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Legal Update

Overview of the Proposed Amendment to the Broadcasting Act Related to the Regulation of OTT Services

Over the top (OTT) media service offers viewers access to media streaming services such as broadcast television and movies over the Internet. Notable OTT service providers include Netflix and Hulu in the U.S. Netflix is also available in Korea, alongside indigenous services such as pooq, oksusu, Tving.

With the growth and increasing popularity of internet-based streaming media services such as OTT, the National Assembly has raised the idea of toughening regulation of OTT services — previously classified as “communication services” and therefore less regulated compared to “broadcasting services” — by incorporating them under the category of broadcast services instead.

On January 11, 2019, Commissioner of the Fair Press Commission Seong-su Kim proposed the Integrated Broadcasting Act (the “IBA”) bill which focuses on raising the public value of broadcasting and reclassifying both the broadcast business and service provider. The bill also proposes to subsume OTT service providers and OTT services under the Broadcasting Act umbrella.

For six months or so, various stakeholder groups, including government agencies, industries, academia, lawyers, and civic organizations, have voiced their diverse views, from the definition of broadcasting (including whether OTT services constitute broadcast services) to protection of freedom of expression. Commissioner Seong-su Kim (also a National Assembly member) gathered these diverse views in proposing the amendment to the IBA on July 29, 2019 which defines OTT services as a separate type of services (a business) called “online video distribution” and grants OTT service providers a legal status called “online video distributor,” distinct from broadcaster.

The amendment to the IBA is significant in that it is based on a principle of minimum regulation, taking into account the media-based features of OTT services while still recognizing that OTT services are innovative new services which cannot be brought entirely under traditional broadcast services.

If the amendment to the IBA is passed by the National Assembly, the Broadcasting Act provisions that will apply to OTT services and OTT service providers are as follows.

- Establishment of separate categories for OTT services and OTT service providers (Article 2, Clauses 5 and 9 of the IBA)
- Use of single reporting system to integrate entry restriction for online video distributors (Article 11, Section 3 of the IBA)
- Enactment and publication of separate deliberation rules for the services or contents provided by online video distributors (Article 8, Section 2 of the IBA)
- Imposition of duty to report terms of use for user protection and duty to notify user, and inclusion of online video distributors to be subject to change to terms of use (Article 41, Sections 1, 3, 4 of the IBA)
- Implementation of competition assessment (Article, 50 Section 2 of the IBA) and application of prohibited conduct regulation (Article 55, Section 1 of the IBA) for online video distributors, and inclusion of online video distributors to be subject to broadcasting dispute mediation (Article 6, Section 1, Clause 2 of the IBA)
- Imposition of duty to submit information to the Korea Communications Commission (Article 85 of the IBA) and duty to submit status of property (Article 86 of the IBA)

- Application of remedial order (Article 87, Section 1 of the IBA) and sanctions (Article 88, Section 1, Clause 2 of the IBA)

As the IBA would apply some but not all broadcasting regulations to OTT services and OTT service providers, even if the amendment to the IBA is passed by the National Assembly, it is not expected to directly impact users who use OTT services in Korea.

In addition to OTT regulations, the IBA is also linked to a bill that separates the Korea Broadcasting System and establishes a separate Act (the Korea Broadcasting System Act). Whether the IBA is passed by the 20th National Assembly while it is in session (in any event before the general elections of April 2020) remains uncertain and should be watched closely.

Should you have any questions or need further information, please feel free to contact us.

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