

China's Law-Based Cyberspace Governance in the New Era (II)

新时代的中国网络法治建设(下)

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II. Consolidating the Legal System for Cyberspace Governance

The law is a powerful tool for governing a country, and sound laws are the prerequisite for good governance. Following the trend of internet development, China has advanced the legal system for cyberspace governance through legislation that is enacted in a well-conceived and democratic way and in accordance with the law. Cyber legislation is becoming systematic, holistic, coordinated, and time-efficient.

Cyber legislation in China has undergone a long, gradual process that can be roughly divided into three stages. The first stage ran from 1994 to 1999, a period when China became connected to the internet. Internet users and devices grew steadily in number. Legislation during this stage focused on network infrastructure security, specifically computer systems security and network security. The second stage lasted from 2000 to 2011, when personal computers (PC) served as the main terminal for internet connection. As PCs and internet users grew rapidly in numbers, internet connection services became more affordable and web-based information services boomed. Legislation during this stage shifted to internet services and content management. The third stage, which began in 2012, is dominated by mobile internet. Legislation now is gradually focusing on comprehensive cyberspace governance by covering areas such as network information services, information technology development, and cybersecurity.

Over the years, China has promulgated more than 140 laws on cyberspace, forming a cyber legislation framework with the Constitution as the foundation, supported by laws, administrative regulations, departmental rules, local regulations and local administrative rules, endorsed by traditional legislation, and underpinned by specialized cyber laws governing online content and management, cybersecurity, information technology, and other elements. This system of laws on cyberspace governance provides a strong institutional guarantee for building up China's strength in cyberspace.

1. Establishing a System of Laws for Protecting People's Rights and Interests in Cyberspace

China has established a sound system of laws to protect people's rights and interests in cyberspace, laying the legal groundwork for protecting both online and offline rights.

二、夯实网络空间法制基础

法律是治国重器，良法是善治前提。中国把握互联网发展规律，坚持科学立法、民主立法、依法立法，大力推进网络法律制度建设，网络立法的系统性、整体性、协同性、时效性不断增强。

中国网络立法随着互联网发展经历了从无到有、从少到多、由点到面、由面到体的发展过程。第一阶段从1994年至1999年，是接入互联网阶段。上网用户和设备数量稳步增加。这一阶段网络立法主要聚焦于网络基础设施安全，即计算机系统安全和联网安全。第二阶段从2000年至2011年，是PC互联网阶段。随着计算机数量逐步增加、上网资费逐步降低，用户上网日益普遍，网络信息服务迅猛发展。这一阶段网络立法转向侧重网络服务管理和内容管理。第三阶段从2012年至今，是移动互联网阶段。这一阶段网络立法逐步趋向全面涵盖网络信息服务、信息化发展、网络安全保护等在内的网络综合治理。在这一进程中，中国制定出台网络领域立法140余部，基本形成了以宪法为根本，以法律、行政法规、部门规章和地方性法规、地方政府规章为依托，以传统立法为基础，以网络内容建设与管理、网络安全和信息化等网络专门立法为主干的网络法律体系，为网络强国建设提供了坚实的制度保障。

(一) 建立网络权益保障法律制度

科学构建网络权益保障法律制度，为实现人民群众合法权益的线上、线下全方位保护提供了充分法律依据。

—Protecting the freedom and confidentiality of correspondence. This is a prerequisite for citizens to air views and needs in cyberspace of their own volition. China enacted the Measures on Ensuring Security of Internationally Connected Computer Information Networks in 1997, to provide legal protection of the freedom and confidentiality of correspondence as enshrined in the Constitution. It formulated the Telecommunications Regulations in 2000, stipulating that citizens' freedom to use telecom services and their confidentiality of correspondence are protected by law. It revised the Regulations on Radio Administration in 2016, further strengthening the protection of the confidentiality of correspondence via radio service. Thus, this basic right enjoys full protection in cyberspace.

—Protecting personal information rights and interests. China has built a line of defense in law for protecting personal information rights and interests. In 2020, the Civil Code was adopted at the Third Session of the 13th National People's Congress, which makes systemic provisions on protecting personal information in civil cases based on previous legal stipulations. In 2009 and 2015, Amendment VII and Amendment IX to the Criminal Law added provisions on the crime of infringing upon citizens' personal information, thus strengthening the protection of personal information in the Criminal Law. In terms of cyber legislation, the Standing Committee of the National People's Congress issued the Decision on Strengthening Online Information Protection in 2012, announcing clearly to protect electronic information that may reveal citizen's identity and privacy. The Cybersecurity Law enacted in 2016 further refined rules on personal information protection.

