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China to Consider Measure to Increase Protection of Personal Information

A law that could increase the level of protection of personal information is circulating among legislative bodies in China. The proposed PRC Tort Liability Law would include clauses providing protections for personal information, by giving a person whose rights are infringed by the use of Internet services a right to demand deletion of the infringing materials. Another clause imposes liability on an Internet service provider that fails to take timely measures after receiving such a demand.

Terms of the Legislation

The relevant clauses of the draft law reportedly require:

- a. If an Internet service provider is clearly aware that an Internet user is using its Internet services to carry out infringing behavior, and does not adopt necessary measures to correct the situation, it will bear joint liability along with the Internet user.
- b. If an Internet user uses Internet services to carry out infringing behavior, the injured person has the right to issue a notice of demand to the Internet service provider for the deletion and screening of the infringing content.
- c. If an Internet service provider receives this notice but does not promptly adopt

necessary measures to correct the situation, it will bear joint liability along with the Internet user for the increased portion of damages resulting from its failure to adopt necessary corrective measures.

In addition, a potentially significant additional clause allows an injured party to make a claim for psychological damages in cases of an intentional violation of a person's right of personality or right of status that results in serious psychological damages to the injured party.

Consequences of the Legislation

It remains to be seen whether the draft law will be passed in its current form. If it is, there may be these preliminary consequences:

- a. Damage awards may not be particularly large. Damages reportedly awarded to a plaintiff who sued both an Internet user and an Internet service provider, in a case in which the plaintiff sued both for damage to personal reputation as a result of information disclosed on the Internet, totaled only RMB8,000 (approximately US \$1,200), for psychological damages. Of this, the infringing user was required to pay RMB5,000 and the Internet service provider was required to pay RMB3,000.

- b. Because damage awards are not likely to be particularly large, the right to demand deletion of the infringing content could be the more significant remedy in practice.
- c. The prospective extent of new protection should, for the time being, be viewed as narrow, and specific to the context of the publication of information concerning an individual on the Internet. While this does represent an advance towards a recognition of a right of privacy, it appears specifically targeted at misuse of Internet resources.

Prospects for an Upcoming Privacy Law in China

Uncertainties remain as to when a full-scale privacy law or personal information protection law may be enacted in China, in the wake of last year's formation of the new Ministry of Industry and Information Technology and the resulting questions as to what the new Ministry's

legislative priorities would be. However, enactment of this provision of the new PRC Tort Liability Law would mean that a portion of the law touches upon personal information concerns. While the new PRC Tort Liability Law would not be a formal privacy or personal information protection law, this provision of the new law would still affect the use of personal information.

If delays and uncertainties in the enactment of a full-scale privacy law persist, agencies other than the Ministry of Industry and Information Technology could take up legislation on the subject matter on a sector-by-sector, act-by-act basis rather than by way of a single, unified, coordinated privacy law. Together with last year's proposal of an amendment to the PRC Criminal Law that would (if enacted) impose criminal liability for misappropriation of personal information by officials of government agencies and personnel of certain other institutions, the appearance of this

provision in the proposed new PRC Tort Liability Law might suggest the beginning of a trend in this direction. If this trend does emerge and persists over time, there is a possibility that personal information protection law in China will emerge in a piecemeal, uncoordinated fashion and that complying with privacy law in China will be cumbersome and complex.

We Can Help

Hunton & Williams' Privacy and Information Management team assists clients in complying with global privacy and data protection requirements. We have experience assessing privacy risks, and drafting policies and procedures to comply with legal requirements. We also monitor privacy policy and regulatory trends in the Asia-Pacific region. If you have any questions about the provision of the proposed law relating to personal information or would like assistance complying with other global privacy laws, please contact us.

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