

Chapter 2

Recent Developments Threatening Privacy in China

2.1 Introduction

As described in Chap. 1, the definition of privacy in this book is that privacy is a right, which consists of a number of individual interests that individuals have in keeping their personal information and personal affairs free from interference from others.¹ Based on the Australian experiences, these individual privacy interests include: “the interest in controlling entry to the personal place”; “the interest in freedom from interference with one’s person and personal space”; “the interest of the person in controlling the information held by others about him”; and “the interest in freedom from surveillance and from interception of one’s communications”.²

However, at present, most of these privacy interests are under threat in China, especially from the following features of current Chinese society: first, in order to consolidate China’s socialistic system, in the 30 years of China’s reform and opening up, the increasing official and administrative powers allowing more and more individuals or organizations to interfere with other people’s private affairs, or to access to other people’s personal information or data; second, with the rapid development of Chinese economy, more and more commercial practices attempt to find customers in their personal place or personal space actively; and third, with the rapid development of information technologies and information processing devices such as computers in China, it is now very easy for Chinese people to access, handle, and save personal information than ever before. All these developments place privacy under particular threat in China. Most importantly, they are going to continue.

This chapter examines the three pervasive features of contemporary Chinese society listed above. It should be noted that this chapter is not an analysis of modern

¹ See Sect. 1.2.3 of this book.

² Australian Law Reform Commission (1983), p. 37.

changes of administration and technology in China. The purpose of this chapter is to explore the Chinese privacy implications of these changes.

2.2 Increasing Official Powers

2.2.1 *Political Basis for Increasing Official Powers*

At the time Deng Xiaoping took over the Chinese leadership, the “Cultural Revolution,” which had lasted almost 10 years, had pushed China’s economy to the edge of collapse.³ Based on this situation, the Chinese leaders thus decided to re-build China’s economy. In 1978, the Third Plenary Session of the Eleventh Central Committee of the National People’s Congress (the Eleventh NPC) was held in Beijing. At the Eleventh NPC, the Chinese leaders declared that large-scale nationwide mass political movements should be stopped and the emphasis of the Party’s work should be shifted to socialist modernization.⁴ Moreover, during the Eleventh NPC, the Chinese leaders also clearly stated that the law must be used to establish stability and order for economic development.⁵ As Deng Xiaoping pointed out in 1978 that:

There is a lot of legislative work to do, and we do not have enough trained people. Therefore, legal provisions will inevitably be rough to start with, and then be gradually improved upon. Some laws and statutes can be tried out in particular localities and later enacted nationally after experience has been evaluated and improvements have been made. In terms of revision and supplemented, we should not wait for a ‘complete set of equipment.’ In short, it is better to have some laws than none, and better to have them sooner than later.⁶

As a consequence, under Deng Xiaoping’s leadership, in the 30 years of China’s reform and opening up, China has witnessed massive and rapid enactment of laws and regulations.⁷ With respect to this Chinese social phenomenon, Professor Chen Jianfu points out that this piecemeal and unsystematic development in China’s legal system produced a number of laws, which include many individual statutes, decisions, orders, administrative regulations, and rules made under different policy orientations.⁸ Some of them authorize intrusive powers to government agencies. Based on these laws, today, Chinese officials have myriad powers of intrusion.

The following sections discuss the privacy issues raised by intrusive powers of Chinese authorities in more detail. It should be noted that I use the general term of

³ Chen (1999), p. 41.

⁴ Chen (1999), p. 40.

⁵ Chen (1999), p. 40.

⁶ Chen (1999), p. 43.

⁷ Chen (1999), p. 41.

⁸ Chen (1999), p. 43.

“intrusive powers” deliberately because it is broad enough to cover many kinds of powers that may endanger privacy, such as to enter, to search, and to require inspection and examination of information.

2.2.2 Entry and Search

2.2.2.1 Revenue Collection

In order to achieve the economic reforms, Chinese government emphasized the importance of tax collection. The *Law of the PRC on Tax Administration* (the Tax Administration Law) thus came into effect from 1 May 2001. However, this law does not pay enough attention to the protection of privacy and personal information. A number of provisions empower the Chinese tax officers to search, enter or inspect. The provisions that are most protective of privacy only requires that the officials of the tax authorities should produce tax inspection identity cards to make tax inspections, and if “an official does not produce any tax inspection identity card or tax inspection notice, the party that is to be inspected have the right to refuse the inspection.”⁹ However, in many cases, there are no limitations were placed to the exercise of the powers, and sometimes, the Chinese tax officers have full and free access.¹⁰

