

E-COMMERCE IN CHINA

By

CHUNYAN WANG

LL.B., Nankai University, 1991

**A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF MASTER OF LAWS**

In

THE FACULTY OF GRADUATE STUDIES

(Faculty of Law)

We accept this thesis as conforming to the required standard

THE UNIVERSITY OF BRITISH COLUMBIA

April 2003

© CHUNYAN WANG, 2003

In presenting this thesis in partial fulfilment of the requirements for an advanced degree at the University of British Columbia, I agree that the Library shall make it freely available for reference and study. I further agree that permission for extensive copying of this thesis for scholarly purposes may be granted by the head of my department or by his or her representatives. It is understood that copying or publication of this thesis for financial gain shall not be allowed without my written permission.

faculty
Department of Law

The University of British Columbia
Vancouver, Canada

Date 04 / 25 / 2023

Abstract

Internet and electronic commerce (e-commerce) promote China's rapid economic growth towards modernization and globalisation. This thesis highlights some of the legal issues surrounding e-commerce and the measures taken by nations and international organisations to address these problems.

It is generally acknowledged that legal issues on e-commerce have a global dimension and can no longer be solved by national solutions only. Fragmented and diverse national approaches adopted by individual nation would adversely affect the development of electronic commerce. To this end, a number of legal efforts regarding e-commerce by international organizations and countries will be discussed and compared in this thesis.

The challenges for e-commerce that international society faces exist as well in China. Domestic development and problems, legal issues and regulations on e-commerce in China are outlined. Some suggestions will be given on how to achieve balance between the development and the regulation on e-commerce in China.

The conclusion suggests that e-commerce law should keep up with development and globalisation in this area. If treated correctly, e-commerce has potential benefit for everyone and could be a major source of wealth creation. However, balance should be taken into consideration between the public security and the benefits associated with the free flow of information.

TABLE OF CONTENTS

ABSTRACT	ii
ACKNOWLEDGEMENT	v
CHAPTER 1 INTRODUCTION	1
1.1 ELECTRONIC COMMERCE AND GLOBALISATION	1
1.2 METHODOLOGY – ‘LAW AND ECONOMICS’	9
1.3 LITERATURE REVIEW	17
CHAPTER 2 INTERNATIONAL LEGAL REVIEW OF E-COMMERCE	24
2.1 INTERNATIONAL ORGANIZATIONS	24
2.2 EU, CANADA AND US	28
2.3 SOME ASIAN COUNTRIES	39
CHAPTER 3 E-COMMERCE: BACKGROUND, DEVELOPMENT AND PROBLEMS IN CHINA.....	45
3.1 BACKGROUND: NEW ECONOMY AND INTERNATIONAL COOPERATION	45
3.2 DEVELOPMENT: THE INTERNET AND E-COMMERCE IN CHINA.....	50
3.3 PROBLEMS WHICH HINDER E-COMMERCE DEVELOPMENT	56
CHAPTER 4 LEGAL ISSUES AND REGULATIONS ON E-COMMERCE IN CHINA.....	64
4.1 ADMINISTRATIVE LEGAL SYSTEM	64
4.2 GENERAL LAWS AND GUIDELINES	71

4.3 REGULATING E-COMMERCE AND ONLINE ACTIVITIES	76
CHAPTER 5 THE FUTURE OF E-COMMERCE IN CHINA	103
5.1 ONLINE BANKING AND SECURITY ISSUES	103
5.2 FOREIGN INVESTMENT IN E-COMMERCE AFTER THE WTO.....	118
5.3 WHAT CHINESE GOVERNMENTS CAN ACCOMPLISH IN WTO	125
CHAPTER 6 CONCLUSION	134
BIBLIOGRAPHY	140
APPENDIX 1: REGULATIONS ON THE REGISTRATION AND FILLING OF ONLINE BUSINESS OPERATIONS	160
APPENDIX 2: NEW RULES ON E-COMMERCE DIGITAL CERTIFICATES.	165
APPENDIX 3: GUIDELINES ON THE DEVELOPMENT OF CHINA'S E- COMMERCE INDUSTRY	168
APPENDIX 4: CIRCULAR OF THE BEIJING MUNICIPAL ADMINISTRATION FOR INDUSTRY AND COMMERCE CONCERNING E-COMMERCE ACTIVITIES REGISTRATION	169
APPENDIX 5: BEIJING MUNICIPALITY, PROTECTION OF THE LAWFUL RIGHTS AND INTERESTS OF CONSUMERS IN ONLINE ECONOMIC ACTIVITIES NOTICE.....	171

Acknowledgement

I greatly appreciated my supervisor, Professor Pitman B. Potter. His knowledge, wisdom and experience about China are great assets for me not only to finish my thesis, but also to my future career. I would also like to thank my second reader, Professor Hudson Janisch, a visiting professor from the University of Toronto, whose suggestions widened my perception and helped bring this thesis to a conclusion.

The contribution made by my family is immeasurable. My husband, Bo Fan, by word and deed, gave me support, inspiration and encouragement during the many long months of research and writing. Now that this thesis is finished, it is his as much as it is mine.

Chapter 1 Introduction

1.1 Electronic Commerce and Globalisation

Definitions of electronic commerce (e-commerce) vary significantly.¹ At its most general, e-commerce “covers any trade or commercial transaction that is effected via electronic means; this would include such means as facsimile, telex, EDI, Internet, and the telephone.”² A narrow definition is “trade that actually takes place over the Internet.”³ This definition is more in keep with popular usage and will be adopted for this thesis.

E-commerce is a shorthand term that encompasses a complex of technologies, infrastructures, processes, and products. It brings together whole industries and narrow applications, producers and users, information exchange, and economic activity into a global marketplace called the Internet.⁴ It is one of the biggest driving forces behind

¹ Defining and Measuring E-Commerce: A Status Report Organisation for Economic Co-operation and Development (OECD), Paris, 1999, at 8.

² Electronic Commerce Expert Group to the Attorney-General, Electronic Commerce: Building The Legal Framework, 1998, at 151.

³ The Economist, 26 February 2000, at 54.

⁴ For a more elaborate discussion of definitions, see online:

<<http://www.oecd.org/dsti/sti/it/ec/act/sacher.htm>> (1999, 28-9, box 1) and United Nations Conference on Trade and Development (UNCTAD) (2000, 9-23).

these factors, plus the awareness of its powerful use in breaking down information and communication barriers between organizations.

Generally speaking, e-commerce is a modern term referring to business online, which is driven by the rise of information technology (IT), or rather, the increase in the digitalization of all information. It is a revolutionary scientific breakthrough. In last few years of 20th century, the term is widely known and accepted by the public. In China, e-commerce is officially defined as profit-making activities on the Internet by commercial dealers and organizations.⁵

⁵ *The Circular of the Beijing Municipal Administration for Industry and Commerce Concerning Activities Registration*, Beijing Municipal Administration for Industry and Commerce (BAIC) (28 March 2000).

Box 1. Various descriptive definitions of electronic commerce⁶

"As the Internet empowers citizens and democratizes societies, it is also changing classic economic paradigms. New Models of commercial interaction are developing as businesses and consumers participate in an electronic marketplace and reap the result benefits. The GII⁷ has the potential to revolutionize commerce in these and other areas by lowering costs dramatically and facilitating new types of commercial transactions. The Internet will revolutionize retail marketing. Commerce on the Internet could total tens of billions of dollars by the turn of the century." (U.S. Executive Office of the President, 1997)

"Electronic commerce, defined simply, is the commercial transaction of services in an electronic format." (Transatlantic Business Dialogue Electronic Commerce White Paper, 1997)

"Electronic commerce refers generally to all forms of transactions relating to commercial activities, including both organizations and individuals, that are based upon the processing and transmission of digitised data, including text, sound, and visual images." (OCED, 1997)

"Electronic commerce is about doing business electronically. It is based on the electronic processing and transmission of data, including text, sound, and video. It encompasses many diverse activities including electronic trading of goods and services, online delivery of digital content, electronic fund transfers, electronic share trading, electronic bills of lading, commercial auctions, collaborative design and engineering, online sourcing, public procurement, direct consumer marketing, and after-sales service. It involves both products (consumer goods, specialized medical equipment) and services (information services, financial and legal services); traditional activities (healthcare, education) and new activities (virtual malls)." (European Commission, 1997)

"Electronic commerce is the carrying out of business activities that lead to an exchange of value across telecommunications networks." (European Information Technology Observatory, 1997)

"... electronic commerce, which has been limited to a number of specified companies, is entering a new era where many unspecified persons including general consumers are involved on the networks. In addition, its contents have come to include not only simple transactions of data concerning placing orders or order acceptance but also to general commercial acts such as publicity, advertisements, negotiations, contracts, and fund settlements." (Ministry of International Trade and Industry, Japan, 1996)

E-commerce can be defined involving an enormous, growing and diverse range of activities including electronic trading of goods and services, on-line delivery of digital

⁶ *Building Confidence, Electronic Commerce and Development* (UNCTAD) [hereafter Building Confidence] (New York and Geneva, 2000), at 14. definitions can be found in legal documents pertaining to e-commerce Online: <<http://www.ispo.cec.be/ecommerce/legal/legal.html>>.

⁷ Global Information Inc. (GII) was established in 1984, and has since emerged as the single most successful aggregator for premium business intelligence and market research products in the Eastern hemisphere, and now around the world. Based in the Greater Tokyo Area, GII has gained a reputation for providing quality products and excellent customer service to the Japanese and Asian business markets. In the past few years, GII has opened offices in Korea, Singapore, Brussels, and the United States to expand our reach and provide continuous 24-hour service around the globe. GII's experience, longevity and proactive marketing philosophy have allowed GII to develop key relationships with industry leaders,

content, electronic banking, electronic payment and fund transfers, electronic bills of lading, commercial auctions, collaborative design, engineering services, public procurement, direct consumer marketing, and after-sales services. To be more specific, we can say that e-commerce would include indirect electronic transactions (electronic ordering of tangible goods) as well as direct ones (on-line delivery of intangible products). Such a breakthrough has already proved attractive to more and more countries involved in e-commerce, and this brings the international community much closer together. This helps generate a new era of what is called 'globalisation.'

What is globalisation? Globalisation has become a very popular expression in the social sciences in recent years. It is generally used to describe the fact that an increasing number of social problems have a global dimension today and can no longer be solved by solely national solutions. Two British political scientists, define globalisation as " the process of increasing interconnectedness between societies such that events in one part of the world more and more have effect on people and societies far away. A globalised world is one in which political, economic, cultural, and social events become more and more interconnected ... In each case, the world seems to be 'shrinking,' and people are increasingly aware of this."⁸

The IMF describes 'Globalisation' as,

The growing economic interdependence of countries worldwide through the increasing volume and variety of cross-border transactions in goods and services and of international capital flows, and also through the more rapid and widespread diffusion of technology.⁹

Box 2. Track of the fast train¹⁰

Capital is offensive in the age of present globalisation and this capital-led globalisation is in its endeavour to restructure the entire economic, political and socio-cultural system of the world. The fast train of globalisation is moving on the track of fast changing technology and modern systems of communication & information.

Globalisation is the great economic event of our era. As Martin Wolf has written:¹¹

Between 1930 and 1990, average revenue per mile in air transport fell from 68 US cents to 11 cents, in 1990 dollars; the cost of a three-minute telephone call between New York and London fell from \$240.65 to \$83.92; and between 1960 and 1990, the cost of a unit of computing power fell by more than 99 per cent. Improved communications have led to an organisation innovation- the multinational company, a superb mechanism for transferring technology across frontiers.¹²

In a word, technology makes globalisation feasible. Yet, on balance, globalisation has gone further than ever before. Global ratios of exports to output returned to 1918 levels

⁸ John Balis/Steve Smith (eds.), *The globalisation of world politics* (Oxford 1997), at 7. Various similar definitions are cited at 15.

⁹ Martin Wolf, "Why this hatred of the market?" (7/15/2001), online: Financial Times <<http://www.monde-diplomatique.fr/dossiers/mondialisation/dbwolf.html>>.

¹⁰ Dr. Yuv Raj Khatiwada, Dr. Narayan Manahdar and Mr. Umesh Upadhyaya, *Globalisation: Economy, Labour and Private Sector*, online: <<http://www.gefont.org/proceedings/globalisation.html>>, at 2.[hereafter Khatiwada and Manahdar, *Globalisation: Economy, Labour and Private Sector*].

¹¹ *Supra* note 9.

¹² *Ibid.*

by 1970, but have since risen from 12 to 17 per cent, financial markets are highly integrated; technology is being transferred at unprecedented rates; and governments are increasingly bound by multilateral agreements.¹³ Why have so many governments chosen, or been forced, to open up to the world economy? The lessons of experience provide an answer. States may imprison their citizens, but they cannot force those imprisoned to show the initiative of free people.¹⁴ These are the closest to the controlled experiments that economic history affords. Their results explain why China liberalised, the Soviet empire disappeared, communism collapsed.¹⁵

Globalisation offers a host of opportunities not only for optimum utilisation of resources, availability of capital and financing, and maximisation of consumer welfare, but also for acquiring knowledge and technology for economic development. Developing countries can neither afford to develop knowledge and technology on their own, nor it is rational to develop on its own. Adopting technology would be more economic and time saving. But seizing those opportunities require openness to the outside world in terms of trade, investment and transfer of technology.¹⁶ However, globalisation has also brought in a host of challenges to countries. First, globalisation has reduced the sovereign policy domain of countries; development policies are highly affected by the global economic

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ See Khatiwada and Manahdar, Globalisation: Economy, Labour and Private Sector, *supra* note 10, at.3.

environment. In fact, economic policies of many countries are now made in Washington and imported for implementation.¹⁷

Pitman B Potter regards has observed:

The notion of 'globalisation' may well be an ideology (White, 1995), but it has its origins in material interest. For just as states deploy and manipulate international economic organizations to suit their own policy imperatives (Trachtman, 1997), so both states and private actors build popular support for particular institutional and normative regimes through the deployment and manipulation of ideas.¹⁸ Thus, while political and economic elites often decry the over-use of the term 'globalisation', it is these same elites who make most use of opportunities for increased international mobility of capital and information.¹⁹

Box 3: Technology & Ideology²⁰

Globalisation is actually a process continued from centuries and centuries. However, the speed of this fast running 'Sinkansen' is surprisingly high. The causal factor responsible for this high speed is the well-known twins:

Technology – unexpected improvement in transport & communication creating unbelievable contraction of time and distance.

Ideology – Dissolution of Soviet Union, German unification, government inefficiently and down –sizing and preference for the market economy.

The dramatic growth of the Internet and e-commerce over the last few years has been matched and fuelled by the hype. Certainly-as stock markets and investors indicate-the

¹⁷ *Ibid.*

¹⁸ Gramsci's ideas about 'cultural hegemony' should cause observers facing the rhetoric of globalisation to question whose interests are being served by the dissemination and consumption of these ideas: Gramsci, 1971; Greer, 1982: 304-9. See also Hunt, 1993: ch11. See also Pitman B Potter "Globalisation and Local Legal Culture, Dilemmas of China's Use of Liberal Ideals of Private Property Rights" (hereafter Potter, Globalisation and Local Legal Culture) The Australian Journal of Asian Law (The Federation Press 2000) 2-1 at 2.

¹⁹ *Ibid.* Potter, Globalisation and Local Culture.

Internet can generate immense wealth, as entrepreneurs create new markets and established companies innovate production, marketing, and sales strategies. Certainly-as sociologists and futurists point out-the Internet and e-commerce have already changed, and more fundamentally, will change the way billions of people work, learn, and live. Certainly - even though we can only imperfectly see the potential of the information revolution-it is likely to exceed the wildest projections.²¹

On the other hand, as Potter has further observed:

The phenomenon of globalisation is also an issue of imagination. In popular culture, globalisation is perceived as a troubling phenomenon. While the increasing free flow of information, goods, people and money across borders is recognised as having unparalleled importance in the post-Cold War world, the effects are often seen as harmful by local communities. Jobs are seen to be lost to immigrant and overseas workers. Consumer goods are at once welcomed for the cheap prices that production in developing economies allows, but also scorned as the product of less than savoury authoritarian regimes. Access to the Internet is viewed by many as a helpful educational and commercial instrument, but also is treated with apprehension as a source of pornography and hate speech. The relationship between international capital markets and the value of the national currency is increasingly seen as depriving local communities of control over their standards of living.²²

²⁰ Khatiwada and Manahdar, Globalisation: Economy, Labour and Private Sector, *supra* note 10, at 6.

²¹ Catherine L. Mann, Sue E. Ekokert and Sarah Cleeland Knight, *A Policy Primer, Global Electronic Commerce*, (Institute for International Economics, Washington D.C. July 2000), at 1. [hereafter Mann and Ekokert, Global Electronic Commerce].

²² Potter, Globalisation and Local Legal Culture, *supra* note 18, at 3.

This leads him to conclude:

Whether viewed as an empirical phenomenon or as a dilemma of imagination, globalisation remains a powerful expression of changing social, political and economic relations at the international level.²³

As its very name indicates, e-commerce must have some bearing on international affairs and their legal framework.²⁴ It needs standards, regulations, and laws to create an environment of certainty, trust, and security for the purchase and sale of products online, as well as for the conveyance and use of information provided online. E-commerce presents new business opportunities as well as challenges. Accommodating fast-moving e-commerce, in terms of both legal and technological structure, is a challenge for all those involved. There is a need for an appropriate legal basis, in order to enable traders to benefit to the maximum extent from the opportunities offered by e-commerce.

1.2 Methodology – ‘Law and Economics’

E-commerce simplifies, makes more efficient, reduces the cost of, or otherwise alters, the process by which a transaction takes place. E-commerce also creates or facilitates new products and new industries not previously available.

²³ *Ibid*, at 4.

²⁴ Jurgen Basedow, Toshiyuki Kono, ed., *The Effects of Globalisation on Private International Law, Legal Aspects of Globalisation*, (Kluwer Academic Publishers) at 1.

Internet appliances tailored to a specific need (such as e-mail-only devices) are now available in retail stores in both the United States and China. MP3 online medium for music allows artists to record music onto a computer; consumers can then download it onto a CD-ROM or a mobile player, thus creating a new medium to produce, market, and distribute music. Companies WebMD²⁵ repackage health information in an easy-to-use online format, offer opportunities for people with similar health concerns to “chat,” and provide real-time answers to health questions. Personal digital assistants like Palm Pilots and high-functionality cellular phones allow consumers to surf the Internet (or compare prices while in the aisle of the store) and buy products online using the mobile connection. How products and industries made available over the Internet, particularly those using high-speed broadband or cable delivery will evolve, is still unknown. E-commerce creates new markets in time, space, and information where previously transaction and coordination costs were prohibitively high.²⁶

The Internet and e-commerce are growing so fast that forecasters regularly underestimate how many users will be online and how much revenue will be generated by e-commerce. While growth has been fastest and activity remains greatest for the early adopter-the United States- as e-commerce diffuses, growth rates (though not necessarily the amount of activity) are expected to be higher in other parts of the globe soon. The Internet and e-commerce will no longer represent only a part of a domestic business strategy or an

²⁵ WebMD with ALO Health.

²⁶ Mann and Ecockert, *Global Electronic Commerce*, *supra* note 21, at 11.

alternative way for people to communicate. It will be integral to the economic and social fabric of countries and commerce.

Because the world economy is rapidly globalising and is forcing the international trading system on the eve of the 21 century to adapt itself to conditions of global competition. At present our traditional trade policy concepts and instruments are still very much focused on commerce between national economies. However, new realities of global business increasingly blur the origin of goods and the nationality of firms.²⁷

‘Law and economics’ is a method for studying law that compares and contrasts different social arrangements across political and economic spectra. It not only analyses the efficiency of having numerous legal rules in a given society, but also investigates how changing a society’s current social, political and social arrangements will affect certain of its legal and social values and principles.

The ‘law and economics’ methodology belongs to a comparative study that compares alternative legal arrangements, while its political ideology can be summarized as asking “where we are going with the evolution of our law and our society.”²⁸ In other words, the salient function of ‘law and economics’ is that it can help us to find out what our core

²⁷ Gerhard Abel, Director for Trade at the OECD, delivered at a recent symposium in Italy, online: <<http://www.oecd.org/search97cgi>>.

values should be when considering different combination of arrangements. The reason for this is that it tests not only legal rules and their economic efficiency, but also the political, economic and historical context of legal arrangements.

E-commerce is the most efficient way to do business in an era when telecommunications allows more and more options for customer contact. The main benefit is savings in the costs of doing business. Computer- to - computer processing of transactions between customers and suppliers and, to a far lesser extent as yet, between companies and customers, eliminates documents and the overhead and administration associated with them.²⁹

E-commerce is not just a single technology or tool: it is a combination of technologies, applications, processes, and business strategies. E-commerce cannot be accomplished by any single enterprise working alone, regardless of the quality of its technologies or business strategies. E-commerce systems and procedures must be consistent with each industry's practices, relationships and power structures.³⁰ E-commerce is a means to a business end. Improvement of costs, relationships, channels, processes, and shareholder value is the goal. Technology is the enabler.³¹

²⁸ Robin Paul Malloy, *Law and Economics: A comparative Approach to Theory and Practices* (St. Paul, Minn: West Pub. Co., 1990).

²⁹ G.W.Keen and Craig Balance: *On-line Profits*, (Harvard Business School Press1997) at 2.

To Gary Minda, economics was the most promising candidate offering “right answers” for law’s problems of all the social sciences.³² Richard Posner comments while the use of economic analysis in some legal subjects, such as antitrust law, has been rich and long-standing, much of what is included in the law and economics movement developed within the last two decades.³³ The new law and economics involves the application of economic analysis to common law subjects such as Tort, Contract, and Property, where the relevance of economics is less apparent.³⁴

Gary Minda agreed with Neil Duxbury and further concluded that

This movement has since evolved for more than two decades, creating two generations of law and economics scholarship united by quite different theoretical jurisprudential orientations. The first generation responsible for forming the movement was united by their faith in the merger of law and the quasi-scientific method of economics. The second generation has taken a more pragmatic and non-nonsense stance toward economic analysis of law: economics is found to be useful for verifying empirical observations about legal behavior. The jurisprudential source supporting the lawyer’s faith in the economic analysis of law, however, remains a subject for debate.³⁵

³⁰ *Ibid.* at 3.

³¹ *Ibid.* at 5.

³² Gary Minda, *Postmodern Legal Movements, Law and Jurisprudence at Century’s End*, (New York University Press 1995).

³³ Richard Posner, *The Economic Analysis of Law* (Boston: Little, Brown & Co., 4th ed. 1992) at 21.

³⁴ *Supra* note 32.

³⁵ *Ibid.* See also Neil Duxbury who argues that responsibility for this “ambivalence” lies at the feet of critical legal scholars, like himself, who have argued that law and economics and critical legal studies movements share a common historical legacy with the legal realist movement. See Neil Duxbury, *Patterns of American Jurisprudence* (Oxford University Press forthcoming 1995) at 434. See also Gary Minda, “The Law and Economics and Critical Legal Studies Movements in American Law” in Nicholas Mercuto ed., *Law and Economics* (Dordrecht: Kluwer 1989). Duxbury claims that arguments emphasizing intimacy between law and economics and critical legal studies have brought about ambivalence about the true jurisprudential pedigree of the law and economics movement.

However, by the 1990s, Robin Paul Malloy with others scholars embraced the pragmatic view that law and economics must be approached from a more common sense, instrumental perspective focusing on human goals and aspirations.³⁶

This methodology can become the basis for e-commerce legislation. Hence, while law and economics analysts continued to believe that efficiency is the test for evaluating good and bad law, they understood legal efficiency as a practical concept that is instrumental, adaptive and functional.

With the rapid uptake of e-commerce, predictably, there has been a rush to enact laws. However, these laws suffer from two fundamental problems: the changing nature of the technology has the potential to render any legislation redundant within a short period of time. In addition, national laws are inadequate to govern what is truly a global issue. Regulation poses further threats in that it risks stifling e-commerce if it is unduly burdensome.

The aim of any regulation of e-commerce should therefore be to facilitate the adoption of e-commerce, or at the very least to avoid distortion of the market through laws which are not appropriate or which create strong local differences. Although there is an argument

³⁶ See, e.g. Robin Paul Malloy, "Toward a New Discourse of Law and Economics", SYRACUSE L. REV. 27 (1991) at 42; Kenneth G. Dau-Schmidt, "Relaxing Traditional Economic Assumptions and Values: Toward a New Multidisciplinary Discourse of Law", SYRACUSE L. REV. 181 (1991) at 42.

that legislation is not necessary, that clearly is not the case. Existing laws are not capable of being adapted to this truly new sphere of business. However, because no clear picture yet exists as to what e-commerce encompasses, how widespread it has become, and how it is likely to evolve in the future, it is difficult to reach a consensus on suitable laws. To some extent, this has been achieved through the various international agreements that have been entered into, although no one agreement takes precedence over another and none are strictly binding. Of more legal effect are interstate agreements such as have taken place between European Union (EU), US and some Asian countries. If a model can be created between these countries it will serve to encourage others to adopt similar legislation, perhaps leading to the level of certainty craved by business.

The legal research employed here is based on my work and study experience in Europe, Canada and China. From a legal practitioner's view point, e-commerce presents many challenges to traditional legal areas. Daily life experience, such as e-banking, online payment, ATM machine transactions, provides many opportunities and ideas on how to organize this thesis. I have drawn heavily on the latest research, legal texts (statutes and interpretations), legal journals, legal practice (law makers, judges, etc.), and on other sources (such as interviews, case studies, etc.).

