



MEMORANDUM

To Clients & Associates

FROM Dang The Duc and Nguyen Thi Hong Anh

DATE 31 December 2008

RE **New circular on blogging management in Vietnam**

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GENERAL INFORMATION

1. The Ministry of Information and Communications (“MOIC”) has recently issued Circular No. 07/2008/TT-BTTTT (“Circular 07”) dated 28 December 2008 guiding some contents relating to the acts of provision of information on personal electronic information sites (blogs) in accordance with Decree No. 97/2008/ND-CP of the Government dated 28 August 2008 on management, provision and use of Internet services and electronic information on the Internet (“Decree 97”)¹. The Circular will come into effect in 15 days as from the publication date thereof on the official Gazette of the Government, i.e. expected to be in January 2009. Circular 07 contains just 04 pages only.
2. Objectives of the new rules and the viewpoints and discussions during the drafting process:
 - 2.1 According to the MOIC², the main objects of Circular 07 are to encourage the expansion of interaction possibilities in the Internet, sharing personal experiences and use of clean Vietnamese language in the Internet and to prevent bloggers from abuse of Internet for spreading illegal information. The Director of the BTEICD, Mr. Luu Vu Hai, said in a recent interview that: *"The State encourages the use of blogs to serve personal freedom but bloggers have to respect social interests and community interests under the laws"*.

¹ Taking effect as of 27 September 2008.

² The Broadcasting, Television and Electronic Information Control Department (BTEICT), attached to the MOIC, is the agency in charge of drafting the circular.



- 2.2 Blog is identified as a personal electronic information site because naturally, it is considered as a personal e-diary and contains personal information/opinion of a particular blogger. Such information/personal content is uploaded at discretion of such blogger. Therefore, according to the MOIC, the blogger shall be responsible personally for information provided in his/her blog as well as the comments posted by others (third parties) on his/her blog. In case a blog contains political and social information, such blog shall be governed by the regulations relating to the management of general information sites (general websites)³.
- 2.3 Most people, including Government officers and bloggers, are suspicious of the enforcement of Circular 07 because Internet is a virtual world and it is very hard to identify the physical (real) owner of a blog through his/her virtual information registered upon establishment of such blog. The MOIC believes that in order to achieve the objects as mentioned above, the Circular will specify the scope of acts that blogger is allowed to do and what is not allowed to do, i.e. providing bloggers with right orientations / behavior guidelines in operation of the blogs. In other words, with the Circular, the MOIC does not expect to solve all “problems”⁴ in respect of blogs as well as bloggers in Vietnam, but hope to minimize the negative aspects of blogs. Therefore, the MOIC did not focus much on the technical issues in drafting the Circular.
- 2.4 Some Internet service providers in Vietnam claimed and questioned that the Circular, if adopted, would place a lot of responsibilities on the local service providers (Vietnam-based providers), while it is silent on foreign service providers such as Google and Yahoo which provides blogging platforms for about 85% Vietnamese bloggers in the country. Therefore, it is unfair between domestic and foreign Internet service providers in respect of their obligations to comply with the laws. On the one hand, the MOIC’s officers confirmed that the foreign-based service providers are not governed by the laws of Vietnam⁵, but on the other hand, said that the MOIC intends to discuss with some major foreign Internet service

³ Under Article 3.13 of Decree 97, “general website” is defined as a website on the Internet of an organization or enterprise which *provides general information on politics, economy, culture and society by citing information from official sources of press agencies or from websites of the Party (Communist Party) and Government bodies.*

⁴ Mostly related to websites promoting pornography (e.g. recently a sex forum has been cracked down and banned by the Police) and containing or promoting sensitive information against the Party and the State.

⁵ Pursuant to Article 7 of Decree 97 (Chapter II: Parties involved in Provision and Use of Internet Services and Electronic Information on the Internet), “Internet Service Provider (ISP)” means an enterprise of any economic sector established in accordance with the laws of Vietnam in order to provide Internet services to the public. Accordingly, it is assumed that those ISPs not incorporated and based in Vietnam shall not be governed by the Decree. ISPs established in accordance with the laws of Vietnam may include local / domestic companies or foreign invested enterprises / companies established in Vietnam.



providers, such as Yahoo and Google, for possible cooperation on the basis of the general responsibility for the social public as to create clean and healthy blogs in Internet in Vietnam. It is not sure if the Government authorities have taken actions to contact or discuss with foreign ISPs for such cooperation.

