

July 23, 2003

## China Internet Culture Administration Interim Provisions

The Ministry of Culture ("MOC") has recently made public the Interim Regulations on the Administration of Internet Culture (the "Provisions," dated May 10, 2003 and effective July 1, 2003), which require that Internet content providers ("ICPs") providing any one of a range of broadly defined "cultural activities" obtain MOC approval. This requirement applies to providers of on-line games and animation, among other things. Existing ICPs must apply for approval no later than August 29, 2003.

### 1. Scope of the Provisions.

The Provisions apply to all ICPs that carry out "Internet Cultural Activities". Under the Provisions, Internet Cultural Activities are defined as activities that entail providing Internet Cultural Products and services related to those Internet Cultural Products, including:

- a. producing, reproducing, importing, wholesaling, retailing, leasing and broadcasting Internet Cultural Products;
- b. posting Internet Cultural Products on the Internet, or sending Internet Cultural Products over the Internet to end users of computers, fixed telephones, mobile phones, radios, televisions and game devices for Internet users to browse, read, enjoy, use or download;
- c. holding exhibitions, competitions or other activities involving Internet Cultural Products.

Internet Cultural Products are defined as cultural products that are produced, broadcast and distributed over the Internet, including:

- a. audio-visual products ("AV Products");
- b. game products;
- c. performance plays (programs), *i.e.*, products that involve an audio or visual reproduction of performances by actors, singers or other artists ;
- d. art products;
- e. animation and other cultural products.

Internet Cultural Activities are divided into two categories, commercial and non-commercial. A Commercial Internet Cultural Activity is an activity that is intended as a means of making profit, by collecting fees from Internet users, engaging in e-commerce or posting advertising. It is not clear from the Provisions whether Internet portals having only free content and that do not collect subscription fees or post advertisements will be considered commercial. We think that it is likely that MOC will consider that all websites of enterprises are commercial, irrespective of their business model as this is the position that other ministries have taken with regard to issues that are similar to this one.

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## **2. Approval Requirements.**

All entities engaging in Internet Cultural Activities ("Internet Cultural Entities") must be approved by MOC in addition to being approved by the Ministry of Information Industry ("MII") as Internet information services providers. While the qualifications required for approval as an Internet Cultural Entity are not onerous, the Provisions state that applicants must also comply with the quantitative, structural and administrative plans for Internet Cultural Entities. Thus, MOC grants itself wide discretion in regulating the number and purpose of Internet Cultural Entities.

The establishment of Commercial Internet Cultural Entities must be approved by MOC at the central government level after preliminary examination by the provincial level cultural affairs authority. The need for central government approval may result in a lengthy approval process. Note, however, that under the Provisions both the provincial level and central level MOC must respond to the application within 30 days after receiving it.

Non-commercial Internet Cultural Entities are approved at the provincial level, subject to a filing with MOC.

If approved, the Commercial Internet Cultural Entity will be issued an Internet Cultural Activity Operation Permit (an "MOC Permit").

For newly established ICPs, an MOC Permit must be obtained before applying to MII for a value-added telecommunications/Internet information service provider permit. However, based on our enquiries with MOC, we understand that although the Provisions state otherwise, foreign-invested telecoms enterprises ("FITEs") applying for an MOC Permit should submit their applications after the ICP license from MII is first obtained. Domestic enterprises may apply simultaneously for an MOC Permit and ICP license. An ICP existing on the date on which the Provisions become effective (i.e., July 1, 2003) must submit an application for an MOC Permit within 60 days after such date.

## **3. Overlap with Other Regulating Requirements.**

AV Products are governed not only by the Provisions, but also by the Administrative Regulations on Audio-Visual Products (the "AV Regulations") issued by the State Council. The Provisions and the AV Regulations both regulate the production, reproduction, importation, wholesale, retail sale and rental of AV Products. Thus, an entity that engages in these activities both over the Internet and offline may need to apply for both an MOC Permit under the Provisions and a permit under the AV Regulations (which is also issued by the MOC).

Likewise, the Provisions also overlap with the Interim Provisions for the Administration of Internet Publishing (the "Internet Publishing Regulations") issued jointly by the State Press and Publishing Administration ("SPPA") and MII. "Internet publishing" means an act of on-line dissemination whereby ICPs post on the Internet AV Products and works of art that have already been formally published or made public in other media. This definition also applies to many Internet Cultural Products. As such, it is likely that many Internet Cultural Entities will have to apply for a SPPA permit under the Internet Publishing Regulations.

**4. Changes or Failure to Undertake Approved Activities.**

If an Internet Cultural Entity changes its name or business scope or undergoes a merger or division, MOC approval for this change must be obtained in the same way as for the establishment of a new Internet Cultural Entity, before applying for a revised MII operating permit on the strength of the revised MOC Permit.

After receiving approval, if an Internet Cultural Entity fails to undertake its approved Internet Cultural Activities within 180 days after receiving an MOC Permit, it must surrender the MOC Permit to the original approval authority.

**5. Imported Content.**

An Internet Cultural Entity that wishes to import foreign Internet Cultural Products must apply to the MOC for approval of the content. The MOC has 30 days to respond to the application. The Provisions do not set forth the application procedures for import of foreign Internet Cultural Products or the standards by which MOC will review such applications. Based on our enquiries with MOC, we understand that the MOC will shortly be issuing implementing regulations which will include guidelines on the application procedure with respect to the importation of foreign Internet Cultural Products.

**6. Prohibited Content.**

The Provisions contain a list of prohibited content that Internet Cultural Entities must not post on-line; this list is consistent with the lists included in the Internet Publishing Regulations, the AV Regulations and Administration of Internet Information Services Procedures (the "ICP Regulations") issued by the State Council.

**7. Content Management.**

Like the Internet Publishing Regulations, the Provisions affirmatively require Internet Cultural Entities to have designated watchdog personnel examine the content being posted by the Internet Cultural Entity to ensure that it complies with the law. Such watchdog personnel should be trained and have the "relevant" qualifications.

The content of, and the time at which, all Internet Cultural Products are posted and the Internet address or domain name at which they are posted must be recorded and maintained by the Internet Cultural Entity for 60 days. This is the same requirement imposed under the ICP Regulations.

**8. Liability.**

If Internet Cultural Products provided by an Internet Cultural Entity infringe the legal interests of the public, legal persons or other entities, such Internet Cultural Entity will be subject to civil liability in accordance with the law. MOC may also impose fines and penalties against entities that violate these regulations, with the highest fine being RMB 30,000 and the most severe penalty being the revocation of the Internet Cultural Entity's MOC Permit.

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If you need additional assistance or information concerning any issue raised by this memo, or on any related issues, please contact the following Paul, Weiss attorneys:

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