A number of reports produced by world government and multilateral bodies form sources in my thesis. A great deal of information was obtained from extensive website searches.

Different approaches will be introduced and comparative studies adopted to analyse the subject. Comparative studies at an international level will focus on e-commerce legislation and how it guides Chinese e-commerce development and legal framework.

China should not be kept out of the international arena on e-commerce. Similar approaches could apply to similar problems by comparison studies. General legal issues will be handled in my thesis as an outline of the legal framework in China. An effort will be made to solve problems in a feasible way by suggestion. Understanding and acceptance by international communities can bring China closer to the rest of the world.

However, China is still very much at early stage in arriving at a stable legal and regulatory regime for these new technologies. As this thesis attests, there is vigorous activity going on to develop interpretations, legislation and regulation to provide the enabling framework for widespread and appropriate use of digital technologies. In a number of areas, there is no law to regulate yet. As a result, legal framework of e-commerce in China can cover several relevant issues. A comprehensive method will have to be taken to explore the legal framework of e-commerce in China.

Major research for this thesis was concluded in 2000. This was a year of comprehensive legal initiatives in China with respect to e-commerce, which will form the basis for the

implementation era to follow. I have chosen to concentrate on these legal foundations as they are more important for academic research than the ever-changing details of implementation.

1.3 Literature Review

E-commerce raises a number of legal issues. It is not only the pace of its adoption that causes difficulty, but the fact is that it is an entirely new way of doing business which disregards national barriers and traditional means of forming contracts. Questions and uncertainties concern the validity, legal effect and enforceability of transactions conducted through electronic means, in a legal environment traditionally based on paper.

Existing requirements in national and international law for the use of written documents or manual signatures in international trade transactions constitute major obstacles to the development of e-commerce at the global level.³⁷ Other areas of legal issues relevant to e-commerce include: data protection, taxation, customs duties, security and authentication, intellectual property rights, liability of Internet service providers, illegal and harmful content, Internet governance, electronic payment systems, consumer

³⁷ "Electronic Commerce: Legal Considerations", UNCTAD/SDTE/BFB/1 OF 15 May 1998 para.87.

protection, jurisdiction, applicable law and dispute resolution mechanisms, all of which create obstacles or uncertainties in an electronic environment.³⁸

The ease by which information may be transferred is partly responsible for the success of e-commerce. It is also the cause of many of the problems, for example new mass marketing techniques have been made possible, thereby raising privacy issues. This inevitably leads to problems on a global scale for legislation and regulation.

What follows is a survey of the current literature on these major subjects of debate.

(1) Present International Legislation on E-commerce

E-commerce is a new technology, which is growing rapidly. It has the ability to create a truly global digital economy, but at present current legislation does not encourage the uptake of this technology. The nature of the Internet and the globalisation of the world economy mean that developments in e-commerce create legal problems. The growth of e-commerce has made current and future legal requirements difficult to assess. In order for e-commerce to develop, this thesis attempts to highlight the problems of legislating e-commerce at international level.

³⁸ UNCTAD Report "Legal Dimensions of Electronic Commerce" TD/B/COM.3/EM.8/2 of 4 May 1999.

EU and US are two jurisdictions at the forefront of legislative and regulatory development.³⁹ Therefore, chapter two includes the EU proposed legal framework for e-commerce and its impacts on Canada and US. At the same time, *the legal framework on e-commerce of the United Nations Commission on International Trade Law (UNCITRAL) Model Law*, Organization of Economic Cooperation and Development (OECD), Asia-Pacific Economic Cooperation (APEC) as well as some Asian countries will be introduced.

(2) E-commerce-Domestic Development and Legal Issues in China

The development of Internet and e-commerce in China will be addressed in the following chapters. Today the Internet is globally pervasive and highly commercial. It has attracted more users in more countries in a shorter period of time than any other communications tool in history. Chinese users are growing rapidly too. China.com, an on-line portal for users in China, offers a wide range of general, financial, and cultural news in English and Chinese. Some expect that the Chinese language will be the most used in the near future.

³⁹ Philip Rees and Mark Hargreaves "E.U. and U.S. Regulation of Electronic Commerce: Converging Approaches in a Converging World," *International Company and Commercial Law Review*, Special Issue On E-commerce [1999] [hereinafter I.C.C.L.R.], (Sweet & Maxwell Limited) [and Contributors], at 176.

E-commerce and Internet rely on each other. The Internet is a medium for e-commerce. E-commerce is a deep motivation to promote the Internet. E-commerce is major trend for business use via the Internet. The Internet is a space and technical support for e-commerce. First of all, the most dramatic developments have been achieved through the evolution of the Internet.⁴⁰ The Chinese government regards e-commerce as an inevitable result of the Internet.

Therefore, it is impossible to exclude Internet law while discussing e-commerce. As a matter of fact, it is often difficult to separate what is purely Internet law and what is e-commerce law. For example, advertising regulation online covers both Internet and e-commerce. China has made a good start in the Internet and e-commerce. The Chinese Internet industry is growing at an unprecedented rate compared to other sectors. E-commerce law is very up to date in China compared with other areas. At present, various authorities govern different aspects of Internet-related business.

It would also address problems relating to e-commerce's legal and financial frameworks. The legal framework supports commercial laws, public laws, domain names, privacy and security, while the financial framework includes issues concerning e-banking and online security.

⁴⁰ A.L. Potter & D.A. Cauffiel, "Poll Finds Electronic Future Bright" EDI Forum No. 3, 13 (1997) at 10.

E-commerce raises a number of new legal issues. As far as legislative reforms are concerned, being a developing country, China should take appropriate legislative measures to accommodate e-commerce, otherwise China runs the risk of being excluded from participation in international trade in the future. Therefore, general barriers and legal issues to hinder e-commerce shall be discussed in chapter three and chapter four.

(3) The Future E-commerce In China Within WTO Framework

The major legal issues that future e-commerce in China faces will be presented in chapter five. An efficient and sound financial structure constitutes a critical infrastructure for the growth and development of e-commerce as well. E-commerce requires strong financial support from the banking sector. It also needs new financial services, such as an Interbank credit card system and an electronic wallet system. At present, there is no effective national-wide financial network in China; nor has the financial industry become fully electronic.

Major banks in China have also been taking concrete steps to promote e-banking, even though it is still a relatively new concept to the Chinese people. The new online banking system relies on Internet and telephone technologies to conduct business instead of bank counters.

The security of e-commerce payment transactions is a global problem, and is also a major concern of Chinese consumers. This is reflected in their worry over online companies' credibility and payment security and hence, their preference for traditional shopping and payment on delivery.

Foreign investors looking to be part of the growth of the Internet in China need to know how best to structure their investments. The unsettled regulatory environment means that different considerations apply depending on the specific business model employed. Some discussion will be made on how to best achieve benefits and develop e-commerce in China after joining WTO.

(4) What Should China Do to Keep Up With Developments and Globalisation In E-commerce?

Chapter six will be my conclusion. Despite obstacles, China is still viewed as one of the great-untapped Internet territories. It will be hard to develop policy that is both appropriate and relevant. For these reasons, inflexible and highly prescriptive regulations and rules are inappropriate and potentially harmful.⁴¹ The task is not an easy one but it is necessary; we must seek to understand how the fundamentals of social, cultural and

⁴¹ "Framework for Global Electronic Commerce", Online:
<http://www.iitf.nist.gov/elecomm/glo_comm.htm>

economic existence are rapidly changing with the advent of information society and how this will impact upon legal regulation and industry practices.⁴²

Some suggestions will be given on how to guide balance between development and control on e-commerce in China. Although there is a general consensus that e-commerce does not take place in a legal vacuum for which a totally new legal framework needs to be created, it is as well acknowledged that there is need to adapt the existing laws and regulations to accommodate e-commerce. This would increase legal certainty and boost the trust of both businesses and consumers in e-commerce.

⁴² Anne Fitzgerald, Brian Fitzgerald, Cristina Cifuentes and Peter Cook, ed., *Going digital 2000 legal issues for e-commerce, software and the internet* (Prospect Media, 2000, St Leonards, N.S.W.) C.1: Conceptualising the digital environment at 17.

Chapter 2 International Legal Review of E-commerce

2.1 International Organizations

(1) Organization for Economic Cooperation and Development (OECD)

The OECD has been at the forefront in examining how e-commerce affects business activity and public policy, conducting extensive research and analysis on a broad range of issues.⁴³ While the OECD does not make laws, it has established useful baseline principles to guide work in areas where it has clear competency, among them privacy and authentication, taxation, and consumer protection. As the principal international organization addressing the subject, it has served as a productive forum for discussion and consensus building, and published guidelines that have become internationally accepted principles.

In 1998, the OECD adopted the *Action Plan for Electronic Commerce*, which was further updated at the 1999 Forum.⁴⁴ It outlines activities and recommendations responding to

⁴³ Online: <<http://www.oecd.org/dsti/sti/it/ec/index.htm>>.

⁴⁴ Online: <http://www.oecd.org/dsti/sti/it/ec/act/paris_ec/pdf/forum_report.pdf>.

four themes: (a) building trust for users and consumers; (b) establishing ground rules for the digital marketplace; (c) enhancing the information infrastructure for electronic commerce; and (d) maximizing the benefit of electronic commerce.

Should members be willing, the OECD could help bridge the gap between differing country approaches to issues like privacy. It could do more to help coordinate national policies and international forums addressing e-commerce questions. While the OECD has outreach programs, a more comprehensive and regularized way for developing countries to contribute would be necessary.

(2) Asia-Pacific Economic Cooperation (APEC)

Through the Telecommunications Working Group, APEC members have worked over the past five years to liberalize and expand the telecommunications and information sectors—the basic infrastructure for e-commerce. This initiative recognized the leading role and regulatory environment that enables all APEC economies to reap the benefits of e-commerce.

In 1998, APEC ministers endorsed the *Blueprint for Electronic Commerce* and its principles for promoting the use of e-commerce in the region, and promulgated an APEC-

wide e-commerce work program. The Electronic Commerce Steering Group was established in 1999 to implement the blueprint and coordinate e-commerce activities within APEC. It has already produced a study of the legal foundations for e-commerce, a legal guide for online contracting, and an e-commerce readiness assessment tool kit to help countries gauge their openness to e-commerce and identify areas where reforms are necessary. Current goals include paperless trading by 2005, a virtual multimedia resource center, and initiatives to ensure consumer protection.

(3) Free Trade Area of the Americas (FTAA)

Another regional body that is primarily a coordinating group is FTAA.⁴⁵ In 1997, the Second Summit of the Americas Plan of Action called for (a) strengthening the capacity of countries in the hemisphere to benefit from the knowledge-based global economy and (b) promoting the growth of the communications and information industries as part of national and regional integration. In 1998 ministers established the FTAA Joint Government-Private Sector Committee of Experts on Electronic Commerce, a non-negotiating group of public officials and private-sector experts, to make recommendations on ways to broaden the benefits of e-commerce in the region.

⁴⁵ Online: <<http://www.ftaa-alca.org>>.

Box 4. United Nations-related organizations dealing with electronic commerce

International Telecommunications Union (<http://www.itu.org>)

As the international organization within which governments and the private sector coordinate global telecommunications networks and services, the International Telecommunications Union (ITU) has led in setting standards on the overall architecture of the global information infrastructure, including integration of public switched telephone networks and internet Protocol (IP) networks. The ITU has emphasized development of standards for electronic commerce and communication system security for multimedia terminals; standards for electronic commerce related to infrastructure and security; educational materials to raise the awareness of the role of telecom reform and regulation in electronic commerce; and technical assistance to facilitate electronic commerce infrastructure and service in developing countries.

UNCITRAL (<http://www.uncitral.org>)

One of the first international organizations to undertake work on electronic commerce was the United Nations Commission on International Trade Law (UNCITRAL). In 1996, UNCITRAL adopted a Model Law on Electronic Commerce to assist states in devising domestic legislation to govern the use of alternatives to paper-based methods of communication and storage of information.⁴⁶ The model law has had a significant influence on national laws; it generally provides a framework to minimize legal obstacles and establish a more secure legal environment for electronic commerce. Numerous countries, including the United States in the *Millennium Digital Commerce Act* passed by Congress in 1999, have adopted or incorporated principles from the UNCITRAL Model Law into domestic legislation.⁴⁷

In addition, UNCITRAL's Working Group on Electronic Commerce is addressing the issue of electronic signatures and certification authorities. Draft Uniform Rules on Electronic Signatures are being drafted to promote the use of electronic signatures through a set of standards on the basis of which digital signatures and other electronic signatures may be legally recognized.⁴⁸ The draft rules also address standards to be met by certification authorities in issuing certificates for legal recognition, and the need for mutual recognition of "trusted" certificates on a global basis.

UNCTAD (<http://www.unctad.org>)

As the principal United Nations agency concerned with trade and development, the UN Conference on Trade and Development (UNCTAD) has concentrated its efforts on stimulating interest and awareness of the economic and social benefits of electronic commerce in developing countries. Through a series of "E-commerce and Development" workshops and regional meetings in 1988 and 1999, UNCTAD has promoted both the exchange of experiences among entities involved in electronic commerce and cooperation among governments and business to encourage infrastructure development. Ongoing activities include dissemination of electronic commerce-related information to developing countries, training activities, and analytical studies on the economic, social, and legal implications of electronic commerce for developing nations.

UNESCO (<http://www.unesco.org>)

The UN Educational, Scientific, and Cultural Organization (UNESCO) have underway a project to examine the legal, ethical, and societal aspects of cyberspace in order to establish a "universal framework for cyberspace." It has adopted a series of principles and has organized several international conferences on cyberspace law and ethics issues, such as privacy and encryption. Its agenda includes joint initiatives with the OECD on international approaches to the protection of privacy and encryption, establishment of a Web site to protect children from illegality on the Internet, and education initiatives. UNESCO also provides technical and financial assistance to developing countries for hardware and software to facilitate education and science, as well as training electronic network managers.

⁴⁶ *The UNCITRAL Model Law on Electronic Commerce*, online:
<<http://www.un.or.at/uncitral/english/texts/electcom/ml-ec.htm>>.

2.2 EU, Canada and US

National approaches to e-commerce generally reflect differing legal and cultural traditions. The EU and US are two jurisdictions at the forefront of legislative and regulatory development.

Relying on market mechanisms and self-regulation, the US has taken a hands-off approach that emphasizes private-sector leadership and minimal government intervention. This market-driven, self-regulatory model has garnered support in Australia and Japan, among other countries. The primary alternative is the more regulated model, the mandated approach. With its tradition of comprehensive legislation, EU has approached e-commerce with a more regulatory stance in mind and with a series of directives addressing specific issues. This mandated approach has been embraced in part by Canada, among others.

Either approach must, at some point, be enforced by government or the courts if it is to succeed in its objective of enabling an environment of certainty and trust. Since law traditionally moves at a relatively slow pace, cases and legislation can take years to wind their way through courts and legislatures. The Internet presents an exciting and

⁴⁷ *The Draft Uniform Rules on Electronic Signatures*, online: <<http://www.uncitral.org/en-index.htm>>.

⁴⁸ UBCTAD, February 2000.

challenging new medium for law. Not only is the breadth of coverage noteworthy, but so too is its international scope.⁴⁹

It is still not clear how e-commerce will be regulated, as it is a virtual media, which transcends national borders. Despite widespread agreement on the need for a legal framework for e-commerce, there is no agreement among world leaders on how this can be best achieved. At one end of the spectrum lies the EU, which has adopted an aggressive privacy law that impacts data transfers within the EU and abroad. At the other end of the spectrum lies the US, which has resisted a comprehensive legislative solution in favour of a hodge podge of federal and state privacy legislation, private litigation, and self-regulatory initiatives. Canada finds itself somewhere in the middle, with the *Personal Information Protection and Electronic Documents Act* providing Canadians with a less stringent legislative solution supplemented by limited self-regulation.⁵⁰

2.2.1 EU Initiatives on E-commerce

The EU is unique amongst international organizations in that it is able to make norms that are legally binding on member states⁵¹ or which confer rights and obligations directly on

⁴⁹ Michael Geist, *Internet Law in Canada*, (Captus Press 2000) at Preface [hereinafter Geist, Internet law].

⁵⁰ *Ibid*, c.13, at 307.

⁵¹ The fifteen Member States of the EU are, at present, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, the Portugal, Spain, Sweden, and the United Kingdom. In addition, the Directive is applicable to the members of the European Economic Area, namely Iceland, Lichtenstein, and Norway.

the citizens of the EU. Harmonization within the EU is a priority in order to ensure the single market is not distorted.

The EU has responded to a broad range of e-commerce concerns, including privacy, electronic signatures, and consumer protection.⁵² It also sponsors research and technology programs. In 1997, the European Union released a comprehensive set of proposals for advancing e-commerce. *A European Initiative in Electronic Commerce*⁵³ addressed three areas: access to the global market place, legal and regulatory issues, and a favourable business environment. Building on this framework, on March 23-24, 2000, Communication on a Commission Initiative for the Special European Council of Lisbon launched the *eEurope Initiative: An Information Society for All*, which proposes ambitious targets for all Europeans to realize the benefits of the Information Society.⁵⁴ This political initiative is intended to bring every citizen, school, and business into the digital age, create a digitally literate Europe, and accelerate the growth of e-commerce, especially for small- and medium-sized enterprises.⁵⁵

The proposed Directive is wide ranging. It covers what is described as “information society services”, which embrace both business to business and business to consumer services, including services that are provided free of charge. Examples of activities that will be covered include: on-line newspapers and magazines, on-line databases, on-line

⁵² Online: < <http://www.ispo.cec.be/Ecommerce/>>.

⁵³ COM [97] 0157 online: <<http://europa.eu.int/ISPO/ecommerce/drecommerce/answers/000025.html>>.

⁵⁴ Online: <http://europa.eu.int/information_society/eeurope/news_library/pdf_files/initiative_en.pdf>.

financial and professional services, on-line entertainment services, on-line direct marketing and advertising and services that provide access to the Internet.

Other EU provisions such as the *Data Protection Directive* which was brought into force on 1st March 2000 by subordinate legislation. It grants certain rights to individuals whose personal data is stored by various bodies and also regulates those who hold and process personal data. And the proposed *Distance Selling Directive* will provide a regulatory framework for the distance selling of financial services and will supplement the existing *Distance Selling Directive*⁵⁶ which provides for the protection of the consumer in relation to contracts for goods and services concluded over a distance, but does not specifically include financial services.

The Directive on a Common Framework for Electronic Signatures covers the legal recognition of electronic signatures and a legal framework for certification service to validate electronic signatures. On 1st December 1999 an amended proposal for this Directive was approved, thereby giving digital signatures for on-line contracts the same legal status as conventional manual signatures. The Directive does not require a digital signature to take a specific format. Member States have 18 months in which to implement it.

⁵⁵ Online: <http://europa.eu.int/comm/information_society/index_en.htm>.

⁵⁶ 97/7/EC online: <<http://www.spamlaws.com/docs/97-7-ec.pdf>>.

Beyond providing information and coordinating e-commerce activities among its 15 members, the EU has adopted a series of directives (some already mentioned) that in effect govern how European countries address issues like data privacy, electronic signatures, and consumer protection. However, the business community has criticized the EU regulatory approach as “an unclear mix of overlapping, contradictory, and ill-suited laws that stall e-commerce initiatives”⁵⁷

2.2.2 Canadian E-commerce Law

Canadian Internet and e-commerce law and policy is far more advanced than is often realized. The Canadian Internet law landscape is as broad as that found in any legal system.⁵⁸

Canada, like many other countries, has a myriad of federal, provincial, municipal statutory instruments, which impact upon how business may be conducted and which affect the relationships between businesses and persons with whom the businesses interact. In the Internet environment where the location of business activities is potentially everywhere there is Internet access, determining which jurisdictions' laws

⁵⁷ Dorie Turnipseed, “Initiative Encourages E-Commerce in the European Union” (Mar. 08, 2000) online: <<http://www.tilj.com/content/ecomarticle03080001.htm>>

⁵⁸ Geist, Internet Law, *supra* note 49.

apply can be an exceptionally difficult task. However, entities carrying on business over the Internet must consider the question or assume the consequences of failing to do so.⁵⁹

The EU Data Privacy Directive, which prohibits the transfer of personal data between EU member states and third countries without adequate privacy protections, was an important consideration in Canada's decision to enact its own private sector privacy legislation. In response to that, in 2000 the government passed a major legislative initiative that, for the first time, creates national private sector privacy protections. *The Personal Information Protection and Electronic Documents Act* took effect on January 1, 2001. Even though Canadian officials were confident that Canadian law would meet the EU adequacy standard, disappointingly, a European working group that assessed the Canadian law was hardly effusive with praise.⁶⁰

A project of the Uniform Law Conference of Canada (ULCC), obtained official approval in 1999, providing Canada with a legal model for electronic commerce transactions.⁶¹

The *Uniform Electronic Commerce Act* (UECA) brings much needed certainty to the world of e-commerce. Based largely on the *UNCITRAL Model Law*, it clarifies issues such as the enforceability and formation of online contracts, the use of electronic agents in the contracting process, and at what point an electronic contract is deemed sent and

⁵⁹ Barry B. Sookman "Electronic Commerce in Canada and the Law: A Survey of the Legal Issues", *International Company and Commercial Law Review*, Special Issues on E-commerce (Sweet & Maxwell Ltd), [hereafter (1999) I.C.C.L.R.] at 201.

⁶⁰ Geist, *Internet Law*, *supra* note 49, at 301.

⁶¹ *Ibid.* C. 19: Contracting, at 573.

received. It promises that information will not be denied legal effect or enforceability solely because it is in electronic form.⁶²

2.2.3 The US Approaches

The American philosophy in this area has traditionally been one of "Less is more." US industry is extremely keen to minimize the regulation of electronic commerce to ensure that the cost and complexity of compliance do not outweigh the benefits that electronic trading promises. Unlike Europe, the United States has no omnibus privacy law covering the private sector's processing of personal information. Instead, the US law features a legal patchwork that regulates different types of personal information in different ways, depending on how it is acquired, by whom, and how it will be used.⁶³

Since 1995, the US Federal Trade Commission (FTC) has been monitoring the state of online privacy and the efficacy of industry self-regulation. In May 2000, it produced an *Online Privacy Survey* for the US Congress. This Survey reviews the nature and substance of US commercial Web sites' privacy disclosure, and assesses the effectiveness of self-regulation.⁶⁴

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ The survey was based on a list of the busiest U.S. commercial sites on the World Wide Web. The groups of sites studied were (1) a random sample of 335 Web sites and (2) 91 of the 100 busiest sites (Most Popular Group).

The effectiveness and desirability of such standards are not beyond question. The enforcement of regulatory requirements would pose a challenge, and would require an enormous bureaucracy. More importantly, requiring that all web sites offer exactly the same privacy policies would restrict competition with respect to privacy and would thereby limit consumer choice. This, of course, is also one of the major adverse consequences of the EU's approach to data protection.

Domestically, states have adopted the *Uniform Commercial Code* (UCC), a wide-ranging codification of significant areas of US commercial law. The National Conference of Commissioners of Uniform State Law (NCCUSL) and the American Law Institute, which sponsors the UCC domestically, already are working to adapt it to cyberspace. The US Government supports the adoption of this model law by all nations as a start to defining an international 'uniform commercial code' for e-commerce.⁶⁵

⁶⁵ Online: <http://www.iitf.nist.gov/elecomm/glo_comm.htm>

Box 5. US Framework for Global Electronic Commerce⁶⁶

President Clinton July 1997

The private sector should lead

Governments should avoid undue restrictions on Electronic Commerce

Where governmental involvement is needed, its aim should be to support and enforce a predictable, minimalist, consistent and simple legal environment for commerce

Governments should recognize the unique qualities of the Internet

Electronic Commerce over the Internet should be facilitated on a global basis

2.2.4 Comparison Between the EU and the US Approaches

The position in the E.U. on encryption is or will be largely governed by the proposal for a directive on digital signatures, which provides a reasonably strong commitment to liberalize encryption and to provide for a harmonized approach to digital signatures, but without controls on the export of software comparable to those in US.⁶⁷

The major conflict between the U.S. and the E.U. concerns privacy and data security.

The *E.U. Data Protection Directive* requires Member States to enact laws prohibiting the transfer of data out of the E.U. to countries without “adequate” data protection. The E.U. does not regard the US as having adequate protection. When this issue was first brought to the attention of the U.S. government, it caused considerable consternation. Reports of

⁶⁶ James St. Pierre “E-business Standards and Outreach to small Manufactures” at UN/ECE Forum (19-20 June 2000), Electronic Commerce for Transition Economies in the Digital Age, Forum Proceedings, United Nations, at 158. Online: <<http://www.ta.doc.gov/digeconomy/framework.htm>>.

⁶⁷ *Ibid.* at 179.

