

LEGAL UPDATE

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Online Gaming – A Review of the First Ministry-Level Regulations Affecting the Industry

On August 1, the Tentative Measures on the Administration of Online Games (the “Measures”), issued jointly by the Ministry of Culture (the “MOC”) and the Ministry of Finance, came into effect. The Measures constitute the first rules, issued at Ministry-level, to govern the booming market which has, according to China Internet Network Information Centre, a reported 420 million “netizens” in China. The Measures are designed to cover the operations of the virtual gaming industry; address the issues of virtual currency and protect minors from unsuitable material and internet addiction.

Online Culture Operating License

The Measures provide that in order to be a game operator, an enterprise must have an online culture operating license. This is obtained from the MOC and lasts for three years. In order to apply, applicants must submit details of their enterprise including the applicant’s name, the registered office, the organization structure, the certificate of incorporation and the business scope.

The minimum registered capital requirement for an enterprise wishing to apply for this license has increased dramatically from RMB 1 million to RMB 10 million. However one of the benefits of the Measures is that license approval can be completed at local authority level which will hopefully ensure that the process is relatively quick.

Content Restrictions and Approval

In a move to protect minors (children under 18 years of age), the Measures restrict the content which may be included in games designed for minors. These may not include violations of social morals, or scenes of horror which could cause psychological damage. In addition, there is a prohibition on content which includes politically or culturally sensitive issues for all ages.

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The Measures also provide further clarification on the content review and approval process. For imported games, any enterprise which is to be the exclusive licensee of the imported game or if the enterprise has materially changed the content of an approved game, they must apply to MOC to get content approval. In the event that the licensee of the approved imported game changes, a fresh application for approval must be made.

It should be noted that only an online games enterprise in China who has the benefit of an exclusive license for the imported online game is qualified and therefore permitted to apply to MOC for their approval. Last year saw a highly documented change of Chinese operators as Blizzard failed to renew The9's exclusive license for World of Warcraft, after 4 years, and instead, appointed NetEase as its Chinese operator, resulting in the CEO of The9, Chen Xiaowei, reportedly admitting that the company had lost 92% of its income.

The position for domestic online games however is different as content approval is not required. Instead, enterprises are only required to file a notification with the MOC within 30 days of either the operation of a domestic online game or the material change of such a game's content. Whilst some have argued that this discriminates against foreign online game producers, in practice, it will be the domestic licensee who is required to seek the MOC's approval.

However, it is interesting to note that the rules do not define the terms "imported" or "domestically produced" thereby giving the authorities discretion over whether games produced by foreign invested enterprises are deemed to be "domestically produced" or not.

Virtual Currencies

Virtual currencies are symbolic currencies which a person can accumulate and then trade for something else. In 2009, the MOC and the Ministry of Commerce put restrictions on the use of virtual currencies, by way of a joint notice and the

Measures serve to reinforce the notice by stating that virtual currencies should be limited to use in the online game product and service only and they cannot therefore be used to purchase other goods or services. Further, online game companies are not permitted to provide gambling activities, which would encourage gamers to spend either real or virtual currency, within the games.

Records of players' virtual currency trading information should be retained by the online gaming enterprise for a minimum of 180 days.

Real Name Registration

Any individual who wishes to play online games will require to register their legal name and identification number (i.e. their Chinese ID card or passport number). Major online game operators in China, including Shanda and Tencent Games, reportedly implemented the real name registration policy prior to the Measures being effective and have confirmed no real effects on their businesses as a result. Some however speculate that the policy is easy to circumvent as lists of ID numbers can be obtained from other internet sites.

The policy is presumably designed to ensure that the gaming company knows who is playing and for how long and follows previous rules, issued in February aimed at encouraging parents to supervise their children's gaming habits. Amid fears of growing "internet addiction" amongst minors in China, the MOC recommended, in the earlier rules that schoolchildren be restricted to two hours' of gaming per week and to RMB 10 in-game spending per month. The Measures reiterate this message by stating that game developers are required to limit the time which minors can play online games, although it is unclear how this will be enforced.

Under the Measures, online game enterprises are obliged to retain copies of players' information though it is not clear whether, in the case of minors, this information could be shared with parents.

Governing Body

Previously there has been uncertainty as to which body is the applicable authority in respect of online gaming as both the MOC and General Administration of Press and Publication have been involved in public disagreements, including over who had the authority to approve the new Chinese operator for the aforementioned game, World of Warcraft and to penalise online gaming. However, the Measures clarify that the MOC will be main authority in the regulation of online games.

Violations

The penalties for violation, by game operators, of any of the provisions in the Measures include fines for breach of between RMB10,000 and RMB 30,000; revocation of the online culture operating license and the potential for criminal liability. Many will argue that with regards the potential fines, these are very low for such a successful and wealthy industry.

Conclusion

As the first piece of Ministry-level regulations, the Measures serve to highlight the Government's increasing interest in this area and suggest there will be much greater scrutiny going forward. Despite the criticisms of low fines and enforceability issues, it is clear that the Government is taking the issues of gaming content and the potential harmful effects on citizens' health seriously.

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