Considerations about Chinese E-commerce legislation

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BACKGROUND

A few days ago, The queen of the Internet, Mary Meeker, the KPCB company issued a Report:

1995, The world's top 15 Internet Co,13/15 are American, the other are one Canada,one Germany.

2015,11/15 are also American. But the 4/15 are all Chinese company.

Third is alibaba, sixth is tencent, eighth is baidu, eleventh is jingdong.

The three company born in 1999, jingdong born in 2005.

Then, what's happen in china in the 15 years.

BACKGROUND

全球互联网上市公司排名（按市值排名）

1995年12月		Home Country	Market Cap. ($MM)		2015年5月		Home Country	Market Cap. ($MM)
	Company					Company		
1	Netscape	USA	$5,415		1	Apple	USA	$763,567
2	Apple	USA	3,918		2	Google	USA	373,437
3	Axel Springer	Germany	2,317		3	Alibaba	China	232,755
4	RentPath	USA	1,555		4	Facebook	USA	226,009
5	Web.com	USA	982		5	Amazon.com	USA	199,139
6	PSINet	USA	742		6	Tencent	China	190,110
7	Netcom On-Line	USA	399		7	eBay	USA	72,549
8	IAC / Interactive	USA	326		8	Baidu	China	71,581
9	Copart	USA	325		9	Priceline.com	USA	62,645
10	Wavo Corporation	USA	203		10	Salesforce.com	USA	49,173
11	iStar Internet	Canada	174		11	JD.com	China	47,711
12	Firefox Communications	USA	158		12	Yahoo!	USA	40,808
13	Storage Computer Corp.	USA	95		13	Netflix	USA	37,700
14	Live Microsystems	USA	86		14	LinkedIn	USA	24,718
15	iLive	USA	57		15	Twitter	USA	23,965
Total Market Cap of Top 15			**$16,752**		**Total Market Cap of Top 15**			**$2,415,867**

@KPCB Source: Morgan Stanley, Capital IQ, Bloomberg
Note: Market capitalizations are as of May 22, 2015 and December 31, 1995, respectively

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用户对内容的掌控明显提升 - 1995年至2015年

BACKGROUND

I think, The major reason are the seven:

1、 China join the WTO since 2001;

2、 Per capita GDP of China exceeded 1000 dollars; Consumption began to upgrade, which happened in 2003.

3、 Online payment after 2005 began to spread, such as Alipay.

4、 Private logistics courier company gradually become the main logistics.

   The state-owned logistics companies such as China post can not meet the market demand

5、 After the 2008 financial crisis China factories major from foreign trade to domestic trade.need new sales plaform

6、 The government has generally adopted a relaxing control measure. Such as tax, business registration, license, platform responsibility, financial services, etc.

7、 China's second and three line citys, rural areas, towns, there is a huge consumer demand has not been met,even now.

BACKGROUND

In McKinsey Co. advisory report in 2013, The four points of the electronic commerce of China and the United States are compared.

The results may be similar to Europe:

  1、 High proportion of trading platform transactions.

  2、 Electronic technology companies engaged in e-commerce rather than business enterprise e-commerce.

  3、 C2C get the Large proportion.

  4、 The majority is physical products, such as shoes, not virtual products and services.

These have decided the form and pattern of the electronic commerce in China today, With greater creativity and social influence.

These are why the four companies were able to rise so rapidly in the twenty years.

BACKGROUND

Further more, in the last five years, this great situation has been further developed. Mainly in:

1、Chinese smart phones and mobile Internet rapidly spread.

2、Support policy upgrade and deepen. One is the Internet PLUS policy,which is the most popular word in China now.Another is policy to encourage innovation.

3、O2O Rapid development, such as taxi software, Internet Banking, online meal ordering, online medical treatment.

Yu E Bao,which founded in February 8, 2014.At that time, ninety-nine percent of people do not know it. But now, ninety-nine percent of people know Internet Banking and **Yu E Bao**.

4、Various applications start to integrate, For example, Cloud Computing, Big Data, Logistics Network, Smart City, Wearable Devices, Smart Home.

Great opportunities are showing, According to Jack Ma, Alibaba only completed a maximum of thirty percent of their task. This is to say, when they complete, they will exceed Apple.