“trade wars” were published on the basis that trans-Atlantic data flows to the US would be halted. Major U.S. organizations with a presence in the E.U. were and are still understandably anxious.⁶⁸

The division between the U.S. and the E.U. approaches to data protection is marked. The U.S. Government policy is for self-regulation, technological solutions, no overriding regulation and no centralized authority. The E.U., on the other hand, views privacy as a fundamental right and considers that E.U. citizens need their data protected wherever and whenever it is collected. Even if the E.U. and the U.S. representatives resolve this issue, it has raised the profile of data protection and privacy immeasurably.⁶⁹

Rather than seeing these interests as mutually exclusive, the US may find it is necessary to increase privacy protection to safeguard these cherished principles and the continued free flow of information. If this does happen, it is likely to be driven by the private sector rather than blanket federal legislation.⁷⁰

There is general international agreement that a global market requires a global approach to regulation. Accordingly, it is perhaps not surprising that there is considerable similarity in regulatory developments on both sides of the Atlantic. Both the US and EU

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

recognize the need for light, flexible regulation that stimulates the growth of Internet and e-commerce. As technology develops further, divergence could subside.⁷¹ The *Framework for Global Electronic Commerce* recognises the need to balance the privacy rights of individuals and the benefits associated with the free flow of information.

Comprehensive e-commerce regulation in the US has largely been confined to the state level. Much of what federal regulation there has been, has focused on electronic authentication (especially the export of software) and anti-money laundering. These have the potential to conflict with the E.U. proposal. It looks likely that the US will back down further from these controls as Internet developments made policing exports very difficult.

In this context, the E.U.'s proposed *Electronic Commerce Directive* is a welcome initiative. Reinforced by other relevant directives, the *UNCITRAL Model Law* and national efforts such as the process leading to the *US Framework for Global Electronic Commerce* and the *U.K. Electronic Commerce Bill*, the proposed directive could make a substantial contribution to the evolution of E.U. law and policy regarding e-commerce by identifying potential hazards to the growth of electronic commerce, proposing specific means of addressing those hazards and facilitating the adoption of a uniform e-commerce framework throughout the Member States of the EU.⁷²

⁷¹ *Ibid.*

⁷² *Supra* note 36 at 175.

2.3 Some Asian Countries

2.3.1 E-commerce In Japan

Fearing that it may be falling behind the US and EU in Internet use and sophistication, Japan is planning its e-commerce strategies from a starting position that is the historical opposite to that of the US.⁷³

Japan took the first major step toward becoming an e-commerce nation with the passage of the *IT Basic Bill* by the Lower House of the Diet (Japan's parliamentary body).⁷⁴ The new law calls for an "electronic government" through the creation of a broadband network infrastructure, the promotion of e-commerce, and the protection of secure networks and private information. The *IT Basic Bill* has been sent to the Upper House and is expected to enact during the Diet's current session. The bill would ease some of the estimated 733 regulations and 124 laws that currently inhibit Japan's e-commerce growth.⁷⁵

⁷³ *Electronic Commerce, Opportunities and Challenges for Government* (OECD1997) at 74.

⁷⁴ Michael Mahoney "Japan Passes E-Commerce Catch-Up Bill", E-Commerce Times, (November 13, 2000) online: <<http://www.ecommercetimes.com/perl/story/4813.html>>

⁷⁵ *Ibid.*

However, some barriers remain. According to reports, the number of Internet users in Japan has grown in 2000 because of the rapid penetration of Internet-enabled cellular telephones and other diversified terminals, which generally cost less than full-fledged PCs, and a reduction in connection charges. But Internet access is still unavailable to many of Japan's 120 million residents, most of whom would face stiff per-minute dial-up charges.⁷⁶

Japan's telecommunications industry is still dominated by former monopoly Nippon Telephone and Telegraph (NTT), now known as NTT Communications, which continues to control over 90 per cent of Japan's local phone lines.⁷⁷

Another barrier to widespread e-commerce in Japan is the lack of credit card ownership. The low usage rate of credit cards in Japan indicates that Japan is still very much a cash society. There's a real perception that using a credit card online isn't safe. It is generally regarded as a common problem in other Asian countries as well.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

(1) Enacted Legislation and Regulations Overview

- Electronic Signatures and Records (including Digital Signatures): It is law concerning Electronic Signatures and Certification Services;⁷⁸
- The Cabinet has approved a bill to revise a package of 50 laws that will allow the electronic issuance of documents related to economic transactions among private sector firms;⁷⁹
- The government has announced a package of information technology-related bills to allow the use of e-mail, fax and the Internet for applications and other formalities, including the exercise of voting rights in cooperative associations;⁸⁰
- The Fair Trade Commission has announced that it will introduce an electronic commerce monitoring system comprised of around 350 watchdogs from the private sector to crackdown on false advertising on the Internet;⁸¹
- The government endorses an ordinance under an amendment to the Commercial Registration Law to allow the introduction of an electronic commerce attestation system;⁸²
- The Ministry of Post and Telecommunications (MPT) announces that it has certified three new enterprises, Jupiter Telecommunications, Tokyo Metallic Communications and eAccess, under the new law on Supporting Business Innovation of Small and Medium Enterprises;⁸³
- Japan's Financial Reconstruction Commission (FRC) is expected to approve Japan's first Internet bank;⁸⁴
- The Minister of International Trade and Industry (MITI) releases its first proposal draft for the WTO E-Commerce Initiative.⁸⁵

⁷⁸ *Ibid.* April 18, 2000.

⁷⁹ *Ibid.* October 21, 2000

⁸⁰ *Ibid.* October 13, 2000.

⁸¹ *Ibid.* October 3, 2000.

⁸² *Ibid.* September 18, 2000.

⁸³ *Ibid.* August 14, 2000.

⁸⁴ *Ibid.* August 8, 2000.

⁸⁵ *Ibid.* July 24, 2000.

(2) Japan IT Business and IT policy.

- The Minister of International Trade and Industry (MITI) releases its action plan for a Secure E-Government;⁸⁶
- Guidelines on the Accessibility of IT Equipment Revised;⁸⁷
- Legal Provisions Relating to Electronic Signatures and Certification: Promoting E-Commerce and Otherwise Laying the Foundation for Network-based Social and Economic Activities-issued by Ministry of Posts and Telecommunications, Ministry of International Trade and Industry, Ministry of Justice.⁸⁸

2.3.2 An Overview of the Legal Framework on E-commerce in South-east Asia

E-commerce is taking the international business community by storm. While the US and EU are fine-tuning their e-commerce implementation, some south-east Asian countries, in particular, Singapore, Malaysia, Indonesia and Thailand, are not lagging far behind in the development of global electronic commerce and its progress.⁸⁹

On the contrary, e-commerce is being launched on a large scale in many Southeast Asian countries. Some, like Singapore and Malaysia, have incorporated it into their national agenda. These countries have embarked upon massive plans to overhaul their legal

⁸⁶ *Ibid.* July 24, 2000.

⁸⁷ *Ibid.* May 162, 2000.

⁸⁸ *Ibid.* November 19, 1999.

⁸⁹ P. Vittet-Philippe, "U.S. and E.U. Policies for Global Electronic Commerce - A Comparative Analysis of the U.S. 'Magaziner Paper' and of the E.U. Communication 'A European Initiative in Electronic Commerce'", (1998) 14-2 Computer Law & Security Report, at 87-95.

structure, investing millions of dollars in their infrastructures and educating the public in order to create a conducive environment for e-commerce. Others, like Thailand and Brunei, although they have not made any public announcement regarding e-commerce, have been encouraging trading through the Internet by creating online malls and business matching directories on the web. The remaining Southeast Asian countries have either promulgated some national policy guidelines to implement e-commerce (e.g. Indonesia) or are in the process of doing so (e.g. Laos and the Philippines).⁹⁰

A comparison of the various Southeast Asian countries shows that Singapore and Malaysia are definitely leading in terms of their e-commerce initiatives. Although there are many similarities in the policies adopted by Singapore and Malaysia, divergences do appear. In terms of the legal framework erected by the two countries, Malaysia apparently prefers a more interventionist approach, as can be seen from the numerous laws drawn up in this area.⁹¹ On the other hand, Singapore takes a minimalist position in this respect, erecting only the bare essential laws for the functioning of e-commerce, leaving many substantive issues, such as privacy, to self-regulation.⁹² In terms of infrastructural services, while the two countries have similar payment system, security systems, etc. in place, the establishment of the Multimedia Super Corridor largely helps Malaysia's progress.⁹³ The rest of the Southeast Asian countries, like Thailand and Indonesia, either have rudimentary e-commerce structures or are in the process of setting

⁹⁰ Luh Luh Lan and May O. Lwin, "An Overview of E-commerce laws and Policies in South-East Asia", (1999) I.C.C.L.R. at 52.

⁹¹ *Ibid.*

⁹² *Ibid.*

them up. One thing is certain. With all these initiatives and activities taking place, one can expect to see many changes on the Southeast Asian e-commerce landscape in the next few years.⁹⁴

⁹³ *Ibid*

⁹⁴ *Ibid.*

Chapter 3 E-commerce: Background, Development and Problems in China

3.1 Background: New Economy⁹⁵ and International Cooperation

China is a very important member in the international business community. It cannot and should not isolate itself from that community in the development of e-commerce in this wave of globalisation. However, the environment for e-commerce and Internet law in China is different from that in the rest of the world. China is not only a country with five thousand years of history as a separate country, but has an immense population and great potential market. After 1978, China opened its market to the world by the way of economic reform, but still appears to be a socialistic country politically. It seeks to combine socialism with capitalization.

In 2001, China became a member of WTO. This will greatly affect its legal system. It will, in turn, influence the regulation and current constraints of e-commerce. China still has to undergo the difficult process of revising its laws and regulations in order to comply with its new international trade commitments.

The New Economy has been driven by rapid globalisation and the rise of information technology (IT), or rather, the increase in the digitalisation of all information.⁹⁶ Indeed, China today is very much caught up in the relentless global process of the IT revolution. By embracing the New Economy, the Chinese government ultimately aims at achieving technology-driven economic growth. Its open support and firm endorsement of the IT industry are in fact quite significant at the early stages of the development of the New Economy. According to some observers, China's IT industry, on account of its vast market potential and steady improvement, may one day overtake that of Taiwan, Singapore and Hong Kong.⁹⁷

The rapid development of IT infrastructure in China in recent years has laid a good foundation for the emergence of its New Economy. In 1999, a total of 4.9 million person computers (PCs) were sold in China. Furthermore, domestic computer hardware sales (accounting for 70% of total sales in the computer industry) registered a 13 % rise over 1998 to reach 130 billion yuan while sales of software and information services products amounted to 41.5 billion yuan, registering a 27.5 % increase.⁹⁸

⁹⁵ The State New Economy Index, The New Economy Index, November 1998, online: <http://www.newecconomyindex.org/>.

⁹⁶ John Wong and Nah Seok Ling, *China's Emerging New Economy: The Internet and E-commerce* (Singapore University Press and world Scientific, 2001) ((hereafter Wong and Ling, *China's Emerging New Economy*) at 2.

⁹⁷ *Ibid.* at 17. See also "Mainland To Lead Region In Hi-tech Industries", South China Morning Post (12 July 2000).

⁹⁸ Wong and Ling, *China's Emerging New Economy*, Supra note 96, at 6.

At the same time, China's telecommunications industry has experienced extraordinarily rapid growth since the 1970's. For average annual growth rate of telecommunication services was more than twice that of the GDP between 1985 and 1990. The annual average growth rate of telecommunications was 45 percent during the period from 1990 to 1995.⁹⁹ As of the end of 2001, China had 15.8 million Internet users and 317 million telephone users, of which 177 million were fixed-line service users and 140 million were mobile service users. From January to November 2001, China telecommunications total revenue reached US \$ 38.6 billion.¹⁰⁰

Since 1997, China has signed a series of bilateral statements with Australia, Canada, Chile, Columbia, Egypt, the European Union, France, Ireland, Korea, Japan, the Netherlands, the United Kingdom, and the United States, endorsing a shared vision and policy principles to foster the growth of global electronic commerce.¹⁰¹ The joint statements include fundamental principles and policies that governments agree should guide the development of electronic commerce. General principles include:¹⁰²

⁹⁹ People's Daily (December 29, 1995). See also Scott Y. Guan "The Development of Telecommunications Competition in China" at 1.

¹⁰⁰ MII statistics of December 20, 2001, online: <<http://www/mii.gov.cn>>.

¹⁰¹ In April 2000, MII together with the State Economic and Trade Commission (SETC) and the China Council for the Promotion of International Trade (CCPIT) hosted the 4th China International Electronic Commerce Summit in Beijing. This summit brought together Chinese Leaders and representatives from the US, UK, and other countries, as well as representatives of prominent multinationals. During the four days summit, the foreign community had the opportunity to interact with leaders from ten Chinese ministries and commissions in roundtable discussions and more intimate behind-the-scenes meetings.

¹⁰² Mann and Ecolert, *Global Electronic Commerce* *supra* note 21 at 170.

- the private sector should lead;
- governments should avoid unnecessary restrictions on electronic commerce and foster its development through a clear, consistent, and predictable legal framework;
- industry self regulation should be encouraged through codes of conduct, guidelines, and technological solutions to met public interest goals; and
- international cooperation is important in promoting the development of electronic commerce.

In practice, these statements adopted the "US model" as outlined in the *US Framework for Global Electronic Commerce*.¹⁰³ First of all, all of these statements called for the private sector to take the lead role; second, governments should avoid undue restrictions on e-commerce, industry self-regulation is encouraged; third, though they use different terms, international cooperation to facilitate e-commerce is generally accepted. The reason for the similarities might be because bilateral statements should not conflict with national policies.

Beyond these principles, some statements outline an agenda of ongoing cooperation and dialogue in key areas. Among these are:¹⁰⁴

- continuation of the duty-free status of the Internet;
- ratification of the WIPO Copyright Treaty and Performance and Phonograms Treaty;
- clear, consistent, neutral and non-discriminatory taxation of electronic commerce;

¹⁰³ *Ibid.* Box 5, at 34.

¹⁰⁴ Statements vary, with some being more specific and others only addressing some of the policies.

- removal of barriers to electronic transactions, including support for interoperable and technologically neutral global approaches to authentication;
- support for effective means of protecting privacy;
- support for effective protection of consumers online;
- access to encryption technology that meet business, consumer, and government needs;
- commitment to extend the benefits of electronic commerce to all parts of society (overcome the digital divide); and
- the right and ability of individuals to control access to content sent over the Internet through filtering and other technology.

While this is very broad agreement, it is a positive step to foster “the effective use of electronic commerce between the two countries” within the areas of cooperation. By embracing the New Economy, China ultimately aims at achieving technology-driven economic growth. Besides, international cooperation brings friendly international environment for China to foster its own New Economy.

3.2 Development: The Internet and E-commerce in China

3.2.1 The Internet in China

Development of the Internet did not commence in China until a decade ago.¹⁰⁵ The first computer network in China was the China Academic Network (CANET), which was set up in 1987.¹⁰⁶ The major purpose of this network was to facilitate academic and research support in computer science. It provided e-mail exchange services with the global Internet via a gateway at Karlsruhe University in Germany.¹⁰⁷ In 1990, following the establishment of the CANET, China registered its domain name of "cn." with the US Network Information Center.¹⁰⁸ However, at this stage, the Internet still focused on academic purposes.

By mid-1995, this situation began to change. ChinaNet (c), the first commercial network in China, was set up by the Ministry of Post and Telecommunications (MPT) and began

¹⁰⁵ Richard Cullen and Pinky D.W. Choy, "The Internet in China", 13-1 (Spring 1999) Columbia Journal of Asian Law, at 103.

¹⁰⁶ Milton Mueller and Zixiang Tan, *China in the Information Age: Telecommunications and the Dilemmas of Reform*, the Asian Technology Information Program (ATIP) (1997) at 82. Online: <<http://www.cs.arizona.edu/japan/www/atip/public/atip.reports.97/atip97.076r.html>>.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.* at 83.

to operate in Beijing and Shanghai¹⁰⁹ Individuals were allowed to purchase Internet accounts from ChinaNet (c) directly.¹¹⁰

Another important element in China's Internet development has been the "Golden Project" factor. The term "Golden Project" refers to a series of high priority proposals for the development of information infrastructure in China. An important focus of the projects has been the nation-wide expansion of the application of the Internet in China. Indeed some commentators feel that the development of the Internet now overshadows other Golden Projects.¹¹¹

Although the Internet is playing an increasingly important role in the commercial sphere, its academic utility has not diminished. Most tertiary level academic institutions are connecting to the Internet. CERNET has claimed that it is planning to "connect all the universities and instates in China in the near future and connect high schools, middle schools, primary schools and other education and research entities by the end of this

¹⁰⁹ Sandy Tse and Philip Tsang, "Internet and WWW in China: All the Right Connections" (last modified July 2, 1997). Online: <<http://www.csu.edu.au/special/conference/apwww95/papers95/stse/stse.html>>.

¹¹⁰ William Yurcik and Zixiang Tan, "The Great (fire) Wall of China: Internet Security and Information Policy Issues in the People's Republic of China", Online: <http://www.pitt.edu/~wjyst/ascii_tprc96.txt>, for proceedings of the 24th Annual Telecommunications Policy Research Conference (TPRC), Solomons Island, MD. Oct. 1996

¹¹¹ ZiXiang (Alex) Tan and Will Foster, "Internet Diffusion in P.R. China: Global diffusion of the Internet" (March 1998), online: <<http://web.syr.edu/~ztan/China-tel.html>>.

century.”¹¹² Also, China’s first digital library system was established in Shenyang in October 1998.¹¹³

3.2.2 E-commerce in China

China’s economy in recent years, despite its overall backwardness, has started to develop industries or activities which are broadly defined as components of the New Economy. In September 1996, the China International Electronic Commerce Centre (CIECC) was established, followed by the creation of the China International Electronic Commerce Network (CIECNet), an e-commerce network which covers the whole country and links up with the world. The initiative was a positive demonstration of China’s understanding of the impact of technology on trade and commerce and its commitment to encourage and facilitate international business and investments in the IT age. On 21 June 2000, the Ministry of Information Industry (MII) launched the China Electronic Commerce Association (CECA), with vice-Minister Lu Xinggui as honorary chairman. CECA will promote the development of e-commerce, via research, investigation, consulting, training and exhibition. CECA will also act as a bridge between the government and e-commerce operators.

¹¹² Mueller and Tan, *supra* note 106, at 86. There must be some serious doubt about this claim with respect to sub-tertiary level educational institutions

¹¹³ “China’s First Digital Library Opens in Shenyang”, (Oct.15, 1998) online: <<http://www.chinainfobank.com>>.

However, the rapid growth of the sectors is constrained by factors such as a small base of registered users, high costs of using the Internet, government control of information access, and lack of an effective distribution network and financial linkage. Internet businesses are also losing money due to exorbitant charges for telephone lines, an uncertain regulatory environment, and direct competition from the telecommunications operators dominating the market. Nonetheless, the high growth potential of the two sectors is still well recognized by foreign multinationals. Despite China's manifest prohibition of foreign involvement, foreign companies have managed to enter the Chinese market by forming strategic alliances with domestic concerns. It appears that China prefers a smooth and orderly process of market opening based on a more effective regulatory regime such as licensing arrangements.¹¹⁴

Indeed, China's IT industry has been growing rapidly at about 30% annually.¹¹⁵ In 1999 alone, total IT sales increased by 16.2% to reach 172 billion Yuan (US\$20.8 billion).¹¹⁶ By the middle of 2000, the number of registered Internet users hit 16.9 million, of which 14 % had tried e-commerce;¹¹⁷ and its mobile phone population is already the second largest in the world,¹¹⁸ amongst which 30 % would be using Wireless Application

¹¹⁴ Wong and Ling, *China's Emerging New Economy* *supra* note 96, at 24.

¹¹⁵ Mo Y.J., "The Current Status & Future Prospects of China's Mobile Telecommunication", presented at the Conference on China's WTO Accession and Its impact on Northeast Asia (28-29 June 2000), Seoul, Korea. The event was organized by the Korea-China Economic Forum.

¹¹⁶ "China IT Industry Sales Reached US\$21 billion in 1999" (1 February 2000), online: <<http://www.chinaonline.com>>.

¹¹⁷ "War on Net Hots up," (12 July 2000) South China Morning Post and "E-commerce In China: The CCIDnet Survey" (27 April 2000), CCIDnet.com online: <<http://www.ccidnet.com>>.

¹¹⁸ "Don't Stifle China's IT Revolution" (28 February 2000) Asian Wall Street Journal and "China Succeeds Japan As Largest Cellphone Market in Asian-Pacific Region" (22 August 2000) China News Service.

Protocol (WAP), i.e. accessing the Internet via mobile phones. It is envisaged that the application of the latest IT technology such as Internet Protocol telephony and WAP will before long become a fairly common phenomenon in the daily lives of many urban Chinese.¹¹⁹

With the commercialization of Internet services and the momentum of the Golden Projects factors, China's Internet has developed rapidly. The China Internet Network Information Centre (CINIC) issued a Semi-Annual Report in Internet Development in China in January 2000¹²⁰ that estimates that there were 8.9 million Internet users in China at the end of 1999. International Data Corporation also predicts that this number will rise to 39.89 million by year 2004.¹²¹

Apart from the increase in the number of Internet users, the nature of Internet usage has broadened. For example, using the Internet for advertising and exchanging commercial information has become fairly common. The importance of the Internet for commercial purposes has been underlined by the Chinese government's acceptance of the use of the Internet to conclude contracts in the Contract Law. Shopping on-line is also becoming

¹¹⁹ Wong And Ling, China's Emerging Economy, *supra* note 96, at 4.

¹²⁰ Online: <<http://www.cnnic.net.cn>>.

¹²¹ Paul D. McKenzie "E-Commerce Law Report—People's Republic of China" (August 2000) at 24, online: <<http://www.lexis.com>>.

more popular. The first electronic business in China, run by the Xinhua Bookstore, started operations in the spring of 1996.¹²²

In early 1998, when IBM and several other large corporations in the US were diving into the world of e-commerce, so were the Chinese. On May 21, 1999, the Beijing Everest E-Commerce and Network Service Company established its e-commerce site, 8848.net. Then, thousands of Chinese jump onto the e-commerce bandwagon. Software developers, agents and investors have rushed to establish their e-commerce websites, believing they have found the key to quick fortunes.

In April 1999, the Beijing Oriental Hongye Information Net Technology Company set up the Shikong Net. On December 3, Shikong Net formally opened the largest e-commerce delivery system in China. Now, Shikong Net has 27 delivery centers and 2,500 depots nationwide. Shikong guarantees safe and quick delivery of goods purchased on the Net. It also provides customers with flexible payment methods including an on-line payment system, thus avoiding the two big difficulties that have hindered the development of Chinese e-commerce: payment and delivery. 8848.net's first customer was from Xinjiang Uygur Autonomous Region, which is far away from Beijing. He bought a computer on the first day of 8848.net's trial operation. To his surprise, two days after he bought the computer from the Internet, it arrived at his home.

E-commerce is still a novelty for most Chinese. But because of its convenience, on-line shopping is sure to spread. E-commerce is revolutionizing traditional business models. By way of on-line shopping, consumer markets are no longer based on geographic boundaries. On-line customers can be from anywhere in the world. In the past four years, Chinese on-line bookstores, speciality shops, and flea markets have sprung up on the Net. Some big departments such as Beijing Xidan Market, Chengxiang Huamao Plaza and Cuiwei Plaza have all opened up their own sites.

The development of domestic e-commerce in China is still in its infancy. At present, there are not enough people to review sites to ensure their efficiency and ease. Even the on-line supermarket at 8848.net has many flaws. For example, goods are not well displayed, leading people to prefer traditional shops when buying goods in bulk.

3.3 Problems Which Hinder E-commerce Development

3.3.1 Infrastructure

E-commerce in China looks very promising. Despite the continuous rapid increase in the number of Internet users in China, there are still many problems hindering e-commerce development. These include: China must overcome many obstacles before e-commerce

¹²² "Internet users spur growth of on-line service" online: <<http://www.chinainfobank.com>>

can be popularised throughout the country.¹²³ Today there are approximately 16 million Internet users in China, but they represent less than .007 percent of China's total population. Also, these Internet users are concentrated in only a few areas.¹²⁴ Internet users' purchasing power tends to be relatively low. According to a survey conducted by sohu.net, only 20 percent of those surveyed said they earned more than 2,000 Yuan a month. Many consumers still worry about the quality and delivery of goods purchased on the Net. The electronic payment system is also a big problem—on-line payment generally takes three or four days. Payments made with the Great Wall card can take up to a week. The slow speed of the network and the high network service charges also hampers the development of e-commerce in China.

The most urgent tasks for e-commerce in China are to further develop their infrastructure and to increase the number of users and/or visitors as well as establish the legal framework to regulate related activities. E-commerce has a long way to go in China. Fixed- line and wireless telecommunications form the backbone through which most Internet traffic travels. The communications infrastructure is therefore crucial to the growth of the Internet, in particular of value-added services such as media-rich content and e-commerce.

¹²³ Handel C.H Lee and Julian Scarff, "Building China's E-commerce Future", (2000) 14-1 China law & Practice (CLP), at 44.

¹²⁴ Research by other governments and groups like the UN, the ITU, the International Data Corporation, and other private researchers shows that nearly one-third of the world's Internet users have at least one university degree- in the UK it is 50 percent, in China almost 60 percent, in Mexico 67 percent, and in Ireland almost 70 percent; women account for only 25 percent of Internet users in Brazil, 17 percent in Japan and South Africa, 16 percent in Russia, 7 percent in China and 4 percent in the Arab States; the average Internet user in the United States is 36, and in China and the UK, under 30 (UNDP 1999, 62).

