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# China Client Alert

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## Jurisdiction over Online Games in China – the Final Word?

The last few weeks have brought significant developments to the difficult and often frustrating approval regime for online games in China. As a result, the approval process will perhaps become much simpler than before, but the impact of the recent official pronouncements is not fully clear yet. We wish to update you on these developments now, and will provide further information as events unfold.

China's online gaming industry has suffered from the overlapping authority of the Ministry of Culture (the "MOC") and the General Administration of Press and Publication (the "GAPP"). MOC is competent for granting permits for operating online games and reviewing the content of imported games, whereas GAPP grants online publishing licences for games operators and registers online games.

On September 17, 2009, pursuant to a State Council decision to reallocate regulatory responsibilities in the media sector, the Office of the State Commission for Public Sector Reform promulgated the *Notice on the Interpretation of Certain Provisions Regarding the Regulation of Animation, Online Games and the Cultural Market in the Rules for the Reorganization of MOC, GAPP and the State Administration of Radio, Film and Television* (the "Notice").

The Notice clarifies that MOC is the sole regulator for online games. Under MOC's unified administration, GAPP is responsible for approving the publication of online games before their launch. The Notice specifies that MOC is not empowered to duplicate the pre-publication review conducted by GAPP. But once a game has been released online, it is entirely under MOC's administration. For imported games, the Notice maintains a dual authority: GAPP approves games under a copyright license from a foreign owner, while MOC conducts unspecified "other approval work". Possibly, therefore, MOC's content review of imported games will subsist in addition to the GAPP registration of those games.

The clarity brought by the Notice turned out to be short lived. On September 28, MOC described a meeting with online game operators on its website ([http://www.ccnt.gov.cn/sjzz/whcys/cydt/200909/t20090928\\_73619.html](http://www.ccnt.gov.cn/sjzz/whcys/cydt/200909/t20090928_73619.html)), in which MOC put forward a very aggressive interpretation of the Notice. MOC contends that "publication", for which GAPP has approval authority under the Notice, only refers to games distributed through physical media such as disks.

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For all games that users can download from the Internet, MOC would have sole authority, including if these games are imported.

Highly unusual, the post on the MOC website blames GAPP in hardly veiled language for causing the highly popular "World of Warcraft" game to remain unavailable in China in its full commercial version for 104 days, after Blizzard Entertainment, the developer of the game, let the previous license to The9 Ltd. expire in June 2009, until the Notice abolished the need to obtain GAPP's approval for the new license granted to Netease.com, Inc.

Despite MOC's highly aggressive stance, its interpretation is not well supported by the wording of the Notice. GAPP has not yet confirmed that it will surrender its powers to register online games and grant publishing permits for online games businesses. Thus, on the eve of the National Day holiday, it is unclear whether MOC is unilaterally staking out its claim to regulate all main aspects of the online games industry, or whether the State Council has had the final word in the conflict of jurisdiction between MOC and GAPP and MOC is only implementing a decision made at the highest level of government. After the holidays, MOC will brief companies in the industry on action they need to take under the Notice. This will show whether the Notice effectively simplifies or maintains the current approval process for online games or introduces a period of confusion and delay for operators who wish to bring new games to market.

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