

Rules of real name registration for internet access in China: infrastructure for cyber security?

Abstract

The Internet has evolved from a virtual space to an integral part of Chinese society. Initiatives for regulation of real name registration for internet access in China have been enacted finally by legislature into Network Security Law. A limited identity verification obligation for all internet users has been imposed on internet operators. The rule of real name registration for internet access has been adopted in the PRC for the purpose not only to balance the defect of anonymity, but also to maintain cybersecurity against cyberspace crime.

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Introduction

The Internet has evolved from a virtual space to an integral part of Chinese society.¹ The large numbers of Internet users in China has created a solid base for the Internet booming.² The happy life is coming when the Internet user wouldn't even leave their houses to work, shop, or talk with their friends. One journalist had imagined the circumstance that a "day in the financial life of a future consumer may begin something like this: (w)ake up, log in, download some E-cash into your PC's hard drive, then go cruise the virtual mall".³ Such Internet paradise is occurring in China where the Internet has penetrated into all aspects of social life. Official statistics show that China has 632 million Internet users, including 527 million who access the Web from mobile devices in 2013 and the total number could rise to 850 million by 2015.⁴

The Internet has changed people's lives in many aspects. One can hardly read the news today without hearing about how the Internet and/or e-commerce are revolutionizing or about to revolutionize the world as we know it.⁵ Today, we are in an era when digital platforms are not only the main mediums for speech,⁶ but also the platforms for shopping. One of the most important phenomenon is that online shopping has become increasingly popular over the past decade.⁷ The top online marketplace operator in China is Alibaba-owned *Taobao*, often described as "eBay in China".⁸ Taking the third party payment as an another example, according to the Shanghai based data firm

iResearch, the total transaction value of China's third party online payments is expected to reach 18.5 trillion RMB by 2017, up from 5.4 trillion RMB in 2013.⁹ However, in course when the Internet becomes a mainstream reality, some legal issues must be addressed. The fast development of the Internet has raised many questions in legal area.

This Note will address why and how real name registration for Internet access implemented in China is balanced to protect the order of Internet society, maintain cybersecurity and prevent cyberspace crime. The history and current status of the laws and regulations governing real name registration for Internet access are central to this discussion. Part I describes the aspects and general rules of real name registration for Internet access implemented in China, including the government cybersecurity initiatives and Network Security Law. It defines real name registration for Internet access by Chinese laws and regulations and addresses how rules of real name registration for Internet access are accepted on the Internet society. Part II will discuss real name registration for Internet access under the Network Security Law. It will focus on identity verification for real name registration as liability of the network operators and the limited identity verification obligation required for real name registration. Part III examines the real name registration for Internet access versus anonymity. Part IV of this Note will argue that the rule of real name registration for Internet access is made for the purpose to maintain cybersecurity against cyberspace crime.

Real name registration for internet access in China: law requirements arisen from cyber security policy

Cyber security has become the national strategy in China. Over the course of the past decade, however, attention among policymakers and scholars has shifted gradually from substantive Internet design principles to the structure of Internet governance¹⁰ and cybersecurity. Requirements for real name registration for Internet access become legal and technical steps to prevent online anonymity. They've taken advantage of advanced technology by applying network-based digital means of governing and social control. The regulatory regime for real

¹Catherine Wong Tsoi-la. China Lays out Vision for Web Governance. *Global Times*. 2014;11:20.

²Jing Bian. Internet Finance in China: Half Lava? Half Ocean?. *JIBLR*. 2014;29(12):743–750.

³Dave Skidmore. Cashless Internet Difficult to Police. The Orange Co Reg. 1995. July 26 at C3.

⁴Catherine Wong Tsoi-la. China Lays out Vision for Web Governance. *Global Times*. 2014;11:20.

⁵Andrew R Thompson. Taming the Frontier: An Evaluation of the SEC's Regulation of Internet Securities Trading Systems. *Colum Bus L Rev*. 1999;165.

⁶Marvin Ammori. Another Worthy Tradition: How the Free Speech Curriculum Ignores Electronic Media and Distorts Free Speech Doctrine, *70 Mo L Rev*. 2005;59:86–91. (describing where Americans get their news today).

⁷FeiLanfang. Liability for an online marketplace provider's trademark infringement-practice and latest development of Chinese law. 2013;44(5):569.

⁸Taobao Marketplace (Tao Bao Wang) is a Chinese-language website for online shopping, similar to eBay and Amazon, operated in the People's Republic of China by Alibaba Group.

⁹Paul Carsten, Jane Lanhee Lee. Alibaba: the New Face of Finance in China, Reuters, May 19. 2014 at <http://www.reuters.com/article/2014/05/19/us-alibaba-group-finance-idUSBREA4I04M20140519>.

