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**CONFLICT BETWEEN OVERLAPPING AUTHORITIES IN THE ONLINE
GAMING INDUSTRY ESCALATES OVER NEW NOTICES**

Introduction

The online gaming industry in China is notorious for the overlapping authority of its regulators. Last year, industry participants had high expectations when the State Council attempted to clarify this ambiguity. However, over the past few months it has become clear that the jurisdictional conflict between the Ministry of Culture (**MOC**) and General Administration of Press and Publication (**GAPP**) has yet to be resolved. In fact, two new notices recently issued by these agencies imply that this conflict might be intensifying.

Background

As discussed in our newsflash of 11 March 2009 (*New Administrative Framework for Online Games and Audiovisual Products – the First 6 Months*), the State Council issued a couple of notices in July 2008 which defined the respective scopes of authority of the GAPP and the MOC. In them, the MOC was appointed the primary regulator of the online gaming industry, and granted broad jurisdiction to supervise online games. The GAPP, on the other hand, retained its original responsibility for pre-approving the publication of online games, as well as the right to issue Internet publishing permits for them. This delineation of authority appeared to be a positive development.

On 23 June 2009, however, the MOC issued the *Notice on Strengthening the Administration of Comic and Gaming Industry Exhibitions, Trade and Festivals (MOC Notice)*. The MOC Notice was followed on 13 July 2009 by the GAPP's *Notice on Strengthening the Administration of Imported Online Game Approval (GAPP Notice)*. The notices address exhibitions and imports involving online games. In them, the MOC and GAPP both claim responsibility over these areas.

Key Provisions of the MOC Notice

1. Objectives

The MOC Notice aims to reform the current status of the cultural market by:

- controlling government intervention in exhibitions and trading activities

involving comics and online gaming, including festival competitions and forums (**Exhibition Events**);

- requiring the content and scope of any Exhibition Event to align with the function and qualifications of the organizing entity;
- supporting and fostering Exhibition Events - in particular those that popularize high-quality and original comic and gaming products that have significant industry influence, social benefits and exemplary qualities; and
- controlling and limiting the proliferation of Exhibition Events and eliminating those events which either invite foreign teams and individuals to participate without the MOC's approval, or which display and sell comics and gaming products with illegal content.

2. Event Cost and Participation Control

The MOC Notice indicates that the MOC plans to impose strict limits on the quantity, scale and cost of Exhibition Events organized by government agencies. Notably, government agencies are prohibited from imposing mandatory participation requirements for such events. The MOC Notice also prohibits small-scale Exhibition Events from using the words "China", "International" and "National" in their event names, although standards defining the scale of an event are not expressly defined.

3. MOC Approvals

All foreign and international Exhibition Events held in China must receive MOC approval pursuant to the MOC Notice, regardless of whether or not an event is being organized by a government agency (of any level) or its direct subordinate entities. Exhibition Events which have not been approved by the MOC will be shut down or penalized. Domestic Exhibition Events must be registered with the cultural administration bureaus (i.e., the MOC) at the provincial level.

4. Supervision by the MOC

The MOC Notice further requires the provincial-level cultural administration bureaus to step up their supervision of Exhibition Events and eliminate the exhibiting of illegal products.

Key Provisions of the GAPP Notice:

1. Objectives

The stated objectives of the GAPP Notice are as follows:

- to regulate the pre-approval of online game publications and to supervise the online publication of authorized gaming products;
- to regulate Exhibition Events relating to imported online games; and

- to control the unlawful administration by other governmental agencies of the pre-approval of imported online games.

2. The GAPP's Authority Over Imported Online Games

The GAPP Notice reiterates that any enterprise planning to publish an online game in China must first receive GAPP authorization along with an Internet publication permit covering the enterprise's online game publication services. Online games involving a foreign copyright that have not been approved by the GAPP may not be operated within China.

The GAPP also emphasizes in its notice that it is the only governmental department designated by the State Council to be in charge of the approval of imported online games with overseas copyright holders. Pursuant to the GAPP Notice, if any other department unlawfully purports to pre-approve online games, the companies involved should report the incident to the State Council. The department in question can even be made the subject of an administrative lawsuit by the relevant game operator.

3. Approving Exhibitions and Festivals

Any presentation, demonstration, promotion or trading activity in any exhibition or festival in China which is related to foreign online games must be held in accordance with the regulations on imported online games and pre-approved by the GAPP.

4. Regulating the Media

The GAPP Notice prohibits newspapers, magazines and online media from reporting on activities and events that take place in violation of its provisions. This prohibition does carry significant weight, however, as such entities are anyway directly regulated by the GAPP.

TAL Commentary

While neither of the recent notices is expected meaningfully to impact the day-to-day operations of online gaming companies, they highlight the inconsistent and confusing elements shaping the implementation of industry regulations in China.

Clearly, the overlapping roles and responsibilities of the online gaming regulators, which have persisted for several years, have not yet conclusively resolved. The State Council is expected to issue another notice that will further clarify the MOC and the GAPP's respective roles in supervising the online gaming industry. Until then, industry players would be wise to carefully follow developments and choose their participation in Exhibition Events with an eye toward complying with both the MOC Notice and the GAPP Notice.

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