

Llinks Client Alert – Cybersecurity, Data & Privacy April 2021



 $Shanghai \cdot Beijing \cdot Shenzhen \cdot Hong \ Kong \cdot London$



I. Legislation

On March 12nd, to further implement the requirement under the PRC Cyber Security Law that network operators comply with the principles of "legitimacy, justifiability and necessity" when collecting and using personal information", as well as "network operators not collect personal information which are not relevant to the services which they provide" etc., *Cyberspace Administration of China, Ministry of Information and Industry , Public Security Bureau* and *State Administration for Market Regulation* collectively issued the *Rules for the Scope of Necessary Personal Information for the Common Category of Mobile Internet Applications* (the "Rules for Necessary Personal Information"), prohibiting mobile internet application operators from refusing users to use APP's fundamental functions only if the users decline to grant consent to the collection of unnecessary personal information. The Rules for Necessary Personal Information sets out the scope of fundamental functions and the corresponding necessary personal information for 39 types of services and will become effective on May 1st, 2021.

Llinks Comment: The Rules for Necessary Personal Information provides for meaningful guidance. From a hierarchical aspect, the Rules for Necessary Personal Information is made under the Cyber Security Law and it elaborates the "Necessity Principle" with which network operators must comply when collecting and using personal information, as well as details the rule that "network operator is not allowed to collect any personal information which are not relevant to the service it provides" under Cyber Security Law. In terms of the content, the Rules for Necessary Personal Information also strengthens the requirement on the prohibition of "compelled collection" and "bundled authorisation" under the Personal Information Security Specification and introduces the concept of "fundamental function services" into a formal legal requirement. From a guiding aspect, the Rules for Necessary Personal Information provides for guidance on the scope of necessary personal information corresponding to the fundamental function.

On March 15th, State Administration for Market Regulation officially released the *Administrative Measures for the Regulation over Online Transactions* (the "Measures"), which provides for certain specific rules on the registration of e-commerce operators, the regulation of online transactions, the responsibilities of e-commerce platform operators as well as the protection of consumers' interests and are effective supplement to the *PRC E-commerce Law*. The Measures consists of 5 Chapters and 56 Articles and will replace the *Administrative Measures on Online Transactions* issued by the State Administration for Industry and Commerce in 2014 upon its effectiveness on May 1st, 2021.

II. Court Rulings

On March 11st, Hangzhou Internet Court closed, by issuing a mediation decision, a public interest case filed by People's Procuratorate of the Yuhang District, Hangzhou City of Zhejiang Province (the "Yuhang Procuratorate"). In this case, a well-known domestic short video platform (the "Platform") was asserted to have infringed children's personal information. The Yuhang Procuratorate requested for the cessation of infringement, extension of

apologies, elimination of adverse effects, compensation of losses etc., and the Platform accepted all of them. The Platform has thoroughly rectified the issues pointed out by the Yuhang Procuratorate. According to the procurator who is in charge of this case, this case focused on the requirement under the *Rules for the Network Protection of Children's Personal Information* that network operators must notify the custodians in a conspicuous and clear manner of how they would collect, use, transfer and disclose children's personal information, as well as to obtain the custodians' consent. Meanwhile, the close of this case further clarified the implementation of the special protection requirements that "the process of children's personal information must obtain their custodian's consent" under the *Civil Code* and the newly-revised *Minors Protection Law*.

III. Law Enforcement

On March 3rd, in accordance with Cyber Security Law and *Interim Managerial Provisions on the Pre-installation and Distribution of Applications and Software on Mobile Intelligent Device* and other laws, regulations and rules, MIIT ordered 10 Apps which fail to rectify the non-compliance such as illegally acquisition of permission of micro phone, contacts and photos etc. as required by MIIT.

China Citi Bank was imposed a RMB 4.5 million fine for its illegal behaviors such as failure to establish client information protection system and non-compliance in the collection of client information.

IV. Foreign Trends

Recently according to Reuters, Google's plan to block a popular web tracking tool called "cookies" is a source of concern for U.S. Justice Department investigators who have been asking advertising industry executives whether the move by the search giant will hobble its smaller rivals.

Google announced a year ago that it would ban some cookies in its Chrome browser to improve user privacy. Over the last two months, Google released more details, leading online ads rivals to complain about losing the data-gathering tools. Investigators are enquiring whether Google is using Chrome, which has 60 per cent global market share, to reduce competition by preventing rival ad companies from tracking users through cookies while leaving loopholes for it to gather data with cookies, analytics tools and other sources.

About Llinks' Cyber Security and Data Compliance Services

Llinks' partners have been representing clients in data and cyber security related legal matters, such as offshore server, log records storage and filing, personal data collection and use, data integrity, centralized data process, differentiation between trade secrets and state secrets, etc. After 2010, Llinks' partners started to represent domestic and foreign enterprises in forming whole-process compliance solutions for the collection, use, transfer and destruction of customer personal information in digital marketing environment. In the course of handling these cases, Llinks' team has built up its solid capacity in tracing the logical chain which underlies all the data privacy laws and regulations. On that basis, our team can provide clients with practical and economical solutions which meet the requirements of the regulatory authorities.

Our team also includes some experienced lawyers who previously have served as law enforcement officials in cyber security administration. Their insights contribute to a better understanding on the regulatory authorities' key concerns and priorities in law enforcement, which is critically important for us to work out a practical solution for clients.

We have been working closely with relevant government consultancy departments and academic research institutions on the trend of legislation and implementation of the CSL regime. Our team has published special reports and analytical articles in this field. In September 2018, LexisNexis published a special issue written by our team, on *Companies' Compliance in the Context of China*, which contains six articles on practical issues concerning cyber security and data compliance. In September 2018, we drafted a series of concise bilingual articles titled *30 Practical Questions about the CSL*, which were later exclusively published online by Wolters Kluwer. In September 2019, as regulations and practice evolved, we updated the *30 Practical Questions about the CSL* and renamed the combined articles as *2019 The Blue Book of PRC Cybersecurity and Data Compliance (Bilingual)*. In November 2020, based on the latest cases and typical scenarios, we updated again and presented the *2020 Blue Book of PRC Cybersecurity and Data Protection Compliance (Bilingual)*. From 2018 to 2020, we published several Chinese and English professional articles, such as *Three Major Problems of China's Internet Security Data Law, China-US Game of Data Regulation*, in the national and foreign journals such as Insights, The American Lawyer, China Business Law Journal and the Legal System Daily.

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