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Open Government in China:

Practice and Problems

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Task Force on Transparency

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This article is an introduction to the practice of open government in China, which has attracted wide attention in the international community over the past several years. The introduction will be made in three aspects. The first part will offer a big picture of the present conditions of the practice, with emphases on open village affairs, open legislation, government informatization and “The Regulations on the Freedom of Information” which is being formulated at the time being. The second part will analyze into the reasons and backgrounds against which the practice occurred. The third part will discuss on various kinds of problems facing the practice of open government in China at the present stage.

I. The Practice of Open Government in China.

The practice of open government ranges widely in China, from open village affairs, to open factory affairs and open school affairs, to open legislation, open trial, open procuratorial affairs, and to open police affairs and open taxation affairs and so on and so forth, involving almost all aspects of the social life. The focus of this article will be placed on the practices in open village affairs, open legislation, government informatization and the formulation of “The Regulation on the Freedom of Information”. The perspectives from these several aspects will enable the readers to perceive China’s system of open government in its entirety.

1. Open Village Affairs.

In the end of the 1970s, China’s rural reform pioneered its national economic reform. Very similarly, the present practice of open village affairs in the rural areas kicked start the practice of open government in the entire country. This is undoubtedly another pioneering undertaking of the Chinese farmers. Generally, the practice experienced four stages of development:

The First Stage:

The stage of self-motivated practice, i.e., the period from 1982 when the villagers autonomy system was incorporated into China’s Constitution to 1987 when “The Law on the Organization of Villagers’ Commissions (for trial) ” was enacted. During this period of time, along with the reform of political structure in the rural areas, the abolishment of the system of people’s community which was a combination of political and social entity and the establishment of the villagers’ autonomous commissions, a small number of villages that carried out reform earlier than others broke the ice to introduce the practice of open village affairs.

This stage was characterized by: *firstly*, the organizers being the party branches of the villages and the commissions of the villagers; *secondly*, carried out in only a small number of villages; *thirdly*, the terminologies, contents and procedures of the practice differing from each other from village to village. Nonetheless, “The Law on the Organization of the Villagers’ Commission” gave a legal foundation and served a strong boost to the open village affairs by providing that “The villagers’ commissions shall periodically publicize the accounts on incomes and expenditures on public

affairs and public utilities and subject them to the supervision of the villagers and the economic bodies of the villages.”

The Second Stage:

The stage of standardization, i.e., the stage from 1988 when “The Law on the Organization of the Villagers’ Commissions” was put into trial enforcement to 1994 when the Central Committee of the Communist Party convened the special meeting on the construction of grass-roots organizations in the rural areas. In this period of time, along with the deepened implementation of “The Law on the Organization of Villagers’ Commissions” in the rural areas, 24 provinces, autonomous regions and municipalities directly under the central government set forth their local regulations, most of which stipulated that the villagers’ commissions shall timely publicize their expenditures on the villages’ public affairs and the costs of the villages’ public utilities. In this period of time, because the Central Government, the State Council and the Ministry of Civil Affairs placed more emphases on the construction of village organizations and listed the strengthening of the village organizations as an important content of standardized open village affairs, the process of standardization of open village affairs was forcefully pushed forward. More importantly, the Central Government issued “The Notice on Enhancing the Construction of Grass-roots Organizations in the Rural Areas” in October 1994, raising, for the first time, the problem of duly “constructing the system of open village affairs.”

This stage was characterized by: *firstly*, the practice of open village affairs had extended from some specific villages to all villages of some counties and the leadership of the practice had become the Party Committee of the Counties, the County Governments and the Department of Civil Affairs of the Counties instead of the party branches of the villages or the commissions of the villagers. *Secondly*, the system of open village affairs had embarked on a standardization track, with its contents, timing, procedures and forms much standardized.

The Third Stage:

The stage of rapid development, i.e., the period from 1995 when the Ministry of Civil Affairs held the National Meeting for the Exchange of Experiences on the Work of Villager Autonomy to April 1998 when the General Office of the Central Committee of the Party and the General Office of the State Council issued “The Notice on Universalizing the System of Open Village Affairs and Democratic Administration in the Rural Areas”. During this period of time, the Ministry of Civil Affairs honored, in a nation-wide scope, 31 “Model Counties for Villager Autonomy”, 16 “Best Towns and Townships”, 150 “Town Stars” and 200 “Model Village Commissions” and, thus, started in the rural areas a vigorous campaign of developing the villagers’ autonomy. In April 1997, the Central Commission for Discipline Inspection and the Ministry of Supervision convened “The Forum on Open Village Affairs and Democratic Administration” in Baodi, Tianjin, on which, a consensus was reached that the practice of open village affairs was an important content of and an efficient way to the building of honest and clean governments in the rural areas. This gave a strong boost to the work of open village affairs.

This stage was characterized by: *firstly*, the scope of open village affairs had

extended to the provincial level and the leadership had become the provincial Party Committees, the provincial governments, the provincial committees of discipline inspection and other relevant departments. *Secondly*, the localities enhanced the standardized and systemized administrative regulations, systems and file management.

The Fourth Stage:

The stage of great advancement, i.e., the period after 1998 when the amended “Law on the Organization of the Villagers’ Commission” was put into force. In this period of time, the Communist Party set forth on the Third Session of its 15th Congress “The Decision on Some Major Issues in the Agricultural and Rural Works”. The Decision stressed that “democratic supervision at village level shall be carried out in an overall way. All major issues and affairs of common concern shall be publicized to the villagers. The emphasis of open village affairs shall be placed on open financial affairs.” The amended “Law on the Organization of Villagers’ Commissions” provided even clearer stipulations on the system of open village affairs and further clarified its contents, timing, requesting, public observation and legal liabilities and etc. On this basis, at the end of 2000, the General Office of the Central Committee of the Party and the General Office of the State Council set forth another document, aiming at pushing forward the practice of open political affairs at the level of towns and townships in a nationwide scope.

This stage is characterized by: *Firstly*, the practice of open village affairs has been universalized nationwide and a network of laws, regulations and system has taken its shape, providing a legal guarantee to the implementation of open village affairs. *Secondly*, all relevant government departments served their own functions and exerted their joint efforts to put into operation a sound system of open village affairs. *Thirdly*, the practice of open village affairs gave an impetus to other practices of open government in China.

Open village affairs have three aspects in contents: 1. Financial affairs; 2. Autonomous affairs; 3. Political affairs.

Financial affairs cover financial revenue, financial expenditure, property status, debts and financial claims, contract performance and etc. Autonomous affairs include economic construction, public undertakings, farmer’s burden, terms of office of the village cadres, etc. Political affairs mainly involve family planning, homestead approval, land expropriation by the State, disaster relief and relief distribution, etc.

