

China IT Law and Practice

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Whether Individuals May Have Domain Names

- MIIT (Ministry of Information Industry) v. CNNIC (China Internet Network Information Center)
- MIIT allows individuals having Chinese domain names (ended with .cn) (Article 27 of Administrative Measures on China Internet Domain Names of 2004)
- CNNIC prohibits individuals from registering Chinese domain names (Article 14 of Implementation Rules on Domain Name Registration of CNNIC of 2009).
- Individuals that had successfully registered Chinese domain names were compelled to surrender their names if they can not find an enterprise to hold their names.

Electronic Signatures

- Law of China on Electronic Signatures (2005) provides for the legal effect of electronic signatures. However, electronic signatures (including digital signatures) have not been effectively implemented in China.
- In practice, public notaries are used to notarize emails and attachments to emails for the purpose of authentication.

Jurisdiction

- Case study: JACK&JONES
- The plaintiff (i.e., the holder of trademark JACK&JONES) sued some imposters of JACK&JONES. Jurisdiction was an issue.
- Regarding the cases on infringement upon copyrights, the Supreme People's Court interpreted that the courts are jurisdictional at the places where the concerned ISP devices or mainframe computers are located.
- To borrow the above judicial interpretation on copyright, the court in the Haidian District, Beijing deemed it jurisdictional because Haidian District was the place where the concerned ISP device or mainframe computer is located.

Data Privacy

- Qihoo 360 v. Tecent (<http://blog.english.caixin.cn/article/403/>)
- MIIT issued Provisions on the Administration of Internet Information Services in July of 2011, by which:
 - It is prohibited to fabricate and spread the false information that harms other Internet service providers' legitimate rights and interests is not allowed.
 - It is prohibited to interfere with or affecting the running of services or related products offered by other Internet service providers on a user's terminal.
 - Without the user's consent, the Internet ISP shall not collect information relevant to the user that can be used alone or in combination with other information to identify the user's identity.

Transfer of Data to Foreign Jurisdiction (1)

- Law on Protection of Individual Data (draft) provides that data is prohibited to transfer outside China if:
 - involving the national security or other significant State's interests
 - subject to the special commitments of China under an international treaty
 - the country or area that the data is transferred to cannot provide an sufficient protection to the data
 - prohibited by some other laws and regulations

Transfer of Data to Foreign Jurisdiction (2)

- Information Security Technology – Guidance of Personal Information Protection (draft) prohibits an administrator of personal data from transferring the data to any other administrator of personal data that is located in foreign jurisdictions.
- However, this draft guidance is not law, and lacks biting teeth.

How to secure electronic evidence?

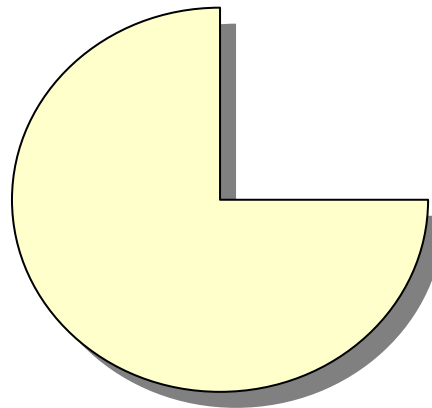
Case study: The president of Company X set up a printing company Y to deal with Company X. If X placed an order with Y (e.g., RMB100K), Y would puff up the value of the order when confirming the order (e.g., RMB 200K). Y cannot print, and outsourced printing to some other real printing companies. Money paid to Y ended in the personal pocket of the president except for the printing costs paid to the real printing companies.

To destroy his trace of crime, the president ordered the business managers of Company X to: (1) place orders via their personal email accounts; (2) delete office emails containing orders and confirmation of orders from the office server; (3) change the hard drives of the laptops and desktops of the office; (4) download the proprietary software and competitive intelligence for the usage of some other company.

1) What to secure?

Any information that has a proving value shall be recovered.

Case study: Printing contract + orders + confirmation orders + emails and other communications + money remittance from Company X to Company Y + money diverted to the personal accounts of the president of Company X



2) What is the right procedure?

- Safeguard crime site
- Search for evidence
- Secure data easy to lose
- Conduct an on-line investigation
- Secure evidence

3) What are common errors?

- Amateurish v. Professional
- Licensed investigator v. non-investigator
- Optimistic v. pessimistic

What are other common errors?

4) How to establish a managerial protocol of protecting electronic evidence?

- An authoritative and experienced team (e.g., company head + lawyer + IT expert)
- Set up a protocol
- Watch flag-ups
- Conduct

5) How to and when to use the force of police during an investigation?

- Why and when to involve the force of the police?
- How to effectively convince the police that a crime has been committed?
- How to use the police investigation to collect more incriminating evidence for civil proceedings?
- What are common errors?

6) How can an investigation improve the risk management of a company?

- Internal management v. external business relationship
- How to tighten up internal management?
- How to deal with media exposure?
- How to maintain business relationship?

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