INTRODUCTION

With the ever growing penetration of the Internet into everyday life, online child protection is an increasing concern in China. By June 2015, there were 668 million Internet users in China, accounting for 48.8% of the population.\(^1\) Of them, 1.8% was below 10 years old, and 23.8% was between 10-19 years old.\(^2\) And more than two thirds of teenagers between 10-19 years old use Internet. Compared with other Internet users, teenagers are much more active in exploring the Web, entertaining themselves with music, games, audio-video and literature.\(^3\) They are curious about the world as it is represented online. And they are naïve. A recent study showed that 60.1% Chinese Internet users under 24 years old reported intuitive belief in online materials and 54.6% of them thought of the Internet as safe.\(^4\) The study also demonstrated that with age, teenagers' trust in cyberspace reduced. As their parents cannot screen all sorts of unhealthy content beforehand, it is important to enact and enforce child protection laws so as to protect the future of the society. Internet service providers ("ISPs") are technologically equipped to stop online pornography, violent

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3 See id.
4 See id.
contents and other illicit materials, and thus are required to police the content flow in their service under Chinese laws. Otherwise, they will face direct or intermediary liabilities.

I. CHILD PROTECTION LAWS IN CHINA

Child protection is thought of highly in China. Children are compared to flowers and called Zu guo de hua duo (祖国的花朵) [Flowers of Motherland]. Chairman Mao once said:

The world is yours, as well as ours, but in the last analysis, it is yours. You young people, full of vigor and vitality, are in the bloom of life, like the sun at eight or nine in the morning. Our hope is placed on you. The world belongs to you. China's future belongs to you.5

After the poignant Cultural Revolution, this idea is still widely recognized and enshrined in the Chinese Constitution.6 Article 49 proclaims that "[m]arriage, the family and mother and child are protected by the State." Paragraph 2 of Article 46 pronounced that “[t]he State promotes the all-round development of children and young people, morally, intellectually and physically.” Furthermore, Quan guo ren min dai biao da hui chang wu wei yuan hui (全国人民代表大会常务委员会) [National People's Congress Standing Committee] (hereafter “NPCSC”) ratified the Convention


on the Rights of the Child as early as in 1991, when China was still a poor developing country.

In the same year, the NPCSC enacted The Law on the Protection of Minors of P. R. China (hereafter “Minors Protection Law”). This law fleshes out the general provisions in the Constitutional Law. “Minors”, as defined by Article 2 of this law, are citizens under the age of eighteen. Minors have the following rights:

Minors shall enjoy the right to life, the right to development, the right to being protected and the right to participation, and the State gives them special and preferential protection in light of the characteristics of their physical and mental development and ensures the inviolability of their lawful rights and interests. Minors shall enjoy the right to education, and the State, society, schools and families shall respect and protect such right.

Minors shall, regardless of their sex, ethnic status, race, family property background and religious belief, enjoy their rights equally in accordance with law.

It is the common responsibility of the entire society to protect minors' interests, including "State organs, armed forces, political parties, public organizations, enterprises and institutions, self-governing organizations of a mass character at grass-roots level in urban and rural areas, guardians of minors and other adult citizens". The Minors Protection Law empowers everyone to fight against unlawful acts harming minors. Article 6, paragraph 2 states:

Any organization or individual shall have the right to discourage a person from infringing upon a minor’s lawful rights and interests,
stop such infringement, or report or make an accusation against it to the department concerned.

In the protection of minors, the following principles shall be followed: (1) respecting the personal dignity of minors; (2) following the laws which govern the minors' physical and mental development and the characteristics of such development; and (3) combining education with protection.\(^{10}\)

To safeguard children from illicit materials, Article 34 of the Minors Protection Law stipulates:

All units and individuals are prohibited from selling, renting, or disseminating by any other means, to minors the books, newspapers, periodicals, audio-visual products, electronic publications and network information of pornography, violence, murder, terrorism, gambling, etc. which are pernicious to minors.\(^{11}\)

When these illicit contents appear online, ISPs have duty to police. For instance, Article 56 (7) of the Regulation on Telecommunications of the People’s Republic of China\(^ {12}\) prohibits anyone from making, reproducing, publicizing and disseminating "obscenity, pornography, force, brutality and terror or crime-abetting". Article 15 (7)......
of the Administrative Measures on Internet Information Services of P.R. China\textsuperscript{13} provides that Internet information service providers shall not produce, reproduce, distribute or disseminate information that includes contents, \textit{inter alia}, that "disseminates obscenity, pornography, gambling, violence, homicide and terror, or incites crime". Article 16 (7) of the Interim Provisions on the Administration of Internet Culture\textsuperscript{14} forbids entities from supplying any cultural product containing contents that "propagates obscenity, gambling, violence or instigates crimes."

