

**Cyber Security Law  
to Tighten Network Operators  
and Users Supervision**

The draft Cyber Security Law (the “Draft”), which was released to solicit public comments recently, aims to strengthen supervision over cyber security. Measures as proposed by the Draft will influence not only network operators directly, but also users and all public sectors.

**I. Definition of network operators is broad**

The Draft defines “network operators”, who will undertake major cyber security obligations, as “owners and administrators of network, and network service providers which use the network owned or administrated by others to provide relevant services, including basic telecommunication operators, network information service providers and important information system operators.”

**II. Network operators bear obligations to safeguard cyber security**

The Draft reveals obligations of network operators to safeguard network operation security, including formulating internal security administration system and operation rules; taking monitoring measures to record and track network operation; not installing malware in products, informing users of security defects and bugs and taking remedial actions; and providing regular security maintenance services for their products and services.

In general, network operators can comply with the obligations of formulating internal security administration rules and monitoring network operation. However, network operators always ignore users’ right to know security defects and bugs and fail to provide regular security maintenance services for their products and services. The Draft suggests a heavy punishment for violation of the abovementioned obligations: a network operator who refuses to correct its behaviors will be fined RMB 50,000 to RMB 500,000 and its officer in charge will face a fine ranging from RMB 10,000 to RMB 100,000.

Network operators are also required to provide

**网络安全法（草案）要求更  
严监管网络运营者和用户**

处于公开征求意见阶段的《网络安全法（草案）》（以下简称“《草案》”）加强了对网络安全的监管，《草案》中的诸多措施不仅直接影响网络运营者，同时也会影响到网络用户以及社会生活的各个方面。

**一、 网络运营者定义宽泛**

《草案》规定网络运营者为其主要义务主体，并将其定义为“网络的所有者、管理者以及利用他人所有或者管理的网络提供相关服务的网络服务提供者，包括基础电信运营者、网络信息服务提供者、重要信息系统运营者等。”

**二、 网络运营者保障网络安全的义务**

《草案》规定了网络经营者一系列保障网络运营安全的义务，包括制定内部安全管理制度和操作规则；采取监控措施，记录、跟踪网络运行状态；不得设置恶意程序；及时告知用户网络漏洞和风险，并采取补救措施；为产品和服务提供定期安全维护。

在现实情况下，网络运营者一般能够履行制定安全管理规则并及时监控网络运行状态的义务，但是往往会忽视用户对于安全漏洞和风险的知情权，并且对其提供的产品和服务缺乏定期安全维护。《草案》对于此类违法行为规定了较大的处罚力度，拒不改正的将面临五到五十万元的罚款，而其直接负责的主管人员也可能需要缴纳一到十万元的罚款。

