



NEWSLETTER

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China IP News

SAIC Released the Measures for Oral Hearing of Trademark Review Cases

In order to further advance the reform to facilitate the trademark review and standardize the oral hearings of the cases, the State Administration for Industry & Commerce (SAIC) released the Measures for Oral Hearing of Trademark Review Cases in accordance with the relevant provisions of the Trademark Law of the People's Republic of China, Regulations on the Implementation of the Trademark Law of the People's Republic of China and Trademark Review Rules.

NISSTC Released Information Security Technology – Guidelines for Data Cross-Border Transfer Security Assessment (Draft Version) for Public Comments

On May 27, 2017, China's National Information Security Standardization Technical Committee ("NISSTC"), a standard-setting committee jointly supervised by the Standardization Administration of China ("SAC") and the Cyberspace Administration of China ("CAC"), released Information Security Technology – Guidelines for Data Cross-Border Transfer Security Assessment (Draft Version) for public comments. And the comment period is open until June 27, 2017. On the basis of the Assessment Measures, the Guidelines specifies the requirements for the assessment process, the focus of assessment, assessment methods and the scope and types of "important data" in different sectors and industries.

2017 China Cracking Down on Violations of Intellectual Property Rights and the Manufacture and Sale of Counterfeit or Substandard Goods Notice Released by General Office of State Council

The key points are:

- ✧ To continue governance in key areas
- ✧ To strengthen the daily supervision of the quality of goods
- ✧ To strengthen powers for cracking down on IPR violations
- ✧ To make harsher criminal penalties and improve judicial protection
- ✧ To comprehensively advance cross-regional and cross-sector cooperation
- ✧ To strengthen the legal system

- ✧ To actively promote social governance
- ✧ To raise the level of international exchanges and cooperation

SARFT Further Enhances the Administration of Online Audio-visual Programs

Recently, the “Further Enhancement of the Administration of Online Audio-visual Programs Notification” issued by The State Administration of Radio Film and Television (SARFT), which makes further demands on online audio-visual creations and broadcasts. The notification highlights that all online audio-visual creations and broadcasts should be focused on fostering and promoting core socialist values, sticking to moral values, standardizing the use of the national common language, and should be consistent with standards and criterion for broadcasting and TV programs.

LIFANG News

Mr. Xie Guanbin and Mr. Sun Xi Consecutively Named the IP Stars by Managing Intellectual Property

For a list of the world’s leading practitioners in the field of intellectual property recently published by Managing Intellectual Property (MIP) magazine, Mr. Xie Guanbin and Mr. Sun Xi, attorneys with Lifang & Partners, have been named as “the IP Stars” of China.

The magazine, researching and ranking IP firms since 1996, is recognized as the most authoritative and comprehensive IP resource in the world. Its annual “IP Stars” ranking draws up an objective and impartial shortlist of nominees from the world. The result was achieved through a lot of research on the law firms, IP institutes, and their clients.

Lifang has built up its reputation through numerous successful cases and is held in high esteem by clients for its dedication to offering the best ever legal services with its focused expertise.

Ms. Huang Yajun Made a Speech on CTA Forum at 139th Annual Meeting of INTA

The 139th Annual Meeting of INTA was held in Barcelona on 20th May 2017. As the member of INTA, Lifang’s attorneys attended this grand meeting as well as INTA-CTA bilateral meeting and the forum held by CTA.

Lifang senior partner Ms. Huang Yajun made a speech on Measures to Deter Ill-faith Trademark Squatting on CTA Forum held on May, 22. She not only reviewed common acts of squatting trademarks and current measures to deter squatting acts, but also pointed out judicial and law enforcement trends on curbing malicious trademark registration.

The International Trademark Association (INTA) is the global association of trademark owners and professionals dedicated to supporting trademarks and related intellectual property in order to protect consumers and to promote fair and effective commerce. The annual meeting of INTA has become the grandest, most vibrant and notable global trademark meeting.

Lifang's 15th Anniversary Seminar "Enterprise Investment & Legal Risk Prevention and Control" Held in Beijing

Lifang & Partners' 15th Anniversary Seminar "Enterprise Investment and Legal Risk Prevention and Control" was successfully held in the Swiss Hotel, Beijing on 6th June this year. The Seminar celebrates the fifteenth anniversary of Lifang & Partners. It's also the first time our Corporate & Commercial Department has delivered such seminars to the public.

During the seminar, Chai Yi, Partner, described her experiences of protecting investors in equity deals. Xinyu Liu, Partner, described the legal risks arising from M & A transactions and how due diligence can provide an effective means of prevention and control.

The seminar won the praise of many guests. The guests themselves made a positive and in-depth contribution to discussions on specific practical problems they have faced. Lifang & Partners is very grateful to all the guests who attended our seminars. We would very much like to organize similar events in the future.

Corporate & Commercial legal services are one of the core business areas of Lifang & Partners. Our corporate lawyers provide practical legal solutions for transactions of all sizes and complexities.

