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A Crackdown on China's Domain Name Industry

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For over a decade, China has had in place specific domain name regulations, but those measures have never been actively enforced. Spurred on by the introduction of the new generic Top Level Domain Names (gTLDs) and their potential effect on the Chinese domain name market, the government has been seeking to crack down on compliance with the existing regulations.

The Measures for the Administration of Internet Domain Names of China (the "measures") came into effect on Dec. 20, 2004 and have since been applied loosely by the authorities. However, the introduction of new gTLDs by the Internet Corporation for Assigned Names and Numbers (ICANN) has brought on a new reaction from the Chinese government which is now seeking to focus on compliance.

In April 2015, the Ministry of Industry and Information Technology ("MIIT") started the "Special Operation to Regulate the Domain Name Registration Services Market" (the "Special Operation"), a fresh initiative which intends to improve internet security and strengthen the regulation of the domestic domain

name registration service market. This is expected to continue until October 2015.

The Special Operation will focus on unauthorized registrars and registries or those that have conducted business outside their approved scope or have been selling domain names by improper means.

On May 12, 2015, the MIIT released an "Interpretation on the Special Operation to Regulate the Domain Name Registration Services Market" (the "interpretation"), which sets out what the provincial level authorities will need to do to enforce the measures, and what registrars and registries must do to comply with them.

Background

In June 2011, ICANN authorized the launch of new gTLDs in order to give greater consumer choice and enhance competition.

During the application period, which opened in January 2012, ICANN received 1,930 applications for new gTLDs. As at June 9, 2015,¹ there were:

- 647 new gTLDs approved and available for registration;
- 712 applications for gTLDs in the process of being considered;

- 35 new gTLDs incorporating Chinese characters (e.g. .world, .company, mobile phone, .mall, etc.); and
- 19 new gTLDs controlled and managed by registries located in China.

Prior to the launch of the new gTLDs, there were only 22 gTLDs (e.g. .com, .net, .or, etc.). As such, ensuring that registrars and registries complied with the measures may have been less of a concern for the Chinese government.

The number of domain names now available for registration in China has vastly increased, and in turn has led to concerns about the regulation and control of the market.

With the introduction of the new gTLDs, the number of domain names now available for registration in China has vastly increased, and in turn has led to concerns about the regulation and control of the market. The interpretation and Special Operation should be seen against the backdrop of this concern.

Registration and Approval

In brief, pursuant to the measures, a domain name can only be sold in China if:

- a) The registry that manages and controls the particular TLD of the domain name has been approved and registered with the MIIT; and
- b) The registrar that sells and administers the domain name has been approved and registered with the MIIT.

Only Approved Registries Can Sell Their TLDs in China

From mid-July 2015 onwards, there will be a drastic cut in the variety of domain names that can be sold legitimately in the Chinese domain name market. Only TLDs that are managed and controlled by registries, which have been approved and registered with the MIIT, will be available to be sold in the country.

As of May 20, 2015, only eight domestic registries had been approved, two of which are government registries (e.g. the China Internet Network Information Center and the China Organizational Name Administration Centre). These approved registries manage only 14 TLDs, which are the Chinese versions of well-known Roman letter TLDs as set out below:

- .cn
- .china
- .company

- .network
- .government-affairs
- .public-interest
- .trademark
- .website
- .wang
- .mall
- .ren
- .citic
- .top

Notably, popular and generic TLDs such as .com, .net and .org are not on the approved list. Therefore, such generic TLDs, or TLDs other than those stated above, cannot be sold in China until such time as they are managed by registries and registrars sanctioned by the MIIT.

Domain Names Can Only Be Registered Through Approved Registrars

Only registrars, which have been approved by the MIIT, are permitted to sell domain names in China. Currently, there are only 93 approved registrars listed in the “Table of Approved Registrars,” issued by the MIIT (the “table”). The table was last updated in April 2013 and can be downloaded from the MIIT’s website. In order to continue selling domain names in the country, registrars who are not currently listed in the table must obtain approval from the provincial level Communication Management Bureaus (“CMBs”), who were delegated the responsibility of approving domain name registrars.²

While the interpretation states that the Special Operation will not affect existing domain names registered with unapproved registrars, it strongly recommends that registrants transfer their domain names to approved registrars.

Registrars must meet certain requirements set out in the measures in order to obtain approval from the CMBs. Such requirements include:

- Having registered capital of no less than 1 million yuan (\$160,000);
- Having in place effective safeguards for network and information security;
- Issuing a letter of commitment signed by their legal representative stating that the registrar will comply with all laws and policies; and
- De-registering domain names, which are not registered using the registrant’s true identity, and to notify the registrant about this in writing (the “Real Name Registration Requirement”).

Foreign Registries and Registrars

In order to comply with the measures, foreign registries and registrars must have a physical presence in China, i.e. an operational wholly foreign-owned enterprise or Chinese foreign joint venture corporation.

