



March 7, 2011

Internet New Privacy Standards for China Emerging In Consumer Protection Agency Proposal

by Kathleen E. McLaughlin

BEIJING—A new draft internet consumer protection proposal in China could be a major step forward for the country’s privacy protection efforts, but first it must survive an often slow and uncertain approval process, Manuel Maisog of Hunton & Williams LLP, in Beijing told BNA March 3.

The proposal was issued in February by the General Administration for Quality Supervision, Inspection and Quarantine and the Commission for the Administration of Standardization, China’s main consumer protection agency, to set consumer protection standards targeting privacy for the country’s Internet users. But Maisog, who has been closely watching China’s development of privacy laws and regulations, said it could have larger data protection implications.

“It’s a potentially very significant matter. It could put Chinese data protection into a new posture,” he explained. “This doesn’t necessarily mean a better or less complicated posture, but because it’s a wide ranging and coordinated [proposal], it could change the way data protection is looked at in China,” he said.

“The draft proposes a principle-based system, setting forth a number of data protection principles, rights of data subjects, and practical steps for implementing the data protection principles. Significantly, the draft proposes cross-border data transfer restrictions,” Hunton & Williams said in a recent client alert blog post on the proposal.

“Right now it is angling at establishing a principle-based system and the principles in the draft are compatible with international concepts,” Maisog said.

The government made a rare call for public comment on the proposal. The public comment period recently closed but it is not clear how many comments the agency received or if it intends to release any comments.

Piecemeal Rules

In China, laws, guidance standards, and regulations can be introduced from several different parts of the government, including directly from ministries and agencies, as in this case. This has resulted in a piecemeal approach to privacy protection.

The proposal is the latest in a long line of attempts by various ministries and legislative entities to come up with standardized data and privacy protections for China, according to Maisog. An omnibus privacy law was drafted several years ago, but was never approved nor moved forward by the National People's Congress or the State Council, he said.

“At this point, what we have to view this is as is in an initial stage, and the content is preliminary,” Maisog said of the proposal. “The content is likely to change, and I would say the fact that something’s been started is very important. But it’s not going to be significant unless it’s finished.”

Maisog said that if the draft standard is finally approved and implemented, other ministries will need to roll back and repeal the scattered laws and regulations that have popped up over the years to cover for China’s lack of a general privacy protection law.