

Trusting E-Commerce in China: The Role of the Rule of Law and the Rule of Ethics

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I. INTRODUCTION: THE STATE OF E-COMMERCE IN CHINA

In the past decade, the Internet and E-commerce have been introduced into China, and have been growing rapidly. In 1997, there were only 670,000 Internet users.¹ In 1999, they jumped to 2.1 million.² A survey report released by the China Internet Network Information Center (CNNIC) showed that in 2000, there were 8.92 million computers having access to Internet, and there are 22.5 million Internet users in China, with 265,405 "WWW" sites with suffixes such as .cn., com., net and .org.³ The Chinese Academy of Electronic Information Industry Development estimates that the number of Internet users in China will grow to 27 million in 2001.⁴ Some sources are even more optimistic. "China is estimated to become the largest Internet market in the world (374 million users by the end of 2005)."⁵ The growth of Internet culture is so fast and influential that a very popular greeting among the common people, "have you hooked-up to Internet?" has replaced the traditional greeting of thousands of years, "Chi le ma? (have you eaten?)"⁶ In 2000, Chinese Ecommerce revenue reached 77.16 billion yuan (US\$9.32 billion), of which B2B (business to business) trade brought in 76.77 billion yuan (US\$9.27 billion), B2C (business to consumer) trade brought in 390 million yuan (US\$ 47.1 million).⁷ There is, in short, great potential for E-commerce development in China.

Chinese consumers, however, are still not as active as their American counterparts in online shopping, despite the fact that the number of Internet users is doubling every six months. The Reports and Statistics of China's Internet Development in 1999 indicated that "85 per cent of interviewees said they would purchase goods online when the conditions were ripe. Nevertheless, they would only buy small commodities such as books, tapes, or videos. The quality of goods, safety and convenience of payment are major worries for potential online purchasers."⁸

This tepid attitude toward online shopping on the part of consumers does not change even when the group of Internet users expands further. According to the semiannual survey report on the development of China's Internet released by China Internet Network Information Center (CNNIC) in January 2001, Ecommerce security is one of the Internet users' concerns. In 2000, only 31.67% of the interviewees had purchased Commodities or services via Internet and only 8.64% of the interviewees had purchased commodities via auction web sites.⁹ The motivations for online shopping vary from timesaving to curiosity. Most frequently bought products and services are books and magazines, and computer appliances.¹⁰

The percentage of online shoppers is even smaller according to another source. A 2000 survey conducted by Beijing-based Analysis Consulting Ltd. in Beijing, Shanghai and Guangzhou -- China's

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most wired cities -- shows, no more than ten per cent of Internet users have purchased products on the web in August, September and October of 2000.¹¹ Not surprisingly, B2C market only accounts for 0.5 per cent among the whole Ecommerce revenue in 2000. Consequently, although there were 667 B2C dotcoms in early 2000, only 205 survived after mergers, acquisitions, and bankruptcies depleted their numbers by the end of 2000.¹²

There are many barriers on the road to E-commerce growth in China, including slow access speed, high prices, insufficient Chinese language information on the web, inability to protect personal privacy, and poor ISPs (Internet Service Providers).¹³ Additionally, China lacks a standard credit system and an effective express network, the two critical elements for the operation of e-commerce.¹⁴ It appears, however, that the major reason for unease is simply that many Chinese Internet users do not trust the e-commerce and are dissatisfied with the current service available in E-commerce world. As the CNNIC survey indicated, 15.68% had experienced delayed goods shipping after their order and payment.¹⁵ Only 1.76% of the interviewees were quite satisfied with online shopping and only 25.96% of the interviewees were satisfied with online shopping, while 51.24% of the interviewees felt ambivalent toward it, 17.17% of the interviewees were unsatisfied with it, and 3.87% of the interviewees are quite unsatisfied.¹⁶ For more expensive goods, the level of confidence is even less. 55.45% of the interviewees prefer cash and carry for goods of over RMB 1000 yuan (US\$ 120) and only 8.03% of the interviewees prefer online payment.¹⁷ 31.20% of the interviewees said that "security can not be guaranteed," 32.03% of the interviewees said that "the quality of products, service after the delivery, and credit of the producer can not be guaranteed," 12.59% of the interviewees complained about inconvenient payment procedures, 9.86% of the interviewees complained that delivery is slow, 7.39% of the interviewees complained about unattractive prices, and 5.91% of the interviewees complained about unreliable information.¹⁸

The small percentage of Internet users shopping online, the majority of online shoppers' dissatisfaction with E-business, the overall concerns about the security and reliability of online shopping and the E-business' credibility simply reflect the basic fact that consumers and customers do not have strong and sufficient trust in ecommerce corporations and the Internet as a whole. Businesses do not trust consumers either. For instance, a senior executive from an E-business admitted that, "we can deliver goods only when we make sure the payments has been transferred to our account. Unfortunately, this process is not under our control and could last weeks."¹⁹ As a result, E-business's distrust of consumers and customers reinforce the latter's distrust of E-business, because the latter has no good reason to extend trust to the former when the former insists on delivering goods only after grabbing hard currency. It is not surprising that, "doubtful of the safety of payment online through credit cards, many online buyers in China tend to choose slower, inefficient, yet safer methods of remittance."²⁰ Obviously, the threats to safety not only come from third parties (i.e. hackers), but also from the contracting parties in the eyes of the consumers and customers. As one would say in China, no one would be able to relax and sit back when they step on the thin ice floating on the river. E-commerce is just the thin ice floating on the river as long as there is insufficient trust among E-commerce parties.

II. THE ROLE OF ETHICS AND LAW IN TRUST-BUILDING

A. Hard Trust, Good Trust, and Real Trust

Our use of the word “trust” is not accidental. Trust is an Internet buzzword these days. Companies such as Microsoft talk establishing trust.²¹ The Napster-Bertlensen deal trades on a notion of trust, this one dealing more with the protection of artists and their works so they can trust putting their intellectual property on the market.²² Management strategists write about placing trust at the center of a company’s Internet strategy so as to encourage repeat business from customers.²³ The focus on trust also drives governmental action as well.²⁴ How governments and businesses can devise ways to encourage people to trust e-commerce thus seems to be at the heart of Internet thinking.

But what is it? What is trust and how does a company achieve it? If companies are not careful about how they go about reaching a goal of trust, it may well create a kind of trust that is different from what company stakeholders are looking for or if they avoid this mismatch, they may underinclude the issues that comprise trust. Trust always entails at least one party being vulnerable to the actions of the another and therefore depends upon, relies on, or trusts that other party to not exploit that vulnerability.²⁵ Yet trust is not only about respecting standards of behavior, it is also about specific bordering and marketing strategies that are necessary to establish who is to be trusted, when, and how. Accordingly, we propose, perhaps idiosyncratically, three kinds of trust: Hard Trust, Real Trust, and Good Trust.

Hard Trust is concerned with bordering. Who are the parties that are part of a transaction? Hard Trust can be a legislative action where a sovereign establishes borders or enacts rules that require compliance.²⁶ When government has not acted, however, the key to Hard Trust is technology, particularly encryption. Encryption allows parties to a transaction to keep others out of the transaction.²⁷ Thus, encryption used for privacy keeps personal information away from those the transactors do not want to have it.²⁸ Encryption used for contractual purposes, such as digital signatures, assures that one is dealing with the partners one wants to deal with.²⁹ Digital signatures *keep out* those who want to impersonate a contractual partner.³⁰ Encryption used for the protection of Intellectual Property, prevents illicit duplication of protected material.³¹ Hard Trust, therefore, is about creating borders. It creates confidence that the business is dealing *only* with the parties one wishes to contract with. In short, Hard Trust results when either a sovereign clearly defines, patrols, and enforces burdens or, when this sovereign action is not present, parties define, patrol and enforce borders for themselves.³²

The second kind of trust is Real Trust. Real Trust is concerned with creating reliable relationships. It is the kind of trust that business literature most frequently deals with.³³ The idea underlying Real Trust is that customers, in particular, have reason to rely on the businesses that conduct commerce over the Internet.³⁴ In this regard, companies that state a privacy policy and abide by it, that provide and assure security for credit card transactions, that ship reliably, and that provide a place for customers to call with questions all lead to customers becoming comfortable with doing business over the Internet.³⁵ These tactics, which are certainly not exhaustive, build Real Trust in the market.³⁶ Companies that do these things are more likely to attract repeat business from satisfied contractual partners.³⁷ If they do not, market forces will punish them.³⁸

Real Trust depends upon the ability of some parties to hold a company accountable for its promises and practices. While the market is one mechanism for doing so, the law has always been a second mechanism. Thus, laws regarding warranties, product defects, and even criminal regulations all make companies more accountable and in doing so, provide customers with the assurance that they have resources to make the company accountable.

The final type of trust is Good Trust. Good Trust goes beyond Real Trust to provide almost an intimate kind of assurance that the person on the other side other computer screen is benefited by one's own well-being.³⁹ This is a kind of trust that trades on a self-interest in which the understanding of the *self* is far more complex than that of an economic transacting partner.⁴⁰ In a non-economic setting, families or members of a religious organization find a joy in the well-being of others.⁴¹ Human beings, being persons when on the job, still have these dispositions when they walk through the door at work or whether they log onto the Internet. The heart of ethical knowledge comes from these interactions with other people when we can understand the consequence of our actions and learn that our well-being is tied up with the well-being of others.⁴² The places where these interactions occur are known as *mediating institutions* and they are indispensable for the development of moral knowledge and the orientation of ethical business behavior.⁴³

The Internet is a double-edged sword in achieving this knowledge and orienting this behavior: It both connects and separates individuals from the consequence of their actions.⁴⁴ Yet, if one is to build a corporate environment in which values such as promise-keeping and truth-telling are important, and they are important in creating Real Trust, then corporations must also look to how those working for them inculcate these virtues on a regular basis. As a result, the ethical notions of Good Trust, in which one's personal dignity is valued at work, becomes important to the company as well.⁴⁵ However, how do these ideas of trust manifest themselves in Chinese E-Commerce?

B. Toshiba in China: A Case Study of Trust

In 1999, Toshiba agreed to pay 500,000 Toshiba laptop users in the United States a total of US\$1.05 billion in compensation because of a possible defect.⁴⁶ Toshiba did not take a similar action, however, in China. Some Chinese Toshiba laptop users' distrust were sparked by news released on May 8 on a Beijing-based news web site, 21DNN, that reported Toshiba had refused to compensate Chinese consumers for a disk drive flaw in their laptop computers that could cause a loss of data.⁴⁷ Toshiba Vice-President Masaichi Koga did not recall the products; instead he only rhetorically offered to do "everything" to help its Chinese laptop purchasers except provide compensation.⁴⁸ Toshiba asserted it took a strong stand against Chinese consumers because China does not have concrete laws, Hard Trust, concerning this kind of compensation as does the United States.⁴⁹ Consumers thought Toshiba's apathetic attitude towards Chinese customers was in stark contrast to what it did for its American customers.⁵⁰ Toshiba implicitly confirmed the defect, or at least its concern that consumers would think there was a defect, because it did compensate its US customers.⁵¹ Moreover, the firm did agree to offer Chinese customers a software patch to fix the disk, but it appears to have been done only after the domestic media held Toshiba accountable.

Three Toshiba laptop users have since filed a lawsuit with Beijing's No 1 Intermediate People's Court demanding compensation of 80,000 yuan (US\$9,600).⁵² It is also reported that more than 100 Toshiba laptop consumers from Northeast China have organized a class-action lawsuit to seek compensation from the Japanese company.⁵³ On May 30, 2000, a special group of attorneys from Long An Law Firm, Feng Lian Law Firm, and Gao Peng Law Firm, representing a group of Toshiba laptop users in filed suit in Beijing's No 1 Intermediate People's Court demanding compensation from Toshiba.⁵⁴ This attorney group also notified all Chinese users of Toshiba laptops that, each and every Toshiba user residing the Mainland China, who purchased Toshiba laptops within the category of computer flaw could use this attorney group to represent the users without charge.⁵⁵ The stakes are high; Toshiba has sold more than 200,000 laptops in China.⁵⁶ If all the consumers join this litigation, it will probably become a large class action since the enactment of the 1991 Civil Procedure Law in China.

The Hard Trust dimension of the Toshiba case appears because of the borderless nature of cyberspace. Because it is unclear as to what jurisdiction would control the alleged product defect, Toshiba places in its contracts a choice of law clause that indicates that disputes will be resolved in a jurisdiction of Toshiba's choosing.⁵⁷ In short, Toshiba creates a border, which mandates how issues on its "territory" will be resolved. Two important upshots result from this. First, it is open to question whether other determiners of sovereign borders should step in to make clear what jurisdiction controls. This could be done by unilateral, bi-lateral, multilateral, or even global treaties. As of yet, however, such treaties are embryonic. Second, in its current guise, many constituents, such as consumers in China, may justifiably believe that submitting a dispute to a court overseas is imposing a burden. As a result, there is a moral question concerning the extent to which Toshiba's bordering strategy is fair to those affected by it. Thus, Hard Trust provides degrees of certainty as to what rules apply, but by itself is not sufficient to create Real Trust.

The Real Trust dimension of the Toshiba case concerns the economic and liability mechanisms to make Toshiba accountable regardless of what borders it wishes to build. Is there an ability to enforce a warranty against a product defect? If the answer is yes, then a consumer in China will know that they can depend on the product or at least have claims concerning defects heard. The Toshiba case illustrates the struggle of legal systems, in this case, China's, to impose accountability on a company whose physical presence is somewhat elusive. If this is the case, one would not expect consumers to place significant trust in the product or the company. Similarly, if there are viable options for consumers to choose from, then economic accountability will encourage Toshiba to stand behind its products or risk losing market share to a competitor. If, however, there is no viable substitute available, then consumers have few weapons, assuming they need or desire a computer, to assure that the computer they purchase is reliable. Without that dependability, trust suffers as it appears to have in the Toshiba case.

