

China Update

October 23, 2009

Jurisdiction over Online Games in China – Conflict Instead of Clarity

China's online gaming industry has suffered from the overlapping authority of the Ministry of Culture (the "MOC") and the General Administration of Press and Publication (the "GAPP"). When China's State Council recently attempted to simplify the regulatory environment and streamline approval processes, it triggered a highly public spat between MOC and GAPP.

On September 17, 2009, the Office of the State Commission for Public Sector Reform published a notice (the "RC Notice") designating MOC as the sole regulator for online games. Under MOC's unified administration, GAPP would be responsible for approving the publication of online games before their launch. The Notice specified that MOC was not empowered to duplicate the pre-publication review conducted by GAPP. But once a game had been released online, it would be entirely under MOC's administration.

The attempted clarity brought by the RC Notice turned out to be short lived. MOC took the view that "publication", for which GAPP has approval authority under the RC Notice, only refers to games distributed through physical media such as disks. For all games that users can download from the Internet, MOC would have sole authority.

On October 9, 2009, GAPP issued a notice (the "GAPP Notice"), which disputes the MOC's interpretation of the RC Notice. The GAPP Notice asserts that the provision of online games to the public is a "publishing" activity that falls under GAPP's jurisdiction. The operation of games that have not been approved by GAPP is stated to be illegal. The GAPP Notice lists several steps that GAPP may take in case of violation.

The GAPP Notice further stresses the prohibition of foreign investment in, or de facto control over, online game operations. GAPP specifically targets the administration of multiplayer matchmaking platforms by foreign entities as a prohibited form of covert control. The prohibition has wide ranging implications for existing game operators, some of whom are listed overseas. Will GAAP truly enforce such prohibition?

It is also unclear whether GAPP or MOC will prevail in their rivaling interpretations of the RC Notice. This conflict is likely to endure for some time, and an eventual solution may come only from the State Council or from the Propaganda Department of the Chinese Communist Party, which often has the final say in media and Internet matters.



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