BACKGROUND

But the problems that we are facing in the law are also obvious and noticeable.

　1、The legal responsibility of the trading platform is not clear in many cases.

　2、The government is not adaptive to the management of such a large and active market.In particular, a virtual market.For example, at the beginning of this year, State Administration for Industry and Commerce and Alibaba made a big conflict incident.

　3、The lack of adequate specification of the competition between the electronic commerce enterprises or in the trading platform,such as the famous war between the 360 and QQ company.

　4、There is a huge contradiction and friction between the e-commerce enterprises and the traditional industries in the competition,traditional industries give government big press.

　5、There are many legal gaps, some new legal subjects and objects can not be protected in the existing laws.

BACKGROUND

In this way, in the next ten years, in addition to the electronic commerce law, China also need to legislate many laws:

Information security law, Personal information protection law, Credit law, Internet banking law, Internet management related laws.

Next, I will still focus on the introduction of this has been started in Oct. 2013, is expected to form the first draft,in the end of this year,the e-commerce law legislation.

Four pictures about Chinese E-commerce legislation

Three principal advices about legislation

Three advice for the international Internet governance

First picture about Chinese E-commerce legislation : **Picture of relevant laws**

民商法
- 民法通则
- 合同法
- 继承法
- 消费者保护法
- 物权法
- 电子签名法
- 海商法
- 侵权责任法
- 拍卖法

知识产权法
- 版权
- 商标
- 专利
- 不正当竞争
- 信息网络传播权
- 软件保护

新型权益
- 域名
- 店铺名
- 账号邮箱
- 虚拟财产
- 虚拟货币
- 信用等级
- 个人数据

经济法
- 公司法
- 证券法
- 商业银行法
- 票据法
- 保险法
- 税法
- 产品质量法
- 经济合同法
- 广告法
- 反洗钱法
- 反垄断法
- 价格法