ISPs who violate these regulations will face administrative penalties, including administrative license suspension or revocation. They may even incur criminal punishment. Article 363, paragraph 1 of the Criminal Law of the People’s Republic of China (hereinafter “Criminal Law”)\textsuperscript{15} criminalizes for-profit dissemination of pornographic materials (conventionally called \textit{Chuan bo yin hui wu pin mou li zui} (传播淫秽物品牟利罪) [For-Profit Porn Dissemination Offense]):

\begin{quote}
Whoever produce, reproduce, publish, sell, or disseminate obscene materials with the purpose of making profits are to be sentenced to three years or fewer in prison or put under criminal punishment.
\end{quote}


\textsuperscript{14} Hu lian wang wen hua guan li zan xing gui ding (《互联网文化管理暂行规定》) [Interim Provisions on the Administration of Internet Culture] (promulgated by Zhonghua Renmin Gongheguo wen hua bu (中华人民共和国文化部) [Ministry of Culture of P.R. China], Mar.4, 2003, effective July 1, 2003); amended Feb.11, 2011, effective Apr.1, 2011, \textit{translated at} Bei da fa bao (北大法宝) [pkulaw.cn] CLI.4.147100 (EN).

detention or surveillance, in addition to be fined. If the circumstances are serious, they are to be sentenced to three to 10 years in prison in addition to be fined. If the circumstances are extraordinarily serious, they are to be sentenced to 10 years or more in prison or given life sentence, in addition to be fined or confiscated of property.

And Article 364 criminalizes all dissemination of pornographic materials even where there is no for-profit purpose (conventionally called *Chuan bo yin hui wu pin zui* (传播淫秽物品罪) [Porn Dissemination Offense]):

Whoever disseminates pornographic materials including books, periodicals, movies, video-audio tapes and pictures, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than two years, criminal detention or public surveillance.

Whoever arranges for shows of pornographic audio-video products including movies and video-tapes shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.

Whoever produces or duplicates pornographic audio-video products including movies and video-tapes and arranges for their show shall be given a heavier punishment in accordance with the provisions of the second paragraph of this Article.

Whoever disseminates pornographic materials to a minor under the age of 18 shall be given a heavier punishment.

These provisions are too general to be administrable. In particular, the standards for assessing the "serious circumstances" and "extraordinarily serious circumstances" are left undefined. To combat fast growing online pornography, *Zui gao ren min fa yuan* (最高人民法院) [Supreme People's Court] and *Zuigao ren min jian cha yuan* (最高人民检察院) [Supreme People's Procuratorate] issued the Supreme People's Court and
Supreme People's Procuratorate's Joint Judicial Interpretation on Law Application in Criminal Cases of Making, Reproducing, Publishing, Selling and Spreading Pornographic Electronic Information by Means of the Internet, Terminal of Mobile Communications and Sound Message Stations (hereafter "Joint Judicial Interpretation (I)") in 2004,\(^{16}\) and supplemented this interpretation in 2010 (hereafter "Joint Judicial Interpretation (II)").\(^{17}\) These two judicial interpretations have specified the standards of finding criminal liability under Article 363, paragraph 1 and Article 364 of the Criminal Law, and are of equal force to them.\(^{18}\) They will be discussed later in Section II.

Chinese laws even prohibit Internet cafés from admitting teenagers categorically, while it is possible to restrict their access by designating special computers or websites. The Article 36 of the Minors Protection Law provides:

> It is prohibited to establish, on the periphery of secondary and
primary schools, commercial song and dance recreation halls or places for commercial internet services which are not appropriate for minors to take part in the activities there. Minors shall be refused admission to the places, such as commercial song and dance recreation halls and commercial internet service centers which are not appropriate for minors to take part in the activities there, and the operators of such places shall put up the signs of no admittance to minors at noticeable places; where it is difficult to tell whether a person is an adult, the person shall be required to show his identification certificate.

Those who illegally admit adolescents to cyber cafés will be punished seriously. According the Ministry of Culture of P. R. China's Order on Aggravating Punishment on Illegally Admitting Minors to Internet Cafés, the license for operating Internet cafés will be revoked in the following circumstances: (1) when an Internet café admit more than three minors in one time, or admit one or more minors during time not allowed by regulations, or admit less than two minors but two or more times within one year; (2) when serious consequence is caused by illegally admitting minor(s) to an Internet café. The Ministry of Culture reiterated this regulation in October 2015 when three teenagers were found in an Internet cafés hiding out from policemen after they had robbed and killed a teacher in Hunan Province.

Additionally, juvenile delinquents are treated with care. Law on Prevention of Juvenile Delinquency provides that:

Administration of juvenile justice shall focus on education,
guidance and reformation, and adhere to the principle that punishment must be subordinate education.\footnote{Article 44 of Law on Prevention of Juvenile Delinquency.}

The juvenile accused are tried by special courts and under protective procedures:

Trials of juvenile offending shall be conducted by juvenile tribunals and by judges or \textit{Ren min pei shen yuan} \textit{(人民陪审员)} [people's assessors] who are familiar with the physical and mental characteristics of juveniles.

