with respect to pay TV must be licensed by the Authority of Broadcasting and Electronic Information (the **ABEI**) under the MIC.

Pay TV content providers, pay TV editors and translators are required to obtain a visual press license.

Foreign pay-TV channels must satisfy five following requirements:

- The content of the channel must meet people's needs and must not violate the press laws in Vietnam;
- Evidence proving the legitimate ownership of the channel is provided. Such evidence must be issued by the competent authority where the television agency owning the relevant channel is registered;
- Having the certificate of registration for the Provision of Foreign Channels in Pay-TV;
- The channel is edited and translated by accredited by editing organizations; and
- The channel must not have overseas built-in advertisements

Foreign TV broadcasting agencies must register their provision of TV channels in Vietnam with the ABEI via an authorized agent in Vietnam in order to be issued with a certificate of registration. The authorized local agents must be legal entities established under Vietnamese laws and having the business license appropriate for being agents of foreign channels in Vietnam.

In addition, the TV channels broadcast in Vietnam must be edited and translated into Vietnamese by licensed pay TV editors and translators. Exceptions to this requirement include live reports on sports events, and live coverage of opening and closing ceremonies of world and regional sports competitions.

Notably, Decision No. 20 requires that pre-programmed commercials aired on foreign TV channels be removed when the foreign TV channels are broadcast in Vietnam. It further specifies that advertisements (if any) must be made in Vietnam and must comply with the advertising law of Vietnam.

Online Content Service Regulations: Decree No. 97

Decree No. 97 applies to organizations and individuals involved in the management, supply, and use of Internet services and electronic information in Vietnam. Although Decree No. 97 does not distinguish between domestic and foreign entities, it includes a specific condition for the licensing of general websites and for registering online social services. Specifically, only organizations or enterprises established in Vietnam, and operating under Vietnamese law are eligible to apply for such licensing or registration. In effect, this website licence or registration requirement does not apply where the owner or operator is not physically based and operating in

Vietnam. Thus, the scope of Decree No. 97 appears to be limited to Internet activities conducted by entities established and operating in Vietnam.

Decree No. 97 addresses the following three types of websites:

- (a) News agency websites: may be established by press agencies that have been granted electronic newspaper operation licences under the Press Law;
- (b) General news websites (defined as “a website of an organization or enterprise providing general information on politics, economy, culture and society by citing information from official sources of press agencies or websites of Party and state agencies”) and websites that provide Internet application services and concurrently provide information on politics, economics, culture and society must be licensed by the MIC; and
- (c) Online social services (defined as “a service providing a broad, public community of users the possibility to interact, share, store and exchange information between one another on the Internet including blogs, forums, chat and other similar forms) must be registered with the MIC.

General news websites are not allowed to publish readers’ comments about the information they collect and cite. Licensed/registered websites must display the license/registration number and license/registration issuance date.

Websites not subject to licensing requirements include those that only provide information on the activities, services, products and business of an enterprise or organization without citing information from other sources, or those that are websites of State agencies providing information on their operations, structure and functions. The website must display, however, the name, address, phone number and email address of the organization managing the site, as well as the name of the webmaster in charge of maintaining the site.

A written notification must be sent to the licensing/registration authorities 10 working days before general news websites and online social networks terminate their activities.

Online social network service providers are responsible for actively preventing and removing any information in violation of Vietnamese laws, providing related information to authorities when necessary.

Authorities are entitled to a broad discretion to block any website, on or offshore, that contains sensitive contents. Accordingly, if ISPs discover any infringement, they are required to terminate the service and notify the authorities. At the authorities’ request, ISPs must also (i) cease to provide Internet services to organizations or individuals if they engage in the prohibited activities, (ii) block websites that violate the relevant regulations, and (iii) provide the authorities with information concerning the websites in violation.

Foreign ownership and investment restrictions

What are the restrictions (if any) on cross-media or broadcast market ownership?

Cross ownership in the media or broadcast markets is currently not a concept addressed by the regulatory regime of Vietnam.

However, for media activities through the telecommunications network, please note that there are cross-ownership restrictions, such as an entity owning more than 20% of the charter capital or shares in a telecommunications enterprise must not concurrently own more than 20% of the charter capital or shares in another telecommunications enterprise that operates on the same telecommunications service market.

What are the restrictions on foreign ownership?

