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CHINA TIGHTENS ITS CONTROL OVER THE ONLINE MUSIC INDUSTRY

Introduction

In an attempt to assert greater regulatory control over the online music industry, China's Ministry of Culture (**MOC**) publicized its *Notice on Strengthening and Improving the Content Censorship of Online Music* (**Notice**) on 3 September 2009. The Notice is part of recent efforts by the Chinese government to better regulate and supervise the Internet, and provides stringent approval and filing requirements for music posted online. According to a statement by the MOC on its website, the Notice is intended to address "bad content" in music, as well as the large quantity of unauthorized foreign music made available online in China and the general lack of supervision and regulation over online music activities.

Key Provisions of the Notice

1. Definition and scope of online music products and operations

The Notice sets out the following definitions for online music products and operations, in order to clarify the activities it applies to:

- online music products: any song or other type of music or music video transmitted in digital form by means of streaming online or downloading through mobile or fixed-line communications networks;
- imported online music products: music products in which the original copyrights are owned by an overseas natural or legal person or other entity; and
- online music operations: the production, release, dissemination (including through direct links), and import of online music products.

2. Approval for imported music products

The Notice states that all "imported music products" made available online in China (including those from the Special Administrative Regions of Hong Kong and Macau and the territory of Taiwan) must be approved by the MOC. All related approval applications must include the following materials:

- an electronic version of the Application Form for Approval of Imported Online Music;
- a photocopy of the applicant's Online Cultural Operation Permit and business license;
- an electronic version of the lyrics of the music product, both in its original language and in Chinese translation;
- a photocopy of the licensing contract(s) to import the music products, along with documentary evidence of the original copyrights in the same; and
- any other materials required by the MOC.

For music made available online prior to the issuance of the Notice, the application and supporting materials must be received by the MOC before the end of this year.

The MOC will decide whether to approve the import of online music within 20 days (with an option for fast-track approval within three days under unspecified "urgent circumstances").

3. Requirements for licensing contracts to import music products

The Notice stipulates that each licensing contract for online music must:

- have a term of not less than one year;
- grant the applicant the right to disseminate the licensed music over information networks;
- adhere to the relevant provisions of China's Contract Law and Copyright Law; and
- stipulate that the contract will only become valid and enforceable upon its approval by the MOC.

4. Filing for domestic music products

"Domestic music products" refer in the Notice to products in which the original copyrights are owned by Chinese legal or natural persons. Such products must be filed for the record with the MOC within 30 days after being made available online.

5. Internal monitoring system

All entities and individuals engaging in online music operations must establish an

internal monitoring system to ensure that they comply with the Notice and other applicable Chinese laws and regulations. Although the approval and filing requirements under the Notice do not apply to music created or performed by individual Internet users, internal monitoring is required for all music made available online.

TAL Commentary

The Notice illustrates the MOC's ongoing attempts to better regulate online music, in particular by clarifying how online music products and operations are defined, and what the approval and filing requirements are for online imported and domestic music products. A broad range of music providers are subject to the Notice's requirements, as its definition of "online music" includes not only music products made available on the Internet, but also music products transmitted through other mobile and fixed-line networks. Further, all entities engaging in online music operations are now required to conduct the approval and filing procedures specified above, and to self-monitor their online music operations to ensure that they comply with the Notice.

Since the provision of direct links to online music products is included within the scope of the Notice, it could have a significant impact on search engines such as Baidu and Sohu. The MOC has not given any official clarification of the requirements for search engines in this regard. However, Tuo Zuhai, deputy director of the MOC's Cultural Market Department, stated in a recent interview that as a result of the Notice, any online music to which links connect must be licensed legally.

Given the stringent approval and filing procedures called for under the Notice, the immense amount of work involved not only for online music providers to submit their applications before the end of the year, but also for the MOC to process those applications, the implementation of the Notice is expected to be difficult. Indeed, it is uncertain whether the MOC has the capability or resources to enforce the Notice on an ongoing basis, since the regulation of the Internet is inherently difficult. The sheer volume of music that is available online, and the extent of illegal music distribution, only exacerbates this problem. As such, the overall effect of the Notice may depend in large part on whether it can be implemented effectively by the MOC.

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