2. Open Legislation.

In China, open legislation was understood as public access to legislation results, inclusive of laws, regulations and statutes. But this is not enough. Open legislation shall include the disclosure of legislation documents and legislation process, allowing the mass to make inquiry, comments and suggestions, so as to increase democracy in the legislation.

Generally speaking, open legislation in China experienced three stages:

The first stage:

A stage basically without openness, i.e., the period from 1949 to the early 1980s.

In this period of time, only the legislation results were published, whereas the legislation process was basically behind the screen. Not only legislation process but also legal work in its entirety remained under cover. In the recruitment of high-school students, law department was indicated as “confidential”. Legislation work was deemed as more confidential. The drafts for laws and regulations and other legislation documents were all treated as secret materials that were disallowed to be made public. And the personnel engaged in legislation were disallowed to publish any article on publications. Besides, public discuss on the drafts of laws and regulations were basically not permitted. So, no-openness was a basic principle. But as regards some specifically important legislation, the laws and regulations could be published for public discussion, of course after special approval. For instance, the 1954 Draft of the Constitution of the People's Republic of China and the 1982 Amendments to the Constitution of the People's Republic of China were both published in newspapers for public discussion.

The Second Stage:

The stage of gradual openness, i.e., the period from the late 1980s to the end of 1990s. In this period of time, not only the disclosure of legislation results were progressively standardized, but also the legislation process was gradually brought to the light. Entering the mid-1980s and along with the deepening of economic restructuring, social demand for political restructuring became stronger and stronger. In April 1989, “The Regulations on the Deliberation of the National People’s Congress” was passed at the Second Session of the 7th National People’s Congress, putting forward some new measures for opening wider the legislation. According to the Regulations, the meetings of the National People’s Congress shall be held publicly, public seats shall be set up, news conference shall be held, and the drafts of some major laws shall be published for the purpose of soliciting public opinions. From the mid-1980s to the end of 1990s, the Standing Committee of the National People’s Congress published 10 legal drafts for public discussion, and the local authorities also published the drafts of some local regulations for public discussion. In 1998, Shenzhen took the lead to institute the public hearing system. In 1999, the Standing Committee of the People’s Congress of Guangdong province initiated the public hearing system, thus injecting a new energy into the practice of open legislation and yielding satisfying results.

The Third Stage:

The stage toward systemization. Since 2000, open legislation has begun to exhibit a trend of systemization and standardization. And systemization and standardization became the basic principle in the activities of legislation. In March 2000, “The Legislation Law” was passed at the Third Session of the 9th National People’s Congress. The Law provides that “Legislation shall give full expression to the people’s will, give full scope to social democracy and ensure the people’s participation in the activities of legislation through multiple channels.” The Law also provides the channels for public participation, inclusive of the forms of opinion collection in written form, forums, hearings and publishing of legal drafts for public discussion and etc. After the promulgation and enforcement of “The Legislation Law”,

the State Council successively issued the regulations on the formulation of administrative regulations and the regulations on the procedure of statute formulation. And the People's Congresses of the provinces, autonomous regions, municipalities directly under the Central Government and big cities also set forth their own regulations on local legislation, with more detailed provisions on public participation in legislation activities and rules on legislation hearing system. At the same time, public hearing system was adopted nationwide, from Shenzhen to Beijing, Shanghai, Anhui, Jiangsu, Shenzhen, Xiamen and Dalian and etc. The public hearing system was instituted by the People's Congresses and their Standing Committees of these provinces and municipalities and corresponding methods of hearing were also put forth. In short, along with the deepening of the reform of market economy and the development of democratic politics, legislation became increasingly open and transparent and its systemization and standardization were paced up.

The basic forms of open legislation in China mainly include:

a. Forum. A forum is a form in which, the drafting units, legislation agencies or other relevant institutions invite, according to their needs, relevant experts and masses from relevant state organs, social organizations, enterprises and institutes to hold discussion and give opinions on the necessity, practicability and contents of relevant bills.

b. Opinion Collection in Written Form. This refers to the form in which the drafting units or legislation agencies send the drafts to relevant state organs, social organizations, enterprises, institutes and relevant experts, so that they could raise their opinions and overtures in written form after doing careful study.

c. Public discussion. This refers to the democratic form in which the drafts for some important laws, regulations and statutes, which are of vital interests to the citizens, are publicized in newspapers after going through specified procedures of approval, so that the public could conduct discussion and air their views and opinions. This form is featured by: a. Complete openness and high transparency, and is, hence, the most thorough form of open legislation; b. The most comprehensive participation by the mass; and c. Equality. However, the huge amount of work involved in public discussion prevented this form from being operated frequently. Therefore, it is only applicable to some major bills that involve the vital interests of the citizens, e.g., the Constitution, the Law on the Organization of the Villagers' Commission and the Marriage Law, etc.

d. Hearing. The first Chinese law that had a provision on hearing system was "The Law on Administrative Punishment" which was passed in March 1996 at the Fourth Session of the 8th National People's Congress. Later, "The Price Law" which was enacted in 1997 made further provision on hearing system. In March 2000, "The Legislation Law" was passed at the Third Meeting of the 9th National People's Congress, in which, hearing system was incorporated into legislation procedure for the first time. This represented a major step that China took to promote open legislation.

e. Argumentation. Argumentation is a form different from a forum or a hearing. It mainly concerns very special and technical problems in some bills. Relevant experts

are asked to carry out researches and put forward argumentations from the scientific and practicable perspective. Therefore, the system is mainly designed to solve scientific problems in the legislation.

f. Public hearing. This is a form in which relevant agencies, social organizations, the press and the masses are allowed to be present and listen to the meeting at which the legislation agencies discuss or deliberate on a bill. The earliest Chinese law that had a provision on public hearing system is “The Deliberation Regulations of the National People's Congress” which was passed in April 1989 at the Second Meeting of the 7th National People's Congress. The 3rd Clause under Article 18 of the Regulations provided: “Public seats shall be established at all the meetings of the Congress, and specific methods shall be provided separately.” Henceforth, the majority of local People's Congresses and their Standing Committees also set forth provisions on hearing system in their Deliberation Regulations. Yet, hearing system was not instituted in the real sense in the early 1990s. It was only translated into action in local practice in the late 1990s.

g. Opinion collection through internet. This is a brand-new form of open legislation which comes into existence because of the wide use of internet in these recent years. At present, there are mainly two forms of practice: a. While publishing a bill in newspapers, publish it at the same time on the internet collect public opinions on it. For instance, while the draft amendments to the Marriage Law was published in newspapers, it was also put on the website of the National People's Congress to collect public comments and opinions. b. Some departments under the State Council and some local authorities only put the drafts of the rules and regulations on the internet for the public to make comments and suggestions. For instance, since August 2001, the city of Chongqing has put the drafts of all local rules and regulations on the “Chongqing Website for Open Government”, with the purpose of soliciting opinions from the masses.