Some powers conferred by article 54 of the Tax Administration Law are pertinent in this context. Article 54 states:

Tax authorities have the rights to conduct the following tax inspections:

1. To inspect a taxpayer’s accounting books, supporting vouchers for the accounts, statements and the relevant information; to inspect a withholding agent’s accounting books, supporting vouchers for the accounts and the relevant information in respect of the amount of taxes withheld and remitted or collected and remitted
2. To inspect a taxpayer’s taxable commodities, goods or other properties at the taxpayer’s places where production or business operations are conducted and the places where goods are stored; to inspect a withholding agent’s operational conditions in respect of the withholding and remittance of taxes or the collection and remittance of taxes
3. To order a taxpayer or withholding agent to provide the documents, evidentiary materials and information relating to the payment of taxes or the amount of taxes withheld and remitted or collected and remitted

⁹ *Law of the People’s Republic of China Concerning the Administration of Tax Collection* 2001, art 59; see also *Rules for the Implementation of the Law of the People’s Republic of China Concerning the Administration of Tax Collection* 2002, art 89.

¹⁰ *Law of the People’s Republic of China Concerning the Administration of Tax Collection* 2001, arts 54, 56, 58; see also *Rules for the Implementation of the Law of the People’s Republic of China Concerning the Administration of Tax Collection* 2002, art 86.

4. To make inquiries of a taxpayer or withholding agent regarding the relevant issues and circumstances relating to the payment of taxes or the amount of taxes withheld and remitted or collected and remitted
5. To inspect supporting documents, vouchers and information relating to the taxable commodities, goods or other properties transported by consignment or sent by post by a taxpayer at railway stations, docks, airports, postal services and the branches thereof

In the *Rules for the Implementation of the Law of the PRC on Tax Administration* (2002), article 86 clearly states that the tax authorities can exercise its power that provided in Clause (1) of article 54 of the Tax Administration Law at the business site of a taxpayer or withholding agent. However, both Laws do not clearly define the legal standards of how to enter the taxpayer's business site. The tax authorities' powers may only be restricted by the requirement that search, enter, or inspect should be for the purposes of the Law. That means a tax authority may have right to search, enter, or inspect taxpayers at all times.

Moreover, in order to achieve the implementation of inspection, article 56 of the Tax Administration Law emphasizes that taxpayers or withholding agents must accept the tax inspections by the tax authorities, provide accurate facts and relevant information, and cannot refuse to cooperate with the authority or conceal any facts. Likewise, article 58 of the Tax Administration Law states that "when investigating a tax case in violation of the law, the tax authority may record, tape-record, video-tape, photograph and reproduce the relevant information and material in respect of the case." These two provisions emphasize the Chinese tax officers' right to ask a party that is to be inspected to provide evidence, documents, or any relating information to a matter that the tax officers are authorized. Therefore, if article 54 of the Tax Administration Law concerns the common rights of the Chinese tax authority, both articles 56 and 58 expressly empower the tax authority to obtain more information and documents.

Compared to the Chinese Tax Administration Law, section 263 Clause (2) of Australian *Income Tax assessment Act 1936* clearly states that:

An officer is not entitled to enter or remain on or in any building or place under this section if, on being requested by the occupier of the building or place for proof of authority, the officer does not produce an authority in writing signed by the Commissioner stating that the officer is authorized to exercise powers under this section.

It is thus clear that some provisions of the Chinese Tax Administration Law and its Implementing Rules in China need further improvement. As mentioned earlier, the provisions contained in the Chinese Tax Administration Law and its Implementing Rules empower Chinese tax officers into personal place and personal space; however, the most protective provisions of privacy only require that the tax officers should show their inspection identity card when they conduct their powers. This is not enough, obviously. Chinese government should ensure that, when the tax officers entry to premises, they should have the consent of the occupier, or at least, pursuant to a warrant issued by the Chinese Administration of Taxation at a certain level or above. Under some particular situations, other stronger evidence should

also be provided by the Chinese tax authorities or other authorities to prove that their conducts are both legal and proper. The inspection identity card should not empower the tax officers to enter all premises or places, and to inspect all documents or information at anytime freely. At the time of strengthening the administration of tax collection in China, privacy interests should not be threatened.