The Personal Information Protection Law, promulgated in 2021, represented an overall upgrading of personal information protection. It defined and refined principles on protecting personal information and rules on processing personal information, and specified how state agencies should process personal information in accordance with the law. It empowered the subjects of personal information with a range of rights, emphasized the obligations of personal information processors, improved the mechanism for protecting personal information, and set clear and strict legal liabilities.

—Safeguarding citizen's property. China has strengthened legislation to curb infringements upon citizens' property by way of the internet. In 2018, the Electronic Commerce Law was promulgated, stipulating that products or services from e-commerce suppliers should not undermine personal safety or the security of property. The Civil Code has clear provisions on the legal liability of those who infringe upon others' property rights and interests by way of the internet. In 2022, China enacted the Law on Combating Telecom and Online Fraud, providing strong legal support for fighting crime and safeguarding people's property rights and interests.

—Protecting the digital rights of special groups. Through multi-level and multifaceted legislation, China has invested a real effort to close the digital divide for minors, elderly people, and persons with disabilities, so that everybody can join in the digital society on an equal basis and enjoy the benefits of the digital age as much as possible.

As stipulated in the Cybersecurity Law, the state supports research and development on internet products and services that are beneficial to minors' healthy growth, and punishes by law those who place their physical and mental health at risk via the internet. In 2019, China issued the Regulations on the Protection of Children's Online Personal Information, prioritizing the protection of personal information for children. In 2020, the Law on the Protection of

保障公民通信自由和通信秘密。通信自由和通信秘密的保护是确保公民能够自主地在网络空间表达诉求和思想的前提。早在1997年就制定《计算机信息网络国际联网安全保护管理办法》，落实宪法对通信自由和通信秘密基本权利的保护。2000年制定《电信条例》，规定电信用户依法使用电信的自由和通信秘密受法律保护。2016年修订《无线电管理条例》，进一步强化无线电领域对通信秘密的保护，实现对这一基本权利在网络空间的全方位保障。

保护个人信息权益。通过民法、刑法和专门立法，构建个人信息权益全链条保护的法律屏障。2020年十三届全国人大三次会议审议通过民法典，在前期法律规定的基础上，对民事领域的个人信息保护问题作了系统规定。2009年、2015年通过刑法修正案，设立侵犯公民个人信息罪，强化个人信息的刑法保护。在网络专门立法中，2012年通过《全国人民代表大会常务委员会关于加强网络信息保护的決定》，明确保护能够识别公民个人身份和涉及公民个人隐私的电子信息。2016年制定网络安全法，进一步完善个人信息保护规则。2021年制定个人信息保护法，细化完善个人信息保护原则和个人信息处理规则，依法规范国家机关处理个人信息的活动，赋予个人信息主体多项权利，强化个人信息处理者义务，健全个人信息保护工作机制，设置严格的法律责任，个人信息保护水平得到全面提升。

守护公民财产安全。持续加大立法保护力度，遏制利用网络侵犯财产权益的行为。2018年出台电子商务法，规定电子商务经营者销售的商品或者提供的服务应当符合保障人身、财产安全的要求。民法典明确利用网络侵害他人财产权益的行为应当承担相应法律责任。2022年出台反电信网络诈骗法，为打击电信网络诈骗活动提供有力法律支撑，切实维护人民群众的财产权益。

保障特殊群体数字权利。通过多层次、多维度立法，弥合未成年人、老年人、残疾人等特殊群体的数字鸿沟，使其能够更加平等广泛地融入数字社会，享受数字时代红利。网络安全法规定，国家支持研究开发有利于未成年人健康成长的网络产品和服务，依法惩治利用网络从事危害未成年人身心健康的活动。2019年制定《儿童个人信息网络保护规定》，对儿童个人信息权益予以重点

Minors was revised, to strengthen minors' education on internet literacy, online supervision and regulation of content for minors, protection of minors' personal information online, and prevention and control of internet addiction, all to safeguard minors' legitimate rights and interests in cyberspace. The Data Security Law, promulgated in 2021, stipulates that providers of smart public services should take into full consideration the needs of elderly people and persons with disabilities, and make sure they do not create obstacles to their daily life.