3. Government Informatization.

Although the development of Chinese economy is still in a primary stage and traditional sectors still occupy the dominant position in the national economy, Chinese government pays high attention to the global revolution of informatization and has made a series of employments with a view to promoting the informatization of the national economy and effecting the transition from a traditional society to a informatized society. The reforms in this respect mainly include:

a. Energetically develop information industry, laying a physical foundation for the informatization of national economy and the government.

Taking notice of the global revolution of informatization in an early time, the leaders of Chinese government have given important instructions and made strategic deployment. All these provide a political guarantee for the fast development of information industry in China. In the “10th Five-Year Plan”, it was explicitly indicated that vigorously promoting the economic and social informatization is a strategic undertaking that has direct bearing on the drive of modernization, because informatization is undoubtedly a driving force for the industrialization process. In

response, during its institutional reform in 1998, the State Council decided to establish the Ministry of Information Industry of the People's Republic of China. This move gave a strong boost to China's informatization. In December 1999, it was decided that the Leading Group for the Work of National Informatization be formed, with Vice-Premier Wu Bangguo as the Head. In order to strengthen the leadership over informatization, the State Council regrouped the Leader Group for the Work of National Informatization in August 2001 and Premier Zhu Rongji in person held the office of its Head. Meanwhile, the Informatization Office of the State Council was established.

Forcefully promoted by the Central Government, information industry and basic information facilities develop dramatically. By 2002, the share of information industry in China's GDP has risen to 5.7%, from 2.3% in 1997; the number of telephone users has taken the first place in the world; internet users, the second place; the scale of electronic and information product manufacturing, the third place; and the rate of telephone coverage of the country has risen to 33.74%, from 8.11% in 1997 and the villages with accessibility to telephone lines have represented 85.3%.¹

In order to further activate the development of information industry, China introduced deep-going reforms of the telecommunication industry, including separating government functions from enterprise management, separating post from telecommunication and regrouping telecommunication sector and etc. Resultantly, the monopoly was basically eliminated in the sectors from basic telecommunication to value-added telecommunication, and a market competition pattern took an initial shape. Now, there are already 6 enterprises of basic telecommunication and 4400 enterprises of value-added telecommunication enterprises.

b. Promote the infrastructural construction of internet and the informatization of the government.

The development of information industry served a strong boost to the development of internet and the process of informatization. Information technologies are used more and more widely in the social life. According to the statistics of the Information Center of China Internet, which was released in January 2003, 20.83 million computers could be logged on to internet and internet users have reached 59.1 million in China.²

In the past several years, with a view to accelerating the pace of informatization, China has lowered the charges for telecommunication services by a wide margin. This also gave an impetus to the development of internet, enabling more and more people to exchange information through internet.

The wide use of internet and the development of informatization are promotive to the process of government informatization. Actually, as early as in the 1970s, the Chinese government has been using computers to handle with statistics and data on earthquake, weather and power and etc. Strictly speaking, China's process of government informatization experienced three climaxes. The first was marked by the

¹ "Follow the Guidelines of the 16th Congress of the Party and Promote the Fast Development of the Information Industry in China", by Wu Jichuan, carried on "Research on Soft-Science of Telecommunication", Page 2, Issue 1, 2002.

² "Statistics on the Internet Development in China, January 2003", by China Internet Information Center.

construction of information management system and the construction of automatic offices. In 1983, under the program and design of the system on automatic management of national economic information, 12 major projects were launched as part of the "Sixth Five-Year Plan". Among them was the project of automatic offices, e.g., the system of telecommunication system, weather report system, power grid control system, etc. From the second half of 1975 to the mid-1980s, capitalizing on the World Bank loans and loans in Japanese Yen, the State Planning Commission grouped 43 State departments and ministries to form the Information Center. The second climax was marked by the construction of the trans-sector application projects, e.g., the package "golden" project --- "Golden Custom", "Golden Card", "Golden Taxation" and "Golden Enterprise" and etc. The third climax was marked by the use of internet after 1997, including the high-functional local networks and government websites that link together the departments at the same level.

On January 22, 1999, with China Communication and the State Economic and Trade Commission taking the lead, the information departments under over 40 Ministries and State Commissions were grouped to convene "The Meeting for Mobilizing the Government Internet Project", at which the Government Internet Project was kicked start. Through the project, the first chapter of "the Year of Government on Internet" was opened in the 1990 and government departments at various level showed active response. The overall startup of the Project served a direct push to the informatization process of both the Central and local governments. By the end of 2002, totally 179,544 domain names were registered under CN. Among them, 7796 was registered with "gov", accounting for 4.3% of the total.

With a view to promoting the development of e-government, the Leading Group for the Work of National Informatization convened the second meeting in July 2002 and laid down "The Guidance for the Construction of E-Government", which set forth specifically the major goals and tasks in the construction of e-government. According to the Guidance, achievements must be made in the "Tenth Five-Year" in respect of the platform of government internet, business system, government database, information sharing, information security system, system of regulation and standardization of e-government, etc.

In the tide of government informatization, with the localities and sectors carrying out corresponding reforms, e-government took its initial shape in some aspects. Built separately by the financial, taxation, customs, foreign trade and technological departments, there have been 108 computer information systems that boast a coverage nationwide. With the General Administration of the Customs of the People's Republic of China taking the lead, 12 State Ministries and Commissions jointly developed the Port Management System. Through the system, all the administrative procedures including the formalities of import and export could be dealt directly online with the customs, inspection, industrial and commercial and taxation authorities. This thoroughly reversed the situation that the enterprises had to go to all the separate sectors to finish the procedures for an item of import or export business. "One-Stop" government service is realized in the favor of the enterprises. On June 15, 2001, the Industrial and Commercial Bureau of Beijing released the

regulations on the joint examination and approval of the enterprises, laying down the principle that “the organ undertaking the registration shall inform all the other relevant organs to conduct and finish joint examination and approval within the specified time limit.” Henceforth, an applicant for opening an enterprise only needs to be filed with the industrial and commercial agency. The latter will inform the basic information of the applicant to all other relevant agencies through internet. All the other relevant agencies will conduct and finish the examination and approval within the specified time limit. And the industrial and commercial agency will be, in return, informed of the result of their examination, also through the internet. The reform created significant convenience for the applicants and largely reduced the waste of time and the opportunities of giving rise to corruption.

c. Enhance the standardization of internet management.