刑法
- 个人信息保护
- 网络信息安全
- 知识产权犯罪
- 金融犯罪等

社会法
- 未成年人保护法
- 劳动法
- 劳动合同法
- 就业促进法

行政法
- 行政处罚
- 行政复议
- 行政许可
- 食品卫生
- 治安处罚
- 身份证法
- 海关法
- 档案法
- 道路交通安全法

程序法
- 民事诉讼
- 刑事诉讼
- 行政诉讼
- 仲裁法
- 证据
- 管辖

国际私法
对外贸易法
相关部门法
- 邮政法
- 公路法
- 港口法
- 民用航空法
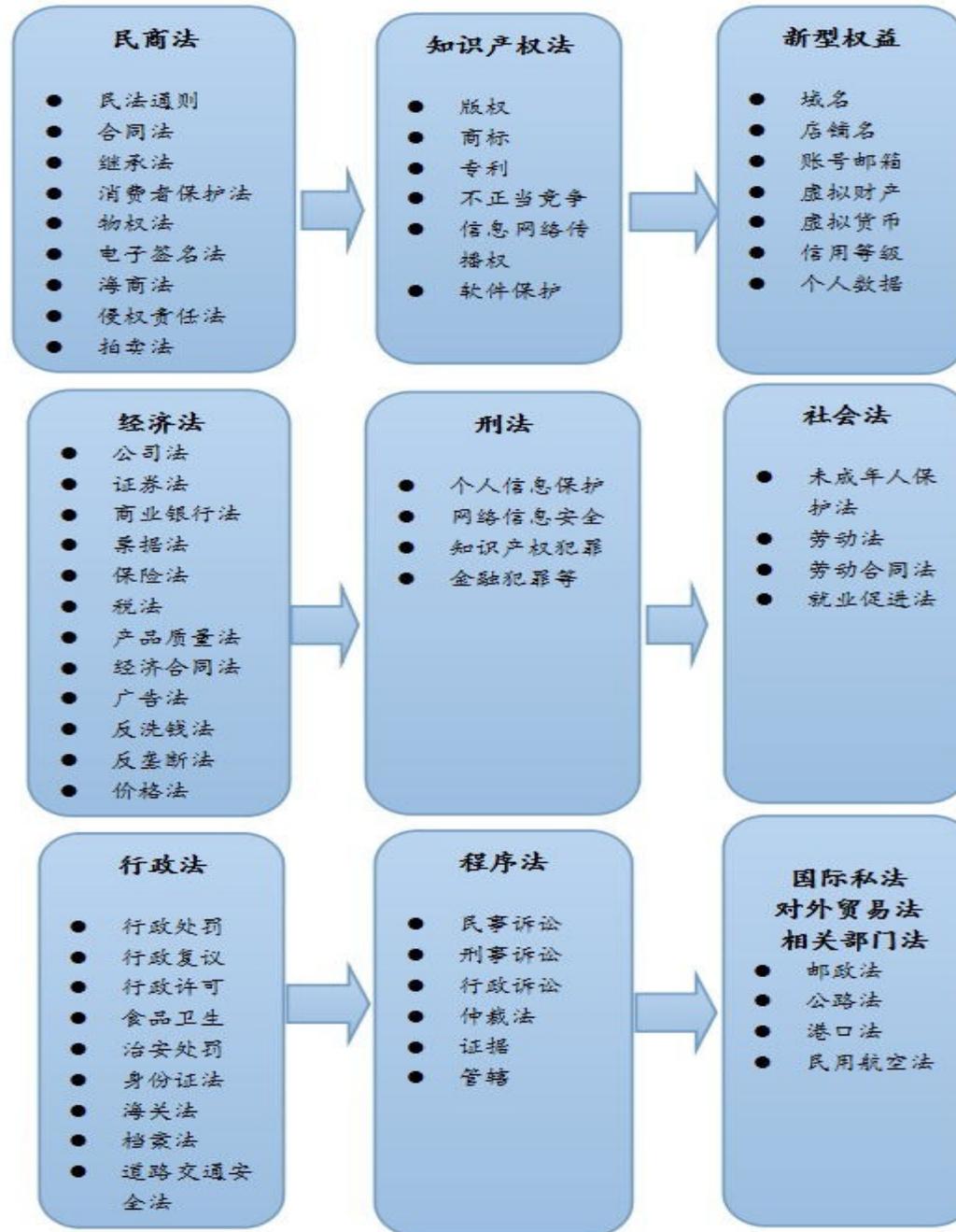
So many laws are relevent to E-commerce, almost all of the laws,we sperate these to two kinds:

Law with strong relevance: general rule of civil law, Contract Law, Law of Electronic Signature, tort liability law, product quality law, Law on Protection of the Rights and Interests of Consumers, food safety law and so on.

Law with weak relevance: inheritance law, maritime law, law on protection of Minors, labour law and so on.

In this way,the task of us are easier.

Second picture about Chinese E-commerce legislation :
Picture of E-business legislation's system, this system formed before the legislation: We classfied then to six scopes: website management,information flow,fund flow,safegard and maitenance rights,special field of E-commerce. About 500 regulations and department regulations, local regulations.

| 电子商务法	商流：《电子签名法》、工商总局《网络交易管理办法》、商务部《第三方电子商务交易平台管理办法》、《杭州市网络交易管理办法》、深圳市关于可信交易环境的系列规定，《上海市促进电子商务发展规定》等				
网站管理	信息流	资金流	物流	保障、维权、调解、仲裁	特定领域电子商务
《互联网IP地址备案管理办法》 信息安全的相关规定	《互联网信息服务管理办法》 个人信息保护的相关规定	《非金融机构支付服务管理办法》等	《快递市场管理办法》等	《消费者权益保护法》 《侵权责任法》 《仲裁法》等中的部分条款	《食品安全法》、《广告法》、《对外贸易法》等中的部分条款