Good Trust may not be present at all in the Toshiba case. As we have already noted, Good Trust results when individuals view their identity as tied up with the well-being of others. Typically, this will occur with ongoing relationships and those kinds of relationships are particularly impossible for a mass market distribution to international consumers. Mediating institutions work is typically opposed to the

supposition that personal relationships can be developed in a bureaucratic, mass-marketed manner.⁵⁸ Good Trust is more subtle, although no less critical set of practices whereby Toshiba, as a corporate community, commits to honesty, trustworthy behavior as a matter of its identity and as a matter of empathy and solidarity to those who are members of the community.⁵⁹ If this is learned by habit, then it is more likely that these traits can be extended to external stakeholders as well.⁶⁰ Although we propose that this is a valid, separate analytical category, there is not enough evidence of Toshiba's practices to know the extent to which they practice building Good Trust.

To create the three types of trust requires engagement with a variety of constituents so that not only do consumers and customers trust E-business, but that E-Business trusts consumers and customers. In addition to mutual trust between and among the direct E-commerce contracting parties, the Internet itself should also be capable of meeting the reasonable expectations of E-commerce contracting parties, and be able to win their trust. Because of the complexities of these issues, it makes sense to subcategorize trust into these three, somewhat analytically distinct layers: Hard Trust, Real Trust and Good Trust. Hard Trust requires eliminating the dangers from third parties who intrude on a relationship (including hackers) other than the direct e-commerce contracting parties, Real Trust requires holding the parties accountable for their actions, and the Good Trust requires building higher level of trust among the whole e-commerce community at either national or international level.

C. The Fundamental Role of the Rule of Law in Trust-Building

E-commerce parties do not have any links of friends, relatives, neighbors, country folks, or business partners to guarantee the credibility of their contracting parties sitting on the computers of thousands of miles away. Because of this, trust may well be a component more relevant to internal corporate practices without the cross-cultural bonds of mediating institutions, at least at this time and place in history. It is likely then that the rule of law at national, international, and even interpersonal levels is necessarily the most effective guarantor of the integrity of an e-commerce transaction.

While the Rule of Law has been established in the US for more than two centuries, it was written into Chinese Constitution only in March 1999, although the notation of "legal system," which generally implies *rule by law*, has been used for decades.⁶¹ Considering thousands of years of tradition utilizing *rule of person* (instead of *rule of law*) in China, there is a long way to go to build Rule of Law in modern cyberspace, including reforming the current legal system to support e-commerce development, to encourage fair, free and sufficient e-commerce competition, and to protect consumers and other e-commerce stakeholders, especially the vulnerable groups in the cyberspace.⁶² As China enters WTO and increases Internet use, China is expected to incorporate western business law standards from the West although this transplanting process may be rather gradual and slow.⁶³

D. The Role of the Rule of Ethics in Trust-building Process: Confucianism

Technology may provide bordering mechanisms to clarify what rules apply in a given transaction, but contracting cannot governing all the aspects of business affairs. Legal rules must be somewhat general and broad, given the substantial governmental weight behind a sanction and given the myriad,

variable situations that arise in human affairs. Even the most intelligent legislators and judges are unlikely to be able to create legal rules sufficiently detailed enough to guarantee trust of e-commerce in a new virtual world. This is not to say, however, that China's culture is without important resources for detailing a Rule of Ethics applicable to the Internet. Chinese history, particularly through the moral precepts of Confucianism, also provides a lens through which E-Commerce can be analyzed.

In China, there are rich traditional cultural and historical resources to be used to build sound cyberethics. One of the lasting and strong traditional thoughts for this purpose is Confucianism. Confucius (551 BC-479 BC) was originally a scholar and philosopher.⁶⁴ His philosophy is comprehensive, and has produced influential impacts on Chinese society for over two thousand years. Despite an uneven history of its development, Confucianism began to be established as the unique guiding thought since the era of Han Wu Emperor of Xi Han Dynasty.⁶⁵ This emperor decided to abolish all the other schools of thought, and considered Confucius as the only respectable philosophy.⁶⁶ It also paved the road to Confucianization of law.⁶⁷ As Professor Zhang Jinfan indicated, so called "Confucianization of law" refers to the penetration of ethics (LI) into the domain of law (FA), and the final integration of ethics and law.⁶⁸ It took about 800 years from XI Han Dynasty to Tang Dynasty for the Confucianization of law to unfold; namely, fully by being institutionalized into written law, especially Tang Code in Tang Dynasty.⁶⁹

Although Confucius himself was once a judge, he did not encourage people to go to court for dispute resolution. Confucius himself expressed this argument very clearly: "In hearing litigation, I am just like other judges. What is necessary, however, is to cause the people to have no litigation."⁷⁰ Fan, a learned subsequent commentator, interpreted the no-litigation admonition as "the purpose of hearing a case is to resolve the dispute itself, and block the sources giving rise to disputes."⁷¹ Yang also noted that, "Confucius did not consider hearing cases as a difficult job, rather considered no-litigation among and between the people as the most fundamental issue."⁷²

Confucius' no-litigation attitude has greatly influenced Chinese mainstream legal philosophy at both official and grass-roots levels in Chinese legal history.⁷³ Not only does the general populace try to avoid litigation, but also the ruling class considered diminishing litigation as one of their governing goals.⁷⁴ Thus, the number of cases served as an important yardstick to evaluate the political performance of the local officials. For example, Han Yanshou, a governor of Dongjun in Xi Han Dynasty, attributed the higher number private litigation suits to inadequate building of morality.⁷⁵ For this reason, he confined himself to his home, re-examining his own faults for giving rise to the disputes.⁷⁶ Consequently, the litigation parties also deeply blamed themselves and eventually, twenty-four counties within his jurisdiction witnessed no further litigation within his term.⁷⁷

Why does Confucianism so enthusiastically pursue a utopia with no litigation? In his relationship-oriented theoretical framework, Confucius paid special emphasis on the significance of "ethics (DE) building"⁷⁸ for the people who want to become superior men (JUN ZI).⁷⁹ To justify his priority to ethical or moral discipline over legal discipline or punishment, Confucius made a comparison between these two categories: "If the people are led by laws, and uniformity sought to be given them by punishments, they will try to avoid the punishment, but have no sense of shame".⁸⁰ However, "If they be led by virtue, and uniformity sought to be given them by the rules of propriety, they will have the

sense of shame, and moreover will become good."⁸¹ Therefore, it makes sense for people to pay more attention to virtue building than to legal discipline.

Additionally, virtue building is also the most intelligent choice for the governing class. As he put it vividly, "he who governs by means of his virtue may be compared to the north polar star, which keeps its place and all the stars turn towards it."⁸² To guide the people to become morally superior, Confucius and his followers gave a great number of guidelines. "The superior man thinks of virtue; the small man thinks of comfort. The superior man thinks of the sanctions of law; the small man thinks of favors which he may receive."⁸³ "He who acts with a constant view to his own advantage will be much murmured against."⁸⁴ "The mind of the superior man is conversant with righteousness; the mind of the mean man is conversant with gain."⁸⁵ "The superior man wishes to be slow in his speech and earnest in his conduct."⁸⁶ "I daily examine myself on three issues: whether I have been faithful in transacting business for other people; whether I have been honest in dealing with friends; whether I have understood and practiced the instructions of my teacher."⁸⁷

Through Confucius's elaboration, it is clear that ethical requirements are broader, more aspirational and more comprehensive than legal requirements; no qualified superior man would be satisfied with only complying with less rigorous legal requirements. Such a characteristic thus remains the fundamental difference between superior man and mean man or small man (XIAO REN). Once people transform themselves into superior men, the whole society will be in harmony and peace, and disputes in society will become less and less.

It is obvious, in Confucius's time, that virtue or morality should play the dominant and leading role in society, while law should play supportive and supplementary role in assisting the process of ethics building. When virtue or morality plays the dominant and leading role in society, disputes and litigations will naturally be eliminated. Although Confucius could not have been able to imagine the mushrooming e-commerce over the Internet of today at his age, he would argue that ethics should also play a fundamental role in ensuring a peaceful, secure and harmonious virtual e-commerce world. As Confucius said, "Virtue is not left to stand alone. He who practices it will have neighbors."⁸⁸

In a linkage with Good Trust and Real Trust, E-businesses that take social responsibility toward their e-commerce partners and stakeholders may ultimately benefit from their ethical performance in terms of optimal and long-term profits and good reputation, because e-commerce partners and stakeholders may offer the business opportunities to the E-business they trust.⁸⁹ One would expect, then, that a Confucian approach would emphasize two particular E-Commerce strategies. First, to encourage contractual agreements, Hard Trust, that cause parties to settle disputes without going to court or at least to minimize court redress and second, to encourage virtuous behavior, Good Trust, so that individuals take responsibilities for their own actions.

The one element that needs to be added to this mixture is Real Trust. It should be added in two ways. First, there needs to be mechanisms for accountability so that Hard Trust agreements, such as in the Toshiba case, are not unfair. Second, there needs to be structures that actually do encourage people, while at work, to develop virtue. In the field of business ethics, the model of Business as Mediating Institution is a model that proposes to develop this organizational structure.⁹⁰ This model has been

described in detail elsewhere,⁹¹ so we will not elaborate on it here. It is important, however, to recognize that Confucius's model of developing organizational structures to encourage individual moral development can be blended with contemporary business ethics frameworks to produce a fuller way to create a wide-ranging trust. A full rendering of the connection between Good Trust and Confucianism would itself require a full paper and it would steer us away from the moral practical realities of Chinese e-commerce legal development. For the remainder of this paper then, we would like to sketch the specific Chinese e-commerce legislative scheme and relate it to two important elements of Real Trust: protection of privacy and defamation.

III. LEGAL FRAMEWORK OF E-COMMERCE IN CHINA

A. Access and Registration

On February 1, 1996, the State Council promulgated the Preliminary Regulations on Computer Information Network and Internet Management, which was amended on May 5, 1997. This statute established the State Information Leading Group, which has the responsibility to coordinate and to resolve critical Internet issues. Under the authorization from Article 5 of this Regulation, the office of the State Information Leading Group promulgated the Implementing Rules of the Preliminary Regulations on Computer Information Network and Internet Management on December 8, 1997. Under these two legal documents, all computer information networks must use the international information port of entry and exit provided by State Public Telecommunication Network and no entities or individuals may have access to Internet by other means.⁹² Any Internet users, whether individuals, corporations or other entities, can have access to the Internet via this access network.⁹³ If a corporation wants to provide Internet access service, it must satisfy statutory conditions⁹⁴ and obtain approval by government agencies.⁹⁵ Internet users must file a user registration form together with ID documents when they apply for Internet access service.⁹⁶ The China Internet Network Information Center (CNNIC) was authorized to provide IP address, domain name and to manage the index of Internet resources.⁹⁷

A second statute, The Regulation on Telecommunication, was promulgated by the State Council on September 20, 2000. It regulates basic telecommunication business and value-added telecommunication business.⁹⁸ The Annex of this Regulation classifies value-added telecommunication service as email, voice mailbox, online information storage and index, electronic data exchange, online data processing and transaction processing, value-added fax, Internet access service, Internet content service, video conferencing service.⁹⁹ In addition to paying attention to the telecommunication security including Internet security, this Regulation lays down the prerequisites to engage in value-added telecommunication service¹⁰⁰ and the approval procedure for it.¹⁰¹

Given the significance of information content control over the Internet, government agencies promulgated several administrative instruments to apply the statutory scheme. Those who wish to provide news coverage over the Internet must comply with several complex regulations. For instance, the State Council promulgated the Internet Information Service Regulation on September 25, 2000.¹⁰² Later, the Ministry of Information Industry ("MII") promulgated the Regulations on Internet Bulletin

Board Service Administration on October 8, 2000, and the State Office of News and the MII together promulgated the Preliminary Administrative Regulations on Publication of News on Internet Web sites on November 6, 2000.¹⁰³

Under the Internet Information Service Regulation, approval from the MII or local telecommunication authorities at the provisional level is required for the Internet information service providers operating for a profit,¹⁰⁴ while registration at the above-mentioned agencies is required for the Internet information service providers for non-profit purpose.¹⁰⁵ No person is allowed to Internet information service without approval or registration.¹⁰⁶ Prior to the approval or registration procedure, the Internet information service providers must also receive approval from competent government agencies (including news and publication, education, health and medication) depending on the categories of the information to be provided.¹⁰⁷ Additionally, Internet information service providers of news, publication and bulletin board service are required to record the content of the information provided, the time that the information is disclosed, web site or domain name; the Internet access service providers are required to record the length of time the users spent online, user name, IP address or domain name, telephone number connected to the Internet.¹⁰⁸ Such records should be kept for at least 60 days, and should be offered to government agencies as requested.¹⁰⁹

On December 28, 2000, the Standing Committee of the National People's Congress passed the Decision on Ensuring Internet Security.¹¹⁰ This Decision confirmed the applicability of traditional criminal law, administrative law and civil law to cyberspace, and listed the unlawful acts to be imposed criminal penalties, civil liabilities and administrative law liabilities.¹¹¹

One of the themes of these above-mentioned legislative efforts is that they grant substantial monitoring powers to the government in pursuing the goal of information security, and make all these statutes look more like public law or administrative law, rather than private law or business law.¹¹² This approach does provide security for information;¹¹³ the disadvantage is that although there are strong government (including the Ministry of Public Security, the Ministry of Information Industry, and other industry government agencies) involvement, ebusiness-related self-regulation is still rather weak.

