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Red Light, Green Light: Has China Achieved Its Goals Through the 2000 Internet Regulations?

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NOTES

Red Light, Green Light: Has China Achieved Its Goals Through the 2000 Internet Regulations?

ABSTRACT

In the mid-1990s, when the Internet began to burgeon in China, many thought that the rule of the Chinese Communist Party (CCP) would finally come to an end. The combination of foreign capital and trans-border information exchange promised a potential influx of democratic ideas and ideals. The CCP responded with both physical and regulatory limits on the use of the Internet by the Chinese people. Some commentators characterized these limits as feeble attempts by the CCP to control a nebulous medium. Others viewed the limits as ineffective steps by the government to become a highly developed authoritarian state.

This Note posits that the CCP seeks to do neither. Instead, the CCP's goal is simple: to reap moderate economic benefits while retaining political power. By regulating how Chinese businesses and individuals use the Internet, the CCP retains political power despite the globalizing effect of the Internet. It does this by dominating the Internet economy and monitoring information exchanges to suppress political insurgency, while deriving economic gain from Internet development. Viewed in this light, economic and informational regulations are very much a success for the CCP.

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I. INTRODUCTION

Edward Tian wants to bring broadband Internet access to the People's Republic of China.¹ Tian is the CEO of China Netcom Communications (CNC), a state-owned enterprise.² At forty gigabytes per second and twenty thousand kilometers in length, his project will be one of the fastest and longest bandwidth networks in the world.³

In a nation where phone service is a luxury, how can entrepreneurs like Edward Tian sell bandwidth? The answer is simple: the Chinese Communist Party (CCP) desperately wants to take advantage of the wealth offered by the Internet. Tian's motivation, however—"to give a voice to the Chinese people"⁴—is precisely what makes the CCP leery.

One central authority has always governed China. Today, the Chinese Communist Party rules China. In order to garner support, the CCP has historically used the media to communicate with the people. The CCP censors media opinions that dissent from the CCP message.

The CCP uses similar censorship tactics on the Internet. Like censorship of traditional media, the CCP uses physical means to block access to the Internet. The CCP has also instituted various regulations delineating permitted and forbidden uses of the Internet.

Most recently, the CCP issued a cluster of regulations in 2000. These regulations can be divided into two broad categories—economic and informational. The economic regulations place requirements on companies doing business online. The informational regulations

1. David Sheff, *Betting on Bandwidth*, WIRED, Feb. 2001, at 146.

2. *Id.* at 148-49, 151 (noting that only a very small percentage of the company is held by employees).

3. *Id.* at 146, 152.

4. *Id.* at 150.

restrict the type of information companies can transmit or permit their users to transmit via the Internet.

With a population of one billion, China represents one of the largest potential markets in the world. The regulations cost the Internet industry a considerable amount of revenue. Though the CCP embraces the Internet and its benefits, it is not willing to sacrifice control.

Most commentators view the current regulatory scheme as either a step towards high authoritarianism or as a futile attempt to control the Internet. However, these views presuppose that the CCP uses current regulations to achieve a grand predetermined goal—either a system of government that is similar to that of a highly authoritarian state or a totalitarian stranglehold on an intangible medium. This Note refutes both predictions. Analyzing the regulations within their political and historical context reveals that not only will the regulations prove to be effective, but also that the reason they will be effective is because the CCP's regulation of the Internet is consistent with its regulation of traditional forms of media. This consistency allows the CCP to enforce Internet regulations to the extent that punishment for disobeying regulations on traditional media serves as a deterrent.

The CCP has used physical restrictions and regulations in tandem to guarantee that publicly-owned enterprises outperform private companies, thus ensuring the CCP's political power. In terms of economic regulations, the CCP favors publicly-owned enterprises over private companies. Motivated by the promise of economic development, the CCP is eager to usher the Internet into China, but not at the expense of its own political power. In the informational category, the CCP elicits compliance with its strict restraints on informational content by using the unspoken but ever present threat of its willingness to squash political insurgency. After Tiananmen Square, there is no doubt in the mind of the Chinese citizenry that the CCP will use militaristic force and spectacular punishment to squelch political opposition.

To illustrate how the CCP has used these two types of regulations, two representative regulations issued in 2000 will be analyzed. First, the "Interim Procedures on Registration and Filing of Online Business Operations" allows the CCP to keep track of private competitors in the telecommunications industry. Second, the "Measures for Managing Internet Information Services" places restrictions on online informational content.

II. CHINA'S ECONOMY: PAST AND PRESENT

In the past twenty-five years, the CCP has moved China's economy toward a socialist market economy.⁵ Prior to 1978, China espoused a centralized, government-driven economic structure.⁶ In 1978, reeling from the effects of both the Cultural Revolution and the ten-year rule of the Gang of Four, the CCP realized that it needed to recoup its legitimacy as a leader.⁷ To do this, the CCP reformed the failing economic structure and demonstrated that it could effectively trigger economic development.⁸

The CCP's decision to maintain a one-party authoritarian state while introducing some elements of a market economy created a tension that it continues to face to this day. The strength of the Chinese government stems from its one party system and its ability to maintain "stability and order" through tight control over information deemed to be at odds with party ideology.⁹ But economic development often occurs in an environment of decentralized ideas and decisions, privatization, and "openness to the outside world."¹⁰ These conflicting goals require the CCP to balance economic openness against its political power. As a result, the CCP walks a fine line attempting to foster entry into the technological global economy without falling into political upheaval.

After the Tiananmen Square "power struggle" in 1989,¹¹ the CCP formally announced that it intended to move towards a socialist market economy.¹² As a result of this announcement and the ensuing economic developments, many commentators predicted that the Chinese government, economic structure, and culture would mimic those of developed Western nations. Other commentators believed that this "expectation of convergence" does not take into account China's current leadership and the fact that it voluntarily embarked on the road towards a socialist market economy.¹³ Instead, commentators contended that the CCP is consciously steering China

5. MILTON MUELLER & ZIXIANG TAN, CHINA IN THE INFORMATION AGE: TELECOMMUNICATIONS AND THE DILEMMAS OF REFORM 6 (1997).

6. *Id.*

7. *Id.*

8. *Id.* at 6-7.

9. *Id.* at 7.

10. *Id.* at 6.

11. *Id.* at 8.

12. See generally WILLY WO-LAP LAM, CHINA AFTER DENG XIAOPING: THE POWER STRUGGLE IN BEIJING SINCE TIANANMEN 51-133 (1995) (providing comprehensive details of modern China's path of economic reform).

