

China's Media: The Impact of the Internet*

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I. INTRODUCTION

The People's Republic of China (PRC), commonly referred to as Mainland China, is the largest nation in the World in terms of population, the oldest continuous civilization on the planet, and, since the early 1980s,

* This article is a partially revised version of an article published in Austria in 2004 entitled: "Media Developments in East Asia: The Internet in China." This article also contains commentary from two previous articles: Richard Cullen & D.W. Choy, *The Internet in China*, 13 COLUM. J. ASIAN L. 99 (1999); and D.W. Choy, *China and the Internet: Recent Developments*, 5 AUSTL. J. ASIAN L. 77 (2003). We would like to thank Professor H.L. Fu of Hong Kong University whose work has been particularly relied upon for the discussion of the impact of the Internet on public policy development in China. The views expressed are those of the authors.

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the fastest growing major power.¹ It is also home to the World's largest One-Party-State (OPS)—run by the Chinese Communist Party (CCP).

Shortly after the death of Mao Zedong in 1976, his successor as leader of the PRC, Deng Xiaoping, announced the commencement of the “Open-Door” policy. In essence, this policy endorsed whole-heartedly China's economic re-engagement with the rest of the World and especially the advanced Western World. This policy has remained the cornerstone of PRC economic strategy ever since. Mainland China remains a vast, massively populated country² beset by huge poverty developmental, political, and environmental problems. But it also stands out as a beacon of hope in so far as it has, more than any other large country, lifted millions out of dire poverty over the last two decades. Some estimates are that three hundred to four hundred million people in China have seen their lives move beyond abject poverty over this period.³

As China has re-engaged with the World, it has not been able to confine that relationship purely to economic matters. Offshore cultural and political influences have become increasingly more important in China since the 1980s. Authoritarianism shows few signs of withering, however—indeed in many ways, it is stronger, than at anytime in the last three hundred years. But the OPS has seen its capacity to micro-manage the lives of its citizens shrink significantly. Today, the State's share of GDP is about twenty-five percent of what it used to be in the 1970s. True, GDP has increased enormously since then, so it is a share of a much “larger cake,” but today, China's wealth is progressively passing into private hands. Wealth distribution—and redistribution—are subject to great corruption and are far from fair. The fact remains, however, that the

1. The PRC is now primarily comprised of the PRC as it was created in 1949 when the Chinese Communist Party, under Mao Zedong, triumphed over the Nationalist Chinese Party (Kuomintang) lead by Chiang Kai-shek. The PRC now also includes Hong Kong (whose sovereignty reverted to China from the UK in 1997) and Macau (whose sovereignty reverted to China from Portugal in 1999). Taiwan remains estranged from the PRC and operates, at many levels, as a separate international entity, although the clear majority of nations do not recognize Taiwan as a separate country—least of all, the PRC. The term “Mainland China” is the usual shorthand used to denote that part of the PRC where the CCP still operates a one-party-state. Hong Kong and Macau are now Special Administrative Regions (SARs) of the PRC. Although as SARs they are denied representative-democratic government, they each enjoy significantly enhanced political and individual freedoms compared to Mainland China. (By the expression East Asia, we mean, principally, that part of Asia including Greater China (PRC-Mainland, PRC-SARS, and Taiwan), Japan, and Korea).

2. China's current population is estimated to be at least 1.3 billion.

3. James Wolfensohn (President, World Bank), *Long-Term Plan Helps China Succeed in Poverty Reduction*, at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/ORGANIZATION/PRESIDENTEXTERNAL/0,,contentMDK:20206330~menuPK:219671~pagePK:159837~piPK:159808~theSitePK:227585,00.html> (May 21, 2004); see also *China is a Model for Poverty Reduction: WB Official* at <http://www.china.org.cn/english/BAT/56633.htm>. (Feb. 25, 2003).

economic balance between the State and the totality of its citizens is a lot less one-sided than was previously the case.

One place where we can see this economic reality having a significant impact is in the development of the media in China. Since the 1980s, there has been an explosion of publishing (books, magazines, and newspapers), broadcast TV, cable TV, and satellite TV to meet the huge and constantly growing demand for information and entertainment.⁴ China likely now has more homes connected to cable TV than any other nation plus thousands of broadcast TV stations. The OPS has worked very hard to try and keep control of media content—especially political content—with some success. Nominally, all media outlets remain under the control of the OPS and extensive monitoring and censorship regimes remain in place.⁵ But the task of the controllers grows more difficult rather than less, as both wealth and technology usage continues to expand in China.

When we look at the “new media” modes, we see a similar pattern of massive growth. We can also see that the Internet has presented China’s “content police” with one of their greatest challenges.⁶ Text messaging via mobile telephones is another area of growing, mass written communication which is also presenting a content regulation “test” for the Chinese government.⁷

The following part of this paper provides a review of how the use of the Internet has grown and been regulated in China. We then draw some conclusions on what the experience to date may have to tell us about future regulatory and usage patterns with respect to the Internet in China.

