

**Beijing Implements New Rules Requiring Real Name
Registration On Microblogs: Every Bush And Tree Looks
Like An Enemy?**

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Further information

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1. INTRODUCTION

On 16 December 2011, the Information Office of the Beijing Municipal Government, the Beijing Public Security Bureau (i.e. the Chinese police) and the Beijing Communication Administration Bureau (i.e. the local branch of the Ministry of Industry and Information Technology) jointly issued the *Beijing Municipality Several Provisions on the Administration of the Development of Microblogs* (the "**Provisions**") which took effect on the same date. The preamble to the Provisions refers back to the *People's Republic of China Telecommunications Regulations* issued by the PRC State Council and effective 25 September 2000 (the "**Telecoms Regulations**") and the *Internet Information Services Administrative Measures* issued by the PRC State Council and effective 25 September 2000 (the "**Internet Measures**") and broadly echo their provisions on prohibited content (see below).

It also starts off with a rather ominous warning to microblog operators that they must "comply with the PRC Constitution, laws, administrative regulations, departmental rules, insist on the principle of operating websites in good faith, in a civilised manner, actively disseminating the core value system of socialism, the most advanced socialist culture in order to build up a socialist harmonious society service". In other words, failure to comply with both law and government policy will have consequences. It also suggests that Beijing Municipality will decide on a development plan for microblogs and on the total number, structure and arrangement of microblogging websites, suggesting a numerical limit may be placed on new entrants.

This client note explains what and who will be affected by the Provisions and examines the most controversial aspect of the Provisions, namely the requirement under Article 9 for microblog users to register using their real identities rather than an alias or an online moniker (the "**Real Name Registration Rule**").

2. BACKGROUND

(a) What is a microblog?

A microblog, known as a weibo (微博) in Chinese, is a real-time platform for users to post and exchange content. The difference between a microblog and a traditional blog is that in the case of the former the posts are limited in length. In the case of Sina Weibo, the dominant microblog in China with an estimated 250 million users¹, posts are limited to 140 Chinese characters. Outside of China, Twitter is the most famous example of a microblog². The Provisions avoid defining a microblog, which is probably sensible given the pace of innovation on the internet. However, as a rule of thumb, if an internet platform can be described as a Twitter-clone (and there are many in that category in China) then it would be prudent to treat it as a microblog.

(b) Which microblogs are affected by the Provisions?

¹ The number of microblog accounts does not directly correspond to the number of actual users as there is a reported widespread use of "zombie" accounts (see paragraph 5.1 below).

² The Chinese government banned Twitter in 2009 when attempts to censor information relating to the July 2009 Urumqi riots were frustrated by Twitter's messaging platform.

The Provisions will apply to all microblog operators whose websites are located (presumably this refers to the server location or possibly the place of company registration as a website only exists in cyberspace) within the area administered by Beijing Municipality ("**Beijing Microblogs**") and their users. It will impact on all users of Beijing Microblogs regardless of their location. Three of the top four microblog operators in China are based in Beijing, including the dominant Sina Weibo. Therefore, the Provisions will have an impact on the vast majority of current microblogging activity in China. If the Provisions achieve their intended purpose, then it is likely that similar laws will be enacted in other major Chinese cities³ or at the national level.

3. THE CONTEXT AND IMPETUS FOR THE PROVISIONS

3.1 The official line: there is too much false information on microblogs

With an estimated 300 million registered users, it is clear that microblogs are incredibly popular in China. Rather than ignore this new outlet for public opinion, the Chinese government has sought to engage with it, and there are currently more than 20,000 government departments and officials who have microblog accounts. However, the Chinese government has become increasingly concerned about how microblogs can be used to disseminate false information and rumours⁴. The official stated intention of introducing the Provisions is to address that concern, in the case of the Real Name Registration Rule, by taking away the shield of anonymity and, in the case of other provisions in the Provisions, by putting the onus on the microblog operator to police postings on its website⁵.

3.2 Another lever to control debate

Although the Provisions may lead to a reduction in the amount of false information that is disseminated on microblogs, a more significant consequence is that they will provide another lever for the Chinese government to exert control over public discourse. As such, the Provisions need to be assessed against the following background:

- First, the historical development of regulation of internet activity in China. Since the invention of the internet, in trying to keep pace with developments, the trend has been for China to hastily enact laws to stem what they view as a threatening tide. Often those laws are not well thought through. This makes the current regulatory environment very difficult to navigate and the regulatory future difficult to predict. The Provisions are a continuation of that trend.
- Second, the current heightened concerns around State security as China prepares for a once-in-a-decade power transition this autumn⁶. The Chinese Communist Party has consistently sought to project an image of unity and stability in the sensitive period prior to the

³ This would include Shenzhen where Sina Weibo's main rival Tencent is based.