Certain audiovisual services

Under Vietnam’s limitations to its WTO market access commitments, foreign capital contributions may not exceed 51% of the legal capital of an entity providing services under Central Product Classification (**CPC**) codes for motion picture production (CPC 96112, excluding video tapes), motion picture distribution (CPC 96113, excluding video tape), or motion picture projection services (CPC 96121).

Advertising services:

Under Vietnam’s WTO market access commitments, foreign investors seeking to conduct “advertising services” in Vietnam must do so through a joint venture with a Vietnamese partner that is licensed to provide such services.

There is, however, no limitation on foreign capital contribution to the joint venture. Although, in principle, a foreign investor should be able to acquire up to 99% of the charter capital of an existing Vietnamese entity engaged in advertising services, local licensing authorities may decide not to approve a joint venture that is 99% foreign-owned, as they may deem such an investment project “unfeasible” and inconsistent with the cooperative spirit intended by the joint venture requirement.

What are the restrictions on foreign investment

Certain audiovisual services

In respect of motion picture production services, motion picture distribution services, and motion picture projection services, foreign entities must enter business cooperation contracts or joint ventures with Vietnamese partners who are authorized to provide these services in Vietnam. Specific to motion picture projection services, Vietnam’s cultural centres, film centres, public cinema clubs and societies and mobile projection teams may not engage in business cooperation contracts or joint-ventures with foreign service suppliers.

Distribution of books, newspapers, magazines, and video records on whatever medium

Vietnam excludes books, newspapers, magazines and video records (on whatever medium) from its WTO market access commitments on distribution services. Accordingly, only domestic laws and regulations will apply. Vietnamese laws list books, newspapers, magazines, and video records on the list of goods that are not permitted to be distributed in Vietnam by foreign-invested enterprises.

Distribution of publications other than books, newspapers, magazines, video records and motion pictures

Distribution of publications other than books, newspapers, magazines, video records and motion pictures is generally permitted in accordance with the international commitments of Vietnam. Article 43.1 of the Publication Law generally provides that Vietnamese and foreign publication distributors having a “legal person status” may enter into business cooperation contracts or joint ventures to distribute publications in Vietnam in accordance with Vietnamese law and treaties to which Vietnam is a contracting party.

Vietnam, in its market access commitments under the WTO, permits a foreign commercial presence for the provision of commission agents’ services (CPC 621, 61111, 6113, 6121), wholesale trade services (CPC 622, 61111, 6113, 6121), and retailing services (CPC 631+632, 61112, 6113, 6121) of all legally imported and domestically produced products from 11 January 2010. Franchising services are also subject to no limitation from 1 January 2009.

Import of publications

Current Vietnamese regulations allow both domestic and foreign individuals and organizations to import publications into Vietnam in compliance with Vietnamese law and international treaties to which Vietnam is a party. Note, however, that one of the licensing conditions is that the head of the business must reside in Vietnam and have either a publication distribution professional certificate issued by Vietnamese authorities or a university degree in publication distribution. In addition, the minimum capital required is VND 5 billion (approx. USD270,700). However, newspapers, journals and periodicals as well as disks, videos and other information-containing audio or similar objects are not permitted to be imported by foreign invested enterprises.

Establishment of a publishing house

Only the following entities can establish a publishing house: state bodies, political organizations and socio-political organizations at the central or provincial level, political-social-professional organizations at the central level that directly create and announce the works, and those determined by the MIC following the approval of the Prime Minister.

Satellite-based telecommunication services included in Vietnam’s WTO market access commitments

Under Vietnam’s WTO market access commitments regarding satellite-based services, which were adopted after current telecommunications regulations, a foreign enterprise providing satellite-based services (including broadcast services) is subject to commercial arrangements with Vietnamese international satellite service suppliers duly licensed in Vietnam, except satellite-based services offered to: off-shore/on sea based business customers, government institutions, facilities-based service suppliers, radio and television broadcasters, official international organization’s representative offices, diplomatic representatives and consulates, high tech and software development parks that are licensed to use satellite-earth stations.

What are the restrictions on a foreign entity entering a content supply agreement in the country with a local organisation?

Foreign TV programmes

Foreign pay-TV channels must satisfy five requirements which are discussed in Section 1.1(a)ii above.

Cooperation between the Vietnamese press and foreign entities

Current regulations require that Vietnamese press agencies obtain written approval from the MIC before engaging in cooperation activities with foreign entities.

