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Compliance Issues in Using VPN

By David Pan | Tianhang Li | Nigel Zhu

It was reported that on December 28, 2018, the public security bureau (PSB) of Nan Xiong City, Guangdong Province fined a person surnamed Zhu RMB 1,000 for his suspected illegal action of “establishing and using illegal channel for international network connectivity”. On January 4, 2019, the PSB of Rong Chang District, Chongqing summoned a person surnamed Huang to the bureau for questioning his similar illegal activity. The two cases signaled a new trend of increasing oversight by public security organs on unlawful international internet connection, which is widely known as “internet surfing by climbing over the wall”.

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I. Facts and Legal Grounds for the Penalties

(一) Facts

The facts based on which Chongqing PSB summoned Mr. Huang were not publicly available yet. A copy of the administrative penalty notice issued by Guangzhou PSB to Mr. Zhu was published and circulated online. According to the copy, the facts of Mr. Zhu's illegal actions are as follows:

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1. Mr. Zhu installed on his mobile phone an APP called Lantern Pro.
2. Mr. Zhu used the said mobile phone to surf the Internet via his broadband connection, with the APP switched on. The times of total such uses in the latest week was 487.

(二) Legal Grounds

The PSBs penalized the two persons based on Articles 6 and 14 of the *Tentative Rules on the Administration of Computer Information Network International Network Connectivity* (hereinafter the “Tentative Rules”).

1. Article 6 of the Tentative Rules: any direct international connectivity of computer information network must go through the international internet exchange channel established by the state public telecommunication network of the Ministry of Posts and Telecommunications (ultimately merged into Ministry of Industry and Information Technology, MIIT). **No entity or individual shall establish or use any other channels for international network connectivity.**
2. Article 14 of the Tentative Rules: for those who violate Articles 6, 8 or 10, public security organs may suspend their network connectivity, issue a warning, and impose a fine up to RMB 15,000. Any illegal gains shall also be confiscated.

II. Analysis

(一) Legal Grounds

The Tentative Rules were issued by the State Council on February 1, 1996, and later amended on May 20, 1997. The Informationization Leading Group of the State Council on February 23 issued certain implementation rules to the Tentative Rules (“Implementation Rules”) and the Ministry of Information and Industry (later restructured and merged into MIIT) on June 26, 2002 issued the *International Telecommunication Exchange Point Bureau Administrative Rules* (“Administrative Rules”).

1. Both the Tentative Rules and the Implementation Rules clearly provide that “No entity or individual shall establish or use any other channels for international network connectivity”.
2. The Implementation Rules provide that international exchange channel is the physical channel used for international network connectivity.
3. The Administrative Rules provide that the international telecommunication exchange point is the point connecting domestic telecommunication channels and international telecommunication channels.

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(二) Analysis

Lantern Pro is a VPN client, and Mr. Zhu's act of using the APP obviously does not constitute "establishing" a telecommunication channel. Whether the use of the APP constitutes "using" illegal channels depends on the operational structure and process of the APP. If the APP actually utilizes international telecommunication channels other than those established by the state public telecommunication network, using the APP may constitute using illegal telecommunication channels for international network connectivity.

III. Thoughts and Caveats

Judging from the above two cases, not only VPN sellers and technical service providers are liable for violation of law, but the mere use of "wall-climbing" APPs might also lead to administrative penalties.

Currently, most "wall-climbing" APPs use VPN for circumvention purpose, and therefore the possibility cannot be ruled out that such APPs utilize telecommunication channels other than those legally established. If VPN users utilized illegal telecommunication channels, the users would face a risk of being penalized for "using illegal telecommunication channels for international network connectivity".

In light of the foregoing, it is advisable for those who are in need of VPN services to utilize services provided by legally qualified and approved telecommunication service providers, such as the international leased private circuit (IPLC) and relevant VPN services provided by China Telecom, China Unicom or China Mobile. It is worth noting, however, that the costs of IPLC and relevant VPN services provided by these three telecommunication companies are relatively high.

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