No cases involving criminal offenses committed by juveniles who were less than 18 years old shall be heard in public.\footnote{Article 45, para.1-2, of Law on Prevention of Juvenile Delinquency.}

When convicted, teenagers are treated specially. The Article 47 of Law of Prevention of Juvenile Delinquency requires:

Parents and other guardians of juvenile delinquents, schools, \textit{Cheng shi ju min wei yuan hui} \textit{(城市居民委员会)} [urban community residents' committees], \textit{Nong cun ju min wei yuan hui} \textit{(农村居民委员会)} [rural community residents' committees] shall take effective measures to help educate juveniles who are \textit{Bu yu xing shi chu fa (不予刑事处罚)} [exempted from criminal penalties] for being less than 16 years old, or juveniles who are \textit{Mian yu xing shi chu fa (免于刑事处罚)} [not held to criminal liabilities], or are held to non-imprisonment criminal liabilities, or \textit{Huan xing (缓刑)} [on probation], or \textit{Jia shi (假释)}[on parole], in order to assist judicial organs in a successful educating and reforming the juveniles.

To ensure juvenile delinquents' rehabilitation, the Article 48 of Law of Prevention of Juvenile Delinquency provides:

Juvenile delinquents who are exempted from criminal penalties, or ordered non-imprisonment criminal penalties, or are probated
or paroled, or those delinquents whose criminal punishment have executed, shall enjoy equal rights with other juveniles in going back to school and receiving education and in employment; no entity or individual may discriminate against them.

Their personal information must not be used for undue publicity:

For juvenile offending, no names, dwelling places, photos nor information from which the juveniles may be identified may be disclosed in news reports, film and television programs and publications.\(^{23}\)

An ISP who violates this regulation may be fined and even subject to administrative license suspension or revocation. This point will be discussed in Section III.

II. INTERNET PORNOGRAPHY AND ISP'S LIABILITIES

There is a massive increase of Internet pornography in China. In 2014, the Chinese agencies accepted 82,402 reports of online obscene materials.\(^{24}\) In the Clean Net Campaign 2015, agencies shut down 280,000 websites for disseminating illicit materials and removed more than 10 million posts of obscene contents.\(^{25}\) This year, in Zhejiang sheng (浙江省) [Zhejiang Province] alone, the agencies cracked down on 2,640 websites for circulating pernicious information, and screened and removed more than 1,160,000 posts of pornographic materials.\(^{26}\)

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\(^{23}\) Article 45, para.3, of Law on Prevention of Juvenile Delinquency.


Mobile Internet pornography is rampant. Mobile apps are used to disseminate pornographic materials through messaging platforms such as video-sharing app Weipai (微拍) [micro video], a mobile video-sharing and social networking platform, and instant messaging services mobile QQ and Wei xin (微信) [WeChat]. To deter mobile Internet pornography, China's National Anti-Pornography and Anti-Illlegal Publications Office (hereafter "NAPAPO") published 24 exemplar porn crackdowns on December 28, 2015. In these cases, massive pornographic materials were distributed through mobile apps.28

Mobile Internet pornography poses special threat to teenagers.29 While teens are under supervision of their parents at home and of their teachers at school, and excluded from Internet Cafes, they may conveniently access the Internet through mobile devices such as smart phones and tablets anywhere and anytime. To strengthen child protection, NAPAPO launched the first "Hu miaoxing dong" (护苗 2015 行动)29

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27 Quan guo sao huang da fei ban gong shi (全国扫黄打非办公室) [NAPAPO]. NAPAPO is under the State Administration of Press, Publication, Radio, Film and Television of P.R. China. The National Anti-Pornography and Anti-illegal publication working group is under the Propaganda and Ideological Work Directorate of the Communist Party of China (CPC) Central Committee, working with 27 departments and agencies including Propaganda Department of the CPC Central Committee; Committee of Political Science and Law under the CPC Central Committee; State Commission Office of Public Sectors Reform; Office of the Central Leading Group for Cyberspace Affairs (Cyberspace Administration of China); General Office of the State Council of P.R. China; Supreme People's Court; Supreme People's Procuratorate; Ministry of Education of P.R. China; Ministry of Public Security of P.R. China; Ministry of State Security of P.R. China; Ministry of Civil Affairs of P.R. China; Ministry of Finance of P.R. China; Ministry of Housing and Urban-Rural Construction of P.R. China; Ministry of Transport of P.R. China; Ministry of Culture of P.R. China, General Administration of Customs of P.R. China; State Administration For Industry And Commerce of P. R. China; State Administration of Press, Publication, Radio, Film and Television of P.R. China; National Copyright Bureau of P.R. China; National Tourism Bureau of P.R. China; Civil Aviation Administration of P.R. China; State Post Bureau of P.R. China; Beijing Municipal Committee of the CPC and so on.


