



HAN KUN LAW OFFICES

# Legal Commentary



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## **Brief Commentary on the Administrative Provisions for Web Publishing Services**

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The State Administration of Press, Publication, Radio, Film and Television and the Ministry of Industry and Information Technology jointly issued the *Administrative Provisions on Web Publishing Services* (the “**Administrative Provisions**”) on February 6, 2016. The Administrative Provisions, taking effect as of March 10, 2016, will supersede the *Interim Provisions on Internet Publication Administration* (the “**Interim Provisions**”) promulgated by the former General Administration of Press and Publication and the former Ministry of Information Industry in 2002.

Compared with the Interim Provisions, the Administrative Provisions set out more detailed provisions for web publishing activities, which mainly cover issues such as defining web publishing services, licensing and approvals, the administrative and supervisory regime, and legal liabilities. Those provisions that feature certain changes or developments are analyzed below:

### **1. Expanded Scope of Application**

According to the Administrative Provisions, all web publishing services provided within the territory of China shall be subject to the Administrative Provisions. Although this scope appears not to be substantially different than that under the Interim Provisions, the scope of the Administrative Provisions has in effect been expanded, as a result of the relatively broad definitions of the “web publishing services” and the “web publications” in the Administrative Provisions.

Pursuant to the Administrative Provisions, “web publishing services” refer to the activity of providing web publications to the public through information networks; “web publications” refer to digital works which have publishing features such as having been edited, produced or processed and which are made available to the public through information networks, including:

- a. written works, pictures, maps, games, cartoons, audio/video reading materials and other original digital works containing useful knowledge or ideas in the field of literature, art, science or other fields;
- b. digital works of which the content is identical to that of any published book, newspaper, periodical, audio/video product, electronic publication or the like;
- c. network literature database or other digital works, derived from any of the aforesaid works by selection, arrangement, collection or other means; and
- d. other types of digital works as may be determined by the State Administration of Press, Publication, Radio, Film and Television.

Notably, the Administrative Provisions explicitly identify maps and network literature databases as web publications, and further provide for a “catch-all” clause (i.e., web publications include other types of digital works as may be determined by the State Administration of Press, Publication, Radio, Film and Television) which vests discretionary power in the State Administration of Press, Publication, Radio, Film and Television so as to cope with the ever-developing forms of web publishing.

## **2. Heightened Threshold Requirements for License Applications**

In accordance with the Administrative Provisions, a web publishing service provider shall obtain the approval and a Web Publishing Service License (hereinafter referred to as “License”) from the competent administrative department for publication according to the law. Meanwhile, the Administrative Provisions tailor differentiated threshold requirements for two kinds of applicants.

Entities which are already considered to be a book, audio-video, electronic, newspaper or periodical publisher are subject to relatively low licensing requirements, which only includes:

- a. having a specific publishing platform in place, such as domain name and intelligent terminal application, for engaging in the web publishing business;
- b. having a specific scope of web publishing services; and
- c. having the necessary technical equipment for the provision of web publishing services, while the related servers and storage equipment are located within the territory of the People’s Republic of China.

Other types of entities which are engaged in providing web publishing services, must meet the following requirements in addition to those set forth above for traditional publishing entities:

- a. having a specific name that is not identical to the name of any other publishing service provider, and having a business name and articles of association which permit engaging in web publishing;

- b. its legal representative and key person in charge shall meet relevant requirements of the state, its legal representative shall be a Chinese citizen of long-term residence within the territory of the People's Republic of China and have full capacity to act, and at least one of either the legal representative or key person in charge has a mid-level or higher professional qualification in the publishing field;
- c. other than the legal representative and key person in charge, the entity has at least eight (8) full-time editing and publishing staff who have professional qualifications in publishing or other relevant fields recognized by the State Administration of Press, Publication, Radio, Film and Television and meet the needs of the entity's scope for web publishing services, and among whom at least three (3) have mid-level or higher professional qualifications;
- d. having a content proofreading system meeting the needs of the provision of web publishing services;
- e. having a fixed place of business; and
- f. other requirements that may be set forth by relevant laws, administrative regulations or the State Administration of Press, Publication, Radio, Film and Television.

Compared with the Interim Provisions, the Administrative Provisions additionally provide for the requirements of placing the related servers and storage equipment within the territory of the People's Republic of China, establishing a content proofreading system, and specify the personnel qualification requirements for entities engaging in web publishing services. Also, for the first time, the submission of feasibility reports for web publishing services is required in addition to other application materials.