2.2.2.2 The Customs Check Law

The *Regulation of the PRC for Customs Check* (1997) (the Customs Check Regulation) is also notable for the extensive powers of intrusion, and confers these powers to China's Customs officials. The Customs Check Regulation provides that if a customs officer having with him a "Customs Check Certificate",¹¹ he can exercise the following powers:

1. To consult and copy relevant material
2. To enter the production and operation areas and storage areas of the units being checked to inspect the production and operation situation and the goods related to import and export activities
3. To check inward and outward means of transport and examine inward and outward goods and articles; to detain those entering or leaving the territory in violation of this Law or other relevant laws and regulations
4. To inquire into situations and matters related to import and export activities with the legal representative, the person in charge and other related personnel of the units being checked
5. To inquire about the deposit accounts in commercial banks or other financial institutions of the units being checked with the approval of the Director General of the Customs¹²

"Transport" means various types of vessels, vehicles, aircraft and pack-animals, which enter or leave the territory carrying persons, goods, or articles.¹³ In China, the Customs Check Certificates are produced and issued by the General Administration of Customs in a unified way. The Customs Check Certificates can only prove that they are legal administrative officers. In fact, the same situation also happens in some developed Western countries. In West, it has been held that the Customs Check Certificates are "completely general and almost entirely without safeguards."¹⁴ Therefore, it is not enough to prove officers have rights to enter, search, or demand free access to people's private property. However, in China, it appears that the Chinese Customs are empowered at all times to enter any premises and check any goods or transports in China. Furthermore, when Customs officers

¹¹ *Regulations of the People's Republic of China for Customs Check* 1997, art 12.

¹² *Regulations of the People's Republic of China for Customs Check* 1997, art 14.

¹³ *Customs Law of the People's Republic of China* 2001, art 100.

¹⁴ Australian Law Reform Commission (1983), p. 76.

enter production, operation or storage areas to make inspections, the legal owner must present their account books, open storage areas, move goods, or untie packages at the request of the Customs.¹⁵ Article 10 of the Customs Check Regulation states "...under special circumstances and with the approval of the Director General of the Customs, the Customs can carry out checks without warrant or prior notice."

Compared to the Customs Check Regulation, the Australian *Customs Act 1901* clearly provides that a search warrant is the premise that the executing officer or a person assisting to conduct their duties.¹⁶ Therefore, there are at least two measures that should be emphasized and accepted by the Chinese Customs: first, the Customs Check Certificate should be necessary in all situations, and the Chinese officer of Customs should be identifiable "either by being in uniform or producing written evidence to establish his identity"¹⁷; second, when conducting checks, the Chinese Customs should formally notify the legal owners. These two measures should be carried out strictly at the same time.

2.2.2.3 Public Health and Safety

These powers are entitled for different reasons: for example, to guarantee the safety of the lives and property of people and to protect the environment,¹⁸ to safeguard the legitimate rights and interests of Chinese citizens with respect to their exit from and entry into China's territory,¹⁹ and to search premises for infected goods.²⁰ Most of these statutory powers state that, in the absence of consent, the working personnel should show their certificates when they conduct their duties; however, under the remaining powers, no such certificate is required.

The *Law of the PRC on the Prevention and Treatment of Infectious Diseases (2004)* (the Infectious Diseases Law) is a good example. The Infectious Diseases law requires that health administration departments under the people's governments at or above the country level have the right to enter the units subjected to inspection and the places where the epidemic situation of infectious diseases occurs to make investigation and collect evidence, consult or duplicate relevant materials and collect samples; while the said units must cooperate with them and cannot refuse to do so or create obstacles.²¹ This provision ensure that a quarantine

¹⁵ *Regulations of the People's Republic of China for Customs Check 1997*, art 19.

¹⁶ *Customs Act 1901* (Cth), s 199.

¹⁷ Australian Law Reform Commission (1983), p. 72.

¹⁸ *Regulations on the Safety Administration of Dangerous Chemicals 2002* (China), art 1.

¹⁹ *Law of the People's Republic of China on the Control of the Exit and Entry of Citizens 1986*, art 1.

²⁰ *Law of the People's Republic of China on Animal Epidemic Prevention 1998*, art 45.

²¹ *Law of the People's Republic of China on the Prevention and Treatment of Infectious Diseases 2004*, art 54.

officer may, at any time, enter any premises or place for the purpose of inspecting plants or goods infected with a disease. In fact, Western developed countries' experience has told us that the functions of a quarantine officer also include entering and searching for infected goods, if necessary, by breaking open cupboards, drawers, chests, trunks, boxes, packages or other receptacles, and asking questions and inspecting documents relating to the movement of persons, vehicles or goods.²² Obviously, if we do not set in stone the protection of individuals' interests, it is possible that this will happen in China. In addition, article 45 of the *Law on Animal Epidemic Prevention* (1997) states that:

Animal-raising farms, slaughter houses, integrated meat-packing plants and other designated slaughter houses (places) shall raise and deal in animals or manufacture and deal in animal products should place themselves under the supervision and inspection by the institutions for supervision over animal epidemic prevention.