A. Administrative Penalties for ISP's Violation of Pornography Regulations

While ISPs are not required to police online infringement of private rights, they have duty to identify and remove pornographic materials under the regulations cited in Section I of this paper. There are general rules governing online infringement of private rights, in particular Article 36 of the Law on Tort Liabilities Law of the People’s Republic of China (hereafter “LTL”). According to Article 36, paragraph 3 of the LTL, ISPs who know network users are infringing other's rights through their service but fail to take necessary corrective measures must be jointly and severally liable with the wrongdoer. For the purpose of this provision, "knowledge" includes not only actual knowledge but also constructive knowledge. Where the ISP should have known that a network user was infringing another's personal rights, he is deemed to have knowledge of the infringement and thus is under a duty to take corrective measure to avoid joint and several liability. Nevertheless, Chinese courts are cautious in finding constructive knowledge for online intermediary liabilities for

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30 See supra note 25.
32 See Article 36 of the LTL:

[...] Where a user engages in online infringing activity, a right holder so harmed has a right to notify the corresponding service provider, requesting the latter to take necessary measures, such as deleting, screening, removing, references or links to the online infringing material or activity. Where the service provider upon receipt of the notification fails to take prompt measures, the service provider shall be jointly liable for the harm resulted from this failure.

When the service provider knows that a user injuries other person's rights and interests and does not take necessary measures, the service providers shall be jointly liable with the user.
ISPs. For instance, in Ma Weiying v. Weimeng Kechuang Network Tech. Co., Ltd., the defendant provided a blog service and was accused of defamation. The court held that:

The defendant provides a platform and channel for users to communicate ideas. To safeguard smooth operation of such platforms and channels, it is not suitable to demand such Internet service providers to organize, screen and police the contents, for they lack the capabilities. Meanwhile, to protect rights and lawful interests of natural and legal persons, when an ISP know an Internet user is doing infringement or tort against other’s rights or lawful interests, it must take necessary measures. But the knowledge on the part of the ISP must be assessed according to the cognizant capability of a normal reasonable person. In the present case, the disputed blog did not include any obvious vilifying, insulting, denigrating or tarnishing words … … the defendant could not learn that the disputed blog infringed any private rights……

This reasoning is widely accepted. It is safe to say that Chinese courts normally consider that an ISP does not have an *ex ante* duty to police online torts infringing on personal rights.34

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33 Ma Weiying su Beijing Weimeng ke chuang ke wang luo ji shu you xian gong si deng ming yu quan jiu fen an (马伟英诉北京微梦创科网络技术有限公司等名誉权纠纷案) [Ma Weiying v. Weimeng Kechuang (Beijing) Network Tech. Co., Ltd.] Bei da fa bao (北大法宝) [pkulaw.cn] CLI.C.2680424, (Zhejiang sheng shao xing shi yue cheng qu ren min fa yuan (浙江省绍兴市越城区人民法院) [Zhejiang Province Shaoxing City Dist. Ct.] 2012).

34 See, e.g., Shanghai mi chun yi liao si yu xian gong si you xian gong si deng ming yu quan jiu fen shang su an (上海密纯饮料食品有限公司与北京奇虎科技有限公司等名誉权纠纷上诉案) [Michun (Shanghai) Beverage & Food Co. Ltd. v. Qihu (Beijing) Tech. Co. Ltd., et al.], Bei da fa bao (北大法宝) [pkulaw.cn] CLI.C.4275913, (Shanghai shi di er zhong ji ren min fa yuan (上海市第二中级人民法院) [Shanghai No. 2 Interm. People's Ct.] 2015); Beijing Baidu wang xu ke ji you xian gong si you xian gong si deng ming yu quan jiu fen shang su an (北京百度网讯科技有限公司与殷虹名誉权、人格权侵权纠纷上诉案) [Yin Hong v. Baidu (Beijing) Network Information Co. Ltd.], Bei da fa bao (北大法宝) [pkulaw.cn] CLI.C.1765615, Shanghai shi di er zhong ji ren min fa yuan (上海市第二中级人民法院) [Shanghai No.2 Interm. People's Ct.] 2009).
On the other hand, ISPs who fail to remove pornographic materials from their service may incur administrative penalties, even though they do not produce or upload illicit content. In the exemplar cases published by NAPAPO during the Child Protection Campaign 2015, the ISPs did not upload or save obscene contents but only provided cloud storage service. Their users uploaded the illicit contents and charged fees for access to them, and thus were convicted of For-Profits Porn Dissemination Offense. Nevertheless, the ISPs were admonished and ordered to take corrective measures within prescribed periods of time. The NAPAPO made clear its policy:

ISPs have social responsibilities and should act responsibly. When adopting new technology, they should take supporting management and preventive measures to check disseminating of illicit contents. Big well-known websites should establish and enhance censoring system, being an example in identifying and removing obscene and other harmful information.

Where an ISP refuses to take corrective measures, NAPAPO reaffirmed that it is subject to administrative license suspension or revocation.