13. MUELLER & TAN, *supra* note 5, at 7.

towards becoming an economically highly developed, authoritarian state like Singapore.¹⁴

In the early 1990s, the advent of the Internet in China increased the tension between economic progress and state control over information. The increase in the number of both commercial and non-commercial websites represented a huge economic growth potential that the CCP was loath to turn away. Instead, the CCP welcomed the Internet's economic benefits while heavily regulating the information transmitted by commercial and non-commercial organizations on their websites.¹⁵

III. HISTORY OF THE INTERNET'S DEVELOPMENT IN CHINA

When the Internet emerged in China, it was the result of the efforts of Chinese computer professionals who did not want the nation to fall behind technologically.¹⁶ Consequently, there were numerous distinct and, to some extent, competing initiatives to advance the Internet that did not fall under the authority of any one governmental ministry or department.¹⁷

The Internet in China began in 1987 when a professor in Beijing sent out the first e-mail in China through the Chinese Academic Network (CANet), the first computer network in China.¹⁸ CANet connected to the global Internet indirectly through a gateway at Karlsruhe University in Germany.¹⁹

In 1993, the Institute of High Energy Physics in the Chinese Academy of Sciences (IHEP), a source of Internet development independent of CANet, rented a specialized 64K line from AT&T's international satellite channel to connect to Stanford University.²⁰ In May 1994 this closed line was opened to allow full Internet

14. For example, Mueller and Tan argue that "it is far more realistic to view China as engaged in the deliberate construction of a gigantic Asian-authoritarian state than it is to view it as stumbling in an extemporaneous, ad hoc manner toward some version of liberal capitalism." *Id.* at 9.

15. Andrew Higgins, *China Tries to Shut Out Internet Anarchy*, THE GUARDIAN (London), Sept. 4, 1995, at 9 (reporting that China was creating "an electronic Great Wall" to shut out "pornography, political dissent, and other forms of 'spiritual pollution.>"). See generally Peter H. Lewis, *Limiting a Medium Without Boundaries: How Do You Let the Good Fish Through the Net While Blocking the Bad?*, N.Y. TIMES, Jan. 15, 1996, at D1 (observing that various governments were seeking to reap the benefits of the Internet but struggling with methods of screening out the unwanted elements).

16. MUELLER & TAN, *supra* note 5, at 82.

17. *Id.*

18. ChinaOnline, *China's Internet Development Timeline*, at http://www.chinaonline.com/issues/internet_policy/c9101571.asp [hereinafter *Timeline*].

19. MUELLER & TAN, *supra* note 5, at 82.

20. *Timeline*, *supra* note 18.

operation.²¹ IHEP set up the first web server and established the first home page in China.²² By June 1995, IHEP had established accounts for more than 500 Chinese scientists and professors.²³

Up until 1995, most networks were used for academic or research purposes.²⁴ However, in May 1995, the Ministry of Posts and Communications (MPT) set up ChinaNET, the first commercial network in China, in Beijing and Shanghai.²⁵ Through ChinaNET, the Chinese public was able to access the Internet.²⁶

The MPT is responsible for overseeing and regulating the postal service and telecommunications, as well as telegraph and wire services.²⁷ The Ministry of Electronic Industries (MEI) establishes policy, conducts research, and makes telecommunications equipment.²⁸ The MEI also has tremendous political power—current Chinese president Jiang Zemin was formerly a Minister of MEI.²⁹ Both the MPT and the MEI vied for administrative clout to lead the telecommunications industry.³⁰

Almost simultaneously, the top three technical universities in China—The Chinese Academy of Sciences (CAS), Tsinghua University in Beijing, and Peking University—created the National Computer Networking Facilities of China (NCFC) in 1992.³¹ Then, in 1994, the three universities joined to establish a satellite link to the global Internet. Users of the three individual campus networks then gained access to the global Internet.³²

The largest Chinese network at the time to connect to the Internet was the Chinese Education and Research Network (CERNET). CERNET was established in 1993 to connect all Chinese educational and research institutions to the Internet.³³ CERNET was headquartered at Tsinghua University and initially connected to the Internet through NCFC/CASNET; it obtained its own connection in May 1995.³⁴

21. MUELLER & TAN, *supra* note 5, at 83.

22. *Id.*

23. *Id.*

24. Richard Cullen & Pinky D.W. Choy, *The Internet in China*, 13 COLUM. J. ASIAN L. 99, 105 (1999).

25. *Id.*

26. *Id.*

27. William Yurcik & Zixiang Tan, *The Great (Fire)Wall of China: Internet Security and Information Policy Issues in the People's Republic of China*, at <http://www.tprc.org/abstracts/tan.txt>.

28. *Id.* § 2.1.

29. *Id.*

30. *Id.*

31. MUELLER & TAN, *supra* note 5, at 83.

32. *Id.*

33. Yurcik & Tan, *supra* note 27, § 2.3.

34. *Id.*

The CCP recognized the economic promise of the Internet and classified its development as a "Golden Project."³⁵ The designation "Golden Project" refers to high priority proposals that will affect the growth of the information infrastructure.³⁶ Some examples of "Golden Projects" are Golden Bridge, Golden Customs, and Golden Card.³⁷ Golden Bridge is a network consisting of economic information. It links government agencies, state enterprises, and the public.³⁸ Golden Customs is a data network focusing on trade and its related licenses and tariffs.³⁹ Golden Card's purpose is to provide an infrastructure for a credit card system by connecting business, banks, and the public with financial networks.⁴⁰ More "Golden Projects" are expected to be added by the government and large corporations as the Internet further develops.⁴¹

In response to the advances in Internet development resulting from commercialization and the "Golden Projects," the Chinese Academy of Sciences established the China Internet Network Information Center (CNNIC) to supervise China's Internet growth in June 1997.⁴² In June 1999, CNNIC reported that 1.46 million computers were connected to the Internet in China and 3700 websites had been established.⁴³ By the end of 2000, a CNNIC official stated that, according to the most recent survey, more than eight million computers were connected to the Internet and there were more than thirty thousand websites.⁴⁴

IV. THE INTERNET'S IMPACT

The Internet's rapid growth has provided a medium for communication and information, as well as a potential for economic growth. More intangibly, it has acted as a catalyst for the fundamental restructuring of society. As a form of media, the

35. MUELLER & TAN, *supra* note 5, at 52.

36. Yurcik & Tan, *supra* note 27, § 2.1.

37. MUELLER & TAN, *supra* note 5, at 52.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* at 53.

42. Timeline, *supra* note 18.

43. Jack Linchuan Qiu, *Virtual Censorship in China: Keeping the Gate Between the Cyberspaces*, 4 INT'L. J. COMM. & POL'Y, Winter 1999/2000, at 1, 9.

44. Peter Weigang Lu, *Internet Development in China: An Analysis of the CNNIC Survey Reports*, at http://www.chinaonline.com/commentary_analysis/internet/currentnews/secure/c0003160InternetAnalysis.pdf. But see Anita Narayan, *LAMAsia's Net Survey Contests Official Figures*, CHINAONLINE NEWS, Jan. 11, 2001, at http://www.chinaonline.com/issues/internet_policy/NewsArchive/cs-protected/2001/January/C01011151.asp (on file with author) (stating that a recent survey may show that the CNNIC overestimated the number of Chinese Internet users).

