



PILLAR LEGAL

LEGAL PRIMER: REGULATION OF CHINA'S DIGITAL GAME INDUSTRY

CHINA REGULATION WATCH¹

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1. INTRODUCTION

This is the fifth edition of our legal primer on the regulation of China's digital game industry. This edition, like its predecessors, provides an overview of the relevant laws and regulations, as well as actual industry practice in the People's Republic of China (the "PRC" or "China").² In doing so we draw upon not only the written rules, but also informal comments from regulators and other industry participants, in addition to the many years of experience that our attorneys have advising clients in China's digital game industry.

This bulletin first provides an overview of the key factors that shape the scope of China's online game market, including the high levels of software piracy and prior prohibition on game consoles such as Xbox and PlayStation. As a result of these factors, China's game market is essentially an online game market, and this primer therefore focuses upon the regulation of online games.³ This preliminary section also explains China's policy of prohibiting foreign (meaning non-PRC) companies from operating online games in China.⁴

In recognition of China's powerful government authorities, before discussing any specific laws, we first introduce the primary regulators of the online game industry. Prior to March 2018, the two primary regulators were the National Press and Publication Administration (国家新闻出版署) ("NPPA") and the Ministry of Culture (文化部) ("MOC"). After March 2018, NPPA became the sole primary regulator for the online game industry in China.⁵ Although MOC does not regulate the online game industry anymore, it

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² "PRC" or "China" refers to the People's Republic of China, excluding for the purposes of this memorandum Hong Kong, Macao and Taiwan.

³ "Internet" or "online" refers to the internet or an online activity that takes place through the internet, irrespective of whether the internet is accessed through, or the online activity takes place through, a personal computer ("PC"), a mobile phone or another device. "Online game" refers to a game product or service that is accessible through the internet. As used in this bulletin, online game includes both PC online games and mobile games. "PC online game" refers to an online game that is designed to be played primarily on a personal computer. "Mobile game" refers to an online game that is designed to be played primarily on a mobile phone or other mobile device.

⁴ "Foreign company" refers to a company established under the laws of a jurisdiction other than the PRC.

⁵ In March 2013, the State Administration of Press, Publication, Radio, Film and Television (国家新闻出版广电总局) ("SAPPRFT") was created by merging the former General Administration of Press and Publication (新闻出版总署) ("GAPP"), and the former State Administration of Radio, Film and Television (国家广播电影电视总局) ("SARFT"). In March 2018, SAPPRFT became the National Radio and Television Administration (国家广播电视总局), which now regulates the radio and television industries, while control over press, publication and film moved to NPPA, which reports directly to the Propaganda Department of the Central Committee (中央宣传部) under the CPC (as defined in Section 3). NPPA as used in this bulletin refers to the government authority that resulted from the reorganization, as well as to SAPPRFT for periods prior to the reorganization in March 2018, and GAPP and SARFT separately for periods prior to the merger in March 2013. MOC as used in this bulletin refers to the government authority that resulted from the reorganization, as well as to the same government authority for periods prior to the reorganization in March 2018.

still supervises some matters that relate to the online game industry, such as game console production and internet cafés, a traditional primary venue for online game players in China.⁶

The first set of rules we discuss are those for the game approval that must be obtained for each game prior to commercial launch in China. Because foreign game companies are the primary readers of this bulletin, but foreign game companies are not legally permitted to directly operate online games in China, the game approval rules are those that are of greatest relevance to most readers. We also discuss how the approval rules applicable to domestic online games differ from those applicable to foreign games.

We then turn to the regulations applicable to the operation of online games in China, including the two required licenses, as well as general rules relating to the anti-fatigue system and real-name registration. Although these rules do not directly affect foreign game companies because they are not permitted to operate online games in China, the information contained in these sections helps provide a more comprehensive overview of the regulatory framework for China's online game industry.

The scope of this bulletin is limited to the key industry rules, namely those relating to game approvals, operating licenses and anti-fatigue plus real-name registration matters. Other rules that are relevant to China's online game industry, but lie outside the scope of this bulletin, including rules relating to virtual currencies,⁷ live online streaming,⁸ user data protection,⁹ internet cafés, e-sports, and government tax and incentive measures.¹⁰

2. CHINA'S GAME MARKET AND FOREIGN OWNERSHIP RESTRICTIONS

In many jurisdictions, including the United States and Europe, console games have traditionally accounted for a large, though declining, portion of the game market. In mainland China, however, online games have always dominated. In 2019, console and single-player PC

⁶ See the Notice on Adjusting the Scope of Online Cultural Business License (关于调整网络文化经营许可证审批范围的通知), issued by MOC on May 14, 2019 (the "[MOC Online Culture License Notice](#)"); the Notice on Allowing Domestic and Foreign-funded Enterprises with Production and Sale of Game and Entertainment Devices (文化部允许内外资企业从事游戏游艺设备生产和销售的通知), issued by MOC on June 24, 2015; the Notices Regarding Further Strengthening the Administration of Internet Cafés and Online Games and the Notice Regarding Increasing the Punishment for Internet Cafés that Admit Minors (文化部关于加大对网吧接纳未成年人违法行为处罚力度的通知), issued by MOC on March 13, 2010. See also the Notice on Printing and Distributing the Administrative Measures for Game and Entertainment Equipment (关于印发《游戏游艺设备管理办法》的通知) issued by the MOC on November 6, 2019.

⁷ For more information about China's virtual currency laws and regulations, see the following article by Pillar Legal [here](#): "China's New Digital Game Treasure Box Rules Become Effective", posted on June 6, 2017.

⁸ For more information about China's live online streaming laws and regulations, see the following article by Pillar Legal [here](#): "China Issues Live Online Streaming Rules", posted on January 5, 2017.

⁹ For more information about China's user data protection laws and regulations, see the following article by Pillar Legal [here](#): "China's Evolving Personal Information Protection Rules", posted on September 28, 2020.