4. See H. L. FU & RICHARD CULLEN, *MEDIA LAW IN THE PRC* (Hong Kong: Asia Law & Practice, 1996).

5. *Id.*

6. China is far from alone in deciding it must throw resources into controlling political content on the internet. Repressive controls in the Arab world are equally if not even more omnipresent, for example. See *Watch Out: Arabs and the Internet*, *ECONOMIST*, July 10, 2004, at 43.

7. China, with 1.3 billion people, has around 305 million mobile phone subscribers and some 295 million fixed-line users. India, by way of contrast, has a population of 1 billion and less than 40 million mobile phone subscribers. It is estimated that almost seventy percent of Chinese people who can afford a mobile phone have one. Rohit Sobti, an analyst with Citigroup, said: “No other developing country has created such penetration in such a short time. There is ridiculous connectivity in China.” *Telecoms in China: Disconnected*, *ECONOMIST*, Aug. 28, 2004, at 59.

II. THE INTERNET IN CHINA

A. Overview

Compared with the United States, the history of China's Internet is relatively short. The first computer network in China did not appear until 1987. At the beginning, all the networks in China could only be used for academic and research purposes. Commercial use of the Internet did not start until mid-1995. Despite its comparatively late commencement, China's Internet usage has developed quickly since. By January 2003, the Internet using population had already reached almost 60 million.⁸

The fast development of the Internet in China has created a significant dilemma for the Chinese government. For Beijing, involvement in the Internet resembles a "love-hate" relationship. On the one hand, due to practical necessity, the Chinese government understands very well that the powerful communication possibilities of the Internet are crucial in helping China: a) to communicate internally and with other parts of the world; b) to enhance its economy; and c) to strengthen its government administration. On the other hand, China is deeply concerned about the potential harmful impact of the Internet.

It is true that every country is cautious about potential negative features of the Internet, but China's concerns in this regard are rather special. Beijing is particularly worried about the potential *political* implications of the Internet. This over-sensitivity about politics arises from the contradictions between China's political system and the nature of the Internet. The political solidarity of China's OPS depends heavily upon maintaining ideological unanimity, and this, in turn, necessitates close State control of all information flows. A key reason for the popularity of the Internet, however, is its power to facilitate instantaneous communication without being subject to any significant constraints. This makes the Chinese government worry that if the Internet communication gateway is opened completely, it will lose control over the flow of information in China.

In order to ensure a "pollution-free" Internet environment (in the political sense, in particular), the Chinese government has established a complicated regulatory framework to regulate the Internet industry. Numerous government and quasi-government bodies are included in this Internet regulatory framework, and they are responsible for monitoring all aspects of the operation of the Internet, ranging from regulating the manufacturing of network equipment to the monitoring of the activities

8. China Internet Network Information Centre (CNNIC), *11th Statistical Survey on the Internet Development in China* (Jan. 2003), at <http://www.cnnic.net.cn/download/manual/en-reports/11.pdf> [hereinafter January 2003 Report].

of Internet users. Since many bodies are involved, overlapping jurisdictions are inevitable, thus making the situation very confusing, especially for those trying to comply with all these regulations.

In addition to the establishment of a regulatory framework to regulate the Internet itself, the Chinese government has, since 1996, also promulgated a series of regulations governing all the *persons involved* in China's Internet (including Internet users, Internet Service Providers, Internet Content Providers, and entities providing international network connections).

In recent years, many high ranking officials, including the now-former PRC President Jiang Zemin and the now-former Premier of the State Council Zhu Rongji, have emphasized the importance of the "informationalization" of China.⁹ The political situation in China remains unchanged, however. The result is that the Internet in China is developing whilst still caught in a "tug-of-war" between the expansion of its application (mainly in the commercial sphere) and the restriction of its possible negative political impact.

In dealing with the Internet, China is trying to maintain its traditional attitude towards new technologies, which is to use such technologies to strengthen the power of the sovereign and to enhance economic prosperity on the one hand, while avoiding (or at least minimizing) "negative" political impacts on the other. In fact, however, economic and political development (and information flows) are interrelated, thus the Chinese government cannot hope, over any substantial time frame, to continue to extract optimum economic benefits from an expansion of the Internet without also tolerating to a significantly greater extent its political impact.

B. Growth in Internet Usage

The Internet is already established as a major person-to-person communication tool in China. The use of the Internet for e-commerce is still at an infant stage in China, however. According to a China Internet Network Information Centre (CNNIC) survey, only 33.8 percent of Chinese Internet users shopped on-line in 2002.¹⁰ Nevertheless, both the government and some commentators are optimistic that e-commerce has

9. CHINA'S CENTURY: THE AWAKENING OF THE NEXT ECONOMIC POWERHOUSE 315-16 (LAURENCE BRAHM ed. 2001) [hereinafter CHINA'S CENTURY]; see also JOHN NAH SEOK LING, CHINA'S EMERGING NEW ECONOMY: THE INTERNET AND E-COMMERCE 27-31 (Singapore: Singapore University Press, 2001).