For the sake of the smooth development of internet and government informatization, China has successively enacted a series of laws and regulations to enhance the internet management and information security. Special regulations include: “The Decision of the Standing Committee of the National People's Congress on Defending Internet Security”, “The Interim Regulations of the People's Republic of China on the Management of the Interconnection of China's Computer Information Network with the International Network”, “The Implementation Measures on the Interim Regulations of the People's Republic of China on the Management of the Interconnection of China's Computer Information Network with the International Network”, “Interim Regulation on the Registration of Domain Names in Chinese Internet”, “The Detailed Rules on the Registration of Domain Names in Chinese Internet”, “The Regulations of the People's Republic of China on the Protection of the Security of the Computer Information System”, “The Notice on Enhancing the Record of the International Interconnection of China's Computer Information System”, “The Measures on the Protection of the Security of the International Interconnection of China's Computer Information System”, “The Measures on the Management of Internet Information Services”, “The Regulations on the Protection of the Designs of Integrate Circuits”, “The Telecommunication Regulations of the People's Republic of China”, “The Regulations on the Management of Commercial Encryption”, and so on and so forth.³ Additionally, “The Law on the Protection of Secrets” and “The Law on the Protection of Copyrights” and other relevant laws and regulation also had provisions on informatization and government informatization.

4. The formulation of “The Regulations on the Openness of Government Information”.

In the context of the fast development of open government and government informatization, the Leading Group for the Work of National Informatization held its Second Meeting, passed the Tenth-Five Year program on informatization and the

³ To enhance legislation in the telecommunication area, in 2001, the Chinese Ministry of Information Industry formed a leading group for the drafting of the telecommunication law, a working group and an expert consultative commission. On October 10, 2001, the framework draft for the telecommunication law was finished. This draft made provisions, in a systematic way, on such problems as the security of the telecommunication network, the information security and the telecommunication supervision and etc, and is therefore of great significance.

guidance on the development of e-government, and elevated the establishment of legal system in the development of e-government to an important position. The formulation of the regulations on the openness of government information, on the protection of private data and on information security is put on the top of the near-term agenda of system construction. Under the direct leadership of the Informatization Office of the State Council, the Draft for the Regulations on Electronic Signature and the Draft for the Regulations on the Openness of Government Information were enacted.⁴

The Draft for the Regulations on the Openness of Government Information fully absorbed experiences from the laws of other countries on open information and gave full expression to the following legal principles:

The Principle of Right. Instead of treating it as a system of working method of the government organs, the Draft explicitly stipulates the access to government information as a right of the citizens. This is aimed at solving the problems occurring in the concrete practice of open government. If open government is seen as a system of working method, it implies that the government information might be open or not open at random. Then, there is no guarantee and binding force for its implementation. While if access to government information is taken as a right of the citizens, it not only complies with the practice of most of the countries and regions across the world, but also renders a practicability to the designed system. For this account, the principle of right serves a foundation and cornerstone for the Regulations.

The Principle of Openness. In the long history of Chinese administration, as regards government information, there existed a conventional thinking --- “not open” was the guiding principle to follow, whereas “open” was exceptional case or grant of favor. This spirit has seriously obstructed the pace of open government. In the practice, the biggest problem is how to reasonably determine the scopes of “open” and “not open”. In order to free ourselves from the influence of the traditional mentality and practice and prevent the working personnel of the state agencies from expanding the scope of “not open” at various excuses, it is necessary to lay down “open” as the basic principle in the practice of open government. The purpose for such doing is to establish a new understanding of open government information among the public servants of the state organs, thus reversing their traditional ways of thinking and old methods of working. In addition, in the future enforcement of the Regulations, this principle will serve a guideline for the solution of many sticking problems and difficult cases. In the legislation of other relevant laws and regulations, the basic principle of open government will also find its expression.

The Principle of Interest Equilibrium. According to the Constitution of the People's Republic of China, a citizen is entitled to enjoy the rights and interests granted by the Constitution and other laws and regulations, and meanwhile, is obliged to perform the duties stipulated in the Constitution and other laws and regulations.

⁴ In the process, many municipal governments, such as Guangzhou, Hangzhou, Chengdu, Shengzhen, Kunming, and Wuhan etc., as well as provincial governments, such as Hubei and Shanghai etc, have being promulgating local by-laws on the openness of government information. The general Structure and major stipulations of these by-laws have been influenced more or less by the draft of the Regulation on the Openness of Government Information. Therefore, we will not discuss them in detail in this article.

When enjoying his/her legal freedom, rights and interests, a citizen shall not harm the legal freedom, rights and interests of the nation, society, collectives and other citizens. When the public uses their right of learning the truth, it is always possible that the right to know the truth contradicts with other rights or interests. The principle of interest equilibrium is hence set forth, with a view to ensure the effective exercising of the right to know the truth.

The Principle of Gratis. With the advent of the information society and the rising of the value of economic information, it has been an oft-seen phenomenon that the government agencies make money from the information under their control. In actuality, some government agencies make direct use of the information in their hands to rake in money, and some make indirect use of their information for selfish purposes. If this is not to be stopped and the information price is driven up under disguised forms, the practice of open government will be adversely effected and the cost for the public access to government information will be increased. In this view, it is a pressing need to set down the principle of gratis, in the compliance with which, the government agencies are disallowed to make profit from the information in their monopoly and are disallowed to charge fees according to the value of the information. However, in order to reduce the burden of the government agencies and prevent unreasonable requests, it is necessary for the requesters to bear the cost of searching, copying and delivery of the information.

The Principle of Free Use. The principle of free use, or to say the principle of marketization, means that, after acquiring the government information, the requester may conduct re-processing or other forms of commercial exploitation of the information in a market-oriented way, upon which, the government agencies shall not impose any prohibition or restriction and shall not claim any copyright or other kinds of protection. By definitely setting forth the principle of free use, the Regulations are designed to effectively motivate people's enthusiasm in exploiting and making full use of the government information. And by so doing, it is also aimed at eliminating the negative influence of various kinds of unjustified rules, increasing the state agencies' sense of public services and reducing the cost for the public access to government information, thus promoting the development of the entire information industry and the information service industry in particular.

The Principle of Relief. The principle of relief in the system of open government information means that, when a requester deems that his/her right to know the truth is prejudiced, or a third party deems that his/her right of privacy or business secrecy is prejudiced, he/she may apply for administrative review or file an administrative lawsuit against the infringement according to the Regulations. According to the provisions in China's Law of Administrative Litigation, the concerned party may only file an administrative lawsuit against the specific acts that constitutes an infringement upon his/her personal rights or property rights. There was no provision that the concerned party may file an administrative lawsuit against any infringement upon his/her right to know the truth. Although it was provided in China's Law of Administrative Review that the concerned party may apply for an administrative review against any administrative acts which constitutes an

infringement upon any of his/her rights inclusive of personal rights and property rights, it was indefinite, from a legal perspective, whether an administrative review could be applied against an infringement upon the right to know the truth, because there was no definite provision on the right to know the truth in any of Chinese laws and regulations. In practice, it was rarely seen that any application for administrative review was filed against an infringement on the right to know the truth. The principle of relief is clearly set forth in the Regulations. It will not only fill the loophole in the current law system, but also clarify the applicable scope of the Law of Administrative Review and the Law of Administrative Litigation, thus providing a strong guarantee for the right to know the truth, in both administrative and judicial way.