¹⁰ Laws and regulations that relate to China's online game industry but are not included in this bulletin include, among others, the Notices Regarding Further Strengthening the Administration of Internet Café and Online Games (关于进一步加强网吧及网络游戏管理工作的通知), issued by 14 government departments including MOC, the State Administration for Industry and Commerce (国家工商行政管理总局), MPS (as defined in Section 3), and MIIT (as defined in Section 3) on February 15, 2007; the Notice on Strengthening Administration of Virtual Currency in Online Games (关于加强网络游戏虚拟货币管理工作通知), issued by MOC and the Ministry of Commerce (商务部) in June 2009; the Interim Provisions for E-Sports Competition Management (电子竞技赛事管理暂行规定), issued by General Administration of Sport of China (国家体育总局) on July 24, 2015; the Cyber Security Law of the People's Republic of China (中华人民共和国网络安全法), issued by the Standing Committee of the National People's Congress (全国人大常务委员会) on November 6, 2016; the Administrative Provisions on Internet Live-Streaming Services (互联网直播服务管理规定), issued by CAC (as defined in Section 3) on December 1, 2016; and the Improvement of the Preferential List of Income Tax Preferential for the Enterprises in Encouraged Industry in Xinjiang Difficult Areas (关于完善新疆困难地区重点鼓励发展产业企业所得税优惠目录的通知), issued by the Ministry of Finance (财政部) and four other department on September 2, 2016.

games accounted for less than one percent (0.6%) of the US\$32.97 billion (RMB 230.8 billion) in China game industry revenue.¹¹ In contrast, PC online games (30.9%) together with mobile games (68.5%) accounted for over ninety-nine percent (99%) of China's 2019 digital game revenue.¹² On a global basis for 2020, console and single-player PC games are expected to account for twenty-eight percent (28%) of the US\$159 billion in projected global digital game revenue. PC online games (23%) together with mobile games (48%) are expected to account for seventy-one percent (71%) of 2020 global digital game revenue.¹³

Various factors contribute to the dominance of online games in China. From 2000 to 2014, China's State Council prohibited the sale of game consoles.¹⁴ In addition, the relatively high rate of software piracy in China was an additional factor that shaped the scope of the country's domestic game market.¹⁵ Online multi-player games, by requiring interactions between the client software and the server software, largely defeated piracy. As a result, China's successful game companies have always been online game companies, with very little interest in the console games or single-player PC games that traditionally suffered from software piracy challenges.

Although online games, which we defined to include both PC online games and mobile games, have dominated China's game market, according to the laws of China, foreign companies are not permitted to directly publish or operate online games within the country. As a result, the only legally permitted way for foreign game developers to enter China's domestic game market is by licensing their games to domestic companies for publication and operation inside China.¹⁶

The prohibition on foreign companies, which includes foreign-invested companies, meaning companies established under the laws of the PRC with at least some non-PRC citizens or foreign companies as shareholders, from operating online games is not unusual for China. In fact, the country's entire corporate legal regime is based upon this very clear distinction between domestic companies and foreign-invested companies, with detailed rules indicating which segments of the economy are open or closed for each type of company. For

¹¹ See Page 16 of the 2019 China Game Industry Report (2019 年中国游戏产业报告), posted at Game Industry (游戏产业网) on December 20, 2019 (the "2019 Industry Report"). Our suspicion, however, is that the metrics mentioned in the 2019 China Game Industry Report might not include data regarding single-player PC games that players downloaded or purchased through Valve Corporation's ("Valve") Steam or Tencent Holdings Limited's ("Tencent") WeGame (formally called the "Tencent Game Platform" or "TGP"), both of which are online game distribution platforms.

¹² See Page 16 of the 2019 Industry Report.

¹³ See "[The World's 2.7 Billion Gamers Will Spend \\$159.3 Billion on Games in 2020: The Market Will Surpass \\$200 Billion by 2023](#)", posted by Newzoo on May 8, 2020.

¹⁴ See Article 6 of the Notice on Launching a Special Campaign against Illegal Electronic Game Rooms (国务院办公厅转发文化部等部门关于开展电子游戏经营场所专项治理意见的通知), issued by the General Office of the State Council on June 15, 2000. In 2014, the State Council officially ended the game console ban. Currently, if game consoles are manufactured in mainland China and pass inspection by MOC, then those game consoles can be legally sold throughout China. Although the game console ban ended a number of years ago, the market for game consoles and their software remains small. For a discussion of the impact of the end to China's game console ban, see "[Game Consoles Trade Ban Lifted: Will a New Market Emerge?](#)" by Greg Pilarowski at Insights, a publication of The American Chamber of Commerce in Shanghai, posted on April 18, 2014.

¹⁵ According to the latest study by the Business Software Alliance, an industry association, China's software piracy rate in 2017 was 66%, which is higher than both the global average of 37% and the Asia Pacific average of 61%. See "[2018 Global Software Survey](#)", posted at globalstudy.bsa.org on June 4, 2018.

¹⁶ "Foreign company", as we mentioned above, refers to a company established under the laws of a jurisdiction other than the PRC. "Domestic company" refers to a company established under the laws of the PRC with only PRC citizens or other domestic companies as shareholders.

the purpose of foreign investment restrictions, China's entire economy is divided into three categories: permitted (鼓励类), restricted (限制类) and prohibited (禁止类).¹⁷

For purposes of China's foreign investment restrictions, publishing or operating online games is regarded as a telecommunications value-added service, and this area falls into the restricted category. Foreign investment in telecommunication value-added service providers must generally take the form of an equity joint venture with the foreign ownership interest not exceeding 50%. The online game operation business is, however, also regarded as a form of online publishing service, which falls into the prohibited category.¹⁸ As a result, foreign investment in an online game operation business is not permitted in any form.

In practice, this prohibition is carried out through a licensing regime. As noted in Section 5 (ICP License and Online Publishing License) below, each online game publisher (as further defined in Section 4.3 (Game Approval Applicant)) is required to obtain an online publishing service license issued by NPPA. NPPA will not, however, issue this license to foreign or foreign-invested companies. In fact, it is also very difficult for domestic game companies to obtain an online publishing service license, and thus many domestic game companies cooperate with an entity that does hold an online publishing service license in order to publish online games. Under this cooperation approach, these domestic game companies are able to publish and operate online games, including providing online game services and receiving revenues generated by the games. This cooperation approach is not, however, a potential path for foreign companies to directly publish online games in China, because none of the entities that hold an online publishing service license will cooperate with a foreign company since foreign companies are prohibited from engaging in online publishing activities in China. The licensing regime therefore helps to implement China's internet censorship policies, while also protecting China's online game publishing market from foreign competition.