Our varied client base includes multi-national companies, state owned enterprises, private companies and governmental agencies. We provide counsel to clients from a diverse range of industries, including life sciences, technology, telecommunications, media and entertainment, journalism, financial services and real estate.

Our Corporate & Commercial lawyers handle complex transactions that involve issues which overlap with other technical areas. Because our firm has specialists in many fields, we can deal

with this overlap by seamlessly integrating our services in areas such as Antitrust & Competition, Labor & Employment, Arbitration and Litigation, International Trade, and Intellectual Property.

LIFANG 's Views

New Provisions for the cross-border transmission of Personal Information and Important Data

Introduction

In order to further clarify some issues related to personal information and important data collected and generated in China, the National Internet Information Office released *Measures on Security Assessment of Cross-border Data Transfer of Personal Information and Important Data* (“the Draft Measures”) on 11th April, 2017. This article will interpret the new provisions for the cross-border transmission of personal information and important data in China, in light of existing laws and regulations.

In recent years, China has attached great importance to improving information and data security, considering such matters to be issues of cyberspace sovereignty and national security. The State Council has produced a number of ‘Guiding Opinions with regards to such matters.

In the *Guiding Opinions of the State Council on Accelerating the Promotion of the "Internet + Government Services" Work* issued in September 2016, the State Council emphasized the importance of strengthening network and information security, along with the protection of important data related to state secrets, trade secrets, personal privacy, etc. In our digital age, the cross-border transmission of data has a significant impact on many industries and has become a sensitive issue that needs to be well managed and regulated.

Before the release of the *Draft Measures*, the laws and regulations concerning the cross-border transmission of data were mainly contained within the *Cybersecurity Law of the People's Republic of China* (“the *Cybersecurity Law*”) which is not yet in force, the *Counterterrorism Law of the People's Republic of China* (“the *Counterterrorism Law*”), the *Measures for the Administration of Population Health Information (for Trial Implementation)*, the *Regulations of Human Genetic Resources Management (drafted by Ministry of Science and Technology)* and the *Interim Measures of Human Genetic Resources Management*. However, all of the aforementioned laws and regulations were very general in their applicability to the cross-border transmission of data,

and failed to provide detailed guidance on when data may leave the country.

Cybersecurity Law

Article 37:- Personal information and important data collected and produced by critical information infrastructure operators during their operations within the territory of the People's Republic of China shall be stored within China. If it is indeed necessary to provide such information and data to overseas parties due to business requirements, a security assessment shall be conducted in accordance with the measures developed by the National Cyberspace Administration in conjunction with relevant departments of the State Council, unless otherwise prescribed by any law or administrative regulation.

Counterterrorism Law

Article 19(2):- Competent telecommunications departments shall take technical measures to block the dissemination of information with any terrorist or extremist content available on the international Internet.

The Measures for the Administration of Population Health Information (for Trial Implementation)

Article 10(2):- Entities in charge may not store population health information in any server outside China and may not host or lease any server outside China.

The Regulations of Human Genetic Resources Management (drafted by Ministry of Science and Technology)

Article 15(2):- Before submitting human genetic information resources collected in China to an overseas institution or using it in any open form, it shall be submitted to the agency designated by the Science and Technology Administration Department of the State Council.

The Interim Measures of Human Genetic Resources Management

Article 17:- China's research and development institutions enjoy exclusive ownership of the information on human genetic resources in China, including important genetic families and genetic resources in specific regions, as well as data, information and samples. The information shall not be transferred to other institutions without permission. The foreign cooperative

institutions and individuals who have obtained the information above shall not open, publish, apply for patents or disclose it to others in any way without permission.

From the above mentioned laws and regulations, it is apparent that data important to China and related to national security should remain in China. On occasion, where special reasons exist, data may be transmitted outwith China, but this is subject to government approval. However, the aforementioned laws and regulations are mostly of general application only.

Domestic and foreign enterprises in different industries had no guidance in regards to their obligations, nor the obligations of their corresponding regulatory authorities, in relation to cross-border data transfers. Therefore, it was considered necessary to formulate management measures for cross-border data transfers by network operators and to break down barriers in the treatment of different industries.

As the detailed operational provisions within the Draft Measures refer to the *National Security Law* and the *Cybersecurity Law*, it is clear that enterprises should conduct a safety assessment on information or data that will leave China. The Draft Measures can play a guiding role for network operators' that transfer data internationally.

In terms of applicability, the Draft Measures can help to standardize the practices of certain network operators, who provide overseas institutions, organizations, individuals with personal information and important data collected and generated in the territory of the People's Republic of China.

Network operator refers to the owner, manager and network service provider of the network; personal information refers to various information recorded electronically or otherwise that can be used alone or in combination with other information to identify persons, including but not limited to their name, date of birth, ID number, personal biometric information, address, telephone number and other information; important data refers to the data related to national security, economic development and social public interest. The specific scope of the important data is not stipulated in the Draft Measures, but reference can always be made to relevant national standards and important data identification guidelines. Domestic and foreign enterprises

engaged in cross-border transactions must pay close attention to the standards and guidelines for important data issued by industry bodies and relevant government departments.