B. Application of Traditional Legal Principles to E-Commerce

There is also a substantial body of the traditional business law designed for traditional business transactions, including the General Principles of Civil Law of 1986,¹¹⁴ Consumer Protection Law of 1993,¹¹⁵ Products Quality Law of 1993,¹¹⁶ Anti-unfair Competition Law of 1993,¹¹⁷ Advertisement Law of 1994,¹¹⁸ and the Contract Law of 1999,¹¹⁹ applicable to ecommerce. For instance, online consumers still enjoy their ten central rights, including the right to personal safety in buying or using commodities or in receiving services, the right to correct information on the commodities they buy or use or on the services they receive, the right to choose their own commodities or services, the right to fair trade, the right to receive compensation for personal and property damages incurred as a result of the purchase and use of commodities or receipt of service, the right to form social groups to safeguard their legitimate rights and interests, the right to obtain knowledge related to consumption and to the

protection of their rights and interests, the right to demand respect of their personal dignity (including the right to privacy) and ethnic customs and habits, the right to exercise supervision over commodities, service and the process of consumer protection, and the right to punitive compensation from fraudulent dealer who refused to inform consumers.¹²⁰ For instance, under Article 49 of Consumer Protection law of 1993, if a consumer shops online, and he has had some doubts about, or even has been aware of fake products before his shopping, he is entitled to punitive compensation from dealer who refuses to inform consumer of this fact on the Internet.¹²¹

Of course, some of traditional business law rules may need proper interpretation when applied to e-commerce. Therefore, the Chinese legislature tends to refer the e-commerce transactions to the jurisdiction of traditional legal framework, and only introduces new special rules for e-commerce if the traditional legal framework is unable to govern.¹²² Sometimes, the legislation incorporates special rules for e-commerce parties, who otherwise would not be covered by traditional legal norms, in the traditional context of traditional business law, such as the Contract Law of 1999.¹²³ Sometimes, new rules are set forth in the special statutes, while traditional legislation is referred in these statutes. For instance, Beijing Authority on Industrial and Commercial Administration issued a Notice on Protecting Consumers in Ecommerce Transactions on June 28 of 2000.¹²⁴ Under this notice, consumers still enjoy the statutory rights recognized by Consumer Protection Law of 1993, and business corporations owe the statutory obligations towards consumers.¹²⁵

Additionally, new legal obligations on the part of business corporations are imposed. For instance, e-business should keep the electronic contracts for at least 2 years;¹²⁶ e-business should not mislead consumers by unfair competition tactics;¹²⁷ e-business should inform consumers of their real registered office, contact person and communication address, or place of transactions;¹²⁸ e-business should not make misleading advertisements on the Internet;¹²⁹ e-business should warrant that their products or services sold on the Internet should satisfy personal and property security requirements, and warn consumers of the potential hazards associated with the products or services and proper instructions for consumers to follow;¹³⁰ e-business should issue receipts to consumers;¹³¹ and e-businesses should register at Beijing Authority on Industrial and Commercial Administration for their ebusiness transactions, and post the registration mark on the organization's home page.¹³²

C. Hard Trust, Security, and the Regulation of Encryption

Although there is no comprehensive e-commerce legislation in China yet, there are substantial sources of law to support trust-building cause on the Internet. To the extent that, (pending national, regional, or even global legislation) Hard Trust results from the specification of contractual duties by private parties, a series of legislative initiatives have rapidly taken place to ensure the information security and reliability of Internet transmissions. On February 18, 1994, the State Council promulgated the Regulations on Computer Information System Security Protection.¹³³ This Regulation authorizes the Ministry of Public Security to be responsible for protecting the security of national computer information system, and authorizes the Ministry of State Security, the State Office for the Protection of State Secrets and other ministries responsible for protecting the security of computer information system within their jurisdiction.¹³⁴ This Regulation prohibits any entities or individuals to endanger the

interest of the State, collectives, and citizens by using computer information system.¹³⁵ This Regulation also stipulates the security protection rules, security supervision, and legal liabilities against computer virus making and other offenses or unlawful actions.¹³⁶ Pursuant to the authority conferred by this statute, the Ministry of Public Security promulgated the Computer Information Network and Internet Security Protection and Management Regulation in December 16, 1997.¹³⁷ This Regulation lists the types of information prohibited to produce, copy, view and disseminate, and lists the activities against computer information network security.¹³⁸ It further defines security safeguarding responsibilities of networked entities, Internet access providers and users.¹³⁹ To ensure control over encryption technologies, the State Council promulgated the Regulation of Commercial Encryption Codes on October 9, 1999.

As previously mentioned, many Internet users are very doubtful about security and privacy issues on online shopping.¹⁴⁰ Additionally, 44.66% of the interviewees reported that, their computers have been invaded or infringed, according to CNNIC survey in early 2001.¹⁴¹ According to another survey on the security of China's e-business in early 2000, 44 per cent of the 300 firms that were polled had their online information tampered with, and 40 per cent reported having been maliciously attacked.¹⁴² In response to these security challenges, many Internet users have adopted new technologies to ensure the security. As the CNNIC survey reveals, 38.11% of the interviewees are using passwords, 71.59% of them are using anti-virus soft wares, 64.67% of them are using firewall technology, 7.83% of them are using electronic signatures; only 4.58% of them do not adopt any method.¹⁴³ As far as E-businesses are concerned, slightly over 70 per cent of polled e-business in the survey on the security of China's e-business in early 2000, reported that they had used firewalls as security precautions, another 20 per cent said they installed security gateways.¹⁴⁴

A core component of trust for e-commerce is security. There will be no trust, if consumers or customers are doubtful about the confidentiality, authenticity and integrity of their communication with their transaction partners thousands of miles away. However, as Internet is driven by openness and high speed, its vulnerability is insecurity. Without proper security measures to protect the computers (including hardware and software), networks, and documents, it will be very easy for some people to intercept, tamper, hack, or forge transmission. The relationship between security and efficiency is an old topic for traditional commercial law, including contract law and negotiable instruments law.¹⁴⁵ Although efficiency is given due consideration, security is important as well. That is why both Chinese law and US law design complex rules for secured transactions.¹⁴⁶

The attainment and controllability of the desirable security technologies do not necessarily mean the problems puzzling e-commerce security could be solved for two reasons. First, the unlimited scientific and technological potential embedded in the human being makes it very easy for every most advanced security technology of today to be surpassed tomorrow. In other words, the same security technology, which could ensure e-commerce security today, will be probably unable to ensure e-commerce security tomorrow.¹⁴⁷ E-commerce parties are ill-advised to passively rely on out-of-date security technologies, which may be still sold as brand new security software or services. Second, like any technology, e-commerce security technology is a double-edged sword. On the one hand, security technology produces and reinforces e-commerce security; on the other hand, security technology may create another kind of insecurity. For instance, malicious people could use security technologies to

protect and expand their fraudulent or even criminal activities, like money laundry, copyright piracies, or gambling.¹⁴⁸ Thus, the acquisition, utilization and control of security technologies could damage both business interest and government interest in safeguarding justice, law and order.

Bearing in mind the potential risks and threats represented by Internet, the Chinese government has been playing an active role in ensuring the computer and Internet information security, especially in regulating security technologies. As in the US, commercial encryption technologies and software play a significant role in safeguarding the transmission and reception of E-commerce information over the Internet, and fight against online theft, fraud, vandalism and invasion of privacy in China.¹⁴⁹ In reality, the encryption technologies and software developed and manufactured in both overseas and China have already been used by some Internet users in China.¹⁵⁰ The Chinese government is very strict in regulating the commercial encryption code (CEC) technology with two major concerns in mind.

The first concern is the reliability of encryption technology from the perspective of the E-business interest, as fake or defective encryption technology may worsen the e-commerce security. The second concern is the controllability of encryption technology from the perspective of the government interest.¹⁵¹ As a senior official from the State Commission on Encryption Code Regulations (SCECR) argued that “the security of the CEC products developed and used by entities or individuals without SCECR approval can not be guaranteed, furthermore, such CEC products may mess the State code administration order. It also posed insecurity issues to use CEC products made overseas, which will not only harm the interest of the users, but also harm the national interest and security.”¹⁵² Since neither CEC products manufactured by Chinese corporations or individuals without government approval, nor CEC products made by overseas manufactures are trustworthy, the only trustworthy and reliable CEC products are made by Chinese manufactures appointed by government in the eye of Chinese government.

To justify the government control of CEC products, commercial encryption technologies, which refer to “the encryption products and technologies used in the encoding protection or security certification of information that is not part of State confidential information,” are defined as “State confidential information”¹⁵³ by Article 2 of the Regulation of Commercial Encryption Codes.¹⁵⁴ Thus, the State has exclusive regulatory powers over the research and development, manufacturing, sales and actual use of commercial encryption products.¹⁵⁵ The Regulation of Commercial Encryption Codes authorizes the SCECR and its offices as the national regulators of CECs.¹⁵⁶ Unlike the attitude of the Ninth Circuit of the US Supreme Court, which held that encryption source code is expression, and therefore classified as speech deserving of First Amendment protections in May 1999,¹⁵⁷ it appears that CEC technologies has nothing to do with the freedom of speech or expression from Chinese law perspective.

Overcoming the first layer of Chinese regulation of the research and development, and manufacturing is very difficult. Only the entities appointed by the SCECR may take the CEC research and development responsibility.¹⁵⁸ CEC research and development achievements are subject to inspection and certification by the experts selected by the SCECR based on CEC technological standards and norms.¹⁵⁹ When CEC technologies are transformed into products, only the entities appointed by the SCECR may manufacture the CEC products.¹⁶⁰ Before manufacturing, the categories

and models of CEC products to be manufactured must be approved by the SCECR, no manufacturing entity may manufacture CEC products exceeding the approved scope.¹⁶¹ After CEC products are produced, they must pass the quality inspections of inspection agencies appointed by the SCECR.¹⁶²

The second layer of regulation targets the distribution of CEC products. Only the entities appointed by the SCECR may distribute the CEC products.¹⁶³ The distributors must truthfully record the actual CEC product user's name, address, organization ID number (or resident ID number) and the use to which each CEC product is put. The distributors must also file the above information with the SCECR.¹⁶⁴ Facing with the flooding of foreign CEC products, the Regulation of Commercial Encryption Codes prohibits any entities or individuals to sell foreign CEC products, to import CEC products and equipment's containing CEC technologies, and requires that export of CEC products must be approved by the SCECR.¹⁶⁵ It is an ironic coincidence that, the US agreed to export US encryption software, formerly classified as military technologies, to non-government users without obtaining a license in 1999,¹⁶⁶ while China tightened the control of foreign encryption software import by enforcing the Regulation of Commercial Encryption Codes.

The third layer of regulation targets the use of CEC products. Only SCECR-approved CEC products may be used by entities or individuals. No entities or individuals may use self-made CEC products or CEC products made overseas.¹⁶⁷ Except for foreign consular and representative organizations, foreign organizations or individuals seeking to use CEC products or equipment containing CEC technologies within China must obtain approval from the SCECR.¹⁶⁸ Additionally, no entities or individuals may illegally attack CECs, nor are they allowed to use CECs to endanger national security and interests, to jeopardize public safety or to participate in other criminal activities.¹⁶⁹ To endorse the three layers of regulation mentioned above, penalties are also imposed for any breach of the Regulation of Commercial Encryption Codes.¹⁷⁰

The Regulation of Commercial Encryption Codes undoubtedly represents a typical model for government to take the responsibility to secure both Ecommerce interest security and government interest and national interest security. In contrast to US model which stresses on decentralized self-regulation by Ecommerce community, Chinese model pay great attention to centralized governmental regulation. Behind these two different models are there two different regulatory philosophies. The US model relies on the e-commerce community more than government agencies, because it believes the e-commerce community has stronger technology competence and business credibility than the government, while the Chinese model trusts the government, for it believes the government has more stronger regulatory competence and political credibility. Of course, these two conflicting philosophies are not necessarily in opposition. The US government agencies are also eager "to obtain decryption keys, or to implant recovery devices that ensure any encrypted message can be read by the government."¹⁷¹ If this becomes the reality, the US encryption policy will be very close to the position of Chinese government. At the same time, the Chinese business community is also gaining some self-regulatory powers in the transition process from planned economy to market economy, which implies that some regulatory power regarding encryption regulation will be transferred to E-commerce community.

In fact, both government regulation and business self-regulation are necessary to build the trust of consumers and users on the security and reliability of the encryption technology. One can confidently say that Internet users, especially consumers would not like to only reckon on either the credibility of the government or that of the e-commerce business. Thus, US government may assume more powers to monitor the encryption technology in the future, while Chinese government may give up some powers to E-commerce community in controlling the encryption technology in the future. A very good indication in this regard is that, just shortly after the enforcement of the Regulation of Commercial Encryption Codes, Chinese government made a narrative interpretation of the scope of the application of this Regulation, in order to ease undue anxiety among American and other foreign investors and manufacturers of encryption technology.¹⁷² As Zhang Xiang, the vice Minister of Foreign Trade and Economic Co-operation promised, "the regulations covers only specialized hardware and software that use encryption as a core function, wireless telephones, Windows software and browser software are not subject to the regulations."¹⁷³ Consequently, Microsoft received approval from China's Ministry of Information Industry (MII) and the SEMC to sell in China the simplified-character Chinese version of the Windows 2000 operating system, which includes 128-bit encryption capability.¹⁷⁴

In addition to encryption technology, China is experimenting with certificate authorities ("CA") and digital certificates. Although the validity of electronic signatures were first recognized by the Provisional Regulations on Electronic Data Interchange in the Field of Foreign Trade, which was promulgated by Guang Dong province in October 1996,¹⁷⁵ there is no detailed legislation at the national level yet. The first Chinese CA, China Telecom Certificate Authority (CTCA), was set up on August 3, 1999. CTCA could issue a CATA certificate for every e-commerce party. Such a certificate works like an Internet ID card, and enables unknown e-commerce parties to be sure of the authenticity and reliability of their transaction partners. CATA system also supports the issue of public keys of 512 bit and 1024 bit.¹⁷⁶ At present, CTCA has established a national network covering all the e-commerce parties in China.¹⁷⁷ In July of 2000, the China Financial Certificate Authority (CFCA) was set up by Chinese central bank and twelve commercial banks.¹⁷⁸ Its main mission is to act as a reliable third party to issue digital certificates, so as to facilitate online payment.¹⁷⁹ The emergence of CAs in China, however, has developed too rapidly for legislature to develop governing legislation. To ensure the accountability of CAs, it will, of course, be necessary to enact regulations concerning the legal status of CAs, the mandatory standards for issuing certificate, the legal validity of the digital certificate that CAs issue for the e-commerce parties, and the professional responsibility of CAs.

