



## **PRC Telecoms, Media & Technology Law Newsletter** **10 April 2009**

This TMT Newsletter contains the following articles:

- Evolving GAPP Policies on the Regulation of Online Games
- National Action Cleaning up Online Obscenity

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### **Evolving GAPP Policies on the Regulation of Online Games**

#### **Introduction**

As mentioned in our previous newsletter on this topic (*New Administrative Framework for Online Games and Audiovisual Products - the First 6 Months* dated 11 March 2009), in July 2008 the State Council issued 2 notices which sought to realign the respective jurisdictions of the Ministry of Culture (**MOC**) and the General administration of Press and Publication (**GAPP**). Namely: the *Notice on the Main Functions, Internal Institutions and Staffing of the Ministry Of Culture*; and the *Notice on the Main Functions, Internal Institutions and Staffing of the General Administration of Press and Publication* (**Notices**).

Pursuant to the Notices, the MOC has been tasked with principal responsibility for regulating the online gaming sector. However, the GAPP has retained its authority over granting Internet Publishing Permits to companies intending to publish online games in China and remains active in the supervision of the online gaming sector.

#### **GAPP's Key Policy Focus**

On 18 March 2009, high-ranking GAPP officials convened a meeting in Shanghai with key representatives from the leading domestic game companies. The topics of the meeting were strengthening government supervision of online games and further promoting the implementation of anti-fatigue systems. From reports coming out of the meeting, the GAPP's recent policy trends are as follows:

##### **1. Promoting the Development of PRC Online Game Companies**

Recently, GAPP officials have expressed concern that the development capacity of the PRC online games industry is lagging too far behind the world leaders. Accordingly, during the Shanghai meeting, the GAPP announced that this year it will be taking measures to

encourage the domestic industry to increase its development capacity and to export more original games. What those measures will be remains to be seen. However, the GAPP is insisting that equal standards will continue to be applied to the review of both domestic and foreign games. It is worth noting that, prior to the meeting, reports indicated that the GAPP also intends to enact regulations clarifying its policies on the cooperation between domestic and foreign online games companies. For example, foreign games will not be approved if the foreign licensor has an ongoing dispute with a domestic licensee.

## 2. Promoting “Green Online Games”

“Green online games,” *i.e.*, games without violent or pornographic content which are suitable for teenage users, appear to be a key focus. Officials at the meeting have indicated plans to launch publishing guidelines for green online games shortly, with the aim that such games will constitute the majority of the online gaming sector in China over the next five years.

## 3. Further Strengthening the Implementation of Anti-fatigue Systems

With the implementation of anti-fatigue programs already underway, the GAPP is now taking steps to introduce enhanced measures, such as collaborating with the Ministry of Public Security to introduce online game player identification and authentication systems; and developing a platform for parents to inquire about and supervise their children’s online gaming.

## 4. Further Strengthening the General Supervision of the Online Gaming Sector

Further sector-wide initiatives by the GAPP are focusing on:

- inspecting online publishing and operating companies;
- strictly implementing the procedures for importing online games, and filing domestic online games; and
- investigating and severely punishing illegal online game-related activities, such as the construction and use of private servers, hacking, and theft of online game user ID numbers and passwords.

## TAL Commentary

According to the Notices, the MOC is now the principal regulator of the online games industry. However, as the Shanghai meeting clearly indicates, in practice, the GAPP is still very active in this area. This overlap of authority is a cause of significant confusion, which is likely to persist as the GAPP continues to play a visible role in the regulation of online games and looks set to continue in this role in 2009, further strengthening its supervision of the online games sector and guiding the development of PRC online game companies and green online games.

It seems unlikely that the GAPP will cede its authority of what remains a relatively successful industry despite the global financial downturn.

This newsletter was coauthored by Erin Wang and James Blue.

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## **National Action in Cleaning Up Online Obscenity**

### **Introduction**

In an effort to improve the demarcation among jurisdictions and enhance departmental accountability under the State Council, the Chinese government has undergone a series of internal re-organizations since August 2008. Each State Council department and committee subsequently issued provisions governing its respective key functions, organizational structure, and staffing (collectively, the **Provisions**).

A key outcome of this reorganization was that each particular matter handled by the State Council is now dealt with by a single department. For complicated matters that require the joint action of multiple departments, a supervisory department is first designated to establish and improve the coordination among the involved departments. A recent example of this new approach is the crackdown on online obscenity which was launched in January 2009.

### **National Action Campaign**

On 5 January 2009, the State Council initiated the National Special Action Campaign (**National Action**) to clean up “obscene trends” on the Internet, with the involvement of 7 departments under the State Council. The State Council Information Office (**SCIO**) was appointed the overall coordinator of the National Action, and is spearheading the campaign with the cooperation of the Ministry of Public Security, the State Administration for Radio, Film and Television (**SARFT**), the Ministry of Culture, the General Administration of Press and Publication, the Ministry of Industry and Information Technology (**MIIT**) and the State Administration for Industry and Commerce.

As of 4 March 2009, 1,518 websites displaying obscene content have been shut down by the MIIT, and 2,461 websites that violated local regulations altogether have been closed down by local MIIT bureaus. By the end of March 2009, the SARFT had also ordered 341 obscene audiovisual websites to cease operations. More closures are expected to follow. In addition to the above shut-downs, 3 telecommunications operators (China Telecom, China Mobile and China Unicom) have internally censored 13,039 websites. Many well-known portals including Sina, Baidu, Sohu and Google, have been instructed to self-censor their search engines and remove links to websites known to contain obscene content.

The SCIO is responsible for the supervision and administration of Internet news information services in China under the 2005 *Regulations on the Administration of Internet News*

*Information Services* (jointly promulgated by the SCIO and MIIT). In its position as the leader of the National Action, and pursuant to the Provisions, the SCIO plays an instrumental role in:

- organizing and coordinating different aspects of the National Action;
- actively assisting public security bureaus in investigating key cases and shutting down infringing websites;
- creating a system of administration for the self-censorship of websites; and
- guiding the Reporting Center for Violations of the Law and Harmful Information on the Internet (a self-regulating organization under the Internet Society of China) on effectively processing public reports of websites with obscene content.

The various State Council departments are involved in the National Action at the central level as well as through the direct participation of their provincial and municipal arms. Indeed, each province and municipality has established special action teams with the objective of shutting down websites containing obscene content.

### **TAL Commentary**

The Provisions have cut through some of the bureaucratic red tape that has hampered exercises similar to the National Action in the past, and provide a legal basis for more streamlined and far-reaching governmental action. It is also the most aggressive campaign launched by the government against obscene websites to date. However, despite the new organizational structure behind the National Action, it still essentially represents the type of government initiative which has historically been used to address acute problems in a quick and dramatic manner. Going forward, there is a growing need for sustained, regular and consistent actions by governmental authorities with respect to the administration of the Internet, as opposed to these sorts of *ad hoc* crackdowns.

Notwithstanding the Provisions' aim to streamline the functions of each State Council department, there is still a continued overlap in jurisdiction among the various ministries that regulate the Internet. The demarcation of each department's roles and responsibilities with regard to the Internet ideally would lead to more consistency in Internet administration and policy. It also remains to be seen whether the SCIO will retain its leading role in cleaning up the Internet once the National Action ends, as this is not specifically addressed in the relevant Provisions.

This newsletter was coauthored by Alicia Zhang, Amanda Rose McCreight and Helen Sunderland.

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We trust that you will find our newsletter both timely and informative. If you have any questions

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