10. January 2003 Report, *supra* note 8, at 16.

great potential to grow in China.¹¹

The Chinese government is also enthusiastic about extending the Internet's application to government administration. In 1999, the Chinese government announced the beginning of the so-called "Government Online Project."¹² One of the aims of this project is to increase the transparency and efficiency of the government by establishing an "electronic government on the Internet" and the "digitizing of government services." Also, it is hoped that by encouraging all government bodies to operate online, communications among various government bodies, as well as between the central authorities and local governments, can be improved.¹³ Although there are now more than 7,000 websites with the domain name *gov.cn* in China,¹⁴ it seems there is still a long way to go before the goals of the Government Online Project can be genuinely achieved. Many of the existing government websites are simply propaganda tools and exist only as a formality. As Jin Xin, a foreign affairs department official of the Central Government, has remarked:

... by taking a look at those existing government websites, one will find that most of them have only posted the functions of their host departments and their working documents. More mobile and interactive information is lacking. They have failed to fully understand the characteristics of the Internet—getting wired is simply a formality. Many of them have even failed to put the address, contact number and e-mail address of the relevant department on the website. It appears that they are afraid that people will come to "knock at their doors." So don't expect to find the details of the "mayor's mailbox" on the Internet.¹⁵

Apart from using the Internet to enhance government administration, the Chinese government has also been quick to discover that, just like other media, such as newspapers and television, the Internet can be deployed as a propaganda tool. For example, the website of the China Internet Information Centre is said to be the "official gateway to news and information" about China.¹⁶ In addition to providing the most up-to-date information about China, this website also disseminates a lot of information regarding the Chinese government's stance on various controversial issues, such as its views on the Taiwan issue¹⁷ and its

11. Peter Yip, *How the Internet Will Shape China*, in CHINA'S CENTURY, *supra* note 9, at 331.

12. For details about the development of China's "Government Online Project," see the website of Zhengfu Shangwang Gongcheng (Government Online Project), at http://www.govonline.cn/frontmanger/5year_01.htm.

13. The term "local government" is commonly used in China to include all non-central governments at provincial, city, and township levels.

14. January 2003 Report, *supra* note 8, at 5.

15. Jin Xin, *Who is Going to Protect the Government?*, in JIN XIN, ZHONGGUO WENTI BAOGAO (REPORTS ON CHINA'S QUESTIONS) 417 (Beijing: China Social Science Press, 2000).

16. China Internet Information Centre, at <http://www.china.org.cn>.

17. China Internet Information Centre, *Concerns over the New Development of*

religious policies.¹⁸ Furthermore, the CCP has made use of this platform to advance its political agenda.¹⁹ Also, another website, China's Human Rights, though not run by the government, serves the function of promoting the Chinese government's version of human rights.²⁰

C. Increasing Control

Over the last few years, China has promulgated numerous examples of Internet-related legislation. Despite the fact that these laws carry new titles, a detailed review of their content shows that they are generally "old wine in new bottles." The legislative intent of all the Internet-related legislation has not changed: to control the information flow on China's Internet. These so-called new laws are simply more detailed laws addressing various aspects of the operation of Internet. The fundamental trend has been to extend the State's regulatory arm "down the food chain" from the actual, technical, service providers through to content providers and finally through to "Internet cafes" and their users.

The moves to control Internet Content Providers (ICPs) directly in the regulations provide a case in point. On September 25, 2000, the Measures for the Management of the Internet Information Services (ICP Measures) were passed.²¹ The ICP Measures represent the first law specifically regulating ICPs in China. The previous legislation (such as that listed below) targeted just Internet Service Providers (ISPs)—and did not explicitly mention applicability to ICPs.

As far as ISPs are concerned, there are numerous regulations imposing duties on them. Very often, these regulations hold the ISPs responsible for the information they provide and for the activities of their subscribers. For example, under the Provisions on Safeguarding the Security of Domestic Computer Networks in Linking with the Internet (11 December 1997) (the PSB Provisions),²² ISPs are required to assume the following

Taiwan Independence, at <http://www.china.org.cn/chinese/TCC/100612.htm>.

18. China Internet Information Centre, *China's Religious Retrospect and Prospect*, at <http://www.china.org.cn/english/features/45367.htm>.

19. China Internet Information Centre, *Learn and Continue Implementing the Spirit of the Sixteenth Chinese Communist Party Congress*, at <http://www.china.org.cn/chinese/zhuanti/238928.htm>.