The major obstacles include high charges for using Internet, slow transmission speed, and government control on information access for security reasons. Most individuals who subscribe to the Internet have to pay fees in two parts: one to the Internet Service Provider (ISP) and another to the Chinese telecom operator for the use of the telephone line. Internet access fee is currently set at 4 Yuan (US\$0.48) per hour while fixed line telephone charge is 1.8 Yuan (US\$0.21) per hour, the same rate as the cost of local telephone calls.¹²⁵ This means that an individual has to pay about 6 Yuan per hour in order to surf the net, which is rather expensive, considering the relatively low average income in China. In fact, according to a survey conducted by CCNIC, 36% users complained of the high cost of using the Internet. In addition, some 49% of Internet users feel that the connection or transmission speed to cyberspace is too slow.¹²⁶

China has a very uneven distribution of telephone lines: while rural telephone access is comparable to the low end of the developing world, the dynamic coastal areas are close to the OECD average indicators. While the number of Internet users in 1999 was around 4 million, some estimates suggest that in 2003 the number of users will be between 20 and 40 million.¹²⁷ The relatively high share of digitised lines makes China a market already well adopted for e-commerce.

¹²⁵ "China Internet Access Fees Too High" (4 April 2000), online: <<http://www.chinaonline.com>>.

¹²⁶ "Statistical Report of the Development of China Internet" (Beijing, July 2000) online: China Internet Network Information Centre (CNNIC) <<http://www.cnnic.net.cn>>.

¹²⁷ For more details see: "Scaling the Great Wall of E-commerce: Strategic issues and recommended actions" (Cyber Century Forum, Washington D.C. 1999) China Electronic Project Report (2nd edition), at

3.3.2 Barriers to E-commerce

According to findings of a project on e-commerce in China, the main barriers to e-commerce included: insufficient and uneven access to high speed Internet networks, inadequate procedures for electronic payments, insufficient legal safeguards for secure transactions, necessity for a regulatory structure encouraging investment and competition, monopoly practices of existing operators, insufficient linkages with foreign capital and expertise to include China in the global marketplace via Internet.

For e-commerce with consumers the shortcomings noted were: limited public access to PCs and networks; lack of alternative delivery systems or ISPs, inadequate awareness, training and cultural barriers; concerns over security, quality and prices; limited availability of delivery systems and credit cards.

At the same time the limitations for the Chinese public telecom-related agencies include: inadequate resources and public policy expertise; conflict between operative and regulatory functions; inadequate procedures to address the issues of intellectual property, data integrity, privacy protection and liability redress; inability to strike a balance in public and private sector cooperation in adapting standards and regulations to market

183. "I-Ways" (GIIC, Third Quarter 1998) Special Report: "China Prepares for E-Commerce" at 48-65. See also Building Confidence, *supra* note 6, at 73.

innovations in cost allocations and subsidies and generally in the use and provision of e-commerce services;¹²⁸ Insufficient bandwidth and insufficient number of international gateways bottlenecking commerce between the Chinese intranet and the international internet making the network unable to cope with higher traffic volume and the increased use of multimedia software formats;¹²⁹ Unbalanced development between big cities and remote areas: Beijing, Shanghai and Guangzhou are leading metropolitans on Internet and e-commerce. The Internet users in Beijing are 19%, those in Shanghai and Guangdong are 11% and 13% respectively.¹³⁰

The costs of connecting to and surfing on the Internet in China remain high. This discourages many new individual users.¹³¹ The high cost does not only discourage users, it also makes the business of the ISPs more difficult. To attract more clients, some ISPs are introducing preferential services, such as a “special price in early morning”, offering discounts and giving one free account number when purchasing one.¹³²

The Chinese language barrier is another problem that Internet users in China have to face. Since the Internet was originally developed in the US and first became popular in

¹²⁸ *Ibid.*

¹²⁹ *Supra* note 123.

¹³⁰ New Economy, chart 6. Geographical Distribution of Internet Users in China (July 2000).

¹³¹ For example, ChinaNet© charged about 4RMB to 6 RMB for 1 hour's surfing. Users also need to pay local phone charges of about 4 RMB per hour. The effect of these financial barriers is revealed in recent Internet development statistics completed by the CNNIC. According to these statistics, by July 1998 more than 90 % of Internet usage was by families with an average monthly income of more than 400 RMB. More than 60% of the existing users regularly complained about the price.

¹³² Liu Dongping, “China Goes With Internet Flow” 10 (6) China Telecommunications Construction, at 35-39.

Western Countries, it follows that most of the content on the Internet is in English.¹³³

Moreover, the complicated Chinese encoding systems need to render Chinese writing electronically have exacerbated the problem of scarce Chinese information on the Internet.¹³⁴

Furthermore, many Chinese people (most of them are not familiar with English or cannot read English) are discouraged from using the Internet. The degree of education of users thus seems to be a crucial factor affecting the development of China's Internet.

According to the CNNIC statistics, over 90 % of Internet users in China have received secondary or higher education.¹³⁵

Apart from the above-mentioned problems, an absence of an established electronic payment system, a relatively low penetration rate of computer ownership, and a low level of computer literacy can also be considered as relevant factors that hinder e-commerce in China.

In light of the exponential growth of global e-commerce and the recent collapse of '.com' ventures in EU,US and other countries, developing the Internet presents a tremendous opportunity and challenges for economic growth in China as well.

¹³³ Zhang Xiaoming and Wang Shangde, "Dianzibaquan" (Electronic Superiority on the Internet), ZHONGGUO QINGNIAN BAO (CHINA YOUNGSTERS POST), (Feb. 18, 1998) online: <<http://www.chinainfobank.com>>.

E-commerce brings many benefits and convenience for the global economy, but the dot.com crash must give us second thoughts. Since foreign investors will obviously be reluctant to invest in China-play companies where the Chinese authorities have spoken out against the listing, such an entity will now follow the practice of making a filing with the China Securities Regulatory Commission (CSRC) and proceeding only if the CSRC does not indicate its disapproval. Nevertheless, where the company is essentially listing on the promise of its Chinese e-commerce business, this presents obvious difficulties.¹³⁶

However, once the industry fully blossoms, the positive effect of e-commerce on China's economy will be incredible. The informatization of China and its offshoot, e-commerce, will require substantial investment in infrastructure, support and training. Government sources are predicting IT procurement increases in excess of 30 percent annually, totalling 1 trillion Renminbi by 2008. By that time, China is expected to surpass the United States as the world's largest information economy. In 2002, China was the only IT market in the world to grow, and an additional 30 percent increase is forecast for 2003.¹³⁷

Even though the dot.com crash does not impact China as severely as the western countries, China should learn lessons from experiences. Otherwise, when problems arise,

¹³⁴ YURCIK and TAN, *supra* note 110.

¹³⁵ CNNIC, *supra* note 126.

¹³⁶ Vivienne Bath, "E-commerce in China" online: <<http://www.google.com>>.

¹³⁷ Gigi Cheah "How will China E-Govern?" online: <http://www.perkinscoie.com/resource/intldocs/china_egovern.htm>.

China will deny everything no matter if it is good or bad. For China, the reality is that the legal opening of sectors related to e-commerce will only happen gradually.¹³⁸ The pace of development of e-commerce will have to be adapted to Chinese situation.

¹³⁸ Vivienne Bath, "China's Internet: An Uncertain Future"(2000) 14- 2 CLP at 18.

Chapter 4 Legal Issues and Regulations on E-commerce in China

4.1 Administrative Legal System

In China, various administrative institutions play crucial roles in regulating the e-commerce industry. It must be recognized that a number of different authorities govern different aspects of e-commerce in China by drafting regulations and submitting them for National People's Congress's (NPC) approval.

As the highest administrative organ in China, the State Council is the dominant law-making body for China's social and economic affairs. As a matter of fact, the State Council issue rules governing different aspects of e-commerce as separate, but related administrative regulations. Furthermore, promulgation of these regulations by the State Council will go a long way toward cleaning up the patch-work presented by competing municipal regulations and the regulatory overlap among several national ministries and commissions. It is estimated that this diffused regulatory scheme encompasses more than 100 different national, provincial, and local e-commerce regulations. However, companies and consumers should be able to rely on these administrative regulations for

definitive guidance on transactions in digital information.¹³⁹

4.1.1 Central Authorities

In 1993, the Economic Information Joint Committee (EIJC) was established. Though the original purpose in forming this Committee was “to formulate policies for the development of a national information infrastructure”,¹⁴⁰ with the rapid development of the Internet over the past few years, the focus of this Committee come to be on the Internet. In March 1996, the status of the Committee was elevated. It became the State Council Steering Committee on National Information Infrastructure (SCSCNII).¹⁴¹

The Ministry of Information Industry (MII) was created during the 1998 government restructuring as a combination of the former Ministry of Electronics Industry (MEI), Ministry of Post and Telecommunications (MPT), and Ministry of Radio, Film and Television (MRFT). The MII is meant to act as an independent regulator of telecommunications under the WTO.¹⁴² According to the MII, its major functions are to oversee the computer and telecommunications industries, including the Internet. MII is responsible for drafting policies for the entire information industry, although it now

¹³⁹ Thomas R. Healy and Kevin E. Duke “Winners and Losers under China’s E-sign Law”, online: <<http://www.ita.org/software/pubs/chinaesig.pdf>>.

¹⁴⁰ Paul S. Triolo and Peter Lovelock, “Up, Up, and Away- With Strings Attached” (Nov/Dec. 1996) CHINA BUS. REV. at 18-28.

¹⁴¹ *Ibid.*

¹⁴² “New Chinese Ministry Begins Work”, (Apr.1, 1998) online: <<http://www.chinainfobank.com>>.

appears that the State Council's Information Department has assumed direct responsibility for Internet Content Providers (ICPs),¹⁴³ while MII retains primary responsibility for Internet Service Providers (ISPs). Other relevant authorities include the State Secrets Bureau (SSB), which is responsible for state secrets; the Ministry of Public Security (MPS), which is responsible for network security.¹⁴⁴ The State Administration for Industry and Commerce (SAIC), as the government department responsible for the registration of enterprises and it has general responsibility to supervise the activities of ICPs, ISPs and other entities registered in China. It also has a supervisory role over online and other forms of advertising in China.¹⁴⁵

Foreign investment of any kind, including investment in areas related to the Internet and e-commerce, is subject to approval by and supervision of the Ministry of Foreign Trade and Economic Cooperation (MOFTEC).

MPT used to be the major regulatory authority over all forms of telecommunication in China, including the Internet. The MPT was responsible both for formulating central policy and for implementing policy. With the help of its subordinate local authorities, Posts and Telecommunications Administrations (PTAs), the MPT was empowered to regulate the administration, operation and management, *inter alia*, of Internet services in

¹⁴³ Semi-annual Survey Report on Internet Development in China (CNNIC, January 2000), online: <www.cnnic.net.cn>.

¹⁴⁴ *Ibid.*

¹⁴⁵ Vivienne Bath, "E-commerce in China" *supra* note 136.

China. It was also the sole international Internet gatekeeper and one of the public network operators in China.¹⁴⁶

Aside from the government agencies themselves, a number of other government entities have been established to handle specific functions, such as the State Encryption Administration Commission. As a prime example, in December 1999, the State Council announced the formation of the National Information Leading Group (NILG). The NILG brings together a number of government entities to coordinate the management of national computer networks, among other tasks. While the NILG was created in hopes of alleviating the current competition among various authorities, it has yet to be seen whether this group will actually have teeth or will just be a forum for unproductive discussion.¹⁴⁷

In March 2000, Ministry of Culture (MOC) issued the *Notice on Questions Concerning E-Commerce Activities Relating to Audio and Video Products* (The Notice). The Notice states that companies must obtain a license before engaging in e-commerce activities related to the manufacture, retail sale, wholesale, or lease of audio or video products.¹⁴⁸ The Notice also requires that all audio and video products sold over the Internet must be domestically manufactured. This stipulation definitely causes great concern for many Chinese Internet businesses looking to sell audio and video products from other countries.

¹⁴⁶ The network operated by the MPT is the ChinaNET(C).

¹⁴⁷ Vivienne Bath, "E-commerce in China" *supra* note 136.

In addition, foreign investment enterprises (FIEs) are specifically prohibited from engaging in online-operational activities involving audio-visual products.

The MOC's first notice concerning e-commerce may well be countermanded or superseded by future unified e-commerce legislation, or by regulatory notices from other government ministries, but its issuance underscores the difficulties of navigating China's Internet regulatory framework, not to mention the general problem of overlapping Chinese rules and regulations administered by different bodies.¹⁴⁹

4.1.2 Local Regulations

In June 1999, the Shanghai Foreign Investment Commission and the Office of Shanghai National Economy and Society Information Leading Group jointly issued the *Trial Opinions Regarding Participation by Foreign Investors in Shanghai's Information Technology Services Industry* in light of Shanghai's specific circumstances. These circumstances involve numerous foreign invested information services enterprises utilizing the Internet.¹⁵⁰

¹⁴⁸ *The Notice on Relevant Issues Concerning the Online Business of Audio-Visual Products* (the AV Notice), Ministry of Culture (MOC) (April 2000).

¹⁴⁹ *Ibid.*

Other local authorities, including Beijing, have followed a practice of allowing the establishment of foreign investment enterprises (FIEs) and other which propose to engage in e-commerce and the provision of internet content, although the word "Internet" was not encouraged to appear in the approved scope of business.

Therefore, it is difficult to sort out which authority is responsible for which aspects of Internet regulation since the functions of these authorities sometimes overlap and are often not clearly defined. Regulation is supposed to be by different departments depending on content. As stated above, there is no formal, centralized regulation of e-commerce, but certain agencies have begun regulating e-commerce. The MII is the overall regulatory agency responsible for the e-commerce industry.¹⁵¹

In the hope of remedying these shortcomings, MOFTEC has established three bodies: the MOFTEC Electronic Commerce Center, the MOFTEC Information Project Group, and the China International Electronic Commerce Center (CIECC).¹⁵²

¹⁵⁰ *Trial Opinions Regarding Participation by Foreign Investors in Shanghai's Information Technology Services Industry*, Office of Shanghai National Economy and Society Information Leading Group and the Shanghai Foreign Investment Commission (3 June 1999).

¹⁵¹ Vivienne Bath, "E-commerce in China", *supra* note 136.

¹⁵² *Supra* note 123.

The purposes are

- to establish an advanced unique standard to protect e-commerce environment in China. The areas that they are to address include transaction security, authentication, commercial codes, legal issues, encryption and taxation.¹⁵³
- to be directly involved in the construction of an electronic commercial network to support Chinese e-commerce enterprises.¹⁵⁴
- to set up a pilot certificate authority (CA) in China and to establish dedicated, secure and certified links to Western countries that have already had well-founded e-commerce environment.

All these initiatives are seeking to establish and consolidate greater international co-operation on e-commerce system and strategies and put in place an adequate regulatory framework.¹⁵⁵ Many ministries have been involved in the development and oversight of the Internet, but their responsibilities were never clearly defined. Power struggles among ministries and agencies were thus inevitable. Reforms will have to be made to simplify the regulatory structure of the Internet and e-commerce. It is possible, therefore, that the fall-out from these power struggles may diminish to a degree in the future, as relevant legislation and regulations become increasingly mature. In such be the case, the development of e-commerce in China will be steadier, healthier, and faster.

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

4.2 General Laws and Guidelines

Although there are no formal laws and regulations governing e-commerce in China, the government has recognized the importance of regulating this nascent but growing industry, which is likely to form a critical component of the new economy. Preliminary laws and several guidelines governing e-commerce in China have been issued.

4.2.1 The Unified Contract Law (UCL)¹⁵⁶

China is still very much at early stage in arriving at a stable legal and regulatory regime for these new technologies. However, as this thesis attests, there is vigorous activity going on to develop interpretations, legislation and regulation to provide the enabling framework for widespread and appropriate use of digital technologies. As mentioned above, e-commerce includes a whole host of commercial activities undertaken online, including international trade transactions, advertising and domestic business-to-consumer (B2C) and business-to-business (B2B) transactions, to name a few. The associated regulatory issues are similarly varied.¹⁵⁷

¹⁵⁶ *PRC Contract Law* (UCL, March 15, 1999), (1999) 13-4 CLP at 19. UCL came into effect on October 1, 1999. *Several Issues Concerning Application of the <PRC, Contract Law> Interpretation* (1), Supreme People's Court (2000) 14-2 CLP at 43.

¹⁵⁷ *Supra* note 121 at 24.

(1) The previous contract law in effect in China was drafted in the 1980s with a strong bias for paper contracts. Contracts formed orally or by other means were not recognized according to the 1980 contract law.

(2) Early attempts at enabling electronic contracting began at the provincial level in 1996. The Guangdong Provincial People's Government promulgated the *Provisional Regulations on the Implementation of Electronic Data Interchange for Foreign Trade in Guangdong Province* (the Guangdong Regulations) in October 1996. The Guangdong Regulations allow for the use of electronic data interchange in connection with the orderly processing of foreign trade documents. The Guangdong Regulations specifically state that electronic transmissions involving an authorized electronic data interchange center create an enforceable contract.¹⁵⁸

(3) Efforts at the central level to reform contract law rules culminated in the adoption of the UCL. The UCL largely replaces the *Economic Contract Law of the People's Republic of China*, adopted on December 15, 1981, and the *Foreign Economic Contract Law of the People's Republic of China* adopted on March 21, 1985, and represents a significant reform of contract law principles.¹⁵⁹

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

(4) In March 1999, China's newly adopted UCL embraced new concepts in the IT area, including e-commerce. The UCL introduces the concepts of "offering" and "acceptance", whereby one party sells a commodity on a website at a suggested price (offering) while another party decides to buy it (acceptance). Such an exchange legally binds the two parties in a formal contract relationship. In particular, Article 11 stipulates that the law recognizes "a memorandum of contract, letter or electronic message (including telegrams, telexes, facsimiles, electronic data exchanges and electronic mails), etc. that is capable of expressing its contents in a tangible form". Besides recognizing the concept of "electronic messages" for the first time, the law also lays down the foundation for IT network contracts. The UCL relaxes previous rules on when a contract must be in writing. Accordingly, contracts can be concluded in writing, orally or in another form. This means that electronic data exchange and e-mail can carry the legal powers of a written contract.¹⁶⁰

The reform most relevant to the development of e-commerce is the fact that the UCL specifically allows for electronic contracting. Article 10 of the UCL permits contracts to be made in written or other form, and Article 11 specifically defines "written form" to include electronic data text, including electronic data interchange and e-mail, that can tangibly represent the content of the contract. Article 16 of the UCL also specifically provides that, where a contract is concluded through the exchange of electronically transmitted documents, a contract offer is effective when it reaches the offeree's system.¹⁶¹

(5) Standard contracts for common commercial exchanges between network businesses have already been developed by UNCITRAL. Nonetheless, work is continuing in this field.¹⁶² In its *Model Law*, the UNCITRAL suggested the adoption of the proposal according to which “when the law requires that the information be written, a message will fulfil this requirement if the information contained in it can be accessed and read at a later time.”¹⁶³

It remains necessary to promote the development of electronic contracting in China. An effective method could be by developing a system of electronic authentication, so that the buyer and seller in an online transaction are able to confirm the other party's identity. Such a system would also facilitate implementation of online payment mechanisms.¹⁶⁴

Among the various technologies available to authenticate identities online, digital signature technology appears to be preferred by the Chinese government. National rules have not yet to be issued, although Shanghai Municipality has issued rules that designate

¹⁶⁰ Wong and Ling, *China's Emerging New Economy*, *supra* note 96, Box 5, at 89.

¹⁶¹ *Ibid.*

¹⁶² The UN Commission on International Trade Law (UNCITRAL) has been continuing its pioneering work of harmonising and codifying commercial principles applicable to selected fields of traditional law. It adopted in 1996 a Model Law on Electronic Commerce applicable to exchange of information in the shape of data message for commercial activities. The *Model Law* is expected to play a significant role in facilitating network transactions.

¹⁶³ Report of the United Nations Commission on International Trade Law on the work of its twenty-ninth session, 28 May –14 June 1996, U.N. GAOR, 51st Sess., Supp. No. 17, U.N.Doc.A/51/17 Annex I (1996) reprinted in 36 I.L.M. 200 (1997)

¹⁶⁴ *Ibid.*

a municipal digital certificate authenticating authority and that stipulate the service fees that can be charged by that authority.¹⁶⁵

4.2.2 Guidelines on the Development of China's E-commerce Industry

The Guidelines on the Development of China's E-commerce Industry (the Guidelines)

aimed at developing an "e-commerce industry with Chinese characteristics"¹⁶⁶ (see

Appendix 3):

- E-commerce must serve the national economy and "should conform to China's unique set of circumstances."
- The government will manage the development of e-commerce in China. "Government agencies must ensure that all policies, regulations and standards are uniform."
- Enterprises will be "encouraged to participate in the development of e-commerce" in China.
- "Model e-commerce businesses will be launched to stimulate the proliferation of e-commerce in China."
- Laws, regulations and security procedures will be established for the sake of national security. "Government agencies have the responsibility to monitor and regulate core security technologies."
- International e-commerce is to be "actively pursued". The government should establish a legal environment that is suitable for China and "fits in the global scheme of things."

¹⁶⁵ *The Provisional Measures of Shanghai Municipality on the Administration of E-commerce Prices*, online: <<http://www.infooffice.sta.net.cn>>. This regulation came into effect on January 1, 2000.

¹⁶⁶ *The Guidelines on the Development of China's E-commerce Industry* (MII, December 1999).

4.3 Regulating E-commerce and Online Activities

The PRC (People's Republic of China) government has recently expressed its concern over the fact that, as use of the Internet in China grows, an increasing amount of business is being carried out without proper regulation. In an effort to improve regulation, moves have recently been made to register and record all online businesses in Beijing, and to experiment with the registration of online advertising businesses in Beijing, Shanghai and Guangdong. (see appendix 1, 4).

(1) Online Registration

Beijing Municipal Administration for Industry and Commerce (BAIC) issued *Beijing Municipality, Record-Filling of Online Business Notice* (the Beijing Notice) to meet the requirements of China's Internet economic development.¹⁶⁷ The Beijing Notice defines e-commerce to include using the Internet to sign contracts and conduct business, to disseminate commercial advertising, to promote products, to provide Internet access, network technology services, graphic design, and etc., or to undertake any other profit-making activity. Any entity in Beijing engaging in such activity must register with the BAIC and must display a registration seal issued by the BAIC on the home page of its

¹⁶⁷ *Beijing Municipality, Record-Filling of Online Business Notice* (Beijing Notice) (Jing Gong Shang Fa [2000] No.87) (28 March 2000), (2000) 5 CLP at 25. The Beijing Notice has the following impacts requiring businesses conducting online business to register with the BAIC website, to post the online

Web site. A registered e-commerce business desiring to alter or terminate its business activities must inform the BAIC.

It also aims to differentiate and standardize business activities on the Internet, to enhance the government's sense of service, to protect the lawful rights and interests of enterprises and consumers, to crack down on illegal business activities, to maintain an e-commerce operations registration system.¹⁶⁸

(2) Online Advertising

Rapid growth of the Internet in China has led to rapid growth in unregulated Internet advertising. In response to this, in May 2000, the State Administration of Industry and Commerce (SAIC) prepared its *Launch of Pilot Projects for Registering Network Advertising Business Circular* (The SAIC Circular).¹⁶⁹ At this stage, registration and advertising operating permits are voluntary.¹⁷⁰ The new regulations would set up a market entry criterion for Internet companies which wish to put up advertisements on their websites. Under the new regulations, websites, which fail to meet the set of criteria, would be prohibited from online advertising.

business number and online business mark on their homepage, and to obtain other regulatory approvals or qualifications to engage in business.

¹⁶⁸ Wong and Ling, China's Emerging New Economy, *supra* note 95, Box 5, at 89.

¹⁶⁹ *Launch of Pilot Projects for Registering Network Advertising Business Circular* (The SAIC Circular), SAIC (May 18, 2000), (2000) 14-8 CLP at 4.

¹⁷⁰ Nancy Leigh, "Regulating E-commerce: Early Steps", (2000) 14-4 CLP at 22-24.

The lack of regulations has made it difficult to conduct effective supervision of online advertisements, which has damaged consumers' rights by deceptive and misleading advertisements. The new regulations are not just designed to tighten supervision or facilitate regular checks on the content of advertisements and mode of operation, but also to encourage regular commercial practices.

A recent report suggests that the SAIC will carry out a pilot program in Beijing,¹⁷¹ Shanghai, and Guangdong Province,¹⁷² which will require designated operators in those locations to register.¹⁷³ The report states that the experience in these locations will assist the SAIC in its preparation of regulations to govern online advertising. These pilot projects are an important first step towards a regulated online advertising industry in China. The pilot projects indicate that the government is now moving towards the development of a clear and consistent policy towards Internet advertising.¹⁷⁴

¹⁷¹ *Notice on Regulations of Internet Advertising Operation Qualifications (The Notice)*, BAIC, (May 16, 2000). The Notice aims to regulate Beijing area Internet businesses that sell advertising space on their web pages. The regulations make clear that Internet businesses must apply for permits to conduct advertising business over the Internet.

¹⁷² Guang Dong, *Pilot Projects for registering Network Advertising Business Urgent Circular* (Yue Gong Shang Guan Zi [2000] No.78), (2000) 14-5, CLP at 28. The impacts of the Guangdong Circular are to regulate the online advertising industry in Guangdong; need to have been running for at least a year, be renown to some degree and have a place of business over 100 square metres; also need to have a specialized advertising department and suitable equipment. The Shanghai Municipal AIC's circular is reportedly almost identical to the Guangdong Circular, but with the addition of an extra statement about the number of companies for registration and additional requirements for employee qualification.