2. Improving Law-Based Governance of the Digital Economy

To transform from high-speed growth to high-quality growth, China has continued to improve institutions fundamental to data development, maintain order in the digital market, and regulate new business forms and models of the digital economy, laying a sound framework of rules for the healthy growth of the digital economy.

—Creating institutions fundamental to data development. Data is a fundamental resource and an engine for innovation. The Data Security Law contains provisions on implementing the big data strategy, supporting R&D on data-related technology and business innovation, advancing data-related standards, and developing data trading markets. These provisions aim to improve data development and utilization, and promote the growth of the digital economy in which data serves as a key factor.

—Regulating the operation of the digital market. China regulates and develops the digital market in accordance with the law, stands firmly against monopolies and unfair competition, and improves digital rules to ensure a market environment for fair competition.

The Electronic Commerce Law provides a full set of regulations on e-commerce operation, with clear provisions on the responsibilities of e-commerce platform operators and business owners on these platforms. It stipulates that e-commerce operators with a dominant share of the market should not abuse their position to eliminate or limit competition, so that fair competition is maintained. The Law on the Protection of Consumer Rights and Interests (2013 Revision) established a seven-day unconditional return policy for online shopping, to reinforce the primary responsibility of online business operators in consumer rights protection. The Law Against Unfair Competition (2017 Revision) has separate provisions regarding the internet, to ban unfair competition that takes advantage of technology. The Measures on the Supervision and Administration of Online Transactions, enacted in 2021, contain detailed provisions on the relevant regulations in the Electronic Commerce Law, to strengthen online trading supervision. In 2021, the Anti-monopoly Commission under the State Council issued the Anti-monopoly Guidelines for Platform Economy, to strengthen and improve anti-monopoly supervision based on the status, characteristics, and development of the platform economy. In 2022, the Anti-monopoly Law was amended to improve the anti-monopoly framework for the platform economy, banning operators from abuse of a monopoly position by leveraging their strengths in data and algorithms, technology, capital, and platform rules.

—Regulating new business forms and models of the digital economy. The rapid rise of new business forms and models in the digital economy created social and economic impetus and potential, and also posed new challenges for social governance and industrial growth. Focusing on problems unique to the new forms and models in certain areas, China has advanced legislation in both the compre-

保护。2020年修订未成年人保护法，对加强未成年人网络素养教育、强化未成年人网络内容监管、加强未成年人个人信息保护和网络沉迷防治等做出专门规定，保护未成年人的网络合法权益。2021年出台数据安全法，要求提供智能化公共服务应当充分考虑老年人、残疾人的需求，避免对老年人、残疾人的日常生活造成障碍。

(二) 健全数字经济法治规则

不断完善数据基础制度，维护数字市场秩序，规范数字经济新业态新模式，为数字经济健康发展提供良好制度基础，助力经济由高速增长转向高质量发展。

推动构建数据基础制度。注重发挥数据的基础资源作用和创新引擎作用，数据安全法对实施大数据战略、支持数据相关技术研发和商业创新、推进数据相关标准体系建设、培育数据交易市场等作出规定，提升数据开发利用水平，促进以数据为关键要素的数字经济发展。

明晰数字市场运行制度。坚持依法规范发展数字市场，坚决反对垄断和不正当竞争，健全数字规则，有力维护公平竞争的市场环境。电子商务法全面规范电子商务经营行为，明确电子商务平台经营者和平台内经营者责任，要求具有市场支配地位的电子商务经营者不得滥用市场支配地位排除、限制竞争，维护公平竞争秩序。2013年修改消费者权益保护法，建立网络购物“七日无理由退货”等制度，强化网络经营者消费维权主体责任。2017年修订反不正当竞争法，增加互联网专条，禁止利用技术手段从事不正当竞争。2021年制定《网络交易监督管理办法》，细化电子商务法有关规定，进一步完善网络交易监管制度体系。2021年发布《国务院反垄断委员会关于平台经济领域的反垄断指南》，并根据平台经济发展状况、发展特点和规律，加强和改进反垄断监管。2022年修改反垄断法，完善平台经济反垄断制度，规定经营者不得利用数据和算法、技术、资本优势以及平台规则等从事该法禁止的垄断行为。

规范数字经济新业态新模式。数字经济新业态新模式快速涌现，在为经济社会发展带来巨大动力和潜能的同时，也对社会治理、产业发展等提出了新的挑战。中国聚焦新业态新模式特定领域、特殊问题，坚持“大块头”立法和“小快灵”立法相结合，