

Overview of regulations relating to computer information safety in the PRC

Concerns have been growing in the PRC about computer security, including computer crime and the possible threat to stability caused by flow of information. Computer crime was added to 中華人民共和國刑法 (PRC Criminal Law) in 1994, and the Ministry of Public Security has established a special computer investigations unit to deal with it. Regulations dealing with computer crime include the computer crime provisions of the March 1994 revision of the Criminal Law, and 計算機信息網絡國際聯網安全保護管理辦法 (Regulations on Security of Internet in Computer Information System) issued in December 1997 by the Ministry of Public Security.

In the PRC, deletion, alteration, adding or disturbing the operation of the data being stored in or transmitted by a computer information system so that it cannot operate properly shall, in serious cases, be punished by imprisonment or detention of five years or less; in especially serious cases, imprisonment of five years or more may be imposed. The deliberate creation and transmission of computer viruses or other destructive programs which affect the proper operation of a computer system is a criminal offence which shall, in serious cases, be punishable by imprisonment or detention of five years or less; in especially serious cases, be punishable by imprisonment of five years or more.

In the PRC, copyright of computer software is protected by registration with the relevant copyright registration administration organization. The Ministry of Public Security is responsible for the nationwide safety protection work of computer information systems. Research and development, production and sale of commercial cryptographic products in the PRC are now regulated by the Commercial Cryptographic Administration Regulations which were promulgated and implemented on 7th October, 1999.

Regulations relating to software protection

In the PRC, copyright of computer software is protected by 計算機軟件保護條例 (Software Protection Regulations), which were promulgated on 4th June, 1991 and implemented on 1st October, 1991. These regulations protect copyright of software developed by Chinese citizens and units, regardless of where and whether it has been published. They also protect the copyright of foreign software first published in the PRC. According to these software protection regulations, computer software refers to computer programs and its related documentation. Software programs refer to programs which are operated on information processing equipment such as computers.

For computer software to be protected under these software protection regulations, it must be independently developed by the developer and must be already in a material form. It does not extend to encompass any ideas, concepts, discoveries, principles, algorithms, processing methods and operations used in the development of software.

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Software copyright have to be registered with the relevant copyright registration administration organization to enjoy administrative treatment of rights, disputes or lawsuits. Under these software protection regulations, software copyright holders enjoy the right of publication, right of authorship, right of use, right of licensing and receiving remuneration and right of transfer. The term of protection is for 25 years from the date of first publication of the software. Any license to use software copyright may not exceed 10 years. Depending on the terms of the licence agreement, a license to use is transferable. Any transfer of software copyright shall be notified to the copyright registration administration organization within 3 months of the signing of the transfer contract.

Any infringement to the copyright of computer software registered under the software protection regulations shall be enforced by cessation of the infringement, elimination of the effects, public apology, compensation for losses and other civil responsibilities. Software copyright disputes may be mediated and if mediation fails to bring about a reconciliation, the parties may have the disputes dealt with by the People's Court. A software copyright contract dispute may be mediated or be applied for mediation by the state software copyright arbitration organization.

Regulations relating to safety protection of computer information system

Safety protection of computer information system in the PRC is regulated by 中華人民共和國計算機信息系統安全保護條例(PRC Safety Protection of Computer Information System Regulations), which became effective on 18th February, 1994. These safety protection regulations are to enforce safety protection of computer information systems, promote the application and development of computers and in particular, in the important fields such as state affairs, economic construction, national defence and most advanced science and technology.

The Ministry of Public Security is in charge of the nationwide safety protection work of computer information systems. The prevention, control and research work of computer viruses and other data harmful to the social public security is within the extent of power of the Ministry of Public Security. The Ministry of Public Security enforces a licence system for sales of the special products for safety of computer information systems. "Special products for the safety of computer information systems" under the regulations mean special hardware and software products used for the safety protection of computer information systems. The Ministry of Public Security is also responsible for the formulation of specific measures for the licensing of special safety products of computer information system in conjunction with the concerned government departments.

The Ministry of Public Security and the relevant local public security authorities are also responsible for the supervision, examination and instruction on the safety protection work for computer information systems, to investigate and handle crime and illegality cases of endangering the safety of computer information systems and other supervisory responsibility. Violation of these safety protection regulations may be subject to warning or suspension of operation for rectification by the public security authorities.

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The Commercial Cryptographic Administration Regulations were introduced by the State Council on 7th October, 1999 in order to strengthen the management of commercial cryptography, to protect the security of information, to protect the legal rights of people and organizations and to protect the security and interests of the State. The cryptography set out in these regulations is about the cryptography protection or information security not relating to the State security information. According to the Commercial Cryptographic Administration Regulations, only the institutions designated by the State Cryptography Control authorities which possess the requisite level of technical skills and research and production equipment, could undertake the work regarding commercial cryptographic research and development, and commercial cryptographic production. The result of the commercial cryptographic research should be approved by the experts of the State Cryptography Control authorities, based on their professional standard. The model, category and quality of the commercial cryptographic products should have been examined by the State Cryptography Control authorities prior to production. In addition, the promotion of cryptography products is also subject to the prior approval of the State Cryptography Control authorities.