¹⁷³ Reported on April 7, 2000, online: <[http:// www.chinaonline.com](http://www.chinaonline.com)>; originally reported in the April 6 2000 Issue of Economic Daily.

¹⁷⁴ Nancy Leigh, *supra* note 170.

(3) Online Securities Trading

The Interim Regulations for the Online Securities Brokerage Sector bans non-brokerage firms from engaging in online securities trading.¹⁷⁵ They also require licensed brokerage firms to obtain a separate license from the CSRC in order to provide online securities trading services, and stipulate technical and other conditions to being eligible for a license.

This caused the firms to change their securities websites and alter their business operations accordingly. Those that originally intended to launch e-commerce operations for online trading had to re-position themselves as providers that would build e-commerce platforms for securities brokers. However, in response to the new regulations, not all of China's securities companies are changing the services they offer.¹⁷⁶

Nonetheless, the new regulations are expected to have a negative impact on such firms because according to the interim provisions, securities firms will receive 100% of the commissions from securities trading, while the website operators will get nothing.

(4) Online Consumer Protection

The Internet offers consumers unparalleled opportunities of choice and access and, the potential for new business is extraordinary.¹⁷⁷ However, in the borderless, anonymous world of the Internet, buyers and sellers interact across national borders, making fraud and deception even more challenging. For the promise of electronic commerce to be realized, buyers and sellers need to have confidence that product they buy and firms they deal with are fairly represented, they will get what pay for and be paid for what they sell, and that legal recourse is available if they do not.

Government had encouraged consumer confidence through laws and regulations to protect consumers against fraud in the physical world; adapting policies to the electronic world has become an increasingly important priority. Protection for consumers online to date has been an extension of national laws and regulations.

Online consumer protection can be broken down to consumer rights, obligations of website operators and online business operators, misuse of trademarks, product labelling, advertising and product safety. The Beijing Municipality has extended consumer protection law to online transactions (see appendix 5). *The Protection of the Lawful*

¹⁷⁵ *The Interim Regulations for the Online Securities Brokerage Sector*, China Securities Regulatory Commission (CSRC) (March 30 2000).

¹⁷⁶ Wong and Ling, China's Emerging New Economy, *supra* note 96, Box 5, at 90.

*Rights and Interests of Consumers in Online Economic Activities Notice*¹⁷⁸ (the Notice) largely restates the existing laws such as the *Law on the Protection of Consumer Rights and Interests* and the *Law Against Unfair Competition* for consumer protection in China. The notice contains specific provisions concerning events commonly associated with e-commerce, especially fraud, false advertising and offers of fake goods.

Since the Notice is issued by BAIC, it applies only to the Beijing Municipality. It applies only to Internet business activities regarding sale of goods and provision of services with the purpose of profit making. It specifically excludes Internet price-bidding business activities (online auctions), which would be regulated by other regulations.¹⁷⁹

Box 6: The relevant consumer protection law that relates to the Notice includes the following:¹⁸⁰

- Protection of the Rights and Interests of Consumers Law, effective as January 1 1994 (the Consumer Protection Law);
- The Beijing Municipality, Implementation of the <Protection of the Rights and Interests of Consumers Law>, effective as of September 1 1995 (The Consumer Protection Procedures);
- The PRC, Contract Law, effective as of October 1 1999 (The Contract Law);
- The PRC, Anti-Unfair Competition Law, effective as of December 1993 (The Anti-Unfair Competition Law);
- The PRC, Product Quality Law, effective as of September 1 1993 (The Product Quality Law); and
- The PRC, Advertising law, effective as of February 1 1995 (The Advertisement Law).

¹⁷⁷ Digital Economy 2000 (US Department of Commerce, June 2000) online: <<http://www.esa.doc.gov/>>.

¹⁷⁸ *The Protection of the Lawful Rights and Interests of Consumers in Online Economic Activities Notice* (The Notice), BAIC, (July 7 2000), (2000) 14-8 CLP at 38.

¹⁷⁹ *Ibid.*

¹⁸⁰ Vivien Chan and Shirley Kwok, "Online Consumer Protection" (2000) 14-8 CLP, at 34.

The purpose of this Notice is to make a clear announcement that online consumers can enjoy the same level of protection that a normal consumer would have under the PRC consumer protection laws. This notice allows consumers the right to lodge their complaints with the BAIC where there is any infringement of their legal rights.¹⁸¹

However, the electronic medium also makes fraud and deception (in contrast to honest mistakes) easier. Marketing messages that entice consumers into impulse buying, get-rich-quick schemes, and copycat (fake) web sites make it difficult for consumers to differentiate between scam, fraud, and the real thing. A fundamental problem faced by consumers in electronic transactions is the absence of clear information. On-line contracts need to state the basics: seller's identity and location, total price, payment and shipping arrangements, any conditions on purchases, including warranties and return/refund arrangements, and mechanisms for addressing complaints. In China so far, the disputes that arise from on-line consumer purchases are likely to be of relatively small dollar value, making it difficult and expensive to pursue legal action. Consumers need affordable and simple ways to resolve disputes.

¹⁸¹ *Ibid.* at 36.

(5) Net Tax

As China's current tax laws do not cover Internet transactions, the Chinese government is currently drafting rules for the taxation of e-commerce and online securities trading. The Chinese government, holding the view that e-commerce should not be treated differently from other businesses, is determined to tax e-commerce even though this may hinder Internet development. Any form of taxation will likely slow down or delay e-commerce's ability to earn a profit and will increase the cost of developing the entire economy.

In addition, relevant government agencies are also in the process of drafting a taxation policy measure, the *Implementation of Specific Internet Taxation Rules and Regulations*, to combat online tax fraud and tax evasion.

Taxing e-commerce is expected to increase the cost of usage of the Internet. The government's move indicated that e-commerce has reached a certain volume that the government wants to intervene so that this business would not be kept off-limits from tax collectors. Furthermore, the government believes that in the near future, a significant part

of commerce would be conducted online, and if online transaction were not taxed, a substantial amount of revenues would be lost.¹⁸²

Businesses in China are currently taxed at a rate of 6%, based on the issuance of receipts. However, as online trading does not provide physical receipts, businesses can easily avoid paying taxes. Nonetheless, one major obstacle in collecting taxes from the Internet is locating taxpayers, especially in transactions of invisible commodities such as intellectual property rights and cross-border deals. Also, because e-commerce is characteristically expedient, direct, confidential and secure, there may be no direct targets to be taxed.

Furthermore, as trading on the Internet is paperless, taxation is relatively difficult to carry out. Although the Chinese government does not wish to forego the right to tax transactions over the Internet, it favours preferential tax treatment in order not to hamper the development of the Internet and e-commerce.¹⁸³

¹⁸² "Taxman Ready To Pounce on Web Revenue", South China Morning Post (31 July 2000). See also *supra* note 96, at 92.

¹⁸³ Wong and Ling, China's Emerging New Economy, *supra* note 96 at 95. See also "Internet to Get Tax Preferences --- China Finance Minister", Chinaonline (17 April 2000).

(6) Regulation on Foreign Exchange

China's currency, the Renminbi (Chinese Yuan), is not yet freely convertible, and conversions between it and foreign currency and remittances of foreign currency into and out of China are transactions subject to regulatory scrutiny.

A Chinese entity participating in a cross-border electronic transaction needs to comply with reporting requirements (either with its foreign exchange bank or the State Administration of Foreign Exchange) in order to receive or pay foreign currency, which generally involve submission of the commercial contract.

The current reporting regime assumes the existence of paper contracts, and does not recognize electronic contracts. Unless either the current foreign exchange rules or current practices change so that electronic contracts are recognized, it may not be feasible to consummate cross-border transactions through electronic contracts, where the contracts are to be used to support currency remittances. At a minimum, the parties may need to enter into a supplementary written contract for currency remittance purposes.

(7) Restrictions on Encryption Technology

Encryption is widely regarded as the most promising answer to the problem of securing electronic transactions.¹⁸⁴ E-mail, on-line banking, Internet credit-card purchases, electronic taxes, and medical records all use some form of encryption technology. As more businesses and individuals come online, the need for strong, reliable encryption technologies will increase.¹⁸⁵

Encryption technology enables transmission of confidential information across the Internet pursuant to an e-commerce transaction with a significant degree of security; encryption at the points of transmission and receipt of sensitive information significantly decreases the risk of unauthorized access to confidential information. The healthy development of e-commerce in China requires the availability of reliable encryption technology. However, recent regulations have brought into question the viability of using foreign encryption products in China. China has announced plans to ban companies from buying products containing foreign encryptions, and to require foreign firms to register their software with the government.

State Council Order Number 273 on Commercial Encryption Management Regulation

(DN 273) was issued on October 7, 1999 and was published in the People's Daily on

¹⁸⁴ A detailed explanation of encryption, its applications, and types of encryption, online: <<http://www.Rsasecurity.com/rsalabs/faq/1-7.html>>.

October 15, 1999. The Order calls for establishment of a general office for commercial encryption under the State Encryption Management Commission (SEMC, or Guojia mima guanli jigou). The general office is creating forms and will implement procedures for registration and approval of CE-related products.¹⁸⁶

DN273 declared commercial encryption codes to be "national classified information" and required foreigners (individuals or companies) using any form of encryption technology to register with the State Encryption Management Commission before 31 January 2000. Immediately, DN273 attracted much criticism, including comments such as "the new Chinese encryption regulation directly threatens the privacy of computer users".¹⁸⁷

China's State Council will require registration of all commercial encryption (CE) products such as those using RSA (a public key encryption system) or DES (data encryption standard) technology by January 31, 2000. According to DN 273, a new agency will issue registration forms for each organization using CE products and for every CE-related product in use. The implications of registration and implementation of this State Council Order are of great concern to Chinese and foreign businesses working

¹⁸⁵ See Mann and Ekokert, *Global Electronic Commerce*, *supra* note 21 at 86.

¹⁸⁶ Online:

<<http://infoserv2.ita.doc.gov/ticwebsite/apweb.nsf/bdaf6ff44c8616ef852568cd005e4b7b/b2079eac829a936d852568cc006d10d1!OpenDocument>>

¹⁸⁷ *Ibid.*

with information technology and e-commerce.¹⁸⁸

Why had this regulation attract so much controversy? Basically, encryption is all about secrecy and privacy. It is a technology that enables information or data to be read only by the intended recipient. This is achieved by converting a message or data into a different format, which no one can understand without a "key" that converts the encrypted data back into understandable text.¹⁸⁹

This explains why the three main areas governed by the Order: DN 273 govern the use of encryption products, control the sales of commercial encryption products in China, and authorize the examination of products.¹⁹⁰

In general, DN273 was an attempt by the Chinese government to regulate the levels of privacy. Unsurprisingly, the PRC is not the only government endeavoring to regulate encryption or communication security; regulations have been proposed and implemented around the world.¹⁹¹

For example, as one of its 33 signatories, the United States originally imposed the stringent regulations required under the Wassenaar Arrangement, which is the first

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

international multilateral arrangement on export controls for firearms, sensitive dual-use goods and technologies used to promote transparency, exchange of views, information and greater responsibility. This attracted much opposition from the IT industry, which is firmly against export regulations or any other ruling pertaining to encryption technology and products. As protests against encryption export regulations grew, the US government eventually relaxed its regulations in this area, although it still proposes that key management systems or publicly recognised certification authorities are established to counterbalance this lack of regulation.¹⁹²

Accordingly, governments around the world have been proposing schemes to promote data security by using encryption keys generated by publicly recognised certification authorities, which complement the regulations governing the export of commercial encryption products.¹⁹³ In an attempt to balance national security and domestic law enforcement concerns with the need for security and trust in electronic transactions, national governments takes different approaches. Many countries (including France, China, Israel, Russia, and South Africa) restrict domestic use of encryption products. Laws in Singapore and Malaysia require users to disclose their encryption keys or face criminal penalties.

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

Furthermore, as encryption tools and technology become standard, the users of keys provided by publicly recognised certification authorities save themselves the trouble and time of updating their individual hardware and software to keep up with advances in the encryption and decryption processes. In addition, the level of achievable security is known and accepted across the business community.¹⁹⁴

An added benefit is that on-line transactions allow companies of all sizes around the world to conduct business seamlessly and simultaneously in the global markets, thus enabling them to promote and benefit from globalisation, traditionally a privilege of large multinational companies.

(8) State Secrets

As the Internet becomes more widespread, the Chinese government want to ensure that the Internet does not turn into a socially destabilizing force. Although a formal set of rules and regulations governing the Internet Industry has yet to take roots, the government has come up with several guidelines to regulate the industry.

¹⁹⁴ *Ibid.*

The Chinese government screens for politically sensitive words and has implemented regulations to control citizens' access to the Internet. In December 1997, the *Computer Information Network and Internet Security, Protection and Management Regulations* were approved by the State Council for promulgation by the Ministry of Public Security (MPS). In 2000, the State Secrets Bureau (SSB) issued the *Regulations on the Administration of the Maintenance of Secrets in the International Networking of Computer Information Systems* (the State Secrets Provisions) designed to prevent the spread of "state secrets" via the Internet, which are seen as a clear attempt to censor on-line content.¹⁹⁵ Moreover, ISPs operating in China can be held accountable for illicit material on the Internet, which is something that has happened in other countries as well.¹⁹⁶

Under new rules, all websites are required to go through security checks. According to the SSB, "all organizations and individuals are forbidden from releasing, discussing or transferring state secret information on bulletin boards, chatrooms, or via Internet news groups. Any website that provides or releases information on the world-wide-web must undergo security checks and approval." Failure to do so will result in the government re-organizing or closing down the website.¹⁹⁷

¹⁹⁵ The State Secrets Bureau, the *Regulations on the Administration of the Maintenance of Secrets in the International Networking of Computer Information Systems* (the "State Secrets Provisions") (January 25, 2000), which were designated to come into effect from January 1, (2000) 14-2 CLP at 18.

¹⁹⁶ China is not the only country to hold ISPs liable for content on their servers. Liability concerns among ISPs have been growing, as some countries (UK) have sought to prosecute ISPs for distributing harmful content, with the end – result being closer cooperation with law enforcement, and adoption of self-regulatory plans. Germany, too, threatened to hold an AOL executive responsible for material in AOL chat room.

¹⁹⁷ Wong and Ling, China's Emerging New Economy, *supra* note 96 at 42.

Earlier legislation defines "state secrets" broadly to include confidential information in areas such as national defence, foreign affairs, economy, social development and technology. The State Secrets Provisions govern dissemination of State secrets through computer systems and stipulate that state secrets are not allowed to be stored, processed or transmitted by computer information systems connected to the Internet.

By operation of the, ICPs (Internet content providers) are required to establish procedures consistent with the State Secrets Provisions and other Chinese laws governing state secrets to ensure that state secrets are not included. Operators of web sites also are required to have a prior agreement from the content provider before posting the content on a web site. The only exception is information that has already been publicly issued by other news media. It is as yet not clear how stringently the State Secrets Provisions will be applied. However, the broad scope of the Provisions, as drafted, raises concerns for ICPs, including those operating in the area of e-commerce.

Internet operators are required to make regular filings with the relevant Public Security Bureau (PSB) and to set up security and censorship systems. Approval must also be sought to publish previously unpublished state information. The SSB is entitled to block sites that do not comply adequately with rules relating to the protection of state secrets. The PSB can also order an ISP to block access to foreign sites. The design of the structure of Internet connections and the implementation of the business permit system in

China indicate the government's desire to control information flow from the outside world and within the domestic context. The attempt of the authorities to exercise control over the transmission of information on the Internet is also indicated by the release of a complex plethora of rules relating to the Internet and the maintenance of social stability and the protection of state security.

(9) Regulation for Online Medical Services

The Chinese government is wrestling with the issue of how to regulate online medical services, as the Beijing Municipal Health Department (BMHP) has drafted regulations governing medical services provided over the Internet.¹⁹⁸

It is estimated that China has hundreds of medical websites. Except for a few capable of providing long-distance diagnoses, most of these websites offer information concerning medical treatment and health care. Although many of these Internet medical services are fast and convenient, hidden perils can await people who act on their recommendations. A misdiagnosis is highly possible with an "online doctor" because of deficient diagnosis in this way, and a face-to-face examination instead is often required.¹⁹⁹

¹⁹⁸ "Beijing Checks Up on Net Medical Sites, Urges Certifications", Beijing Evening News (2 August 2000).

¹⁹⁹ Wong and Ling, China's Emerging New Economy, *supra* note 96, Box 5, at 94.

Internet medical services are primarily consultative services. Hence, the proposed regulations indicated that Internet medical services should not use the word "hospital" and medical treatments such as outpatient and emergency-room services must be performed at medical institutions rather than over the Internet.

To standardize medical and health care services offered over the Internet, the regulations also stipulate that people, including volunteers, providing this information online must be professionally certified. In addition, remote medical treatments must be provided by medical institutions themselves.

(10) Regulation of Online Bookstores

The State Press and Publishing Administration (SPPA)'s November 1999 *Interim Regulations on Managing the Distribution of Publications* (the Interim Regulation) stated that all companies need SPPA permission to sell publications online and that non-publication distributors may not open online bookstores or sell publications on the Internet.²⁰⁰

²⁰⁰ Asia Times (Jan.27), online: <http://www.chinaonline.com/refer/ministry_profiles/SPPA.asp>.

Who can open online bookstores? The arrival of the network age heralds a revolution in media transmission and will lead to a diversity of publishers and expand the concept of publishing itself. Selling, publishing and printing books online will be the trend in the new century. Currently, there are nearly 200 websites in China selling books, mainly falling into 3 categories: online bookstores opened by publishing and distribution units, professional online book dealers, and comprehensive online shops like the "Sina Shopping Mall" and "InfoHighway."²⁰¹

The SPPA claimed that this ruling was necessary to standardize the market for publication distribution and strengthen management of online bookstores since some Web sites were selling superstitious, reactionary or pornographic books.²⁰²

The low profit margin on selling books online had meant that most online bookstores in China were losing money, but most publishers were still anxious to invest in e-commerce, especially targeting overseas buyers. The SPPA did promote the controlled development of the legitimate Internet publishing market to help the publishing industry reach an annual sales goal of Rmb 100 billion (US\$12.1 billion).²⁰³

²⁰¹ http://www.sinopolis.com/TOPSTORY/ts_default.htm

²⁰² *Ibid.*

²⁰³ *Ibid.*

The SPPA itself had invested Rmb 10 million (US\$1.21 million) in the online China Modern Bookshop and promised to support the construction of a unified e-commerce platform and a unified database for the publishing industry.²⁰⁴

These measures were intended to prevent private Web sites from continuing to draw readers from state media with splashy treatment of the news and breaching the state's monopoly on news distribution. Many feared that this move would kill China's private Web sites, which depended on such content providers to attract Internet users and advertising with good content. Indeed, on this basis many sites switched to e-commerce or carried only sports and entertainment items.²⁰⁵ Others believed that the new rules would not be enforced very strictly since the government did not really want to slow down the growth of Internet use as this would affect the entire Internet infrastructure and slow down e-commerce.²⁰⁶

In June 2000, the SPPB announced that book retailers must obtain an official operating license and register with the SAIC before conducting business online. In order to qualify for an operating license, online booksellers must first subject to examination and approval according to state regulations governing the management of publishing operations in China. With such a regulation in place, web-based booksellers can no longer start their e-

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

business simply by registering a domain name and setting up an e-store. Those already selling online, particularly commercial operations, will be subjected to review.

(11) Domain Name Issues – Online Infringement

As more and more companies jump onto the Internet bandwagon, the complexity of conflict resolution between trademark and domain name holders in the PRC remains an increasing concern. In an effort to solve cyber squatting disputes quickly and effectively, on September 30 2002, three new sets of rules concerning domain names became effective in China. The MII promulgated the *Administration of China Internet Domain Names Procedures* (The Domain Name Procedures). The other two were issued by the CNNIC: *Resolution of Domain Name Disputes Procedures* (The Dispute Resolution Procedures) and *Policies for Resolution of Domain Name Dispute Procedural Rules* (the Procedural Rules). The Dispute Resolution Procedures replace the original CNNIC *Resolution of Disputes Concerning Chinese-language Domain Names Procedures* (Trial Implementation issued on November 1 2000).²⁰⁷

Currently a domain name dispute can be resolved through one of the following methods. One possibility is arbitration through a CNNIC-certified domain name arbitration tribunal. Currently the China International Economic and Trade Arbitration Commission

(CIETAC) and Hong Kong International Arbitration Centre (HKIAC) are the first two arbitration organizations certified by CNNIC to handle disputes related to “.cn” and Chinese domain name disputes.²⁰⁸ The other avenue open is arbitration through another arbitration organization. The same rules also provide that the parties are free, by their own agreement, to submit a dispute to any other arbitration organization.²⁰⁹ A third option is a lawsuit filed with a Chinese court that has the proper jurisdiction. Either party to the domain name dispute may at any time during the CNNIC –certified arbitration tribunal’s proceeding, or within 10 days after it issues an arbitration ruling, file an arbitration application with any Chinese arbitration organization if both parties so agree) or a lawsuit with the court having the jurisdiction over the district in which CNNIC is located.²¹⁰

The CNNIC Procedures and the CIETAC Procedural Rules set out a new framework for resolving disputes involving “Chinese character domain names.” Together, they form the cornerstone of China’s response to international and domestic commentators who have doubted its ability to implement effective and transparent domain name dispute resolution mechanisms. Also they provide an important mechanism for resolving such disputes more speedily and effectively than before. This is another important area for many

²⁰⁷ Ron (Rongwei) Cai, “New Rules on Domain name Registration and Dispute Resolution” (2002) 16-8 CLP at 105.

²⁰⁸ *Ibid.*

²⁰⁹ *Ibid.*

²¹⁰ *Ibid.*

foreign companies seeking to protect their English character trademarks in China in the near future.²¹¹

(12) Initiatives in Online Copyright Enforcement

There have been an increasing number of cases involving the protection of intellectual property on the Internet. Works created and distributed on the Internet are currently not covered under the existing Copyright Law. To cope with the increasing number of copyright infringement disputes in connection with the use of the Internet, the Chinese Supreme People's Court has recently issued new judicial interpretations, *Several Issues Concerning the Laws Applicable to the Trial of Copyright Disputes Involving Computer networks Interpretations* (the Interpretations)²¹² to counteract this shortcoming.²¹³

By issuing the Interpretations, the Supreme People's Court seeks to extend copyright protection to works created and distributed on the Internet (in the digital form of the works) and the others not specifically covered under the Copyright Law and to resolve jurisdictional disputes among the Chinese courts hearing copyright infringement cases. Most notably, the Interpretations of the Supreme People's Court impose extensive

²¹¹ Barry Lau and Jason Qian, "How to Evict Cybersquatters", (2000-2001) 14-10 CLP at 18.

²¹² The Interpretations were issued on December 19 2000 and became effective on December 21 2000, (2001) 15-1 CPL at 59.

²¹³ Xiaohu Ma, Robert Woll and Jun Deng, "Initiatives in Online Copyright Enforcement" Editor's note, (2001) 15-1 CLP at 55.

obligations on ISPs and ICPs for purposes of copyright protection.²¹⁴ Therefore, Internet operators in China should establish or adjust their internal copyright policies in order to minimize the risks of potential copyright infringement claims based on the provisions of the Interpretations.²¹⁵

The Interpretations reflect the prevailing positions of the Chinese legal community on online copyright infringement and related issues. It is expected that the future amendments to the Copyright Law are likely to be in line with the provisions contained in the interpretations.²¹⁶

As mentioned above, China lacks clear and comprehensive set of regulations. The regulatory system in China was and remains complicated. Small cities and remote areas still trade in a traditional way, however, in big cities such as Beijing, Shanghai, Guangzhou, e-commerce is becoming increasingly popular. The traditional legal system should be re-evaluated and readjusted to adapt to the new changes.

Accordingly, government encouragement of a legal framework for Internet and e-commerce has been expressed in numerous ways, such as the provisions on electronic contracts in the new contract law, the establishment of a domain name registration

²¹⁴ *Ibid.*

²¹⁵ *Ibid.* at 58.

²¹⁶ *Ibid.*

system, pilot projects in Beijing, Shanghai and Guangzhou for online advertising, and recent attempts to control cyber-squatting. The State Council and MII are reportedly formulating an overall framework for the development of e-commerce in China and other government agencies are working on e-commerce policies and regulations in areas such as foreign trade, online advertising and taxation.²¹⁷

On the other hand, government control over use of the Internet and e-commerce is reflected in many regulations that have been promulgated in recent years. For example, the government has sought to control and monitor access to the Internet, to prevent the divulgence of "state secrets" over the Internet, to restrict the use of foreign-made encryption software, to control the online sale of audio-visual products, and to control the online distribution of books.²¹⁸

As a result of disagreements between certain government ministries and departments, the e-commerce Guidelines are likely to be downgraded in both scope and importance. The release of the documents above requiring registration of online business also indicates that the government is keen to exert the same degree of control over the online business environment as it does over all other aspects of business. Companies planning to do business over the Internet with or in China should be aware that, in most cases, they will

²¹⁷ John Eichelberger and Annabel Allen, A Legal Perspective: The Impact of WTO on Foreign Investment in China's Internet/E-commerce Sector. Online: <http://www.perkinscoie.com/resource/intldocs/wtoimpact.htm>.

²¹⁸ *Ibid.*

be subject to at least the same level of regulation as they are when conducting more traditional forms of business.²¹⁹

²¹⁹ Nancy Leigh, *supra* note 170, at 23-24.