¹⁰Olivier Sylvain. Legitimacy and Expertise in Global Internet Governance. *Colo Tech L J*. 2015;13:31.

name registration for Internet access in China has been formed step by step. Starting from 2003, Chinese authorities required Internet user across the country to register with their ID cards before surfing at Internet cafes. On May 13, 2004, the China Internet Society published the Draft Standards for Web-Based Public E-Mail Service to solicit public opinion. The Draft Standards called for the real name system for the first time. In March 2005, the Ministry of Education released No 17 File to request that BBS and websites of all universities and colleges should strictly apply the real-name registration system.¹¹

The requirements for Internet user to provide their real identical information has been raised by Article 6 of the Decision on Strengthening Internet Information Protection, promulgated by the Standing Committee of the National People's Congress in 2012. Article 10 of the Regulation on Development and Administration of Instant Communication Instrument for Public Information Service, promulgated by National Bureau for Internet Information in 2014, provided that the Internet service providers for public information shall be subject to the rule of real name registration. Recently, rule of real name registration for Internet access has been adopted by the PRC Network Security Law,¹² enacted on November 7, 2016 by China's national legislature, the 24th Session of the 12th Standing Committee of the National People's Congress, and has been coming into effect from June 1st, 2017.

Real name registration for internet access under the network security law

Real name registration for Internet access is a rule that requires Internet users to use their real names to identify themselves to service providers, including Internet or telecommunications operators.

Identity verification for real name registration liability of network operator

The Network Security Law of the PRC adopts a provision requiring real name registration for Internet access in its article 24 as follows: Where network operators provide network access and domain registration services for users, handle network access formalities for fixed-line or mobile phone users, or provide users with information release services, instant messaging services and other services, they shall require users to provide true identity information when signing agreements with users or confirming the provision of services. If any user fails to provide his or her true identify information, the network operator shall not provide him or her with relevant services. The legal term "Network Operator" has been defined by Article 76 of the PRC Network Security Law and it refers to the owners and administrators of networks, as well as network service providers. For the purpose to perform the requirements of the PRC Network Security Law, Chinese Internet service providers, especially China's three biggest telecom companies, such as China Telecom, China Mobile and China Unicom, have already implemented real name registration for Internet access.¹³ They have required individuals and enterprises to provide their real names when subscribing to data transmission services. According to a West commentator, the real name requirement extends to all those who provide Internet service allowing Internet users to publish information to the public. This could include social networks, sites that allow comments on their articles, or pretty much any platform

¹¹Real Name Angst. Shanghai Star, 2005-08-14. http://www.chinadaily.com.cn/english/doc/2005-08/14/content_468833.htm.

¹²For comments on Chinese Network Security Law, see Taylor Wessing, Network Security Law of the PRC, <https://www.lexology.com/library/detail.aspx?g=44c0bbb8-f420-41a2-86b9-4a51f91fbe25>.

¹³CPC Encyclopedia, Real name registration for Internet access, http://cpcchina.chinadaily.com.cn/2013-01/04/content_16082234.htm.

that allows for user-generated content to be made publicly available.¹⁴ Obviously, the rule of real name registration for Internet access in China is expanded to all website operators or managers of the Internet platform. As a result, all websites operators have been imposed the obligations and liabilities for the identity verification from the legal perspective.

Limited identity verification required for real name registration

Real name registration for Internet access in China regulated by the Network Security Law is characterized as a system of limited identity verification. It is so called 'limited' because it does not require that the real name of the Internet user to be shown on-screen and the Internet users may put their alternative name (naked name or false name) instead. This is the principle of "background real name while foreground voluntary". Under such regulation, any Internet user in China can only register their Internet account upon authentication of their real identification.

Real name registration for internet access versus anonymity

Debates on real name registration for Internet access are fierce in global society, with a focus on the core issues of anonymity. One of benefits is that anonymity may encourage more speech.¹⁵ According to Kris Markman and Craig Scott, anonymity may foster an Internet environment that encourages individuals to be more open with information that they may otherwise never disclose.¹⁶ This may include seeking and posting information related to embarrassing health issues.¹⁷ In addition, anonymity encourages open debate on political and social issues.¹⁸ "Not everyone is so courageous as to wish to be known for everything they say, and some timorous speech deserves encouragement".¹⁹ Speakers who would otherwise fear reprisal from their employers, members of government, and other private citizens may be more likely to express themselves online if given anonymity.²⁰ These benefits of anonymity are similar to those found by the U.S. Supreme Court in its decision in McIntyre.²¹

Anonymity on the Internet is not absolute and unlimited. The limited identity verification required for real name registration is accepted by Chinese law for balancing personal anonymity with public interest and national interest. The limited identity verification requires anyone who wants to log on to the platform or Intranet has to register with their real name, gender, birth date, debarment, major and student number. The user may use the naked name or false name

¹⁴Laura Scaife. The Interrelationship of Platform Providers and Users in the Regulation of Twitter and Offensive Speech - Is There a Right to Be Offensive and Offended at Content?. *Comms L.* 2013;18(4):128–132.

¹⁵Andrea Chester & Gillian Gwynne, Online Teaching: Encouraging Collaboration through Anonymity. *J Computer Mediated Comm.* 1998;4:115.