Internet has dramatically increased individuals' abilities to gain access to information and to communicate with others. In terms of accessing information, Chinese Internet users employ the Internet primarily for "pragmatic" reasons.⁴⁵ According to the CNNIC Report of July 1999, the most frequently visited websites contain search engines, technology news, and free e-mail.⁴⁶

Electronic bulletin board systems (BBS) allow users to readily communicate with others.⁴⁷ Currently, however, most BBS communications center around "technology, economy, entertainment, sports, and other apolitical topics."⁴⁸ Even though there are relatively few BBS users communicating with each other about political and ideological issues, the ability of those who do to mobilize others is taken very seriously by the CCP.⁴⁹

Economically, the Internet has opened up enormous investment avenues for China. Foreign investors, recognizing the enormous market potential of China, have funneled hundreds of millions of dollars into Chinese Internet startups.⁵⁰ Similarly, Chinese entrepreneurs hoped to capitalize on the "world's fastest-growing Internet market."⁵¹ However, since most Chinese Internet users employ the Internet pragmatically and only a small fraction of the population has a disposable income of twenty thousand dollars or more, the number of Internet users does not accurately reflect the

45. Qiu, *supra* note 43, at 9.

46. China Internet Network Information Center, *Semi-Annual Survey Report on Internet Development in China*, at <http://www.cnnic.net.cn/develst/e-9907.shtml>.

47. Qiu, *supra* note 43, at 9.

48. *Id.* at 10.

49. The Chinese government was "shocked" by the ability of individuals to use on-line bulletin boards to organize political demonstrations. Stephen Mufson, *Chinese Protest Finds a Path on the Internet; Beijing Tightens its Control; Can't Prevent On-Line Access*, WASH. POST, Sept. 17, 1996, at A9. A student posted a message on an on-line bulletin board, calling for a protest at the Japanese embassy in Beijing on September 18, 1996 over Japan's proprietary behavior regarding a group of East China Sea Islands claimed by China, Japan, and Taiwan. *Id.* The bulletin board connected over two hundred Chinese universities and, at the time the article was written, individuals had already protested in Hong Kong and "hundreds of thousands of Chinese" had signed a petition denouncing Japan's behavior. *Id.* The CCP acted quickly to discourage this type of organization and demonstration without its permission—notwithstanding its sharing of outrage with the protestors over Japan's actions—by exiling an organizer of the petition drive from Beijing to Qinghai province, in far western China. *Id.* More recently, after the NATO bombing of the Chinese embassy in Belgrade, large numbers of Chinese students demonstrated throughout China, first learning of organized demonstrations on the web. John Pomfret & Michael Laris, *Chinese React with Anger, Vilify U.S.*, WASH. POST, May 9, 1999, at A1.

50. Edward Wong, *China's New Culture Starting to Take Shape, Minister Says*, N.Y. TIMES, Sept. 8, 2000, at A13.

51. Bruce Einhorn et al., *China's Tangled Web: Will Beijing Ruin the Net by Trying to Control It?*, BUS. WK. INT'L, July 17, 2000, at 28.

market for e-commerce.⁵² Moreover, China's financial infrastructure is still relatively unsophisticated. Credit card use is limited and non-uniform, leaving buyers and sellers on e-commerce websites with an in-person cash transaction as the only alternative.⁵³ This effectively eliminates the global advantage of the Internet.⁵⁴ Therefore, the Internet in China exists largely as a potential market, rather than a fully developed market.

The Internet has also vastly altered the Chinese social structure. People who otherwise might have remained in one province, restricted to a limited set of opportunities, find themselves more mobile and entrepreneurial as a direct result of using the Internet.⁵⁵ However, only those who have access to a computer connected to the Internet are exposed to these opportunities. Consequently, there is a sharp divide between those who do have access and those who do not.⁵⁶ Currently, most Internet users are educated, male, and clustered around China's wealthiest cities.⁵⁷ So, while those with access are able to transcend geographical boundaries and attain greater opportunities, those who cannot gain Internet access are comparatively worse off than before the introduction of the Internet.⁵⁸

V. INTERNET INFORMATION FLOW: A CHALLENGE TO CHINA'S CONTROL CAPABILITIES

China's history dictates a governmental system in which power is vested in a single body. Philosophically, Confucianism still underpins many Chinese cultural beliefs. Confucianism advocates the principle of the Rule of Man.⁵⁹ The Rule of Man envisions a sage emperor ruling over his subjects astutely and firmly.⁶⁰ Under

52. *Id.* at 57. John B. Stuttard, a London-based PricewaterhouseCoopers consultant who was chairman of China operations for the firm up until 1999 observed that, "[t]he amount of hype and hot money going into the China Internet was preposterous . . . [t]he Web is growing fast, but what the Chinese really are doing with it is sending e-mails or surfing for free information . . . China is not ready for e-business." *Id.*

53. *Id.* at 56.

54. *See id.*

55. John Pomfret, *Chinese Web Opens Portals to New Way of Life; Booming Internet Splits Haves and Have-Nots*, WASH. POST, Feb. 13, 2000, at A1. For example, twenty-five year old Wang Siping, from Qinghai—one of the "poorest regions in China," posted her picture on a personals website and met the man she now works for as a secretary in Hong Kong. *Id.*

56. *Id.* at A26.

57. *Id.*

58. *See id.*

59. VICTOR H. LI, *LAW WITHOUT LAWYERS: A COMPARATIVE VIEW OF LAW IN CHINA AND THE UNITED STATES* 13, 25 (1978).

60. *Id.* at 25.

Confucianism, each person finds his or her place in society, which in turn promotes stability. One finds one's place in society by using five key relationships as guidance: parent and child, elder and younger brothers, husband and wife, friend and friend, and master and follower.⁶¹ Respect for authority is thus engrained in Chinese culture because it ensures stability.⁶²

In line with Confucianism, prior to economic reforms, the CCP promulgated party ideals and conveyed them through the press.⁶³ The press was bound to express the party ideals, both by its duty as a faithful subject and by the CCP's strict censorship and editing.⁶⁴

Traditionally, the CCP has controlled the media through direct government regulation, censorship, and strict enforcement.⁶⁵ In the 1960s, Mao Zedong replaced the leading journalists at national and local newspapers with those who were willing to follow the government's directives.⁶⁶ Through the "official" press, the CCP communicated Party ideals and goals.⁶⁷ The official press provided a vehicle for the CCP to generate popular support for the government's policies and actions.⁶⁸ In addition, the media also served as an information filter for the public by distilling certain events and public actors into black-and-white terms; they were portrayed as "in-line" with the party or opposed to it.⁶⁹

Within the past fifteen years, the CCP squelched perceived threats to its power through heavy censorship of traditional media. After Tiananmen Square, the CCP eliminated almost thirteen percent of all publications.⁷⁰ More recently, in September 1996, President Jiang Zemin set forth the "Strike Hard" campaign to cleanse printed publications and television of "spiritual pollution."⁷¹ Through the campaign, Jiang aimed to encourage the media to participate in self-censorship and sought ultimately to stamp-out politically untoward speech.⁷² Jiang laid out six requirements for

61. RASHID MALIK, CHINESE ENTREPRENEURS IN THE ECONOMIC DEVELOPMENT OF CHINA 94 (1997).

62. *Id.*

63. Li, *supra* note 58, at 15.

64. *Id.*

65. *Id.*

66. ARTICLE 19 STAFF, WORLD REPORT 1988: INFORMATION, FREEDOM, AND CENSORSHIP 132 (Kevin Boyle ed., 1988).

67. SUZANNE OGDEN, CHINA'S UNRESOLVED ISSUES: POLITICS, DEVELOPMENT AND CULTURE 150 (3d ed. 1995).

68. *Id.*

69. *Id.* at 150-51.