That means when conducting supervision and inspection, the Chinese institutions for supervision over animal epidemic prevention and their officers can enter operation areas or storage areas without warrant or notice.

2.2.2.4 Public Works

These powers are entitled to ensure the inspection for the public service purposes. For example, the Chinese *Electric Power Law* (1995) regulates that when electric power supervisors and inspectors perform their duties, they shall have the right to question power providers and consumers about their implementation of the laws and administrative rules and regulations on electric power, look up relevant documents, and conduct on-the-spot inspections.²³ In order to ensure the effectiveness of article 58, the electric power enterprises and consumers also need to provide assistance to electric power supervisors and inspectors who are performing their duties.²⁴

Furthermore, in order to ensure normal progress of postal work, and promote development of postal services, the *Postal Law of the PRC* (1986) grants certain intrusive powers to officers. In particular, the Minister may issue a search warrant to any other agencies, such as Customs, to inspect forcibly. As the Postal Law states that "postal enterprises shall inform the Customs of their business hours in advance, and the Customs shall promptly send officials to supervise on-the-spot checking and examination."²⁵

It should be noted that article 4 of the Postal Law states that:

Freedom and secret of correspondence shall be protected by law. No organization or individual shall infringe upon the freedom and secret of correspondence of other persons

²² Australian Law Reform Commission (1983), p. 78.

²³ *Electric Power Law of the People's Republic of China* 1995, art 58.

²⁴ *Electric Power Law of the People's Republic of China* 1995, art 59.

²⁵ *Postal Law of the People's Republic of China* 1986, art 30.

for any reason, except when the inspection of correspondence in accordance with legal procedures by the public security organ, the state security organ or the procuratorial organ is necessary for the state's safety or the investigation of criminal offence.

However, the secret of correspondence can only be deemed as privacy of written communication. Privacy of written communication is only one interest of related privacy interests. That is to say the protection of secret of correspondence is too narrow to substitute the legal protection of privacy. Moreover, as mentioned earlier, due to the fact that there is no working definition of privacy in China, the general population of China does not know what the concept of privacy is. Therefore, it can be understood as that there is no explicit restriction attaching to the exercise of the power.

2.2.2.5 Summary

Based on China's national nature and unsystematic legal development, intrusive powers are numerous and widely enforced in China. These include powers to enter any personal places or to inspect and obtain personal information. It is undeniable that most unwarranted powers are entitled to deal with some urgent circumstances. However, this should not be deemed as a justification for China to remove the controls of these powers. In fact, Western developed countries' experiences have already shown that even if the power to issue administrative warrants was limited to the Chinese authorities, it would still cause concern.²⁶ That is because there is not enough independent scrutiny of whether there is the need for a warrant, or whether a warrant should remain in force for certain periods or circumstances in China.²⁷ As a consequence, the officials that have the power to issue the warrant may give undue weight to departmental interests, and privacy is a significant factor.²⁸ The only way to achieve effective protection of privacy in this respect may be that confer the power of issuing warrants to Chinese judicial officials.

2.2.3 Arrest and Detention

In this context, the area selected for discussion is a unique measure called "the Detain for Examination." It should be emphasized that this is not to say this area will pose greater privacy problems than others. However, "the Detain for Examination" typically demonstrates the wide range of intrusive powers conferred by Chinese governments, and privacy is put at serious risk under these powers.

²⁶ Australian Law Reform Commission (1983), p. 82.

²⁷ Australian Law Reform Commission (1983), p. 82.

²⁸ Australian Law Reform Commission (1983), p. 82.

Since the economic opening of China, the Chinese police have faced an increasing crime rate.²⁹ In part, that is the result of increasing numbers of vagrants and beggars. In order to control these vagrants and beggars in China, on May 12, 1982, the State Council of the PRC enacted the *Measures for Detaining and Sending Back of Vagrants and Beggars in Cities* (the Measures for Vagrants and Beggars). The aims of the Measures for Vagrants and Beggars are to strengthen the public safety of cities, and to assist, educate, and find a home for Vagrants and Beggars.³⁰ Article 2 of the Measures for Vagrants and Beggars states that people will be detained and sent back if they are “countryside citizens who go begging in cities; city’s citizens who go begging in cities; and other vagrants.” In 1992, the State Council of the PRC enacted the *Detailed Rules about Measures for Detaining and Sending Back of Vagrants and Beggars in Cities* (the Detailed Rules). The Detailed Rules require that, if someone who is not a local citizen stays in a city for more than three days, they will also be seen as an illegal citizen and will be detained and sent back.³¹ Moreover if someone had no identity card, certificate for temporary living or certificate for working, they would be detained and sent back.³² At the time of widening the range of detentions, the freedom of Chinese citizens has also been limited.

