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An Interpretation of Children Personal Information Network Protection Rule —— From Life Science Companies' Aspects

By Xun Yang

The Cyberspace Administration of China (“CAC”) has recently issued the Children Personal Information Network Protection Rule (the “**Children PI Rule**”), which will become effective on 1 October 2019. Comparing to other ministerial rules proposed to be enacted by CAC in relation to personal information protection, which suffer “difficult births,” the Children PI Rule was formally promulgated only two months after its announcement for public consultations, which record a rarely fast speed.

The promulgation of the Children PI Rule for enforcement is a milestone on the way to protection personal information in China. It imposes higher requirements on companies in terms of protection of personal information. Companies, including those engage in life science business, must pay attention to the Children PI Rule.

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I. The Application of the Children PI Rule

According to the Children PI Rule, network operators' collection, storage, transfer, and disclosure of children's personal information via networks in China are governed by this rule. As such, the Children PI Rule has jurisdictions over activities in China, i.e., this rule regulates the business involving children's personal information regardless of whether Chinese citizen or Chinese companies engage in such business. Foreign companies which collect children's personal information online within the territory of China are also subject to the Children PI Rule.

The scope of network operators governed by the Children PI Rule, as having the same definition under the Cyber Security Law, captures not only internet companies, but also those operators which collect personal information by using APPs, computer terminals, or wearable devices in the sectors such as retailing, medical services, healthcare, research, transportation, education, etc. Taking the medical service sector as an example, the collection of children's personal information via networks during the course of providing medical services to children or the course of clinical trials vis-à-vis children or the collection of treatment and health related information via remote medical devices, fall within the scope of application of the Children PI Rule.

II. The Content of the Children PI Rule

The Children PI Rule strengthens and details the personal information protection requirements under the Cyber Security Law and imposes elaborated rules on collection, storage, transfer and disclosure by network operators of children's personal information. These rules do not come from scratch; rather, it has taken reference to prior legislations.

(1) Reference to *Telecoms and Internet User Personal Information Protection Rule*

The Cyber Security Law only has principal rules on personal information protection. However, the *Telecoms and Internet User Personal Information Protection Rule* which MIIT issued in 2013 sets out detailed rules for collection and use of personal information of telecoms and internet users. The Children PI Rule has taken reference to the said rule to a certain extent.

Firstly, the Children PI Rule provides for the items of information which must be notified to data subjects, including the purpose of and methods for collection of personal information, the channel for enquiry about or amendment of personal information, and the consequence of not giving consents to personal information collection. Secondly, the Children PI Rule requires that network operators adopt encryption or other technical measures to protect personal information. Thirdly, in case of any significant cyber incident, the network operator must report the same to the relevant authority.

In essence, the Children PI Rule broadens the application of the rules for only protecting telecoms and

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internet users' personal information to apply to all network operators which are involved in the collection, storage, transfer and disclosure of children's personal information. In other words, as far as life science companies are concerned, they are not telecoms companies, nor are they internet companies. Nevertheless, if these life science companies record children's personal information into their computer systems or collect children's personal information via remote medical devices, the detailed and strict rules similar to those set out in the *Telecoms and Internet User Personal Information Protection Rule* will apply.

These rules may not be a significant extra burden for life science companies which maintain a high standard for personal information protection. However, efforts need to be made for comply with such rules for those companies of which personal information protection standards are low.

(2) Reference to *Personal Information Security Guidance*

Given that the personal information protection rules are quite general under the Cyber Security Law, the *Personal Information Security Guidance* effective on May 1st 2018 details those general rules and, thus, became important behavioral guidance for personal information protection practice. The Children PI Rule has also taken reference to some of the rules in the *Personal Information Security Guidance*. For example, firstly, privacy policies are required to be clear and reader-friendly; secondly, data subjects can withdraw their consents to personal information collection; and thirdly, network operators are required to conduct security assessment before transferring children's personal information or engaging third parties to process children's personal information. These rules appear to be rooted in the *Personal Information Security Guidance*.

The reference by the Children PI Rule to *Personal Information Security Guidance* means, in fact, a number of recommendatory standards in the *Personal Information Security Guidance* have been upgraded to ministerial rules through a legislation process and become legally binding behavioral standards. Companies which pay little attention to or even ignore recommendatory standards must make efforts to enhance their personal information protection standards.

Although many large-scale life science companies have established personal information protection policies well by taken reference to *Personal Information Security Guidance* before the issuance of the Children PI Rule, they may still face some practical difficulties in implementing these policies. For example, the Children PI Rule requires that privacy policies must be clear and reader-friendly but what is considered being clear and reader friendly given that medical terminologies are sometimes inevitably used in the policies formulated for the life science business, such as clinical trials. For another example, in a global process where children's personal information need to be transferred outside of China, is it necessary to have the information export undergone both security assessment for information transfer and security assessment for data exportation? The former security assessment, according to the Children PI Rule must be conducted by the company itself or a third

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party engaged by it; and the latter, according to the draft *Security Assessment Measure for Personal Data Exportation* issued on June 13th 2019, must be conducted by CAC's counterparts at the provincial level.

(3) Newly created rules under the Children PI Rule

There are two newly created rules under the Children PI Rule which need to be paid attention to.

Firstly, according to Article 8 of the Children PI Rule, network operators must adopt personal information protection rules and user agreements specifically for children's personal information and must appoint a person dedicated to be responsible for the protection of children's personal information. This article appears to require companies to adopt protection policies for children's personal information in addition to those policies applicable to adults' personal information. For those companies which maintain a high standard of personal information protection, can these policies be substantially the same? Additionally, can the person who is responsible for protecting children's personal information be the same person in charge of personal information protection in general?

Secondly, according to Article 15 of the Children PI Rule, the access to children's personal information by network operators' employees must be subject to approval by the children personal information protection officer or the person delegated by him, the access must be recorded, and technical measures must be adopted to prevent unauthorized duplication or download of children's personal information. This article requires establishment of strict internal controlling system. Although this article does not require any super challenging managerial measures, it will impose significant administrative burden to network operators. In particular, in the coursing of providing medical services and of using wearable devices, children's personal information are collected and stored together with adults' personal information. Consequently, this article will likely result in the enhancement of protection of adults' personal information as well.

III. Enlightenment from Children PI Rule

The Children PI Rule is the first ministerial rule on protection of personal information after the effectiveness of the Cyber Security Law. It is not a guidance or guidelines; rather it is a formal binding rule. It is not a version issued for public consultation; rather it is an issued ministerial rule. It brings important enlightenment for companies.

On one hand, the Children PI Rule has set out a relatively high standard for the protection of children's personal information. For those companies in the life science sector, in the course of diagnoses and medical researches, as well as in collection of personal information via wearable devices, children's personal information are usually collected and stored together with adults' personal information. The split of them will likely incur significant costs and may not be practical from a business aspect. Therefore, the actual

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consequence will likely be that both protection of children's personal information and of adults' personal information be upgraded onto a high level and be managed by one or a group of privacy officers.

On the other, as a ministerial rule strengthening personal information protection, the Children PI Rule, to a great extent, details the personal information protection rules under the Cyber Security Law. These rules under the Children PI Rule may be taken reference by the legislations with respect of personal information enacted in the future. In particular, in the life science sector, personal information collected in the business often concern personal health. The sensitivity of such information requires the adoption of higher standard of personal information protection. Therefore, the relevant requirements under the Children PI Rule can be taken as reference in formulating privacy policies for the life science companies.

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