70. Scott E. Feir, *Regulations Restricting Internet Access: Attempted Repair of Rupture in China's Great Wall Restraining the Free Exchange of Ideas*, 6 PAC. RIM L. & POL'Y J. 361, 377 (1997).

71. Wendy Lei, Note, *Economic Boon or Regulatory Bane? The Emergence of the Internet in Modern China*, 22 RUTGERS L. REC. 6 (1997).

72. *Publish or be Ideologically Damned*, ECONOMIST, Oct. 26, 1996, at 41.

journalists to fulfill, including adherence to Mao Zedong's teachings and the CCP's basic ideology.⁷³

When the CCP is unable to cut undesirable information off at the source, it then turns to enforcement measures involving severe and memorable punishment to deter others from considering participating in "counterrevolutionary" activities.⁷⁴ For example, following Tiananmen Square, many student protesters were imprisoned for long periods of time⁷⁵ or simply executed.⁷⁶

Regulation of the Internet can be traced back to Tiananmen Square.⁷⁷ On June 4, 1989, the CCP stationed monitors at every fax machine in China to intercept foreign transmissions to protesters, since protesters had largely been using fax machines to communicate with each other inside and outside of China.⁷⁸ The Internet replaced the fax machine as a more efficient means of communication for those disagreeing with CCP policy.⁷⁹

At first glance, the Internet would seem to pose a unique challenge to China's ability to control the flow of information. The Internet, a global network of local networks comprised of innumerable computers, is by its nature decentralized and subject to no singular center of authority.⁸⁰ Each individual or organization that wishes to have access to the Internet pays for the link and the necessary equipment.⁸¹

73. *Id.*

74. The term "counterrevolutionary" encompasses activities that run contrary to the CCP and is therefore quite broad. For instance, after Tiananmen Square, a man was sentenced to ten years in prison for spreading "counterrevolutionary propaganda" when he stood on the Beijing Railway Station platform and stated that "more than 20,000 people were killed on July 3-4 [1989] and some were crushed to 'meat pie' by tanks." *Rumour-Monger Sentenced to Imprisonment in Dalian*, XINHUA NEWS AGENCY, July 14, 1989. The article, published by the Xinhua New Agency, reported that the statement was counterfactual. *Id.* The Xinhua News Agency is run by the CCP. *Lei, supra* note 71.

75. For example, Zhang Weiping, a 25 year old art student in China was sentenced to nine years in prison for calling in to Voice of America, a network run by the U.S. government which is broadcast in China, and stating that students had marched to the Hangzhou provincial headquarters to protest the "army assault" on the protesters in Beijing. Michael Weisskopf, *China Sentences Student to Prison; Man Gets 9 Years for Spreading News of Protests on VOA Program*, WASH. POST, Aug. 29, 1989, at A15. Zhang was accused only of "spreading news" of the rebellion and not of actually inciting it. *Id.*

76. Paul Theroux, *Letters From Hong Kong: Ghost Stories*, NEW YORKER, May 12, 1997, at 60.

77. Yurcik & Tan, *supra* note 27, § 3.0.

78. *Id.*

79. *Id.*

80. See generally G. BURGESS ALLISON, *THE LAWYER'S GUIDE TO THE INTERNET* 29-43 (1995) (explaining how the Internet works).

81. *Id.* at 30.

Moreover, the Internet's design expects that faults within the system will occur.⁸² Therefore, when a link or a computer fails, packets adapt and automatically reroute.⁸³ To access blocked information, a user can just use an alternate route. By methods such as e-mail aliases and changing newsgroup names, users can easily route around censors.⁸⁴

Finally, any technological censorship scheme is effective only to the extent that human behavior is completely predictable.⁸⁵ A technological censorship scheme can only guard against human behavior that it can foresee. Two instances of "unforeseeable conduct" are "substitutability" and "tunneling."⁸⁶ With substitutability, when one Internet Service Provider (ISP) is censored, users move to another type of provider that can provide essentially the same service. For example, if e-mail is censored, a user might instead send messages via the web.⁸⁷ In tunneling, a user can employ several different uncensored Internet services to rebuild the functionality of censored Internet services.⁸⁸

Despite these challenges, the CCP has been remarkably effective in using a combination of physical restrictions and regulations to control the Internet.

A. *Current Methods of Controlling the Internet*

Many argued that because of the Internet's amorphous nature, the CCP would not be able to use traditional methods to regulate Internet information flow.⁸⁹ Nonetheless, the CCP's current methods for regulating the Internet closely resemble its methods of controlling traditional media. The CCP controls the Internet through physical restrictions, regulations that dictate permissible use, and ownership and operation of ISPs.

82. Yurcik & Tan, *supra* note 27, § 4.2.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. See Feir, *supra* note 70, at 378 (asserting that "banning access to information on the Internet may be far more difficult than banning a hard copy publication."). See also John H. Taylor, III, Comment, *The Internet in China: Embarking on the "Information Superhighway" with One Hand on the Wheel and the Other Hand on the Plug*, 15 DICK. J. INT'L L. 621, 642 (1997) (arguing that it would be "naïve" to think that the Chinese government could regulate the use of the Internet by the Chinese people).

1. Physical Restrictions

The simplest way to have complete control over the Internet would be to physically prevent a connection to the global Internet. The CCP has many options in attempting to physically block information from the Internet from entering Chinese boundaries.⁹⁰ First, the CCP has attempted to create the world's largest intranet.⁹¹ An intranet is a vehicle for connecting members of the organization to organizational information. Intranets are commonly used by organizations to allow members within the organization to communicate with each other and to provide members with Internet application tools such as web browsers to retrieve organizational information.⁹² The organization can completely control the intranet, and, if a connection to the global Internet is somehow established, a "firewall" can preclude any computers on the global Internet from infiltrating computers on the organization's intranet.

Establishing an intranet is an attractive solution for many reasons. First, intranets are easily implemented because the infrastructure and technology parallel that of the Internet, which already exists—computers, software, and connectivity.⁹³ Second, intranets are highly effective in providing organizational members with instant access to organizational information. A web-based intranet also allows the CCP to track web use in general and monitor the web use patterns of individuals.⁹⁴ Finally, and most significantly from the CCP's perspective, intranets are completely secure from the Internet; though an intranet can be connected to the Internet and commonly are, a connection is not necessary.⁹⁵

When an Internet connection is established despite the organization's desire to isolate the intranet, a firewall is capable of preventing unwanted computers from connecting to the intranet. A firewall is a "computer or group of computer systems that enforces an access control policy between two networks by blocking traffic or permitting traffic."⁹⁶ Usually, a firewall consists of one computer in

90. See Yurcik & Tan, *supra* note 27, § 3.0.

91. If the CCP succeeds in constructing an intranet to take advantage of the already existing Internet connectivity while keeping out unwanted information, then it would be the largest intranet in the world. *Id.* at Abstract.

