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IP UPDATE



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China Draft E-Commerce Law (Second Reading)

The growth of China's e-commerce sector has driven the government to further regulate the activities of e-commerce operators. The National People's Congress Standing Committee issued the first draft of the Electronic Commerce Law on 26 January 2017 (the "First Draft"). Please see our previous discussion [here](#). The second draft of the Electronic Commerce Law (the "Second Draft") was published on 7 November 2017. In this article, we will highlight some of the issues or proposed changes brought by the Second Draft that you should pay attention to.

1. SCOPE OF OPERATION

The Second Draft clearly defines the scope of "e-commerce operators" in China which has a wide scope of application including: (1) operators exploiting their own websites, (2) e-commerce platform operators, and (3) e-commerce operators who listed their web shops on e-commerce platforms. Also, the previous chapter in the First Draft on cross-border e-commerce has been deleted. The Second Draft will solely cover e-commerce activities occurring within China without considering cross-border e-commerce operation where consumers may participate.

2. SAFE HARBOUR FOR E-COMMERCE PLATFORMS

According to the Second Draft, if the IP owner can provide prima facie evidence of infringement, the e-commerce platform must initiate the takedown procedures, allowing the IP owners to request the takedown of infringing links or even the closure of the online shops. E-Commerce platforms that fail to take appropriate measures will be jointly liable with the operators for the damages caused. This could be regarded as a codification of practice that has already been adopted by the major E-commerce platforms, with a clear responsibility and liability imposed.

3. AIC REGISTRATION OF E-COMMERCE OPERATORS

Under the Second Draft, the e-commerce operators must be registered with the Administration and Industry and Commerce (AIC) with limited exception. This is a welcoming development for IP right owners, as infringers operating online stores may be more easily identified.

4. MEASURES AGAINST FALSE OR MISLEADING ADVERTISING

The Second Draft proposes to strengthen consumer protection. In particular, it is prohibited to fabricate false transaction information, post false user reviews or delete genuine user reviews. It further requires that e-commerce operators should display search results according to indicators such as sales volumes, prices, and credit ratings of commodities or services. It also requires paid or sponsored listings to be marked clearly.

5. PRACTICAL MECHANISM FOR USERS TO ACCESS, CORRECT OR DELETE THEIR INFORMATION

As introduced in the Second Draft, e-commerce operators would be required to provide users with practical mechanisms to access their personal information, make corrections or delete their information. Users should be informed of the procedure for closing their accounts without unreasonable conditions. Furthermore, e-commerce operators would be prohibited from circumventing these requirements through imposing onerous contractual conditions on the users. The Second Draft has strengthened the protection of personal data of users.

The consultation period of the Second Draft has ended on 26 November 2017. The Second Draft will now go through a third review by the Standing Committee before it comes into effect. We will keep you posted of any further development.