Chapter 5 The Future of E-commerce in China

5.1 Online Banking and Security Issues

Liberalization of telecommunications, financial services, trade and investment regimes in China is supposed to enhance greatly the competitiveness of its ISPs, which are actually working hard to establish rich and speedy Internet sites permitting buying and selling of goods and services, while at the same time securing reliable electronic payment systems.²²⁰

The success and future of e-commerce is interwoven with the development of electronic payment systems. If payment mechanisms cause a bottleneck in the e-commerce environment, then many of the advantages of networked commerce will be negated. Traditional payment methods such as cheques or bank drafts can take days to be processed and can disrupt the mercantile process. Before electronic payment becomes widely accepted, several issues must be addressed. A user making an electronic payment

²²⁰ Building Confidence, *supra* note 6, Box 9 at 73.

expects privacy – particularly with respect to electronic cash payments. Along with privacy, security is a major user-concern.²²¹

5.1.1 Online Banking

An efficient and sound financial structure is the critical infrastructure for the growth and development of e-commerce as well. Although there are a number of online payment techniques, about 80 percent of e-commerce transactions currently use credit cards. The international credit card is currency-neutral; it is recognized in nearly every country, which is of particular value in global e-commerce. Consequently, in the near term, countries where credit or debit card penetration and usage are low may be less able to achieve maximum benefit from global e-commerce, unless an alternative, equally interoperable mechanism is available.

On the other hand, e-commerce technologies and lower transaction costs allow financial institutions to treat clients individually. In this age of online mortgage applications and stock trades, financial institutions can retain their relationships with clients by creating bundles of services unique to the needs of individual clients. Such bundles can include traditional savings and checking accounts that can be tracked and updated electronically, as well as online bill-pay. Moreover, Internet businesses must authorize transactions

through payment institutions (e.g., banks or credit card companies) in real time so as to allow immediate delivery of digital products. A financial system that cannot provide this will stymie the development of e-commerce and of the economy generally. Speed of authorization and clearing is also important at the macro level: the shorter the time between authorization and actual payment, the more efficient the transaction and the lower the institutional risk.

Full efficiency and realization of the benefits of e-commerce depend on the rapid payment and settlement of accounts: the "plumbing" or payment-system relationships between the payment institutions (e.g., independent credit-card companies), financial intermediaries, and the central bank need to be efficient. If there is one clearinghouse for transactions, the most efficient use of that facility is to clear only the net transactions between the parties. This is the approach used most commonly by central banks and their domestic banks and by credit-card companies around the world.

In sum, the banking and payment systems need to be able to process transactions in real time, both domestically and in multiple currencies on international markets. One way to jump start this internally is to encourage participation in the local market by foreign financial institutions that already have this capability. The technology and knowledge transfers are important to improve domestic activities. Moreover, the partnership

²²¹ Richard L. Doernberg and Luc Hinnekens, *Electronic Commerce and International Taxation*, (Hague Boston: Kluwer Law International 1999).

between international institutions with technology and local institutions with local expertise brings the domestic institutions into the global network of financial institutions.

China's rapid progress in financial reform and the modernization of its financial services in recent years has inadvertently paved the way for the subsequent development of e-commerce. The case in point is the "Golden projects," which have been particularly conducted to the growth of e-commerce. During the early 1990s, the Chinese government launched several "Golden projects" to spearhead IT growth and to promote IT applications on the mainland. For instance, the Golden Bridge project is aimed at wiring millions of Chinese citizens to the nation-wide financial network by 2010. The Golden Card project aims to facilitate national financial transactions and payments by creating a bankcard network akin to the global Cirrus networks and building regional switch centres to link ATMs and point-of-sale machines of different banks within regions. Furthermore, the regional centres would be linked to a national network, hence simplifying the online payment process.²²²

Major banks in China have also been taking concrete steps to promote e-banking, even though it is still a relatively new concept to the Chinese people. The new online banking system relies on Internet and telephone technologies to conduct business instead of bank counters. It includes 24-hour customer bank account access, and allows transactions between accounts, personal financing consultation, fee payments, online shopping and

online stock trading. In 1999, approximately 250,000 online securities trading accounts were opened in China though online trading volume still accounted for a minuscule 1% of the total market trade volume. In the future, however, online trading volume is expected to grow over 200% annually.²²³

In August 1999, the China Construction Bank announced the provision of Internet banking services and established a national integrated business network, incorporating state of the art information services and network technologies that support real time online settlements of accounts, online shopping and other e-commerce services. Within the network, customers can manage their current accounts, fixed deposits and credit card accounts online. Advanced coding technology ensures the security of online banking services provided by the bank.²²⁴

In February 2000, China's largest commercial bank, the Industrial and Commercial Bank of China (ICBC, it owns 8.1 million enterprise accounts), expanded its online banking business to enterprises throughout China, and will soon start personal online banking.²²⁵

²²² Wong and Ling, *China's Emerging New Economy*, *supra* note 96 at 65.

²²³ "Homeway Unveils New Platform for Online Securities Trade" *Business Daily* (7 August 2000).

²²⁴ "Online Trading Needs Improvement in China" *China Daily Business Weekly* (12-18 September 2000).

²²⁵ "Bank Boosts Online Services" *China Daily* (22 June 2000).

In May 2000, China's central bank, the People's Bank of China (PBOC), established administrative procedures to approve online banking. Plans are also under way for the State Development Bank (SDB) to build an e-bank connected to the global network, with wholesale services as its core function. It is expected that by the year 2004, China will be the largest online banking market in Asia.²²⁶

The PBOC promulgated the *Administration of Online Banking Services Tentative Procedures* (The Tentative Procedures) on June 29, 2001, in order to regulate and guide the healthy development of Online Banking Services in China, effectively mitigate the risks associated with the operation of banking services and protect the lawful rights and interests of bank clients.²²⁷ As a further attempt to regulate its financial service sector and to protect the interests of consumers, PBOC issued the *Tentative Administrative Measures on Online Banking Business* (The Online banking Measures) on July 29, 2001, effective immediately upon promulgation.²²⁸

Those promulgated regulations governing online banking are a welcome addition to China's banking laws, but it remains to be seen how the regulations will play out. Online

²²⁶ "By the year 2004, China will be the biggest online banking market in Asia" Brokat Infosystems AG (26 April 2000), online: <<http://www.brokat.com/int/netnews/china-2004.html>>.

²²⁷ *Administration of Online Banking Services Tentative Procedures* (June 29 2001) (2001) 15-7 CLP at 33-40.

²²⁸ Lisa Luo, "Belated PRC Online Banking Regulations Welcomed by Financial Services Sector" (2001) 15-7, CLP at 42-44.

Privacy issues, the role of foreign banks and ambiguity on whether the regulations apply to mobile phone or other telecom users are some of the obstacles to online banking.²²⁹

Many of China's e-commerce websites are not pure e-commerce sites. Although many operators can take orders and accept payment online, most Chinese shoppers order online but pay offline. Online payment is not as popular among consumers and operators. Even website operators or vendors themselves prefer offline cash payment as several e-commerce websites have been found to accept cash-on-delivery only.²³⁰ Various methods of payments such as online payment by credit/debit cards, online payment by bank /cash cards, payment upon delivery, payment by postal remittance, and payment via bank transfer and "electronic wallets" are practised in China.

²²⁹ *Ibid.* editor's note.

²³⁰ "Online Trading Needs Improvement in China" China Daily Business Weekly (12-18 September 1999)

Box 6. Methods of payment for E-commerce transactions in China ²³¹	
Online payment by credit or debit cards	<p>Consumers can pay using credit cards such as VISA, MasterCard, American Express and Diner's Club. In this case, payment can be made online globally.</p> <p>Credit cards or debit cards issued by Chinese banks such as the Bank of China, and the Industrial and Commercial Bank of China, and the China Merchant Bank are accepted but limited to selected cities across China. Some examples are the China Merchant Bank's Yikatong and Yiwangtong card systems, the Bank of China's Great Wall electronic debit card and Great Wall renminbi credit card, the China Construction Bank's long card and the Agricultural Bank of China's Golden Ear of Grain Card. Of these options, the China Merchant Bank's Yiwangtong system is the most popular for online payments.</p>
Online payments by bank cards	<p>Another method of payment is via bank cards, or rather, savings account cards issued by the Chinese banks such as the Construction Bank of China, the Industries and Commercial Bank of China and the Shanghai Pudong Development Bank. The verification process takes as long as 15 days before delivery can be made.</p>
Payment upon delivery	<p>This is the method which most Chinese prefer. Nonetheless, this method is limited to selected cities. For instance, 8848.net makes this option available only in 19 cities.</p> <p>Payment upon delivery can also be collected by couriers such as EMS or DHL.</p>
Payment by bank transfers	<p>Consumers can pay by transferring funds from their accounts to the online operator's accounts. This could mean global online account transfers or nationwide online account transfers.</p>
Postal remittance	<p>Payment can also be in the form of postal remittance where consumers pay via the Post Office.</p>
Payments by electronic wallets	<p>Consumers can pay using electronic wallets issued by some commercial banks, which is available in certain provinces.</p>

²³¹ Wong and Ling, China's Emerging New Economy, *supra* note 96.

5.1.2 The Security of Online Payment

However, online verification, fraud, and charge-backs are becoming more serious, with particular relevance for small and medium sized enterprises in both industrial and developing countries. If the credit /debit card mechanism is to remain the premier method of on-line payment, these problems must be resolved.

Credit-card penetration varies widely by country for various reasons including both culture and policy. In many countries, such as China, though consumers prefer cash transactions, in part to avoid audit and tax trails; credit card usage for e-commerce remains low, even as usage of the Internet (such as for e-mail) has risen sharply.

Consumers are mainly concerned about the security of their card numbers online, afraid that they are not protected from liability in the case of fraudulent use of their card.²³² This is reflected in their worry over online companies' credibility and payment security and hence, their preference for traditional shopping and payment on delivery. In a survey, about 80 % of China's Internet users believe that e-commerce provides no guaranteed replacement or payment security.²³³

Just about any computer-based system is vulnerable to external attack. However, as companies move more of their core processes and transactions onto the Internet and

²³² Mann and Eokert, *Global Electronic Commerce* *supra* note 21, at 62.

become e-businesses, they become potentially far more vulnerable because the Internet increases the number of entry points exponentially. Without adequate security technology, therefore, e-business rapidly becomes untenable. The reason for this is that the Internet was originally designed with interoperability, rather than security, in mind.

In recent years, companies have set up “firewalls” to defend Internet security. There are at least three other main ingredients of Internet security. The first is encryption. If data is sent in “clear text,” anyone can intercept and read it. Encryption, depending on whether it is “soft” or “hard,” can make life difficult or next-to-impossible for would-be snoopers.²³⁴ The second is authentication of identity. This, too, can take soft and hard forms. It can amount to a simple password, or it may call for a digital signature.²³⁵ Digital signatures may be held and checked by trusted third parties, such as banks or credit-card companies. However, even that may not be secure enough for some companies. Therefore, the third increasingly popular alternative is the “virtual private network (VPN).”²³⁶ VPNs offer a controlled pathway through the Internet open only to authorized users and authorized data.

A further recent innovation is the public-key infrastructure (PKI), a complete set of products to provide total security. Such a set include, among other things, public-key

²³³ “E-commerce In China: The CCIDnet Survey” (5 May 2000), online: <<http://www.chinaonline.com>>.

²³⁴ The economist, “The Net Imperative” online: <<http://op.cit.com>>.

²³⁵ Data may also be digitally signed as well as encrypted to ensure that it has not been tampered with.

²³⁶ VPNs “tunnel” through the Internet, wrapping user data in Internet-protocol (IP) packets that hide the underlying routing and switching structure of the Internet from senders and receivers.

digital certificates (or electronic means of identification), somewhere to store them, means of revoking them, automatic updating of key pairs and certificates before expiry, key storage, back-up and recovery, and secure client-side software.

(1) Certificate Authorization

In late 1999, the PBOC established the National Banking Certificate Authorization (CA) Centre and signed several contracts with online security system suppliers to construct an Internet CA system to facilitate secure application of online transactions.

Currently, the authoritative certificate recognition system has been adopted by many banks, including the China International Trust & Investment Corp.(CITIC) Industrial Bank and ICBC. The CITIC Industrial Bank is the first to adopt certificates of newly founded China Financial Certificate Authorization Centre (CFCA) to guarantee safe online banking. The CFCA, founded by the PBOC and 12 major commercial banks in June 2000, grants certificates to e-commerce users on the basis of credit record inspection.²³⁷

²³⁷ "CITIC Industrial Offers Online Services" South China Morning Post (14 July 2000).

Digital certification authorities play a vital role in e-commerce. In 2001, the Hainan Provincial Government introduced *digital certification rules*.²³⁸ Late in 2002, the Standing Committee of the Guangdong Provincial People's Congress promulgated China's first comprehensive *Regulations on Electronic Transactions* that address several crucial issues, including electronic signatures.²³⁹

Year 2002 witnessed a number of significant developments in connection with China's development of its digital certification regime, with the establishment by MII of the State Electronic Commerce Certification Institution Administrative Center (the "Center") in January 2002, issuance of the *Standards and Guidelines for Construction, Operation and Administration of Electronic Commerce Certification Institutions for Trial Implementation* ("Guidelines") in July 2002, and most recently issuance by Shanghai Municipality of the *Shanghai Municipal Digital Certification Administrative Measures* ("Measures"), which took effect on January 1, 2003.²⁴⁰

(2) China's First Secure Internet Server

In early 2000, China's first secure Internet server, the Founder Yuanming Internet Secure, was launched by the Founder Science & Technology Computer Co. This device protects

²³⁸ China Legal Highlights, (October 2001).

²³⁹ Andrew Zeng "the groundbreaking Guangdong rules" online: <<http://www.perkinscoie.com/resource/intldocs/guangdong.htm>>.

business information systems and resources from outside intrusion and attack, while allowing the government to go online by ensuring the security of the government information network.

Founder Yuanming Internet Secure adopts a new mode of security, known as “active isolation.” It links a business internal network with the Internet through two layers of security protection. The system both customizes the content to be transmitted to ensure the security of content and employs physical isolation to guarantee the security of the network. System managers can customize website content according to their needs, and can adopt different updating tactics, including automatic updating, regular updating and manual updating. The secure server is capable of processing requests from over 200 visitors per second.

(3) Security Authentication System

China has yet to establish an efficient security authentication system through which corporate or individual credit can be verified under security regardless of geographical location. Without such an effective security authentication system, it would be highly risky for anyone, be it business or individual, to conduct transactions online. Fears were intensified when hackers used available technology to obtain 80,000 personal credit

²⁴⁰ Paul McKenzie and Jeffrey Yunan Ren, “China Moving Forward on Digital Certification Regulations”

account numbers and passwords from hacking different commercial websites in early 1998.²⁴¹ It was reported that more than 90% of China's web portals and e-commerce websites have serious security flaws.²⁴²

In fact, the China Consumers Association (CCA) recently issued its eighth consumer alert of the year to warn China's Internet users to guard personal information from the websites to prevent it from being misused. The consumer association's investigations found the security of such important personal information as users' names, identification numbers, e-mail addresses and credit card numbers, which may be divulged while communicating, shopping and registering online, may be at risk. According to the CAA, Internet users' personal information can be divulged because some online operators sell customer information to third parties; some websites are not well-equipped with network security technologies and this creates an opportunity for lawbreakers and hackers. Some Internet users also unwittingly divulge their e-mail addresses while chatting online.

Perhaps the most significant reason why there is not more business conducted electronically is that potential purchasers fear that their communications over the Internet – particular, their credit card or bank account numbers, medical information, personal records, and trails of which websites they may have visited – can be easily intercepted by those to whom the messages are not addressed. To be sure, some danger now exists

online: < <http://www.perkinscoie.com/resource/intldocs/digital.htm> >.

²⁴¹ *Ibid.*

²⁴² "Hack Attack: 90% of Chinese Websites Not Secure" Guangzhou Daily (18 May 2000).

when people order goods over the telephone and provide their credit card numbers to clerks they have never met, or even when people use their credit cards to pay for goods and services in person (because the numbers on the cards can easily be copied by one or more individuals who handle the processing of credit card slips as they proceed from the retailer through the banking system). Nevertheless, in e-commerce, this concern remains central.

Security of banking payment systems is of primordial importance. This observation is true for both Internet and traditional banking. A security protocol should provide reliable data encryption, server authentication and message integrity for an Internet connection. Passing through cleansing firewalls, only authenticated requests should reach the Internet banking server. Meanwhile, a security analyser should constantly monitor login attempts and recognize failures that could indicate a possible unauthorized attempt to log into an account. Currently banks and their business partners are trying to develop an array of secure electronic payments and finance models for their retail and corporate clients. The models differ due to the character of clients or operations. Achieving that level of state of the art communications demands mobilization of a great deal of know-how and investment.²⁴³

²⁴³ Online: <<http://www.banking.com/security.asp>>.

5.2 Foreign Investment in E-commerce After the WTO

International businesses want legal certainty from a host country's law and justice from its courts and there has been reason to be sceptical about the strength of law in China. However, recent trends and developments indicate that China's laws increasingly provide the certainty and predictability that businesses demand. Over the last 10 years, the NPC has largely followed its declaration that the state must adhere to the law, and that the application of a law should not adjust with changes in leadership or the views of particular leaders. The Communist Party's continuing support for the adoption of rules to guide a socialist market economy and its consent to the application of certain capitalist innovations have allowed market participants to stimulate further economic growth. Other positive indicators-entrance into the WTO, the rise in the number and social status of Chinese lawyers, the cross-pollination effects from Hong Kong's judicial system, the number and complexity of laws passed since 1992 suggest that law matters more in China today than it did 10 years ago.²⁴⁴

E-commerce is considered by Chinese government as a priority area to develop. China with its immense market potential is one of the regions characterized by a rapid growth of e-commerce. Its wired and wireless customer base gives China a telecommunications market that is second only to the USA. In the 1990s the country was, every 2-3 years, doubling the number of fixed and cellular phones as well as PC and Internet host

²⁴⁴ Healy and Duke "Winners and Losers under China's E-sign Law," *supra* note 139.

penetration. It was estimated that by the beginning of the millennium the fixed telephones would reach the level of 150 million lines, i.e. 13 lines per 100 people. The current Five –Year Plan (2001-05) anticipates that e-commerce will grow from less than \$1 billion in 2001 to more than \$20 billion in 2005. The PRC government recognizes that laws that facilitate e-commerce will be needed to foster such growth.²⁴⁵

Foreign investors are looked to be part of the growth of the Internet in China. The government has recognized the important role foreigners have played in developing the hi-tech sector in China.²⁴⁶ Hence, to entice foreign firms to develop the hi-tech sector, the State Council in 1999 started granting tax benefits to foreign invested firms (FIEs) for investing in technology projects. The tax benefits would allow FIEs which have increased their technological development by 10% in the previous year to deduct half of that year's technology spending from its taxable income.²⁴⁷ In fact, under the umbrella of WTO, China has agreed to eliminate all tariffs by 2005 on IT products such as computers, semiconductors and Internet-related equipment.²⁴⁸ After its accession to WTO, China can also count on foreign technology and foreign venture capital to spur further Internet development.²⁴⁹ The future legal framework for foreign involvement in China's Internet sector is likely to evolve under WTO rules. More foreign involvement in the future would eventually lead to an increase in network capacity, making expansion considerably cheaper.

²⁴⁵ *Ibid.*

²⁴⁶ Some 80% of the country's hi-tech exporters are foreign-invested enterprises.

²⁴⁷ "China To Grant Foreign Invested firms Hi Tech Tax Breaks", online: <<http://www.chinaonline.com>> (19 October 1999).

Furthermore, the nature of e-commerce make structuring a Chinese Internet investment is the stage of the lifecycle the business is at and the desired business outcomes an important issue that regulators have to address. At the incubation stage, it may be commercially acceptable to take an aggressive view in order to get the project started. Where the business is already mature and second or third round financing is sought or a trade sale or an initial public offering (IPO) is likely, it may be necessary to structure or restructure the business in a different manner.²⁵⁰

FIEs have always had the ability to sell their own products in China. The difficulties have been with distribution and marketing. Old-economy FIEs are turning increasingly to the Internet to market their products and to conclude sales online.²⁵¹ As a FIE is entitled to sell its own products, it would follow that it should be entitled to establish a website for this purpose, including posting specifications and current list prices, and setting standard conditions of sale.

However, the position can never be totally risk-free as the restrictions apply.²⁵² Foreign companies can also be expected to become increasingly interested in China e-commerce segment. This is in part a natural extension of the growth of the Chinese market. There is a risk that regulatory authorities may deny access to international connections because

²⁴⁸ "Don't Stifle China's IT Revolution" Asian Wall Street Journal (28 February 2000), *supra* note 118.

²⁴⁹ Wong and Ling, China's Emerging New Economy, *supra* note 96, at 28.

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.*

²⁵² *Ibid.*

of regulatory breaches. Conducting Internet activity in China is fraught with potential legal and regulatory controls even though they are often not enforced.²⁵³

As there are no specific rules regulating the Internet in China, the major potential prohibition comes from regulations dealing with telecommunications services. A FIE is prohibited from investing in, operating or participating in the operation of any business that provides deregulated or value-added telecommunications services. These are defined to include computer information services, electronic mail box services, electronic data exchange and the provision of picture and text images.

The question is whether this prohibition covers the main forms of web-based activity such as acting as an ICP, making available online directories and search engines, providing free e-mail, conducting e-commerce and setting up chat rooms and bulletin boards. Some consider that this prohibition has only a narrow ambit and applies to specific activities that certain Chinese providers are doing already. The more prudent view is that the broad scope of this prohibition is wide enough to be able to be interpreted to cover the main forms of Internet activity.

This is consistent with the position taken at WTO negotiations that treats the Internet as being subsumed within the ambit of value-added services, which are only being gradually

²⁵³ *Ibid.* at 18.

liberalised. The Chinese government shall liberalize rules governing foreign investment in telecommunications, Internet and trading business upon joining the WTO. China has promised 49% foreign ownership in telecoms services. Two years later this level should rise to 50%. China's accession to the WTO will spur further growth of e-commerce. Finally, in allowing global Internet companies to own 49 – 100% of the shares of Chinese Internet companies, post-WTO China will improve its overall e-commerce environment.²⁵⁴

China, like other countries coming late to the e-commerce drive, has the advantage of learning from those before it and using those experiences to create a robust technical and legal framework that, though global in nature, will be Chinese in character.²⁵⁵

The development of a legal framework for e-commerce in other countries generally has been based on some key principles - the established administrative powers of the relevant public bodies to collect, use and share personal data; a duty of confidentiality in relation to personal data; laws relating to the maintenance of security and human rights; as well as the commercial contractual principles of procurement. China's challenge will be in determining the fundamental legal pillars that will support its e-commerce initiative, and

²⁵⁴ See "WTO Entry To Open China's E-commerce market" online: <<http://www.chinaonline.com>> (23 November 1999).

²⁵⁵ Gigi Cheah "How will China E-Govern?" online: <http://www.perkinscoie.com/resource/intldocs/china_egovern.htm>.

balancing those requirements with its own unique system of governance and democracy.²⁵⁶

The size and scope of this massive investment presents a tremendous opportunity for both foreign companies and FIEs in China. Though most official documents stress the use of existing technology and equipment to build the new e-commerce infrastructure, a large portion of the work must be outsourced, and 2003 represents the beginning of the growth phase.

The Chinese government has announced an intention to publish new laws that deal specifically with Internet. These may spell out more clearly the restrictions that are thought to exist already. Significantly, they may limit foreign investment in the Internet industry in China to the limits agreed in negotiations for the China's accession to WTO.

By late 2003, China will likely have passed new laws governing electronic signatures that will make electronically executed contracts as legally binding as those signed with a pen. This new "e-sign" law will be the first in a series of administrative regulations for e-commerce that the State Council is expected to issue over the next several years. It follows on the passage of the PRC Contract Law in 1999, which generally recognized the validity of contracts documented electronically, but did not specifically address

²⁵⁶ *Ibid.*

authentication or electronic signatures. China's e-sign law will be an important development for international companies interested in expanding their e-commerce to China.²⁵⁷

Different considerations will apply depending on business need. Because the regulatory regime is still not settled, it is difficult to arrive at enduring structures with a high degree of legal comfort. However, investments continue to be made by investors who appreciate the risks of various approaches and who are nimble enough to respond to regulatory changes.²⁵⁸

Accordingly, many foreign and Chinese observers are optimistic about its future growth potential. Once China has strengthened the legal framework for e-commerce and sorted out the payment system, its e-commerce is set to grow much faster. Books, home electronics, laser discs, computer software and hardware, and various telecommunications equipment will remain popular online merchandise; service products like online ticketing and online distance learning also hold further growth potential.

²⁵⁷ Healy and Duke "Winners and Losers under China's E-sign Law," *supra* note 140.

²⁵⁸ Seung Chong "Structuring Internet Investments in China", (2000) 14-4 CLP at 21.

5.3 What Chinese Governments Can Accomplish in WTO

China's accession to WTO is expected to boost the overall development of e-commerce in China.²⁵⁹ Both local and foreign banks, shipping companies and insurance companies will have a wider scope for their e-business operations. More foreign online e-stores will be attracted to the China market on the promise of millions of potential Chinese online shoppers.²⁶⁰ The Chinese side will also count on the rapid growth in the potential global demand for China's labour-intensive products via the e-commerce channel.²⁶¹

Foreign participation will certainly speed up the technical upgrading of China's IT infrastructure and the eventual standardization and modernization of China's online payment system, offline delivery, and Internet platforms. All these are currently weak links in China's e-commerce, which will take many years to remedy. The WTO membership may provide just the needed impetus to China's IT infrastructure.