In the practice of open government information, the biggest problem is how to reasonably define the scopes of “open” and “not open”, preventing national security and other public interests from being harmed. Against the background of China’s actual conditions, lack of standard system of open government information and stipulations on exceptions, how to define the scope of the huge amount of government information is really a difficult question. For this reason, the Regulations stipulate seven exceptions:

a. The information defined as national secret according to the State Law of Secrecy;

b. The information which shall not be made public according to the stipulations of other laws;

c. Pure internal rules and affairs of the government organs that have no relation with the public;

d. Business secret of the enterprises or other information provided by the enterprises to the government on the precondition of keeping them confidential;

e. Personally identifiable information, but with the following exceptions: ① The personal information which could be referred to according to the provisions of the laws and regulations; ② The personal information which must be publicized for the purpose of protecting the life, health or property of the people; ③ The personal information related to the obligations of the public servant to performance their duty; ④ The personal information which the concerned person agree to make public;

f. The information on the researches, discussions, suggestions or deliberations inside or among the government agencies during the process of policy-making, the disclosure of which might adversely affect the process of decision-making or cause chaos in the society;

g. The information related to the execution of criminal law, the disclosure of which might adversely affect the investigation of the crime, the indictment, the trial, the enforcement of the penalty or the right of the defendant to be tried equitably.

Except the above seven categories, all the other government information shall be opened to the public.

II. The Cause for the Advent and Development of the System of Open Government in China.

The advent and rapid development of open government system in China is actually a necessity because it has very profound social and economic backgrounds.

First, the development of information society demands the free flow of government information as a kind of resource, for the sake of economic growth.

In all countries across the world, governments are the biggest information holders and controllers. The precondition for state informatization or the development of information society is government informatization. And the core for government informatization is the effective exploitation and utilization of government information as a resource. Due to the influence of the prolonged feudal rule, government opacity is always an outstanding problem in China. The result is the formidable waste of the resource of government information. According to relevant statistics, 80% of China's useful information is in the hand of the government and most of them are kept undisclosed. This constitutes a severe containment to the economic development. Especially, after the informatization strategy was put forward, the phenomenon that some regions or sectors make money from the information in their hands becomes more and more apparent. This obviously goes against the trend of informatization. Along with the development of information technology, the exploitation of government information as a resource is being faced with both unprecedented opportunities and unparalleled challenges and problems. It could be said that, if guarantee could be provided to the full use of government information by the whole society, there will be a wide room for innovation and creation in respects of system, technology and market. Government information resembles bank money. Only accelerated flow could yield huge benefits. Against the big picture of informatization, China's open government system has attracted high attention of the high-level government leaders, who has given a pushing force for its development.

Second, the openness of government information is a warrant for the people's democratic right, i.e., the right be the host and master of their own affairs.

According to the general provisions in the Constitution of the People's Republic of China: China is a socialist country of the people's democracy; The people is the host of the country; All power belong to the people; Chinese people may exercise their power by electing the People's Congresses at all levels and, according to the laws, manage the state affairs and economic, cultural and social undertakings through multiple forms and channels; The People's Congresses at all levels are elected in a democratic way; They are responsible for the people and are subject to the people's supervision; All the state agencies and working staffs shall rely on and keep close relations with the people; They must frequently listen to the people's views and opinions, accept the people's supervision and work hard to serve the people. Article 41 of the Constitution also stipulates that a citizen has the right to raise criticism and suggestions on the work of any state agency or working staff, and has the right to file a complaint, charge or report to relevant organs on any illegal malpractice or nonperformance of duty by any state agency or working staff. Nonetheless, in the concrete practice, for the people to exercise the power of managing state affairs and social affairs, the precondition is to know the truth. Only after knowing the truth, could they exercise their power of managing the state affairs in the real sense. If

people have no idea about how the government work is proceeding, undoubtedly they cannot carry out any effective supervision on the government work. In these recent years, along with the increased awareness of their own right, people are attaching more and more importance to their own right to know the truth.

Third, the openness of government information is a basic WTO requirement on government transparency.

The goal of WTO is to establish a complete, energetic and lasting system of multilateral trade. Transparency is one of its basic requirements. The principle of transparency is cherished in almost all WTO documents. Analyzing into WTO provisions, it is easy to find out that its requirements have two characteristics: a. It requires the disclosure of the generally applicable rules, regulations, bylaws, decisions and inter-governmental agreements, instead of specific administrative acts or specific information the government grasps. This is the most basic WTO requirement on government transparency. b. The influence is wide-ranging. Although WTO puts emphasis on the transparency of legal provisions on trade, it is not only limited to trade in the real practice. Trade is an important linkage in the market economy. With international trade expanding rapidly across the world, the WTO influence on the social life of a country is becoming increasingly comprehensive and deep-going.

In accordance with China's agreement with WTO, China must accept the review of other WTO members in each of the first 8 years after its entry into this organization. The review will cover the transparency of trade policy. On this account, the establishment of the open government information system will help China to satisfy the WTO requirements.

Fourth, the openness of government information is a way to eradicate corruption from the root.

Corruption has become a headache from both the Party and the government leaders in China. The causes for corruption are very complicated. But among others, two factors have contributed to the existence of corruption: a. Power concentration without a checking mechanism. b. Lack of transparency in the use of power, which creates convenience for back-door practice and trade for money with power. With a view to eradicating corruption from the root, a power constraint mechanism must be set up, on one hand, to prevent those in power from misusing his power; and the power-exercising method must be changed, on another hand, so as to subject it to the people's supervision. By establishing the open government information system, the state organs' functions and powers, work procedures and results, time limits and supervision methods are all made known to the public. This will change the method of power performance, thus suffocating the back-door practices from which the corruption stems. Meanwhile, the open government information system grants the people accessibility to government information and the right to relief. This will enrich the power containment mechanism. Except the traditional supervision by the state organs at higher level on those at lower level, personal right to supervision on the administrative powers and the supervision by the judicial power on the administrative power are also developed. Thus, a scientific system of power containment is brought into being.

Fifth, the openness of government information will facilitate the standardization of the order of market economy.

Due to lack of credit, the chaotic market order and the high cost for deals are the major factors checking China's economic development. Chinese government had mobilized all social forces to rectify the market order, with a view to creating an environment of fair market competition. In reality, in dealing with such phenomena as the forgery of diplomas, counterfeit property right certificates, falsification of government documents, contract fraud and speculation companies etc., there are basically two ways of solution: One is to intensify control and punishment, namely, the oft-mentioned "cracking down on forgery" and straightening out the market order. This way demands large amount of government input and intensified enforcement of laws. But in spite of its high cost, its achievements are usually not satisfactory. To be specific, in spite of the largely intensified enforcement of laws and punishment on irregularities and the widely increased government expenditure, the market order shows no sign of turning for better. The other way is to open government information. In this way, extra government input and social cost are not necessary, nor any further input of legal personnel or intensified punishment. The most important reason for the existence of various kinds of frauds is the fact that the public has no access to government information. Once the government information is opened to the public, all the frauds will lose the cover behind which they could hide themselves. In this way, the standardization of market order will be facilitated.