92. *Id.* § 4.2.1.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.* § 4.2.2. Yurcik and Tan state that the term "firewall" for the security filtering system is a poor analogy since, in reality, concrete firewalls are designed to stop fires from moving from one part of the building to another. Instead, they suggest that comparing the security filtering system to a fire door is more apt since it allows

between the intranet and the global Internet, sifting out packets according to a set of rules.⁹⁷ The use of firewalls for network security is extremely efficient because it eliminates the need to distribute a set of rules to each computer on the intranet. Instead, security measures such as sets of rules are amalgamated on firewall systems.⁹⁸ The centralized location of the firewall allows for convenient summarizing of Internet traffic, monitoring of attempts to hack through the firewall, and sampling of the connections entering and exiting the firewall.⁹⁹

Similar to the CCP's censorship of traditional media, the government decided in August 1996 to block access to approximately one hundred websites.¹⁰⁰ The CCP did this by constructing the "Great Chinese Firewall," preventing the Chinese Internet user from accessing specified websites or websites that contain specific terms.¹⁰¹ The banned websites ranged from the websites of major U.S. newspapers to those containing information on Taiwan and Hong Kong.¹⁰² The government asserted that the websites were blocked because they were "suspected of carrying spiritual pollution."¹⁰³

For a firewall to function, it must first and foremost be resistant to attacks. Once a firewall is susceptible to attacks, not only does it cease to effectively filter out information, but it also becomes a possible liability.¹⁰⁴ When a firewall is penetrated, the set of rules can be easily altered, sometimes to do exactly the opposite of what the firewall owner intended it to do.¹⁰⁵

For a firewall to be effective, information must first pass through it. A firewall cannot filter Internet traffic that does not route through it, just as a water filter cannot filter soil out of water that does not pass through the filter. Therefore, Internet traffic that can route

most of the information through while keeping the unwanted information, or the fire, out. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. Taylor, *supra* note 89, at 635.

101. Niall McKay, *China: The Great Firewall*, WIRED, at <http://www.wired.com/news/print/0,1294,16545,00.html>. Though effective against the lay Chinese Internet user, more sophisticated "hackers" or "hacktivists" have little trouble tampering with these firewalls. *Id.*

102. *Id.*

103. Wayne Arnold, *Cyberpatrols: Censoring the Net Isn't Easy, But It Can Be Intimidating*, ASIAN WALL ST. J., Sept. 11, 1996, at 1.

104. Yurcik & Tan, *supra* note 27, § 4.2.2.

105. In one instance, "crackers" from the United States had penetrated and disabled five Chinese firewalls created to prevent Chinese Internet users from seeing various websites. *See, e.g.,* McKay, *supra* note 101. In protest over the imprisonment of Lin Hai, a Chinese man arrested for "simply sending e-mail to the U.S.," one American cracker defaced a government website. *Id.* Another cracker group stated that it had begun developing an e-mail plug-in that would allow Chinese Internet users to see blocked websites via e-mail. *Id.*

around the firewall symbolizes a considerable threat that is impervious to firewall defenses.¹⁰⁶ In China, an Internet user could circumvent the firewall by dialing into an international Internet connection and accessing the uncensored Internet.¹⁰⁷

Though these two models of physically blocking information from reaching Chinese Internet users are equally viable, the CCP has elected to use an extensive firewall system, allowing access to the global Internet but accompanied by heavy filtration.¹⁰⁸

2. Internet Regulations

The State Council, the executive branch of the National People's Congress, has the authority to set forth regulations that "carry the force of law over the entire country."¹⁰⁹ To carry out these regulations, the State Council depends on numerous ministries, each having a specific jurisdiction.¹¹⁰ On February 1, 1996, in the Provisional Regulations for the Management Networking with Information Networks of the People's Republic of China (1996 Provisional Regulations), the State Council mandated that all connections to the global Internet would be provided by the MPT.¹¹¹ Essentially, the MPT had the authority to screen out information antagonistic to the CCP before it ever reached the lay Chinese Internet user. In 1998, the CCP replaced the MPT and the Ministry of Electronic Industry (MEI) with the Ministry of Information Industry (MII) as part of a restructuring effort.¹¹²

The 1996 Provisional Regulations were the CCP's first major efforts to control the Internet via regulations that carried the force of law. In addition to naming the MPT as the sole provider of international Internet access, the 1996 Provisional Regulations, in broad strokes, proscribed using the Internet for certain purposes.¹¹³ Namely, individuals could not use the Internet to transmit information "prejudicial to state security," "leak[ing] state secrets," or

106. Yurcik & Tan, *supra* note 27, § 4.2.2.

107. *Id.* However, such a call would probably be much too expensive for most Chinese people. *Id.*

108. *Id.*

109. Feir, *supra* note 70, at 369. The source of the State Council's authority is found in articles 57 and 85 of the Chinese Constitution. *Id.* at 368-69.

110. *Id.* at 369.

111. *Id.* at 368-69.

112. Jiang-yu Wang, *The Internet and E-Commerce in China: Regulations, Judicial Views, and Government Policies*, COMPUTER & INTERNET LAW., Jan. 2001, at 12, 13.

113. Feir, *supra* note 70, at 371.

“producing, retrieving, duplicating, or disseminating anything prejudicial to public order.”¹¹⁴

The 1996 Provisional Regulations also place the burden of monitoring message content on companies who provide services via the Internet.¹¹⁵ Service providers are thus subject to noncompliance penalties if any content is found to fall into an illegal category.¹¹⁶ This liability caused foreign companies to reconsider whether the benefits of doing business on the Internet in China outweighed the costs.¹¹⁷

Additionally, on February 14, 1996, the Ministry of Public Security (MPS) issued a circular mandating that all Internet users register with the MPS within thirty days.¹¹⁸ The MPS is responsible for law enforcement at all levels of government. The MPS also has authority to investigate computer crimes, furnish computer security training, and institute computer security regulations.¹¹⁹

Most recently, the CCP instituted a cluster of regulations in 2000 strikingly similar in nature to the 1996 Provisional Regulations.¹²⁰ These regulations can be separated into two categories: economic and informational. Economic regulations encompass the CCP's efforts to impose stringent requirements on those doing business on the Internet, or Chinese dot-coms. Informational regulations are targeted at Internet content deemed objectionable, regardless of its source.

VI. 2000 ECONOMIC AND INFORMATIONAL REGULATIONS

To better understand the CCP's motivations for these two types of regulations, a representative regulation from each of the two categories will be examined. In the economic category, the Interim Procedures on Registration and Filing of Online Business Operations (Procedures) was issued on September 2, 2000. In it, the CCP set forth the requirements for “business Web sites.”¹²¹ According to Article 4 of the Procedures, a “business Web site” is a website that is

114. *Id.* Such activities are nebulously defined based on past interpretation in different contexts. *Id.* at 371-74. For instance, a speech by Jiang Zemin was deemed a “state secret” when it was leaked to a Hong Kong newspaper and published a week before it was given. *Id.* at 372.

115. *Id.* at 382.

116. *Id.*

117. *Id.* at 382-83.

118. Yurcik & Tan, *supra* note 27, § 3.0.

119. *Id.*

120. Interim Procedures on Registration and Filing of Online Business Operations, at <http://www.chinaonline.com> (on file with the VANDERBILT JOURNAL OF TRANSNATIONAL LAW) [hereinafter Procedures].

