

China's app market and the movement towards regulation

Regulatory trend towards framework for app ecosystem

China's telecoms industry is highly regulated and service providers are required to obtain permission from the government to operate various services. Internet information services, which are regarded as a type of value-added telecoms service, are also subject to such requirements. According to the Administrative Measures Governing Internet Information Services (2000) issued by the State Council (the 'Measures'), the provision of internet information services requires either a licence from or registration with the government. Under the Measures, internet information services are divided into services of a commercial nature and services of a non-commercial nature; commercial services providers are subject to licensing requirements while non-commercial services providers are subject to registration requirements.

In 2012, the Ministry of Industry and Information Technology ('MIIT') clarified that smartphone app store operators are considered internet information services providers and should go through a registration or licensing process similar to website operators. MIIT also plans to bring smartphone app providers under supervision by means of a real name registration system.

It is worth noting that under the existing telecoms regulations, to apply for a value-added telecommunications licence for the provision of app store services, a foreign company must establish a joint venture with a Chinese partner in which the foreign shareholding is capped at 50%. In January 2014 MIIT released its Opinions regarding Further Opening up Value-added Telecom Service Sector towards Foreign Investments in China (Shanghai) Pilot Free Trade Zone ('Opinions'). According to the Opinions, the above-mentioned shareholding limitation on app stores does not apply in the Shanghai Free Trade Zone ('FTZ').

The innovation and sectoral convergence created by apps results in new challenges; seeking regulatory means to address *inter alia* the following is at the top of the regulator's agenda:

Personal data protection: Apps are among the most afflicted areas in terms of personal data breach. Many collect users' personal information without the users' permission and some intercept or monitor sensitive information like SMS, for example. While the specific app providers should be held liable for personal data breaches, it is debated in China whether and to what extent app store operators should also be held liable. After all, most of the apps are downloaded from app stores directly and a stricter review of apps by the app store operators would have made a big difference.

Copyright infringements: The fundamental ideas of an app can easily become the target of copyright infringement. In a rapidly changing market, the original app provider sometimes has to choose not to seek judicial remedy, considering the cost and time burden involved, which in turn encourages more infringement in the market.

Competition issues: Having a higher ranking in the app store

means that the app will be downloaded by more users and therefore the provider can expect more profit. For this reason, some app providers will boost their app rankings artificially via inappropriate means, or make negative or malicious comments about competitors' apps. For app store operators, there is a concern about whether they are abusing their comparatively dominant position in the way they treat app providers. In a typical relationship between an app store operator and a provider, the provider normally has to accept the operator's standard T&Cs and the operator normally has sole discretion as to whether to decrease the rankings of the app or even remove the app from the app store without full justification.

Regulatory trend

Applicable existing regulations play an important role in governing the fundamental issues of the smartphone ecosystem. In November 2012, MIIT announced that it would be making specific plans to regulate the apps market. Although the framework for apps hasn't been fully established yet, MIIT and other relevant authorities have made some steady progress. In April 2013, MIIT issued a Notice on Strengthening the Supervision of Network Access for Mobile Smart Terminals ('Notice'). The Notice mainly aims to prohibit smartphone manufacturers from pre-installing apps that may raise personal data protection and prohibited content concerns. Smart terminal manufacturers are required to provide basic information about the configuration of any pre-installed apps while applying for a permit to access communication networks for their smart terminals.

Since 2012, China's Academy of Telecommunication Research, the think tank of the MIIT, has issued a series of technical standards for smartphones and is also drafting relevant technical standards for app stores. In May 2014, the State Internet Information Office of the State Council announced it will be rolling out a 'network security vetting' process soon. Officials say the vetting will focus on 'important' network and IT products and services to prevent illegal control, interference and interruption of the users' systems and illegal collection, storage, processing and use of users' information. Any product or service that fails the vetting will be banned from China. As no detailed regulations have been promulgated so far, it is unclear to what extent app stores and apps originating outside China will be affected. In October 2014, the Cyberspace Administration of China announced that it will promulgate regulations on the development and supervision of mobile apps, which have yet to come to fruition.

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