The third picture about Chinese E-commerce legislation: **The componet of the E-commerce ecosystem:** application, service, environment
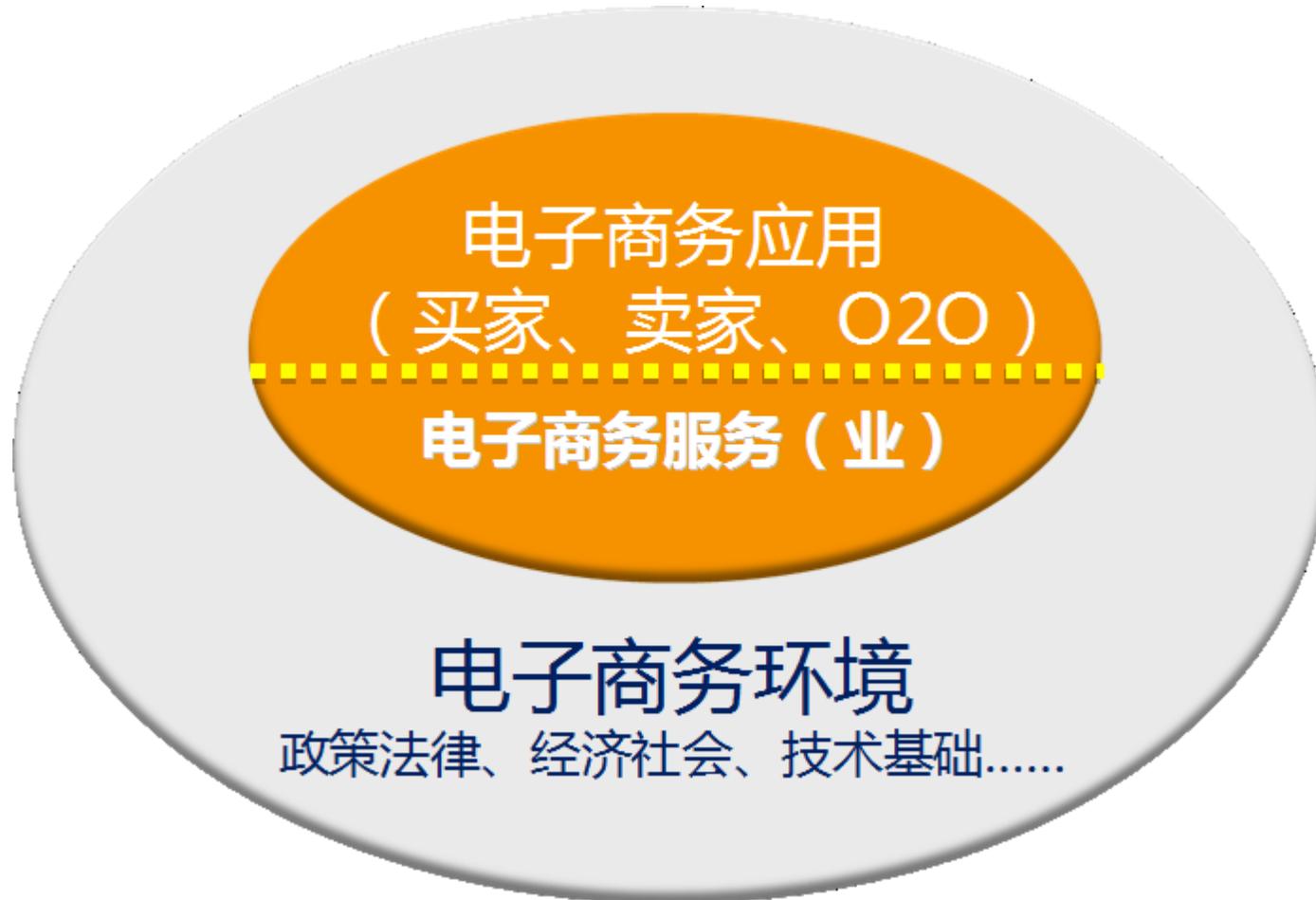
The map of the E-commerce services