It should be noted that “the Detain for Examination” has never been officially adopted by the NPC or by the NPC Standing Committee,³³ but its wide use by police in Chinese society has already caused serious harm to individuals’ rights to both liberty and privacy in China. The author acknowledges that vagrants and beggars may have a bad influence on the development of cities; for example, they may increase the possibility of crime in China. However, before they commit a crime, vagrants and beggars are legal Chinese citizens. No organizations or people have the right to intrude on vagrants’ and beggars’ legal rights. In the last 30 years, although the Chinese State Council and the Ministry of Public Security issued many measures or directives regulate the use of the Measures for Vagrants and Beggars, such as directives covering the jurisdictional scope, approval authority, time limits, and administration of the practice of the Measures, it has been argued that these measures and directives are “largely inconsistent, unclear, overly broad and open-ended.”³⁴

In 1996, the NPC amended the *Criminal Procedure Law of the PRC* (1979). The new Criminal Procedure Law does not mention “the Detain for Examination” by name, but effectively places all public security compulsory measures in Chapter VI, including “the Detain for Examination.”³⁵ The new criminal Procedure Law

²⁹ Wong (1996), p. 373.

³⁰ *Measures for Detaining and Sending Back of Vagrants and Beggars in Cities* (1982) (China), art 1.

³¹ *Detailed Rules about Measures for Detaining and Sending Back of Vagrants and Beggars in Cities* 1992 (China).

³² *Procedures of the People’s Republic of China about Shelter for Repatriating*, art 2.

³³ Wong (1996), p. 367.

³⁴ Wong (1996), p. 368.

³⁵ *Criminal Procedure Law of the People’s Republic of China* 1996, Chapter VI.

confers authority on the public security organizations to initially detain active criminals or major suspects under the following circumstances “(6) if he does not tell his true name and address and his identity is unknown; and (7) if he is strongly suspected of committing crimes from one place to another, repeatedly, or in a gang.”³⁶ With respect to the Chapter VI of the new Criminal Procedure Law, it has been argued that some of these provisions are a major departure from the past legal policy and the administrative practice dealing with “the Detain for Examination.”³⁷ The new Criminal Procedure Law provides clear and explicit guidelines for these compulsory measures, such as procedure for detention, procedure during detention, procedure for release, procedure for arrest, procedure for extension of detention, and the requirement for all investigative detentions to be accompanied by a detention warrant.³⁸ However, the fact is that these compulsory measures in the new Criminal Procedure Law are subject to a serious incidence of abuse by officials exceeding their investigative and other powers. The wide exercise of those powers will endanger not only privacy rights, but also other legal rights in China.

2.2.4 *Evaluation of Official Powers*

Careful examination makes it clear that intrusive powers exist widely in China. When authorized officers are empowered to conduct their duties, they may use some methods of control to ensure that they can achieve their desired outcome. These methods may include independent judicial scrutiny of the decision to use the power of entry, inspection, or arrest. The starting points of these methods may be correct, but the process and result of these methods seriously endanger the privacy interests of individuals in China. Someone may suggest that there should be a unit to monitor the conduct of current legislation in China. It has been proved that the monitoring of current legislation in a particular context, however, cannot solve all the problems.³⁹ For example, the process for officers to apply for an inspection warrant is easy and common in China. In this case, based on unsystematic legal development in China, even if the inspection is improper, the Chinese authorities have enough excuse to interpret that their activities are legal under certain laws. They can even interpret that they are conducting administrative duty rather than judicial duty. The author thus believes that the fundamental issue is that there is a lack of the consistent principles of protecting privacy in China. At present, the privacy issues raised by the official powers in China include: (1) whether all these official powers, which are conferred by Chinese current legislation, are really necessary to achieve their purposes; (2) whether adequate attention has been paid

³⁶ *Criminal Procedure Law of the People's Republic of China* 1996, art 61 (6) and (7).

³⁷ Wong (1996), p. 387.

³⁸ *Criminal Procedure Law of the People's Republic of China* 1996, arts 64, 65 and 69.

³⁹ Australian Law Reform Commission (1983), p. 115.

to the protection of privacy and other legal civil rights when we create or amend laws; and (3) whether the further powers of Chinese officials will result in an unwanted harm of privacy interests and other legal civil rights in Chinese society.