Import and export regulations of cryptographic products in the PRC

Pursuant to the Commercial Cryptographic Administration Regulations as mentioned in the preceding paragraph, the State has control on import and export of cryptographic products. Any import of cryptographic products or any equipment with cryptographic technology or any export of cryptographic products have to be approved by the State Cryptography Control authorities. No unit or individual shall be permitted to sell any unauthorised imported cryptographic products. Any unauthorised export sale of cryptographic products by any units or individual is prohibited. Any unit or individual is only allowed to use cryptographic products approved by the State Cryptography Control authorities and is prohibited from using any self-developed or overseas manufactured cryptographic products.

Regulations of application specific security products in the PRC

According to regulations governing application specific security products in the PRC, manufacturers of application specific security products are required to make an application to 公安部計算機管理監察司(The Computer Management and Supervision Department of the Ministry of Public Security) for the granting of 計算機信息系統安全專用產品銷售許可證(Certificate for Sales of Computer Information System Security Product) prior to selling such products in the market. The sales permit is non-transferable and has a definite term of two years and renewal is required from time to time when features of such products vary.

Regulations for radio frequency in the PRC

According to 中華人民共和國無線電管理條例(PRC Radio Frequency Management Regulations), the resources of radio frequency spectrum is owned by the State. The State Radio Regulatory Authority under the co-leadership of the State Council and 人民解放軍中央軍事委員會 (Central Military Commission of the People's Liberation Army) are responsible

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for the formulation of policies relating to radio regulations and nationwide management of radio frequency spectrum. Implementation of the radio regulations is the responsibilities of the radio regulatory authorities of provinces, autonomous regions, municipalities directly under the central government and prefectural cities under the co-leadership of the People's Government of the same level and the next higher level of radio regulatory authorities.

Radio frequencies in the PRC are allocated and allotted by 國家無線監管機構 (“State Radio Regulatory Authority”) on a centralized basis and the relevant radio regulatory authorities are responsible for assigning radio frequencies at the localities. Assigned radio frequencies shall be used in compliance with the provisions stipulated by the State governing the management of frequencies. In accordance with the relevant PRC regulations for radio frequencies, any transfer of radio frequency(ies) assigned without the permission of the State Radio Regulatory Authority or the radio regulatory authorities of the locality concerned is prohibited. Any form of lease of radio frequencies, open or covert, is also prohibited.

In the PRC, the working frequencies and frequency bands of the radio transmission equipment to be developed shall conform with the provisions of the State relating to radio regulation and be notified to and approved by the State Radio Regulatory Authority. Manufacturing of radio transmission equipment shall also conform with the provisions of the State relating to radio regulation and be notified for the record of the State Radio Regulatory Authority and the radio regulatory authorities of the locality concerned. Effective measures shall also be taken to suppress radio wave emission of radio transmission equipment and field emission trials are subject to the approval of the State Radio Regulatory Authority or the radio regulatory authorities of the localities concerned.

Radio transmission equipment manufactured and sold in the PRC shall also meet the relevant national technical standards and the provisions of applicable laws and acts governing quality control. The People's Government at the county level and above shall be responsible for quality control by conducting checks and supervision of the quality of the equipment.

Regulations relating to fire control

Fire control in the PRC is principally governed by 中華人民共和國消防法 (Fire Control Law of the PRC) (“Fire Control Law”), which was passed on 29th April, 1998 and implemented on 1st September, 1998. In the PRC, the national fire control work is led by the State Council and is the responsibility of the People's Government at all levels, which shall be responsible for bringing fire control work in line with the national economy and social development plan. The Ministry of Public Security is responsible for monitoring and administration of the nationwide fire control work. Implementation of fire control above the county level is the responsibility of the fire control units of the public security organs of the People's Government at the same level.

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Fire control plan relating to, among others, contents and requirements of fire control facilities shall be part of the overall urban planning in urban cities and be implemented by the relevant department(s). It is the policy of the State Council to strengthen fire control work through scientific research and to promote the use of advanced fire control technology and equipment.

Under the Fire Control Law, quality of fire control products in the PRC shall conform to the State's standards or industrial standards. It is prohibited to produce, sell or use fire control products without passing qualification checks by the inspection organs designated in accordance with 中國產品質量條例 (“PRC Product Quality Law”). Use of fire control parts, extinguishers, fire maintenance and control facilities and devices not conforming to the State's standards or industrial standards is prohibited.

Fire control units of the public security organs of the People's Government shall monitor and conduct surveillance of and inspection of compliance with the fire control laws and regulations.

Production and sale of fire control products in violation of the Fire Control Law shall be liable to have the operations suspended, the products and illegal income confiscated and be punished in accordance with the regulations of the PRC Product Quality Law. Those units engaging in maintenance, inspection and testing of fire control facilities and devices in violation of the rules relating to fire control technology shall be ordered to rectify the violations within a time limit and/or be fined and the person directly in-charge and other persons directly responsible for the violations may also be warned or fined.