121. *Id.* art. 1.

wholly or partially owned by an “enterprise” or that “engages in business operations aiming to make a profit.”¹²² The definitional prong of engaging in “business operations aiming to make a profit” is broad enough to encircle the entire commercial sector of China’s Internet industry. Once an individual operates such a website, or an “enterprise” is an owner of a commercial or non-commercial website, the owner must apply for filing and registration with the CCP.¹²³ Additionally, the owner must also maintain personnel for “information checks” by the CCP to ensure that “unlawful information or information that harms social morals and efforts to build a socialist civilization with a high cultural and ideological level” is eliminated.¹²⁴

Essentially, only those companies that are able to obtain a license from the MII will be allowed to do business. On January 4, 2001, Sina.com announced that the MII had decided to grant the company an operating license.¹²⁵ Sina.com was the first private commercial Internet company in China to obtain CCP approval for a license.¹²⁶ Wang Zhidong, president and CEO of Sina.com, stated that the grant “demonstrate[d] the government’s commitment to provide a stable business environment that encourages growth of the Internet industry as a whole.”¹²⁷ The nature of the statement reveals the underlying bargain: the right to continue to operate a potentially highly profitable business in exchange for the public and unequivocal support of CCP policy.

Prior to the Procedures, many hoped that the Internet would quickly revolutionize China by creating a “new corporate elite” of Chinese entrepreneurs who would introduce millions of citizens to information previously off-limits, resulting in a new and dynamic Chinese economy.¹²⁸ Some even speculated that the new Internet economy would lead inevitably to democratization.¹²⁹

However, the CCP’s desire to control the Internet and thus the development of a corporate elite became explicit in the Procedures.

122. *Id.* art. 4.

123. *Id.* art. 5.

124. *Id.* art. 6.

125. *SINA.com Becomes First Internet Company to Receive ICP License in China*, PR NEWSWIRE, Jan. 4, 2001.

126. *Id.*

127. *Id.*

128. Einhorn et al., *supra* note 51, at 29. These hopes were in part spurred by the fact that a “little-known” portal called Chinadotcom raised \$84 million in a Nasdaq offering. *Id.*

129. This “hope” essentially encapsulates the technocratic viewpoint that economic modernization and development will take place upon implementation of new information technology. MUELLER & TAN, *supra* note 5, at 14-15.

Flouting critics,¹³⁰ the CCP succeeded in controlling and using the Internet for its own purposes.

In the eyes of foreign investors and Chinese entrepreneurs alike, the Procedures represent obstacles in the path towards wealth and ensuing economic development. It would seem that the CCP has sacrificed enormous economic growth in favor of preserving a "socialist civilization with a high cultural and ideological level."¹³¹ Though the preservation of such a "civilization" was certainly aided by the Procedures, far more importantly, the CCP secured wealth from the Internet industry for itself by effectively handicapping the competition.

The Procedures exemplify how the CCP funnels power to itself with its existing authority. Through these regulations, the CCP creates an economic pecking order: private companies are at the bottom, those with personal relationships with government officials, or *guanxi*, are in the middle, and the CCP itself is at the top. For instance, in 1999, entrepreneur Joseph Chen and two Chinese classmates from Stanford University launched a portal named ChinaRen Inc. and raised millions of dollars from investors.¹³² In a short period of time, ChinaRen looked like it would emerge as the leader of the new Internet industry.¹³³ However, when it was time to give the investors a return, Chen came up largely empty-handed due to detailed regulations and the limited number of Chinese Internet users who are able to engage in e-commerce.¹³⁴

ChinaRen would likely have been in a much better position if Chen had some *guanxi* with the CCP. *Guanxi* is no guarantee of success, however. Even some entrepreneurs who have direct ties to the government find similar regulations prohibitive and counterproductive.¹³⁵ One well-connected entrepreneur notes that the "CEO has to spend all of his time dealing with the bureaucrats instead of dealing with his own business."¹³⁶

In contrast, CCIDNet.com, a CCP backed website which offers news, e-commerce, and consulting services in the electronic industry, is looking to expand from its Beijing headquarters. CCIDNet's chief

130. Former President Bill Clinton dismissed the CCP's efforts to control the Internet as impossible. Specifically, he likened the effort to "trying to nail Jell-O to the wall." Ellen Bork, *The Red Internet*, WASH. POST, June 17, 2000, at A19.

131. Procedures, *supra* note 120, art. 6.

132. Einhorn et al., *supra* note 51, at 28.

133. *Id.*

134. *Id.*

135. *Id.* at 31. For example, Wang Boming, executive vice-president of the Stock Exchange Executive Council, a government-sponsored group is also the entrepreneur behind ChinaWeb, a website that provides financial information. *Id.* However, he believes that the CCP cost the Internet industry over two billion dollars with its regulations. *Id.*

136. *Id.*

shareholder is a subsidiary of the MII, the very ministry that regulates the Internet industry.¹³⁷ So, while private entrepreneurs are busy fulfilling the requirements set forth by the CCP, the CCP is free to reap the financial benefits of the Internet.

In the informational category, the Measures for Managing Internet Information Services (Measures) were issued on September 25, 2000. This was the CCP's effort to restrict ISPs from providing certain types of information.¹³⁸ The Measures are intended to regulate "[i]nternet information services (IIS) and promot[e] the healthy and orderly development of such services."¹³⁹ IIS is defined broadly as "services that provide Internet users with information via the Internet."¹⁴⁰ IIS are then classified into commercial and non-commercial providers.¹⁴¹ Commercial IIS refers to providing Internet users with information in "exchange for compensation" or "providing Web page creation services."¹⁴² It is possible to interpret this definition narrowly or broadly.¹⁴³ If interpreted narrowly, the Measures would only apply to those commercial IIS providers who charge fees for access to their websites.¹⁴⁴ Alternatively, a broad reading would include IIS providers who generate indirect income from their website. For example, an IIS provider could provide free access to Internet users but derive income from companies who advertise on their website.¹⁴⁵ Though a narrow reading is possible, the Measures will most likely include a broad range of commercial IIS providers. The broad reading is consistent with similar regulations. Local regulations in Beijing state that the term "business-oriented IIS" encompasses deriving income from activities such as online advertising and "web design" services.¹⁴⁶

Once an IIS provider falls within the commercial sphere, the Measures dictate that it must apply to the local IIS administration or the MII to obtain a license to "operate an IIS value-added telecommunications business."¹⁴⁷ In September 2000, the MII issued the new Telecommunications Regulations in which IIS was expressly included in the definition of "value added telecommunications

137. *Id.*

138. Measures for Managing Internet Information Services, at <http://www.chinaonline.com> (on file with the VANDERBILT JOURNAL OF TRANSNATIONAL LAW) [hereinafter Measures].

139. *Id.* art. 1.

140. *Id.* art. 2.

141. *Id.* art. 3.

142. *Id.*

143. Paul McKenzie, *China's State Council Issues New Rules Governing "Internet Information Services,"* at <http://www.perkinscoie.com/resource/intldocs/newrules.htm>.

144. *Id.* § 1.