其他服务
社交网络、互联网金融、O2O、网络游戏、数字娱乐、网络医疗等

海外买家和消费者

独立网站卖家

买家
（消费者、企业和其他组织）

交易服务
（售前售中和售后：展示、信息披露、订单处理、咨询、维修退换、投诉处理等）

海外卖家代购服务商

支撑服务
（支付、物流、数字认证、信用、数据服务）

产品
（一般产品；特殊产品：食品药品、农产品）等

卖家
（个人、个体工商户、公司等）

服务
（一般服务；软件和数字产品；网络游戏和虚拟财产）

衍生服务
（代运营、店铺装修、培训、模特、店铺转让等）

商盟与行业协会等

交易平台服务
规则、消保、安全、违法信息处理、身份验证、商家违规处罚、信用、搜索、广告、调解、欺诈防范

法律法规、政策文件、标准、合同、司法、行政执法等
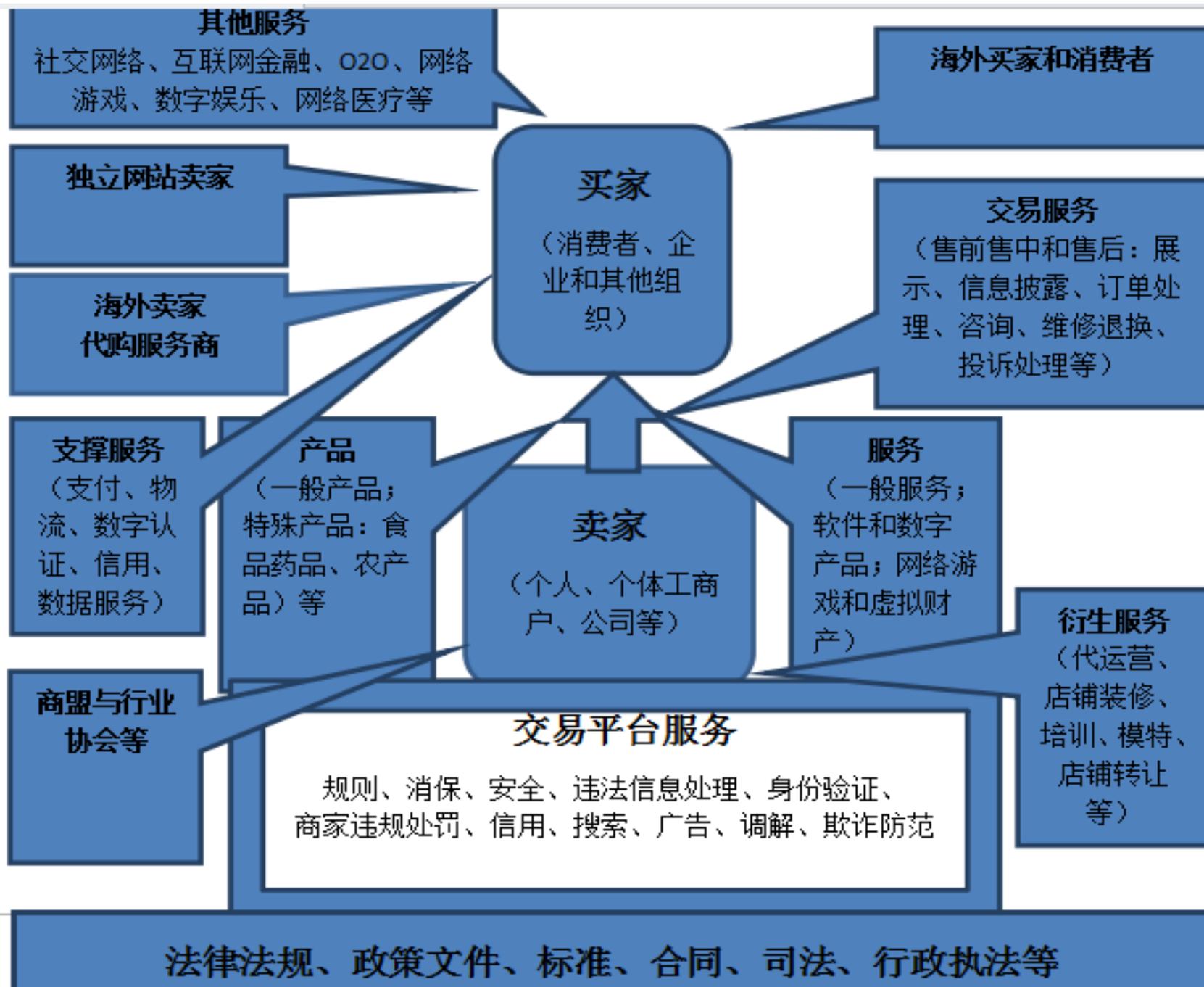
subject conclued : seller, buyer, trading platform, main service provider, **derivative** service provider, purchasing website, overseas' seller and buyer, independent website, product producer, server ;

behavior conclued : trading service, third-party board service, main service, derivative service, purchasing service , on-line service

Therefore, the difficulties of E-business come from mainly two aspects:

First, facing plentiful new main parts, subjects and behavior, deffrent to off-line trading.

