

China progresses e-commerce law changes

By Johnathan Chen

Intellectual property rights will receive greater protection in China later this year with the expected passing of new legislation governing e-commerce in the country.

Runaway growth in the e-commerce area prompted the Chinese Government to develop the new legislation, which will regulate Chinese e-commerce operators for the first time.

A measure of the enormity of online sales in China was seen at e-commerce giant Alibaba's annual "Singles Day" event on 11 November last year when \$US25.3 billion in gross merchandise revenue was transacted – 39% more than the previous Singles Day sales record the year before. More than 140,000 merchants took part and at its peak Alibaba was handling 256,000 transactions a second.

The Electronic Commerce Law was first released for submissions in 2016, and a revised draft was issued in November 2017. Submissions on that draft closed in January this year.

Interestingly, the first draft Law included cross-border e-commerce in its scope, but this was dropped from the second draft.

The draft Law defines e-commerce operators as operators exploiting their own websites, e-commerce platform operators, and e-commerce operators who listed their web shops on e-commerce platforms.

The proposed legislation will cover data and privacy protection, protection of intellectual property, unfair competition and consumer protection. Its scope includes contracts, transactions and payments.

Among other measures, the Law will make goods and services providers responsible for the quality of those goods and services, which means consumers can seek damages from the e-commerce platform directly. The platforms would then have to compensate consumers and seek reimbursement from the actual retailers of the goods or services – something e-commerce providers won't welcome.

The draft Law also puts the legal onus on e-commerce platforms to delete, block or terminate transactions or services if they detect any infringements to IP rights. If the IP owner can prove infringement, the e-commerce platform must begin taking down the offending content. This is already the practice of larger e-commerce providers like Alibaba and Taobao, but the legislation will extend that protection across all e-commerce platforms. E-commerce platforms that don't

take appropriate measures will be jointly liable with the operators for any damages.

E-commerce operators will also be prohibited from fabricating false transaction information and posting bogus user reviews or deleting genuine ones. They will also have to display search results for sales volumes, prices and credit ratings and clearly identify any paid or sponsored content.

E-commerce operators must also be registered with the Chinese Government agency Administration and Industry and Commerce (AIC), a requirement which will assist in identifying transgressors.

The Law will also make electronic payment service providers responsible for minimising unauthorised payments, i.e. where someone else's credit card is used to buy something. Responsibility for such losses will be on the e-payment company itself, unless it can prove the fault lies with the retailer.

Retailers will also need to be on their best behaviour. The draft prohibits retailers from unfair acts such as using domain names, websites or trade marks that are similar to well-known ones, attacking other retailers' websites, restricting trade, or overcharging.

The second draft has strengthened the protection of users' personal data. E-commerce operators will have to provide users with easy access to their personal information to correct or delete it and inform them of the procedure for closing their accounts without unreasonable conditions being imposed. Operators will also be prohibited from imposing onerous contractual conditions to get around these requirements.

Following the closure of submissions in January, the legislation is currently before the Standing Committee of the National People's Congress for a third and final review, after which it will come into effect. That date is still to be confirmed.

This law shows Chinese Government's determination in dealing with IP issues and the like, putting more onus on the E-commerce platforms to help deal with potential infringement. This should be welcome news for New Zealand businesses wanting to take advantage of the E-commerce boom in China

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