在网络运营者自行维护和保障网络运营安全的同时，为网络运营者和国家安全及侦查犯罪的需要，也应当积极配合和协助侦查机关展开各项行动。

**三、 关键信息基础设施实施重点保护**

《草案》规定，国家实行网络安全等级保护制度，对于提供公共通信、广播电视传输等服务的基础信息网络，能源、交通、水利、金融等重要行业和供电、供

<p>necessary assistance and support to investigation authorities for the needs of national security and investigating crimes.</p> <p><b>III. Key information infrastructure facilities require special protections</b></p> <p>The Draft classifies protection system of cyber security. The base information network that provides public communication, broadcasting and television transmission services, the important information systems in key industries like energy sources, transportation, water conservancy, finance etc., and in public service sectors including water, power and gas supply, medical treatment and social security, the military networks, government networks of state organs of cities divided into districts or higher levels, and the networks and systems owned or administrated by network service providers with a large number of users shall be preferentially protected. The above-mentioned networks and systems are defined as key information infrastructure facilities.</p> <p>The Draft requires special protection measures for the key information infrastructure facilities, including (1) to establish special security organization and staffs, strengthen training, data backup, and formulate emergency response plan; (2) to store important data within the territory; (3) to examine and assess the network security on a yearly basis; and (4) to run mandatory security review.</p> <p>It is clear that once networks and systems of a network operator are determined as key information infrastructure facilities, the network operator will bear more responsibilities and obligations. Except for networks and systems in public service sectors and networks and systems of military and government authorities, the Draft fails to provide specific definition of “internet service providers with a large number of users”. Which kind of enterprises will be deemed as “internet service providers with a large number of users” is still an issue which needs more discussions.</p> <p><b>IV. Users are required to offer real identity while network operators have obligations to protect users’ information</b></p>	<p>水、供气、医疗卫生、社会保障等公共服务领域的重要信息系统，军事网络，设区的市级以上国家机关等政务网络，用户数量众多的网络服务提供者所有或者管理的网络和系统实行重点保护。此类网络和系统被定义为关键信息基础设施。</p> <p>《草案》明确了对关键信息基础设施的重点保护措施，包括：（1）设置专门安保机构和人员、强化训练、数据备份、制定应急预案；（2）重要数据储存地原则上限制在境内；（3）年度安全性检测评估；（4）强制安全审查。</p> <p>明显的是，一旦网络运营者所运营的网络和系统被认定为关键信息基础设施，该网络运营者需要承担更多的责任和义务。除了公共服务领域、军事、政府机关的网络和系统，《草案》并未对“用户数量众多的网络服务者”进行明确定义，何种企业会被认定为此类关键信息基础设施的运营者，仍然是需要讨论和解决的问题。</p> <p><b>四、 用户需提供真实身份信息；网络运营者对用户信息的保护义务</b></p> <p>《草案》在法律层面上明确了网络用户实名制的要求，其规定提供网络接入、域名注册、办理固话和移动电话入网手续以及信息发布等服务的网络运营者应当要求用户提供真实身份信息。</p> <p>《草案》要求网络运营者在收集使用用户信息时，应当遵循合法、正当和必要的原则，并应当经过被收集者的明确同意，同时公开其收集、使用规则。并且网络运营者对用户信息应严格保密，不得泄露、篡改、损毁，不得出售或者非法向他人提供。这里的用户信息被定义为，以电子或其他方式记录的公民个人身份信息以及其他能够单独或者与其他信息结合能够识别公民个人身份的各种信息。</p> <p><b>五、 用户发布信息受网络运营者管理</b></p> <p>《草案》规定网络运营者应加强对用户发布信息的管理，发现用户发布法律、行政法规禁止发布或者传输的信息的，应当立即停止传输该信息，采取删除等处置措施，防止信息扩散，保存有关记录，并</p>
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<p>The Draft underlines that network operators providing internet access, domain name registration, phone and mobile phone access network and information release services shall require their users to offer real identity.</p> <p>The Draft further emphasizes that, while collecting and using information of users, a network operator shall state the purpose, method and scope of such collection and use, and obtain users' consent. A network operator is not allowed to disclose, tamper, destroy, sell or illegally provide to others users' information. The users' information is defined as citizens' personal identity information and other information recorded electronically or in other methods that, alone or combined with other information, is capable of identifying the users.</p> <p><b>V. Users' information release will be under strict supervision of network operators</b></p> <p>The Draft requires network operators to strengthen supervisions over users' information release. Once a network operator discovers that its users release or transmit information that is prohibited by laws and relevant regulations, it should immediately stop such information transmission, take measures to remove the information, prevent diffusion, save records and report to relevant authorities.</p> <p>Punishments like fine, business suspension, website shutdown and withdrawal of business license will be imposed on a network operator who is in violation of the aforesaid obligations.</p>		<p>向有关主管部门报告。</p> <p>违反上述规定的网络运营者将面临轻则罚款，重则停业整顿、关闭网站、吊销执照等处罚。</p> <p>© 上海胡光律师事务所 Martin Hu &amp; Partners Attorneys at Law</p> <p>This Newsletter is only offered for the purpose of sharing information. It discusses legal developments and should not be regarded as legal advice for specific situations. If you wish to obtain more information, please contact us at <a href="mailto:info@mhplawyer.com">info@mhplawyer.com</a>.</p> <p>本文仅为信息分享之目的提供，任何内容均不构成胡光律师事务所的任何法律意见或建议。如需了解更多信息，欢迎联系胡光律师事务所 (<a href="mailto:info@mhplawyer.com">info@mhplawyer.com</a>)</p>
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