China's accession to WTO will affect e-commerce and the current regulations on e-commerce in China significantly. Even though China has become a member, there can be a considerable gap between law and practice. It is unlikely that all of the problems will disappear overnight when China joins the WTO.²⁶² Thereafter, China will have to

²⁵⁹ Wong and Ling, China's Emerging New Economy, *supra* note 96, at 62.

²⁶⁰ *Ibid.*

²⁶¹ *Ibid.* at 86.

²⁶² *Ibid.*

undergo the difficult process of revising its laws and regulations in order to comply with its commitments.²⁶³

WTO, an emerging structure is a constitutional system backed by compulsory coercive dispute resolution that promises to act as a mechanism for universalising substantive norms of international law.²⁶⁴ A great concern is that the WTO is too 'one-eyed' and that trading interests, especially the trading interests of the hegemon, will dominate.

Nonetheless, as the WTO has already embraced intellectual property law through *the Agreement on Trade Related Aspects of Intellectual Property Rights* (TRIPS), it has the potential to exert great influence over the information society. There will inevitably be a push for individual (including corporate and group) representation before and within the primary institutions of WTO. This push will arise from the view that as the trade structure evolves into much more of a constitutional system, as happened in the EU, greater accountability to and representation of individuals will be required.²⁶⁵

The WTO has done a substantial amount of work on e-commerce, both directly on its trade-related aspects and more generally on the infrastructure necessary to the development of global as well as domestic e-commerce.²⁶⁶ As the body that addresses

²⁶³ Vivienne Bath, "E-commerce in China" *supra* note 136.

²⁶⁴ Fitzgerald B F, "Trade based constitutionalisms: a framework for universalising substantive international law" 5 (1996-7) University of Miami Yearbook of International Law 131; Evans GE, "Issues of legitimacy and the resolution of intellectual property disputes in the supercourt of the World Trade Organization" (1998) 14 Journal of International Trade Law and Regulation at 81.

²⁶⁵ Weiler J, "The Transformation of Europe" (1991) 100 Yale LJ 2403.

²⁶⁶ See Mann and Ecockert, Global Electronic Commerce, *supra* note 21 at 151.

global trade issues, the WTO is ideal for the exchange of information and insights on how countries approach both domestic and cross-border aspects of e-commerce.²⁶⁷

Because e-commerce was evolving so quickly, the *1998 Geneva Ministerial agreement* imposed a temporary moratorium on customs duties for all products delivered over the Internet. A key motivation for the moratorium was the difficulty of distinguishing between physical and electronic delivery of products bought over the Internet and the blurring of the traditional distinction between goods and services. However, there was a general convergence of views that WTO members should not impose new barriers to e-commerce. The WTO has helped to liberalize or (at least) address the service-sector infrastructures that are a prerequisite for growth of e-commerce. Tariffs and restrictions on computers and other IT products were set at zero under *Information Technology Agreement (ITA) I*, and the range of products is likely to be broadened in ITA II. The basic *Telecommunications Agreement* covers commitments for telecommunications liberalization. Though it is unclear whether the moratorium has expired, the important point is that no country has acted yet to impose new duties.

WTO also commenced a comprehensive work program to examine the trade-related aspects of e-commerce. Four separate working groups-the Goods Council, the Services Council, the TRIPS Council, and the Trade and Development Committee-were coordinated by the General Council.

Because of the economic and social importance and the global reach of e-commerce and the infrastructure on which it depends, it is essential that the WTO members commit to the maximum possible liberalization of e-commerce. The WTO members should agree to continue the e-commerce work program in their mandate for new negotiations so as to continue the process of education and shared experiences.

Basically, there are several approaches to pave the way for a comprehensive treatment of e-commerce – and its infrastructure – which will encourage growth and benefits of all WTO members.

(1) Reaffirm that existing the WTO principles and disciplines apply to e-commerce

While the electronic world poses certain challenges to the current trade policy framework, traditional WTO principles of non-discrimination, transparency, and market openness remain valid for e-commerce. New rules are not necessary if the principle of liberalization fundamental to the WTO is honoured.

With e-commerce still in its infancy, it is too early to determine how digitised products delivered over the Internet should be classified. Premature classification could have a

²⁶⁷ *Ibid.*

profound impact on the future growth of e-commerce, given the differences in how GATT and GATS approach liberalization. Moreover, if the pace of classification is too early, extensive resources and efforts are probably misguided.

Where the application of these agreements to e-commerce is not clear, the most liberalizing approach should prevail. This might mean that electronic delivery of goods and services would be treated more favourably than other forms of delivery. For example, insurance products could be sold over the Internet even though the physical presence of foreign insurance firms is not yet been scheduled for liberalization under GATS. The bias toward liberalization engendered by e-commerce can stimulate its further development, as well as encourage liberalization and deregulation throughout the economy.

(2) Extend the moratorium on customs duties on electronic transmissions

Ideally, the WTO members will make permanent and binding the practice of not imposing customs duties on digitised products. The longer countries keep electronic commerce duty-free, the more these activities will flourish and clarify the benefits of a more liberal domestic and international trade environment. If the WTO members allow the moratorium to expire, they will encourage fragmentation by different taxes and tariff

types and rates. Businesses will waste time and energy “forum-shopping,” which will discourage technological growth in countries where seamless markets are most important.

(3) Negotiating methods need greater creativity and leadership

The debate on whether to classify electronic transactions as GATT or GATS reveals how country delegations approach negotiating methodology. The US proposal on services in mid-summer 1999 argued for the “use of all appropriate negotiating modalities, including request-offer, horizontal, and sectoral approaches.”²⁶⁸

In the horizontal approach, negotiators seek to apply liberalizing measures like transparency and good governance in regulations, as well as consistency of ownership across sectors to a broad range of services. They might seek to eliminate any discrimination across a particular mode of delivery (like e-commerce or rights of establishment) or a range of services (like financial services and small package delivery).

Horizontal negotiations recognize that service sectors are interconnected and that for maximum economic benefits, liberalization must proceed on several fronts at once.

Otherwise the benefits from liberalizing one sector (say, lower telecommunications costs)

²⁶⁸ Preparations for the 1999 Ministerial conference; communication from the United States, Further Negotiations as Mandated by the General Agreement on Trade in Services (GATS), as replicated in Inside U.S. Trade (30 July 1999).

are simply absorbed into a protected sector (such as higher air cargo costs). The horizontal approach to liberalization is particularly valuable for e-commerce, where the synergies between services sectors are especially apparent.

That said, request-offer negotiations will likely still be important, and will require industrial countries to have clearer vision. Specifically, industrial and developing countries need to negotiate across manufacturing and services sectors. Developing countries stand to benefit through the new opportunities created by e-commerce, as well as through the increased efficiencies of e-commerce in traditional sectors. This is a clear win-win proposition.

However, if markets are not open for those more efficiently produced goods and services, the overall benefits could be reduced. Developing countries, for example, face barriers in textiles and apparel and some elements of data processing, communications, and software programming, precisely those areas in which e-commerce can enhance the competitiveness of developing-country producers.

(4) Extend the e-commerce work program, but avoid linkages to technical assistance

WTO members must foster an environment that allows consideration of how e-commerce issues are unique, even while falling under the WTO principle of liberalization.

However, the current WTO work program has provided only a shallow understanding of how e-commerce is changing the global economy. For example, should the Basic Telecom Agreement be expanded to embrace broadband infrastructure and services, or should technology products for the Internet qualify for tariff reduction under ITA II? Should interoperability, standards, and universal access be addressed? Such questions could be addressed through the WTO work program, with special attention to developing-country concerns.

Some experts suggest a future WTO work program on e-commerce should have the following two features:

- the work program should be subject to the General Council rather than fragmented throughout the WTO, or put under the Services Council. While input from councils and committees is important, the cross-cutting nature of e-commerce means that the General Council must lead. Close coordination of the work program under the General Council will also help developing countries with their smaller negotiating staff participate more fully. Certainly, too, this work program should be a non-negotiating forum.
- the private sector is leading the way in setting global technological standards for e-commerce; it can also help resolve policymaking concerns such as tax administration and privacy protection. Private-sector participation has been the hallmark of all the regional trade forums' discussions of electronic commerce

(including those proceeding under APEC and FTAA). The contribution the sector can make to the WTO work program is vital.²⁶⁹

Ensuring the benefits of this new form of international trade be realized by consumers in all countries is one of the WTO's fundamental goals. To do so, WTO must make sure that e-commerce remains free from international trade barriers and continues to drive domestic and global growth. Thus, establishing a predictable environment in which e-commerce can thrive. By this way, several developing countries' concerns about how any WTO e-commerce commitments will affect them will be solved. Their concerns include infrastructure, equitable access, and technological and human capacity for e-commerce growth.

²⁶⁹ This was suggested by the EU, in keeping with the view that all e-commerce transactions should be classified as services.

Chapter 6 Conclusion

As has been shown, our focus must be much broader-not just on e-commerce, but on some of the larger social and economic implications of the digital revolution. Moreover, with respect to e-commerce itself, the government must not simply announce a hands-off approach, as the administration has done, but in certain important respects must actively get out of the way by removing legal impediments to interstate and global commerce that were fashioned in a pre-digital environment. Furthermore, policymakers must remain vigilant against continuing efforts by defenders of old guard technologies and products to stall new advances.

New policies in a digital age includes:

First, policymakers should let markets rather than governments address problems associated with digital technology. Although the government initially financed the development of the Internet, the digital revolution is overwhelmingly a private sector phenomenon and should remain so. In fact, the great virtue of a market-based approach is that if digital problems are perceived to be significant by large numbers of users, then

firms have strong market incentives to develop technological solutions that premature regulation is likely to pre-empt.

The pace of technological change itself favors market driven over government solutions. Government decision-making is slow, whether at the legislative level or at the regulatory level. By the time government acts, the nature of the problem or the problem itself is likely have to be changed radically. In contrast, corporations increasingly must live or die by Internet time, a reality that tips heavily in favor of market-driven solutions to problems in the digital environment.

Second, governments must recognize and adapt to the shrinkage of their regulatory domains caused by the digital revolution by removing unnecessary and counterproductive barriers to trade and commerce that electronic communications make possible. Third, one important positive task for governments is to upgrade the legal and institutional infrastructure to suit the digital age. In some instances, this may require harmonized rules.

At the same time, it is important not to assume that government action may be required to resolve every uncertainty or technological incompatibility associated with e-commerce.

In many if not most cases, markets can do a far better job, more quickly, than can

governments. For example, consider calls for common international rules to determine which jurisdiction's rules govern contract interpretation, liability, and consumer protection. In e-commerce, if left alone, markets will solve such questions all by themselves as sellers make clear in their contracts, which laws apply to their transactions.

It is clear that the Chinese government will have to step up efforts to regulate e-commerce in a more integrated fashion. A set of draft guidelines governing the development of e-commerce in China has already been prepared by the MII and submitted to the State Information Leading Group.²⁷⁰ The guidelines include a discussion of comprehensive changes needed to Chinese legal system in order to support the development of e-commerce.

Another way in which government can play a beneficial role in promoting innovation is to ensure that all digital markets remain fully open to competition, because it is competition (or the threat of it) that has encouraged the development of the digital technologies that we now almost take for granted. The guidelines to be followed include:

- Priority should be given to the development of e-commerce;
- The information technology infrastructure should be developed so that it can stimulate the development of Internet;

²⁷⁰ Hong Kong, Wen Wei Po Daily (April 29, 2000).

- The breakthrough of critical technology on computers should be encouraged in order to push forward the development of the legal system for Internet;
- Government and public recognition set aside financial support for the promotion of education on e-commerce;
- Enterprises should be encouraged to carry out information modernization;
- The International cooperation and communication should be encouraged to harmonize the compatibility of the development of Internet in China with the world;
- Internet and e-commerce law to regulate the commercial activities on computer should be on agenda;
- A large number of experts on Internet and e-commerce law and should be trained on international level;
- A communication network between Internet experts and legal professions shall be established.

At present, the Chinese government is still in the process of formulating an all-encompassing e-commerce strategy for the development in China. The strategy would examine issues such as problems concerning permission to enter the Chinese market and operational logistics for foreign businesses wanting to invest in China's Internet sector including e-commerce.

People will not be able to engage in e-commerce if they cannot go online. What is more, even if the hardware and connection are available, consumers will most likely choose not to engage in e-commerce if the transaction is so slow that it would be more efficient and enjoyable simply to walk to the store and purchase what they want. In general, all government actions in areas of importance to e-commerce should be given high visibility in order to generate and sustain public confidence and trust in the emerging e-commerce environment.²⁷¹

These are momentous times for China and those doing business there. The country's economy continues to perform resiliently. Sentiment has received a double boost from Beijing's successful bid for the 2008 Olympics, and eager anticipation now that the country's long wait to join the WTO is finally ended. China intends to have a fully integrated e-commerce system up and running before the Beijing 2008 Olympics. The process will pass through several growth phases before reaching maturity. This year marks the start of the "development stage," the mid-point in a 10-year struggle that began in 1998 when the Chinese first went online.²⁷²

The removal of administrative and regulatory barriers to technological convergence and the provision of an open and easily accessible networking environment were seen to be key aspects of future competitiveness. Both government and industry will require

²⁷¹ *Electronic Commerce, Opportunities and Challenges for Government* (OECD 1997), *supra* note 73 at 15.

²⁷² *Supra* note 138.

maximum flexibility if they are to respond rapidly and productively to the rapidly evolving challenges of e-commerce.²⁷³

²⁷³ *Electronic Commerce, Opportunities and Challenges for Government* (OECD 1997), *supra* note 73 at 15

Bibliography

International Laws and Relevant Websites

1998 OECD, Action Plan for Electronic Commerce, online:

<http://www.oecd.org/dsti/sti/it/ec/act/paris_ec/pdf/forum_report.pdf>.

1998, APEC, the Blueprint for Electronic Commerce, online:

<http://www.dfat.gov.au/apec/business_forum/ec_apec.html>

International Telecommunications Union (ITU), online:

<<http://www.itu.org>>

The United Nations Commission on International Trade Law (UNCITRAL), online:

<<http://www.uncitral.org>>

UN Conference on Trade and Development (UNCTAD), online:

<<http://www.unctad.org>>

UN Educational, Scientific and Cultural Organization (UNESCO), online:

<<http://www.unesco.org>>

The UNCITRAL Model Law on Electronic Commerce, online:

<<http://www.un.or.at/uncitral/english/texts/electcom/ml-ec.htm>>.

The Draft Uniform Rules on Electronic Signatures, online:

<<http://www.uncitral.org/en-index.htm>

Canada Personal Information Protection and Electronic Documents Act, online:

<http://www.privcom.gc.ca/legislation/02_06_01_e.asp>

Canada Uniform Electronic Commerce Act, online:

<<http://www.law.ualberta.ca/alri/ulc/current/euecafin.htm>>

eEurope Initiative: An Information Society for All, online:

<http://europa.eu.int/information_society/eeurope/news_library/pdf_files/initiative_en.pdf>

Final EU Data Protection Directive, online:

<http://www.privacy.org/pi/intl_orgs/ec/final_EU_Data_Protection.html>

Proposed EC Distance Selling Directive CP24 (05/94), online:

<<http://www.etno.be/CP/CP24.html>>

EU, the Directive on a Common Framework for Electronic Signatures, online:

<<http://europa.eu.int/ISPO/ecommerce/legal/digital.html>>

US Uniform Commercial Code, online:

<<http://www.law.cornell.edu/ucc/ucc.table.html>> (1/23/2003)

US Framework for Global Electronic Commerce, online:

<<http://www.nyls.edu/cmc/papers/whgiifra.htm>>

U.K. Electronic Commerce Bill, online:

<<http://news.bbc.co.uk/1/hi/sci/tech/401946.stm>>

Japan IT Basic Bill, online: < <http://www.ecommercetimes.com/perl/story/4813.html>>

Domestic Laws

PRC Interim Regulations governing the Management of International Computer Networks and The Internet (1February 1996), online: <<http://www.chinaonline.com>>.

MPT, PRC Measures on the Regulation of Public Computer Networks and The Internet (9 April 1996), See Wong and Ling, China's Emerging New Economy, Internet and E-commerce (Singapore University Press 2001) Annex 2 at 103.

MPS, The Computer Information Network and Internet Security Protection and Management Regulations (December 30, 1997), online: <<Http://www.chinaonline.com>>.

Administration of Security Protection of International Linkups of Computer Information

Networks Procedures (Dec 30 1997), (1998) 12-2 CLP at 10.

PRC Contract Law ("UCL") (March 15, 1999), (1999) 13-4 CLP at 19.

State Council Order Number 273 on Commercial Encryption Management Regulation (DN 273) (October 7, 1999), The People's Daily (October 15, 1999).

SAIC, Launch of Pilot Projects for Registering Network Advertising Business Circular (May 18, 2000), (2000) 14-8 CLP at 4.

BAIC, the Protection of the Lawful Rights and Interests of Consumers in Online Economic Activities Notice (July 7 2000), (2000) 14-8 CLP at 38.

BAIC, the Notice of the Beijing Municipal Administration for Industry and Commerce Concerning E-Commerce Activities Registration (On March 28, 2000), See Wong and Ling, China's Emerging New Economy, Internet and E-commerce (Singapore University Press 2001) Annex 8 at 136.

SSB, the Regulations on the Administration of the Maintenance of Secrets in the International Networking of Computer Information Systems (January 25, 2000, come into effect from January 1), (2000) 14-2 CLP at 18.

Guang Dong, *Pilot Projects for registering Network Advertising Business Urgent Circular* (Yue Gong Shang Guan Zi [2000] No.78), (2000) 14-5 CLP at 28.

The State Council, Administration of Internet Information Services Procedures (Sep 25 2000), (2000) 14-9 CLP 2000 at 62.

PRC, Telecommunications Regulations, (Sep 25 2000), (2000) 14-9 CLP at 28

Supreme People's Court, Several Issues Concerning the Application of Law to the Trial of Civil Dispute Cases Involving Computer Network Domain names Interpretation, (July 17 2001 and effective as of July 24 2001), (2001) 15-7 CLP at 46-47.

Supreme People's Court , Several Issues Concerning the Laws Applicable to the Trial of Copyright Disputes Involving Computer networks Interpretations (the Interpretations)

(December 19 2000 and became effective on December 21 2000) (2001) 15-1 CPL at 59.

PBOC, Administration of Online Banking Services Tentative Procedures (June 29 2001), (2001) 15-7, CLP at 33-40.

General Administration of Press and Publishing and MII, Administration of Internet Publishing Tentative Provisions (June 27 2002 and effective as of August 2002) (2002) 16-7 CLP at 30.

MI, Administration of China Internet Domain Names Procedures (August 1 2002, effective as of September 30 2002) (2002) 16-8 CLP at 105

Policies for Resolution of Domain Name Disputes Procedural Rules (effective as of September 30 2002) (2002) 16-8 CLP at 105.

Guangdong, Electronic Transactions Regulations (Promulgated on December 6 2002 and effective as of February 1 2003), (2003) 17-2 CLP at 79.

Some Government Authorities (Abbreviations)

Beijing Municipal Administration For Industry and Commerce (BAIC)

China International Electronic Commerce Center (CIECC)

China Internet Network Information Centre (CINIC or CNNIC)

China Securities Regulatory Commission (CSRC)

Economic Information Joint Committee (EIJC)

Ministry of Culture (MOC)

Ministry of Electronics Industry (MEI)

Ministry of Foreign Trade and Economic Cooperation (MOFTEC)

MOFTEC Electronic Commerce Center (ECC)

MOFTEC Information Project Group (IPG)

Ministry of Information Industry (MII)

Ministry of Public Security (MPS)

Ministry of Post and Telecommunications (MPT)

Ministry of Radio, Film and Television (MRFT)

National Information Leading Group (NILG)

The People's Bank of China (PBOC)

Public Security Bureau (PSB)

State Council Steering Committee on National Information Infrastructure (SCSCNII)

State Administration for Industry and Commerce (SAIC)

State Press and Publishing Administration (SPPA)

State Secrets Bureau (SSB)

State Encryption Administrative Commission (SEAC)

Secondary Materials: Monographs and Articles

Balis, J. and Smith, S. (ed.), *The Globalization of World Politics* (Oxford, 1997).

Balis, John and Smith, Steve (eds.), *The Globalisation of World Politics*, (Oxford 1997).

Basedow, Jurgen and Kono, Toshiyuki ed., *The Effects of Globalisation on Private International Law, Legal Aspects of Globalisation* (Kluwer Academic Publishers).

Bath, V., "China's Internet: An Uncertain Future" (2000) 2 *China Law & Practice* (CLP).

Bath, V., "E-commerce in China" online: <<http://www.google.com>>.

Cai, R. (Rongwei), "New Rules on Domain name Registration and Dispute Resolution" (2002) 16-8 CLP at 105.

Chan, V. and Kwok, S., "Online Consumer Protection" (2000) 14-8 CLP, at 34.

Cheah, G., "How will China E-Govern?" online:

<http://www.perkinscoie.com/resource/intldocs/china_egovern.htm>.

Chong, S., "Structuring Internet Investments in China", (2000) 14-4 CLP at 21.

Cullen, R. and Choy, P. D.W., "The Internet in China", 13-1 (Spring 1999) Columbia Journal of Asian Law.

Doernberg, R. L. and Hinnekens, L., Electronic Commerce and International Taxation, (the Hague Boston: Kluwer Law International) (1999).

Eichelberger, J. and Allen, A., A Legal Perspective: The Impact of WTO on Foreign Investment in China's Internet/E-commerce Sector, online:

<<http://www.perkinscoie.com/resource/intldocs/wtoimpact.htm>>.

Evans, G.E., "Issues of legitimacy and the resolution of intellectual property disputes in the supercourt of the World Trade Organization" (1998) 14 Journal of International Trade Law and Regulation at 81.

Fitzgerald A., Fitzgerald, B., Cifuentes C. and Cook P., ed., *Going Digital 2000 Legal Issues for E-commerce, Software and the Internet* (Prospect Media, 2000, St Leonards, N.S.W.)

Fitzgerald, B. F., "Trade Based Constitutionalism: A Framework for Universalising Substantive International Law" 5 (1996-7) *University of Miami Yearbook of International law* 131.

Healy, T. R. and Duke, K. E. "Winners and Losers under China's E-sign Law," online: <<http://www.ita.org/software/pubs/chinaesig.pdf>>.

Keen, G.W. and Craig, Balance: *On-line Profits* (Harvard Business School Press, 1997).

Keen, Peter G. W. and Balance, Craig, *On-line Profits, A Manager's Guide to Electronic Commerce* (Harvard Business School Press 1997).

Khatriwada, Y. R., Manahdar N. and Upadhyaya U., *Globalisation: Economy, Labour and Private Sector*, online: <<http://www.gefont.org/proceedings/globalisation.html>>.

Lan, L. L. and Lwin, M. O., "An Overview of E-commerce laws and Policies in South-East Asia," (1999) I.C.C.L.R.

Lee, C.H. (Handel) and Scarff J., "Building China's E-commerce Future", (2000) 14-1 CLP.

Leigh, N., "Regulating E-commerce: Early Steps" (2000) 14-4 CLP at 22-24.

Li, Qi, Chinese Electronic Commerce Theory & Practice Research (China: Southwest Financial Institute Press).

Litan, R. E. and Niskanen, W., Going Digital! A Guide to Policy in the Digital Age (Brookings Institution Press and Cato Institute, Washington, D.C.).

Liu, Dongping, "China Goes With Internet Flow" 10 (6) China Telecommunications Construction.

Luo, L., "Belated PRC Online Banking Regulations Welcomed by Financial Services

Sector” (2001) 15-7, CLP at 42-44.

Mahoney, M., “Japan Passes E-Commerce Catch-Up Bill”, E-Commerce Times, (November 13, 2000) online: <<http://www.ecommercetimes.com/perl/story/4813.html>>.

Malloy, R. P., Law and Economics: A comparative Approach to Theory and Practices (St. Paul, Minn: West Pub. Co., 1900).

Mann, Catherine L., Ekokert, Sue E. and Cleeland Knight, Sarah, A Policy Primer, Global Electronic Commerce (Institute for International Economics, Washington D.C. July 2000).

McKenzie, P. D., “Electronic Commerce Law—People’s Republic of China”, E-Commerce Law Report (August 2000) at 24, online: <<http://www.lexis.com>>.

Minda, G., Postmodern Legal Movements, Law and Jurisprudence at Century’s End, (New York University Press, 1995).

Mo, Y.J., "The Current Status & Future Prospects of China's Mobile Telecommunication", presented at the Conference on China's WTO Accession and its impact on Northeast Asia (28-29 June 2000), Seoul, Korea. The event was organized by the Korea-China Economic Forum.

Mueller, M. and Tan, Z., China in the Information Age: Telecommunications and the Dilemmas of Reform, the Asian Technology Information Program (ATIP) (1997),
online: < http://www.pitt.edu/~wjyst/ascii_tprc96.txt>.

Posner, R., The Economic Analysis of Law (Boston: Little, Brown & Co., 4th ed. 1992).

Potter, A.L. and Cauffiel, D.A., "Poll Finds Electronic Future Bright" EDI Forum No. 3, 13 (1997).

