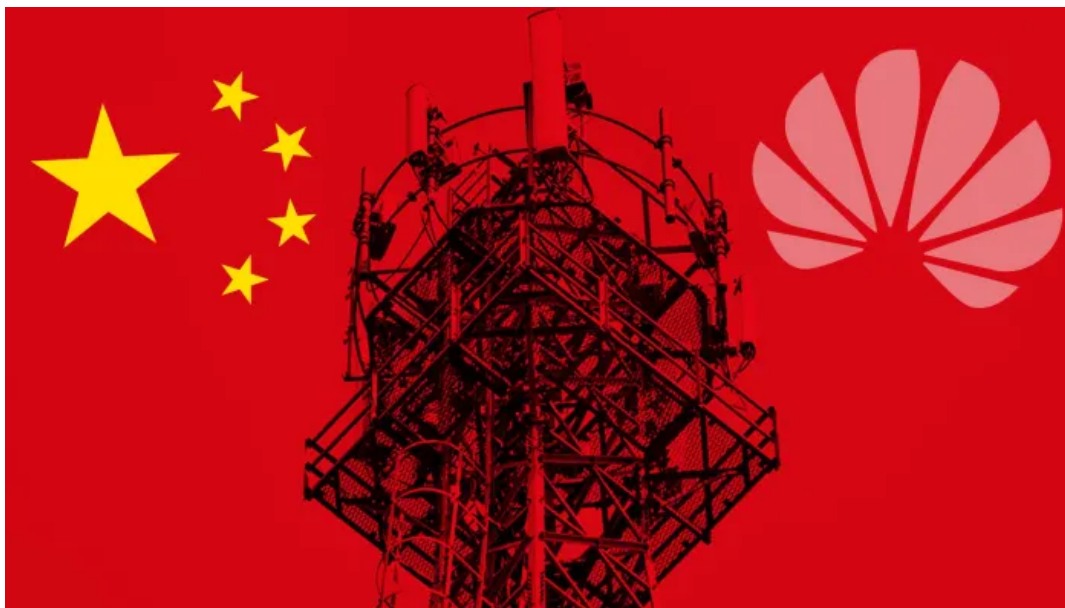


**Huawei Technologies**

## Is Huawei compelled by Chinese law to help with espionage?

Telecoms group prepares 37-page legal argument to clarify its position



**Yuan Yang** in Beijing MARCH 4 2019

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One of the cornerstones of the case against Huawei, as governments around the world consider whether to allow the [Chinese company](#) to build their telecoms networks, is that it is obliged by law to help China's intelligence operations.

A number of Chinese laws state that Chinese individuals and organisations must, if asked, co-operate with intelligence work.

But Beijing has repeatedly insisted that Huawei is not obliged to help with intelligence gathering in its overseas business.

“Some US government officials . . . have been playing up the security risks of certain Chinese companies' products,” said the vice-minister of foreign affairs, Zhang Yesui, on Monday. Mr Zhang said that although organisations and citizens were obliged to assist national intelligence work, “China asks companies to strictly abide by local laws” while abroad.

To try to dispel concerns, Huawei commissioned a 37-page legal opinion from Zhong Lun, a Chinese law firm, which it submitted to the US Federal Communications Commission last May. In a letter to the UK parliament in January, it said this advice had been reviewed by Clifford Chance, the London-based law firm.

Clifford Chance said that it “is not authorised to advise on PRC law” but believed that Zhong Lun’s opinion “provides a sound analysis”.

However, other lawyers and tech analysts disputed the strength of Huawei’s legal opinion and its conclusion that Chinese law cannot compel the company to gather intelligence against the interests of customers. In particular they noted that the law has never been tested in this area.

Here are four claims from Huawei’s document and the response from outside experts.

### **1. Huawei has no duty to implant backdoors in its networks, because there is no law that empowers government authorities to demand this.**

In recent years the Chinese government has expanded its ability to collect data for national security purposes and has written new laws expanding the scope of intelligence-gathering operations.

China’s criminal procedural law already compels “workplaces and individuals” to comply with technical investigative methods, such as wiretaps.

The country’s recently issued national intelligence law gives “state intelligence agents” the ability to demand co-operation from organisations while carrying out “intelligence work”, which is vaguely defined.

These laws do not clarify what counts as “co-operation”. Installing a backdoor — a route hidden to the user, by which authorities could access and control data — is not explicitly mentioned in law, as Huawei’s lawyers point out.

But this line of argument is “disingenuous”, said Lester Ross, a partner at WilmerHale in Beijing. “It doesn’t address the larger point, which is how Huawei is obliged to co-operate with Chinese intelligence work.”

Zhong Lun responded that national intelligence law does not compel Huawei to conduct “malicious activities”, and that this would breach the principle of privacy as enshrined in China’s constitution.

Huawei would find it especially difficult to refuse a request to provide data stored in China to authorities, said other lawyers.

Wang Congwei, a partner at Beijing Jingshi law firm, said: “[Huawei] cannot refuse, the law stipulates that companies have an obligation to co-operate for national security and investigation needs. National security laws, the anti-terrorism law and other laws all require companies to assist the judiciary.”

### **2. There are “safeguards” built into Chinese law that defend businesses’ “legitimate interests”.**

Under Chinese law, intelligence agents cannot compel companies to act against their “lawful” or “legitimate” interests.

But both foreign and domestic tech companies are routinely asked to give up data against their business and customer interests. In 2005, the Chinese journalist Shi Tao was sentenced to 10 years in jail after Yahoo provided information on his emails.

There are no previous public examples of companies standing up to Beijing to refuse such requests — other than leaving the country entirely.

“There is no such case in China and no previous experience,” said a partner at a Chinese law firm who asked not to be named, when asked what would happen if Huawei refused to comply. “China does not have such a litigation path,” the lawyer concluded.

“Given such cases are rare in China, it is normal that there is no published precedent,” said a Zhong Lun spokesperson, who added that the national intelligence service is obliged to “respect and protect human rights”.

The Chinese law firm partner drew a contrast between China’s lack of legal recourse for tech companies against investigators’ demands, and the example of Microsoft winning an appeal against the US Department of Justice, which had asked the Redmond-based giant to turn over data stored in Dublin. The US has since enacted a specific law forcing companies to turn over data stored overseas.

### **3. “Huawei’s subsidiaries and employees outside of China are not subject to the territorial jurisdiction of the National Intelligence Law”.**

The National Intelligence Law mandates intelligence agents to do work “within and outside of” China, and to compel organisations to assist them in their work. State security officials have in the past travelled to the US to harass practitioners of the Falun Gong spiritual group.

“I think the territoriality issue is a red herring,” said Paul Haswell, a partner at Pinsent Masons in Hong Kong. “Regardless of what any law says, if the state asks you to do something, you’ll face consequences if you don’t, be they legal or more sinister. The [Communist] party is supreme and has the final say on everything.”

### **4. The “scope” of anti-terrorism work is “direct and explicit” under Chinese law, as is counter-espionage work.**

Huawei’s lawyers argue that Beijing is bound by law to demand assistance only in order to meet “clear and specific [counter-espionage] goals”.

But China has interpreted “national security” broadly to include investigating anyone, from NGO workers to Chinese nationals working for foreign media.

*Additional reporting by Nian Liu in Beijing and Barney Thompson in London*

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