145. *Id.*

146. *Id.*

147. Measures, *supra* note 138, art. 7.

business.”¹⁴⁸ As a result, an assortment of online businesses are suddenly finding that they qualify as “telecommunications operators” and are subject to the telecommunications regulatory scheme set forth in the Telecommunications Regulations.¹⁴⁹ Non-commercial IIS providers must “report [their] operations for the official records” to the local telecommunications administrative office or directly to the MII.¹⁵⁰ Both commercial and non-commercial IIS providers must display their licenses and record numbers, respectively, on the home page of their websites.¹⁵¹ In addition, IIS providers must “guarantee that its information is legal,” and therefore must censor heavily to avoid severe fines.¹⁵²

The Measures layer the duty of self-monitoring on top of the duty of self-censorship.¹⁵³ IIS providers are required to keep a record of information distributed, when it is distributed, and the web address where the information is located.¹⁵⁴ ISPs are under similar obligations: they must record when a subscriber accessed the Internet, the subscriber’s account number, the addresses of the websites visited, and the telephone numbers the subscriber uses.¹⁵⁵ IIS providers and ISPs must keep these records on file for sixty days and be able to “furnish them to the relevant state authorities upon demand”¹⁵⁶

As for the actual informational content, IIS providers are prohibited from producing, reproducing, releasing, or disseminating information that “goes against the basic principles set in the constitution . . . endangers national security, divulges state secrets, subverts the government, [or] undermines national unity.”¹⁵⁷ The information also may not harm the “honor and interests of the state,” cause ethnic strife, spread rumors, decrease social stability, spread pornography, undermine state religious policy, or preach the teachings of “evil cults.”¹⁵⁸

This list of prohibited information is strikingly similar to the list of prohibited activities in the 1996 Provisions. Some argue that the 2000 regulations are simply a reiteration of old regulations and are issued to remind citizens and officials alike to obey the old

148. McKenzie, *supra* note 143, § 1.

149. *Id.*

150. Measures, *supra* note 138, art. 8.

151. *Id.* art. 12.

152. *Id.* art. 13.

153. *Id.* arts. 15-16 (outlining types of information not allowed on IIS provider websites, which the providers must censor themselves).

154. *Id.* art. 14.

155. *Id.*

156. *Id.*

157. *Id.* art. 15.

158. *Id.*

regulations.¹⁵⁹ Due to the unstable rule of law in China, the “new” regulations are actually “more detail on the same topic,” which leads to more “transparency” in the law, rather than new types of authoritarianism.¹⁶⁰ A transparent and stable regulatory system in turn reduces the chance that a government will institute unpredictable restrictions to limit private investment or support one competitor over another.¹⁶¹ Transparent regulation is therefore a favorable and desired circumstance for investors because they can make rational investment decisions ahead of time.¹⁶²

The Measures also provide that a commercial IIS provider must obtain consent from the MII before listing on a stock exchange in China or abroad, and before entering into a joint venture with a foreign business.¹⁶³ Once the MII consents, foreign investment is capped according to the “relevant laws and administrative regulations.”¹⁶⁴ Though China’s accession to the WTO is expected in the next few months, there are no current “relevant laws” pertaining to the permissible proportion of foreign investment in a Chinese Internet company.¹⁶⁵

Prior to the WTO agreement, China used the “Chinese-Chinese-Foreign” (CCF) approach to limit the amount of foreign investment in its telecommunications industry.¹⁶⁶ According to this approach, a Chinese company that was licensed to operate a network established a joint venture that functions as an investment “clearinghouse.”¹⁶⁷ Three way contracts between the Chinese network operator, the Chinese joint venture company, and the foreign investor “combine equipment leasing, royalties, consulting[,] and license fees in a network supply contract in lieu of direct equity investment.”¹⁶⁸ The CCP’s permission to use CCFs seemed to indicate a willingness to

159. David Cowhig, *China—New Net Rules Not a Nuisance?* CHINAONLINE NEWS, Dec. 5, 2000. The author argues that when the CCP issues “new” regulations, it is doing so to elucidate old regulations that were plagued with vagueness. *Id.* The strong, largely Western, media reaction to the 2000 regulations can be attributed to differences between Chinese lawmaking and Western lawmaking. The signature of Chinese laws and regulations is a “vague, ubiquitous style,” while Western laws are generally more precise. *Id.* In light of this distinction between the two styles of lawmaking, the 2000 regulations are neither new nor noteworthy. *Id.*

160. *Id.*

161. Rachele B. Chong & Wendy Chow, *Financing Telecommunications Projects in Asia: A Promising Regulatory Perspective*, 52 FED. COMM. L.J. 1, 6 (1999).

162. *Id.*

163. Measures, *supra* note 138, art. 17.

164. *Id.*

165. James Kynge, *Dotcoms in China Face up to New Rules*, FIN. TIMES (London), Oct. 4, 2000, at 10.

166. Chong & Chow, *supra* note 161, at 5.

167. *Id.*

168. Ken Zita, *Will China Embrace Competition? Foreign Equity in Telecoms Hangs in the Balance*, at <http://web.syr.edu/~ztan/KenZita-PTC99.html>.

open the telecommunications market up to foreign investment.¹⁶⁹ However, in 1998, the CCP officially forbade the use of the CCF model.¹⁷⁰ Then, in early 1999, Unicom, a state-owned telecommunications company that had used the CCF model, froze approximately sixteen million dollars of foreign investors' revenue and proceeded to buy out the investors.¹⁷¹ Foreign investors were given until August 1999 to break their joint venture contracts or forego the possibility of receiving any revenue on their investments.¹⁷² These moves reflected the CCP's decision to decrease foreign participation in China's telecommunications industry.¹⁷³ The CCP bought back the foreign investors' shares in Unicom in order to list them in Hong Kong and other exchanges as a means of increasing foreign financial investment as opposed to foreign strategic investment.¹⁷⁴

Though most companies doing business in China did not find the provision limiting foreign investment overly prohibitive, investors' perceptions that the regulations were overly prohibitive were enough to create a negative impact.¹⁷⁵ Two days after the Measures were issued, the price of the shares of China's three largest portals fell dramatically in the New York market.¹⁷⁶ However, the executives at both Sina.com and Sohu.com stated that they had anticipated new regulations and were already in compliance with the Measures.¹⁷⁷ Currently, there are no laws in China permitting foreign investment in Internet companies. However, whether the MII will crack down on foreign-invested Internet companies before China officially joins the WTO is not clear. According to the WTO rules, China has pledged that it will allow foreign companies to own up to a forty-nine percent stake in ICPs once it is admitted to the WTO and then fifty percent after it has been in a member of the WTO for two years.¹⁷⁸

VII. A DIFFERENT APPROACH TO THE INTERNET REGULATORY SCHEME

Two commentators refer to governmental efforts to control the Internet as "bootstrapping" control of the physical world into control

169. Chong & Chow, *supra* note 161, at 5.

170. *Id.*

171. Gordon G. Chang, *Unicom Highlights Reform Paradox*, S. CHINA MORNING POST, July 26, 1999, at 12.

172. Wang Xiangwei, *China Unicom Gives CCF Investors August Quit Deadline*, S. CHINA MORNING POST, July 26, 1999, at 1.

173. Chang, *supra* note 171, at 12.

174. *Id.*

175. James Kynge, *supra* note 165, at 10.

176. Sina.com fell by 12.4%, Sohu.com by 6.45%, and Netease.com by 5.75%. *Id.*

177. *Id.*

178. *Id.*

of the electronic world.”¹⁷⁹ Governments can do this in several ways. First, since governments can control the physical land over or under which the information must pass, they can set conditions for the installation and operation of network equipment.¹⁸⁰ Second, governments can control information with their existing authority to allow or forbid foreign companies to do business within their physical borders.¹⁸¹

