

Client Alert

February 2013

China - Electronic personal information protection

Recent developments in electronic personal data protection

On 28 December 2012, the Standing Committee of the National People's Congress ("**NPC**") enacted the Decision on Strengthening Network Information Protection (the "**Decision**"). The Decision went into effect upon its enactment.

The Decision echoes the Chinese government's goal to strengthen personal privacy protections and increase supervision over the publication of information. With only 12 fairly short articles, the Decision basically outlines the principles and general regulations for collecting and processing "personal electronic information", reinforcing some existing regulations and expanding their scope.

The Decision sets forth requirements that "network service providers and other enterprises or public institutions" (i.e. any company or institution that handles personal electronic information) must meet to handle "personal electronic information" referred to in the Decision as the "electronic information that may identify a citizen's individual identity or involve his personal privacy". While the Decision refers to only network service providers and "other enterprises or public institutions", it really applies to any business that handles electronic information, including information that is not processed over the Internet (e.g. information electronically stored or transmitted but not collected online, such as electronic information gathered by converting information originally in paper form). The collection and use of such information must be driven by the principles of "legality, legitimacy and necessity".

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1. What "network service providers" and "other enterprises or public institutions" must do pursuant to the Decision:

- Explicitly notify the purpose, methods, and scope of collection and use (i.e. make policies for collecting and using information public);
- Obtain consent from people to collect their personal data;
- Comply with all laws and regulations, as well as any agreements with people whose personal information is collected;
- Keep all personal electronic information collected during business operations strictly confidential;
- Adopt security safeguards to protect personal electronic information from being "divulged, damaged or lost"; if security is breached or likely to be breached, promptly take remedial measures.

2. What network service providers in particular must do:

- Strengthen the management of information published on their networks by their users;
- Cooperate and provide technical assistance in government enforcement of network information surveillance;
- Promptly delete any content posted or transmitted that violates laws and regulations, stop the transmission of such content or take other remedial measures;
- Keep records and report any violation to authorities;
- Require users to provide their real identity when concluding service agreements or accepting provision of services if the network service providers (i) provide website access services; (ii) handle Internet access formalities for land-line phones, mobile phones, or other means of Internet access; or (iii) provide information publication services to users in China.

3. What network service providers and other enterprises or public institutions must not do:

- Steal or otherwise use illegal methods to collect or use personal electronic information;
- Divulge, sell or illegally provide, distort or damage such information to others;
- Send "commercial electronic information" to a user's landline phone, mobile phone or email address without the user's consent or request, or following their clear refusal.

The Decisions further provides that users may require network service providers to delete or take other measures necessary to stop the transmission of any network information that leaks their individual identities, invades their personal privacy, or infringes on their other legal rights and interests.

Entities and individuals also have the right to file a report with authorities regarding any unlawful or criminal act in connection with their electronic information, such as stolen personal data or the sale or illegal provision of personal data to others.

The Decision is drafted in general terms and does not provide implementation or enforcement details. Thus, it does not define "network information providers" or "other enterprises or public institutions", nor is it explicit about the requirements or the applicable penalties for violations. At the press conference for the Decision, the spokesman for the Legislative Affairs of the State Council said that relevant authorities are drafting implementing regulations in response to the Decision.

In the meantime and pending any such regulations, companies handling personal electronic information in China should ensure that their company's practices for electronic data collection, processing and use comply with the above requirements. In this regard, the Guidelines for Personal Information Protection in Information Systems for Public and Commercial Services issued by the Standardization Administration (effective 1 February 2013) might be useful.

Although this Decision only relates to the protection of personal electronic information, it is to be applied nationwide and shows the Chinese authorities' desire to regulate personal data protection. Companies doing business in China should therefore be on the lookout for further laws and regulations addressing the issues of personal data protection in China.

GLN will keep you updated on any new developments in this area. ■

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