

# Global Regulatory Enforcement

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## **New law regulating Internet Information Service Providers comes into force in China**

New regulations governing the activities of Internet Information Service Providers ("IISPs") unveiled by the Chinese Ministry of Industry and Information Technology ("CMIIT") in December came into force on 15 March. The "Several Provisions on Regulation of the Market Order of Internet Information Services" ("Provisions") aim to enhance the protections available to Internet users in China in areas such as Internet security, data protection and online advertising.

The push to implement these rules has been driven by a series of cases at the end of 2011 involving the unauthorized disclosure and alleged unlawful sale of user information such as names and telephone numbers by a number of well-known Internet companies in China, including Dangdang and Jingdong.

The objective of the Provisions is to ensure that consumers are provided with transparency and a degree of control over how their data is processed, and, crucially, that disclosure breaches are reported to the CMIIT.

The Provisions, however, lack a clear definition of an IISP, and refer to regulations issued in 2000. Those 2000 regulations simply refer to IISPs as parties providing information to users over the Internet. This broad definition will likely result in companies with limited online operations being within the scope of the new Provisions.

The Provisions prohibit IISPs from engaging in unfair practices and provide detailed consumer protection provisions. IISPs must provide users with clear and complete information on software functions and related information, and must obtain consent prior to allowing consumers to download, run, or upgrade software. IISPs are also prohibited from deceptive, misleading or forceful practices that convince users to run, download or install software, and are required to give users an easy or convenient method for uninstalling. IISPs are generally prohibited from leaving software codes or unnecessary files behind once software has been uninstalled. IISPs also cannot change users' browser configurations or settings without their consent.

IISPs are further prohibited from maliciously interfering with other website operators or their software, or from making their products incompatible, and from making false statements about other IISPs.

IISPs may not collect personal information about users or pass that information on to others without consent. Where consent is granted, IISPs must clearly inform users of the methods, contents and purposes for collecting and processing personal information, and IISPs may not collect personal information unnecessary to their service provision. In addition, IISPs cannot use the personal information for any purposes other than their specified services.

IISPs must store users' personal information in a proper way and take remedial measures to mitigate harm resulting from disclosures; must immediately report unauthorized disclosures to the CMIIT; and must cooperate with any investigation.

Failure to comply with the Provisions may be sanctioned with penalties ranging from an official warning to fines ranging between the equivalent of \$1,600 USD/£1,000 GBP to \$4,800 USD/£3,000 GBP. Organisations should expect the CMIIT to actively enforce the Provisions.

Companies in China such as Sky-Mobi Ltd and AdChina have expressed concerns that the regulations will be difficult to comply with and that they could hold companies liable for the actions of third-party processing agents over which the companies have no control. Despite these concerns, all entities that provide Internet services in China will have had to be compliant with the Provisions from 15 March.

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