2.3 New Methods of Business Practices in China

A number of new methods of business practices also endanger privacy in China in certain aspects.

2.3.1 Increasing New Marketing Practices

Today, facing the booming economy in China, both international and domestic businesses are beginning to extend their products and activities in the Chinese market. New techniques of direct marketing, advertising, and solicitation by mail or telephone are thus widely practiced for commercial purposes in China. With respect to the direct mail, as the Chinese Post Office reported that, “in 2003, the direct mail increased rapidly, hitting 1.78 billion pieces, up 9.4% over last year, and its proportion to the total letter mail stood at 17.1%, 1.7 percentage points higher than the previous year.”⁴⁰ Based on the Chinese population, the quantity of direct mail is huge. These numbers continue to increase these years. Furthermore, advertising and solicitation by telephone are also widely used in China. However, it has been argued that “while the technique of direct marketing is tolerated and, indeed, appreciated by many people, it causes great anxiety for others.”⁴¹ That is because some people may have an antipathy to receive advertising mails or telephone calls, and other people may have an antipathy to have their names and addresses made available without their consent.⁴² The same concern about them is that their personal information is being used by some unknown people. This is thus a dangerous signal that, in order to satisfy the commercial interests of the direct marketers, privacy is being abused in contemporary Chinese society.

2.3.2 Private Security Officers and Investigators

Other important instances of Chinese market practices, which may endanger privacy, are intrusive conduct by private security officers and investigators. In recent years, more and more businesses have been established in China. Many of them

⁴⁰ China Post office (2005).

⁴¹ Australian Law Reform Commission (1983), p. 39.

⁴² Australian Law Reform Commission (1983), p. 39.

employ security staff to protect their business, such as supermarkets or retail shops. The main duty of these security personnel is to stop shoplifters. Likewise, in order to avoid the problem of insurance fraud, insurance agents usually have the legal right to investigate. At present, there is no regulation to regulate private security officers and private investigator in China. Therefore, the reality is that both security officer and private investigator have unlimited rights to take certain actions. Too many existed cases have shown that the frisk by the security officers in certain situations seems to be reasonable in China. In fact, both private security officers and investigators should not be allowed to have unlimited rights to take any actions they consider to be correct in certain situations.⁴³ Therefore, some external standards should be established in China, which can impose a balance between those who seek to intrude and those who are the subjects of that intrusion.⁴⁴

2.3.3 New Business Practices Threatening Information Privacy

Many people may believe that the new business practices only endanger the privacy of individuals. In fact, new business practices also threaten information privacy. In the past 10 years, consumer credit facilities had become one of the most important commercial developments in China. Many corporate executives, economists, and global investors believe that there will be a sustained growth and vast opportunities in China's underdeveloped consumer credit markets.⁴⁵ Therefore, in the following years, credit facilities will be more and more common in Chinese society.

On the other hand, based on the Western experiences, credit facilities also produce certain fears in people's minds.⁴⁶ As the ALRC points out that:

A modern credit system and the trail left behind by users of credit cards would enable the compilation of detailed personal profiles on individuals. ...An enormous range of information can now be assembled concerning single consumer of a vast range of goods and services. Once stored on computer it may be readily analyzed either on its own or in conjunction with information about other individuals. It may be readily transmitted to other data storage systems and could be used for an infinite variety of purposes over an indefinite period of time.⁴⁷

Although the development of credit facilities is in the infant stage in China, the case of stealing other people's personal information of credit card to achieve illegal purposes has been found in Hai Nan province in China in 2008.⁴⁸ It is thus dangerous if we ignore the protection of information privacy in the new business practices.

⁴³ Australian Law Reform Commission (1983), p. 39.

⁴⁴ Australian Law Reform Commission (1983), p. 39.

⁴⁵ Stakelbeck (2005).

⁴⁶ Australian Law Reform Commission (1983), p. 40.

⁴⁷ Australian Law Reform Commission (1983), p. 40.

⁴⁸ Hai Nan News (2008).

2.4 New Technology in China

While increasing powers of governmental agencies and the new business practices pose threats to privacy, new development of technology places privacy at risk in China. For example, the wide popularity of computers and the Internet in China has permitted Chinese people to gain and save information more conveniently and easily. The following section explores the dangers to privacy from the new technology in China.

