

# China regulates privacy practices slowly

By Francis J Kean and Tom Lenon

**R**EGULATION OF THE COMMERCIAL USE and transfer of personal data in China is in its infancy. Developments to date have been piecemeal, responding to specific concerns.

Chinese regulation has focused on those areas of commercial activity that have also concerned United Kingdom authorities. These include collection of information by market researchers, and collection and sharing of credit reference information. Where regulation has developed, protecting personal privacy has not necessarily been the primary aim of the legislative authorities.

There is no general data protection law in China, and therefore no cross-sector regulatory authority with powers to monitor and enforce compliance as in the UK. Indeed, there is no general right of individual privacy enshrined in the Chinese constitution. There is a narrower right to the privacy of an individual's correspondence (which may only be infringed in the interests of state security or for criminal investigation). There is also no general right to the protection of confidential information. Rights of confidentiality have been created to cover specific issues; for example, the law against unfair competition deals with the use of commercially sensitive information.

## FRAGMENTATION

Regulatory developments have therefore been fragmentary. One example is the conduct of market research surveys on behalf of foreign clients. The "interim measures for the administration of foreign related social survey activities" (implemented in 1999) target market research activities of foreign

invested enterprises, or research funded by foreign parties. It is clear from the opening Article that protecting personal privacy rights is not the regulations' primary objective. Rather the focus is the "healthy and orderly development of foreign-related social survey activities to maintain social economic order and promote the smooth opening up to the

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outside world and socialist construction". The regulations require that all "social survey activities" be conducted by domestic institutions qualified to conduct foreign-related social surveys and that the content be approved in advance.

There are, however, some specific provisions clearly intended to protect individuals. For example, data that could lead to identifying individual respondents must be kept confidential. Under Article 7, provincial bureaux of statistics are responsible for regulating foreign-

related social survey activities. These responsibilities include publicising and implementing relevant policies, improving professional training and education in vocational ethics for practitioners, and approving the content of proposed social surveys. The bureaux are also given general but unspecific enforcement powers.

The 1999 measures hint at some familiar (and presumably widespread) abuses by practitioners. Under Article 5, researchers are forbidden from undertaking surveys in the guise of governmental statistical research (a practice prohibited in the UK some time ago). Similarly, Article 16 requires questionnaires to state very clearly that participation in the survey is voluntary.

## FINANCIAL DATA

Using personal data to screen applications for financial products by the consumer finance sector generally – and by banks and insurance companies particularly – is far less developed in China than in the United Kingdom. Nonetheless, this use of data is increasing and will accelerate with the emergence of a broad middle class of Chinese consumers. Some local regulations have already been promulgated. The Shenzhen municipal government recently introduced the "Regulations on Personal Credit and Credit Grading in Shenzhen," governing credit reference agencies' collection and use of data.

The regulations allow data (other than data that is otherwise lawfully available) to be collected only with the individual's consent. And the details are limited to personal identification information, credit information (such as current loans and credit cards), social security information and certain other information about the person's civil and criminal liabilities. The data can be provided only to financial or commercial organisations with which the individual is in negotiation, or to other third parties authorised by the individual, and to the courts, tax authorities and other organisations according to other relevant laws. The information can be used only to evaluate the credit position of the individual concerned, not for any other purpose. These provisions are somewhat similar in concept to certain principles of the UK Data Protection Act.

The Shenzhen government and the Shenzhen branch of the People's Bank of China are jointly responsible for penalising any

breaches of the regulations, and a supervising committee is responsible for supervising the activities governed by the regulations.

#### ENFORCEMENT WEAKNESSES

The weakness of both the 1999 measures on social surveys and the Shenzhen regulations lies, as usual, in their enforcement. The misuse of personal data by commercial organisations in China is not yet considered a significant social problem. Where there is regulation, it is unclear how vigorously enforcement authorities will exercise their supervisory powers. Under the 1999 measures, the enforcement authorities have powers to impose fines on those in breach of the regulations. However, it is not clear how these powers have been exercised, and indeed whether the statistical authorities charged with supervising the market research industry have the budget or the will to do so. Nor is it clear how effectively they will act on

individual complaints. Nonetheless, there will be developments over the next few years. China's accession to the World Trade Organisation (WTO) will intensify competition in China's financial services industries. As companies invest more heavily in their technological infrastructure, and marketing and product development become increasingly sophisticated, the use (and misuse) of their customer data will grow, increasing pressure for further regulatory control in this area.



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## German government forges ahead with e-security programme

By Eugene Oscapella

Last month, the Federal German Ministry of Economics started issuing free encryption software at CeBIT, Germany's leading technology trade fair. The software is part of the ministry's GnuPP Privacy project, the objective of which is to ensure the security of e-mail communications across public networks. Also being distributed at the CeBIT show were educational tools helping people to understand encryption software, including an encryption guide, and "Adele", an exercise "roboter" designed to help consumers use security software.

Meanwhile, in January, online newswire IDG reported that Germany's federal government will introduce electronic signatures for its employees. According to the report, the government's motivation is to boost general acceptance of their security procedures in Germany. More than 200,000 ministry and agency employees will be supplied with chip cards and readers, between now and 2005. This equipment will enable them to sign electronic documents with the card and an encrypted key, giving the documents the same legal weight as paper documents with a handwritten signature.

The measure builds on German legislation making digital signatures legally binding, which came into force last year. It calls for the development of standards to secure online documents, e-mail, and electronic transactions. The goal is to implement the standards ISIS (Industrial Signature Interoperability Specification) and MTT (MailTrusT), still under development with government funding.

An online guide, offered by Darwin magazine, explains that

there is no simple definition for "digital signature." However, the simplest definition might be "a cryptographic method of communication that authenticates transactions taking place over the Internet." It continues:

"The implications for digital signatures and e-commerce are enormous. Here's a simple example. Let's say Mickey Mouse buys a pound of cheddar on [www.cheese.com](http://www.cheese.com), then denies he bought it. The cheese merchant is stuck with the bill because there's no way to prove absolutely that Mickey made the purchase – somebody else could have used Mickey's password or his credit card number."

Such repudiations end up costing merchants money, which makes them raise prices to cover the costs of fraud, which, in turn, hurts honest consumers. But if Mickey had used a digital signature when he made his purchase, the merchant could prove that Mickey bought the cheese.

*For further information: [www.cnn.com/2002/TECH/ptech/01/21/german.government.idg/index.html](http://www.cnn.com/2002/TECH/ptech/01/21/german.government.idg/index.html)*

*For further information on digital signatures: [www.darwinmag.com/learn/curve/column.html?ArticleID=144](http://www.darwinmag.com/learn/curve/column.html?ArticleID=144)*

*See [www.gnuPP.org/start.html](http://www.gnuPP.org/start.html) for more information on the e-mail encryption programme.*