

Chinese regulators target internet search and advertising business

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Following a focused investigation of internet paid-search practices, the Cyberspace Administration of China issued the Administrative Regulations on Internet Information Search Services (the “**Internet Search Regulations**”) on 25 June 2016. Only two weeks later on 4 July 2016, the State Administration for Industry and Commerce (the “**SAIC**”) issued the Interim Measures for Administration of Internet Advertising (the “**Internet Advertising Regulations**”). Together, these new regulations can be seen as a clear response from Chinese regulators to increasing concerns and criticism from internet users about paid-search results and misleading or false information in online advertisements.

Internet search service

The Internet Search Regulations, which will come into effect on 1 August 2016, call for “objective, fair and authoritative” search results that do not harm the interests of the state, the public or other interested parties. Under the regulations, internet search service providers must:

- take primary responsibility to set up information security management systems covering information examination and verification, real-time inspection of public information, emergency response plans and personal information protection;
- not provide any information which is not compliant with the relevant laws and regulations in links, meta descriptions, snapshots, associated words, related searches or related recommendations;
- fulfil timely reporting and record-storing obligations if they find search results contain information, websites or applications with obviously non-compliant content;
- not manipulate search results to inappropriately benefit from, for example, disabling access to certain links or providing false information;

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- for any paid-search service, verify customers' qualifications, limit the ratio of paid-search results on each webpage, and clearly mark paid-search results to distinguish them from natural-search results; and
- establish a sound system for handling public complaints and assume responsibility for any losses suffered by users.

Internet advertising activities

The Internet Advertising Regulations, which will come into effect on 1 September 2016, provide a broad list of advertising activities that are subject to its regulation, including advertising through emails, texts, images or video with embedded links, and paid-search results. Under the regulations, "internet advertising activity" is defined to include any commercial advertising that directly or indirectly promotes goods or services through websites, webpages, internet applications and other internet media in text, picture, audio, video or other forms.

The Internet Advertising Regulations, the first internet advertising legislation in China, have not only adopted provisions of the existing Advertisement Law and other industry regulations but also set out detailed guidelines that seek to fight controversial internet advertising practices. For example:

- No online advertisement is permitted for prescription medicine or tobacco, while for certain types of food for special medical purposes, medical devices, sterilisers, veterinary medicine and other health products, pre-approval must be obtained in accordance with the relevant laws and regulations.
- Advertisements must be visibly marked with "AD". Consistent with the Internet Search Regulations, paid-search results must also be clearly identified. A fine of up to RMB 100,000 will be imposed for any non-compliance.
- "Pop-up ads" must be closable by one-click. Without the consent of a user, no advertising or a link to it can be included in his or her email. In addition, no deceptive means may be used to lure users into clicking on an advertisement.
- Internet information service providers, such as social media platforms and online marketplaces, may also be caught by the Internet Advertising Regulations. They must prevent the publishing of any advertisement that they know or should have known violates the regulations. Any non-compliance may give rise to administrative sanctions including confiscation of all illegal gains, fines (up to three times those gains) and suspension of operation.
- With the development of "big data", programmatic advertising is becoming increasingly widespread through the use of advanced automatic advertising placement technology. Under the Internet Advertising Regulations, programmatic advertising platform operators and members are required to use technical measures to prevent any content

being published that they know or should have known violates the regulations.

Separately, it is stated in China's 13th Five-Year Plan that an internet advertisement surveillance centre will be established by the SAIC to supervise advertising activities.¹ Reports suggest that the centre will be set up before the end of 2016.²

Looking forward

Although the Internet Search Regulations and the Internet Advertising Regulations contain a wide range of definitive obligations and responsibilities for market participants, it remains unclear how they will affect the current business model of China's domestic internet giants. It is also unclear how these new regulations may create opportunities for those international players who have shown increasing interest in the Chinese internet market. Businesses that may be affected or which wish to seek new revenue streams in this area are recommended to work with their internal teams and external advisors to formulate strategies to best navigate or exploit the new regimes.

¹ Gong Shang Guang Zi No. 132 [2016] 13th Five-Year Plan of Advertising Industry Development (工商广字 (2016) 132号 广告产业发展“十三五”规划), 7 July 2016.

² People.cn: SAIC: Internet Advertising to be Formally Supervised Next Year (人民网: 《国家工商总局官员: 明年正式监测互联网广告》) <http://politics.people.com.cn/n1/2016/0422/c1001-28297708.html>, 22 April 2016.

Reference

[Administrative Regulations on Internet Information Search Services \(互联网信息服务搜索服务管理规定\)](#), 25 June 2016

[Interim Measures for Administration of Internet Advertising \(互联网广告管理暂行办法\)](#), 4 July 2016

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