Notwithstanding these foreign investment restrictions, many companies in China that operate in restricted or prohibited industries have received financing from foreign venture capital funds and have listed their shares on overseas stock exchanges.¹⁹ Such companies have achieved what they believe to be technical compliance with the foreign ownership restrictions by establishing a variable interest entity (“VIE”) structure in which the foreign-invested entity does not have a direct ownership interest in the domestic company that holds the licenses required to operate in the restricted or prohibited industry. For a detailed discussion of the VIE structure, including a diagram and descriptions of the primary contracts used to create the structure, please refer to our VIE memo [here](#).

¹⁷ See the Catalogue of Industries for Encouraging Foreign Investment (Amended in 2019) (鼓励外商投资产业目录(2019年版)), issued by the National Development and Reform Commission (国家发展和改革委员会) (“NDRC”) and the Ministry of Commerce (商务部) on June 30, 2019; and the Special Administrative Measures (Negative List) for the Access of Foreign Investment (Amended in 2020) (外商投资准入特别管理措施(负面清单)(2020年版)), issued by NDRC and the Ministry of Commerce (商务部) on June 23, 2020 (the “2020 Negative List”).

¹⁸ See Section 16 and Section 17 of the 2020 Negative List.

¹⁹ Online game companies in China with shares listed on overseas stock exchanges include: Tencent Holdings Limited and NetEase, Inc.

3. THE REGULATORS

The online game industry, like many segments of China's economy, is subject to numerous regulations issued by various administrative authorities, including each of the following:

- (1) NPPA;
- (2) State Council (国务院);
- (3) Cyberspace Administrative of China (国家互联网信息办公室) (“CAC”);
- (4) Ministry of Industry and Information Technology (工业和信息化部) (“MIIT”);
- (5) Ministry of Public Security (公安部) (“MPS”); and
- (6) National Copyright Administration of China (国家版权局) (“NCAC”).

Prior to March 2018, NPPA and MOC were the two primary regulators of China's online game industry. Both of them were involved with game censorship review and approval, game publication and operation licenses and the creation as well as enforcement of various industry regulations.²⁰ On March 21, 2018, the Communist Party of China (中国共产党) (the “CPC” or the “Party”) released the Plan to Deepen Reform of Party and State Institutions (深化党和国家机构改革方案), which consolidated primary game industry regulatory authority in NPPA, and moved NPPA from the government structure under the State Council (国务院) to the Party structure under the Propaganda Department of the Central Committee (中央宣传部) (the “CPD”).²¹ Following the reorganization there was a period when it was not clear which regulator would be in charge, but in May 2019 MOC formally confirmed that it would no longer be involved with regulating the online game industry.²²

Although it is now clear that NPPA is the primary regulator of China's online game industry, many other administrative authorities continue to play a role, including CAC, the primary regulator for internet content management,²³ MIIT, the primary regulator of the

²⁰ NPPA and MOC often clashed when attempting to assert regulatory control over the lucrative online game industry. A June 2008 government reorganization, for example, left some ambiguity as to whether MOC or NPPA was the primary regulator for China's online game industry. When Blizzard announced a change in domestic operator for the World of Warcraft from The9 to NetEase, MOC and NPPA, each wanting to assert their authority, declared that the game needed to undergo another round of censorship review in connection with this change in operator. While NPPA and MOC struggled for regulatory control, World of Warcraft's China operations were suspended for almost nine months. For additional background on the World of Warcraft transition saga, see the following articles by Greg Pilarowski at The Escapist: “[China and the World of Tradecraft](#)”, posted on August 16, 2009, and “[Mind the GAPP: Update on WoW in China](#)”, posted on November 6, 2009.

²¹ See “[Tencent and Chinese Gaming Rivals Shudder as Government Tightens Grip](#),” posted by Wall Street Journal on August 31, 2018.

²² See MOC Online Culture License Notice.

²³ CAC was established in May 2011, and is a sub-department supervised by the State Council Information Office (国务院新闻办公室). Since 2014, CAC has been responsible for regulating internet content. CAC also serves as the office of Central Cyberspace Affairs Commission (中共中央网络安全和信息化委员会) (the “CCAC”), an organization established in 2014 that is under the direct leadership of the Party. Currently, the leaders and various senior officers of CAC and the CCAC are in fact the same people. CCAC is a very important organization within the Party, with President Xi Jinping, the current leader of the Party and the country, serving as the first CCAC chief. In recent years, probably due in part to both CAC's high profile and its close ties with CCAC, CAC has exercised widespread censorship control over the internet. Although most of the regulations issued by CAC do not specifically target the online game industry, CAC regulations do affect the industry. See the Notice of Authorizing the Cyberspace Administration of China to Administrate National Internet Information Content (关于授权国家互联网信息办公室负责互联网信息内容管理工作的通知), issued by State Council on August 26, 2014.

telecommunications industry, MPS, which is the main police force, NCAC and the State Council.

4. GAME APPROVALS

China's media content industries, including those that publish news as well as those that produce entertainment products, are subject to comprehensive government censorship regimes. In the digital game industry, every game must be approved by NPPA prior to commercialization.

Previously, each foreign game needed to be reviewed and approved by MOC prior to commercialization, and each domestic game needed to be register with MOC within 30 days after becoming available online, but after the March 2018 government reorganization MOC's game approval and registration is no longer required.²⁴ For a period of nearly nine months after the March 2018 government reorganization, game approvals were completely suspended.²⁵ When game approvals restarted in late December 2018, a large backlog of applications had built up – perhaps as many as 5,000.²⁶

Prior to the March 2018 government reorganization, there wasn't any official limit on the number of games that could be approved for publication in China. After the Government Reorganization, however, NPPA indicated that the number of game approvals would be limited based on the requirements of total volume (总量), structure (结构) and layout planning (布局规划).²⁷ From December 2018 through December 2020, NPPA approved an average of 102 domestic games and 10 foreign games per month. This compares with an average of 779 domestic games and 39 foreign games approved per month in 2017, the most recent full year of game approvals prior to the 2018 temporary suspension of game approvals.²⁸

This section provides an overview of China's content review and approval process for foreign and domestic games.