  New subject: trading platform, purchasing, websites

  New object: Including many custom-made product of C2B, on-line games and virtual property.

  New service: Including third-party board service, purchasing service, some main service and derivative service

Second, E-business' complexity mainly shows on the complexity and diversity of trading relationship.

Fourth picture about Chinese E-commerce legislation : **Compare between management of on-line and off-line**

工商登记、行政许可、商品检验、年检	抽查	消费维权、司法救济、专项行动、行政处罚、刑事责任

交易前	交易中	交易后

实名审验、网站备案、消保基金、大数据风险预警	信用评价、社交网络、网规约束、第三方支付担保交易	消费维权、司法救济、法律责任、平台责任、大数据可追溯
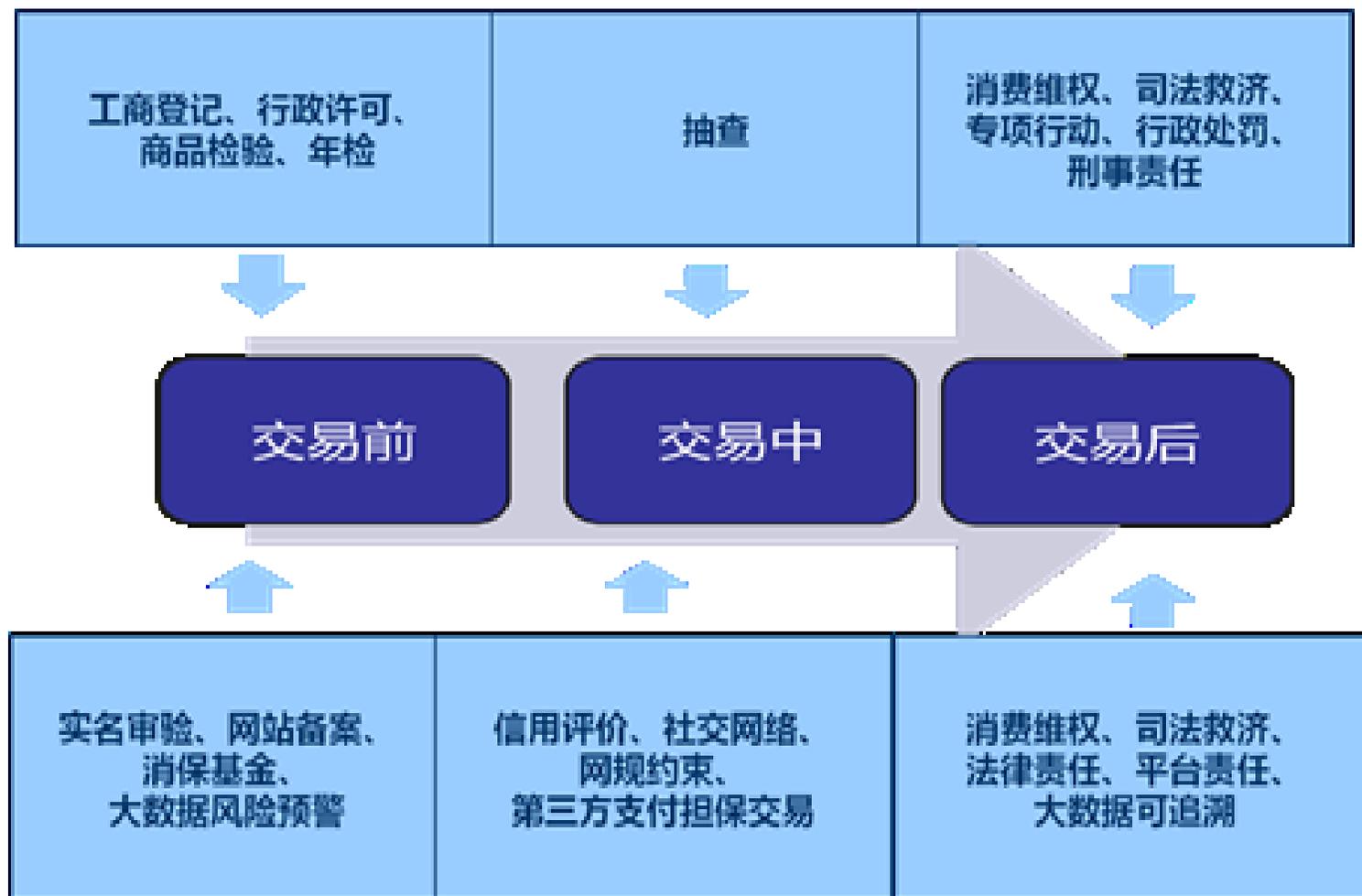
Managements on-line are more various. Such as, Taobao has the rules about dock point, "lock in a small room", limit the number of new online product, which is hard to realized off-line.

