



China issues its second Draft E-Commerce Law

December 2017

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On 7 November 2017, the Standing Committee of the National People's Congress ("NPC") published the [second draft](#) of the E-commerce Law (电子商务法 (草案二次审议稿), "Draft"). The goal of the Draft is to regulate China's burgeoning e-commerce sector, and thereby facilitate growth, maintain "market order", and eradicate scams and counterfeits.

It is particularly striking that the Draft was published only days before China's biggest online shopping event, "Double Eleven" (Singles' Day), which takes place annually on 11 November. This year, no less than USD 25 billion was spent on e-commerce on Single's Day, a 40% increase compared to last year's results. These new results emphasize the growing importance of this sector in China and the need for regulation.

The legislation work for the E-commerce Law was first initiated in December 2013 and was planned to be submitted for Standing Committee review during the 12th five-year term of the NPC (i.e., March 2013 to March 2018). The first draft of the E-commerce Law was published for comment on 27 December 2016, which immediately caught extensive public attention. On 31 October 2017, a second review of the draft E-commerce Law was conducted. As a rule, a legislative bill placed on the agenda of a meeting of the Standing Committee must be put to vote after three reviews by the Standing Committee. This Draft would therefore only need to go through the third review before it is passed into law. There is, however, no statutory time limit on when the third review would happen.

In this article we summarize the highlights of the Draft:

1. **Scope:** The Draft has a wide scope of application, and extends to all "e-commerce operators" in China, which is a new concept encompassing: (1) operators exploiting their own websites, (2) e-commerce platform operators, and (3) e-commerce operators who listed their web shops on e-commerce platforms.
2. **AIC registration and taxation:** One of the novelties of the Draft is that all e-commerce operators must be registered and licensed by the Administration for Industry and Commerce ("AIC") (exceptions are made for vendors of home-grown agricultural products and arts and crafts). Moreover, all e-commerce operators (i.e. even the individual web shop on e-commerce platforms) will have to pay taxes on their e-commerce revenue, which is, up until now, often not the case for individual web shops. This new rule arises from China's goal to promote e-commerce development while ensuring its convergence with other industries. To ensure this convergence on tax collection and the effective enforcement thereof, the Draft requires platform operators to collect the business license and identity information of individual web shops on their platform, and to transmit this information to the Chinese tax authorities. This requirement has drawn heated discussions since the first draft of the E-commerce Law was released for comments.
3. **False advertising:** The Draft reiterates some of the prohibitions under the Advertising Law, but tailors them to an online setting: e.g. it is forbidden to fabricate false transaction information, write and post fake user reviews or delete genuine user reviews, unless they are defamatory or otherwise forbidden. Moreover, sponsored listings should be clearly marked as such.
4. **Intellectual Property:** the Draft provides a formal framework for the notice-and-take-down procedures that already exist on most e-commerce platforms in China. According to the Draft, e-commerce platform operators must provide takedown procedures, allowing IP owners to request the takedown of infringing links or even the closure of the web shop, if the IP owner can provide *prima facie* evidence of infringement. Platforms that do not take appropriate measures will be jointly liable for the increase in damages caused

by the prolonged IPR infringement. However, IP owners who erroneously request the takedown of genuine links or web shops will also have to indemnify any good faith web shops selling genuine articles.

5. Data protection and cybersecurity:

Unlike the previous version, the current version of the Draft simply refers to the [Cybersecurity Law](#) for the treatment of personal information of e-commerce users. However, the Draft does contain some specificities: the Draft introduces an EU-style right for users to search, correct or delete any of their personal information saved by e-commerce operators, or to deregister altogether. As to cybersecurity, under the Draft e-commerce platforms must adopt technical or other measures to protect network security, and to adopt contingency plans for cyber security incidents.

6. Protection for operators on platform from abuses by E-commerce platform operators:

The Draft provides protection for e-commerce operators registered with e-commerce platforms. Article 30 of the Draft points out that e-commerce platform operators shall not take advantage of the service agreement, transaction rules or other means to impose unreasonable restrictions or transaction conditions on the transactions of operators on platform or the price of such transactions, or collect unreasonable fees against operators on platform. This provision addresses recent controversies in relation to some e-commerce platform operators trying to limit participation in certain major promotion events to a selected group of sellers.

7. Risks and liabilities assumed during the transportation:

According to the Draft, e-commerce operators shall deliver goods or services to consumers in accordance with what was offered and with the way or time as agreed with consumers, and assume the risks and liabilities during the

transportation of goods, unless consumers reach an agreement with e-commerce operators to select another logistic service provider. This is in line with current practice with major e-commerce operators in China, and confirms such accountability system expressly in the Draft.

8. E-Commerce Dispute Resolution:

In the current Draft, article 52 provides that e-commerce operators shall set up convenient and effective complaint and reporting mechanisms, disclose the complaint and reporting channels and other information, and timely accept and handle any complaint and reporting. This aims to address the challenges that consumers may encounter at the time they intend to enforce their consumer rights.

9. Sanctions:

The Draft provides for a range of sanctions for infringements. What is special, however, is that apart from monetary sanctions of up to RMB 500,000, the Draft also prescribes that any infringement of the law will be registered in the infringers credit file, and made public.

Conclusion

The law is, all-in-all, fairly balanced and largely in line with existing practices. One of the most controversial aspects of the Draft is the obligation for individual web shops on e-commerce platforms to register with the AIC and obtain a business license. However, this new obligation could have a markedly positive impact for IP owners, as it would make it harder for bad-faith IP infringers to evade enforcement actions by an IP owner by simply closing their web shop (or having it taken down by the platform) and opening a new one.

Comments on the law could be submitted until 26 November 2017. Given the relatively short period for comments and the fact that it is the second draft reviewed by the Standing Committee, it is probable that the Committee will deliberate and pass the Draft at its upcoming December session.

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