IV. PROTECTION OF E-COMMERCE CONSUMER PRIVACY IN CHINA

In Chinese language, privacy (Yin Si) generally refers to all the personal information, personal activities and personal space which people are unwilling to let other people know or get involved. Such privacy includes, but is not confined to, one's resume, name, age or date of birth, gender, height, weight, health condition, medical records, body features (such as fingerprints), genetic information, body organs (especially handicapped or dysfunctional organs), picture, address, residence or other private space (including cubicle), telephone and fax numbers, race, religion, affiliation with political party, political belief, income and savings, education background, occupation, hobbies, marriage status, sex life and sex orientation, personal history (especially regarding sexually transmitted disease),

correspondence, diaries, passport or other ID numbers, personal documents or deeds, family background, social networks, and private articles (including bags, luggage).¹⁸⁰ Of course, public figures enjoy less privacy than the general population.¹⁸¹ Furthermore, the scope of the privacy varies depending on various communities, which may have different cultural values and traditions.¹⁸²

Generally speaking, the privacy that consumers enjoy in the e-commerce world is not fundamentally different from traditional privacy consumers enjoy in the physical world. Excluding the sinister use that may be made by individuals, such as for theft or pornography, the most vulnerable personal data of privacy in e-commerce world will be those of commercial value for different sectors and trades of e-business, just because of the very fact that consumer privacy serves as valuable assets for e-business to expand their business.¹⁸³ The exploitation of the privacy of consumers on the Internet is facilitated by easy data collection, instantaneous disclosure, wide dissemination, and national or even global consequences.¹⁸⁴ For instance, if a customer shops at a bricks-and mortar store, she does not need to inform the cashier of her home address, family telephone number, shopping preference. However, the same person may be doing expected to disclose more personal information to e-business in a very carefully designed and detailed standard form when shopping online. Doing business online thus poses greater risks to privacy, which also makes misuse of private information more likely.

Privacy concerns are augmented in China, because privacy protection has traditionally been limited in Chinese legal history as a result of the country's feudalistic tradition. As an evidence for Chinese long, feudal tradition of ignoring privacy, W.J.F. Jenner wrote that "Chinese states by the fourth century BC at latest were often remarkably successful in keeping records of their whole populations so that they could be taxed and conscripted. The state had the surname, personal name, age and home place of every subject and was also able to ensure that nobody could move far from home without proper authorization."¹⁸⁵

During the Cultural Revolution between 1966 and 1976, the individual's privacy was condemned as capitalist privilege¹⁸⁶ and even today, many people consider "privacy" as a negative word.¹⁸⁷ The awareness of privacy has been stronger since late 1970s, however, when China opened up to the outside world and engaged in economic reforms. In the past recent years, privacy or the right to privacy has become a very hot topic discussed by the media or even the general population.¹⁸⁸

The constitutional basis for privacy protection can be traced back to four clauses in Constitution of 1982. The first provision is about the general concept of "personal freedom," meaning that "the personal freedom of the Chinese citizens is inviolable."¹⁸⁹ The second provision is about the general concept of "human dignity," meaning that "the human dignity of the Chinese citizens is inviolable."¹⁹⁰ Both "personal freedom" and "human dignity" can be interpreted to cover the right to privacy.¹⁹¹ The third provision aims at protecting the privacy in one's home so that "the residence of the Chinese citizens is inviolable. It is prohibited to illegally search and intrude into the residence of the citizens."¹⁹² The fourth provision aims at protecting the correspondence privacy. "The freedom and privacy of correspondence of the Chinese citizens are protected by law. No organization or individual may, on any ground, infringe on the freedom and privacy of correspondence, except in cases where to meet the needs of state security or criminal investigation, public security or prosecutorial organs are permitted to censor correspondence following statutory procedures."¹⁹³ The Criminal law of 1997

criminalizes illegally searching other's body and house, intruding into other's house, opening, destroying and concealing other's mails and letters.¹⁹⁴

Although not addressed specifically, the significance of privacy protection is stressed in many laws whether in the form of general legislation or in the form of special legislation. Such language is also found in Article 14 of the Consumer Protection Law of 1993,¹⁹⁵ Article 30 of the Infants Protection Law of 1991,¹⁹⁶ Article 39 of the Women Protection Law of 1992,¹⁹⁷ Article 22 of the Practicing Physician Law of 1999,¹⁹⁸ Article 4 of the Postal Law of 1986,¹⁹⁹ Article 29 of the Commercial Bank Law of 1995,²⁰⁰ Article 33 of the Attorney Law of 1996,²⁰¹ Articles 22 of the People's Police Law,²⁰² Articles 66 and 120 of the Civil Procedure Law of 1991,²⁰³ Articles 105, 112, 152 of the Criminal Procedure Law of 1996,²⁰⁴ and Article 42 of the Administrative Punishment Law of 1996.²⁰⁵

Privacy protection is also recognized by some codes of conducts made by some professional associations, including Article 3 of the Ethical Code of Professional Conduct of Chinese Journalists of 1997²⁰⁶ and Article 9 of the Code of Attorneys' Professional Morality and Practicing Disciplines of 1996,²⁰⁷ Article 7 of the Computer Information Network and Internet Security Protection and Management Regulations also declares that "correspondence freedom and correspondence privacy enjoyed by network users are protected by law. No unit or individual may, in violation of the legal requirements, may use the Internet to violate the correspondence freedom and correspondence privacy enjoyed by network users."²⁰⁸ Although this administrative regulation adds nothing substantially new, it confirms the applicability of traditional privacy protection to the virtual e-commerce world. These statutes serve as the basic statutory guideline when the business corporations or professionals are virtualized on the Internet highway.

The right to privacy was not incorporated into the General Principles of Civil Law of 1986.²⁰⁹ Human dignity, however, was mentioned again in Article 101 of this Law as the following: "citizens and corporations enjoy the right to reputation, and *the human dignity of citizens is protected by law*. It is prohibited to damage the reputation of citizens or legal persons by insults, defamation or other means."²¹⁰ Keeping in mind this legislation, the Chinese Supreme Court treated the privacy breach cases as the cases of defamation.²¹¹

In reality, privacy infringement happens frequently. In 1996, the privacy cases accounted for 12 per cent of all the civil law cases in China.²¹² In 1997, these kinds of cases shot up to 25 per cent.²¹³ Breach of privacy happens to many different social groups. For instance, the privacy of the infants is very easily breached by their parents or teachers. In Guangxi, a female high school student of 14 years old sued her teacher for reading her diary and disclosing it to the whole class.²¹⁴ The court held that the defendant breached the plaintiff's privacy, and ordered the defendant to pay non-pecuniary compensation to the plaintiff.²¹⁵ Ironically, even the privacy of judges is at risk. It is reported that the courts of justice in Beijing City will monitor the performance of their judges and clerks, not only covering their eight hours of working, but also covering their circle of life and socialization since 2000.²¹⁶ Some commentators argue that such a policy amounts to a breach of the privacy of the judges and clerks.²¹⁷ In China, the emergence of new organizations, technologies and products, like private detective agencies,²¹⁸ credit reporting agencies,²¹⁹ and bugs²²⁰ also represent the possibility of privacy

intrusion.²²¹

The development of E-business in China has placed Chinese consumers in a vulnerable position in terms of privacy protection. When users enter into contracts with Internet Service Providers for Internet access, they are generally required to disclose their true name (first name and last name), ID number (equivalent to a social security number in the US), date of birth, address of residence.²²² When consumers shop online, they are also required to furnish their general personal data, together with the information necessary for the purpose of the specific transaction.²²³ When consumers apply for an email address, they are usually required to offer certain information, regarding their occupation, education degree, income level, personal hobbies, and shopping preferences.²²⁴ Therefore, at least in theory, it is possible for an e-business to use or sell the consumers' personal data for profits or other purposes without consumers' consent.

Additionally, a threat to consumer privacy can also come from defective computer software, which could transmit users' personal data to the web sites of the software manufactures or other parties without authorization of the users. For instance, since mid May of 1999, many Chinese newspapers have challenged the reliability of Windows 98 software and the Pentium III chip.²²⁵ More than one month later, MII suggested that the government agencies should be careful in using Pentium III chips, they recommended that domestic PC computers disable the "Processor Serial Number" function, and warned that government agencies using Pentium III chips may not have direct access to Internet.²²⁶ Pentium III chips used by many Chinese consumers have the "Processor Serial Number" function, which makes it possible to identify and track Internet users as they conduct e-commerce transactions. Ultimately, Intel had to disable this function under orders from MII in August of 1999.²²⁷

On May 15, 2000, the Beijing Authority on Industrial and Commercial Administration issued the Notice on Standardizing Sending Commercial Advertisements by Emails.²²⁸ Under this notice, it is prohibited to send commercial emails to email users without their consent.²²⁹ Although this Notice is intended to curb email spamming, and to protect the Internet users' privacy, some questions still remain unresolved. For instance, such an administrative regulation is only valid in the jurisdiction of Beijing Municipality.²³⁰ If a corporation sends emails from other cities or foreign countries, it will be difficult to impose any legal liabilities on the sender. In reality, if a corporation based in Beijing sends spamming emails from a foreign IP address, it will be very difficult, if not impossible for the government agency to investigate the real identity of sender in Beijing. Nevertheless, the actions of the legislature are a step in the direction of enhancing privacy protection.

It is possible that there could be national legislation enhancing the protection of privacy. Of course, the determination of an optimal compliance scheme is the subject of much debate both in the United States and the European Union.²³¹ Regardless of what parameters are legislatively decided, the following elements of a privacy policy may very well inspire the kind of Real Trust that consumers desire from Internet companies. A company could adopt a policy that respects the consumers' right to information and the right to control regarding their own personal data.²³² A company adopting such an approach could effectuate Real Trust by providing a notice to consumers regarding the personal data, before the company gather consumers' personal data either by surveys, cookies or other new technologies.²³³ After the consumers provide their personal data, they should be informed as to the

storing, process, editing, utilization, dissemination, transferring, disposal including selling of the consumers' personal data by e-business on a regular and timely basis.²³⁴ E-businesses should limit the scope of personal data to the reasonably minimum and necessary extent when they collect information. That is, only the closely related personal data regarding certain-commerce transactions should be collected.²³⁵ For instance, in normal circumstances, income, employer or education background should not be inquired when consumers shop online.²³⁶

E-businesses should guarantee the integrity of consumers' personal data, and should permit the consumers to update, edit, delete or withdraw their personal data from the e-business database at the consumer's sole discretion.²³⁷ As a function of data control by the consumers, they should be able to decide whether or not their personal data should be sold or not, and who should be the buyer of their personal data.²³⁸ In addition to the decision right on these issues, consumers should also receive a reasonable portion of proceeds from selling their personal data.

To ensure respect of the privacy of consumers on the part of e-business themselves, e-businesses should also use their best care, knowledge, skill, experience and diligence in adopting any necessary managerial or technological measures to make sure that no third parties, including hackers, could steal or unlawfully have access to the private information. Of course, the privacy policy will be worth nothing if the e-business fails in properly enforcing it. Thus, it may be necessary to monitor the implementation of the privacy policy either by NGOs (non-governmental organizations) on privacy policy, associations of e-business, mass media or consumer organizations.

Self-help may also enhance Real Trust. Consumers should also learn how to protect themselves in a new e-commerce environment with the aid of technology and the use of legal remedies. Consumers should be aware that e-commerce on the Internet is not as secure as may be suggested by online firms. Consumer confederations and pro-consumer interest groups may make helpful contributions to consumers in the forms of public education, litigation representation, technological and legal information dissemination for the purpose of privacy protection.