MAJOR CONTENTS OF CIRCULAR 07

What is a blog ?

3. Under Clause 1 of Circular 07, by reference to Article 12.3⁶ of Decree 97, “personal electronic information site” (blog) is defined as a private website and used to display personal information so as to store, exchange, or share with a group of people or a community using Internet services.

Government Policies for Blogs

4. Before coming to the prohibited acts, the Circular in Clause 2 affirms some principles for provision of the information in blogs which seem quite open at first:
 - 4.1 To encourage the development and use of blogs to enable individuals to improve the interaction in the Internet so as to exchange and share information *appropriate with* the traditional fine customs and the laws, to enrich the social life and solidarity of the community;
 - 4.2 To encourage the use of Vietnamese language in a clean and healthy manner in blogs; and
 - 4.3 To encourage use of blogs in those online social networks which have been registered in accordance with the laws⁷.

What are prohibited acts in provision of information / content in the blogs ?

5. Guiding Article 6⁸ of Decree 97, Clause 3 of the Circular expressly prohibits the following acts in relation to the provision of the information / content in blogs:

⁶ “Website on the Internet” means an information page or a group of information pages which serve the provision and exchange of information on the Internet and includes websites, blogs, portals and other similar things.

⁷ It is required under Article 19.4 of Decree 97 that the enterprises establishing website(s) in order to provide online social network services must register with the MOIC.

⁸ Article 6 provides the following acts are prohibited:

1. Abuse of the Internet to:
 - (a) Oppose the State of the Socialist Republic of Vietnam; undermine national security and social order and safety; sabotage national unity; disseminate [information on] wars of aggression; cause feuds and conflicts among nations, ethnic peoples and religions; disseminate and rouse violence, obscenity,



- 5.1 Abuse of blogs to provide, transmit or place links directly to false or illegal information (as per Article 6 of Decree 97);
- 5.2 Creation of blogs forging other organizations or individuals; illegal use of blog accounts of other individuals; and posting of false information harmful to the legitimate rights and interest of other organizations or individuals;
- 5.3 Diffusion of press works, literary and art works, publications which violate the laws on press and publication;
- 5.4 Use of personal information, pictures violating Articles 31 and 38 of the Civil Code⁹; and
- 5.5 Provision of information in blogs, which violates the laws on intellectual property, e-commerce transactions and other related laws.

What the responsibilities for Internet users ?

6. Under Clause 4¹⁰ of the Circular, Internet users shall have the following responsibilities:
 - 6.1 Blog owner is responsible for contents of information provided on, stored in, transmitted from his/her blog, and for ensuring that such information does not violate the laws; and
 - 6.2 He/she is also responsible for protection of the passwords, secret code and personal information.

debauchery, crime, social evils and superstition; sabotage national fine custom and tradition;

- (b) Disclose national secrets or military, security, economic, external relation secrets and other secrets as defined by law;
 - (c) Disseminate information which distorts, slanders and offends the reputation of any organization, the honour and dignity of the citizens; and
 - (d) Abuse the Internet to advertise, disseminate, purchase and sell goods and services on the prohibited list as stipulated by law.
2. Cause disruption, damage the equipment system and illegally hinder the management, provision and use of Internet services and electronic information on the Internet.
 3. Steal and illegally use personal passwords, ciphers and information of entities on the Internet.
 4. Create and install virus programs and software in order to perform any of the acts stipulated in article 71 of the Law on Information Technology.

⁹ Article 37 of the Civil Code provides for the *right to protection of honour, dignity and reputation*; and Article 38 provides for the *right to privacy*.

¹⁰ Guiding Article 12.2 c. & d. of Decree 97.

What are the responsibilities of online social network providers?

