



# The Regulation of Wearables in China: Consumer Privacy and the Ministry of Industry and Information Technology

by Jiong SHENG

The latest wave of growth in consumer electronics appears to be coming from wearables, and with the ongoing expansion of their capabilities, there has been public concern in the media over the protection of consumer privacy. This might reflect similar fears among some officials within the Ministry of Industry and Information Technology (MIIT), China's regulatory body for the Internet market. Further examination, however, reveals that such concern may be premature.

From activity trackers to smartwatches, with an assortment of features that allow a user to look at a day's activity, these spiffy new products are now able to collect various data, from number of exercise steps, calories burned, and minutes of sleep, among others. With so much personal information being gathered, many consumers are now raising concerns over the illegal collection of their personal information, their cloud-based info and the analysis of this by wearable manufacturers, and the retrieval of private information by third parties through illegal means. Information such as medical records are, after all, private and should be kept that way<sup>1</sup>.

In China this concern over privacy is clearly understandable, as there still is not a law that covers the protection of personal privacy, although this has been under discussion since 2003. The country therefore lacks a structure for the protection of personal data, and there are worries that new products such as wearables may be left outside of the law when it comes to the collection, dissemination and use of a customer's personal data. This could be a



Image courtesy of Donald Tong

particularly big problem as several unscrupulous companies have now begun to enter a new market of over-collection, unauthorized disclosure and illegal trading of personal information by various Internet information service providers<sup>1</sup>.

Are these consequences because of a lack of regulations? Even though there is not a single structural law on personal information protection in China, the legal concept of privacy has been deeply embedded into the public's minds. There have always been many general provisions prohibiting the encroachment of privacy in various legal acts and regulations (both medical and communications related). In 2009, a Criminal Law amendment was added, and the new article prohibits any acts of "selling or illegally providing citizens' personal information", or "illegally obtain[ing] the above-mentioned information by theft or through other

<sup>1</sup> [http://www.china.com.cn/news/txt/2009-03/09/content\\_17403879.htm](http://www.china.com.cn/news/txt/2009-03/09/content_17403879.htm)

means". The maximum punishment is a maximum of three years imprisonment (imposed on the individual or the person directly in charge of the organization which commits such a crime). This provision is universal and covers all improper acts of data collection by all persons.

The MIIT also issued its Provisions on Protecting the Personal Information of Telecommunications and Internet Users in 2013 (Order No. 24/2013) following authorization from the Standing Committee of the National People's Congress. MIIT's Order No. 24/2013 provides a clear legal structure on the collection, use and protection of personal data information service providers. MIIT's Order No. 24/2013 should be seen as a sufficient legal document for the protection of personal information for wearable users, since most of the wearable manufacturers themselves are also information providers as they offer a broad range of Internet services. These companies will continue to be such providers given the way the market is operated.

While there is no lack of legal regulations in China, it is the enforcement of the law that has been the challenge. This will continue to be a challenge to local authorities, and further legislation may not be of much assistance. Following MIIT's Order No. 24/2013, this duty has been clearly stipulated, and telecommunications authorities will now have a clearer authority and boundary of power to supervise, inspect, request information and record behaviors of relevant parties when it comes to their actions in data collection and protection. The public and the State Council shall be confident that given more time, better privacy protection will emerge in China.

Some industry analysts are of the opinion that because the field of wearables is so new, and developing so quickly, that undue regulatory requirements could shorten the sector's growth. A *2014 Wearables Market White Paper* published by Tencent<sup>2</sup> also reported that in a survey, most wearable users found it unrealistic to make a habit of using the devices every day. As high as 86.9 percent of those surveyed stopped using the product three months after their purchase. As such, more features might need to be offered before we see the kind of widespread adoption that took place with smartphones. In the interest of all wearable makers (especially local ones), the government should let consumers chart the course before setting in.

As devices that encourage consumers to monitor their own health—and to do so of their own volition—wearables present an opportunity to create a healthy population without the explicit and often expensive encouragement by public health authorities. A healthier society is one that is more productive and efficient, with fewer days lost to work, boasting greater morale, and less chronic and debilitating diseases. Given that this could occur without medical intervention, wearables represent a cost-saving opportunity in the aggregate. At the same time, a new, booming electronics market will also be beneficial for the Chinese economy. But any attempts to regulate their usage and manufacture outside the existing regulatory framework could throw a wrench into this plan. Given the latent nature of health-related wearables, there may be a time when a broader range of regulatory measures will be required—but that time has not yet come.

<sup>2</sup> <http://data.qq.com/article?id=1609>

**Author:**



**Jiong SHENG**, Associate  
[jiong.sheng@eigerlaw.com](mailto:jiong.sheng@eigerlaw.com)

**DISCLAIMER**

*This publication is not intended to provide accurate information in regard to the subject matter covered. Readers entering into transaction on the basis of such information should seek additional, in-depth services of a competent professional advisor. Eiger, the author, consultant or general editor of this publication expressly disclaim all and any liability and responsibility to any person, whether a future client or mere reader of this publication or not, in respect of anything and of the consequences of anything, done or omitted to be done by any such person in reliance, whether wholly or partially, upon the whole or any part of the contents of this publication. This work is licensed under the Creative Commons Attribution-ShareAlike 3.0 Unported License. To view a copy of this license, please visit <http://creativecommons.org/licenses/by-sa/3.0/>.*