Six, the openness of government information is conducive to the maintenance of social stability.

Social stability is of utmost importance to China's reform and economic development. Without stability, the reform and economic development could not be steered ahead smoothly. Presently, at some grass-roots level, some cadres do not have good relations with the masses or even have sharp contradictions with the latter. This will have a direct bearing on social stability. One of the reasons for such situation is that, the state organs and the working staffs fail to work in a democratic and transparent way. Some even use their power for selfish purposes, to the serious disservice of the masses. By establishing the system of open government information, the working style of the state agencies and the working staffs could be effectively improved, conducing to the relations between the Party and the masses and increasing the public trust in the government. Thus, some social contradictions and conflicts will be settled down soundly and the big situation of stability and solidarity will be well maintained. Viewing from the experiences of the government agencies in foreign countries, to develop public relations by opening government information always yields better results than doing that through other forms, and the cost is much lower.

Theoretically, the stability of a system is durable when it is a dynamic stability in an open environment in which the system has the ability of self-organization. A self-closed system without the ability of self-organization cannot enjoy durable stability. When the mankind enters the information time that features the development of internet, the exchange of information becomes the most fundament way of living. Only when free flow of information among all information systems are guaranteed

and the public, that fully enjoy the right to know the truth, can make right judgment, could the ability of self-organization of the society be increased and the psychological ability of the public to receive risks be strengthened. Numerous facts, home and abroad, have pointed to the fact that, in a society where the public has no access to true information, even a little rumor could lead to turmoil in the whole society. Therefore, to promote the openness of government information is an important measure to strengthen the psychological endurance of the public and, thus, preserve social stability.

Seven, the openness of government information is a prerequisite for promoting administration according to law and reforming government management.

Administering the country according to law is an objective requirement as well as a guarantee for the development of socialist market economy, the construction of socialist democracy and the maintenance of lasting peace and stability of the nation. Rule of law is the fundamental strategy of the country. In order to translate rule of law into reality and build up a state of socialist rule of law, the government agencies and working staffs at various levels must function according to law and sincerely defend the legal rights and interests of the public. At present, there still exist the phenomenon that some government agencies or working staffs do not observe laws in their performance of functions and duties. Especially at the grass-roots level, the awareness of laws and policies remains weak and bureaucracy goes rampant. By setting up the system of open government information, making the public acquainted with the working methods and procedures of the government agencies and subjecting the administrative acts to the supervision of the masses, the concept of rule of law will be strengthened among the government organs and working staffs and the level of administration according to law will be thus elevated.

Traditionally, administration according to law connotes administrative acts strictly conducted by law, namely, the government powers and functions shall be exercised strictly in compliance with the stipulations of the laws, including the procedures, steps, time limits and working methods, etc. Contemporarily, because the extension of administrative function is unavoidable, the emphases of administration according to law are placed on transparency and public participation, instead of strict observation of law. Great importance is attached to the participation by the masses into the process of decision-making. Openness and participation represent the most fundamental principles in the contemporary administration by law. The establishment of the system of open government not only renders the public an access to government information, but also gives an expression to the principle of openness, thus making the process of public participation in policy-making more practicable.

The traditional way of government administration is a kind of extensive administration which is featured by orders and controls and oriented to the system of planned economy. But it is not a scientific way of administration. Under such kind of administration, the resources of government information is decentralized among the government organs and information exchanges among them are blockaded. As a result, the organs at upper level cannot hold the truth information and, therefore, cannot use modern information technology in the policy-making and market supervision. In

many cases, the decisions are made blindly and changed quickly. The openness of government information not only renders public access to government information, but also poses a challenge to the information management and the policy-making on information technology. It demands relevant concepts and systems to be renewed and administrative procedures to be reformed. These chain reacts will inevitably change the traditional way of government administration, thus laying a scientific foundation for the policy-making and government administration. And by dint of the modern information technology, the efficiency of the management of government information will be improved by a large margin.

III. Major Problems Facing the System of Open Government in China.

In spite of the great headway made in respect of open government in China, there are still many obstacles and difficulties in the practice.⁵ Main problems can be demonstrated as follows:

First, the absence of an authoritative institution that could coordinate the policies in respect of open information.

At present, openness in various forms are being carried out in China, but with a feature of “each doing in its own way”. Mutual consistency and coordination are absent from the view. And concrete practices differ widely from each other.⁶ In the affairs of open village, the competent department is the department of civil affairs, cooperated by the department of discipline inspection and other relevant departments. It is the same case with the affairs of open towns and townships. Yet, as to other levels of open government, the competent departments and the leadership are much more complex. The departments of legal affairs, departments of personnel, departments of civil affairs and departments of supervision and etc. are all engaged. Additionally, the management of information security and the enforcement of laws in this regard also involved departments from the State Commission of Encryption Management, the Ministry of Public Security, the Ministry of State Security, the Ministry of Information Industry, the National Administration for the Protection of State Secrets to the Information Office of the State Council. With different ministries taking charge

⁵ A recent case is very reflective of the problem. According to the report by “South China Weekend” on October 12, 2000, the Editorial Department of “The Tribune on Rural Development” under the Agricultural and Industrial Commission of the Party Committee of Jiangxi Province published a booklet entitled “The Working Manual on the Reduction of the Farmers’ Burden”, in the form of an additional issue in 2000. Within half a month, 12,000 copies of the booklet were sold out across eleven areas of Jiangxi Province. Almost all the buyers were farmers. On August 11, the Editorial Department suddenly received a notice that the selling booklets must be stopped immediately and the sold books must be reclaimed. Accordingly, relevant departments exert every effort to call back the booklets according to the registered addresses of the buyers. Even some local agencies of public security received the order to take back the booklets household by household without a single escape. Their slogan is “The (negative) effects must be cleared up wherever the booklets are sold.” By the end of August, 11,000 copies of the booklet was sent back to Nancang and stored in the warehouse, waiting to be destroyed. What is most inconceivable is that, the booklet is in no sense an illegal publication, but only a compilation of the Party’s rural policies.

⁶ Over a period of time, public access to government information is called differently as: “openness of government affairs”, “publicization”, “two openness and one supervision”, “e-government”, “the system of publicizing the working system”, “freedom of information”, “open government information” and “open administration” and so on. Sometimes, these different names refer to different contents, resulting in different practices in the implementation.

of different matters, the drawback is the lack of coordination among them. And, as far as different areas and departments are concerned, concrete practices in open government are widely different. Moreover, the experiences accumulated by one department are not applicable in another. This has increased the cost of the entire system. Besides, due to the absence of a coordinating institution, an overall planning and deployment are unavailable in the openness of information. As a result, all kinds of reform can only remain in the stage of exploration.⁷

Second, the absence of a unified “Law on Open Government Information”.