A company incorporated in Hong Kong, Macau or Taiwan will not meet the physical presence requirement. They must also have a properly designated legal representative who is ultimately held responsible for the company's actions.

Enforcement Against Registrars and Registries

Under the measures, the MIIT can impose fines of up to 30,000 yuan (\$5,000) against registries and registrars that operate in the Chinese market without the necessary approval.

However, the interpretation and measures do not specify how the MIIT will enforce such sanctions on foreign registrars or registries, or how unapproved TLDs and foreign registrars will be blocked from the domestic market. What will stop resident individuals from registering unapproved TLDs via foreign registrars? Active policing by the MIIT would be impractical and virtually impossible considering the sheer amount of domain names and TLDs available, particularly due to the introduction of new gTLDs which has significantly broadened the domain name market.

Four Stage Implementation

The Special Operation aims to ensure regulatory compliance in four stages.

In designing these stages, the MIIT appears to have taken into account the fact that a large number of registries and registrars are currently not in full compliance with the regulatory framework imposed by the measures, despite the fact that the measures have been in place since 2004.

For example, there may be registrars who have been approved by the MIIT, but who are selling TLDs of registries that have not been approved by the MIIT pursuant to the measures.

If the relevant registry and TLDs do not get the approval of the MIIT, then the registrars should cease selling domain names that incorporate such TLDs in the Chinese market.

Stage 1 — Self-Inspection and Screening: Mid April to Mid July 2015

An initial transition period is provided whereby registrars and registries have the opportunity to evaluate their business operations and make necessary adjustments before the authorities step in. During this initial stage:

- Registrars will need to conduct a “self-inspection process” and rectify any non-compliance with the measures;
- Registrars must write a report regarding their self-inspection process and submit the report to their local CMB;
- Unlicensed registrars must submit an application for approval (if they have not done so already) to their local CMB before the end of Stage 1;
- Registrars who are not in full compliance with the Real Name Registration Requirement (detailed above) must rectify the non-compliance before the end of Stage 1 and must submit any supplementary materials and documents as needed;
- Registrars who have been selling domain names through improper means (e.g. fraud or coercion) must immediately cease to do so;
- Non-Chinese registrars must apply to the CMB to obtain approval in order to operate as a registrar in China, even if they have already obtained ICANN certification; and
- CMBs are in charge of organizing the self-inspection process, and will need to investigate any registrars in their jurisdiction in order to identify any non-compliance with the regulations.

Stage 2 — On-site Inspection: Late July to Late August 2015

During stage two, the CMBs will conduct on-site inspections of the registrars that fall within their jurisdiction. The CMBs will take into account the self-inspection reports submitted by the registrars during stage one.

If necessary, the MIIT will conduct further spot checks on registrars by forming inter-provincial joint inspection units.

Registrars will be required to cooperate fully with the MIIT and CMBs during their on-site inspection.

Registrars must also comply with any orders or instructions given by the MIIT and CMB including, if necessary, suspending the provision of their domain name services.

Stage 3 — Rectification: September 2015

In stage three, any registrars that are not in compliance with the measures will be required to rectify such deficiencies, under the supervision and direction of the CMBs. The interpretation is silent on exactly how this “rectification” stage will be conducted.

Stage 4 — Conclusive Upgrading: October 2015

In the final stage, MIIT will convene a “Special Operation Summary Meeting” whereby CMBs will consolidate the results of the Special Operation, discuss their experiences, and explore plans for a long term management

mechanism to promote the healthy and orderly development of the registrar service market.

Conclusion

Will the Special Operation shut out many TLDs and registrars from the Chinese market? Will the domestic domain name market become significantly limited?

While it is unlikely that the MIIT will refuse to approve the original 22 gTLDs that have been available in the Chinese market for decades, its focus will likely be on restricting the new gTLDs that are not operated or managed by domestic registries.

It is unclear how the MIIT will enforce the measures against foreign unapproved registrars and registries and whether access to unapproved registrars' websites will be blocked in China so that users cannot purchase a domain name through such registrars.

In practice, it is unclear how the MIIT will enforce the

measures against foreign unapproved registrars and registries. The question about how the MIIT will block them from the Chinese market remains open. It also remains to be seen whether access to unapproved registrars' websites will be blocked in China so that users cannot purchase a domain name through such registrars.

However, considering the sheer number of gTLDs that are now available in the market, and the vast number of registrars all over the world, any active policing by the MIIT would be impossible. Therefore, whilst it is recommended that all registries and registrars operating in the Chinese market comply with the measures and participate in the Special Operation, the MIIT will likely face an uphill battle in enforcing the measures.

Notes

1. <http://newgtlds.icann.org/en/>
2. Pursuant to the decision of the State Council on the Cancellation and Adjustment of a Number of Administrative Approval Items and Other Matters [2014] No. 27.