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China fences off the World
Wide Web with its new
Online Publishing
Regulations

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Summary

China's SARFT¹ and MIT² recently jointly issued their new Regulations on the Administration of Network Publication Services ("[网络出版服务管理规定](#)", "Regulations"). The Regulations contain an important overhaul of the current regulations -which took effect in 2001- and significantly tighten the applicable legislation, reaffirming foreign publishers are cut off from the Chinese online publishing market, and (further) restricting the freedom of operation of Chinese online publishers. The new Regulations will take effect on 10 March 2016. This newsflash summarizes the key changes in the Regulations. As implementation proceeds, we will keep you posted.

Wide scope

The Regulations have a very large scope of application. Online publication services are defined as "*the provision of online publications to the public through the information network*". This definition, if applied strictly, could in theory encompass virtually any uploading activity on the internet by both individuals and businesses in China. However, the Regulations also provide that the "*specific classification*" of online publication businesses "*are to be further clarified*" by the authorities. We expect –and the SARFT informally confirmed- that the scope of the Regulations will be limited to professional online publishers, excluding individuals and entities that only occasionally or incidentally publish online media in China.

As to the types of media covered by the Regulations, the following three –very broad- categories of online publications are listed under article 2:

- works of literature, art, science and technology, including literary works, pictures, maps, videogames, animation, audio, video and audio-visual works;
- digitized books, newspapers, magazines, sound and/or video recordings and electronic publications that were published in other media before;
- online databases of digital works developed from the selection, edition and collection of the above two types of works.

Additionally, the Regulations provide for a catch-all section, allowing SARFT to add other types of media to the scope of the Regulations, e.g. to include novel types of digital works and arguably content aggregators.

¹ State Administration of Press, Publication, Radio, Film and Television

² Ministry of Industry and Information Technology

Publication licenses required

Any individual or entity (principally and or professionally?) providing online publications to the public in China must apply for an online publication service license with SARFT. Such license must be obtained *before* the entity can engage in any online publishing in China, and will be valid for 5 years.

Applicants must, inter alia, fulfil the following requirements in order to be eligible for a license:

- The servers used for the online publications must be located in China;
- The legal representative of the applicant must be a Chinese citizen residing in China;
- The applicant must establish a system of self-editing/scrutiny (this provision is unclear, but is probably directed against any "sensitive" content).

Licenses are non-transferable (this includes 'sub-licensing', leasing etc.) and information regarding the license (such as the license number) must be clearly displayed on the publisher's home page.

Anyone providing online publications to the public in China without a license faces administrative penalties (such as deletion of the website, removal of the online publications, confiscation of illegal proceeds and fines of 5 to 10 times the amount of the illegal turnover) and even criminal sanctions.

Foreign entities banned

Foreign entities, including Sino-foreign joint ventures and WOFEs, are banned from providing online publications to the public in China, and are not eligible for a publication license. Sino-foreign publishing "cooperation programs" may, on the other hand, be permissible, but remain subject to SARFT's prior and *ad hoc* approval. This prior approval is a noted tightening compared to the standard "prior security report" used in the 2012 draft Regulations.

However, this seemingly draconic measure does not come as a real surprise, since foreign entities had already been banned from investing in the online publication sector in China under the current (2015) version of the Catalogue for the Guidance of Foreign Investment Industries.

It is currently unclear if foreign media companies with overseas servers will be targeted or whether the Regulations are just targeted at content providers in China.

Increased government control over online publishers

The Regulations provide that online publishers must conduct their business with respect for China's laws and regulations, China's socialist direction and China's socialist core values. Online publishers will need to report annually to the local authorities about, inter alia, their operation, the quality of their publications and their compliance with the laws and regulations. The local SARFT authorities are granted powers of inspection.

If an online publisher is suspected of violating the publishing laws and regulations, committing copyright infringement or other illegal conduct, the local SARFT authorities can suspend its operation for up to 180 days, pending further investigations. The online publisher must then cease all publishing activities for the time of the suspension.

Monitoring obligations for ISPs

The Regulations impose a direct duty of verification on Internet Service Providers ("ISPs") for so-called acts of "active intervention". This means that they are obligated to verify the online publication licenses and the business scopes etc. of online publishers when providing services such as search engine result ranking, advertising and promotion, etc. ISPs that fail to do so face fines of up to RMB 30,000.

Specific rules for online games and minors

As to online (video) games, foreign game developers are required to license their software copyrights to a Chinese online publishing license-holder, since only such license-holders are permitted to publish content online in China. This domestic Chinese license holder will then have to apply for a pre-approval from the local SARFT authority before a game can be published/uploaded on the internet in China. This pre-approval for online games is a requirement for both foreign and domestic games.

The Regulations also provide for specific measures to protect minors. In particular, the Regulations prohibit the online publication of:

- Content encouraging minors to imitate immoral or criminal conduct;
- Content that is deemed horrific, cruel or likely to prejudice the physical or mental health of minors;
- Content that violates the privacy of minors.

For further information or consideration in line with the free trade zones exceptions for certain telecommunication type of services, please see our resources [here](#) and [here](#).

Conclusion

The Regulations are the last in a series of laws (about which we reported e.g. in [our most recent TMT brief](#)) that significantly tighten the regulation of the internet and the freedom of operation of technology companies in China.

The objective -which was also underlined by President Xi Jinping in his keynote speech at the World Internet Conference in Wuzhen in 2015-, is to make the Chinese internet and IT technology in general more "secure and controllable". This is inter alia reflected in the recent National Security Law, a draft of the China Cyber Security Law, and the Counter-Terrorism Law. This often leads to the exclusion of foreign players and content providers as they are considered less "secure and controllable".

However, notwithstanding the clear tightening of China's internet and technology legislation, the Regulations do leave some loopholes for foreign content providers (e.g. Sino-foreign cooperation programs) and for Chinese publishers to publish their media in China. This should allow market players to continue targeting China's immense online population, estimated at 700 million people, provided they tread carefully and stay within the boundaries of the Government's laws, regulations and policies.

The Regulations seem as of yet incomplete, and will need to be followed by additional clarifications from the authorities (e.g. details regarding the application process for licenses, the application for permission for Sino-foreign cooperation projects and the specific classifications of online publishers are currently still lacking).

We will keep you updated with further developments as soon as they become available.

Further information

If you would like further information please contact a lawyer mentioned below or the lawyer with whom you usually deal.

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