⁴ For example, there was a recent rumour that the new North Korean leader Kim Jong-un had been assassinated in Beijing, which went viral on Chinese microblogs.

⁵ For example, under Article 7 of the Provisions, Beijing Microblogs must stop transmission of "harmful information".

⁶ This autumn, the 18th National Congress of the Chinese Communist Party will formally select the next general secretary and other key members of China's top political body.

transition⁷. Beijing's nervousness is somewhat understandable as this will be the first power transition that will be exposed to scrutiny in the social media. China needs to strike a balance between freedom of expression and suppression of politically undesirable content at this time and not fall into the trap of thinking "every bush and tree looks like an enemy" in this regard⁸.

- The role played by microblogs in the Arab Spring in fomenting social change.

Article 10 of the Provisions sets out eleven categories of information which must not be disseminated on Beijing Microblogs. These replicate categories of information previously prohibited from transmission on media in China by prior legislation⁹. However, two new categories have been added, being information:

- that instigates others to disturb public order by illegally holding an assembly, forming an association, marching, demonstrating, or gathering in a crowd; and
- in relation to activities of an illegal non-governmental organization.

The first bullet point above appears to be explicitly aimed at preventing the use of microblogs to precipitate civil disobedience as witnessed in the countries where the Arab Spring took place, where by circumventing the restrictions on conventional media, communications on Twitter and Facebook proved to be a powerful mobilising force.

4. THE REAL NAME REGISTRATION RULE

4.1 No more anonymity

Article 9 of the Provisions sets out the Real Name Registration Rule which requires that any entity or individual must submit evidence of their true identity if they wish to reproduce, publish or disseminate information on a Beijing Microblog. Users can access Beijing Microblogs on a "read-only" basis without submitting their real identity, but they will not be able to post or forward content without complying with the Real Name Registration Rule. Article 9 also requires that Beijing Microblogs must ensure compliance with the Real Name Registration Rule.

⁷ At the time this note was being written, there were reports that Sina and Tencent had been punished and ordered to disable their comment functions and that a number of arrests had been made in connection with false rumours of a coup in Beijing that first spread over microblogs on 20 March 2012.

⁸ This idiom describes how one can defeat oneself by imagining difficulties. Its origin relates to the paralysing fear that overcame Fu Jian, the king of Former Qin, in AD 383 when he mistook the grass and trees for enemy soldiers and his resulting nervousness led to a crushing defeat by his enemies.

⁹ For example, (i) under Article 15 the Internet Measures and (ii) under Article 57 of the Telecoms Regulations.

4.2 How to comply with the Real Name Registration Rule?

To comply with the Real Name Registration Rule users must submit their PRC identification card number¹⁰. There is no exception for foreign nationals who must now submit their passport numbers when registering with a Beijing Microblog. The deadline for compliance with Article 9 was 16 March 2012.

4.3 Penalties

It is unclear what the consequences will be for non-compliance with the Real Name Registration Rule. Article 14 of the Provisions sets out in general terms that breach of the Provisions will result in punishment by the competent authorities in accordance with relevant laws, regulations and rules. However, the Provisions themselves do not appear to add any new penalties, presumably because the existing regulatory framework (including the Telecoms Regulations and the Internet Measures) already provides extensive sanctions. For example, in circumstances where a website contains prohibited information the relevant authorities already have the ability to shut it down¹¹.

5. WHAT WILL BE THE IMPACT OF THE REAL NAME REGISTRATION RULE?

5.1 Will the Real Name Registration Rule be enforced?

There will be an obvious commercial incentive for Beijing Microblogs to comply with the Real Name Registration Rule, as otherwise they could be punished or closed down. However, it remains to be seen whether the intent of the legislators will be *de facto* undermined by the plethora of enterprising companies that are already offering to provide fake identities to users. These are largely the same companies who do a good trade in providing users with a ready-made army of "fans" (the equivalent of a "follower" on Twitter) known as "zombie fans" to make users appear more popular than they actually are.

5.2 What will be the impact on microblogging activity?

When the Real Name Registration Rule was first announced, there were initial fears that it might precipitate a significant decline in user engagement as a consequence of the following:

- First, users objecting to the encroachment on their freedom of speech and fearing that they will now be closely monitored. In reality, it is unlikely that many users would be willing to forego participation in microblogs on these grounds, for the vast majority of users microblogs are forums for entertainment and gossip and not for political debate. Even those who take issue with the encroachment on their free speech are unlikely to stay away from microblogging for long, as the medium is unique and remains the best way to engage in public debate (and obtain the latest gossip) in China. As regards the fear of being monitored, microblogs were monitored extensively even before the Provisions, so were never a safe

¹⁰ In fact, some Beijing Microblogs are asking for the ID card number or the mobile phone number, however it is really the ID card number that is the key piece of identifying information. To obtain a mobile phone number in China you must disclose your ID card number, which is why (given the state controls all the major basic telecoms operators) knowing an individual's mobile phone number will also enable their ID card number to be identified.