For instance, Momo (陌陌), a free location-based services instant messaging application for smart phones and tablets (much like Skout) were imposed penalties for

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pornographic materials in its service. Momo started as one of several location-based
dating apps in China back in 2011, once widely viewed as China’s favorite flirty chat application.38 The application grew to 73.0 million monthly active users (MAUs) in September 2015 and its membership subscription revenues reached $16.0 million in the third quarter of 2015.39 Since 2014, there were tip-offs that there was massive pornographic information on Momo groups (just like Twitter groups) and Momo message boards. Momo was fined RMB 60,000 Yuan (approximate 9,000 USD) and ordered to take corrective measures to: (1) shut down the groups and boards where obscene information was disseminated and remove obscene words, images and videos; (2) screen all user's groups and message boards, remove obscene contents, and close those groups and boards which host Huan qi (换妻) [wife swap], Yi ye qing (一夜情) [One-night stand], Tong cheng yue pao (同城约炮) [city dating] and similar subject matter; (3) disable users from uploading videos; (4) report its measures to the authority and make an apology to the public.

In another instance, Sina, a popular Chinese Internet portal, was penalized twice in 2013 for disseminating indecent content. In 2014, Sina hired several authors and published their novels. Two of the novels were found to be pornographic and the authors later were convicted of producing and disseminating pornography for profit. The Sina employee directly responsible for the matter was also accused and sentenced one and half years' imprisonment and fined RMB 6,000 Yuan (about 920 US

dollars). Moreover, the agency found another 20 works lewd and four videos obscene. Then, Sina was fined RMB 5,040,000 Yuan (about 766,080 US dollars) and its licenses for Internet publication and audio-video dissemination were both revoked. This Sina case was reported as an exemplar one during the Jing wang 2014 (净网2014) [Clean Net Campaign 2014].

Through porn crackdowns, Chinese ISPs are now serious about fighting Internet pornography. On October 30, 2015, six major Chinese ISPs, Alibaba, Sina, Momo, Baidu (Chinese leading search engine), Tencent (Chinese leading instant messaging service provider) and Youku (Chinese leading video sharing application) made a joint statement of commitment Guan yu Qing lang wang luo huang jing, wen ming wang luo xing wei de lian he chang yi (《关于“清朗网络环境,文明网络行为”的联合倡议》) [Statement of Commitment to Clean Internet], reaffirming their social responsibilities for a healthy Internet and commitment to combat Internet pornography.

B. Criminal Liability for ISP's Violation of Pornography Regulations.

Where ISPs knowingly contribute to disseminating pornography through their service, the executives responsible for the dissemination might well be penalized as

conspirators for offending Article 363, paragraph 1 (For-Profit Porn Dissemination Offense) or Article 364, paragraph 1 (Porn Dissemination Offense) of the Criminal Law. The Article 7 of the Joint Judicial Interpretation (I) provides that:

Where anyone knowingly render aid of links, server trusteeship, network memory space, communications transmission channels, and expenditure settlement for other people for their committing such crimes of making, reproducing, publishing, selling or spreading pornographic electronic information, the person-in-charge who is directly responsible and other person directly responsible shall be subject to the punishment for conspiracy.

Courts will find that an ISP "knows" of the dissemination of pornography under the following circumstances unless the ISP can find evidence to rebut:

[1] Committing the offense even after receiving a written notice from the competent administrative organ;

[2] Failing to fulfill statutory management duties after receiving a tip-off;

[3] Providing such services as internet access, server hosting, network memory space, communication transmission channels, fee collection agency and cost settlement for pornographic websites, with the service fees charged being obviously higher than the market price;

[4] Publishing advertisements in pornographic websites and the click rate of advertisements is obviously abnormal; or

[5] Any other circumstances under which the actor may be deemed to have knowingly committed the offense.43

As a conspirator, an ISP's criminal liability for porn dissemination is closely linked to the actor who initiates the pornographic dissemination. The threshold to be convicted of For-Profit Porn Dissemination Crime is not high. According to Article 1 of Joint Judicial Interpretation (I), whoever makes, reproduces, publishes, sells, or spreads

43 See Article 8 of Joint Judicial Interpretation (I).
pornographic electronic information *for profits* by means of the internet or terminal of mobile communications, chatting room, forums, instant communications software, or emails, and has any of the following circumstances, will be convicted and punished under Article 363, paragraph 1:

[1] Making, reproducing, publishing, selling or spreading pornographic films, performances, motion pictures and other video documents for more than 20;

[2] Making, reproducing, publishing, selling or spreading pornographic audio documents for more than 100;

[3] Making, reproducing, publishing, selling or spreading pornographic electronic publications, pictures, articles, and short messages, etc. for more than 200;

[4] The pornographic electronic information made, copied, published, sold or spread by him is clicked for more than 10 thousand times;

[5] Publishing, selling or spreading pornographic electronic information by way of membership, and the registered members are more than 200 persons;

[6] Collecting advertising fees, membership registration fees or other fees by means of pornographic electronic information, and the illegal gains obtained are more than RMB 10 thousand Yuan;

[7] Although the said quantity or amount has not reached the standards as prescribed in Item (1) to (5) of paragraph 1 of the article 1 or more;

[8] Resulting in serious consequences.