Managements on-line distribute more balance. However, managements off-line concentrate more on after-trading than before-trading and during-trading; basing on transparent information and trading record, on-line management can bring many measures which work even before anything bad happens.

Management on-line is all-round. Managements off-line are always just about seller but not about the buyer; but there are also credit record of buyer online.

The first proposal for the principles of legislation

Persist in the problem-oriented policy and base on practical issues

This means, the legislation cannot solve all the E-commerce problems.We only resolve the things can be figure out.

Now we have only one year, but the aguments are more than commen views.

The second proposal for the principles of legislation

Be clear of the boundary with other laws and legislations

E-commerce Law regulates issues in E-commerce field that are peculiar and urgent and E-commerce Law should have its own genes, characteristics and fields. For example, issues like promoting development, eliminating legal obstacles, upgrading of governance of the government, regulating existing rules into laws, clarification of platform responsibility, promoting cross-border E-commerce and dispute settlement mechanism should be stressed.

Thus, we can avoid conflict with other laws in execution. To solve these interlinked problems, we should mainly rely on making amendments on relevant laws rather than solely depending on E-commerce Law.

Based on these considerations, issues like consumer protection in E-commerce, Internet unfair competition, tax revenue of E-commerce, personal information protection, electronic payment and E-commerce credit are mentioned, but these issues are not covered in separate chapters.

The third proposal for the principles of legislation

Encouraging exploring governance innovation is the only way to improve governance

The first, in this highly innovative and active e-commerce market, we need to depend on innovative ideas and means , Internet thinking, and big data technology to solve a lot of new governance problem and then achieve the transformation and upgrading of governance. The supervision which can match with e-commerce - the distinct form of business - must be based on using internet to manage internet and governance innovation and must be in e-government form.

We cannot simply use old ideas to solve problems. For example, "one office site with multiple licenses" was strictly forbidden, but in 2010 the market administration bureau in Shenzhen boldly broke up the regulation, permitted e-commerce enterprise applying for one site with multiple licenses.

The second, e-commerce management puts emphasis on social governance, instead of making government the only dominant force. It depends fully on platform, network operators, internet users and professional institutes. It also adapts new methods such as credit system and big data technology to carry on dynamic governance.

The third, the supervision of e-commerce emphasize that the logic of "seeing is believing" must be unreliable. We need to abandon the thoughts that atomic must be more reliable than bites and that face-to-face audit is more trustworthy than online audit. These thoughts violate the non-discrimination principle established by international e-commerce legislation.

The forth, the character of e-commerce governance is more afterwards principle, and due supervision principle, in order to achieve the transformation from management to governance and service.

Disorder is not certainly bad. Chaos is disorder, but it is also the most vital one. We need to take full advantage of ecology concept to govern e-commerce. Disturbing the order does not necessarily mean breaking laws and rules, and we only need to stop it timely when it damages legitimate interests. Some unreasonable order is ought to be broken.

The three advice for the international Internet governance

1、We can 't use our normal conception and logic to understand and govern internet. The internet just like a mirror. It let we see ourselves and our society. But these are opposite. The onceptions are not clear,the logic is not reasonable,the experiences are not useful next time,the facts are all broken up.When you ask the four companies what is their experience to success, they must reply youthe same answer,no experience is the most impaotant experience.I think it's similar to jurisprudence and governance.

2、The identity verification are two parts: who am I, which one is me.The second question is more difficult. The keywords of verification "wich one is me" is the method cannot be delivered to others anyway. It bind with the certain human unique correspondence. Such as iris, not the password and CA.

3、The new problem is more and more human will be instead in internet. The machine and software will have their own ideals. These happen rapidly than we imagine, these problems should be more concern.

Your comments and criticism are greatly welcomed!

Thank you!