4.1 Game Content Restrictions

China has promulgated a variety of measures relating to internet content, which includes online games. These regulations are drafted in broad general terms and prohibit content that:

- (1) Opposes the fundamental principles determined in the constitution;

²⁴ “Foreign game” refers to a game that is owned by a company established under the laws of a jurisdiction other than the PRC, or a foreign-invested company. “Domestic game” refers to a game that is owned by a company established under the laws of the PRC with only PRC citizens or other domestic PRC companies as shareholders.

²⁵ See “[Unofficial Notice about No Game ISBN Approvals Due to Government Reorganization \(网传受国家机构改革影响, 非七大类游戏将暂时无法办理版号\)](#)” (Chinese), posted by Sohu.com on March 30, 2018. See also “[Domestic Game Approval in December 2018 \(2018年12月份国产网络游戏审批信息\)](#)” (Chinese), posted by former NPPA official website on December 29, 2018.

²⁶ See “[Chinese Government Halts New Game Approvals to Work through Backlog](#),” posted by Gamesindustry.biz on February 20, 2019. See also “[Exclusive: China Regulator Stops Accepting New Video Game Applications to Clear Backlog](#),” posted by Reuters on February 20, 2019.

²⁷ See the NPPA policy statements for domestic game approvals [here](#) and for foreign game approvals [here](#).

²⁸ NPPA discloses on its website the name, publisher and operator of each game that completes the censorship review process and receives a game approval. We calculated the number of game approvals for the years indicated based on the information from NPPA's website, which can be found [here](#).

- (2) Endangers the unity, sovereignty or territorial integrity of the nation;
- (3) Divulges state secrets, endangers national security, or damages the dignity or interests of the nation;
- (4) Incites ethnic hatred or racial discrimination or undermines national solidarity, or infringes upon national customs and habits;
- (5) Propagates evil cults or superstition;
- (6) Disseminates rumors, disrupts social order or undermines social stability;
- (7) Propagates obscenity, pornography, gambling, violence or instigates crimes;
- (8) Insults or slanders others, or otherwise infringes upon the legitimate rights of others;
- (9) Endangers social morality or national splendid cultural traditions; or
- (10) Is otherwise prohibited by the laws, or administrative regulations of the PRC.²⁹

Prior to May 2016, none of the relevant governmental authorities had publicly explained the actual meaning and scope of these general content censorship provisions. On May 24, 2016, after NPPA had issued rules indicating that each mobile game must be approved by NPPA, the China Audio-Video and Digital Publishing Association (中国音像与数字出版协会), an organization that is affiliated with NPPA, issued the Mobile Game Content Specifications (2016 Edition) (移动游戏内容规范 (2016年版)) (the “Mobile Game Content Specifications”). The Mobile Game Content Specifications provide guidance with respect to the general content restrictions in the context of mobile game censorship approvals.

For instance, for the principle “opposes the fundamental principles determined in the constitution,” the Mobile Game Content Specifications explain that this principle prohibits content that opposes the people’s democratic dictatorship or disparages the People’s Congress system, opposes the leadership of the Party, or opposes the guidance of Marxism-Leninism, Mao Zedong Thought and the theoretical system of socialism with Chinese characteristics.³⁰ Although many of the explanations, like this one, continue to be very general, in some instances they can help when trying to understand the meaning of the abstract general content prohibitions listed above. Although the Mobile Game Content Specifications only apply to mobile games, these standards should also be considered in the context of censorship approvals for PC online games or any other category of game.

From time to time, NPPA also releases specific content restrictions. For instance, in 2017 NPPA banned Pokémon GO and other games with augmented reality and location based service functions (“AR/LBS”).³¹ In April 2019, NPPA also indicated that game approvals will not be issued for games that relate to harem infighting (宫斗), political

²⁹ See, among others, Article 25 of the Regulation on the Administration of Publications (出版管理条例) issued by the State Council on February 6, 2016; Article 24 of the Provisions on the Administration of Online Publishing Services (网络出版服务管理规定) issued by NPPA and MIIT on February 4, 2016 (the “Online Publishing Services Administration Provisions”); Article 17 of the Interim Provisions on Internet Publication Administration; Article 15 of the Internet Information Services Administrative Measures (互联网信息服务管理办法), issued by the State Council on September 25, 2000, amended on January 8, 2011 (the “Internet Information Services Measures”).

³⁰ The Mobile Game Content Specifications (Chinese) are available [here](#).

³¹ See “[Regulator Suspend Game Approval: AR Game is coming to a ‘cross road’](#)” (监管部门暂不受理审批：AR 游戏走向“十字路口”) (Chinese), posted at Tencent Tech on January 12, 2017.

maneuvering (官斗), poker or board games (棋牌),³² or dress up games (换装).³³ These content restrictions are often not written into specific regulations, but nonetheless impact whether a game can pass NPPA's content censorship review and receive the required approval for publication in China.

4.2 NPPA Game Approval Process

Before a digital publication, which includes PC online games and mobile games, can be published in China, NPPA must first review and approve the publication.³⁴ For PC online games, the same NPPA pre-publication review and approval procedures apply equally to both foreign games and domestic games. For mobile games, NPPA applies a less stringent content censorship approval procedure for simple domestic mobile games, which are mobile games that do not contain any materials relating to political, military, ethnic or religious topics and are “simple” non-story based games, such as matching games (消除类), obstacle course or running games (酷跑类), flying games (飞行类), board games (棋牌类), puzzle games (解谜类), sports games (体育类), or music or dance games (音乐舞蹈类).³⁵ All other mobile games, including both foreign and domestic mobile games, are subject to the same NPPA pre-publication review and approval procedure as PC online games.