The most outstanding problem concerning open government in China is the lack of unified legislation and competent department. On open government information, specific provisions have appeared in many Chinese laws and regulations. For instance: “The Archive Law” has provisions on the management and openness of government archives; “The Law on the Protection of National Secrets” has provisions on the secrecy of government information; “The Law Against Unfair Competition” has provisions on the protection of business secret; “The Statistics Law” has provisions on the management and openness of government statistics, and so on and so forth. Nonetheless, because there is no unified law to make standardized and clarified provisions on relevant problems, there are no cooperation and coordination among the departments and localities in the process of reform. Resultantly, some reform measures have been delayed or suspended.⁸ If such a situation continues after China’s entry into WTO, the practices of some sectors and localities will be deemed as not in conformity with the WTO principle of transparency. It has become a pressing task to legislate a unified law on open government information so that our legal system on open government could meet WTO requirements.

Third, in an overall perspective, open government in China still remain at the level of open working procedures. It is urgent to usher in the openness of government information.

Viewing from the system design, open government in China is always treated as the openness of the government working system. Therefore, in many local areas, the system of open government starts with the reform of working system. Reforming from the working system means opening to the public the working system including the procedures and results which were not open to the public before. In a certain sense, the working system reform is only the government’s business, or to say, is a “commitment” by the government. As how to open and what to open, they are all decided by the government. The public is only passive beneficiary. If the government does not open the systems or documents that should be open, the public can do nothing about it.

Therefore, on the basis of the achievements of open working system, the

⁷ Guangzhou was the first municipal government in China adopting local by-laws on the Openness of Government Information, implemented from Jan 1, 2003. However, during the outbreak of SARS around the same time, the by-law was silent and the public could not get any information from relevant government agencies.

⁸ For instance, the Credit Registration and Consultation System under the China People’s Bank possesses China’s largest database on capital and credit. But due to the absence of relevant laws and regulations, its information can not be open to the public. This has directly effected the establishment of China’s credit system which is so urgently needed in development of market economy. For another instance, despite the efforts by the Central Government in promoting the informatization of national economy and the project of “on-line government”, due to the lack of relevant laws and regulations, ‘on-line government’ can not duly play its role. Similar cases are innumerable.

openness of government information shall be started as soon as possible so that the government information could be available for the free use of the public. Of course, because information is a kind of resource, the government agencies will find all excuses to keep it and make profit from it. This is happening everywhere in this country as well as other countries across the world. In order to usher in the openness of government information in the real sense, deep-going reform must be conducted in both the system and the concept. Outmoded conventions and customs that are not suitable for the market economy and information society must be get rid of and all obstacles hindering the free flow of government information must be removed, so as to guarantee the freedom of the public to acquire and utilize government information.⁹

In the real life, because the system of rule by law in the administrative field is not yet set up completely, the government agencies may make money for themselves through imposing fines and charging fees and etc. Besides, before the advent of internet and the introduction of open government information, the public have few chance to use government information, or to say, have no access to government information at all. Along with the gradual establishment of the system of administrative rule by law, there is less leeway for the government agencies to trade power for selfish interest. But, with the public demand for government information increasing day by day, it is foreseeable that, because the financial conditions for the government agencies cannot be improved under the present condition, the trading of government information for sector interest will come to the fore as a new phenomenon. Actually, this phenomenon has existed in some local areas and departments under various disguises. They have intangibly raised the cost of government information and, thus, obstructed the openness and free flow of government information.¹⁰ Today, in some internet services provided by some government organs, even the access to some new laws and regulations is not free of charge. Maybe, someday, we will shamefully find that the Chinese people could acquire *gratis* the latest foreign laws and regulations and foreign government information through internet, but have no access to Chinese laws and regulations and our own government information, because of its hefty price. The result will be

⁹ According to Clause 1 of Article 5 of China's Copyright Law, the protection of copyright does not apply to "laws, regulations, and resolutions, decisions and decrees of the state agencies, and other documents which are of the nature of legislative, administrative and judicial documents, and other official translations." In compliance with this provision, almost all government documents shall be open to the free use of the public. Of course, the concrete implication of the provision in the copyright law needs to be clarified further. It is yet to be clarified as to whether all the government information and archives are covered by the provision. Additionally, viewing from the provisions in some other laws and regulations, the spirit of encouraging the free use of government information, which is cherished in the copyright law, is not followed and supported in a consistent way. For instance, it is expressly provided in "The Regulations on the Management of the Compilation, Edition and Publishing of Laws", which was promulgated by the State Council in 1990, that compilation of laws can only be undertaken by the authority, whereas non-governmental organizations can not compile laws for their internal uses. The protection provided in the Regulations on the compilation of laws are much more forceful than the protection provided by the copyright law on the works with copyright. It has, in fact, made the authority the sole supplier of the compilation of laws. We can understand the original intention of such doing as trying to warrant the high quality of the compilation of laws, but we cannot help doubting its effectiveness and rationality.

¹⁰ Cite the commercial and industrial registration of the lawyers in different localities as an example. The materials of national registration are not put on the internet. The cost for two lawyers in different areas to inquiry about the materials of registration is actually thousand of times higher than the cost of the registration materials themselves. Moreover, due to sector blockade, even the highest information authority of the state, or even the State Statistics Bureau, cannot gain access to the information in the hands of other government departments.

information monopoly and blockage in the information society.

Four, it is necessary to modify the secret law and other relevant laws and scientifically define the scopes of “open” and “not open”.

To translate the principle of transparency into reality, the most important thing is to properly handle the relations between “open” and “not open”. Otherwise, the openness might adversely affect the vital interests or national security of the state. In China, the prevailing secret law was legislated ten years ago. In view of the classification, declassification, punishment on secret leakage, relief measures and etc., the system has lagged far behind the requirement of the actual situation. Some which shall be defined as secrets are not defined as secrets; Some which shall not be treated as secrets are treated as secrets; Some which shall be kept secret are not kept secret; Some which shall not be kept secret are kept as secret. All these phenomena are often seen here and there. This has constituted a constraint to the openness of government information. And some leakage of state secrets has done serious harm to the state interest. Obviously, this kind of conditions fails meeting the WTO requirements on transparency. To ensure the coordinated development between the secret system and the open government system in China, the modification of the current secret law has been a must.¹¹

Observing from the experiences of the foreign countries, there are always some exception in the practice of open government. In the case of exceptions, the concerned government information is usually not open to the public. Secret documents are among the exceptions. But apart from secret documents, there are some other government information which cannot be open to the public.¹² In China, as to whether the government information other than secret documents can be open to public or not, there is no scientific and uniform provision. Resultantly, the scope of secret is defined much wider than needed, and non-secret documents are also kept away from the public. Except system reasons and the reason of working style, the failure to correctly define the scope of secret and distinguish non-secrets from secrets is the most important factor that contribute to the blockade of government information. Only when there is a reasonable definition on secret and non-secret information and a clear distinction between what may be opened and what may not be opened, could there be a sound foundation for the realization of open government information.