### **3. Denial of Foreign Entry and Pre-approval Items**

Echoing the *Catalogue for the Guidance of Foreign Investment Industries* as revised in 2015, the Administrative Provisions places web publishing services in the prohibited category for foreign investment. Thus, Sino-foreign equity joint ventures, Sino-foreign cooperative joint ventures and wholly foreign-owned enterprises cannot legally engage in providing web publishing services. Moreover, foreign nationals are not allowed to be the legal representative of any web publishing service entity.

In addition, the Administrative Provisions bring the following under the scope of items which require the pre-examination and approval by the State Administration of Press, Publication, Radio, Film and Television:

- a. collaborative projects involving web publishing services between web publishing service providers and a Sino-foreign equity joint venture, Sino-foreign cooperative joint venture or wholly foreign-owned enterprise, or a foreign entity or individual; and

- b. web publication of online games (including online games subject to authorization by an overseas copyright owner).

#### **4. Valid Term of the License**

Unlike the Interim Provisions which do not address the term of validity for the previous equivalent to the License, the Administrative Provisions stipulate that the valid term of the License is five (5) years. Sixty (60) days prior to the expiration of the term, an application for extension may be filed by the web publishing service provider, and approval is subject to the discretion of the competent administrative authority.

#### **5. Extended Scope for Change Registration and Record Reporting, New Annual Inspection Requirement**

Compared with the Interim Provisions, the Administration Provisions mainly add the following into the scope of items which require the web publishing service provider to subsequently carry out a change registration or record reporting.

- c. In the event of changes in the capital structure or establishment of branches, the web publishing service provider shall go through the procedure for change registration with the competent administrative authority; and
- d. Where a web publishing service provider suspends its web publishing services, it shall report to the competent administrative authority for records and explain the reasons and the duration of the suspension. A web publishing service provider may not suspend its web publishing services for more than 180 days.

However, where a web publishing service provider fails to commence web publishing services within 180 days from the date of registration and it is due to force majeure or other justifiable reasons, the Administrative Provisions allow the web publishing service provider to apply to the competent administrative authority for an extension of the time limit.

Furthermore, under the Administrative Provisions, web publishing service providers which hold a License shall submit an annual self-inspection report on a yearly basis to the competent administrative authority. The authority will examine and verify the provider's conditions for establishment, registration items, operation of publishing business, publishing quality, legal compliance, internal management, etc. Where any web publishing service provider is found to be no longer satisfying the conditions for Licensure, the License may be revoked.

#### **6. Imposing Checks and Verification Obligations on Providers of Internet-related Ranking and Promotion Services**

Under the Administrative Provisions, a provider of internet-related services shall check the License and business scope of web publishing service providers to which it provides manual

intervention ranking of search results, advertising, promotions or other services. In addition, the competent administrative authority may order such providers of internet-related services to terminate the provision of relevant services to web publishing service providers which publish or distribute any web publications containing content which is prohibited by the Administrative Provisions.

## **7. Enhanced Protection for the Legitimate Rights and Interests of Minors**

The Administrative Provisions not only continue to include provisions which protect the legitimate rights and interests of minors, but also add a provision that forbids the publishing of any content that “discloses the personal privacy of minors.”

## **8. Legal Liabilities of the Key Person in Charge**

The penalty provisions of the Administrative Provisions generally follow the framework of the Interim Provisions, and feature essentially the same level of punishment. Notably, in contrast to the Interim Provisions which only subject the web publishing service providers committing illegal acts to punishment, the Administrative Provisions also aim to hold the legal representative or key person in charge liable to legal liabilities, e.g. where the license of a web publishing service provider is revoked, its legal representative or key person in charge shall not be legal representative or key person in charge of any web publishing service provider within ten (10) years from the date of revocation of the License.

## **9. Administrative Measures to be Separately Formulated by the Competent Authority**

The Administrative Provisions state repeatedly that certain measures, such as the specific classification of web publishing services, implementing special share rights for the management shares of web publishing service providers, and identity management for web publications, remain to be formulated and further clarified by the competent administrative authority. It remains to be further observed when such measures will be promulgated and how they will impact web publishing services.

## **Summary**

Compared with the Interim Provisions, the Administrative Provisions make no innovative breakthroughs or changes, but rather detail relevant existing provisions and additionally devise certain administrative measures to address features of the network environment. In light of such changes, it appears to us that policymakers, instead of relaxing supervisory control over the web publishing services, intend to regulate the industry development and maintain market order in the hope of stimulating the growth of web publishing services as well as encouraging the unified development of old and new publishing media.

## ● **Important Announcement**

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