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International Information for International Business

VOLUME 15, NUMBER 7 >>> JULY 2015

CHINA

Draft Regulations Propose Stricter Rules on Internet Advertising

By Eric Carlson and Sheng Huang, of Covington & Burling LLP, Beijing.

On July 1, 2015, China's State Administration for Industry and Commerce published a draft of the Interim Measures on Supervision of Internet Advertising ("Draft Internet Advertising Measures") for public comment.

If adopted as drafted, the Draft Internet Advertising Measures will:

- require advertisements in e-mail and instant messages to contain conspicuous options for the user to agree to, refuse, or unsubscribe from advertisements;
- require websites to allow users to block pop-ups for certain repeat visitors; and
- require advertisements sent via e-mail or instant message to identify the sender and be marked as advertisements.

Public comments on the draft are due by July 31, 2015.

Once finalized, the Draft Internet Advertising Measures are expected to come into effect on September 1, 2015.

Implementing Recently Revised Advertising Law

The Draft Internet Advertising Measures would be the first measures to focus specifically on Internet advertising, and primarily serve to implement China's recently revised Advertising Law, amended in April 2015 and effective September 1, 2015.

The amended Advertising Law prohibits sending electronic advertising without prior consent or request by recipients. Senders are required to disclose their true identities and contact information, and provide a choice to unsubscribe from the advertisements. The amended Advertising Law also requires that the "close" button on Internet advertisements must be prominently visible, and that users can close the advertisement with a single action. The Draft Internet Advertising Measures provide more details and specificity on these requirements.

Under the current regulatory framework (*i.e.*, prior to the proposed new requirements in the Draft Internet Advertising Measures), Internet advertising is regulated in a less targeted way — generally under broader categories, such as "advertising" or "electronic advertising" — by various provisions of several different laws and administrative rules. These current laws generally prohibit companies from sending advertisements to consumers (such as via short message service ("SMS") or e-mail) without consent, require senders to identify advertising e-mails as such, and require companies to stop sending advertisements upon explicit refusal by consumers.

The new Draft Internet Advertising Measures propose to more directly regulate advertising activities via the Internet, such as those conducted through websites,

e-mail, self-published content (e.g., blogs, WeChat), forums, instant messaging services, and software.

New Restrictions

In addition to implementing existing rules and regulations (including the amended Advertising Law), the Draft Internet Advertising Measures would provide the following new restrictions:

- For advertisements in “private Internet spaces” (i.e., e-mail and instant messaging), the advertisement must contain conspicuous options for the user to agree, refuse, or unsubscribe. If a user chooses to unsubscribe from or refuse advertisements, further advertisements are prohibited. Advertisements sent through mobile e-mail and instant messaging services also must provide users with the option to specify the period of time during which their expressed preference will remain valid.
- Websites must provide an option to block all pop-up advertisements when the same device logs onto the same domain or one of its sub-domains a second time within a 24-hour period.
- Advertisements sent to e-mail or instant messaging accounts must identify the source and nature of the e-mail or message in the “from” and “subject” fields, so that users can identify them as advertisements before opening them. This requirement is not completely new. The Measures for the Administration of Internet E-mail Services issued by the Ministry of Industry and Information Technology (“MIIT”) in 2006

require that e-mail advertisements should contain “AD” (or the Chinese characters for “advertisement”) in the subject line.

Once finalized, the new regulations should come into effect at the same time as the amended Advertising Law on September 1, 2015.

Ongoing Series of Developments

The first half of 2015 has been an active time for the development of electronic data privacy laws and regulations. Aside from these Draft Internet Advertising Measures and the newly amended Advertising Law, the MIIT recently issued the Administrative Rules for Short Message Services, which regulate electronic advertising activities through SMS, effective June 30, 2015 (*see report by the authors at WDPR, June 2015, page 35*).

Companies advertising to consumers in the Chinese market are advised to monitor this ongoing series of developments, as the government increasingly seeks to regulate the country’s rapidly growing e-commerce industry.

The full text of the draft Interim Measures on Supervision of Internet Advertising is available, in Chinese, at <http://bit.ly/1eWZQF5>.

Eric Carlson is a Partner and Sheng Huang is an Associate at Covington & Burling LLP, Beijing. They may be contacted at ecarlson@cov.com and shuang@cov.com. The authors wish to thank Cairu Huang and Ashwin Kaja, of Covington & Burling LLP, for their contributions to this report.