¹¹ This can occur under, among other provisions, Article 20 of the Internet Measures.

hiding space in the first place. Many users are already posting using their real names and those posting anonymously are aware that the authorities can trace them.

- Second, users' fears that their personal information will be hacked. This may prove to be a more enduring deterrent as, even though the Provisions contain provisions aimed at ensuring the safe-keeping of personal information¹², recent scandals such as the "CSDN Leak"¹³ have heightened fears of cybercrime.

5.3 Good for business?

If (and it is a big "if") it is rigorously enforced, the Real Name Registration Rule should weed out fake microblog accounts, including the zombie accounts mentioned at paragraph 5.1 above. In doing so, the Real Name Registration Rule will assist Beijing Microblogs to collect valuable information on users that in turn will facilitate strategic targeted advertising. This may be the way in which these platforms will be monetised, and hence ironically may be good for business. However, query whether it is the operator's job to check whether an ID is genuine or fake and whether it has the technical means available to do this.

The increased level of internal policing imposed by the Provisions will be an additional cost for business. However, that cost should be more than off-set by the increased advertising revenue.

The introduction of the Provisions, rather than taking more radical action could be interpreted as recognition by the Chinese government that microblogs have, in a very short timeframe, already become an enshrined mode of communication in Chinese culture, and that simply shutting them down may not be tenable. In that regard, the Provisions are a good indicator that microblogs have a long-term future in China, which is positive for investment in the Chinese microblog industry. The other, more pessimistic interpretation is that China is testing the waters to see if this intermediate position can address their political concerns, failing which, China will shut down the microblogs.

5.4 Bad for free speech?

In China, free speech on the internet is constrained in three key ways:

- By the "Great Firewall of China", meaning the government sponsored censorship machine which is policed by an estimated 30,000 strong team who, armed with the latest technology, monitor all channels of internet communication.
- By the self-censorship of operators. Some commentators suggest that Sina Weibo's huge success rests partly on its ability to placate the authorities by assiduously censoring its own content.

¹² For example, Article 7 requires Beijing Microblogs to ensure, among other things, that user information is not disclosed. In fact, Beijing Microblogs will already be under various obligations to keep personal information secure and prevent disclosure pursuant to a variety of existing legislation including, without limitation, under the *Regulating the Internet Information Service Market Order Several Provisions*, promulgated by the Ministry of Industry and Technology and effective 15 March 2012.

¹³ In the "CSDN leak", Qihoo 360 alerted the police that the personal data of more than six million users of the China Software Developer Network had been hacked. Matters escalated and a general panic ensued when it was subsequently alleged that the hackers had also successfully infiltrated a variety of other websites, including popular online shopping, online gaming and personal finance sites. It subsequently transpired that the hacking was much less widespread than originally feared. However, the case underscored the implications of security failings on the internet.

- By the self-censorship of the user. Facing the real threat of punishment for posting sensitive information, users will inevitably (and quite sensibly) self-censor.

The introduction of the Real Name Registration Rule will have the biggest impact on self-censorship by the user as the user will have a heightened consciousness that they are under surveillance, but will no doubt also push the operators to self-censor to a greater extent than previously.

6. CONCLUSION

The introduction of the Real Name Registration Rule is consistent with the trend for China to seek to impose legal restrictions on communications sent over the internet. China is not alone in voicing concerns about the consequences of totally unrestrained communications on microblogs; outside of China there has been a growing consensus that free speech on microblogs has its limits. For example, that the claim to free speech should not be a shield for the insidious activities of internet trolls and cyber bullies. However, outside of China that debate has centred on the protection of the privacy and dignity of the individual from other individuals, whereas China's priority, as evidenced by the Provisions, is to re-assert State control over the individual.

The incredible popularity of microblogs in China is unlikely to be diminished by the Provisions in the short term, however, the net effect of the Real Name Registration Rule will be to ensure that there is more user and operator self-censorship so that ultimately microblogs become a less "free" forum, that may make their content less interesting and attractive to certain types of users. The real significance of the Provisions is that on their face they provide an additional lever for the Chinese government to exert wide-ranging controls over microblogs at a sensitive time where the final arbiter of whether information is "harmful" or "false" will be the Chinese government. It remains to be seen whether the restrictions will be relaxed once China's new generation of leaders has been installed, and perhaps this may come to be seen as a bellwether of the new regime's policy on personal freedoms.

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