2.4.1 *Information Processing Technology*

2.4.1.1 Penetration of Computers and Internet in China

Today, the use of personal computers is taking off in China.⁴⁹ The total number of personal computers in China was about 12 million in 1999, and had jumped to 130 million in 2007.⁵⁰ One expert predicts, based on the population and the development of the economy, that the number of computers in China will double every 28 months.⁵¹ With respect to the future of China's personal computers, Yang Yuanqing, president of Legend Group, China's largest personal computer manufacturer, points out that "the popularity of the personal computer (PC) in China is expected to increase at an annual rate of 25–30% in next 5 years. China's market will keep this growth momentum for 5–10 years."⁵² Even so, it has been held that:

PCs are far from being popular in China as the popularity rate was less than 30 percent in big cities, such as Beijing, Shanghai, and Guangzhou which were believed to have the strongest purchasing power across the country. The figure for the country as a whole was no more than 10 percent. The Chinese market has a huge potential. . . about 10 million medium-sized and small businesses in China are still using computers individually. Only 2 percent of the country's large and medium-sized enterprises have established their intranet.⁵³

In addition, Internet accounts number is about 10 million in China.⁵⁴ By the end of 2008, the number of Internet users in the country reached about 253 million, helping China overtakes the United States as the world's biggest Internet market.⁵⁵

⁴⁹ Mekay (2005). See: Reference "China Replacing the United States as World's Leading Consumer (2005)" <http://www.atimes.com/atimes/China/GB18Ad01.html>

⁵⁰ Mekay (2005). See: Reference "China Replacing the United States as World's Leading Consumer (2005)" <http://www.atimes.com/atimes/China/GB18Ad01.html>

⁵¹ Mekay (2005). See: Reference "China Replacing the United States as World's Leading Consumer (2005)" <http://www.atimes.com/atimes/China/GB18Ad01.html>

⁵² Tougher Time Loomed for China's PC Market (2001).

⁵³ China's PC Market Sees Great Potential (2001).

⁵⁴ China Statistics and Related Data Information and Links (2007).

⁵⁵ China's Information Technology (2008).

Table 2.1 The increase of internet account, the online computers and websites in China

Year	Internet account (million)	Number of online computers (million)	Number of websites
1997	0.62		
June 1999	4		
End of 1999	8.9		
June 2000	10		
End of 2000	16.9		
End of 2001	33.7		
June 2002	45		
End of 2002	59.1		
End of 2003	87	30.00	
End of 2004	94	41.69	430,000
End of 2005	111	49.50	694,200
End of 2006	123		2,600,000

Table 2.1 demonstrates the increase of Internet accounts, the number of online computers, and the number of websites from 1997 to 2006 in China⁵⁶:

The impact of computers for contemporary Chinese society is self-evident. Today, more and more Chinese people realize that the importance of computer. The connection between computers, telecommunications, and other relative new technologies has enlarged the impact of the computer on Chinese society. However, the impact of computerization endangers privacy in certain aspects. It is mainly represented in two areas in modern China: the first is the area of public administration; and the second is the area of the finance industry.

2.4.1.2 Public Administration

The new information technology has had a significant impact on public administration in China. Today, it is impossible for many works to be carried out without the help of computers. For example, the system of collecting and claiming tax, named Chinese Golden Tax system, has been widely used by the Chinese Taxation office.⁵⁷ At present, in China, the main technologies in use in public administration include: statistical modeling, information/data retrieval and storage, automated filing systems, and so on.

2.4.1.3 Finance Industry

The new information technology has also had a significant impact on finance industry in China. For example, in banking, since the central computer was installed

⁵⁶ China Statistics and Related Data Information and Links (2007).

⁵⁷ The Analyse System of Tax Collection (2008).

in the Industrial and Commercial Bank of China, almost all branches, while located in different cities in China, have online information/data connection to the central information bank.⁵⁸ All branches can access to customers' records and information easily. Today, more and more finance industries in China rely on computer to undertake their tasks. In fact, Western developed countries' experiences have already shown that the growth of building societies, credit unions, merchant banks, and other financial institutions has been made possible only by the use of computers.⁵⁹ At present, in China, the main finance industries include: banking; insurance industry; finance companies; real estate agencies; investment services; other business services; and so on. All these finance industries depend on information.