Once NPPA approves a PC online game for publication, the publication number must be displayed in a prominent place on such PC online game's website.³⁶ For a mobile game, the name of the copyright owner, the name of the publisher, the NPPA game censorship approval number, and the publication number must be displayed prior to any end user interactive experience.³⁷

If a company wishes to publish any upgraded version or expansion of either an approved PC online game or an approved mobile game, a new application for such upgraded version or expansion must be submitted to NPPA.³⁸ An upgraded version or expansion for a mobile game includes material changes to the storyline, content of quests, maps, characters, features of characters or interaction functions, and adding a subtitle directly after the original name of such mobile game, each of which requires approval by NPPA as if it was a new game.³⁹ Although this explanation of upgraded version or expansion technically only applies to mobile games, game developers should also consider these standards in the PC online game context, since NPPA issued these rules and NPPA also handles approvals for PC online games.

³² Industry contacts have indicated that game approvals will not be issued for poker games but may be issued for board games. In September 2018 Tencent shut down their poker game platform. See [“Tencent Shuts Poker Platform Amid Widening Gaming Crackdown,”](#) posted by Reuters on September 10, 2018.

³³ Selected companies' participated in meetings with officials from NPPA provincial branches during which these policy positions were explained. See [“Game Approval Submission Restarts, Whether the Notes about New Requirements are True? \(游戏版本号申请重启, 新增版本号注意事项是否为真\)”](#) (Chinese), posted by China Economic Observer (经济观察报) on April 24, 2019.

³⁴ See Article 5 of the Administrative Provisions on the Publishing of Electronic Publications (电子出版物出版管理规定), issued by NPPA on February 21, 2008.

³⁵ See Article 3 of the Notice Regarding the Administration of Mobile Game Publication Services (关于移动游戏出版服务管理的规定), issued by NPPA on May 24, 2016 (the [“Mobile Game Approval Notice”](#)).

³⁶ See Article 27 of the Administrative Provisions on the Publishing of Electronic Publications and the game approval letter issued by NPPA.

³⁷ See Article 8 of the Mobile Game Approval Notice.

³⁸ See Article 28 of the Administrative Provisions on the Publishing of Electronic Publications, and Article 6 of the Mobile Game Approval Notice.

³⁹ See Article 6 of the Mobile Game Approval Notice.

Mini-games, which are games published inside other applications, like WeChat or Douyin (TikTok), also now require game approvals prior to publication. These games became popular in recent years, especially when game approvals were suspended in 2018 since at that time game approval rules were not being enforced for mini-games. That trend ended in April 2019, when NPPA indicated that all mini-games must obtain a game approval before commercial launch.⁴⁰

4.3 Game Approval Applicant

To apply for a game approval, the applicant must hold both an online publishing service license (网络出版许可证) and an internet content provider value-added telecommunication license (互联网信息服务增值电信业务经营许可证) (often referred to as an “ICP license”). Sometimes a single business entity holds both of these licenses. The online publishing service license is, however, very difficult to obtain, so often the actual game operator holds only an ICP license and cooperates with another business entity that holds the online publishing service license in order to apply for a game approval. The entity that holds an online publishing license is referred to as the “publisher” (出版单位), while the entity that holds an ICP license is referred to as the “operator” (运营单位).

The publisher is responsible for completing an internal self-censorship review of the game content and for submitting the game approval application to NPPA.⁴¹ The application must include the game internal censorship review opinion, along with information about the game’s background, character roles, non-player characters, settings, main storylines, functions, systems, shops, features and user instructions. Details about the internal censorship review process also need to be submitted to NPPA, including the start and end dates of the review, any problems discovered during the review, details about how the problems were corrected, and the final censorship review opinion. All problems and corrections discussed in the report must include relevant screenshots.⁴²

The operator is responsible for game distribution, and generally also handles game promotion, hosting, and customer support. NPPA conducts a detailed assessment of the operator and thus requires the application materials to include operator background information, including when the operator was established, when the operator started operating games, a list of games previously released by the operator, and a list of games currently operated by the operator.⁴³

For mobile games, NPPA also requires any “joint-operator” of the game to verify completion of the NPPA censorship approval process and the required disclosure of the NPPA approval number within the game.⁴⁴ Although NPPA hasn’t clearly define the term “joint-operator,” based on our prior informal discussions with NPPA staff, we understand that

⁴⁰ See “[Game Approval Submission Restarts, Are the Notes About the New Requirements True? \(游戏版号申请重启, 新增版号注意事项是否为真\)](#)” (Chinese), posted by China Economic Observer (经济观察报) on April 24, 2019.

⁴¹ Each game approval application must be signed by the publisher’s internal censor who reviewed the game content for compliance with China’s strict censorship requirements and by the publisher’s editor-in-chief.

⁴² See the NPPA game approval application form [here](#).

⁴³ See the NPPA game approval application form [here](#).

⁴⁴ See Article 9 of the Mobile Game Approval Notice.

the mobile app stores are joint operators.⁴⁵ As a result, NPPA is enlisting the help of the mobile app stores to ensure that all mobile games have completed the censorship approval process.

NPPA also requires a new censorship review for foreign games when game operations are transferred from one domestic operator to another.⁴⁶ Although this additional censorship review rule originated during a historic bureaucratic struggle among competing regulators, and seems difficult to justify with respect to games that have already passed one censorship review, NPPA nonetheless continues to require submission of application materials to its relevant local provincial office if there is a change in the operator or the name of a game.⁴⁷

4.4 Apple Game Approval Enforcement

In the summer of 2020, Apple for the first time began actively enforcing the NPPA game approval rules. Prior to July 31, 2020, Apple did request mobile game developers to submit their NPPA game approval numbers prior to publishing a game through Apple's China App Store, but game developers could ignore the request and still publish their mobile games. Because Apple didn't enforce the game approval rules in the past, many foreign mobile game developers used to self-publish their games in China through the China Apple App Store.⁴⁸

According to the new Apple policy, however, after July 31, 2020, a game developer will be required to provide an NPPA game approval number in order to publish their game on the App Store in China if the game is a premium (pay for download) game or includes in-app purchases. Since foreign game developers are not able to apply for an NPPA game approval themselves, self-publishing in the China Apple App Store is now much more challenging.⁴⁹ In addition, in August 2020, Apple started to remove nearly 26,000 games from its China

⁴⁵ In contrast to the United States, where the Google Play Store and the Apple App Store dominate mobile app distribution, China's app store market is very fragmented with many competitive mobile app stores.

