



PRC Telecoms, Media & Technology Law Newsletter 3 March 2009

This TMT Newsletter contains the following articles:

- Newly Published Measures on News Gathering in Mainland China by Journalists from Hong Kong and Macao
- Three Agencies Jointly Release Trial Measures for the Classification of Animation Companies

* * *

NEWLY PUBLISHED MEASURES ON NEWS GATHERING IN MAINLAND CHINA BY JOURNALISTS FROM HONG KONG AND MACAO

Background

On 6 February 2009, the State Council's Hong Kong and Macao Affairs Office (**Affairs Office**) issued the *Measures on News Gathering in Mainland China by Journalists from Hong Kong and Macao (2009 Measures)*.

The Measures confirm the policies outlined in the 2001 *Notice on the Establishment of Residential News Organizations in, and the Assignment of Residential Journalists to, Mainland China by Hong Kong and Macao News Entities*.

In addition, they reiterate the basic principles set forth in 2 earlier pieces of legislation on the area issued at the end of 2008 (together, **2008 Regulations**):

- the *Regulations on News Gathering by Resident Foreign News Organizations and Foreign Journalists in the People's Republic of China*; and
- the *Measures on News Gathering by Journalists of Taiwan in Mainland China*.

Similar to the 2008 Regulations, the 2009 Measures intend to facilitate the process of applying to collect news in Mainland China for non-Mainland residential journalists from Hong Kong and Macao.

Key Points

1. *Scope of the Measures*

The 2009 Measures state the policies of the 2001 Notice continue to apply to any issues relating to Mainland residential news organizations established by Hong Kong and Macao news entities, as well as their Mainland residential journalists.

The 2009 Measures exclude residential journalists and focus on a very specific group: non-residential professional journalists working for news agencies (e.g., newspapers, periodicals, radio stations and television stations) legally registered in Hong Kong and Macao who are conducting interviews in mainland China. While the Measures do not expressly indicate that this is the case, on the surface we understand that only non-residential journalists who have been sent to Mainland China on short-term assignments will be governed by the Measures.

2. *Interviewing Permits*

Although the journalists covered under the Measures do not need to - and they for practical purposes can't - obtain a Resident Journalist Permit, they will need to obtain an Interviewing Permit issued by the All-China Journalists Association through the Liaison Office of the Central People's Government where the news entity is located (**Liaison Offices**). The Measures are silent on the details based on which this application will be reviewed, and are also ambiguous on the procedures for obtaining the permit.

However, the Affairs Office officials have provided verbal reassurance that the application process will be mainly procedural, and will not involve a substantial inspection. For the time being, it appears that this is indeed the case, as none of the Interviewing Permits that have been issued have taken more than 2 hours. Moreover, the Affairs Office has begun a 24-hour permit issuing service out of consideration for the urgency with which permits may need to be obtained.

The Interviewing Permit must be carried - and produced - by Hong Kong and Macao journalists when conducting interviews in Mainland China, and the entities and persons involved in the interviews will need to provide their "prior consent". However, how such consent needs to be obtained - or, indeed, whether it needs to be in writing or orally only - remains open to interpretation.

3. *Support from Mainland Citizens*

Similar to the policies in the 2008 Regulations, journalists from Hong Kong and Macao may hire Mainland citizens to provide logistical and service support. However, all hiring in this regard must be done through currently undefined service companies to be designated by the relevant authorities. Until these service providers have been identified, hiring individuals from the Mainland to provide support will be difficult.

4. *Equipment Importation Requirements Relaxed*

Under the Measures, journalists from Hong Kong and Macao may temporarily import, set up and use wireless communications equipment upon obtaining the requisite approvals. This change is also in line with the policies for resident foreign news organizations and foreign journalists.

Commentary

Intended to target one of the last remaining groups of journalists not yet covered under PRC Law - non-Mainland resident journalists from Hong Kong and Macao - the Measures

appear to be a correct and positive step to take towards the encouragement and facilitation of the news-gathering and interviewing activities in Mainland China of those journalists. By laying down simple and clear rules, the Measures should also ensure the proper and effective monitoring and supervision of the activities of those journalists.