Commercial imported publications

Commercial imported publications must be registered with the MIC prior to import. An imported publication must also comply with the Publication Law and other relevant regulations. If the MIC determines that an imported publication might violate Vietnamese laws, the MIC may request a content assessment of that publication before certifying the import registration or refuse to certify the import registration for that publication. The head of a commercial-publication import establishment must organize the content evaluation of an imported publication prior to distribution and take legal responsibility for the content of that imported publication.

Foreign document printing

For non-commercial documents of Vietnam-based foreign organizations or international organizations that are not published by Vietnamese publishing houses, a publication permit from the MIC is required. Printing conducted under contracts with foreign countries requires a contracted printing permit from the MIC or the provincial people's committee.

Regulatory Bodies

What are the agency(ies) responsible for administering regulation?

The MIC is the principal ministry responsible for exercising state powers of management over the press and media.

The MCST acts as a regulatory body, particularly in regard to regulations under the Motion Picture Law.

Are there any other key issues impacting the regulatory body/regime?

Ensuring transparency remains a significant challenge in Vietnam.

Content Regulation

The Vietnamese government heavily regulates both print and broadcast content, often under a variety of regulations. The main legal and normative documents are discussed below.

- The Press Law governs the content of both print and broadcast press organizations and states that the role of the press is to “propagate the official line of the Vietnamese Communist Party and the government”. All programs broadcast on Vietnamese radio and television, except those from direct satellite, are subject to censorship by authorities.
- The Publication Law governs the content of publishing houses, including books, magazines, and broadcast programs that are not covered by the *Press Law*.
- The Commercial Law, Competition Law, Ordinance on Advertising, implementing regulations, and various local regulations govern advertising content in Vietnam.
- The Civil Code provides private remedies for “non-contractual damages” that result from content-related violations.
- The IT Law and its implementing regulations provide broad discretion for authorities to block offending websites.

Defamation and Contempt

Article 10 of the Publication Law, which applies to works or documents on politics, economics, culture, social affairs, education and training, sciences and technologies, literature and arts, published in any language, or “expressed in images or sounds on different materials or technical means,” prohibits slander (i.e., defamation) of organizations, agencies or individuals.

Decree No. 51, which implements the Press Law, states that the press cannot:

- (a) publish or broadcast personal photos without clear captions or which affect the concerned individuals’ prestige or honour (except for photos giving information on public meetings or collective activities, working sessions, art performances, sports and physical training, wanted persons, open court hearings or defendants in serious cases who are serving court sentences); or
- (b) publish or broadcast news reports, articles or photos that badly affect people’s private lives or publicize personal documents or letters of individuals without consent of the senders or the receivers or the lawful owners of those documents or letters.

Vietnam’s Civil Code addresses liability for non-contractual damages, including a broadly-defined liability for defamation, as follows:

- (a) A person intentionally or unintentionally harming the life, health, honour, dignity, reputation, property, or other legal rights or interests of an individual, or harming the honour, reputation, or property of a legal entity or other subject, thereby causing damage, must compensate (for such damage).
- (b) Where the law provides that a person causing damage must compensate for such damage even if (that person) was not at fault, such provision shall be applied.

Article 611 specifically addresses damages caused by harm to “honour, dignity or reputation”, which includes defamation:

- (a) Damage caused by harm to the honour, dignity or reputation of an individual or harm to the honour or reputation of a legal entity or another subject shall comprise:
 - (i) reasonable costs for mitigating and remedying the damage;
 - (ii) loss of or reduction in actual income.
- (b) A person causing harm to the honour, dignity or reputation of another person must pay compensation for damage together with another amount of money as compensation for mental suffering of the aggrieved person. The amount of compensation for mental suffering shall be as agreed by the parties; if the parties are not able to agree, (the maximum sum) shall not exceed ten (10) months wages at the minimum monthly wage rate provided by the State.

There are also criminal penalties for slander and humiliation.

Copyright

Vietnam is a member of the World Intellectual Property Organization and is a signatory to the Paris Convention for the Protection of Industrial Property. It has acceded to the Patent Cooperation Treaty and the Madrid Agreement. On October 26, 2004, Vietnam joined the Berne Convention on Protection for Literary and Artistic Works.

Vietnam has taken steps towards fulfilling its international obligations and has enacted several laws against various forms of copyright infringement, including the Law on Intellectual Property. The Vietnam Office of Literary and Artistic Copyright is controlled and supervised by the Ministry of Culture and Information. However, even with this legal and regulatory framework to support copyright protection, enforcement of copyright laws is not yet strong in practice.

