

## Two Powerful Chinese Media Regulators Merge

In March 2013, the State Council announced the merger of two Chinese regulators: the General Administration of Press and Publication and the State Administration of Radio, Film and Television and created a mega-ministry, the General Administration of Press, Publication, Radio, Film and Television ("GAPPRFT"). The merger of the national press and broadcasting regulators is intended to boost the development of Chinese culture industries and increase their global influence.

As Chinese media grows exponentially and shows its strength on the international scene, leading media partner **Jeanette Chan** and counsel **Hans-Günther Herrmann** from the Hong Kong office of US law firm Paul, Weiss, Rifkind, Wharton & Garrison and partner **Glenn Su** from the Beijing office of PRC firm Fangda Partners have joined forces to explain the implications of the regulators' merger for industry participants.

### WHAT DO YOU THINK IS THE MAIN DRIVER OF THIS INSTITUTIONAL REFORM?

The merger of the State Administration of Radio, Film and Television ("SARFT") and the General Administration of Press and Publication ("GAPP") was part of a broader institutional restructuring involving a number of other ministries and was also part of the systematic cultural reform that began in 2003. More specifically, the merger of SARFT and GAPP was driven by the need to reduce overlap of responsibilities between the two regulators, trim red tape and streamline bureaucracy. For instance, the lack of administrative consistency and coordination between SARFT and GAPP had led to the situation where SARFT might allow certain contents to be published in the form of radio, film or television programs while the same or similar contents were banned by GAPP from print publication, or vice versa. In addition, with the arrival of the Internet era, SARFT and GAPP each tried to exert control over the various Internet-based new media. Finally, the Chinese government expected that the merger would serve to promote the development of China's modern communications system, underpinned by digital information technology, and strengthen the competitiveness and influence of Chinese media and culture.

#### Goals of merger

- Avoid overlap of SARFT and GAAP
- Streamline internet-based media
- Aid competitiveness of Chinese media and culture

### WHAT ARE THE FUNCTIONS OF THE NEW "SUPER MINISTRY OF BROADCAST AND PRESS"?

According to the *Plans for Institutional Reform and Functional Transformation* of the State Council, the newly merged ministry of broadcast and press is principally responsible for the overall planning of the development of the press, publication, radio, film and television industries, the supervision and administration of the relevant organizations and businesses, as well as the contents and quality of publications and radio, film and television programs, and copyright administration.

#### Responsibilities

- Very broad responsibilities over all kinds of content, however disseminated, and also over copyright administration

### **WILL THE NEW “SUPER MINISTRY” HAVE INCREASED POWER COMPARED WITH OTHER AGENCIES?**

The new “super ministry” was formed by combining and streamlining the functions previously performed by each of SARFT and GAPP separately on its own. Such combination does not appear to have changed the power configuration among itself, the Ministry of Culture, the Propaganda Department of the Communist Party and the Ministry of Industry and Information Technology (“MIIT”).

No increased power despite the merger

### **WILL THIS REFORM LEAD TO MORE LIBERAL REGULATION IN THE MEDIA INDUSTRY IN CHINA?**

Before the merger, SARFT and GAPP regulated the Chinese media industry through a tight licensing system. The nature of the merger, namely whether it is simply a merger of previously separate functions or a true reform, hinges on whether the newly merged ministry is willing to deregulate the current licensing system. At this stage, the merger of SARFT and GAPP appears to be only a merger at an organizational-structure level. While such a merger may result in the streamlining of the regulatory process in the Chinese media sector, it remains unclear whether the merger will lead to immediate liberalization or even deregulation of the industry. Reduced numbers of regulators may not necessarily translate into more relaxed regulatory oversight. In addition, the Chinese government is prudent about reform having an impact on culture and ideology, and liberalization in the media industry requires more than the efforts of a newly merged ministry alone, which is also under the leadership of the Communist Party’s Propaganda Department.

#### **Impact on industry**

- Unlikely to see immediate liberalization/deregulation of the Chinese media industry
- Reduction of licenses for foreign and domestic media businesses also unlikely

### **WHAT DO YOU THINK THE REFORM WILL DO TO THE EXISTING APPROVAL REGIMES IN THE MEDIA SECTOR GOING FORWARD?**

The media industry is characterized by the competing claims of various agencies. In addition to GAPP and SARFT, other media regulators such as the Ministry of Culture and the MIIT approve “cultural products,” license Internet content providers and intervene in other aspects of content production and distribution. The GAPP/SARFT merger does not change this, because their respective regulatory turfs have little overlap. Media businesses – both foreign and domestic – may still have to obtain many concurrent, time consuming approvals.

In one respect, the new agency may add even more approvals. In December 2012, GAPP put out draft regulations under which online publication of works of any description would require a GAPP license. This licensing requirement already exists, but GAPP rarely granted these licenses and tolerated operators without a license. By issuing new regulations, GAPP wanted to lay claim to this area again. There is no indication that the new ministry will abandon this attempt.