V. REGULATION OF DEFAMATION ON THE INTERNET

A. Statutory and Judicial Framework

While greatly expanding freedom of speech, the advance of Internet puts people's reputation in a more vulnerable position than ever due to the high speed and ease of dissemination of defamatory information on the Internet. Not surprisingly, the emergence of Internet has resulted in an increased number of defamation cases in China. For instance, in *Hu Ming v. Jiang Guobei*,²³⁹ the plaintiff argued that the defendant published defamatory remarks on a web sites of sina.com about the plaintiff, who was described as baring the defendant from adopting a baby girl from an orphanage.²⁴⁰ In addition to the increase of defamation cases, business or product disparagement on the Internet often causes huge economic loss suffered by corporate victims. For instance, three Internet users, Wen Baocheng, Wang Fei and Zha Yiliang, posted a rumor message on the BBS of a web site in April 1999, saying that "the Director of Zhengzhou branch of the Communication Bank has absconded with the embezzled

money."²⁴¹ As a result, many misled depositors withdrew their deposits in advance or even canceled their bank accounts.²⁴² The Communication Bank suffered over RMB 33.02 million yuan (US\$ 4 million) of loss. Accused of defamation, three individuals were arrested and put on trial.²⁴³

Defamation is prohibited by both private law and public law in China. Article 101 of the General Principles of Civil Law of 1986 reads that: "citizens and corporations enjoy the right to reputation, and *the human dignity of citizens is protected by law*."²⁴⁴ It is prohibited to damage the reputation of citizens or legal persons by insults, defamation or other means."²⁴⁵ Article 120 of the General Principles of Civil Law reads:

If a citizen's right of personal name, portrait, reputation or honor is infringed upon, he shall have the right to demand that the infringement be stopped, his reputation be rehabilitated, the ill effects be eliminated and an apology be made; he may also demand compensation for losses. The above paragraph shall also apply to infringements upon a legal person's right of name, reputation or honor.²⁴⁶

Article 221 of the Criminal Law of 1997 criminalizes serious business and product disparagement²⁴⁷ and Article 246 criminalizes serious defamation against non-business individuals.²⁴⁸ Article 4 of the Decision on Ensuring Internet Security Passed by the Standing Committee of the National People's Congress on December 28, 2000, brings the crimes of defamation on Internet subject to Criminal Law of 1997.²⁴⁹ Article 57 of the Regulations on Telecommunication, promulgated by the State Council on September 20, 2000, also prohibits any entities or individuals to produce, copy, publish and distribute defamatory information using the telecommunication networks.²⁵⁰ Article 7 of the Computer Information Network and Internet Security Protection and Management Regulations promulgated by the Ministry of Public Security on December 16, 1997 even prohibits viewing defamatory information.²⁵¹ Article 9 of the Regulations on Internet Bulletin Board Service Administration, promulgated by the MII on October 8, 2000, prohibits publication of defamatory information on bulletin boards service, including bulletin boards, electronic forums, and chat rooms.²⁵² Article 13 of the Preliminary Administrative Regulations on Publication of News on Internet Web Sites, promulgated by the State Office of News and the MII on November 6, 2000, also prohibits defamatory information in the news published on web sites.²⁵³

The Chinese Supreme Court provided a judicial interpretation for defamation litigation in 1993, called "the Reply on Certain Issues Regarding Hearing the Cases of Reputation Breach."²⁵⁴ In 1998, this Court made another interpretation, titled "the Interpretations on Certain Issues Regarding Hearing the Cases of Reputation Breach."²⁵⁵ These two judicial interpretations answer substantial questions regarding defamation cases, including but not confined to, the elements of proof required for defamation, the jurisdiction of the courts over defamation cases, the relationship between defamation tort procedure and defamation criminal procedure, the plaintiffs in the cases of defamation against deceased individuals, defamatory liabilities for writing literal works and criticism articles with defamatory elements, liabilities of media and consumer for defamation, the identification of the place of the result of defamation torts, kinds of civil liabilities for defamation, and the evaluation of amount of pecuniary compensation in defamation cases.²⁵⁶ For instance, the courts are required to take into account a number of factors when imposing defamation liabilities against the defendant, including the

fact that the victim's reputation has been damaged, the illegality of defendant's statement, the causality between illegal statement and consequential damage, and the fault on the part of the defendant.²⁵⁷ Either oral or written false statements, or news coverage inconsistent with the facts, could amount to defamation if such false statements or news coverage have led to wrongful harm to the plaintiff's reputation.²⁵⁸

Although Chinese legal norms on defamation are basically the same with the US law, Chinese law has many its own features. For instance, even if a deceased individual is defamed, there exists a cause of action for his close family members to file a defamation case.²⁵⁹

B. *Max Computer Station Inc: The First Internet Defamation case in China*

Perhaps the most noteworthy Internet defamation case originated from a 1998 dispute. *Max Computer Station Inc. v. Wang Hong, Life Times & PC World*²⁶⁰ is the first defamation case on the Internet between a computer user and a computer manufacturer, the biggest defamation case in terms of alleged compensation, and the most controversial case in China. Wang Hong, a computer engineer, bought a Maxstation SLIM-I laptop produced by Max Computer Station Inc. (Maxstation), from a laptop retailer, Anteming Corporation (Anteming), for 14,200 yuan (US\$1,710) on August 5, 1997.²⁶¹ He was promised by Anteming that he would have a full, one-year warranty.²⁶² After he completed the warranty card, he left it at Anteming Corporation.²⁶³ When his computer screen began to malfunction, Wang took the laptop to Anteming for repair on June 2, 1998.²⁶⁴ However, Maxstation refused to repair because Anteming did not present the warranty card, and told Anteming that it would cost 7,300 yuan (US\$880) for repairs without it.²⁶⁵ After several conversations between Wang and Anteming, Anteming asked Wang to contact Maxstation directly.²⁶⁶

Angered by the refusal, Wang wrote and posted his article, "please see how I was swindled in the process of purchasing the Maxstation laptop", on a bulletin board of the web site of Sitong Lifang on June 9, 1998, and filed a complaint with the consumer association of Haidian District of Beijing city.²⁶⁷ In this article, he described his experience in a relatively straightforward way, and asked readers to help post the story on other bulletin boards, "So as to let those manufacturers know that Chinese consumers are not just defenseless and to prevent trash like Maxstation from spreading."²⁶⁸ After reading this article, Maxstation contacted Wang on June 11, and agreed to repair Wang's computer, but it also demanded that Wang apologize for his words.²⁶⁹ Wang faxed his apology to Maxstation on July 2, 1998.²⁷⁰ However, Maxstation asked Wang to publish this apology on the Internet.²⁷¹ Wang disagreed, and canceled his request to repair.²⁷² On July 3, Wang wrote his second article, titled "Never ever give in," and posted on the Internet.²⁷³ His article called the Maxstation laptop as weak as "tofu"(bean curd), and compared it to "trash" compared with the laptops manufactured by other corporations.²⁷⁴

On July 24, 1998, he took back his defective laptop.²⁷⁵ The next day, he received an email from a sender, who claimed to be a lawyer of Maxstation, and warned Wang that he would work for his remaining life to make compensation for Maxstation.²⁷⁶ In response to this email, Wang wrote a public letter to Maxstation on the Internet on July 26, 1998.²⁷⁷ Then he set up a home page on a web

site named "IT315," in which he encouraged surfers to vent their discontent, if they had, with the quality of Maxstation products on the web site.²⁷⁸ This home page not only collected his articles, but also included a column for signing in to condemn Maxstation.²⁷⁹ Some bulletin boards in other web sites were hyperlinked to this condemnation column.²⁸⁰

On July 28, 1998, Life Times reported Wang's dispute with Maxstation.²⁸¹ The report said that, "Maxstation was considered, by a majority of consumers on the Internet, to be irresponsible to the consumers after the problems with the products were identified," and described Wang's special home page as "full of the supports for Wang and condemnations against Maxstation by the consumers across the country."²⁸² On August 10, 1998, PC World, a computer magazine, also cited Wang's notation about the Maxstation laptop, including "tofu" and "trash" in its report.²⁸³ On August 12, 1998, Maxstation offered to repair Wang's computer unconditionally.²⁸⁴ Wang took back his repaired laptop from Maxstation on August 26, 1998.²⁸⁵

In April, 1999, Maxstation sued Wang, as well as the publishers of the newspaper and the magazine, for defamation at the Haidian District People's Court, and demanded that the three defendants pay 2.4 million yuan (US\$289,150) in compensation.²⁸⁶ The Haidian court delivered the "first instance judgment" in favor of Maxstation on December 15, 1999.²⁸⁷ Wang was found to have libeled Maxstation in his articles and the other two defendants were held responsible for damaging Maxstation's reputation.²⁸⁸ Wang was also held liable for the defamatory remarks posted by other readers on the BBS linked to Wang's home page.²⁸⁹ The court ordered Wang pay Maxstation 500,000 yuan (US\$60,240) in compensation, the publishers of PC World and the Life Times pay 240,356 yuan (US\$28,960) each. Written public apologies were also demanded from the three defendants.²⁹⁰

All three defendants appealed to Beijing's No 1 Intermediate People's Court, which upheld the first instance verdict on December 19, 2000, except for reducing Wang's compensation amount to 90,000 yuan (US\$11,000), and exempted the other two defendants' duty to compensate.²⁹¹ The "second instance verdict" held that, "Wang's articles omitted the part about the guarantee card and focused on the fact that he did not receive post-sale service, and caused the public to have a bad estimation of the company."²⁹² "In particular, Wang did not take measures to stop the spread of the negative impact even after Maxstation provided free maintenance service for his laptop."²⁹³ Nevertheless, unlike the first instance judgment, the second instance judgment did not recognize Wang's liability for the defamatory remarks posted by other readers on the BBS linked to Wang's home page.²⁹⁴

C. Assessment of Max Computer Station Inc.

Three important principles arise from this case. The first issue concerns how to judge certain consumer comments over product or service to be defamatory statement or not. The supreme court held in its judicial interpretation that "consumer criticisms or comments over the quality of product or service provided by the manufactures, dealers or shops, should not be considered defamation. However, defamation should be identified when consumers use the criticism or comment opportunity to libel or attack the business reputation."²⁹⁵

Differentiating between lawful criticism or comment and defamatory statement is not very clear. The appellate court listed two defamatory points in Wang's articles: first, that Wang's articles omitted some facts about his difficult process of repairing his laptop, which makes the statement at least partly false and second, that Wang used the language of calling for boycotting Maxstation laptops. The court judgment found a link between the lowering of Maxstation's business credibility and the wide distribution and dissemination of Wang's articles on the Internet, newspapers and magazines.²⁹⁶ Compared with the first instance judgment, the second instance judgment did not clearly classify "tofu" or "trash" as insulting or defamatory words. It seems that the second instance judgment realized that "tofu" or "trash" is associated with a statement of opinion, instead of the statement of fact, and the words "tofu" or "trash" themselves should not be considered defamatory statements. If this is true, the second instance judgment departs from the judicial interpretation of the Supreme Court in 1998, which does not treat statement of opinion and that of fact differently. Nevertheless, the second instance judgment does not explain why and how omission of certain facts in the statement of fact will amount to defamation, and has failed in explaining why boycotting language will amount to defamation. If the omission of certain fact is minor or insignificant, there will be no reason to identify defamation. If the statement of opinion and that of fact is different, however, it would seem necessary to classify boycotting language as statement of opinion, instead of statement of fact, and thereby not giving rise to defamation.

The second issue is that, even assuming the words posted by other readers on the BBS linked to Wang's home page are defamatory statements, whether Wang should be liable for them. The first instance judgment said yes on this point.²⁹⁷ However, Wang only offered hyperlinks to the BBS on other web sites, which means that Wang is not the web master or editor of the BBS. Since Wang has no opportunity to control the content of the speech of other readers on the BBS, it is not clear why he should be held liable for offering hyperlinks to another BBS. By analogy, a symposium organizer should not be liable for the defamatory statements made by every participants, because he has no right to restrict or deprive the other people's freedom of speech, despite the fact that he offered the opportunity for the people to gather together and speak on certain issues.²⁹⁸ For the same reason, Wang should not be responsible for the defamatory remarks posted by other readers. The second instance court may have resolved this reasoning problem with the first instant court, and ignored Wang's responsibility for other people's remarks on the BBS hyperlinked to Wang's home page, but out of Wang's control or management. We think the second instance judgment is correct on this point, and such position should be upheld in other similar cases.

The third issue is how to define media's defamation liability in covering consumer criticism and comments. The supreme court held in its judicial interpretation that, "if the media criticisms or comments over certain products or services of certain manufacturers, dealers or shops are true with the basic fact, and contain no insulting words, there shall be no defamation. However, defamation should be identified when there are substantial false statements, and such statements has caused harm to business or product credibility."²⁹⁹ *In Max Computer Station Inc. v. Wang Hong, Life Times & PC World*, the second instance judgment held that the two media committed defamation, because

the source of coverage mainly depend on the information on the Internet, and
the media did not go through detailed and deep interview and strict

ensorship, and failed in informing the readers of the significant fact that Wang did not process the warranty application, and had not directly contacted Maxstation before he published his articles. In this way, the media also have caused negative impacts on Maxstation's business reputation.³⁰⁰

In a sense, it would be logical for the media to join Wang in compensating Maxstation for defamation following this reasoning. However, the second instance judgment did not draw such conclusion. Instead, it only ordered the two media to apologize to Maxstation, and exempted their duty to make compensation for Maxstation. The rationale is that, the two media "misled the readers due to receiving incomplete information."³⁰¹ Thus, the second instance judgment tends to differentiate the media's compensation liability based on the cause of defamatory coverage. That is, if the defamatory media report or coverage is caused by active statements by the media itself, the media should be imposed full civil liabilities including apology and compensation; if caused by inactive reception and citing of incomplete information, only apology is sufficient. If this judgment is modeled by other courts, Chinese media will be encouraged to exempt their compensation liability by arguing that their misleading coverage, despite containing defamatory statements, is caused by receiving incomplete information. It is doubtful whether an apology would be sufficient to motivate the media to promote more rigid censorship and deeper interview among the mass media community when compensation for defamation is exempted.

More fundamentally, it is still an open question as to whether merely citing or reporting incomplete information or defamatory statement amounts to defamation. While the second instance judgment said yes on this question, the legislation is silent on this point. Considering the significance of media supervision in political and business life, it seems that other more productive and positive remedies, instead of imposing defamatory liability on the media, could be offered. For instance, if a party covered by the media reports is dissatisfied with the defamatory statements made by another party, he can ask the media to cover his comments or responses, so as counteract the negative of defamatory statement, in addition to suing the defaming party. Since there is no comprehensive legislation on mass media, it is a wise choice to keep media as a free speech and communication forum for all the consumers and business corporations. In this way, the two media defendants in this case should not be held liable for defamation at all; nevertheless, Maxstation is entitled to ask these two media to devote the same space to cover its response or comments over Wang's statements.

The fourth issue is, assuming the second instance judgment is correct, whether it is wise strategy for a manufacturer to sue its consumers for defamatory statements when the consumer criticizes the product and service of the manufacturer. This is not a purely a legal question. Reputation is so sensitive and complex that it is still possible for the people to doubt about a person regardless whether this person won the case or not. As one commentator put it, "Whether Maxstation wins or loses the case, the suit brings negative effects to the company's image."³⁰²

Max Computer Station Inc. v. Wang Hong, Life Times & PC World, as the first Internet defamation case, not only triggered the reflections on the defamation legislation by the legislators and judges, but also proposed a question for consumers, e-business and high-tech business corporations as to how to avoid the defamation conflicts, how to resolve the defamation conflicts already in existence. Although

detailed and sophisticated legislation and decided cases are indispensable to strike proper balance between consumers' freedom of speech and business reputation, so as to fairly resolve defamation litigation, it is more important for the consumers and business build solid trust and to avoid defamation. For the healthy growth of business prosperity and social integrity, trust is more valuable than the mere legal freedom of speech or legal right to reputation. When trust is there between consumers and business corporations, including e-business, there will be no room for defamation litigation battles to happen.

