



PILLAR LEGAL

CHINA REGULATION WATCH

CHINA ISSUES LIVE ONLINE STREAMING RULES¹

JANUARY 2017

On December 2, 2016, the Ministry of Culture (文化部) (the “MOC”) issued the Online Performance Business Operation Management Rules (《网络表演经营活动管理办法》) (the “MOC Online Performance Rules”), which became effective on January 1, 2017. In addition, on November 4, 2016, the Cyberspace Administration of China, also known as the State Internet Information Office (国家互联网信息办公室) (“CAC”) released the Live Streaming Service Management Rules (《互联网直播服务管理规定》) (the “CAC Live Streaming Rules”), which became effective on December 1, 2016. The CAC Live Streaming Rules address matters related to live online streaming, while the MOC Online Performance Rules apply to both live online streaming and to video that is uploaded online. The overriding goal of both measures is to strengthen the supervision of online streaming content, ensuring that only licensed businesses publish this type of internet content and that those businesses monitor the content to ensure that it complies with China’s strict censorship requirements.

1. Definition of Online Performance

Under the MOC Online Performance Rules, “Online Performance” means an internet culture product that has activities such as live artistic or literary performance as its principal content, and that is delivered to viewers via the internet or the mobile internet either in real-time or through a recorded copy.² The MOC Online Performance Rules also clearly indicate that publishing videos of online game play, whether in real-time or as recorded copies (“Game Broadcasting”), falls within the scope of Online Performance and is regulated by these measures.³ “Online Performance Operating Units” means operating units that obtain benefits by means of accepting fees, e-commerce, advertising, or sponsorship for providing the public with Online Performance products and services.⁴

2. Internet Culture Operating License Requirement for Service Providers

The MOC Online Performance Rules require Online Performance Operating Units to obtain the internet culture operating license (网络文化经营许可证) and to prominently

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² See Section 2 of the MOC Online Performance Rules.

³ See Section 2 of the MOC Online Performance Rules.

⁴ See Section 2 of the MOC Online Performance Rules.



display their license number on their website homepage.⁵ Because the Ministry of Culture does not accept applications for an internet culture operation license from foreign or foreign-invested companies, this rule makes clear that China's long standing prohibition on foreign investment in any company engaged in internet culture activities extends to companies that provide live online streaming services.⁶ The CAC Live Streaming Rules also emphasizes that anyone providing internet live-streaming services must obtain the applicable required licenses.⁷

3. Prohibited Content and Censorship Responsibility

Both the MOC Online Performance Rules and the CAC Live Streaming Rules place heavy emphasis on the need for Online Performance Operating Units and anyone providing live streaming content to be responsible for ensuring such content complies with China's strict censorship rules. Requirements include reviewing non-real-time content before it is published, ensuring a sufficient number of content reviewers are employed, real-time monitoring of live-streaming content and ensuring that technical measures are in place to instantly cut-off internet live-streams if the streamed content is found to violate applicable laws or regulations.⁸ In addition, all Online Performances must be recorded and stored for at least sixty (60) days, and provided to the relevant authorities upon request.⁹ Online Performance Operating Units are also required to submit content review reports to the Ministry of Culture on a quarterly basis, with these reports including the results of real-time monitoring and a name list of performers who provide any content that violates applicable laws or regulations.¹⁰

Both rules also include the standard references to content that is prohibited, including any content that endangers national security, undermines social stability, disturbs social order, or disseminates pornographic or obscene materials.¹¹ The MOC Online Performance Rules include additional content prohibitions, such as content that abuses animals or that uses hidden cameras or secret recording to infringe upon the lawful rights of others.¹²

Both the MOC Online Performance Rules and the CAC Live Streaming Rules also attempt to harness the power of China's large viewing audience to help monitor and report offensive content.¹³ For example, Online Performance Operating Units are required to install a website link to the National Culture Market Reporting Platform "12318" (12318 全国文化市场举报网站) on their website homepage and on

⁵ See Section 4 of the MOC Online Performance Rules.