### **WILL THE REFORM HAVE ANY IMPACT ON PLATFORM CONVERGENCE?**

SARFT – and the new ministry as its successor – actively work to implement convergence. A national cable TV network operator – expected to be set up within a few months – will focus on promoting connectivity, including inter-connectivity of regional networks, and convergence of technologies, operations and management. The ministry is also preparing a three-year

Platform convergence is high on the agenda

convergence plan for the period 2013 to 2015. Under the plan, all cable TV networks at county level and above will be digitalized by 2015, with 80% of them able to provide internet access, IPTV, video-on-demand and interactive entertainment services.

One interesting question is whether GAPPRFT will become more active in regulating TV games than SARFT was. GAPP approved operation of online games and import of foreign online games, and imported online videos have to be registered with the National Copyright Administration (previously under GAPP). SARFT, by contrast, had not created a licensing regime for TV games. Will GAPPRFT expand GAPP's authority to TV platforms and close what some see as a loophole in the current regime? Will GAPPRFT try to encourage interactive content on TV sets to strengthen competition against other devices? Will GAPPRFT reconsider its ban on importation of set top boxes for games?

### **WHAT IMPACT DO YOU THINK THIS WILL HAVE ON FOREIGN INVESTORS?**

Both print media and broadcasting are prohibited industries for foreign investment and will remain so for the foreseeable future, apart from the limited avenues for foreign participation in content, distribution and technology that exist today. Opportunities in these areas will increase, since the Chinese government is pushing for the growth of large media groups, and the merger of GAPP and SARFT is part of this drive.

### **WHICH OF THE MEDIA SECTORS INVOLVED WILL BENEFIT MORE FROM THIS REFORM?**

The Chinese authorities see television as the more strategic medium, because it connects more directly with people as a propaganda tool and satisfies a stronger demand for entertainment and information. If the new ministry has to choose between print and broadcasting interests (e.g., in authorizing acquisitions, facilitating cross-media licensing or providing State funding), it is more likely to favor broadcasters.

### **WILL THIS REFORM LEAD TO HEIGHTENED MERGER AND ACQUISITION ACTIVITY IN THE MEDIA SECTOR?**

Yes. The Chinese government wants industry consolidation so that large and strong media groups will emerge. The new ministry will encourage mergers and acquisitions among broadcasters and publishers. Unlike its predecessor authorities, the ministry will not be concerned that a state-owned enterprise under its supervision will escape from its portfolio and come under the authority of another regulator in such a deal.

*This update is not intended to provide legal advice with respect to any particular situation and no legal or business decision should be based solely on its content. Questions concerning issues addressed in this article should be directed to the authors as follows:*

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#### **Impact on foreign investors**

- Media remains a prohibited industry, but business opportunities may increase as the industry grows

Television broadcasting is likely to benefit the most

#### **Impact on M&A activity**

- Activity in the Chinese media sector will be encouraged

## 新闻出版总署与广电总局合并

2013年3月，国务院宣布国家新闻出版总署(“版署”)、国家广播电影电视总局(“广电总局”)整合为大部制下的“国家新闻出版广电总局”。版署、广电总局这两大新闻和传播领域的国家监管机构的合并，旨在推动中国文化产业的发展，提高其在全球的影响力。

在中国传媒行业蓬勃发展并在国际舞台展现实力之际，两大监管机构的合并将会对业界带来哪些影响？美国宝维斯律师事务所香港办事处专注传媒领域的合伙人陈剑音、高级法律顾问何翰森(Hans-Günther Herrmann)、以及方达律师事务所北京办事处合伙人苏亮作出了以下分析。

### 这次国务院机构改革的主要目的何在？

广电总局、版署的合并，是国务院全面机构改革的一部分，也是自2003年以来启动的文化体制改革的一部分。具体而言，广电总局、版署合二为一，是出于避免两者职能重叠、减少冗余环节和精简机构的需要。举例来说，过去由于广电总局和版署缺乏管理上的协调和协作，曾出现广电总局允许某些内容在广播电影电视节目中播出、但相同或类似内容却被版署禁止出版的情况，相反的情况也曾有发生。此外，随着互联网时代的来临，广电总局、版署都曾试图将其监管范围延伸至互联网新媒体。中国政府希望这次合并能推动国内以数字信息技术为核心的现代化传播系统的发展，并加强中国传媒和文化产业的竞争力及影响力。

#### 合并目的

- 避免广电总局、版署职能重叠
- 简化互联网媒体监管
- 增强中国媒体文化产业竞争力

### 大部制下的“新闻出版广电总局”有哪些职能？

根据《国务院机构改革和职能转变方案》，合并后的新闻出版广电总局的主要职责是，统筹规划新闻出版广播电影电视事业产业发展，监督管理新闻出版广播影视机构和业务以及出版物、广播影视节目的内容和质量，负责著作权管理等。