However, the Measures are still ambiguous in certain respects, which conveniently provide room for the government to tighten their supervision if necessary. The Measures also only address administrative procedures, and do not deal with controversial topics such as censorship and penalties. Ironically, these are the very topics on which journalists and their employers would welcome additional and unambiguous clarification.

* * *

THREE AGENCIES JOINTLY RELEASE TRIAL MEASURES FOR THE CLASSIFICATION OF ANIMATION COMPANIES

Background

It was not until early 2006 when the PRC government identified the animation industry as a promising business sector and began to introduce favorable policies so as to nurture and guide the domestic animation industry.

To kick off the campaign, the State Council approved the 2006 *Several Opinions on the Promotion of China's Animation and Cartoon Industry (2006 Opinions)*, which rolled out a policy framework for the development of the domestic animation industry and included a range of government funding, subsidies and tax benefits.

At the end of 2008, three powerful ministries - Ministry of Commerce (**MOC**), Ministry of Finance (**MOF**) and State Administration of Taxation (**SAT**) - jointly promulgated the *Trial Measures on the Recognition of Animation and Cartoon Enterprise (Trial Measures)* which clarified and elaborated upon the 2006 Opinions.

Trial Measures

1. *Definition of Animation Enterprises*

Animation enterprises are defined as those entities involved in the creation, development, design, production and performance of cartoon and animation.

2. *Qualification for Entitlements to Preferential Policies*

In order to qualify for policy benefits, an animation enterprise must be approved as a certified animation enterprise (**Certified Enterprise**) after meeting a set of criteria, and include:

- It must be legally incorporated within the PRC;
- Its revenue (derived from self-developed animation products) must constitute no less than 50% of its primary business revenue; and

- It must own the proprietary intellectual property rights to its animation products.

3. *Definition of Animation Products*

Under the Trial Measures, animation products are given a broad definition, and include:

- Cartoon publications;
- Animation AV products;
- Drama adaptations of animation publications, movies or images; and
- Animation and consumer products such as clothing, toys and games that use animation images.

4. *Certification of Animation Enterprises*

The application consists of a 2 stage process, namely:

- Firstly, preliminary approval will be granted at the provincial level by a newly formed body jointly established by the provincial arms of the MOC, SAT and MOF; and
- Secondly, the MOC, in conjunction with the SAT and MOF - all at the central level - will issue the final approval.

5. *Term of Certification*

- Annual certification is required.
- Those enterprises failing to meet the relevant criteria will lose their policy benefits.

Commentary

As the intention behind the series of policies is to promote and protect the domestic animation industry, the Trial Measures specify that policy benefits will be granted only to animation enterprises incorporated in China that own their own proprietary intellectual property rights. Those entities that simply develop or run foreign-licensed products will not be entitled to the benefits of the policy.

Although the policies do not explicitly preclude foreign-funded entities from enjoying the policy benefits, such applications are unlikely to be accepted as the Trial Measures were designed to promote growth within the domestic animation industry. This is perhaps understandable - albeit unfair - considering that the domestic animation sector has yet to show any significant development despite the promulgation of the 2006 Opinions.

It will be interesting to see what stimulating impact these new Trial Measures will have on the domestic animation industry and whether additional steps need to be taken by the Chinese government. If the latest measures don't serve the intended purpose, one step that springs to mind would be for Beijing to open up the domestic sector to foreign entities, especially the leading cartoon and animation players, in order to increase competition and spur growth within the industry. That result might not be what Beijing desires to see happen but it may well end up being the case.

* * *

This newsletter was coauthored by Celina Peng and James Blue.

We trust that you will find our newsletter both timely and informative. If you have any questions on these subjects or any other area of telecoms, media or technology law, please contact:

- Jesse T H Chang (jthchang@transasialawyers.com);
- Philip Qu (pqu@TransAsiaLawyers.com);
- Kevin Guo (kguo@TransAsiaLawyers.com); or
- Elaine Huang (ehuang@TransAsiaLawyers.com).

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 03.03.2009

© 2009 TransAsia Lawyers