

Client Alert

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Release of a new Draft Decree amending and supplementing a number of articles of Decree No. 06/2016/ND-CP on the Management, Provision and use of radio and television services

The Ministry of Information and Communications recently released Version 5 of the draft decree ("**Draft Decree**") amending Decree No. 06 06/2016/ND-CP of the Government dated 18 January 2016 on the management, provision, and use of radio and television services ("**Decree No. 06**"). The Draft Decree has been sent to stakeholders for consultation purposes and amendments are continuously being made.

The most notable change in the Draft Decree is the removal of all sections relating to "on-demand service on the Internet" ("**ODSI**"), which explicitly covers over-the-top ("**OTT**") content services. It does however appear that changes have been made only to the structure and not the substance, in other words, the Draft Decree will likely instead regulate OTT content services.

Below are some of the Draft Decree's proposed amendments to Decree No. 06.

Broader Definition of Radio and Television Services

While the draft released prior to this Draft Decree introduced ODSI as a new category of radio and television services and provided statutory requirements accordingly, this Draft Decree has removed all references to ODSI.

The current Decree No. 06 defines "radio and television services" as:

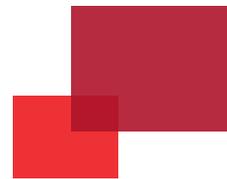
...telecommunications application services to provide intact domestic and foreign radio and television program channels and value added services via broadcasting infrastructure to services users.¹

The Draft Decree appears to broaden the scope of "radio and television services" by amending the above definition to:

*telecommunications application services to provide intact domestic program channels, foreign program channels, **domestic programs, foreign programs** and value added contents on technical infrastructure for radio and television transmitting and broadcasting to users.*

As stated above, the Draft Decree includes "domestic programs" and "foreign programs" in the definition of "radio and television services". "Domestic

¹ Article 3.1, Decree No. 06.



programs" are defined as radio and television programs produced or co-produced by Vietnamese agencies and organizations in compliance with the laws, and "foreign programs" as radio and television programs produced by foreign agencies and organizations in foreign languages.

However, no definition of "radio and television programs" is provided in either the current Decree No. 06 and the Draft Decree.

Reclassification of Radio and Television Services

With the removal of ODSI, under the Draft Decree, "radio and television services" are now classified into the following five (5) types of services:

- (i) Terrestrial television service;
- (ii) Cable television service;
- (iii) Satellite television services;
- (iv) Mobile television service; and
- (v) Radio and television service on the Internet.

Under the current Decree No. 06, "radio and television service on the Internet" is defined specifically as:

*...a service using Internet connection to transmit **radio and television program channel contents** to service subscribers.*

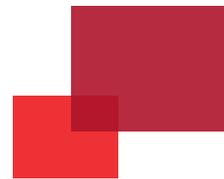
In the Draft Decree the definition of "radio and television service on the Internet" is amended as follows:

a type of radio and television service using the Internet connection by use of domain names of portals or identified Internet addresses, including Internet applications to broadcast to service subscribers.

The Draft Decree appears to more broadly define "radio and television service on the Internet" by removing the types of content being provided by such service as specified in the current Decree 06's definition (i.e., radio and television program channel content).

The Draft Decree also proposes amendments to Article 12 of Decree No. 06, which allows enterprises to provide an "on-demand service package" of "radio and television service on the Internet" without providing any other program channels.

In light of the above, the Draft Decree's broadened definition of "radio and television service on the Internet" will likely cover separate and independent movies, series, music, and/or videos provided by OTT content services.



Requirements potentially applicable to OTT services if they are classified as a type of "Radio and television services on the Internet"

In the event OTT services are classified as a type of "Radio and television services on the Internet", they will be subject to requirements applicable to radio and television services under Decree No. 06. For example:

a) Licensing requirement

In general, the provision of paid radio and television services to Vietnamese users, they must obtain a license issued by the Ministry of Information and Communications ("**License to Provide Paid Radio and Television Service**").

b) Library quota and mandatory requirements regarding advertising

Article 21.3 of Decree No. 06 (as amended) requires that the percentage of domestic programs shown on an on-demand service on the Internet shall not make up less than 30% of the total programs shown. In addition, advertisements (if any) must be installed in Vietnam, edited by press agencies that possess a proper radio/television license, and comply with Vietnamese laws.

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For more details on the Draft Decree, please do not hesitate to contact us.

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