

GENEVA INTERNET L@W RESEARCH COLLOQUIUM

University of Geneva

24 June 2016

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Saving Face: The Screen of Chinese Privacy Law Unfolds



Why Should We Research Chinese Privacy Law?

- ◆ China is an emerging economic power
- ◆ EU and US businesses want to do business in China
- ◆ China's laws and regulations will influence the future of Internet development and international online laws
- ◆ The Silk Road: Inbound law from EU/US vs. Outbound law affecting EU/US



What Are the Cultural Foundations for Privacy Protection?

- ✧ Laws are not created in a vacuum
- ✧ Laws arise based on history, culture, and societal needs
- ✧ Western culture values individual identity and rights
- ✧ Eastern/Chinese cultures value creating a respected persona within the context of the community



A Central Question

What is the individual's role in the community?

A Simplified Comparison, Part 1



Privacy - East

Privacy law and regulation in Chinese culture serve to sustain the individual's role/face in the community



Privacy - West

Privacy law and regulation in Western culture support individual privacy rights against the community, corporation, or government



A Simplified Comparison, Part 2



The East

- Shame-based, external restrictions on behavior



The West

- Guilt-based, internal restrictions on behavior





Does Confucianism Still Affect 21st Century Chinese Law?

- ✧ Historical significance of Confucianism arising in an era of war and discord: “Unification Mindset” persists
- ✧ Priority is placed on ensuring order and good governance
- ✧ Rights of the individual are subordinate to the rights of the family unit, the community, and the country
 - ✧ Such ideas have been reinforced or reintroduced in many ways under Communist rule: ex/ communes
 - ✧ Privacy Law and applications are based on hiding facts that would be shameful for an individual or family/community
 - ✧ New: “Real name” laws establish & correct relationships



If There's No "Privacy Law" in China, What Protects Privacy? Sectorial Privacy Law Developments in China

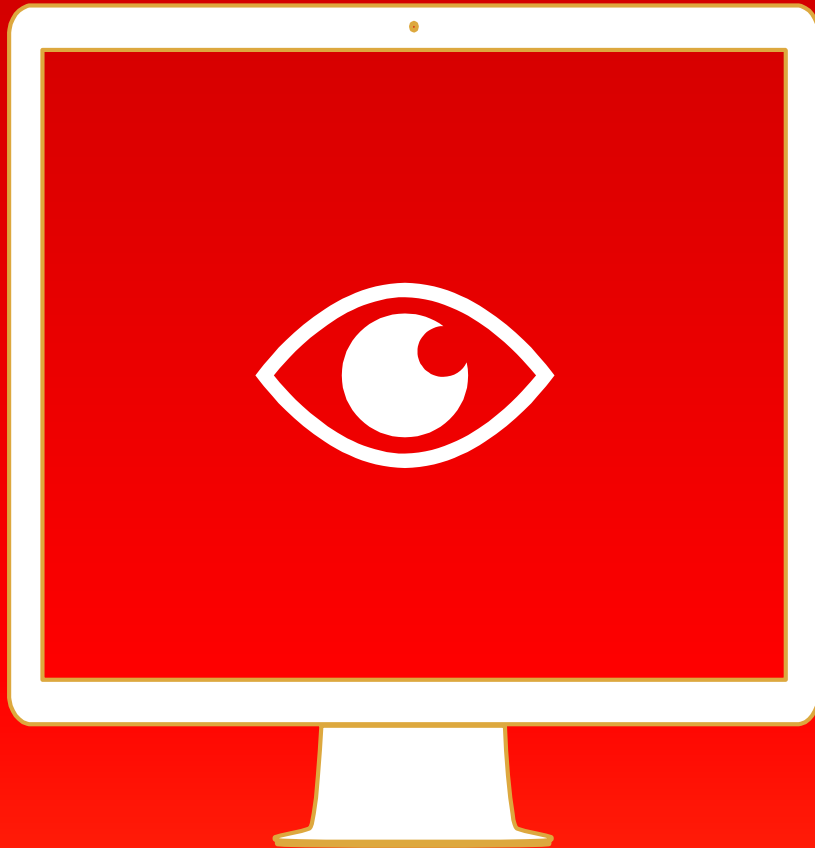
Examples, to begin:

- A. Telecommunications-based privacy protections
- B. Consumer Protection - explicitly stating the purposes, means and scope for collecting or using information, and obtaining the consumers' consent
- C. Tort Law – similar to the right to privacy torts in U.S. law



Are There Different Calculations for Privacy in Asia, the E.U., and the U.S.? Business Applications

- ◆ Tradeoff of private information for services in China (community-based)
- ◆ Tradeoff of private information for services in the U.S. (individual-based)
- ◆ Tradeoff of private information for services in the E.U. (rights-based)



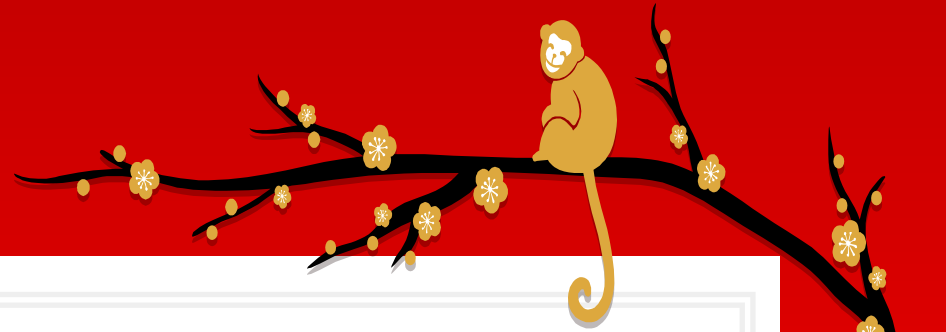
Is Privacy in China a
virtual PRIVACY
SCREEN protecting the
individual's place and
dignity in the
community?

Or does the law protect
the community rather
than the individual?



Thanks!

Where Do We Go Next?



Credits

Co-Authors: Tiffany Li and Zhou Zhou

Research Assistance: Shao-An (Enya) Chang

IP Scholars Asia 2016 at Singapore Management University

WIPIP Colloquium at University of Washington

Privacy Law Scholars Conference (PLSC) at George Washington
School of Law

Institute of Innovation Law, University of California Hastings College
of the Law

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