Those who engage in the above mentioned criminal conduct without a profit motive may still be convicted and punished under Article 364, paragraph 1 of the Criminal Law, if:

[1] The quantity has reached to two times the standards as prescribed in item (1) to (5) of paragraph 1 of the article 1 or more;
The quantity has reached to two standards of item (1) to (5) of paragraph 1 of the article 1 or more; or

Resulting in serious consequences.\(^4^4\)

To protect children, where pornography targets an adolescent audience or involves teenagers below 18 years old, criminal penalties will be aggravated.\(^4^5\) Additionally, the threshold for finding criminal liability is lowered by almost one-half where child pornography is involved. Article 1, paragraph 2 of Joint Judicial Interpretation (II) provides:

Under any of the following circumstances, whoever, for profits, produces, reproduces, publishes, sells or disseminates pornographic electronic information involving any minors under the age of 14 via the Internet or any mobile communication terminal shall be convicted of and punished for the crime of producing, reproducing, publishing, selling or disseminating pornographic items for profits in accordance with paragraph 1 of Article 363 of the Criminal Law:

1. Producing, reproducing, publishing, selling or disseminating 10 or more pornographic cinematic, performance, motion picture or other video files;
2. Producing, reproducing, publishing, selling or disseminating 50 or more pornographic audio files;
3. Producing, reproducing, publishing, selling or disseminating 100 or more pornographic electronic publications, pictures, articles, etc.;
4. Producing, reproducing, publishing, selling or disseminating pornographic electronic information with the click number reaching 5,000 or more;
5. Publishing, selling or disseminating pornographic electronic information in the manner of membership, with the registered members being 100 or more;
6. Charging advertising fees, membership registration fees or other fees by making use of pornographic electronic

\(^4^4\) Article 3 of Joint Judicial Interpretation (I).
\(^4^5\) See Article 6 (2)-(3) of Joint Judicial Interpretation (I).
information, with the illegal gains being RMB 5,000 Yuan or more;

[7] The quantities or amounts failing to reach the respective standards as prescribed in subparagraphs 1 to 6 hereof but reaching 50% of the standards as prescribed in two or more of the said subparagraphs respectively; or


And Article 2, paragraph 2 of Joint Judicial Interpretation (II) provides:

Under any of the following circumstances, whoever disseminates pornographic electronic information involving any minors under the age of 14 via the Internet or any mobile communication terminal shall be convicted of and punished for the crime of disseminating pornographic items in accordance with paragraph 1 of Article 364 of the Criminal Law:

[1] The quantity reaches 2 times the corresponding standard as prescribed in subparagraphs 1 to 5 of paragraph 2 of Article 1;

[2] The quantities respectively reach the standards in two or more of subparagraphs 1 to 5 of paragraph 2 of Article 1; or


These thresholds serve as the baseline to assess an ISP's criminal liability for the For-Profit Porn Dissemination Offense and the Porn Dissemination Offense. The Article 4 of Joint Judicial Interpretation (II) provides:

Where, for profits, the founder or directly responsible manager of a website, knowing that any other person is producing, reproducing, publishing, selling or disseminating pornographic electronic information, allows or connives at the person's publishing such information on the website or webpage owned or managed by the founder or manager, under any of the following circumstances, the founder or manager shall be convicted of and punished for the crime of disseminating pornographic items for profits in accordance with paragraph 1 of Article 363 of the Criminal Law:
The quantity or amount reaches 5 times the corresponding standard as prescribed in subparagraphs 1 to 6 of paragraph 2 of Article 1; or

The quantities or amounts respectively reach 2 times the respective standards in two or more of subparagraphs 1 to 6 of paragraph 2 of Article 1; or

Causing serious consequences.

And the Article 5 of Joint Judicial Interpretation (II) provides:

Where the founder or directly responsible manager of a website, knowing that any other person is producing, reproducing, publishing, selling or disseminating pornographic electronic information, allows or connives at the person's publishing such information on the website or webpage owned or managed by the founder or manager, under any of the following circumstances, the founder or manager shall be convicted of and punished for the crime of disseminating pornographic items in accordance with paragraph 1 of Article 364 of the Criminal Law:

The quantity reaches 10 times the corresponding standard as prescribed in subparagraphs 1 to 5 of paragraph 2 of Article 1; or

The quantities respectively reach 5 times the standards in two or more of subparagraphs 1 to 5 of paragraph 2 of Article 1; or

Causing serious consequences.