¹⁶AN Joinson. Self-Disclosure in Computer Mediated Communication. *Eur J SocPsychol.* 2001;31:177.

¹⁷A Michael Froomkin. Legal Issues in Anonymity and Pseudonymity. *Info Soc'y.* 1999;15:115.

¹⁸Anne Wells Branscomb. Anonymity, Autonomy, and Accountability: Challenges to the First Amendment in Cyberspaces. *Yale L J.* 1995;104:1639–1642.

¹⁹AMichael Froomkin. Legal Issues in Anonymity and Pseudonymity. *Info Soc'y.* 1999;15:115.

²⁰Anne Wells Branscomb. Anonymity, Autonomy, and Accountability: Challenges to the First Amendment in Cyberspaces. *Yale L J.* 1995;104:1639–1642.

²¹Jasmine Mcnealy. A Textual Analysis of the Influence of McIntyre v. Ohio Elections Commission in Cases. *First Amendment Law Review*, Fall. 2012:153.

for express their opinion on Internet upon registration of their real name. All Internet users shall be responsible for their opinion and act. Any Internet user will be regulated, pursued or punished once they have violated the laws and regulations during their access on the Internet. Support of the real-name rule is justified by diverse reasons. Any control that counters anonymity serves to prevent the kinds of electronic rumor-mongering that can spread panic among the public, damage reputations and breed cyberspace crime. Real-name systems encourage discipline among Internet users by bringing people closer when they chat online, and by promoting serious rather than spurious discussions.

Legislators and governments must prepare for a solution to fight against the phenomenon of Internet offenses or crimes. The cause of problems of Internet offenses or crimes is anonymity. Anonymity on the Internet induces individuals to break the rules because anonymity hides their identity. Such problems can be improved by enforcement and expansion of the real name registration for Internet access. Freedom of expression on the Internet must be accompanied by responsibilities and such enforcement of responsibility doesn't infringe that freedom.

Real name registration for internet access for network cyber security against cyberspace crime

Theoretically, law was conceived as a thoroughly practical discipline and was the technology through which the modern state was to be erected.²² PRC Network Security Law was meant simply as the rules and techniques through which the legislators regulate the order of Internet society and maintain the cybersecurity against cyberspace crime. Article 76 of the PRC Network Security Law provides that "Cybersecurity" refers to taking necessary measures to prevent attacks, invasion, disturbance, undermining and unlawful use of networks, as well as unexpected accidents; causing the networks to be in a state of stable and reliable operation, as well as safeguarding the integrity, secrecy and usability of network information. Real Name Registration for Internet Access is one of such measures to be taken by the PRC Network Security Law for purpose of cybersecurity. Real name registration for Internet access has become a general technology-based initiative and a public policy to deal with cybersecurity. The rule on real name registration for Internet access is enacted as a preventive measure on dysfunctions of the Internet due to anonymity in order to secure and strengthen the responsibility of influential communication service providers and public institutions. The improvement in the sense of responsibility by users and contribution to self-control by identity verification system is anticipated to operate as a long-term prevention device for Internet violence. Therefore, the rule on real name registration for Internet access enacted in China has the purpose

²²Martin Loughlin. Modernism in British public law, 1919-79. *Public Law*. 2014;60:56-67

of increasing confidence on Internet activities and forming upright cyber public opinions by responsible writing.

The government says that introducing additional rules will assist in the prevention of the dissemination of malicious and anonymous accusations online, the spreading of pornography and publication of unfounded rumors.²³ The Network Security Law serves to prevent electronic rumor-mongering and encourage discipline among Internet users. The rule of real name registration for Internet access could be officially confirmed by Network Security Law which will promote criminal laws to maintain network order, curb network violence, and build a network system of integrity. Rule of real name registration for Internet access, as a social identity authentication system, should be the counter-measure against the anonymous status of the cyberspace community, and could be the technical support and the starting point of the policy for preventing network crimes.

Conclusion

There has already been tremendous growth in the use of the Internet in China. The rules of real name registration for Internet access have ensured that the Internet is a dynamic platform for innovation and communication. The development of the Internet and the enhanced ability of Internet service providers or operators to verify real name information through the access of the Internet show that the enactment of the rule of real name registration for Internet access is suitable. In addition, growing political support in both legislative institution and diverse governmental agencies with respect of regulation of Internet activities suggests that the time is ripe for a real name registration system. The purpose of the PRC Network Security Law is mainly to "ensure network security, maintain network space sovereignty, state security and social welfare" (Article 1). Although the implementation of PRC Network Security Law as an instrument against cyberspace crime may strike an appropriate balance between the freedom of speech and Cybersecurity at the present time, the political and technological environments suggest that Internet regulation in China is moving toward a real name registration for Internet access system.

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Conflicts of interest

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²³Laura Scaife. The Interrelationship of Platform Providers and Users in the Regulation of Twitter and Offensive Speech-Is There a Right to Be Offensive and Offended at Content?. *Comms L.* 2013;18(4):128-132.