Governments can set conditions for the physical construction of network equipment more effectively if there is little or no existing electronic infrastructure.¹⁸² Therefore, it is far more probable that a nation like China would be successful at controlling what enters or exits its borders than a nation with a highly developed infrastructure already in place, like the United States.¹⁸³

Similarly, a government can use its authority to permit or forbid foreign companies from doing business within its borders to control the telecommunications industry.¹⁸⁴ For example, the CCP required Rupert Murdoch to remove the British Broadcast Channel (BBC) from his Star TV satellite broadcasts into China, Taiwan, and Hong Kong as a precondition to operate in China.¹⁸⁵

Just as the CCP can bootstrap existing governmental power to the telecommunications industry, which now includes the Internet, so can it bootstrap the effect of raw exercises of authority in the past to dissent in the present. The CCP has done this with a combination of finesse and brute strength. Tiananmen Square remains the most notable uprising by the people against the government in recent Chinese history. A demonstration that had grown to one million students planted itself in China’s central square calling for democracy. Then, on June 4, 1989, the CCP sent in tanks and soldiers who fired on the crowd of one million, killing as many as one thousand students, perhaps more.¹⁸⁶

If there was any doubt before June 4, 1989 that the CCP would employ any means necessary to maintain its seat of authority, it was extinguished by the public use of force in the face of revolution. The CCP has exploited that certainty in every Chinese citizen’s mind to quiet possible political dissension via the Internet.

Most commentators have argued that the Internet in China will either result in the CCP steering the nation towards a highly

179. L.T. Greenberg & S.E. Goodman, *Is Big Brother Hanging by His Bootstraps?*, 39 COMM. OF THE ACM, July 1996, at 11, 14, available at <http://som.csudh.edu/cis/lpress/devnat/general/bigbro.thm>.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. Sheff, *supra* note 1, at 149.

authoritarian state such as Singapore or towards spontaneous liberal capitalism.¹⁸⁷ However, analyzing the CCP's regulatory decisions in the context of either of these two dichotomous outcomes is not particularly useful. Rather, a more functional approach sheds light on the CCP's choice of regulations.

The CCP adheres to the ideological path of a "socialist market economy," moving towards modernization.¹⁸⁸ At the Fourteenth Party Congress in 1992, President Jiang stated that the socialist system aimed to modernize.¹⁸⁹ In particular, he stated that "the objective of socialism is to liberate and develop the productive forces, to eliminate exploitation and polarization, and ultimately to achieve common prosperity . . ." ¹⁹⁰ Through this statement, Jiang expressed a change in the definition of socialism; it is no longer a system whose goal is to "guarantee egalitarianism."¹⁹¹ Rather, it is now characterized by the development of productive forces. Therefore, anything that spurs development is now, by definition, socialism.¹⁹²

In the same speech, Jiang iterated that socialism does not necessarily involve central economic planning.¹⁹³ According to the new definition of socialism, if a market economy increases productive forces, then it is a socialist market economy, despite its effect on class structure.¹⁹⁴

Jiang emphasized that the distinguishing characteristic of socialism was not egalitarianism, but rather ownership.¹⁹⁵ In socialism, public ownership dominates, while private ownership is secondary. However, in Jiang's view, public ownership does not equal public control. Instead, publicly-owned enterprises can be privately managed.¹⁹⁶ Additionally, these publicly-owned enterprises would compete in the market with private companies to increase efficiency.¹⁹⁷ In this paradigm, the CCP is free to detach itself from the operation of publicly-owned enterprises and act as a regulatory body, overseeing the market.¹⁹⁸

Under this model, though the CCP does not operate the publicly-owned enterprises, it still benefits when they excel in the market. Therefore, as a regulator, the CCP would naturally favor publicly-

187. See *supra* notes 13-14 and accompanying text.

188. ALAN. R. KLUVER, LEGITIMATING THE CHINESE ECONOMIC REFORMS: A RHETORIC OF MYTH AND ORTHODOXY 110 (1996).

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.* at 110-11.

193. *Id.* at 111.

194. *Id.*

195. *Id.*

196. *Id.* at 111-12.

197. *Id.* at 112.

198. *Id.*

owned enterprises over private companies to maintain ideological consistency. The superiority of publicly-owned enterprises over private companies ensures adherence to the CCP's view of market socialism. Adherence to market socialism in turn ensures that the CCP will remain in power.

Therefore, as a functional matter, the CCP's regulatory scheme is highly sustainable. The regulations are not a means towards a "highly authoritarian state," nor are they a feeble attempt to have complete control over the ubiquitous Internet. Rather, the regulations are a means for the CCP to ensure that publicly-owned enterprises outnumber and outperform private companies, creating political and ideological revenue. When publicly-owned enterprises profit financially, it is testament to the fact that the CCP can competently elevate the nation economically, thus increasing its political power. When the means of that elevation is a socialist market economy, the CCP's ideological structure is further buttressed.

The CCP is desperately eager to take advantage of the potential benefits of the Internet. However, like any political entity, it is equally fervent about its self-preservation. In the end, a change in the regulatory scheme will be achieved through either a top down or bottom up effort. In a top down effort, a reform party would unseat the CCP and introduce democratic and capitalist principles that will be reflected in state regulations. Alternatively, the people of China could disobey the current regulations and instigate a grassroots Internet revolution. These two results may be equally likely or unlikely. The only sure bet is that China will be true to its five thousand year history. Its destiny as nation and a civilization rests in the Chinese people's hands.

VIII. CONCLUSION

Through an analysis of two regulations typifying China's recent effort to contain the Internet, it appears unlikely that the CCP's ultimate goal is either to become an authoritarian state like Singapore or to restrict the Internet to reduce politically incendiary speech alone. Rather, the CCP's seeks to increase economic development and maintain political power. With regard to the Internet, the CCP has already achieved its goal. For almost a decade, it has been deriving moderate benefits from the Internet industry while keeping political unrest in check.

To the CCP, the Internet is no different than any other form of media. And like any other form of media, it can be "cleansed" of politically harmful materials. Treating the Internet like traditional forms of media also sends a message to the Chinese people that when Internet regulations are disobeyed, the punishment will be

commensurate to the punishment for disregarding restrictions on traditional forms of media—namely extremely long prison sentences or even death. No matter how easy it seems to be to communicate displeasure with the CCP on the Internet, a citizen must always take punishment into consideration.

Taking punishment into consideration, the question posed to the Chinese people becomes: how much are you willing to risk for freedom of speech? In 1989, the answer was death. Today, the answer may very well be the same.

*Clara Liang**

* J.D. Candidate, 2002, Vanderbilt University Law School; B.A., Cornell University. This Note is dedicated to my family. Mom and Dad—thank you for your unwavering love—you both inspire me everyday to live and learn. Thank you Jie Jie for always being there to listen, late at night and early in the morning, and for your support and love through everything. Finally, countless thanks to Wendy for her faith in me.