



PRC Telecoms, Media & Technology Law Newsletter
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RECENT PRCTELECOMS, MEDIA & TECHNOLOGY LEGAL DEVELOPMENTS

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MII IMPLEMENTS FOREIGN TELCO ESTABLISHMENT PROCEDURES

On 22 April 2002, the Ministry of Information Industry (**MII**) promulgated the *Procedures for the Examination and Approval of the Establishment of Foreign-Invested Telecommunications Enterprises (Procedures)*. The Procedures constitute the long-awaited implementing rules for the MII's regulations of 1 January 2002 that originally opened the PRC telecoms market to foreign investors. Outlining the process through which a foreign enterprise may establish a foreign-invested telecoms enterprise (**FITE**) in China, the Procedures set forth the responsibilities for the MII's five departments that handle FITE applications (namely, the General Planning Department, Department of Policy and Regulation, Economic Adjustment and Telecoms Clearance Department, Telecoms Administration Bureau and Radio Administration Bureau).

According to the Procedures, the General Planning Department will conduct an initial examination of the FITE's business plan and feasibility study. After examination, the General Planning Department may either directly deny the application or forward the application materials to the relevant MII divisions. After each division's review, the General Planning Department will deny the application or recommend it to the MII directors for final approval.

The Procedures set forth different time limits within which FITE applications must be examined and approved:

- 180 days for applications to provide basic telecoms services, plus an additional 30 days if the application requires special approval from the State Council;
 - 90 days for applications to provide value-added telecoms services across provinces, autonomous regions and directly-administered municipalities, plus 30 days if the application requires special approval from the State Council; and
 - 90 days for applications to provide value-added telecoms services within one province (including both the provincial telecoms administration bureau and MII's approvals).
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SHANGHAI DIRECTORY SUES CHINA UNICOM

On 30 July 2002, the Shanghai No. 1 Intermediate People's Court (**Court**) heard the opening arguments of a suit filed by Shanghai Telephone Directory Publishing Corp. (**Shanghai Directory**), a subsidiary of China Telecom, against China Unicom and its foreign investors (namely, Pacific Century Cyber Works and R.H. Donnelley Corp.). Shanghai Directory alleges that China Unicom and its foreign investors infringed upon Shanghai Directory's intellectual property rights when they marketed and sold a "Yellow Pages" telephone directory in Shanghai in early 2002 that was similar in design and content to Shanghai Directory's Yellow Pages.

Shanghai Directory requested the Court to order the removal of China Unicom's directory from the market and payment by China Unicom of compensation based on income generated from all sales thereof. Shanghai Directory argues that the *Provisional Rules on Telecommunications Directory Services* (promulgated on 12 December 1995 by the former Ministry of Post and Telecommunications, the MII's predecessor) sanction its monopoly in providing telephone directory services. However, China Unicom maintains that the State Press and Publication Administration legally authorized the publication and sale of its "Yellow Pages" directory. The court is expected to render its judgement before the end of this year.

CHINA ANNOUNCES STRONGER CONSUMER PROTECTION FOR IT RETAIL SALES

On 23 July 2002, the MII and State General Administration for Quality Supervision, Inspection and Quarantine (**GAQSIQ**) jointly issued the *Rules on the Maintenance, Replacement and Refunding of Consumer Electronics (Rules)*, which will enter into effect as of 1 September 2002. The Rules address consumers' growing dissatisfaction with the technical support available for computers and electronics products sold in the PRC.

All sales of such products in China will be governed by the Rules, which implement a "three-strikes" system for enterprises that offer after-sales repair services. Where a consumer returns a defective computer or electronics item twice to the relevant manufacturer, distributor or service center, and the product is still not properly repaired, he/she may demand a full refund or replacement, provided that the product is still under warranty. The Rules also state that manufacturers, distributors and service centers may not enter into contracts that circumvent their obligations to fulfill such requests by consumers.

Although the Rules stipulate that penalties shall be imposed on parties that fail to comply thereto, they merely state that GAQSIQ may publicize such non-compliance and do not outline any other specific penalties.

GUANGDONG OUTLINES LEGAL FRAMEWORK FOR RESIDENTIAL BROADBAND SERVICES

In July 2002, the Guangdong Communications Administration (**GCA**) issued the *Notice on the Annual Inspection of Residential Broadband Operating Permits* and the *Supplementary Notice on the Annual Inspection of Residential Broadband Operating Permits*.

The notices extend in Guangdong a one-year pilot project coordinated by the MII to introduce residential broadband networks in 13 trial markets throughout the PRC, including Guangzhou and Shenzhen. Since the operating permits issued by the MII during that one-year project expired on 19 August 2002, the notices require that all local residential broadband operators apply to the GCA to renew them. According to the notices, seven organizations in Guangdong Province have filed applications and passed the technical inspections necessary for the granting of such permits. The notices do not set any time limit for the lifespan of this project.

The extension of the MII's project indicates that Guangdong, like many other jurisdictions, is not yet able to formulate authoritative legislation that accounts for the broadband market's ongoing development and changes.

FUJIAN CODIFIES PROCEDURES FOR VALUE-ADDED TELECOMS PERMITS

On 20 May 2002, the Fujian Communications Administration (**FCA**) promulgated its *Administrative Rules on the Examination, Approval and Filing Procedures for Value-Added Telecommunications Service Operating Permits in Fujian Province* (**Administrative Rules**).

In addition to outlining the FCA's internal procedures for issuing value-added telecoms operating permits, the Administrative Rules also state that the FCA shall announce a quota for the number of permits to be issued thereunder. However, they do not specify precisely when such a quota will be announced. All local branches and subsidiaries of nationwide or interprovincial telecoms service providers that are based in Fujian are required under the Administrative Rules to file their operating permits with the FCA within an unspecified period.

The Administrative Rules are the first piece of legislation in the PRC to outline such application procedures at the provincial level. Unfortunately, as indicated above, the Administrative Rules lack various basic details, such as a timeline for enterprises to file existing permits and the FCA to announce of a quota for new permits.

CHINESE PORTALS NEGOTIATE WITH INTERNATIONAL RECORD LABELS TO LEGALIZE WEB MUSIC SERVICES

In early July 2002, the International Federation of the Phonographic Industry (**IFPI**, which represents the legal interests of Sony, AOL Time Warner, Vivendi Universal, EMI Group and Bertelsmann's music divisions), threatened to initiate legal proceedings against the Chinese portals Sina.com, Sohu.com and Tom.com, if they did not immediately remove approximately 1,000 pieces of music from their web sites and pay compensation to the various media giants based on unauthorized sales thereof. The IFPI alleges that the music in question is the intellectual property of IFPI members and was sold without their consent. The portals are understood to be negotiating with the IFPI to settle this issue, and they will likely enter into music licensing contracts with that organization. The total amount of damages that IFPI has claimed against the portals has not yet been publicized.

This is not the first time that the IFPI has initiated legal action in China: on 23 March 2000, it signed a settlement agreement with the Chinese portal MyWeb Inc. related to that site's unauthorized distribution of music as MP3 files.

We trust that you find these summaries useful. If you have any questions on these subjects or any other area of telecoms, media or technology law, please contact either of our following partners for further assistance:

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Full English translations of the aforementioned PRC legislation as well as other telecoms, media and technology rules and regulations are available for purchase upon request.

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