Sedition

The Vietnamese government has strict regulations regarding what content may be published, particularly in light of material which may undermine national unity or Vietnamese customs. Therefore any such activity is likely to be met with civil and/or criminal penalties.

Advertising in General

Vietnamese law makes a clear distinction between advertising and promotional activities. Advertising is associated with introducing a product or service to the public, whereas promotions is the act of enhancing sale of a product or service.

The Commercial Law, the Competition Law, the Ordinance on Advertising, Decree No. 24 providing detailed regulations for implementation of the Ordinance on Advertising, and various local regulations govern advertising in Vietnam. In practice, advertisement activities are conducted in line with the Ordinance on Advertisement and its guiding regulations. Advertisements are only allowed for goods that have been approved for circulation in the Vietnamese market at the time of advertising.

Advertising through Email and Text Messaging

Decree No. 90 outlines specific requirements relating to the subject lines of email advertisements or text message labels, contents, and “opt-out” functions. An advertising service provider email advertisements and internet based text messages must be sent from a Vietnamese domain name (“**.vn**”) website which is operated from a server located in Vietnam. An advertising service provider sending text messages advertisements must use a subscriber number issued by a Vietnamese text message service provider. In either case, the advertising service provider must apply for and be issued a management code number from MIC.

Misleading advertising

Both the Commercial Law and the Competition Law prohibit false or misleading advertising in any form.

Restricted product advertising

Certain products, including food, alcohol and tobacco in particular, are subject to restricted advertising. In addition, Article 109 of Vietnam’s Commercial Law lists prohibited commercial advertisements.

Classification (e.g. pornographic or adult material)

Vietnam has strict prohibitions against content considered to be pornographic or of an adult nature. In cases where it is necessary to express sexual activity or nudity in film or video as required by the theme of a work with a philosophical or humanistic character, then it is permitted to depict this from afar, dimly or fugitively, and it is necessary to organize permission from the MCST or the local Department of Culture, Sports and Tourism.

In general, contents provided on all forms of press, on the Internet and on mobile networks must comply with the regulations for press, information technology, advertising, publications, etc.

For example, press agencies are prohibited to publish in the press:

- materials that are illegal and hostile to the State of the Socialist Republic of Vietnam and damaging to national solidarity;
- materials that contain detailed descriptions of lewd and violent acts;
- materials that convey depraved customs and superstitions;

In addition, there are specific regulations on approval of motion picture contents before projecting, broadcasting, or distributing a motion picture in Vietnam:

- Organizations and individuals are only allowed to project, broadcast or distribute motion pictures once the motion pictures have had a dissemination license from the state competent authority in charge of motion picture (for motion pictures other than TV shows produced by TV stations/TV-radio station for broadcasting on their stations) or have had broadcasting decision of the head of the television stations or the radio-television stations (for TV shows produced by TV stations/TV-radio station for broadcasting on their stations).
- The application dossier for a dissemination license includes an application form and the copyrights certificate of the motion picture. The MCST or local people’s committee will grant the dissemination license, and the head of TV station or TV-radio station will issue the broadcasting decision on the basis of the opinion of a motion picture appraisal committee.

- A motion picture appraisal committee can be established by the MCST Minister, the chairman of the local people's committee, or a head of a TV station or TV-radio station, with a minimum of 5 members.
- The appraisal committee operate in accordance with prescribed procedures using prescribed standards for rating and assessing motion pictures under Decision No. 49/2008/QĐ-BVHTTDL issued by the MCST on 09 July 2008 on promulgating Regulation on motion picture appraisal and the issuance of the license to popularize motion pictures.

Regarding the contents of imported publications, the importer is responsible before the law for the content of their imported publications. If signals of infringement are detected, the Publication Authority, under the MIC or the local Departments of Information and Communications, will only grant import licenses for the import of a limited amount of publications for content appraisal. An appraisal authority will be established to appraise the content of the imported publications. The appraisal results will form the basis for the authority to grant the import license to the publication under appraisal.

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We are very appreciative to our many contributing Baker & McKenzie authors and particularly grateful for the input from our contributing firms. While we have aimed to ensure currency and accuracy as at the date of publication, laws and regulations can often change at short notice. Please feel free to contact any member of our Asia Pacific team in your jurisdiction.

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