Those who knowingly provide direct links to pornographic electronic information on websites or web pages under their control, the quantity for the purpose of assessing the offenses under Article 363 and 364 of the Criminal Law shall be computed in light of the kinds of pornographic electronic information linked.46

While there are few cases involving ISP's criminal liability for disseminating pornography, the Kuai bo (快播) [QVOD] case is exceptional. On February 7, 2015, four executives with Shenzhen shi kuai bo ke ji you xian gong si (深圳市快播科技有限

46 Article 4 of Joint Judicial Interpretation (I).
Shenzhen QVOD Technology Co., including the chief executive officer Wang Xin, were indicted in Beijing for disseminating pornography on the Internet for profit. The company was founded in 2007, offering peer-to-peer video streaming technology for its users to share videos. Its user base once reached 300 million. In December 2013, more than 3,000 obscene videos were found in its servers. In April 2014, it was forced to shut down the QVOD (quasi video on demand) servers when Zhonghua Renmin Gongheguo Guo jia ban quan ju (中华人民共和国国家版权局) [National Copyright Administration of P.R. China] found massive copyright infringements in its service. The company was fined RMB 260 million Yuan (about 41.6 million USD). In May, the company was suspected of disseminating porn materials for profit. Several employees were arrested and the chief executive officer fled China. Then, NAPAPO propagandized the case intensively, highlighting its determination to crack down on Internet pornography. In June, the company's license for value-added telecommunication service was revoked. In August 2014, the chief executive was arrested.

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The trial of this high profile case generated intense debate.\textsuperscript{50} The two day long trial was broadcast live on the Internet. There was evidence that of the 29,841 videos saved on servers run by QVOD, 21,251 were found to be pornographic (accounting for more than 70%) and could be accessed by Internet users at large. The lawyers for the accused maintained that technology was innocent, arguing that:

QVOD was simply a tool used to play videos, and its functions are just like a DVD player. Even though it has been used by others to watch or spread pornography, the responsibility should lie with those users, rather than the defendants.\textsuperscript{51}

Furthermore, the accused argued that there was no legal requirement that software developers guarantee the users of their products were not involved in possible illegal acts. According to the lawyers:

From the perspective of the criminal law, QVOD, as a video service provider, is not required to conduct substantive examinations about whether the video content is illegal. That duty belongs to the organs of state power, such as the public security department.\textsuperscript{52}

The accused also claimed that QVOD had established a filtering and reporting system to prevent users from uploading and watching porn videos. The prosecutors countered that QVOD did have such a duty to police its service under the Administrative Provisions on Internet Audio-Visual Program Service,\textsuperscript{53} promulgated by Guo jia guang bo dian ying dian shi zong ju (国家广播电影电视总局) [former State

\begin{itemize}
    \item \textsuperscript{51} See id.
\end{itemize}
Broadcasting, Film & TV Administration of P.R. China] and Zhonghua Renmin Gongheguo Xin xi chan ye bu (中华人民共和国信息产业部) [Ministry of Information of P.R. China]. According to Article 16 (7) of this regulation, no audio-visual program may "induce minors to commit violation of laws and crimes, or exaggerating violence, sex, gambling or terrorist activities."

This case is still pending judgment. The accused might well be convicted. First, the obscene videos were found in QVOD's servers and could be accessed by the general public. QVOD was acting as an independent source for making the illicit materials available to the public, not merely an innocent media player. QVOD might well be found to have disseminated pornographic electronic information by means of the Internet. According to Article 2 of the Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in Hearing Civil Dispute Cases Involving Infringement of the Right of Dissemination through Information Networks, a network user or a network service provider engages disseminating contents through information network

if the work, performance, audio or video recording is placed on an information network by means such as uploading to a network server, file sharing settings or using file sharing software, allowing the general public to download, browse or otherwise obtain the work, performance, audio or video recording at the time and place chosen individually.

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54 See supra note 51.
Therefore, it should be of no avail for QVOD to assert that those pornographic contents were uploaded by QVOD's users and were not produced and initiated by QVOD itself. Second, even though QVOD might not know whether a specific video was indecent or not, it should never turn a willfully blind eye to the pornographic contents in its servers, as there were more than 70% were obscene. There are regulations governing sexual content online and QVOD was required to comply with them.

III. JUVENILE'S PRIVACY AND ISP'S LIABILITIES

The personal data of juvenile delinquents is not allowed to be exploited by the mass media. In juvenile justice, treatment and rehabilitation plays an important role. United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) reiterates that:

Youthful behavior or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood.56

Treatment and rehabilitation will be difficult where the juvenile's privacy and personal data are exploited by mass media. As such, Article 8 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") requires that:

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labeling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.57

In juvenile justice, China has made remarkable progress and greatly respects juveniles' right to privacy. Juvenile criminal offenders are handled under protective procedures. The Criminal Procedures Law of P. R. China, \(^{58}\) when amended in 2012, set forth the special chapter: Criminal Procedures for Juvenile Crimes. Article 266 of this law maintains that the principal purpose for juvenile justice is not punishment but education, treatment and rehabilitation. To further this objective, the privacy and personal data of juvenile offenders are kept away from public eyes. Where the accused is less than 18 years old, the case are not tried in public. \(^{59}\) If juvenile offenders were under 18 years when they committed the offense and were sentenced to imprisonment for five years or less, their criminal records will be sealed and kept confidential. \(^{60}\) Only those authorized by law may have access to those records, \(^{61}\) and they are under the duty to keep them confidential after having learned them. \(^{62}\) In practices, cases of juvenile offenders are routinely heard by juvenile tribunals in China. The first Chinese juvenile tribunal was established in Shanghai City in 1984, more than 30 years ago. Now there are 2,253 juvenile tribunals and 7,200 specialized judges across the country. Over the decades, they heard more than 1,500,000 juvenile offenses. Furthermore, the Supreme People's Procuratorate has established a special office to handle juvenile crimes recently. \(^{63}\) Statistics show that since 2002 the rate for

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59 Article 274 of Criminal Procedures Law of P.R China.
60 Article 275 of Criminal Procedures Law of P.R China.
repeat juvenile offender is less than 2%, and since 2007 there is continuing decline in juvenile offenses.