⁶ See Article 4 of the Several Opinions on the Introduction of Foreign Investment in Cultural Fields (关于文化领域引进外资的若干意见), issued by the Ministry of Culture on July 6, 2005.

⁷ See Sections 5 and 6 of the CAC Live Streaming Rules.

⁸ See Sections 5, 13 and 14 of the MOC Online Performance Rules, and Sections 7 and 8 of the CAC Live Streaming Rules.

⁹ See Section 13 of the MOC Online Performance Rules and Section 16 of the CAC Live Streaming Rules.

¹⁰ See Section 15 of the MOC Online Performance Rules.

¹¹ See Section 6 of the MOC Online Performance Rules and Section 9 of the CAC Live Streaming Rules.

¹² See Section 6 of the MOC Online Performance Rules.

¹³ See Section 16 of the MOC Online Performance Rules and Section 19 of the CAC Live Streaming Rules.



performance channels, to ensure that viewers can easily complain directly to the MOC in the event that they view any illegal content.¹⁴

4. Management of Online Performers

Both rules require Online Performance Operating Units and live streaming service providers to verify the real identity of online performers, including through review of identity cards for individuals, or review of business license certificates and organization code certificates for companies.¹⁵ Both rules also specify new detailed requirements for how Online Performance Operating Units and live streaming service providers verify the real identity of online performers. Online Performance Operating Units must verify the real identity of performers through in-person interviews or recorded phone or video calls.¹⁶ Live streaming service providers must also register the real identity information of performers with the provincial level offices of CAC.¹⁷ As discussed in greater detail below, China has struggled with implementing real-name registration requirements in the past. These additional details on implementing real-name registration for online performers, along with the fact that there should be far fewer performers than viewers, suggest that the performer real-name registration requirements are likely to be enforced more vigorously than past user real-name registration requirements.

5. Prior MOC Approval of Foreign Performers

Starting on March 15, 2017, before an Online Performance Operating Unit may open a live performance channel to, or make performance works available to the public from, a foreign performer (including performers from Hong Kong, Macao or Taiwan), the Online Performance Operating Unit must first submit an application to the Ministry of Culture and obtain special approval.¹⁸ When opening live performance channels for domestic performers, starting on March 15, 2017, Online Performance Operating Units need to register the channel with the Ministry of Culture within ten (10) days after making the channel available to the public.¹⁹ This difference in censorship treatment for foreign content and domestic content is not unusual for China's Ministry of Culture. For example, foreign video games are required to be approved by the Ministry of Culture before publication, while domestic video games simply need to be registered within thirty (30) days after publication.²⁰

6. No Game Broadcasts of Unapproved Games

Under the MOC Online Performance Rules, Online Performance Operating Units are prohibited from providing Game Broadcasting services with respect to games that have

¹⁴ See Section 16 of the MOC Online Performance Rules.

¹⁵ See Section 9 of the MOC Online Performance Rules and Section 12 of the CAC Live Streaming Rules.

¹⁶ See Section 9 of the MOC Online Performance Rules.

¹⁷ See Section 12 of the CAC Live Streaming Rules.

¹⁸ See Sections 10 and 22 of the MOC Online Performance Rules.

¹⁹ See Section 10 of the MOC Online Performance Rules.

²⁰ See Sections 11 and 13 of the Interim Provisions on the Administration of Online Games (网络游戏管理暂行办法), issued by the Ministry of Culture in June 2010.



not been reviewed and approved by the Ministry of Culture.²¹ This requirement is not creating a new censorship and approval regime for video games, but is simply emphasizing the importance of complying with the existing censorship and approval regime for a game before gameplay from that game can be live-streamed or otherwise posted to the internet.²² This means that gameplay for games like World of Warcraft, which has been reviewed and approved by the Ministry of Culture and has been lawfully available in China for many years, can be streamed online in China. But gameplay for games like Grand Theft Auto, which is unlikely to ever pass the censorship regime, cannot be lawfully streamed in China.

