

# "Actually, Someone Knows You are a Dog"-- the Chinese Regulation Efforts on Private Data Protection

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## Do you have privacy in the era of information?

"On the Internet, nobody knows you're a dog." First published in *The New Yorker* on July 5, 1993, this widely known and recognized saying has been quoted many times to describe the anonymous feature of Internet. However, now this description has been drifting from the truth.

The truth is that, some people using the Internet may know you better than yourself. When you log on Amazon, not only will the site greet you by name, the homepage will also suggest certain purchases. Surprisingly, you will be interested in at least one third of them. Your addresses have been recorded and Amazon will automatically calculate the delivery period. Besides those online shopping sites, getting visitors' information is the common practice of online service and/or information providers. Youku and Netflix suggest videos to watch. Weibo and Facebook suggest friends to follow. Douban and IMDB suggest movie tickets to buy and parties to attend.

On one hand, these recommendations might give you convenience in your life and entertainment; while on the other hand, this can be really intruding and make you anxious by knowing you so much. For example, you just bought an apartment and even did not get the keys. However, decoration companies and contractors give you calls telling you the decoration designs for the new apartment have been done. You just submitted some resumes for a job. Even before the interview, insurance companies and training companies give you calls and emails to make sales. Have you wondered how strangers know your private, personal information?

Every time you log on a website, make a call or buy a ticket by showing ID card, computer systems will track you down, and record everything you have clicked and purchased. Data analyzing systems will collect, characterize, store your information, and take further actions based on the information. Some entities even purchase and resell personal data for profit. The reason why personal data become commodities is because direct marketing based on private data is profitable. Marketing communications are only classified as "direct marketing" where they are addressed to a specific person by name or where a phone call is made to a specific person, and the use of private data is the foundation of direct marketing. The newly issued Hong Kong Personal Data (Privacy) Amendment Ordinance contains a number of new provisions regulating the use of personal data in connection with direct marketing activities in Hong Kong, which has come into force since April 1, 2013. Apart

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from Hong Kong, there are over fifty countries and regions which have laws and regulations protecting personal data.

## What is the new trend in China to protect personal data?

In order to safeguard the legitimate rights and interests of Chinese citizens concerning private data protection, the Ministry of Industry and Information Technology of China ("**MIIT**") announced the Provisions on the Protection of Personal Information of Telecommunication and Internet Users (Draft for Comments) ("**PPI Rules**") and the Provisions on the Registration of True Identity Information of Telephone Users (Draft for Comments) ("**RTII Rules**") and sought for public comments. The deadline for submitting comments is May 15, 2013.

The PPI Rules and RTII Rules are a breakthrough with respect to legislation of personal information protection. Although these two rules are not officially a personal information protection law, they are a good beginning and call for a complete set of rules.

The PPI Rules and RTII Rules are designed to protect personal information from two perspectives. While the PPI Rules regulates the collection and utilization of users' private information, the RTII Rules requests "real-name registration" of telephone users for the prohibition of direct or indirect marketing using no-name telephone numbers. Specifically, the PPI Rules requires that telecommunication service providers and Internet information service providers ("**Service Providers**") shall not collect or use the users' personal information without their consent. Service Providers shall also clearly notify the users of the purpose, method and scope of collection and utilization of the users' personal information, retention period of such information, ways to access and modify such information, and consequences of refusal to provide such information.

Meanwhile, the "real-name registration" required by RTII Rules is a double-edged sword. Not only are telephone users required to supply their true identity information, some Internet services, for example, the Chinese Twitter Weibo, also require users' true identity information. On one hand, it will reduce the risk of private information abuse by no-name telephones and Weibo bloggers. On the other hand, the "real-name registration" regime means it is legitimate for telephone and some Internet service providers to collect their users' information. Although RTII Rules prohibits the sales and illegal provision of users' information, it doesn't mean those providers will not utilize the users' information to make profits and provide such information to government or other compulsive entities. This "real-name registration" may limit the health development of Internet and even harm users' right to free speech. Is "real-name registration" the only way to protect personal information? This is a controversial topic.

## What can enterprises do to avoid violations of personal data protection rules in China?

Putting the controversial topic aside, let's talk about what the enterprises doing business in China can do regarding new rules to protect personal information. Those enterprises may not be limited to Internet/telecommunication service providers, because the regime may expand in the future to regulate more entities that may get access to citizens' personal data.

First, the concerned enterprises can log on MIIT official websites and submit comments if any. They can make their voice heard since the rules are in the "draft for comments" period.

Second, thorough study of the new rules and other anticipated rules in this area is needed. The concerned enterprises need to provide proper training to their employees regarding the users' information protection, since this is not only required by the new rules, but the enterprises might also have joint and several obligations with the employees who abuse the users' information.

Third, proper drafts of disclaimer/declaration/agreement are needed when the enterprises want to collect and utilize the users' private information. The enterprises need to make sure that they have obtained the users' consents concerning the information collection and utilization. Proper preparations are needed to avoid future risks.

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