

## Client Alert

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## NCC Issues the Draft of a New OTT Law

The Taiwan National Communications Commission (the **NCC**) issued the draft of a new legislation on 22 July 2020, named the 'Internet Audiovisual Service Management Act' (the **draft IASMA**, 網際網路視聽服務管理法), to regulate OTT operators that provide such services in Taiwan. The draft IASMA aims to promote the development of internet audiovisual services, protect public audiovisual rights and interests, and safeguard the culture of Taiwan.

The draft IASMA is currently open to public consultation, and OTT operators and interested parties may provide opinion before 20 September 2020.

### ● What are the key elements of the draft IASMA?

The key elements of the draft IASMA include:

1. Scope of the draft IASMA.
2. OTT operator's registration to the NCC.
3. General obligations of registered OTT operators.
4. Special obligations and incentives to cultivate Taiwanese programs.
5. Foreign registered OTT operators.
6. China OTT operators issue.

### ● Scope of the draft IASMA

"Internet Audiovisual Service" is defined as the service in which operators use their own names to provide curated contents and provide the contents through the internet for local users to view and listen to and monetize the services by subscription fees or ads. The law will not apply to user generated content (UGC) platforms or social media.

### ● OTT operator's registration to the NCC

In general, OTT operators may submit an application to the NCC for registration on a voluntary basis. However, the NCC will require OTT operators with a larger size of users, big revenue, big traffic, significant market influence, or with significant public interest, to register by issuing a public announcement. Failure to register will lead to a fine.

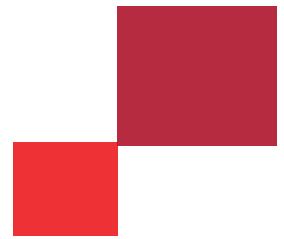
Registration will be terminated by the NCC if the operator terminates or suspends its business operations for 6 months without justifiable reasons.

### ● General obligations for registered OTT operators

The draft IASMA imposes a list of general obligations for registered OTT operators including:

#### ■ Periodic reporting to the NCC

OTT operators are required to make periodic reports to the NCC about relevant business information, including the number of Taiwan users, revenue, number of views, traffic and user's usage status.



#### ■ **Information disclosure to users**

To protect consumer interests, OTT operators must disclose certain information in a clear and accessible manner on the operator's website including basic business/operation information, its certificate of registration, and other relevant information required to be disclosed pursuant to applicable laws and/or as designated by the NCC.

#### ■ **Disclosure of the terms of service**

In addition to the information mentioned above, OTT operators should disclose the terms of service on its website for their user's easy reference. The terms of use include:

- ✓ Items of services.
- ✓ Service fee and consumer protection policy.
- ✓ Compensation for service interruption.
- ✓ Privacy protection policy.
- ✓ Methods, conditions and limitations of collecting, processing, utilizing user data.
- ✓ Cyber security policy.
- ✓ Direct contact information of the OTT operator.
- ✓ User-friendly way to report an issue.
- ✓ A provision that states in the event of a consumer dispute, the user may bring a case to a district court based on the location of his/her domicile, residence, principle place of business or office.
- ✓ A provision that states users are prohibited from infringing on others' rights and interests or conducting any behavior in violation of applicable laws with regard to the protection of children and youth, intellectual property rights and other illegal behavior.
- ✓ The Chinese subtitles displayed to users should be in Traditional Chinese.

#### ■ **Content obligations**

According to the draft IASMA, the OTT operators should ensure their content does not endanger national security, disrupt public order or the moral good, or impair the physical and mental health of children and youth. Proper ratings are required.

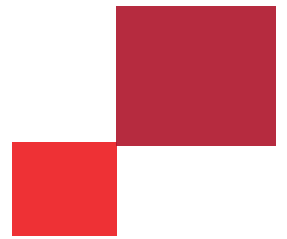
#### ■ **Establishment or participation in self-regulatory organizations**

The draft IASMA requires OTT operators to jointly establish or participate in an existing self-regulatory organization and to comply with the self-regulation rules jointly enacted by the operators. The self-regulation rules should be sent to the NCC for recordal.

### ● **Special obligations and incentives to cultivate Taiwanese programs**

#### ■ **Special obligations**

For the prosperity of the Taiwanese audiovisual industry, a special obligation will be imposed on the OTT operators announced by the NCC for registration. The obligation in a broad sense is to cultivate Taiwanese



audiovisual programs. The operators are required to set up a special column for Taiwanese programs on their website and describe their specific measures to produce or co-produce Taiwanese programs and also the proportion of such programs.

■ **Government assistance and incentives**

Government sectors will further provide assistance and incentives to encourage OTT operators to invest in or produce/co-produce Taiwanese programs.

● **Foreign registered OTT operators**

Foreign registered OTT operators must appoint a local agent in Taiwan to handle relevant matters related to this law and submit the information of the local agent to the authority, if foreign registered operators are without a fixed place of business in Taiwan.

● **China OTT operators issue**

Before China OTT operators receive proper approvals from the Taiwan authority to operate in Taiwan, telcos, data centers, CDN (Content Delivery Network) operators, and cloud service providers are prohibited from providing facility or service to the China operators and their agents.

If the partners of telcos, data centers, CDN operators, and cloud service providers which are outside Taiwan but transmit the contents of these China OTT TV operators to Taiwan, telcos, data centers, CDN operators, and cloud service providers must block or take necessary measures after receipt of the notices from the Taiwan authority.

If you require any further explanation or assistance, please feel free to contact us.

Thank you.

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