Potter, P. B., "Globalisation and Local Legal Culture: Dilemmas of China's Use of Liberal Ideals of Private Property Rights", Australian Journal of Asian Law (The Federation Press, 2000) 2-1.

Rees, P. and Hargreaves, M., "E.U. and U.S. Regulation of Electronic Commerce: Converging Approaches in a Converging World," (I.C.C.L.R 1999).

Sookman, B. B., "Electronic Commerce in Canada and the Law: A Survey of the Legal Issues," (1999) I.C.C.L.R., at 201.

Tan, Z. X. (Alex) and Foster, W., "Internet Diffusion in P.R. China: Global diffusion of the Internet" (March 1998) Online: <<http://web.syr.edu/~ztan/China-tel.html>>.

Triolo, P. S. and Lovelock, P., "Up, Up, and Away- With Strings Attached" (Nov/Dec. 1996) CHINA BUS. REV.

Tse, S. and Tsang, P., "Internet and WWW in China: All the Right Connections" (last modified July 2, 1997), online:

<<http://www.csu.edu.au/special/conference/apwww95/papers95/stse/stse.html>>.

Turnipseed, D., "Initiative Encourages E-Commerce in the European Union" (Mar. 08, 2000), online: <<http://www.tilj.com/content/ecomarticle03080001.htm>>.

Vittet-Philippe, P., "U.S. and E.U. Policies for Global Electronic Commerce - A Comparative Analysis of the U.S. 'Magaziner Paper' and of the E.U. Communication 'A European Initiative in Electronic Commerce'", (1998) 14-2 Computer Law & Security Report.

Wolf, M., "Why this hatred of the market?" Online: Financial Times (7/15/2001)
<<http://www.mondediplomatique.fr/dossiers/mondialisation/dbwolf.html>>.

Wong, J. and Ling, N. S, China's Emerging New Economy-The Internet and E-Commerce (Singapore University Press, Singapore 2001).

Yurcik, W. and Tan, Z., "The Great (fire) Wall of China: Internet Security and Information Policy Issues in the People's Republic of China",

Zhang, Xiaoming and Wang, Shangde, "Dianzibaquan" (Electronic Superiority on the Internet), ZHONGGUO QINGNIAN BAO (CHINA YOUNGSTERS POST) (Feb. 18, 1998), online: <<http://www.chinainfobank.com>>.

Reports and Other Materials

A Status Report Organisation for Economic Co-operation and Development (OECD), (Paris 1999).

Building Confidence, Electronic Commerce and Development, UNCTAD, (New York and Geneva, 2000).

Electronic Commerce Expert Group to the Attorney-General, Electronic Commerce: Building The Legal Framework (1998).

Electronic Commerce for Transition Economies in the Digital Age, Forum Proceedings, United Nations, UN/ECE Forum (19-20 June 2000).

Electronic Commerce for Transition Economies in the Digital Age, Forum Proceedings (United Nations, New York and Geneva 2000).

Electronic Commerce, Opportunities and Challenges for Government (OECD1997).

Science Technology Industry "STI", Electronic Commerce, Opportunities and Challenges for Government, Organization for Economic Co-operation and Development (OECD, 1997).

UNCTAD Report "Legal Dimensions of Electronic Commerce" TD/B/COM.3/EM.8/2 of 4 May 1999.

"Don't Stifle China's IT Revolution" (28 February 2000) Asian Wall Street Journal

"China Succeeds Japan As Largest Cellphone Market in Asian-Pacific Region" (22 August 2000) China News Service.

"Electronic Commerce: Legal Considerations" UNCTAD/SDTE/BFB/1 OF 15 May 1998.

Boxes

Box 1. Various descriptive definitions of electronic commerce

Box 2. Track of the fast train

Box 3. Technology & Ideology

Box 4. United Nations-related organizations dealing with electronic commerce

Box 5. US Framework for Global Electronic Commerce

Box 6. Methods of payment for E-commerce transactions in China

Appendix 1: Regulations on The Registration and Filing of Online Business Operations

The regulations on the Registration and filing of Online Business Operations, which were issued by the Beijing municipal administration for Industry and Commerce, took effect on 1 September, 2000.

Chapter 1 General Provisions

Article 1: These Procedures are made in accordance with related state laws and regulations in a bid to protect the legitimate rights and interests of business website owners and standardize the operation of Web sites.

Article 2: Procedures for the filing and registration of business websites are identical throughout the country. The Beijing Municipal Administration for Industry and Commerce, as the competent authority authorized by the State Administration for Industry and Commerce for experimenting with the national filing and registration of business websites (referred to as the Competent Authority hereafter), exercises supervision and management over business websites.

Article 3: A business Website in these Procedures is defined as an electronic platform established with Internet technologies and with an independent domain name obtained from the domain name authorities. Through this platform, the owner of the website can release information and advertisements, set up e-mail boxes and conduct business activities via the Internet, or provide Internet space to others for carrying out the aforesaid activities.

The owner of the website refers to the owner of the domain name of the website, except what is stipulated in a contract.

Article 4: A business website in these Procedures is a website with one of the following features:

- The owner of the website or one of the owners of the website is an enterprise; or
- The website engages in business operations aiming to make a profit.

Article 5: An owner of a business website shall apply to the Competent Authority for filing and registration, obtain a Certificate of Business Website filed and Registered, and install electronic identification for filing and registration on the front page of the site. The Beijing Municipal Administration for Industry and Commerce itself makes the paper copies of the certificate as well as the electronic identification.

Article 6: the owner of a business website shall provide personnel for information checks to prevent and eliminate, in a timely manner, all kinds of unlawful information or information that harms social morals and efforts to build a socialist civilization with a

high cultural and ideological level.

Article 7: While operating a website, the owner of a business website shall abide by state laws and regulations, adhere to professional ethics, raise the level of socialist civilization, improve internal management, accept supervision from the government and public alike, and prevent illegal operations.

Chapter 2 application, verification and ratification

Article 8: The establishment of a business website is handled as the establishment of a branch of an enterprise. If explicit stipulations are made in these Procedures concerning specific matters, such provisions shall be followed.

Article 9: The filing and registration of a business website shall be applied for by the owner of the site. If the owner of a website entrusts the filing and registration to others, the filing and registration shall be carried out in accordance with regulations of the Competent Authority.

Article 10: The owner of a business website shall have a relevant business scope. If a business website was opened prior to the promulgation of these Procedures and does not conform to the previous provision, its owner shall go through formalities at the local administration for industry and commerce and rectify the business scope within 30 days beginning from the day of the promulgation of these Procedures.

Article 11: Individuals that establish a business website shall go through related formalities for industrial and commercial registration and obtain a business license before applying for the filing and registration of the website.

Individuals who opened a business website prior to the promulgation of the Procedures shall go through the aforesaid formalities at the local administration for industry and commerce.

Article 12: the filing and registration of a business website shall include information on the basic conditions of the website and the owner of the website. The owner of the website shall, according to the requirements of the Competent Authority, accurately fill out and submit relevant documents and testimonial papers.

Article 13: While going through formalities of filing and registration, the business website shall apply for the registration of its domain name.

Article 14: the application, obtaining, modification, cancellation and other issues relating to the name of the website shall be dealt with by the Competent Authority in line with related provisions in the Interim Procedures Governing the Registration of Website Names and detailed rules for their implementation.

Article 15: The applicant shall apply for the filing and registration of websites online and submit relevant information in conformity with the forms and procedures provided at the website of Hongdun 315.

Article 16: The applicant shall submit written testimonial documents to the Competent Authority within 30 days of completing the online application. If the applicant fails to submit the written testimonial documents within the states period of time, the application shall be cancelled.

Article 17: After ratifying the application documents submitted by the owner of a website, the Competent Authority shall guide the owner of the website to download and install electronic identification. Only when the electronic identification is correctly installed can the website start trail operation.

Article 18: During trial operation, the Competent Authority shall announce the name of the registered website in accordance with the Interim Procedures Governing the Registration of Website Names.

During trail operation, the name of the registered website is subject to dispute. During the period, the owner of the website shall have no exclusive right to the name of the website being used.

Article 19: The Competent Authority will issue a Certificate of Website Name registered and a Certificate of Business Website Filed and Registered to the Website upon ratification of its registered name. The Competent Authority shall also issue a public notice. From then on, the owner of the website has the exclusive right to the name of the registered website and the site automatically begins formal operation.

Article 20: If the website does not pass the period of dispute on the name of the registered website, the owner of the website may re-apply for the name of registered website. During the re-application, the period of dispute will be postponed. The continuous time of the trial operation of a business website shall be no more than 12 months.

Chapter 3 modification, assignment and annual checks

Article 21: If any modification is to be made in the filing and registration of the business website, the owner of a website shall, according to related regulations, apply to the Competent Authority to make changes relating to the filing and registration. Name changes of a website shall accord with related provisions as stipulated in the Interim Procedures Governing the Registration of Website Names.

Article 22: if a business website is to be transferred, the transferor shall apply for cancellation and submit the letter of assignment reached by the two parties. Upon approval of the Competent Authority, the transferor no longer has the relevant rights for online operation or the exclusive rights to the name of the registered website. The Competent Authority revokes the Certificate of WebSite Name Registered and the Certificate of Business Website Filed and Registered from the transferor.

Article 23: The assignee shall apply to the Competent Authority for filing and registration according to the Procedures. Upon confirmation, the Competent Authority issues the Certificate of website Name Registered and the Certificate of Business Website Filed and

Registered and makes an announcement.

Article 24: After obtaining a Certificate of Business Website Filed and Registered, a business website shall apply to the Competent Authority for annual checks. In the meantime, the site shall apply to the Competent Authority for any modifications to be made in the registration.

Chapter 4 Cancellation

Article 25: If a website stops operation because it is closed, revoked, or bankrupt or for other reasons, the owner of the website shall go through cancellation formalities at the Competent Authority.

Article 26: While going through cancellation formalities, the owner of the website shall provide the Competent Authority with an application form for cancelling the registration and other related testimonial documents. Upon ratification, the Competent Authority shall take back the Certificate of Business Website Name Registered and the Certificate of Business Website Filed and Registered and revoke the electronic identification.

Chapter 5 supervision and management

Article 27: If a website fails to operate within six months after its owner obtains a Certificates of Business Website Filed and Registered, or if the website stops operation for one year, the Competent Authority shall take back the Certificate of Website Name Registered and the Certificate of Business Website Filed and Registered and shall revoke the electronic identification.

Article 28: The Competent Authority shall, according to related laws and regulations, mete out penalties to those violating Article 10 and Article 11 of the Procedures.

Article 29: In any one of the following cases, the Competent Authority may order the owner of a website to amend its behaviour. If the misconduct is of a serious nature, the Competent Authority can revoke the Certificate of Business Website Filed and Registered as well the electronic identification and make an announcement. Misconduct of a serious nature includes:

- Concealing the true facts and practising fraud in the filing and registration;
- Forging, obliterating, renting, lending, selling or arbitrarily assigning a certificate of Business Website filed and registered.
- Installing the electronic identification incorrectly and refusing to correct it, or arbitrarily changing the electronic identification;
- Not cancelling the registration or conducting annual checks in accordance with stipulated provisions; and
- Engaging in illegal activity on the filed and registered website.

Article 30: Websites which were set up and did not going through formalities of filing and registration prior to the promulgation of the Procedures, shall file and register with the Competent Authority within 60 days after the promulgation of the procedures. Administration for industry and commerce shall order those that fail to go through the formalities within the stated time to correct themselves. Activities of a serious nature shall be investigated and penalized in accordance with administrative regulations governing industry and commerce.

Article 31: Website owners that forge the electronic identification shall be investigated and penalized by administrations for industry and commerce in line with related laws and regulations.

Chapter 6 Supplementary Provisions

Article 32: Websites that filed and registered for online operations prior to the promulgation of the Procedures shall update their formalities in accordance with related provisions at the site of Hongdun 315.

Article 33: Beijing Municipal Administration for Industry and Commerce shall be responsible for interpretation of the Procedures.

Article 34: These Procedures took effect on 1 September 2000.

The Announcement of Beijing Municipal Administration for Industry and Commerce on the registration and Filing of Online Business Operations issued on 28 March 2000, and its supplementary rules issued on 18 May 2000, shall be simultaneously abolished.

Appendix 2: New rules on e-commerce digital certificates

In April 2000, Shanghai took a major step ahead by publishing the New Rules On E-commerce Digital Certificates for the Shanghai Municipality to strengthen the management of the pricing and the charges to standardize service in relation to the authentication of e-commerce digital certificates.

The new rules on digital certificates as provided in the Provisional Methods Of Shanghai Municipality On The Price Management of E-commerce was published on 4 April 2000.

Article 1: Basis And Objectives

The Methods are made in accordance with the Price Law of the People's Republic of China, the Regulations of Shanghai Municipality on Price Management and other relevant laws, regulations and provisions while taking into account the reality of shanghai Municipality.

The purpose is to strengthen management of the pricing of e-commerce digital certificate (hereafter referred to as digital certificates) authentication and to standardize service Charges in relation to the authentication of digital certificates.

Article 2: Scope Of Application

Applications for and the issuing, verification, management and use of digital certificates and related administration activities within the Shanghai administrative division shall abide by the methods.

Article 3: Administrative Departments

Shanghai National Economy and Social Information Leading Group Office (hereafter referred to as the Info Office) is the competent administrative department for authenticating digital certificates in the city.

The Shanghai Price Bureau (hereafter referred to as the Price Bureau) is the competent administrative department in charge of pricing in relation to digital certificates in the city.

Article 4: Digital Certificate Authentication Authority

The Shanghai Electronic Certificate Authority Center Co., Ltd. (hereafter referred to as the CA Center) is the only institution responsible for the issuing, verification and management of digital certificates in shanghai. The CA Center can entrust related units with the acceptance and issuing of digital certificates.

Article 5: Services

Services concerning the issuing, verification and management of digital certificates include:

- Opening new accounts: Services include customer identity verification, digital

certificate creation, certificate storage, certificate management, certificate inquiry, regular certificate maintenance, certificate instalment and guidance for use.

- Certificate renewal: The renewal of certificates shall occur in the original storage medium. Except for the verification of customer identity, other services are identical with the application for opening an account.
- Reporting the loss of certificates: Service consists of entering the invalid certificate in the blacklist database.
- Information requests: information support is provided to users of digital certificates.
- Technical appraisal: Services are provided in relation to technical appraisal and proof of digital certificate and digital signature.
- Special services: Services include cipher key entrustment, cipher key renewal, related software development, security system development, e-commerce consulting and technical guidance.

Article 6: Customer Rights

The issuing, verification and management of digital certificates are provided for a fee. Customers who pay the fees have the right to the corresponding services stipulated in Article 5 in the Methods.

Article 7: Form of Price Management

Fees for services such as application processing, certificate renewal, reporting certificate loss, information requests and technical appraisal are fixed by the government. Fees for special services are market-determined.

The price Bureau and the Info Office are responsible for setting the government-fixed fees. The Market price is determined through negotiations between the CA center and customers on the principles of equality, free will, honesty and credit.

Article 8: Pricing Procedures

Concerning services whose fees are fixed by the government, the CA Center shall apply to the Info Office for the setting and adjustment of fees for the authentication of digital certificates. The CA Center shall also provide the cost and relevant data to the Info Office for examination and verification before submitting it to the Price Bureau for approval.

Concerning service fees for the issuing, verification and management of digital certificates, during the one-year trial period, the CA Center shall draft standards for service fees in line with related provisions in the Methods before submitting them to the Price Bureau and Info Office for recording.

Article 9: Fee Settlement

The Renminbi (Chinese Yen) is the currency in which service fees for the authentication of digital certificates are settled, and domestic and overseas settlements are handled separately. Domestic service fees for the authentication of digital certificates are settled in Renminbi, while overseas service fees are settled in foreign currency based on the Renminbi market exchange rate released by the State Administration of Foreign Exchange that day.

Article 10: Marked Prices

The CA Center and its business departments shall display the price list in a conspicuous spot at their business site. The Prices shall be clearly marked to facilitate supervision and inspection by pricing authorities.

Article 11: Administrative Penalties

Pricing authorities shall penalize those who violate provisions in the Methods.

Article 12: Administrative Measures

The Info Office may circulate a notice of criticism concerning those violating provisions in the Methods and demand that violations be corrected within a stipulated time.

Article 13: Interpretation Authorities

The Price Bureau and the Info Office are responsible for interpreting the Methods.

Article 14: Date of Enforcement

The Methods take effect as of 1 January 2000.

Appendix 3: Guidelines on the Development of China's E-commerce Industry

In December 1999, the Ministry of information Industry issued several guidelines on the development of China's e-commerce industry:

- E-commerce must serve the national economy and “ should conform to China's unique set of circumstances”.
- the government will manage the development of e-commerce in China.
“Government agencies must ensure that all policies, regulations and standards are uniform.”
- “ Model e-commerce businesses will be launched to stimulate the proliferation of e-commerce in China.”
- laws, regulations and security procedures will be established for the sake of national security.” Government agencies have the responsibility to monitor and regulate core security technologies.”
- International e-commerce is to be “ actively pursued”. The government should establish a legal environment that is suitable for China and “ fits in the global scheme of things”.

Appendix 4: Circular of the Beijing Municipal Administration for Industry and Commerce concerning E-commerce activities registration

The "Circular of the Beijing Municipal Administration for Industry and Commerce Concerning E-commerce Activities Registration" was issued by the Beijing Municipal Administration for Industry and Commerce on 28 March 2000. This circular was formulated to meet the requirements of China's Internet economic development, namely, to differentiate and standardize business activities on the Internet, to enhance government's sense of service, to protect the lawful rights and interests of enterprises and consumers, to crack down on illegal business activities, to maintain the socio-economic order and to establish an e-commerce operations registration system.

I. E-commerce activities refer to profit-making activities on the Internet of market subjects within the jurisdiction of Beijing municipality which have obtained a business license in accordance with state laws (Hereafter referred to as "e-commerce dealers"), as well as the acts of image designing, product publication, auctions and advertising for economic organizations. E-commerce dealers engaged in the following activities should apply for an e-commerce operations registration:

- Signing contracts, doing business and trading on the Internet;
- Releasing commercial advertising on the Internet;
- Carrying out image designing and product publication activities on the Internet;
- Specializing in providing Internet-access service, network technical support service, e-commerce and information source service on the Internet; and
- Other profit-making activities.

II. The Beijing Municipal Administration for Industry and Commerce is the registering office for e-commerce operations. E-commerce dealers should apply to register their e-commerce operations at <http://hd315.com>, which was established by the Beijing Municipal Administration for Industry and Commerce.

III. The major types of information needed to register include: the type of e-commerce involved, the name of the e-commerce dealer, the registration number (or the number of a valid certificate), location (family address), legal representative, registered capital, type, business scope, the person in charge of the network management, network business scope, mailing address, telephone number, email address, registered domain name, Internet protocol address and network supplier, network address, name and location of the server, and other information.

IV. After the registration office receives the application of an e-commerce dealer, the office will complete the registration online, and, meanwhile, arrange the coding of the registration and provide a registration seal via the Internet. The e-commerce dealer should then post their registration seal on the homepage of its website.

V. Where changes occur in the major registration information, the e-commerce dealer should apply to the registry office to update these, and the registry office should change the related registration after receiving the updated application.

VI. Where an e-commerce dealer wants to cancel or stop its business operations, the said dealer should apply to the registry office to remove its registration. The registry office, after receiving the application, should withdraw its network sign. If the statutory qualification of an e-commerce dealer is revoked according to the law, the registry office has the power to terminate its registration and to withdraw the network sign.

VII. E-commerce dealers who have already completed the registration of their e-commerce operations are still required to obtain lawful business qualifications before beginning actual commercial operations.

VIII. There shall be no charge to register to carry out e-commerce operations.

IX. E-commerce dealers shall be subject to the supervision of the registry office in accordance with state laws, regulations and the provisions of these rules. The registry office exercises supervision over the activities of e-commerce dealers according to the law and punishes lawbreakers in accordance with the relevant laws and administrative regulations.

X. As for e-commerce operations in existence prior to the release of this circular, the party concerned should apply to the registry office within 180 days after this circular is issued.

Appendix 5: Beijing Municipality, Protection of the Lawful Rights and Interests of Consumers in online Economic Activities Notice

(issued by the Beijing Municipal Administration for Industry and Commerce on July 7 2000)

Pursuant to the PRC Protection of the Rights and Interests of Consumers Law, The PRC, Anti-unfair Competition Law, The PRC, Advertising Law, the PRC, Contract Law and the relevant provisions of other laws and regulations, the Beijing Municipal Administration for Industry and Commerce issues the following notice on specific matters concerning the protection of consumers' lawful rights and interests in online economic activities, in order to promote the healthy development of the online economy and duly protect the lawful rights and interests of consumers:

This notice regulates the for-profit activities whereby Internet activities within the jurisdiction of Beijing Municipality sell goods or provide services. Online auction activities engaged in by merchants are not regulated hereby and our opinions on regulating that type of activity will be formulated separately.

Merchants and consumers that use Internet sites to conduct goods or service transactions shall confirm with the principles of voluntariness, equality, fairness and good faith, actively and conscientiously honour their commitments and adhere to generally accepted commercial ethics.

When using internet sites to purchase goods or accept services, consumers enjoy all the rights provided for in the PRC, Protection of the Rights and Interests of Consumers Law> Procedures, The Beijing Municipality, Implementation of the < PRC, Protection of the Rights and Interests of Consumers Law> Procedures and other related laws and regulations.

Websites owners, and other merchants that use internet sites to engage in business activities, shall perform the obligations imposed on merchants by the PRC, Protection of the Rights and Interests of Consumers Law, the Beijing Municipality, Implementation of the <PRC, Protection of the Rights and Interests of Consumers Law> Procedures and other related laws and regulations.

The goods sold or services provided by website owners and other merchants that use internet sites to engage in business activities may not violate the provisions concerning the protection of the rights and interests of consumers in the PRC, Protection of the Rights and Interests of Consumers Law, the Beijing Municipality, Implementation of the <PRC, Protection of the Rights and Interests of Consumers Law> Procedures and other related Laws and regulations

Before website owners, and other merchants that use internet sites to engage in business activities, mutually provide or use internet sites to engage in business activities, they shall enter into written contracts that specify the rights and obligations of the parties. Such contracts shall be preserved for at least two years.

When a merchant enters into a sales contract online in the course of using an internet site to sell goods or provide services, they shall preserve the contract for at least two years.

A merchant may not mislead consumers by using such unfair competition practices as passing off another's registered trademark, or using another's product name, enterprise name or enterprise address without authorization, or counterfeiting or fraudulently using a certification mark or mark of fame or excellence on its internet site.

Merchants that sell goods or provide services on Internet sites shall inform consumers of their true place of registration, contact method or place business and may not provide a false address.

Merchants that sell goods or provide services on Internet sites must clearly indicate the prices of the goods they are selling or the services they are providing and may not falsely indicate the prices of such goods or services.

Merchants that sell goods on Internet sites must clearly indicate the place of origin, producer, specifications, grade and quality of the goods they are selling. If a consumer raises a question concerning such details as the quality, performance, main ingredients/components, production date, shelf life, proof of having passed inspection, user manual or after-sales service, etc. of a product, the merchant shall respond truthfully. If the merchant is temporarily unable to give a response, he shall give a reason. When disseminating the aforementioned information, the merchant may not make any false claims and mislead consumers.

Merchants may not use advertisements or another method on their internet sites to make false publicity about model, specifications, quality, manufacturing ingredients/components, price, performance, purpose, producer, shelf life, place of origin of goods, thereby causing misunderstanding among people. Operators of network advertising business may not act as agents for, or design, produce or disseminate false advertisements.

Merchants that sell goods or provide services on Internet sites shall ensure that the goods or services they provide meet the requirements of personal safety and safety of property. For products or services that may pose a risk to personal safety or safety of property, the merchants shall truthfully explain the same to or clearly warn consumers and explain or indicate the proper method of using the goods or accepting the service and the method for preventing injury or damage. If the same can be clearly indicated online, it shall be clearly indicated online and if it cannot be clearly indicated online, it shall be clearly indicated to the consumer during the physical transaction.

When providing goods or services, merchants that use Internet sites to engage in business activities shall issue to consumers a proof of purchase or service memo in accordance with the relevant State regulations or commercial practice. If a consumer requests proof of purchase or a service memo, the online merchant must provide the same.

Web site owners shall carry out record-filing of their online business in accordance with the Beijing Municipality, Record-filing of Online Business Notice, and place the

business record-filing mark on their home pages.

When using Internet sites to purchase goods or accept services, the consumer should take care to look for the site's lawful record-filing mark and to ascertain the online merchant's true identity, and become more aware of the need to protect his own interests. If a consumer discovers a website that has not been recorded, they may make an online inquiry on the work website of the Beijing Municipal Administration for Industry and Commerce at HD 315.gov.cn.

Merchants that sell goods or provide services on Internet sites shall attach importance to their own reputations, strengthen self-regulation, enhance their service quality, conscientiously protect the rights and interests of consumers and not disturb the order in market trading.

Website owners shall strengthen their management and urge the merchants who use their electronic platforms to engage in business activities to operate legally and act in good faith.

If a consumer's lawful rights and interests are infringed while using an internet site to purchase goods or accept services, they may complain online through the Beijing Municipal Administration for Industry and Commerce's work platform at HD 315.gov.vn or by dialling the complaint hotline number, 12345. The administration authority for industry and commerce will rectify the infringement and handle the matter in accordance with the law. Hereby notified as such.