7. The Circular (Clause 5¹¹) now places quite a few responsibilities for the online social network providers¹², namely:
 - 7.1 To establish and publicize the regulations on provision, exchange of information in blogs at its website providing services, so that the regulations as mentioned in Clause of the Circular are not violated;
 - 7.2 To take appropriate measures for those blogs violating the provider's regulations on provision of information;
 - 7.3 To establish the process for management of information in accordance with the scale of services provided by such provider;
 - 7.4 To build the *database of bloggers' personal information* managed by such provider, and to be responsible for *providing the competent government authorities with such information upon request*;
 - 7.5 To *block (prevent) and remove* those contents in violation of the laws and the rules in Clause 3 of the Circular (above), as soon as the provider detects such information or when receives the request from the competent government authorities; and
 - 7.6 To be inspected or checked by competent government authorities as provided by the laws.
8. It is noted that the Circular under Clause 6 mandates the service providers to send periodical reports every six months to the BTEICD in Hanoi and the local Department of Information and Communications where the provider is located, and reports on urgent basis upon request. The periodical report contains, among others, such information as:
 - 8.1 The number of blogs under management and other data¹³ as may be requested by the authorities; and

¹¹ Guiding Article 11.2 of Decree 97.

¹² Article 11.1 of Decree 97 provides that an online social network provider means an enterprise of any economic sector which is established in accordance with the law of Vietnam in order to supply an online social network to the public. As mentioned above, the providers governed by the Circular are those based in Vietnam only.

¹³ It remains unclear which data or information the authorities may require the service providers to report.



- 8.2 The number of blogs which violate the regulations as published by the service provider on its website

IMPLICATIONS AND ENFORCEMENT OF THE NEW RULES

- 9. As soon as the Circular is issued, many including bloggers and even some Government officers¹⁴ are in doubt that the rules can be enforced, but rather it serves just as orientation guidelines for bloggers and service providers based in Vietnam. This conversation is attributed to some facts that:

- 8.1 The Circular provides for general provisions and principles only, and does not provide for specific remedies or penalties for the violations.

- 8.2 Many issues in the Circular are not clear and need to be clarified for implementation and enforcement. For example, what are the illegal or false information so that a blogger will not place a link in his/her website ? and to what extent a blogger is responsible for the information provided by third-parties (such comments placed by others in the blog) because the blog owner may or can not control such information ? etc.

- 10. For the enforcement of the Circular, the MOIC has confirmed that they are in the process of drafting a Government decree dealing with administrative penalties in provision and use of Internet services (including provision of information in blogs)¹⁵. It is anticipated that the decree would contain specific penalties and measures against the violations in relation to blogging in the above Circular. The decree is expected to be submitted to the Government for approval next year.

- 11. It is interesting to note that in an article in *Phap Luat Tp. Ho Chi Minh* on 25 December 2008, Mr. Hai, Director of the BTEICD has made certain clarifications¹⁶ on the prohibited acts as mentioned in Clause 3 of Circular 07. However, his comments are just for reference only, but should not be viewed as formal interpretations.

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¹⁴ In an interview with *Phap Luat Tp. Ho Chi Minh* (Ho Chi Minh City Law) Newspapers on 26 December 2008 (http://www.phapluattp.vn/news/nha-nuoc/view.aspx?news_id=238160), Mr. Le Manh Hai, Director of the Department of Information and Communications of Ho Chi Min City, said that there remain a lot of points unclear under the Circular, and to implement the new rules, further guidelines should be introduced. Otherwise, it is also difficult for the regulatory authorities in enforcement of the rules.

¹⁵ To replace Decree No. 56/2006/ND-CP dated 06 June 2006 on penalties for administrative offences in the fields of culture and information.

¹⁶ Read the interview at: http://www.phapluattp.vn/news/nha-nuoc/view.aspx?news_id=238061 (Vietnamese only). Please advise if you need us to translate into English.



CONTACT

For further information or any inquiries, please contact

Dang The Duc | Managing Partner

T +848 3823 9640 | E duc.dang@indochinecounsel.com

or

Nguyen Thi Hong Anh | Senior Associate, Head of IP & Technology Practice Group

T +848 3823 9640 | E anh.nguyen@indochinecounsel.com

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