To avoid defamation conflicts, the business has more important role to play than the consumers do. For instance, the defamation litigation of *Max Computer Station Inc. v. Wang Hong, Life Times & PC World*, could have been dispensed if Wang had his laptop repaired without refusal. If business corporations satisfy their consumers, most consumers will be satisfied enough to restrain from expressing their angers by defamatory words. In addition to prevent the business or product disparagement between the business and the consumers, it is also necessary to avoid defamation between business competitors, and to build good spirit of honest, open and free competition.

VI. SUMMARY

Compared with its American counterpart, the Chinese e-commerce market is still in its infancy. It is a separate question as to just how effectively U.S. law promotes all three elements of trust, but comparatively speaking, consumers and businesses have a greater range of protection in the United States than do those in China. Given the longer history of free markets and the Rule of Law, this is not surprising.³⁰³ The kind of legal infrastructure that allows U.S. and European economies to adapt to technological changes does not develop overnight.³⁰⁴ Yet this infrastructure is vital for e-commerce.

Trust-building among e-commerce constituents is critical to foster the development of e-commerce in order for them to take reasonable risks, risks based on economic assessment more than on legal ambiguity. Although Chinese institutional arrangements supporting traditional commercial transactions are able to create and enforce hard trust, real trust and good trust to some extent, further legal reforms and improvements will be necessary. For instance, while current Contract Law of 1999 has five articles dealing with e-contracts,³⁰⁵ it is silent on the legal validity of digital signatures and authentication by certificate authorities. Therefore, further legislative reforms related to digital signatures and authentication at national level is important for regulating current e-contracts and certificate authorities. In addition to contracting rules, identification of consumer rights including the right to privacy, clarification of the laws of defamation, protection from credit card fraud, and rules on fair trade and competition will also be needed. Of course, fair, effective and strong judicial enforcement system and international legal cooperation are tremendously important to pursue the goal of trust building in a borderless, trans-national cyberspace. All of these legal supports ensure that those involved in e-commerce, whether businesses or consumers, are accountable for their actions and thus generate Real Trust.

The Rule of Law should also join hand in hand with Rule of Ethics in the process of trust building in e-commerce community. Although rule of law in modern sense is relatively young, the Rule of

Ethics is rooted in Chinese traditional culture, especially Confucianism. Once applied to e-commerce, Chinese traditional ethics has much to offer in building a harmonious and trustworthy e-commerce world. To make cyberethics workable, e-businesses should take initiatives in self-regulating, such as enacting consumer and customer friendly policies and codes, and substantially raising their cyberethics standards beyond legal thresholds. Unfortunately, one cannot solely rely on such practices of Good Trust. Thus, the supervision by government agencies, NGOs (especially media, consumer organizations, and industry organizations) is essential to the meaningful enforcement of cyberethics. Given the borderless nature of e-commerce, corporate codes of e-businesses should be developed at international level rather than national or industry level. Thus, comparative study on cyberethics and traditional business ethics in different nations, including US and China, will be an important part of developing international cyberethics standards of trust building.

Any time significant change occurs, questions arise as to what rules apply. Globalization of markets, the Internet, and other scientific advances test old assumptions. There are always risks to fall back solely on traditional laws and thereby limit the potential of the new technologies. This is the temptation of Ludditism and more recently in reactions of fundamentalist religious groups of nearly all major religious branches.³⁰⁶ On occasion, however, new laws need to be fashioned, whether it is to keep up with the Industrial Revolution or the Internet Revolution. A globalized, technologically driven economy has need for new legal forms.

There is also a temptation to assume that none of the old rules apply to a New Economy. The dotcoms that believed that traditional methods of stock valuation or accounting procedures fell into this trap and the stock market has been littered with tales of their demise during in initial years of this century. It is rarely prudent to ignore the lessons of time and a significant advantage of traditional normative rules, whether legal or ethical, is that there is wisdom within them that may not always seem to make rational sense, but which have deep knowledge nonetheless.³⁰⁷

Neither approach is sufficient by itself. The global e-commerce world can neither work if it attempts to create everything from scratch nor can it work if it relies solely on traditional legal principles. Instead, we propose a middle path that steers between these shores. One might think of this in the East as a Buddhist Middle Way or in the West as an Aristotelian form of moderation. Either way, a middle road in which e commerce learns from the wisdom of the West's Rule of Law and the East's Rule of Ethics may hold promise for a model for trust in this technologically vibrant, globalized economy.

NOTES

¹ Zhao Huanxin, *Internet hook-up cost reduction to enhance extension of access*, CHINA DAILY, March

2, 1999.

² *Id.*

³ China Internet Network Information Center, at <http://www.cnnic.net.cn/develst/e-cnnic200101.shtml> (last visited May 15, 2001).

⁴ Hou Mingjuan, *National Internet Fever cools down*, CHINA DAILY, February 27, 2001.

⁵ Kai-Alexander Schlevogt, *Policy needed to make web a power for life*, CHINA DAILY, September 22, 1999.

⁶ Huan Xin, *Web Surfers profiled in survey*, CHINA DAILY, January 18, 1999.

⁷ Hou, *supra* note 4.

⁸ Jiang Jingen, *Internet users hit 4 million mark*, CHINA DAILY, July 15, 1999.

⁹ China Internet Network Information Center, *supra* note 3.

¹⁰ *Id.*

¹¹ Hou Mingjuan, *Survey scrutinizes state of Internet users*, CHINA DAILY, November 14, 2000.

¹² Hou, *supra* note 4.

¹³ China Internet Network Information Center, *supra* note 3 (noting that users of the Internet in some cities had to pay about one-third of their salaries to get internet service in 1999). *See*, Zhao Huanxin, *Internet hook-up cost reduction to enhance extension of access*, CHINA DAILY, March 2, 1999 (indicating that many respondents think that telecommunication monopoly has made surfing the net unreasonably expensive, and is retarding expansion of the network). *See, also* Huan Xin, *Web Surfers profiled in survey*, CHINA DAILY, January 18, 1999.

¹⁴ Wang Chuandong, *IT players yearn to be listed abroad*, CHINA DAILY, July 12, 2000.

¹⁵ China Internet Network Information Center, *supra* note 3.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ He Sheng, *On-line disillusionment growing*, CHINA DAILY, July 27, 1999.

²⁰ *Id.*

²¹ *See, Chief Privacy Officer*, HARV. BUS. REV., November-December 2000, at 20.

²² Don Clark, *Napster Alliance Boosts Prospects for Encryption*, WALL ST. J., Nov. 2, 2000.

²³ Glen L. Urban, Fareena Sultan, and William J. Qualls, *Placing Trust at the Center of Your Internet Strategy*, Sloan Mgmt. Rev. 39 (Fall 2000).

²⁴ *See, e.g., Hague Conference Will Examine ADR's Role in Consumer Protection, Privacy Rights Areas, in Electronic Commerce & Law*, BUREAU OF NATIONAL AFFAIRS, Nov. 15, 2000, at 1123.

²⁵ *See*, LaRue Tone Hosmer, *Trust: The Connecting Link Between Organizational Theory and Philosophical Business Ethics*, 20 ACAD. MGMT. REV. 379 (1995).

²⁶ In this sense, Hard Trust is akin to positive law as well as Stage One of Lawrence Kohlberg's schema of moral development. *See, e.g.,* H.L.A. HART, *THE CONCEPT OF LAW* (1994)(for a classic presentation of positive law theory); *see, also* Lawrence Kohlberg, *The Philosophy of Moral Development: Moral Stages and the Idea of Justice* (1981)(for a description of moral development in which pre-conventional moral development is the result of avoiding punishment).

²⁷ American Bar Association, *Digital Signature Guidelines Tutorial*, at <http://aba.com> (last visited Dec. 12, 2000).

²⁸ *See*, Manny Frishberg, *Web Privacy, Security Weighed*,

<http://wired.com/news/technology/0,1282,40591,00.html> (last visited Dec. 12, 2000).

²⁹ See, Elinor Abreu, *Savings Seen in E-Sign Law*, THESTANDARD.COM, at <http://biz.yahoo.com/st.001002/19139.html> (last visited Dec. 12, 2000).

³⁰ *Id.*

³¹ *Id.*

³² An analogy for this idea comes from the western settlements of the United States where absent effective government regulation, ranchers and farmers relied on inexpensive technology such as barbed wire in order to set borders for their property.

³³ See, e.g., Urban, et. al, *supra* note 23.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ See, TIMOTHY L. FORT, *ETHICS AND GOVERNANCE: BUSINESS AS MEDIATING INSTITUTION* 62-86 (2001).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See, CASS SUNSTEIN, *REPUBLIC.COM* (2001).

⁴⁵ See Kohlberg, *supra* note 26 (noting advanced stages of moral development, primary in terms of individual quests for more excellence, cf CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1982)(for a more relational perspective of moral virtue in terms of caring relationships, a position more akin to the kind of trust for which we advocate).

⁴⁶ Jin Zeqing, *Toshiba knows little of China's laws*, CHINA DAILY, June 1, 2000.

⁴⁷ *Id.*

⁴⁸ Guo Aibing, *No compensation angers Chinese*, CHINA DAILY, May 23, 2000.

⁴⁹ Jin, *supra* note 45.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Wang Xuefeng, *Attorney syndicates assist class action against Toshiba*, BEIJING WANBAO, June 1, 2000.

⁵⁵ *Id.*

⁵⁶ Guo, *supra* note 47.

⁵⁷ *Id.*

⁵⁸ See, e.g., PETER BERGER & RICHARD JOHN NEUHAUS, *TO EMPOWER PEOPLE: THE ROLE OF MEDIATING STRUCTURES IN PUBLIC LIFE* (1977).

⁵⁹ FORT, *supra* note 39.

⁶⁰ *Id.*

⁶¹ See, *Zhonghua Renmin, Gongheguo Xianfa Xiuzheng An* (Amendments to the Constitution of

People's Republic of China), passed by the NPC on March 15, 1999.

The NPC incorporated a new sentence into Article 5 of the Constitution of People's Republic of China in 1999, which reads as: "The People's Republic of China should implement the principle of governing this country by law, and making it a socialist country with rule of law". This is the first time for "rule of law" to be written into Constitution.

⁶² See, Zeng Min, *Internet laws urged in China*, CHINA DAILY, June 15, 2000. Chinese authorities are ready to phase in a series of internet-related regulations, including regulations on internet crime, intellectual property rights protection in cyberspace, online payment, online taxation, and how to identify e-dealers and electronic trade certification. However, e-commerce legislation will be a difficult to draft because the range of fields to be governed is both broad and ever-changing.

⁶³ See, Liang Yu, *Law moves in WTO's direction*, CHINA DAILY, November 22, 2000 (noting that the mainstream argument that China needs to reshape its laws and regulations so that they conform to standards demanded by the WTO).

⁶⁴ <http://www.confucius.org/bbio.htm> (last visited May 15, 2001).

⁶⁵ Zhang Jinfan, *Several Issues on the World Position of Chinese Legal Culture and its modernization*. <http://www.cin.hebnet.gov.cn/Others/Rendafazhi/d6j2.html> (last visited May 15, 2001).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Confucius, Verse 13, Yanyuan 12, LUN YU (the Analects).

⁷¹ Zhu Xi, Advance 11, Book 6, ZHUXI JIZHU. See, also, <http://read.cnread.net/cnread1/gdwx/z/zhuxi/lyjz/006.htm> (last visited May 15, 2001).

⁷² *Id.*

⁷³ Zhang Jinfan, *Several Issues on the World Position of Chinese Legal Culture and its modernization*. <http://www.cin.hebnet.gov.cn/Others/Rendafazhi/d6j2.html> (last visited May 15, 2001).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Confucius concept "De" could also be translated into "virtue" or "morality."

⁷⁹ Confucius concept "Jun Zi" could be translated into various English counterparts, including but not confined to, "gentleman," "a man of complete virtues" or "superior man". Of course, it is difficult to choose a most appropriate word for the translation purpose.

⁸⁰ Confucius, Verse 3, Weizheng 2, Lun Yu (the Analects).

⁸¹ *Id.* Verse 1, Weizheng 2.

⁸² *Id.* Verse 3, Weizheng 2.

⁸³ *Id.* Verse 11, Liren 4.

⁸⁴ *Id.* Verse 12, Liren 4.

⁸⁵ *Id.* Verse 16, Liren 4.

⁸⁶ *Id.* Verse 24, Liren 4.

⁸⁷ *Id.* Verse 4 Xue'er 1.

⁸⁸ *Id.* Verse 25, Liren 4.

⁸⁹ According to a Chinese e-business manager, "one of the major reasons for the failure of other online shops is that they concentrated too much on their online work, while ignoring the off-line work." *See*, He, *supra* note 19. It seems that the customers are very particular about e-business's performance off the line. If they have good reason to believe that an e-business is trustworthy with the online service, but untrustworthy with off-line service, they will probably switch to other e-businesses that deserve trust and dependability. To some extent, winning trust from e-commerce partners and customers is a critical part of competition strategies for e-business.

⁹⁰ FORT, *supra* note 38.

⁹¹ *Id.*

⁹² The Preliminary Regulations on Computer Information Network and Internet Management, §6(1997); the Implementing Rules of the Preliminary Regulations on Computer Information Network and Internet Management §7(1997).

⁹³ The Preliminary Regulations on Computer Information Network and Internet Management, §10(1997); the Implementing Rules of the Preliminary Regulations on Computer Information Network and Internet Management, §12(1997).