In the defining of the scope of open information, the coordination between the current secret law and criminal law is also a problem. According to the Secret Law, the state secrets fall within three categories: top-secret, secret and confidential. On each classified document, the competent agency must indicate its classification. A document without an indication of classification does not constitute a state secret and its disclosure does not constitute a secret leakage. However, according to Article 111 of the Criminal Law, any stealing, inquiring, collecting or buying of state secret or intelligence for the purpose of illegally providing to foreign institutions, organizations

¹¹ In terms of the strategy of legislation, because the formulating of a special law on public access to government information will be inevitably confronted with many difficulties, it might be a good alternative to modify the relevant existing laws including the Secret Law for the purpose of providing further guarantee to the people’s right to know the truth.

¹² Sweden’s Law on the Freedom to Publish provides seven exceptions. The U.S.’s Law on Freedom of Information provides nine exceptions. Among all the exceptions, classified documents are only one kind of them.

or personnel constitutes a crime, and any leakage of state secret constitutes a crime. But what kind of information belongs to intelligence? There is no provision in Chinese law. This gives rise to a problem. A document without an indication of its classification could also be treated as “intelligence” in the later judgment and its disclosure could also constitute a crime.¹³ If the provision is not clarified and the Law is not coordinated with the Secret Law, along with the expanded openness of information, it will become the major factor containing the development of the system.¹⁴

In defining the scope of openness, another note-worthy problem is the relations between government information and archives. In foreign countries, archives are governed by the Law on the Freedom of Information. All the archives that do not fall within the scope of exceptions can be treated as the same with other government documents and can be disclosed to the public. In China, according to relevant laws and regulations, government information is divided into archives and non-archives. Archives are governed by Archive Law, but non-archives are governed by no law. As to government archives, according to Article 19 of the Archive Law, “Generally, the archives kept by the State can be disclosed to the society after the expiration of 30 years as of the formation of the archives. In the cases of economic, scientific, technological, cultural and other relevant archives, the period could be shorter than 30 years; while in the cases of the archives that involve state security or other vital interests which are not suitable for disclosure upon the expiration of 30 years, the period shall be longer than 30 years. The specific period shall be decided by the competent archive management agency of the State.” That’s to say, the Archive Law has restricted the disclosure of the archived government information to the public. In principle, the archives which do not belong to classified documents are also kept for 30 years before they can be disclosed to the public. Therefore, the Archive Law has actually posed a restraint to the construction of open government, instead of giving facilitation to open government. If any law on open government information is to be legislated, the problem of its relations with the Archive Law must be addressed first. Otherwise, the law could only be applicable to non-archive documents and the scope of application will be largely limited.

Fifth, it is necessary to grant the public the right to inquire about government information.

Due to the fact that the practice of open government in China is mainly limited to the working system, the forms of open government mainly belong to active forms of openness by the government. For instance, the government agencies post in the

¹³ According to Article 5 and Article 7 of “The Explanations on Some Questions in Regard of the Applicable Laws in the Trial of the Cases of Stealing, Inquiring, Purchasing and Illegally Providing State Secrets and Intelligence to Foreigners”, if the concerned party steals, inquires, purchases or illegally provides the information to foreigners when he is aware or should have been aware that the item, although without indication of classification, is of great concern to the State security and state interest, a punishment shall be imposed according to Article 111 of the Criminal Law. In the trial of the cases of stealing, inquiring, purchasing or illegally providing the state secrets, it shall be determined whether the concerned items belong to state secret and what kind of classification the concerned items fall within. And the determination shall be made by the State Department of Secrecy. These two articles imply that the materials or information without indication of classification could also become secrecy or intelligence in the later determination.

¹⁴ In reality, there have occurred some very disputable cases.

offices the working systems and procedures, print and issue work manuals, set up bulletin boards, hold propaganda meetings and put government information on internet and so on and so forth. Viewing from the actual effects, these measures have played an important role in letting the people know more about the government work and defending the legal rights and interests of the people. Nevertheless, without fixed forms of disclosure, the publicizing of the working system is largely limited. Especially with the passing of the time and with the reducing of the pushing force of the government, it will become more and more apparent that there exists no smooth avenue for the public to know the government working system.

Within the WTO framework, establishing information inquiry point has become an important form to affect government transparency. This actually involves the problem of the people's right to apply for government information. When ushering in the system of open government information, it is important to grant the applicants with some procedural rights so that they are entitled to acquire the information by filing applications with the government agencies under some certain conditions. To a certain extent, this offsets the lack of open channels at the present stage, accumulates experiences and creates conditions for the overall launching of the system of open government in a later time. In this doing, it is necessary to research on a series of problems including the costs, charges of fees, reduction and exemption of charges, mechanism building, application procedure and reform of working methods and etc. Only after the solution of all these practical problems, could we make a breakthrough in the forms of open government.

Six, the Internet shall be fully utilized in the construction of open government.

Public access to government information is not a system without price. The storage of information needs a cost, and providing the information to the public also needs a cost. Under the traditional system, due to the binding of the financial resource, the public had to share in the cost. Some people even could not acquire government information because of economic reasons. Yet, the advent of internet completely reversed the situation. By releasing government information through internet, the cost for the public to apply for and acquire government information was significantly reduced, thus enabling the public to enjoy the right to know the truth on an equal footing. At the same time, internet also creates for the government agencies great convenience for the information management and storage and thus largely reduces their workload.

Observing some government websites, it is perceivable that the role of internet has not been given full scope. Some government websites are actually commercial websites or websites on special fields, showing a dislocation of roles; Some government websites play the part of the press and newspapers, carrying contents which are already published by the press; Some government websites carry very limited contents and remain not renewed for long time, failing to play the role of information carrier.

The characteristics distinguishing government websites from other websites shall be the accuracy, all-inclusiveness, timeliness and authoritativeness of the government information published on them. Through the government websites, the

public could gain access to government information in the most efficient way. We shall make full use of internet to made public government information. At the present stage, it shall be considered to set some standards and invite the public to make evaluation of the government websites, thus prompting the project of on-line government to be developed in depth. In a long-term view, deep-going studies shall be conducted on the new problems caused to by the utilization of internet in respect of public access to government information, including the new challenges posed to the forms of information storage by the rapid update of technology, the assortment and definition of information, the openness and security of information, the pluralization of information resources and so on and so forth. Only by conducting deep-going researches and duly settle these problems, could we give full play to the role of internet in ensuring the public access to government information.