However, China is experiencing an epidemic of school bullying. In 2012, one study was done to measure the prevalence of bullying behaviors among Chinese adolescents. Of the total 8,342 middle school students surveyed in four cities in the Guangdong Province, 20.83% were involved in bullying behaviors, 18.99% were victims of bullying, 8.60% were bullies themselves, and 6.74% both were bullied themselves and bullied others as well. Furthermore, more than 30 serious bullying cases have been reported by the Chinese media in 2015. In one case, four middle school students beat another boy and burned him with cigarette butts. The whole process was videotaped and posted online, leading to a public outrage. Chinese schools responded to most of these incidents by penalizing perpetrators with a mark on their school record. They are widely blamed for not taking effective measures. And
there are calls for intervention.\textsuperscript{72}

The personal data and privacy of the victims of school bullying should not be exploited by mass media. Otherwise, the victim, being labeled, might be harassed again and live a shadowy life thereafter. Where appalling videos of school bullying are posted online, they may encourage adolescent to imitate bullying.\textsuperscript{73}

The juvenile's right to privacy and personal data is likely to be infringed, especially in news reporting on juvenile crime and school bullying. With increasing online news reports covering juvenile crimes and school bullying, \textit{Guo jia hu lian wang xin xi ban gong shi} (国家互联网信息办公室) [Cyberspace Administration of China, hereafter CAC] promulgated the \textit{Guan yu jin yi bu jia qiang dui wang shang wei cheng nian ren fan zui he qi ling shi jian bao dao guan li de tong zhi} (《关于进一步加强对网上未成年犯罪和欺凌事件报道管理的通知》) [Decree on Strengthening Regulation on Online News Reporting for Juvenile Crimes and Bullying] on June 30, 2015. The decree requires that all media should give priority to children's rights and interests.

\textsuperscript{71} See Xin hua wang (新华网) [English.news.cn], Cheng zhang de hui si de dai zi sheng wei cheng nian ren qi ling ("Grey area" of School Education are Breeding Ground for Juvenile Bullying), published on July 10, 2015, available at: http://news.xinhuanet.com/comments/2015-07/10/c_1115877387.htm (last visited on Feb.2, 2016); Zhong guo wen ming wang (中国文明网)[wenming.cn], Jin jue xiao yuan qi ling hai xia zhi (禁绝“校园欺凌”还需法治给力) (Legislation is need to check school bullying), published on May 18, 2015, available at: http://www.wenming.cn/wmpl_pd/yczl/201505/t20150518_2619168.shtml (last visited on Feb.2, 2016);

\textsuperscript{72} Zhongguo fa yuan wang (中国法院网) [Chinacourt.org], Ying gai you ge fan xiao yuan qi ling de ji zhi (应该有个“反校园欺凌”机制) [Measures should be taken to combat school bullying], published Jan. 5, 2016, available at: http://www.chinacourt.org/article/detail/2016/01/id/1780609.shtml (last visited on Feb.2, 2016); Zhongguo min zhu cu jin hui (中国民主促进会) [www.mj.org.cn], Guan yu xiao yu qi ling shi jian de fa lü gan yu de jian yi (关于校园欺凌事件的法律干预的建议) [proposal for intervention in school bullying], published on Aug. 21, 2015, available at: http://www.mj.org.cn/lxzn/content/2015-08/21/content_191118.htm (last visited on Feb.2, 2016).

when reporting juvenile offenses and school bullying. In principle, websites should only post those news reports on juvenile crime and school bullying produced by the news agencies under the central government. Otherwise, such postings must be approved by the chief editor of the websites. Those news reports should not appear on the homepage, take a predominant place on the website, or be recommended in blogs, message boards, bulletins, video blogs and other online arenas. Neither should they be compiled into special edition publications. In such reporting, obscene or violent photos and videos are prohibited, and favorable or lively portrayals of school corporal punishment, humiliation, violence and juvenile delinquency are not allowed. The reporting should not reveal the juveniles' personal data, such as name, residence, photo and any other information which could be used to identify relevant adolescents. Furthermore, websites shall police their service. Where Internet users on their own initiative upload contents about juvenile offending or bullying, websites should remove them expeditiously. The decree stresses that any violating websites will be admonished, fined, or subject to administrative license suspension or revocation.