⁴⁶ his requirement arose in 2009 when both NPPA and MOC required NetEase to submit the World of Warcraft for a new censorship review when game operations transferred from The9 to NetEase. For additional background information on the World of Warcraft transition saga, see the following articles by Greg Pilarowski at The Escapist: "[China and the World of Tradecraft](#)", posted on August 16, 2009, and "[Mind the GAPP: Update on WoW in China](#)", posted on November 6, 2009.

⁴⁷ See Section 7 of the Mobile Game Approval Notice.

⁴⁸ We understand that PRC authorities, including NPPA, tolerated Apple's publishing of games that did not have game approvals is due, at least in part, to Apple's seemingly good relationship with the relevant PRC government authorities. Apple benefits from PRC government leniency in other ways as well. For example, Apple is permitted to operate its China Apple App Store even though foreign companies like Apple are not allowed to hold the required licenses to operate an app store. The lack of these required licenses is one reason why Google Inc. ("Google") does not operate the Google Play Store in China. A key part of Apple's positive relationship with the relevant PRC government authorities is Apple's efforts to comply with China's censorship regime. For example, in 2012, the PRC government began blocking the New York Times' website after the newspaper published a series of articles exposing the wealth amassed by the family of Wen Jiabao, who was China's prime minister at the time. Four years later in December 2016, Apple complied with a request of the PRC authorities to remove both the English-language and Chinese-language versions of the New York Times app from the China Apple App Store. In addition, Apple's iPhone has a material user base in China, consisting of approximately 17% of all mobile phones in the country. Since the iPhone app ecosystem is a "closed system", which means that only applications downloaded through Apple App Store can be used on the iPhone, prohibiting Apple from operating its China Apple App Store would risk upsetting the many iPhone users in China. See "[Apple Pulls New York Times App from China Store](#)", posted at wsj.com on January 4, 2017, See "[Apple Store in Mainland China removes more than 26,000 games without game approvals](#)", "[Android vs. iOS – Smartphone OS Sales Market Share Evolution](#)", posted at Kantarworldpanel.com in June 2020.

⁴⁹ See "[Apple Emails Developers to Inform Developers that Games without a Version Number will be Removed in August](#)" (苹果邮件通知开发者 无版本号游戏 8 月将被下架), posted by Sina.com on July 9, 2020. For more information about Apple's new policy to enforce the game approval requirements, see the following article by Pillar Legal [here](#): "Apple to Enforce Game Approval Rules in China", posted on February 28, 2020.

App Store that did not have an NPPA game approval number.⁵⁰ Apple's removal of previously published games continued past the summer, with additional games pulled from the app store before a subsequently announced additional deadline of December 31, 2020.⁵¹

For games that are not pay for download and do not include in-app purchases, the laws of China still require game approval prior to publication. However, as of the time of publishing of this bulletin, these games are still being published without game approvals both on the China Apple App Store and the various Android app stores. As a result, games that monetize only through in-game ads will likely proliferate in China, perhaps leading to another game approval policy change.

4.5 Game Copyright Registration

Before a game can be submitted to NPPA for the censorship review process, either the game copyright or the game license agreement must first be registered with NCAC. For a domestic online game, NPPA requires a copyright registration certificate from NCAC to be submitted with the game application. For a foreign online game, NPPA requires a game license agreement registration certificate from NCAC to be submitted with the game application.

Although NPPA does not require submission of a copyright registration certificate from NCAC with a foreign online game approval application, many Android app stores and other user acquisition or advertising channels in China do require a game copyright registration certificate from NCAC before accepting a game for launch or for promotional activities. As a result, in practice both foreign and domestic game developers need to register the copyright for their games in China with NCAC. When doing so, the applicant must submit its application online, and that submission needs to include a portion of the game's source code (specifically the first 30 pages and the last 30 pages), the game's instruction manual and a scanned copy of the applicant's business license or other relevant company establishment document.

If the game copyright will be registered under the name of a foreign company, the company establishment document, such as the certificate of incorporation or articles of association, needs to be authenticated by a PRC consulate in the foreign company's home jurisdiction. The PRC consulate authentication procedures tend to be slow and tedious, which may delay the game launch. Therefore, many domestic publishers suggest that foreign game developers allow them to register the game copyright in China in the name of the domestic publisher. Foreign developers that agree to this can often launch their games quicker, but they sometimes find it difficult to later enforce contractual obligations requiring the domestic publisher to transfer the copyright registration back to the foreign developer, which then might result in confusion over who is the actual owner of the game. As a result, we generally suggest that foreign game developers register the copyright to their games in China in their own name, even though this might result in a slower game copyright registration process.

⁵⁰ See "[Apple Store in Mainland China removes more than 26,000 games without game approvals](#)" (苹果中国下架逾 2.6 万款无版号游戏) (Chinese), posted by Sina Finance (新浪财经) on August 3, 2020.

⁵¹ See "[Apple's China App Store Sheds Videogames as Beijing Tightens Internet Control](#)", posted by the Wall Street Journal on December 23, 2020.

5. ICP LICNESE AND ONLINE PUBLISHING LICENSE

As mentioned in Section 4.3 (Game Approval Applicant), in order to submit a game to NPPA for the censorship review process, the applicant must hold an ICP license, which is issued by MIIT, and an online publishing service license, which is issued by NPPA.

As mentioned in Section 2 (Foreign Ownership Restrictions), neither foreign companies nor foreign-invested companies can obtain an online publishing service license because foreign investment in the online publishing service industry is prohibited.⁵²

Foreign-invested companies also face restrictions with respect to obtaining an ICP license. In most cases, for a company to obtain an ICP license, foreign investment in the company must not exceed 50% of the ownership interest.⁵³ In practice, however, very few foreign-invested companies ever received an ICP license, even if they comply with the foreign ownership restrictions. More importantly, the online publishing service industry is completely closed to foreign investment, and therefore even if a foreign-invested company did succeed in obtaining an ICP license, the company would still not be permitted to operate online games in China.⁵⁴

Prior to the 2018 government reorganization, an online game operator was also required to obtain an internet culture license issued by MOC.⁵⁵ Following the government reorganization, however, MOC is no longer involved in the regulation of the online game industry and thus the internet culture license is no longer required to operate online games in China.⁵⁶

5.1 ICP License (issued by MIIT)

An ICP license is required in order to provide internet information services in China on a commercial basis.⁵⁷ An ICP license is different from an ICP registration, which is required to provide internet information services in China on a non-commercial basis.⁵⁸ Operating online games in China, regardless of whether the game is played on PC or mobile devices, is regarded as providing internet information services on a commercial basis, and therefore an ICP license is required to operate online games in China.⁵⁹

⁵² See Section 10 of Online Publishing Services Administration Provisions and Section 7 of Article 16 of the 2020 Negative List.