In terms of supervision and regulation, the Draft Measures divide the departments responsible for the safety assessment into two levels. In general, the National Administration of the People's Republic of China coordinates safety assessments and guides industry bodies or regulatory authorities to conduct safety assessments of data. Meanwhile, the industry bodies or regulatory authorities are responsible for safety assessments and should organize regular safety assessments.

It is common practise, for industry bodies or regulatory authorities to issue appropriate rules and regulations for information management. For example, the National Health Commission issued the *Population Health Information Management Measures (for Trial Implementation)*, which involves the issue of population health information stored offshore; the Ministry of Transport issued *Provisions on the Administration of Information Security for the Civil Aviation Network (interim draft)*, which includes provisions that personal information and important data should be stored in China; the Ministry of Agriculture issued Working Plan on Accelerating the "Internet + agriculture government services"; the General Office of the China Banking Regulatory Commission issued *the Implementation Opinions for Accelerating the Promotion of the "Internet + Government Services" Work* to various banking bureaus and authorities.

In terms of the assessment methods and standards, according to the provisions of the Draft Measures, safety assessments are divided into two types:

1. Those carried out and organized by network operators; and
2. Those carried out and organized by industry bodies or regulatory authorities.

Under normal circumstances, enterprises can carry out their own safety assessments for data to be transferred abroad. However, the network operator should report to the industry body or regulatory authorities to let them conduct a safety assessment, if the data transfer or series of data transfers falls into one of the following categories:

1. It contain the personal information of more than 500,000 people;
2. The total amount of data exceeds 1000GB;

3. It includes nuclear facilities, chemical biology, national defense industry, population health, large-scale project activities, marine environment, sensitive geographic information data and other types of data;
4. It includes system vulnerabilities in key information infrastructures;
5. It contains information infrastructure operators provide personal information and important data abroad;
6. Other circumstances that may affect national security and social public interests, and the industry body or regulatory authorities think it should be assessed.

When the appropriate industry body or regulatory authority to carry out an assessment is not explicit, the National Telecommunications Department shall organize the assessment.

The data subject to a safety assessment may involve sensitive or important information. The provisions above contain five specific categories and a miscellaneous one, thus the industry bodies or regulatory authorities have "discretion" to conduct safety assessments based on the miscellaneous provisions.

The first three items of the five specific categories provides specific criteria and examples, thus they are easier to judge. However, the key information infrastructures referred to the fourth and fifth categories is the subject of much discussion. The relevant laws and regulations have not been fully formulated and published, so the final outcome is not yet clear.

For the current legislative situation, the *Cybersecurity Law of the People's Republic of China*, and the *National Cyberspace Security Strategy* (published by the National Internet Information Office on December 27, 2016) both mention key information infrastructures, but do not give a detailed definition or illustration. At present, the most detailed provisions on the key information infrastructures a contained within the *National Security Inspection Operation Guide*, published by the Central Network Security and Information Leading Group and Network Security Coordination Bureau in June 2016. Therefore, the safety assessments of the practices of key information infrastructure operators should be judged in conjunction with the regulations above and other normative may be introduced in the future.

In terms of safety assessments, the following things are must be considered by virtue of all the aforementioned guidelines, regulations and laws:

1. The necessity of data leaving China.
2. The features of personal information involved, including the number, scope, type, sensitivity, and whether the subject of personal information agrees to the cross-border transfer, etc.
3. The features of important data involved, including the number, scope, type and sensitivity of important data, etc.
4. Security measures in place, the capabilities and levels of data receivers, as well as the network security environment in the country and region.
5. If information is at risk of being leaked, damaged, tampered with, abused and other risks after cross border transfer or re-transfer.
6. Whether the cross border data transfer may bring risks to national security, social and public interests, and personal legitimate interests.
7. Other important issues that need to be evaluated.

Whilst some factors in the safety check are very transactional and depend more on the circumstance of the data transfer, other factors – such as national security ones- are information specific. Some data may not be transferred overseas, despite having passed the assessment in regards to the circumstance of the proposed data transfer. Article 11 of the draft states that data shall not leave in any of the following circumstances:

1. Personal information lacks personal consent, or may be against an individual's personal interests.
2. A cross border transfer brings about national political risk, economic risk, technological risk, national defense risk and other security risks, which may affect national security and damage social and public interests.
3. Other circumstances which are prohibited by the National Telecommunications Department, the Public Security Bureau, the Security Department or other relevant departments.

In general, the publication of the Draft Measures provides detailed rules for the implementation of laws and regulations such as the Internet Security Act, which specify methods of operation for network operators who engage in cross-border data transfers. This is an important part of gradually improving the overall system of information management in China. However, we should

also pay attention to parts of the draft that lack specification. The relevant government departments need to provide businesses with certainty to prevent mistakes from happening.

----- By LI Chun, IP Dept. of Lifang & Partners

IMPORTANT INFORMATION

This Newsletter has been prepared for clients and professional associates of Lifang & Partners. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

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