⁹⁴ The Preliminary Regulations on Computer Information Network and Internet Management, §9(1997).

⁹⁵ *Id.* §8(1997).

⁹⁶ The Preliminary Regulations on Computer Information Network and Internet Management, §10(1997); the Implementing Rules of the Preliminary Regulations on Computer Information Network and Internet Management, §13(1997).

⁹⁷ The Implementing Rules of the Preliminary Regulations on Computer Information Network and Internet Management, §7(1997).

⁹⁸ According to the regulations, "basic telecommunication business" should "offer public network infrastructure, public data transferring and basic voice communication" and "value-added telecommunication business" should "offer the telecommunication and information service with the aid of public network infrastructure. The Regulation on Telecommunication, §8(2000).

⁹⁹ Classification Catalogue of Telecommunication Business, §2(2000).

¹⁰⁰ The Regulation on Telecommunication, §13 (2000).

¹⁰¹ *Id.*, §14 (2000).

¹⁰² http://www.legaldaily.com.cn/gb/content/2000-10/11/content_6474.htm (last visited May 15, 2001).

¹⁰³ http://www.legaldaily.com.cn/gb/content/2000-11/07/content_8036.htm (last visited May 15, 2001).

¹⁰⁴ The Internet Information Service Regulation, §7 (2000).

¹⁰⁵ *Id.* §8 (2000).

¹⁰⁶ *Id.* §4 (2000).

¹⁰⁷ *Id.* §5 (2000).

¹⁰⁸ *Id.* §14 (2000).

¹⁰⁹ *Id.*

¹¹⁰ www.legaldaily.com.cn/gb/content/2000-12/30/content_11264.htm (last visited May 15, 2001).

¹¹¹ Articles 15 of this Decision deal with criminal penalties, Article 6 deals with administrative law liabilities and civil liabilities.

¹¹³ Under Articles 11 and 16 of the Computer Information Network and Internet Security Protection and Management Regulations, the Internet users should fill the registration form required by the

Ministry of Public Security, completed form shall be submitted to the Ministry of Public Security for supervision and file keeping.

¹¹⁴ This law was passed by the NPC on April 12, 1986. <http://www.spp.gov.cn/falv/minfa.htm> (last visited May 15, 2001).

¹¹⁵ This law was passed by the Standing Committee of NPC on October 31, 1993. <http://www.spp.gov.cn/falv/xiaofei.htm> (last visited May 15, 2001).

¹¹⁶ This law was passed by the Standing Committee of NPC on February 22, 1993. <http://www.spp.gov.cn/falv/zhiliang.htm> (last visited May 15, 2001).

¹¹⁷ This law was passed by the Standing Committee of NPC on September 22, 1993. <http://www.spp.gov.cn/falv/fbzd.htm> (last visited May 15, 2001).

¹¹⁸ This law was passed by the Standing Committee of NPC on October 27, 1994. http://www.moftec.gov.cn/html/government/laws_dwmy/31.html (last visited May 15, 2001).

¹¹⁹ This law was passed by the NPC on March 15, 1999. http://www.moftec.gov.cn/chinese/government/laws_dwmy/40.html (last visited May 15, 2001).

¹²⁰ See, Consumer Protection Law of 1993 from Article 7 to Article 15.

¹²¹ In China, there are a number of consumers engage in buying fake products to make profits by claiming double punitive compensation from the fake product dealers. Although it is still controversial today in China whether it is ethical or not for a knowing consumer to buy the fake products and claim punitive compensation, such consumers are legally protected. A typical case in this regard is *Heshan v. Wanleda* (Xicheng District Court of Justice, Beijing in 1996). See, LEGAL DAILY, October 23, 1996; PEOPLE'S DAILY, October 28, 1996.

¹²² In other words, Chinese legislature has been reluctant to create e-commerce law separate from traditional business law. Rather, the legislature tries to apply traditional legal rules to e-commerce. That is why China has not, and probably will not enact a comprehensive code on e-commerce law.

¹²³ Article 11 of Contract Law of 1999 regards electronic contract as written contracts. Article 16 and 26 of this Law stipulates the time s of arrivals of offers and acceptances. When a contract is concluded by the exchange of electronic messages. Thus, if the recipient of an electronic message has designated a specific system to receive it, the time when the electronic message enters into such specific system is deemed its time of arrival; if no specific system has been designated, the time when the electronic message first enters into any of the recipient's systems is deemed its time of arrival. Article 34 of this Law deals with the place of formation of e-contracts: "Where a contract is concluded by the exchange of electronic messages, the recipient's main place of business is the place of formation of the contract; if the recipient does not have a main place of business, its habitual residence is the place of formation of the contract. If the parties have agreed otherwise, such agreement shall prevail."

¹²⁴ <http://www.a.com.cn/cn/ggfg/dffg/001207qytg.htm> (last visited May 15, 2001).

¹²⁵ Notice on Protecting Consumers in E-commerce Transactions, §3(2000).

¹²⁶ *Id.* §7(2000).

¹²⁷ *Id.* §8(2000).

¹²⁸ *Id.* §9(2000).

¹²⁹ *Id.* §11(2000).

¹³⁰ *Id.* §13(2000).

¹³¹ *Id.* §14(2000).

¹³² *Id.* §15(2000).

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- ¹³³ http://www.b2i.net.cn/policy/policy_int_5.htm (last visited May 15, 2001).
- ¹³⁴ The Regulations on Computer Information System Security Protection, §6 (1994).
- ¹³⁵ *Id.* §7 (1994).
- ¹³⁶ Security protection rules are stipulated in Chapter 2, security supervision rules are stipulated in Chapter 3, legal liabilities are stipulated in Chapter 4 of the Regulations.
- ¹³⁷ <http://www.nease.net/~magic/computer.html> (last visited May 15, 2001).
- ¹³⁸ The Computer Information Network and Internet Security Protection and Management Regulation, §5, §6 (1997).
- ¹³⁹ *Id.* at §8, §9, §10, §11, §12, §13, §14, §15.
- ¹⁴⁰ <http://www.cnnic.net.cn/develst/e-cnnic200101.shtml> (last visited on May 15, 2001).
- ¹⁴¹ *Id.*
- ¹⁴² Zhao Huanxin, *Rules, Ethics needed for cybersecurity*, CHINA DAILY, April 4, 2000.
- ¹⁴³ <http://www.cnnic.net.cn/develst/e-cnnic200101.shtml> (last visited May 15, 2001).
- ¹⁴⁴ Zhao, *supra* note 142.
- ¹⁴⁵ Thus, business transactions should be made as rapid as possible, in order to achieve the efficiency; on the other hand, business transactions should be made as secure as possible. Traditional commercial law, especially contract law and negotiable instruments law must strike a balance between the value of security and efficiency.
- ¹⁴⁶ For instance, China enacted the Guarantee Law in 1995; Article 9 of Uniform Commercial Code in the US also paid great attention to secured transactions.
- ¹⁴⁷ This is determined by the very nature of the ever-changing technological advance. Once certain security technology is surpassed, it can not be regarded "secure" or "safe" anymore. To some extent, we can say that there is no permanent security technology or product.
- ¹⁴⁸ According to the survey coordinated by the St Paul group of US insurance companies, while many are aware of Microsoft Corp's problems with hackers, or of the havoc wreaked by the "Melissa" and "lovebug" viruses, most companies have no safety net to protect them from the hazards of doing business on the internet. *See*, Xinhua, *Protecting your e-frontier*, CHINA DAILY, February 5, 2001.
- ¹⁴⁹ As the CNNIC survey reveals, 71.59% of the interviewees are using anti-virus soft wares, 64.67% of them are using firewall technology, 7.83% of them are using electricity signatures, only 4.58% of them do not adopt any method. *See*, <http://www.cnnic.net.cn/develst/e-cnnic200101.shtml> (last visited May 15, 2001).
- ¹⁵⁰ Xinhua News Agency, *Promote the healthy and orderly development of Chinese commercial encryption codes*, PEOPLE'S DAILY, October 18, 1999.
- ¹⁵¹ *Id.*
- ¹⁵² *Id.*
- ¹⁵³ "State confidential information" refers to the information of great significance to national security and interest, which is only available to certain group of people within certain period ascertained by following statutory procedure. *See*, The Law of Protecting State Confidential Information, §2 (1988).
- ¹⁵⁴ The State Council promulgated the Regulation of Commercial Encryption Codes on October 9, 1999. <http://www.bjbmj.gov.cn/fg/fag08.htm> (last visited May 15, 2001).
- ¹⁵⁵ The Regulation of Commercial Encryption Codes, §3 (1999).
- ¹⁵⁶ *Id.* §3 (1999).
- ¹⁵⁷ *Bernstein v. Department of State*, <http://www.eff.org/bernstein/> (last visited May 15, 2001).

¹⁵⁸ The Regulation of Commercial Encryption Codes, §5 (1999).

¹⁵⁹ *Id.* §6 (1999).

¹⁶⁰ *Id.* §7 (1999).

¹⁶¹ *Id.* §8 (1999).

¹⁶² *Id.* §9 (1999).

¹⁶³ *Id.* §10 (1999).

¹⁶⁴ *Id.* §12 (1999).

¹⁶⁵ *Id.* §13 (1999).

¹⁶⁶ Revised U.S. Encryption Export Control Regulations, January 2000. See: http://www.epic.org/crypto/export_controls/regs_1_00.html (last visited May 15, 2001).

¹⁶⁷ The Regulation of Commercial Encryption Codes, §14 (1999).

¹⁶⁸ *Id.* §15 (1999).

¹⁶⁹ *Id.* §19 (1999).

¹⁷⁰ *Id.* §20, §21, §22, §23, §24, §25 (1999).

¹⁷¹ FBI Director Louis Freeh said in a speech to the International Cryptography Institute, "We are simply looking to continue ... electronic surveillance under very stringent conditions. If we are foreclosed from those areas ... the safety of this country will be impaired." See, *Digital Security: Who Holds the Keys?* <http://www.washingtonpost.com/wp-srv/tech/analysis/encryption/encrypt.htm> (last visited May 15, 2001).

¹⁷² Zhang Yan, *Computer code rule decoded*, CHINA DAILY, March 17, 2000.

¹⁷³ *Id.*

¹⁷⁴ Stephen Lawson, *Microsoft gets OK to sell Windows 2000 in China*. See, <<http://www.cw.com.hk/News/n20000314001.htm> (last visited May 15, 2001).

It is foreseeable that Chinese encryption regulation will become more compatible with international standards after China enters WTO in the near future. Currently, it is controversial as to whether it is appropriate to classify commercial encryption technology as State confidential information. One line of argument is that such technology would be wise in order to ensure e-commerce security by defining commercial encryption technology as State confidential information and thereby allow commercial encryption technology to receive protection like other State confidential information, including military, political information. However, one of the problems associated with this position is that the e-commerce business interest and users' privacy could be infringed by government agencies, for the government agencies may be well equipped by regulatory advantages including back-doors or decryption keys to decode any encrypted business information transmitted over the Internet. The second problem is that a great number of entities or individuals will be deprived of the opportunity to explore, develop, manufacture, distribute and use valuable commercial encryption technology of great interest to E-commerce security.

¹⁷⁵ See, SOUTH DAILY (Nanfang Ribao), December 5, 1996, at 2.

¹⁷⁶ <http://www.sying.com/ebol/catixi.htm> (last visited May 15, 2001).

¹⁷⁷ *Id.*

¹⁷⁸ <http://www.cfca.com.cn/about/about.htm> (last visited May 15, 2001).

¹⁷⁹ *Id.*

¹⁸⁰ There is no list of privacy rights articulated by the Chinese legislature. The above-mentioned items of privacy summarized by these authors do not necessarily fit into Chinese legislation. It is often very

controversial to list certain personal information into the category of privacy. For instance, the high school students' scores in the National College Entrance Examination are regarded as privacy by some students, while considered public information by some high schools. Yet, there is neither statutes nor court cases on this point. See, Huang Zhong, *Is score a piece of privacy?* CHINA ECONOMIC TIMES, August 5, 2000, at 1.

¹⁸¹ The media and general population may have strong curiosity or fundamental interest in knowing about the private life of the public figures, and the public figures are more frequently covered by media either due to performing their legal obligation, or due to their desire to be famous. All of these factors could make public figures' private life more transparent than ordinary people.

¹⁸² For instance, one of the authors of this article readily receive an answer from elderly Chinese when inquiring about his age. Americans, however, are more reluctant to state their age. Similarly, while some Americans are reluctant to disclose their salary, many Chinese are very comfortable to disclose it.

¹⁸³ In the U.S., ecommerce businesses are willing to pay for the valuable personal information, especially those regarding shopping habits and preferences. Thus, the gathering of such data has evolved into big business for many companies specializing in the sale of such information in the form of list. See, GERALD R. FERRERA, STEPHEN D. LICHTENSTEIN, MARGO E. K. REDER, RAY AUGUST, & WILLIAM TI SCHIANO, *CYBERLAW: TEXT AND CASES* 211 (2000). Such a profitable business may occur in China in not so distant future.

¹⁸⁴ In discussing defamation cases, some writers believe that "the likelihood of an increase of such cases in the future is inevitable, given the personal nature of electronic communications, publications, e-mail messages, and so on, and the relative ease with which it is possible to virtually instantaneously publish and transmit to millions of other users worldwide." See, FERRARA, et. al, *supra* note 183, at 249.

¹⁸⁵ W.J.F Jenner, *China and Freedom*, in KELLY & REID, *ASIAN FREEDOMS* (1998).

¹⁸⁶ For instance, everything was considered "public" during the Cultural Revolution. and the "red guards" could break into the private house, and take whatever they liked, including diaries. Some groups' only responsibility at that time was to explore and disclose the other people's privacy. See, He Jiahong, *The right we all have*, PEOPLE'S DAILY, September 8, 1999, at K.

¹⁸⁷ *Id.*(noting that even today some people still interpret the word "privacy" as something akin to immoral romantic affairs between the male and the female).