⁵³ See Article 2 and Article 6 of the Provisions on the Administration of Foreign-Invested Telecommunication Enterprises (外商投资电信企业管理规定), which was issued by the State Council in January 2001 and amended in September 2008 and February 2016. See also Section 7 of Article 16 of the 2020 Negative List. For a few select telecommunication industry sectors that China agreed to open under World Trade Organization treaties, foreign ownership interest can be more than 50%, such as e-commerce or call-center service.

⁵⁴ See Section 7 of Article 16 of the 2020 Negative List.

⁵⁵ See the Interim Provisions on the Administration of Online Games (网络游戏管理暂行办法), issued by MOC on June 3, 2010, amended on November 24, 2017. This MOC rule was repealed on July 10, 2019.

⁵⁶ See MOC Online Culture License Notice.

⁵⁷ See Article 7 of the Internet Information Services Measures.

⁵⁸ See Article 3 of the Internet Information Services Measures.

⁵⁹ Article 2 of the Online Publishing Services Administration Provisions indicates that online game publishing is a type of online publishing service. Article 5 of the Internet Information Services Measures lists online publishing service as an example of internet information service.

As noted above, foreign investment in telecommunication value-added service providers, and consequently the ability of a foreign-invested company⁶⁰ to obtain an ICP license, is generally restricted to companies with less than 50% foreign ownership. In practice, however, very few foreign-invested companies receive an ICP license. Before deciding whether or not to grant an ICP license to a company that is eligible, MIIT officials consider various factors including the foreign ownership percentage, the number of employees in China, and previous operating experience. Perhaps as a result of these subjective criteria, very few foreign-invested companies receive an ICP license even when they are qualified to obtain one based on the foreign ownership restrictions.

As we discussed above, even if a foreign-invested company successfully obtains an ICP license, the company still cannot operate online games in China. Foreign-invested companies are prohibited from providing game operation services, which is considered a type of online publishing service and this sector of the economy is closed to foreign investment in China.⁶¹

5.2 Online Publishing Service License (issued by NPPA)

Online publishers that make digital products, including books, newspapers, audio visual products and games, publicly available on the internet, and in doing so exhibit publishing characteristics, such as editing, production and processing, must obtain an online publishing service license from NPPA.⁶²

The requirements a company must meet in order to obtain an online publishing service license are very strict. For instance, a publisher must have eight or more professions licensed by NPPA for publishing and editing services. In addition, at least one key person at the publisher must be a mid-level publication professional certified by NPPA.⁶³

Because the requirements are so strict, very few domestic game operators have obtained an online publishing service license. As discussed in Section 4.3 (Game Approval Applicant) above, only companies that hold this license can submit a game to NPPA for the censorship review process. As a result, many domestic game operators cooperate with a stated-owned publishing house that holds this license in order to submit games to NPPA for the censorship review process.

6. Anti-Fatigue and Real Name Registration

In October 2019, NPPA issued a new more restrictive version of prior anti-fatigue rules, which are designed to curb excessive online game playing by minors. To identify whether a game player is a minor and thus subject to the anti-fatigue system rules, under the new rules online game companies were required to implement a real-name registration system before December 25, 2019. Under that system, online game players must register their

⁶⁰ “Foreign-invested company” refers to a company established under the laws of the PRC with at least some non-PRC citizens or foreign companies as shareholders. Foreign-invested companies can be in the form of a wholly foreign owned entity or in the form of a joint venture.

⁶¹ See Section 7 of Article 16 of the 2020 Negative List.

⁶² See Article 2 and Article 7 of the Online Publishing Services Administration Provisions.

⁶³ See Article 8 and Article 9 of Administrative Provisions on Online Publishing Service. NAPP is also the primary regulator for the publishing professional qualification certificate (出版专业职业资格), which is required to become a professional in a publishing related career in China, including a career as an editor, proofreader, publisher or distributor of books, magazines, audio-visual products and other electronic publications.

accounts using their real identity information, and online game companies must submit the game player identity information to the public security bureau for verification.

The details of the current NPPA anti-fatigue rules are summarized in the following table.

Rules	Details
Real name registration	Except for a one-hour game tour (see details below), online game companies shall not provide game services to any user that has not completed the real name registration process. ⁶⁴
One-hour game tour	Player is able to play the game for one-hour prior to completing the real name registration process. During this one-hour game tour the player cannot use legal currency to make purchases within the game. In addition, online game companies cannot allow a player to take the one-hour game tour again (on the same hardware device) within 15 days. ⁶⁵
Curfew time	For minors under the age of 18, online game companies shall not provide game services between 10 pm and 8 am.
Playing time limitation	Each game company shall limit the game play time on their games for minors under the age of 18 to 3 hours per day during legal holidays, and to 1.5 hours per day during other time. ⁶⁶
Payment limitation	In-game payment services shall not be provided to minors under the age of 8. ⁶⁷
	For minors from age 8 to 16, the payment amount for each transaction shall not exceed RMB 50, and the aggregate payment amount every month shall not exceed RMB 200. ⁶⁸
	For minors from age 16 to 18, the payment amount for each transaction shall not exceed RMB 100, and the aggregate payment amount every month shall not exceed RMB 400. ⁶⁹

This is not the first time that regulators in China have tried to mandate anti-fatigue and real-name registration requirements for the game industry. In April 2007, NPPA and several other government offices jointly issued a notice requiring PC online game companies to implement an anti-fatigue compliance system and real name registration system.⁷⁰ In May 2016, NPPA extended the anti-fatigue system requirement to all mobile games other than the newly created category of simple domestic mobile games.⁷¹ In addition, implementation of an

⁶⁴ See Article 1 of the Notice on Preventing Minors from Indulging in Online Games (关于防止未成年人沉迷网络游戏的通知), issued by NPPA on October 25, 2019 (the “2019 Anti-Fatigue Notice”).