7. Management of Users

Under the CAC Live Streaming Rules, live streaming service providers must verify the real identity of their users based on the users' mobile phone numbers.²³ This is not the first time that regulators in China have tried to mandate real-name registration requirements for internet services. Examples of prior attempts include the following:

- Online Games. In April 2007, the State Administration of Press, Publication, Radio, Film and Television (新闻出版广电总局) (“SAPPRFT”) and several other government offices jointly issued a notice requiring online game operators to implement an anti-fatigue compliance system and real-name registration system in order to curb addictive online game playing by minors.²⁴ In July 2011, SAPPRFT announced that the online game real-name system would be officially implemented on October 1, 2011.²⁵
- Microblogs. In December 2011, the Beijing city government issued rules requiring full implementation of real-name registration for microblog services located in Beijing, which included Sina's Weibo, a Twitter style service that was and is extremely popular in China.²⁶
- Mobile Games. In May 2016, SAPPRFT required foreign mobile games and all domestic mobile games that do not qualify as simple domestic mobile games, to comply with real-name registration rules.²⁷

²¹ See Section 6(6) of the MOC Online Performance Rules.

²² For additional details on the existing MOC game censorship and approval rules, see Section 11 and Section 13 of the Interim Provisions on the Administration of Online Games (网络游戏管理暂行办法), issued by the Ministry of Culture in June 2010.

²³ See Section 12 of the CAC Live Streaming Rules.

²⁴ 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 SAPPRFT and eight other government offices on April 15, 2007 (the “Anti-Fatigue Notice”).

²⁵ See Notice of Implementation of Online Game Anti-Fatigue and Real Name Registration System (关于启动网络游戏防沉迷实名认证工作的通知), issued on July 1, 2011 by SAPPRFT.

²⁶ See Section 9 of Several Rules on the Administration of Weibo Development (北京微博客发展管理若干规定) issued by the Beijing Government on December 16, 2011.

²⁷ See Sections 4 and 5 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 on May 24, 2016 by the SAPPRFT.



- Mobile Apps. In June 2016, CAC released rules regarding mobile app management, which included real-name registration requirements for mobile app service providers, including the two most popular communication apps in China, Tencent's Weixin and Sina's Weibo, each of which have hundreds of millions of users.²⁸

Notwithstanding numerous attempts to implement real-name registration requirements over the past decade, and tremendous political pressure to do so following the rapid growth of Sina's microblog platform Weibo, China has struggled to effectively enforce these regulatory requirements. For example, SAPPRFT attempted to require real-name registration in the online game area, but failed to achieve effective implementation due in part to poor coordination with the Ministry of Public Security (公安部) (the "MPS"). The 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 operators 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. Based on compliance checks conducted by Pillar Legal in September 2013 and in April 2014, it was clear that the leading online game operators in China had not fully implemented the real-name verification measures.

Achieving real-name registration by using mobile phone numbers, as currently proposed by CAC, might be more effective. In the past China leniently enforced requirements for mobile phone users to provide their real name and national identification number when registering for a Subscriber Identity Module ("SIM") card for their mobile phone. In May 2016, however, the Ministry of Industry and Information (工信部) ("MIIT") issued a notice indicating that it would strictly enforce these requirements, with the goal of full implementation of real-name registration for all SIM cards in China by June 30, 2017.²⁹ 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.³⁰ As a result, China may soon achieve a real-name registration system for mobile and internet products and services generally, in addition to online streaming services.

²⁸ See Section 7 of the Regulations for the Administration of Mobile Apps Information Service (移动互联网应用程序信息服务管理规定), issued on June 28, 2016 by the CAC.

²⁹ See Notice about Implementation of Anti-Terrorism Law and Other Relevant Laws and Regulations to Enhance the Real-Name Registration of Mobile Phone Users (关于贯彻落实《反恐怖主义法》等法律规定, 进一步做好电话用户真实身份信息登记工作的通知) issued by MIIT, on May 24, 2016.

³⁰ See news report of the strictest mobile real-name registration rules at [Xinhua Net](#).