¹⁸⁸ Yang Lixin, *The right to privacy should not be violated*, PEOPLE'S DAILY, September 8, 1999, at K.

¹⁸⁹ Chinese Constitution, §37 (1982).

¹⁹⁰ *Id.*,§38 (1982).

¹⁹¹ Some Chinese scholars interpret the notation "human dignity" as a abstract and general concept, which takes several concrete forms, such as the right to privacy and the right to reputation. See, Yang Lixin, *Please respect my human dignity*, PEOPLE'S DAILY, July 19, 2000, at K.

¹⁹² Chinese Constitution,§39 (1982).

¹⁹³ *Id.* §40 (1982).

¹⁹⁴ Criminal Law, §245,§252,§253 (1997).

¹⁹⁵ <http://www.spp.gov.cn/falv/xiaofei.htm> (last visited May 15, 2001).

¹⁹⁶ <http://www.people.com.cn/GB/channel7/498/20001016/274038.html> (last visited May 15, 2001).

¹⁹⁷ <http://www.315china.com/wqfg/wqfg11.htm> (last visited May 15, 2001).

¹⁹⁸ <http://www.people.com.cn/item/faguiku/yywsh/F47-1030.html> (last visited May 15, 2001).

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- ¹⁹⁹ <http://postcode.027.net/law1.htm> (last visited May 15, 2001).
- ²⁰⁰ <http://www.spp.gov.cn/falv/shangyeyh.htm> (last visited May 15, 2001).
- ²⁰¹ <http://www.spp.gov.cn/falv/lushi.htm> (last visited May 15, 2001).
- ²⁰² <http://www.spp.gov.cn/falv/jingcha.htm> (last visited May 15, 2001).
- ²⁰³ <http://www.spp.gov.cn/falv/minsss.htm> (last visited May 15, 2001).
- ²⁰⁴ <http://www.spp.gov.cn/falv/ssf.htm> (last visited May 15, 2001).
- ²⁰⁵ <http://www.people.com.cn/item/faguiku/xzhf/F1030.html> (last visited May 15, 2001).
- ²⁰⁶ <http://www.media-china.com/cmdt/cmdt-dl/001030/zydd.htm> (last visited May 15, 2001).
- ²⁰⁷ <http://www.laws-online.net/lvka0/11-2.htm> (last visited May 15, 2001).
- ²⁰⁸ <http://www.shnet.edu.cn/ir/irl3.htm> (last visited May 15, 2001).
- ²⁰⁹ <http://www.spp.gov.cn/falv/minfa.htm> (last visited May 15, 2001).
- ²¹⁰ The General Principles of Civil Law, §101(1986).
- ²¹¹ See, The Opinions on Certain Issues Regarding Implementing the General Principles of Civil Law, §140 (1988), http://www.fl365.com/nhlaw/lawshelf/civil_2.htm (last visited May 15, 2001); The Reply on Certain Issues Regarding Hearing the Cases of Reputation Breach (1993), <http://www.laws-online.net/lvka0/6-4.htm> (last visited May 15, 2001). This approach is very problematic. Privacy cases accepted by the court are restricted to the cases where the privacy information is disclosed or spread either orally, or in writing, and the reputation of the victim is hurt. However, not every privacy case is suitable to be classified as reputation breach. Although the reputation of an individual is hurt in some cases of privacy breach, the reputation of the individual is not hurt in many cases of privacy breach. In the latter cases, the plaintiff will be unable to seek judicial remedies under this approach.
- ²¹² Zhang Lingguo, *Please respect my "personal space,"* PEOPLE'S DAILY, September 8, 1999.
- ²¹³ *Id.*
- ²¹⁴ Su Ning and Wu Jing, *Walking toward the country with rule of law,* PEOPLE'S DAILY, September 24, 1999, at 1.
- ²¹⁵ *Id.*
- ²¹⁶ Wei Wenbiao, *Motivation and the effect,* China Economic Times, May 6, 2000, at 2.
- ²¹⁷ *Id.*
- ²¹⁸ Private detective agencies have come into being in many cities, including Shanghai, Beijing, Shenyang, Haerbin, Chengdu. Most of the investigation businesses focus on unfaithful marriages, which implies a great deal of privacy issues. CHINESE ASSETS NEWS, *Could Chinese private detective agencies make money,* March 31, 2000.
- ²¹⁹ The first Chinese Consumer credit report agency was born in Shanghai in July 2000. Beginning from July 1, 2000, 15 Chinese-invested banks in Shanghai, after paying RMB 10 yuan (1.25 US\$), could have access to the personal credit data stored in the data center of this report agency. There are critical privacy issues associated with the collection, storing and dissemination of the consumers' personal credit information. See, Xie Jun, *Do you know the credit ID card?* GUANGMING DAILY, July 14, 2000 at B2; Wang Lu and Quan Wuying, *Unified personal credit report: how to ensure the financial consumer' interest?* ECONOMIC DAILY, August 25, 2000.
- ²²⁰ Although it is illegal to sell wiretapping devices in China, bugs are available in the market of some cities. Even some elementary students can buy them to eavesdrop the other people.
- ²²¹ Chen Gang and Tang Min, *Be careful with the expansion of bugs,* PEOPLE'S DAILY, February 16, 2000.

²²² This also serves to satisfy the current legal requirements. *See*, the Implementing Rules of the Preliminary Regulations on Computer Information Network and Internet Management, §13(1997).

²²³ For instance, to apply for the online shopping membership at <http://mall.sina.com.cn/>, one must submit the information on your true name, gender, birth date, education background, industry the applicant is working with employment position, monthly income (optional), marriage status (optional), hobbies (optional), address, post code, telephone number, type and number of ID documents. *See*, <http://members.sina.com.cn/cgi-bin/nz/newform.cgi> (last visited May 15, 2001).

²²⁴ To apply for a free email address at yahoo.com, one is asked to submit the information, including date of birth, family name, first name, residence, post code, gender, occupation and industry the applicant is working with. *See*, <http://mail.yahoo.com>. To apply for a free email address at china.com, one is requested to submit more information, including the ID number, the highest education background, marriage status, employment status, monthly income, method used to have access to internet, time spent on the internet per month, expense spent on the internet, the first time having access to internet. *See*, <http://freemail.china.com/extend/gb/UserName.htm> (last visited May 15, 2001). To apply for a free email address at wowchina.com, you are also requested to submit the information regarding one's street address. *See*, <http://china.mail.everyone.net/email/scripts/joinuser.pl?EV1=9896217037074870> (last visited May 15, 2001).

²²⁵ Li Lin, *Explore the road to information security*, PEOPLES' DAILY, August 28, 1999, at 7.

²²⁶ *Id.*

²²⁷ *China Security Blitz Bugs Intel PCs*, AUSTRALIAN BUSINESS ABSTRACTS, July 8, 1999.

²²⁸ <http://www.eneews.com.cn/document/20000901/2000090111191501.shtml> (last visited May 15, 2001).

²²⁹ The Notice on Standardizing Sending Commercial Advertisements by Emails, §(2000).

²³⁰ Since the Beijing Authority on Industrial and Commercial Administration is only a local government agency, only its administrative measures within its jurisdiction could be recognized by law.

²³¹ The European Union's Directive on Privacy Protection, effective on October 25, 1998, is an important effort of legislative harmonization in safeguarding the right to privacy within 15 EU member states. For this Directive, see: <http://www2.echo.lu/legal/en/dataprot/directive/directive.html> (last visited May 15, 2001). This Directive is so rigid that some American writers admitted that, "currently, U.S. laws on privacy do not comply with the Directives' mandates". *See*, FERRERA, et. al, *supra* note 183, at 217.

²³² These two rights will enable the consumers have some idea about the e-business's practice regarding their personal data, and enable them to stop e-business from using and selling their personal data. In other word, consumers' personal data should be treated like consumers' other private property.

²³³ Surveys and cookies are not the only two means to gather consumer personal data. Other technologies could also be developed in gathering consumer personal data in a more efficient and challenging way.

²³⁴ It seems that such subsequent report has not been endorsed by all e-business. Without the subsequent report, consumers will probably have no idea where their "private property" has been placed.

²³⁵ It seems that personal data gathering is justified only when it serves certain transaction purpose. If personal data gathering serves other purpose, consumers should have the right to abstain from cooperation with the e-business.

²³⁶ In addition to consumers' motivation to be let alone, additional but unnecessary information may put consumers at disadvantage later in terms of possible different but unjustified treatments based on the personal data consumers provided.

²³⁷ Of course, consumers could sell his or her personal data to the e-business outright and give up all the rights to control or update the personal data. Otherwise, consumers should be offered opportunities to keep the ultimate control over their personal data.

²³⁸ Some consumers may be very concerned about the second-hand, or even the third-hand buyers of their personal data. The opportunity for them to participate the decision on selling their personal data will make consumers feel comfortable when they asked to offer detailed personal data.

²³⁹ Xuanwu District People's Court in Nanjing city, 2000.

²⁴⁰ Yang Jian and Da Ying, *Nanjing: defamation on the Internet is on trial*, YANGZI EVENING NEWS, May 25, 2000.

²⁴¹ Xinmin Evening News, July 1, 2000 where a rumor caused RMB 30 million yuan of loss to a bank.

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ The General Principles of Civil Law, §101(1986).

²⁴⁵ *Id.*

²⁴⁶ *Id.*, §101(1986).

²⁴⁷ The Criminal Law, §221(1997).

²⁴⁸ *Id.* §246(1997).

²⁴⁹ The Decision on Ensuring Internet Security, §4(2000).

²⁵⁰ The Regulations on Telecommunication, §57(2000).

²⁵¹ The Computer Information Network and Internet Security Protection and Management Regulations, §7(1997).

²⁵² The Regulations on Internet Bulletin Board Service Administration, §9(2000).

²⁵³ The Preliminary Administrative Regulations on Publication of News on Internet Web Sites, §13(2000).

²⁵⁴ <http://www.laws-online.net/lvka0/6-4.htm> (last visited May 15, 2001).

²⁵⁵ <http://www.gzlawyer.com/laws/minyujx.htm> (last visited May 15, 2001).

²⁵⁶ The Reply on Certain Issues Regarding Hearing the Cases of Reputation Breach, §4, §5, §7, §10(1993); the Interpretations on Certain Issues Regarding Hearing the Cases of Reputation Breach, §7, §9, §10 (1998).

²⁵⁷ The Reply on Certain Issues Regarding Hearing the Cases of Reputation Breach, paragraph 1, §7 (1993).

²⁵⁸ *Id.* paragraphs 2, 4, §7 (1993).

²⁵⁹ *Id.* §5 (1993).

²⁶⁰ Beijing's No 1 Intermediate People's Court, December 19, 2000.

²⁶¹ For the facts of this case, see the first instance verdict at: http://www.angelaw.com/weblaw/wang_court03.htm (last visited May 15, 2001); the second instance verdict at: http://www.angelaw.com/weblaw/wang_22.htm (last visited May 15, 2001); *see also*, He

Sheng, *Pushing the limits on-line*, CHINA DAILY, April 11, 2000; Shao Zongwei, *Shopper loses libel case*, CHINA DAILY, December 20, 2000.

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ Zheng Zhi, *Consumer complains on the internet, and manufacturer's attorney sends e-mail to consumer*, LIFE TIMES, July 28, 1998.

²⁸² *Id.*

²⁸³ Zhang Yan, *Whose fault: a controversial case about Maxstation laptop*, PC WORLD, August 10, 1998.

²⁸⁴ http://www.angelaw.com/weblaw/wang_court03.htm (last visited May 15, 2001); http://www.angelaw.com/weblaw/wang_22.htm (last visited May 15, 2001); He Sheng, *Pushing the limits on-line*, CHINA DAILY, April 11, 2000.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ http://www.angelaw.com/weblaw/wang_court03.htm (last visited May 15, 2001).

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *See*, http://www.angelaw.com/weblaw/wang_22.htm (last visited May 15, 2001).

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ The Interpretations on Certain Issues Regarding Hearing the Cases of Reputation Breach, §9(1998).

²⁹⁶ *See*, http://www.angelaw.com/weblaw/wang_22.htm (last visited May 15, 2001).

²⁹⁷ *See*, http://www.angelaw.com/weblaw/wang_court03.htm (last visited May 15, 2001).

²⁹⁸ *See, e.g., Howard Stern v Delphi Services Corporation*, 165 Misc. 2d 21, 626 NYS2d 694 (NY Sup.

Ct. 1995).

²⁹⁹ The Interpretations on Certain Issues Regarding Hearing the Cases of Reputation Breach, §9(1998).

³⁰⁰ See, http://www.angelaw.com/weblaw/wang_22.htm (last visited May 15, 2001).

³⁰¹ *Id.*

³⁰² He Sheng, *Pushing the limits on-line*, CHINA DAILY, April 11, 2000.

³⁰³ See HERNANDO DESOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* (2000) (arguing that a key reason why the West fosters capitalism is because of a long legal history refining concepts of property rights De Soto argues that in advising emerging countries how to adapt their legal systems, Western advisors are sometimes unaware of the complexity of their own legal history and how to graft 21st century rules onto a socioeconomic polity without the decades of learning that made incremental advances in property development sensible).

³⁰⁴ *Id.*

³⁰⁵ Contract Law, §11, §16, §26, §33, §34(1999).

³⁰⁶ See, R. SCOTT APPELBY, *THE AMBIVALENCE OF THE SACRED* (1999) (arguing that a major reason that fundamentalist sects develop is that new ways of thinking, such as free market capitalism, can undermine traditional identity as well as economic ways of life. Thus, a reaction to this new threat is to “dig in” with the blessings of a fundamentalist interpretation of sacred scriptures.)

³⁰⁷ See, F.A. HAYEK, *THE FATAL CONCEIT* (1988)(arguing that between instinct and reason lies a dimension of knowledge that is inherent in tradition that human beings are wise to attend to.