⁶⁵ See Article 1 of the 2019 anti-Fatigue Notice.

⁶⁶ See Article 2 of the 2019 Anti-Fatigue Notice.

⁶⁷ See Article 3 of the 2019 Anti-Fatigue Notice.

⁶⁸ See Article 3 of the 2019 Anti-Fatigue Notice.

⁶⁹ See Article 3 of the 2019 Anti-Fatigue Notice.

⁷⁰ See the Notice on Protecting the Health of Minors by Adopting an Anti-fatigue System in Online Games (关于保护未成年人身心健康实施网络游戏防沉迷系统的通知), issued by NPPA, MIIT and six other government offices on April 15, 2007 (the “2007 Anti-Fatigue Notice”), and Article 1 of the Notice Regarding China Initiates Work for the Online Game Real-Name System (关于启动网络游戏防沉迷实名认证工作的通知), issued by eight government departments including NPPA and the Ministry of Public Security on July 1, 2011.

⁷¹ See Article 3, Article 4 and Article 5 of the Mobile Game Approval Notice, and the term “simple domestic mobile games” is defined under Section 5.2 (NPPA Game Approval Process).

anti-fatigue system into an online game is required in order to obtain an NPPA game approval.⁷²

Notwithstanding numerous previous attempts to implement real-name registration requirements, China had struggled to effectively enforce these rules until recent implementation of real-name registration for mobile phones in China made it easier for game companies to verify user identity through their mobile phones.⁷³ In May 2016, Xinhua, China's state owned news agency, reported that approximately 92% of mobile phone users in China had already registered their SIM cards with real identity information.⁷⁴ MIIT local offices in some provinces announced that the real name registration was 100% implemented by the end of 2016.⁷⁵

Although a sophisticated minor can evade the anti-fatigue system by using an adult's mobile phone number to register their account, the successful implementation of a real-name registration process is still arguably a positive development with respect to achieving the goals of the anti-fatigue rules. This development, however, is also likely to have important implications for online censorship under China's strict government rules. In December 2018, Tencent tried to implement facial recognition technology in *Glory of Kings* (王者荣耀),⁷⁶ which might make it more difficult for even clever minors to evade the anti-fatigue rules. Our market checks, however, did not find any games that require users to allow a face scan in order to play.

In April 2017 and again in October 2020, we reviewed the real-name registration function of the top fifty PC online games and top fifty mobile games, in order to see whether the game operators complied with the rules.⁷⁷ We found that real-name registration compliance rates have dramatically increased during the past three years. Our October 2020 checks indicate that most online games now require players to provide their mobile phone numbers and to authenticate such mobile phone numbers by text message in order to complete the registration process. Compliance rates for PC online games increased from forty percent (40%) in April 2017 to one hundred percent (100%) in October 2020.⁷⁸ iOS mobile game compliance rates increased from zero percent in April 2017 to ninety-three percent

⁷² See Article 3 of the 2007 Anti-Fatigue Notice, and see Article 4 and Article 5 of the Notice Regarding the Administration of Mobile Game Publication Services.

⁷³ One of the key challenges to implement the real name registration system in the past was poor coordination with MPS. MPS outsourced real-name verification services to a state-owned enterprise under its control — the National Citizen Identity Information Center (全国公民身份证号码查询服务中心), which initially charged five (5) RMB per identity verification. Because large online game companies often have many millions of registered accounts, full compliance with the real-name registration system could have resulted in millions of RMB in additional expenses for the online game operators. As a result, full implementation didn't happen.

⁷⁴ See "[The Strictest Mobile Real-Name Registration Rule is Coming! Cease Service if Fails to Comply](#)" (最严手机实名制来了！不实名将停止服务) (Chinese), posted at Xinhuanet.com on May 25, 2016.

⁷⁵ For instance, Jiangsu province announced that the real name registration was fully implemented on December 30, 2016, but we cannot find the evidence that all of the 34 provinces have the same announcement. See "[Jiangsu fully enters the era of real-name telephone](#)" (江苏全面进入电话实名时代) (Chinese), posted at MIIT website on December 30, 2016.

⁷⁶ See "[Tencent's Health System is Upgraded Again, Glory of Kings Takes the Lead in Enabling Facial Recognition Verification](#)" (腾讯健康系统再升级 《王者荣耀》率先启用人脸识别验证) (Chinese), posted at QQ.com, November 28, 2018.

⁷⁷ In both our April 2017 and October 2020, we tested compliance for the top fifty PC client-based games and the top fifty mobile games, relying upon the top game rankings from 17173.com, which are based on user votes. See "[17173 Game Ranking List](#)" (17173 游戏排行榜) (Chinese).

⁷⁸ We regard a PC game to be compliant with real-name registration rules when, in connection with registration, such game requires its players to provide their (i) mobile phone numbers, and such mobile phone numbers are verified by text message; or (ii) names and national identification numbers. If a game's registration process can be completed by providing a fake identification number with a random name, then we regard this game as not complying with the real-name registration rules.

(93%) in October 2020.⁷⁹ Similarly, Android game compliance rates increased from twenty-eight percent (28%) in April 2017 to one hundred percent (100%) in October 2020.⁸⁰

Game Type	April 2017	October 2020
PC Online Games	40%	100%
Mobile iOS games	0%	93%
Mobile Android games	28%	100%

⁷⁹ We downloaded each iOS version of a mobile game that we tested through China’s Apple App Store. We regard a mobile game as compliant with real-name registration rules if: (i) there isn’t a “tourist mode” that allows players to play the mobile game without submitting any player identification information or mobile phone number, and (ii) the game requires players either to provide their mobile phone numbers and to verify such mobile phone numbers by text message, or to provide their names and national identification numbers, in each case to finish the registration process. If a game’s registration process can be completed by providing a fake identification number with a random name, then we regard this game as not complying with the real-name registration rules.

⁸⁰ We downloaded each Android version of the mobile game that we tested through such mobile game’s official website. The standards that we used to determine real-name registration compliance for Android game compliance is the same as the standard described above that we used for iOS versions of mobile games.