



PRC Telecoms, Media & Technology Law Newsletter
18 May 2009

Ministry of Culture Tightens Censorship of Online Gaming
– Further Uncertainty for an Overregulated Industry?

Background

On 24 April 2009, the Ministry of Culture (**MOC**) issued the *Public Announcement on Regulating Applications for the Examination of the Content of Imported Online Games (Announcement)*. Though concise - just 5 articles long - the Announcement represents one of the most significant moves by the MOC in the regulation of online gaming since China restructured its central government agencies (including the MOC) last year.

As a result of that reshuffle, the MOC became the primary regulatory authority for the online gaming industry. However, the General Administration for Press and Publications (**GAPP**) also retained certain powers. The exact respective jurisdictions of the MOC and GAPP in this sector remain ill-defined.

[Note: A detailed discussion and analysis of the government restructuring can be found in our newsletters of 31 March 2008 and 2 April 2008. Its specific impact on the online gaming industry and resulting tension among the various authorities is discussed in our newsletter of 11 March 2009.]

Key Provisions

1. **Continuance of Previous System**

The Announcement emphasizes that enterprises operating imported online games must apply for the content of those games to be examined by the MOC in accordance with the 2004 *Notice on the Strengthening of the Examination of the Content of Online Games (2004 Notice)*. The version of an imported online game which is filed for examination must be the same as that which is ultimately operated or publicly tested.

2. **Pre-Conditions for MOC Approval**

Before an imported online game can be approved by the MOC, it must satisfy the following requirements:

- the game must not enable users to register "in an open manner", or to register or access the game server through user-end software;
- technical testing of the game must be limited to 20,000 users, and access to the game for such purpose must be by activation code only; and
- its operator must not conduct any business activities over the game, such as charging users or displaying advertising.

The MOC will not accept an approval application for a game that fails to meet the above pre-conditions. Thus, the game can never be legitimately operated in China. Related violations are dealt with under applicable law, including the MOC's *Provisional Measures on the Administration of Internet Culture* (promulgated in May 2003 and revised in July 2004).

3. Termination or Transfer of Operations

If an enterprise decides to cease operating an imported online game, or transfers the operation of the game to a third party, then the MOC will revoke its import approval certificate. To operate the game thereafter, a fresh approval application must be made to the MOC, as though the game had never previously been operated in China.

4. Changes to Approved Games

All material changes to the content of a game after its approval must be examined and approved by the MOC before they can legally be adopted.

5. Online Application and Status Verification System

Finally, the Announcement states that the MOC's Online Application and Status Verification System for Online Games is now operational (at www.ccm.gov.cn). This system enables game operators to track the status of their MOC approval applications.

Our Analysis

MOC & GAPP

During last year's government restructuring, the MOC was granted the power of prior approval over "online literary and artistic products". However, as such products were never defined it is unclear whether they encompass online games. The Announcement illustrates the MOC's belief that they do.

In the Announcement, the MOC emphasizes the 2004 Notice as well as other existing legislation applicable to online gaming. This indicates that the MOC will exercise its new remit through the application of older laws, regardless of the lack of definitive interpretations or delineation of authority. As mentioned above, the overlapping jurisdiction of the MOC and GAPP over the online gaming sector has yet to be redressed. The GAPP is implementing its own procedures for the review of imported online games in parallel with those of the MOC; indeed, there has even been news that the GAPP is planning to introduce tighter entrance requirements for imported online games.

Notwithstanding the MOC's appointment as the sole regulator for online games, the GAPP recently signaled its intent to continue to implement player identification and authentication systems, as well as to continue with its anti-fatigue and addiction programs. Thus, tension between the 2 government agencies thus still prevails.

Closing Loopholes

Some operators have initiated the normal commercial operation of imported online games under the guise of carrying out beta testing. In doing so, they have hoped to circumvent the time-consuming, expense and uncertain MOC approval process. In narrowing the permissible scope of testing, however, the Announcement clearly prohibits such activities: only approved games may lawfully be accessible to the general public. This will worry many operators, who are already deeply concerned about the delay between importing a game and obtaining approval to launch it. This delay not only has commercial implications for the game itself, but also provides an opportunity for third parties to offer pirated versions of the game to Chinese users while official approval procedures are pending.

* * *

This article was written by partner [Kevin Guo \(kguo@TransAsiaLawyers.com\)](mailto:kguo@TransAsiaLawyers.com), together with associates Feng Feng, Nick Boorer and Helen Sunderland.

Beijing

Suite 2218 China World Tower 1
1 Jianguomenwai Avenue
Beijing 100004, China
Tel: (86 10) 6505-8188
Fax: (86 10) 6505-8189 / 98

Shanghai

Unit 1101 Platinum
233 Tai Cang Road
Shanghai 200020, China
Tel: (86 21) 6141-0998
Fax: (86 21) 6141-0995 / 6

<http://www.TransAsiaLawyers.com>

This newsletter is for informational purposes only and does not constitute legal advice. Use of this newsletter does not create an attorney-client relationship between TransAsia Lawyers and the reader. Readers should contact appropriate legal counsel for advice on any particular issue. Entire content

copyright is owned by TransAsia Lawyers. Reproduction and distribution of this newsletter in whole or in part without the written permission of TransAsia Lawyers is expressly prohibited.

This newsletter may have been sent via e-mail. We cannot guaranty the completeness of messages transmitted by e-mail, and will not be responsible for any modification made to this message after sending by us.

Uploaded on 18.05.2009

© 2009 TransAsia Lawyers