#### 职责

- 职责扩大至涵盖经各种途径传播的各类内容，同时包括著作权管理。

### 与其他部门相比，新的新闻出版广电总局的权力是否有所增加？

新的新闻出版广电总局是在整合和精简过去由广电总局和版署分别履行的职能的基础上组建的。这次整合没有改变新闻出版广电总局、文化部、中宣部以及工业和信息化部(“工信部”)之间的权力分配。

整合之后权力没有增加

## 这次改革会否使中国对传媒产业的监管更加宽松？

此次合并前，广电总局和版署通过严格的许可制度监管中国的传媒产业。这次合并是仅仅将两部门过去分开行使的职能合并，还是一次真正的改革，取决于整合后的部门是否愿意对现有的许可制度松绑。现阶段，广电总局和版署的合并似乎仅停留在组织结构的层面上。此次合并可能将促使中国传媒产业的监管过程的简化，但是合并是否能立即带来产业监管的宽松化、甚至完全的松绑，目前尚是未知数。监管机构数目的减少不一定意味着监管环境的更为宽松，而且，中国政府对影响文化和意识形态领域的改革历来采取谨慎态度，对传媒产业监管的放松，仅有这个中宣部领导之下的新部委的努力是不够的。

### 机构改革对传媒产业现有审批制度的影响

传媒产业的特点之一是其需受多个政府部门的监管。除版署和广电总局外，还有文化部及工信部等其他传媒监管部门也负责“文化产品”的审批、互联网内容提供商的许可、以及内容制作和传播的其他领域的监管。版署和广电总局的整合不会改变这种状况，因为各个部门的监管范围少有重叠。经营传媒业务，无论是外资或内资，可能仍需同时获得若干需要较长时间才能取得的政府批准。

从某一方面来说，新成立的新闻出版广电总局可能要求实施更多的审批。2012年12月，版署曾公布一项法规的征求意见稿，其中规定在网络出版任何类别的作品都需获得版署签发的许可证。该项许可证要求其其实早已存在，但版署极少签发该等许可证，并且曾对未获得该许可证的经营者采取宽容态度。版署意在通过新条例的颁布重申其在这一领域的权力，而现时没有迹象显示新成立的新闻出版广电总局会放弃这种尝试。

### 改革是否会对三网融合产生影响？

广电总局以及合并后的新闻出版广电总局一直积极推进三网融合。一家国家级的广播电视网络公司预计将在数月内组建，该公司将专注于互联互通工作，包括网络、技术、运营和管理方面的互联互通工作。新闻出版广电总局还在制定2013年至2015年的三网融合规划。根据该规划，到2015年底，全国县级及县级以上城市有线电视网络将全部实现数字化，其中80%具备互联网接入服务、以及IPTV、付费电视以及互动娱乐游戏服务功能。

#### 对产业的影响

- 不太可能导致中国传媒产业监管的立即宽松化或松绑
- 亦不太可能降低对外资和内资传媒业务的许可要求

平台融合是优先议题

另一有趣的问题是，新闻出版广电总局在监管电视游戏方面是否会比广电总局扮演更积极的角色。版署曾负责审批网络游戏的经营和外国网络游戏的进口，而且进口的网上视频必须经国家版权局(曾隶属于版署)登记。但广电总局在此前并未设置电视游戏的许可制度。新闻出版广电总局是否会将版署的权力扩大至电视平台，并由此堵住某些人眼中的现行制度的漏洞？是否会尝试鼓励在电视中提供互动内容以加强其与其他平台的竞争？是否会重新考虑撤销对游戏机顶盒的进口禁令？这些问题的答案都有待揭晓。

### 改革对外国投资者将会有什么影响？

出版物和广播都是禁止外商投资的产业，尽管当前政策允许外资通过有限的途径参与内容、发行和技术的开发，但前者在可预见的将来仍会是禁止外商投资的产业。不过，由于中国政府当前鼓励大型传媒集团的发展(版署和广电总局的合并也是这一政策的一部分)，这些领域的机会将会不断增加。

### 传媒产业的哪些领域将更多受惠于改革？

在中国监管机构的眼中，电视是更具战略意义的媒体，原因在于电视作为宣传工具，对民众的影响更加直接，而且能够满足民众在娱乐和信息方面更强的需求。如果新闻出版广电总局一定要在平面媒体和广播行业的利益之间作出取舍(比如在批准收购、推进跨媒体许可或提供国家资助方面)，其将更有可能向广播行业倾斜。

### 改革会加速传媒产业的并购活动吗？

是的。中国政府希望整合传媒产业以产生大型的有实力的传媒集团。新闻出版广电总局将鼓励广播公司和出版商之间的并购。与其前身不同，新闻出版广电总局无需担心其下辖的国有企业会因为并购交易而脱离其监管并由另一机构管辖。

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#### 对外国投资者的影响

- 传媒仍然是禁止类产业，但随着产业的发展，机会也许会越来越多

电视行业可能受惠更多

#### 对并购活动的影响

- 中国传媒产业的活动将得到鼓励