2.4.2 *New Surveillance Technology*

Surveillance is defined as the systematic investigation or monitoring of the actions or communications of one or more persons.⁶⁰ Traditionally, surveillance has been undertaken by physical means, such as guarding prisons.⁶¹ In recent decades, it has been enhanced through image amplification devices such as high-resolution satellite cameras.⁶² Most of them are readily available in China today. However, some of them are also privacy invasive. They render current Chinese legal protections seriously inadequate. These devices may include: (1) microphones or listening devices that can be concealed; (2) miniature tape recorders; (3) hidden cameras such as cell phone cameras; (4) hidden monitors that operated by remote control; (5) infrared devices enabling photographs to be taken at night; (6) miniature transmitters; and so on.⁶³

Initially, in China, most of these devices are used by the Chinese internal security agencies or in the company's security departments. For example, Chinese police use some of these devices to detect crime. Moreover, these devices can also help companies to minimize the risk of theft, to improve customer service, to assist in staff training, and to ensure that employees comply with legal obligations.⁶⁴ On the other hand, the misuse of these devices poses a threat of increased invasion of privacy in China. For example, today mobile phones with cameras are popular. It is easy for someone to take a photo using a mobile phone camera, but it is inappropriate that someone be photographed without their consent. Moreover, a person's

⁵⁸ The Introduction of Industrial and Commercial Bank of China (2008).

⁵⁹ Australian Law Reform Commission (1983), p. 50.

⁶⁰ Clarke (1993).

⁶¹ Clarke (1993).

⁶² Clarke (1993).

⁶³ China Monitor.

⁶⁴ Bogonikolos (1999).

location can be pinpointed by reference to the transmission tower used when a call is made or with the assistance of the inbuilt Global Positioning System (GPS), which is a feature of some recent model phones.⁶⁵ Therefore, all these surveillance devices that may invade individual privacy should be required to comply with appropriate standards.

2.4.3 *Other Areas*

The telephone network and related equipment have become more complex than ever before in China. Picture phones and data phones have been used in China for many years. Chinese fixed-line telecom operators, China Telecom, China Netcom and China Tie Tong (formally China Railcom) have already increased their efforts in building wireless LAN networks to provide their customers with fast and easy wireless access to the Internet.⁶⁶ It has been held that increased efficiency and sophistication of communications media will also make possible an expansion of existing modes into many situations.⁶⁷ Furthermore, other technologies, such as Document Facsimile Transmission, Optical Technology, Satellite Technology, Telex and Interactive Information Services and Cable TV and Telephone-Based Systems, have also been introduced to China and influenced Chinese people's lives.

Although there are likely no harms of introduction of these advanced technologies to China, based on Western experiences of protecting privacy, these technologies may also endangering privacy in China. For example, as the ALRC points out that:

The privacy issue in the area of cable TV and telephone-based systems arises from the fact that the operators managing these systems will have access to an enormous pool of personal information from subscribers. It could cover: purchase of reading material, novelty items and magazine subscriptions; details about subscriptions to special information data bases; times owners left homes or turned off alarm systems; health conditions involving special alerts; the position taken by viewers on survey questions; home profiles produced from aggregating many individual responses, including purchases of sexually oriented films and services, and contributions to political, religious, social and charitable causes.⁶⁸

It has been argued that the potential dangers of misuse of personal information in interactive services may include (1) the improper commercial use by the system operator; (2) breaches of confidentiality to the third parties; (3) commercial pressure on subscribers to authorize release of their information profile; and (4) investigation or litigation.⁶⁹

⁶⁵ Fisher (2003).

⁶⁶ Contact China (2005).

⁶⁷ Australian Law Reform Commission (1983), p. 52.

⁶⁸ Australian Law Reform Commission (1983), p. 56.

⁶⁹ Australian Law Reform Commission (1983), pp. 56–57.

2.5 Need for Privacy Protection

In some certain developed countries, the development of privacy protection is more than a century. Therefore, the risks of invasion of privacy from the official intrusive powers described in this chapter are not new. It has been argued that “it is almost impossible to obtain an accurate quantification of the extent of unjustified interference with privacy.”⁷⁰ That is because most invasions of privacy do not attract official notice. Moreover, there are no comprehensive legal principles protecting privacy interests in China. The current Chinese laws can only provide a partial response to invasions of privacy. The determined intruder always escapes detection or be detected only after the individual’s privacy has been invaded.⁷¹ It is difficult to say that the Chinese people are being hurt by serious privacy problems that caused by the intrusive powers and the development of technology. But it should be clear that the Chinese contemporary society is losing its privacy little by little. The author thus believes that if we cannot deal with privacy issues appropriately, it will be difficult for Chinese society to maintain liberty and democracy. With the rapid development of Chinese society, there will be more instances of invasion of privacy in China. As a consequence, legislative action is necessary.

The next Chapter of this book explores China’s privacy standards and the privacy protection in both ancient and modern China. The purposes of the next chapter are to examine China’s privacy standards firstly, and then to consider whether existing statutory privacy protections in modern China are able to effectively solve these privacy issues.

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⁷⁰ Australian Law Reform Commission (1983), p. 59.

⁷¹ Australian Law Reform Commission (1983), p. 59.

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