20. China's Human Rights, at <http://www.humanrights-china.org> (last visited Jan. 19, 2004) (this website, which began operating in 1998, is run by the China Society for Human Rights).

21. For the full text of the ICP Measures (in Chinese), see <http://www.cnnic.net.cn/html/Dir/2000/09/25/0652.htm>.

22. For the full text of the PSB Provisions (in Chinese), see <http://www.cnnic.net>.

responsibilities:

- (1) assume responsibility for network security, protection and management and establish a thoroughly secure, protected and well managed network;
- (2) carry out technical measures for network security and protection and ensure network operational security and information security;
- (3) assume responsibility for the security, education and training of network users;
- (4) register units and individuals to whom information is provided and examine the information provided and make sure that no prohibited information is provided;
- (5) establish a system for registering the users of electronic bulletin board systems on the computer information network as well as a system for managing bulletin board information;
- (6) keep records of any violations of the PSB Provisions and report to the public security organs; and
- (7) according to the relevant State regulations, remove from the network any address, directory or server that has prohibited contents.²³

Under the PSB Provisions, information which can be categorized as illegal, immoral, or endangering the interests of the government or socialist system of China is prohibited information.²⁴

For ISPs who fail to satisfy these obligations, their rights to international connection may be cancelled.²⁵ Worse still, if any criminal activity (widely defined—see below) can be shown to have taken place, the ISPs

cn/html/Dir/1997/12/11/0650.htm.

23. PSB Provisions, art. 10.

24. According to Article 5 of the PSB Provisions, the nine categories of prohibited information are:

- 1) materials inciting resistance or inciting behaviors contrary to the Constitution or laws or the implementation of administrative regulations;
- 2) materials inciting the overthrow of the government or the socialist system;
- 3) materials inciting division of the country, harming national unification;
- 4) materials inciting hatred or discrimination among nationalities or harming the unity of the nationalities;
- 5) materials containing falsehoods or distorting the truth, or spreading rumours, or destroying the order of society;
- 6) materials promoting feudal superstitions, sexually suggestive material, gambling, violence, murder, terrorism or inciting others to criminal activity;
- 7) materials openly insulting other people or distorting the truth to slander people;
- 8) materials injuring the reputation of State organs; and
- 9) materials encouraging other activities against the Constitution, laws or administrative regulations.

25. *Id.* at art. 21.

may be subject to criminal liability.

For ICPs, the ICP Measures make it clear that the liabilities of ICPs—are to their Internet content—are no less than the liabilities of ISPs. Indeed, they are subject to even more stringent control. Before applying for an operating permit from the Ministry of Information Industry (MII), each ICP is subject to examination by different government departments, depending on the nature of the content provided. For example, if the content includes news, then the ICP is required to obtain the relevant approval from the State Press and Publishing Bureau.²⁶ Another way to prevent “undesirable” information from flowing into China’s Internet is to regulate both the virtual and real gathering places of the “netizens.” In order to regulate virtual gathering places, the Chinese government adopted the Provisions for the Administration of Electronic Bulletin Board System Services (8 October 2000) (the BBS Measures).²⁷ To regulate real gathering places, the government adopted the Methods for Management of Business Places of Internet On-line Services (3 April 2001) (the Internet Bar Measures).²⁸ As far as the BBS Measures are concerned, the liability of the BBS service providers under these Measures is similar to that of ISPs—they are required to monitor the information posted on their BBS and to keep records of the details of BBS users (including their Internet addresses), the content they post on each BBS, as well as the time of posting of that information.²⁹ The Internet Bar Measures, as the name suggests, regulates the Internet services centers in China, i.e. the so-called “Internet bars” or the “cyber cafés.” In addition, they require the operators of Internet bars to monitor their customers’ activities on the Internet closely. Since all the “gates” to the Internet’s virtual world are guarded, it appears that such a requirement may not be necessary. In fact, the symbolic value of imposing such requirements may outweigh the practical value, especially because it is very difficult, if not impossible, for the operators of the Internet bars to check the identities of their customers.

Leaking information relating to national security and state secrets remains one of the major concerns of the Chinese government. On January 1, 2000, the State Secrets Protection Regulations for Computer

26. ICP Measures, art. 5.

27. For the full text of the BBS Measures (in Chinese), see <http://www.cnnic.net.cn/html/Dir/2000/10/08/0653.htm>.

28. For the full text of the Internet Bar Measures (in Chinese), see <http://www.cnnic.net.cn/html/Dir/2003/12/12/1995.htm>.

29. BBS Measures, art. 14.

Information Systems on the Internet (the Internet Secrecy Regulations) came into effect.³⁰ These Regulations specifically and comprehensively address problems related to the disclosure of state secrets through the Internet in China. Article 1 of the Regulations states: “[T]hese Regulations have been formulated pursuant to the ‘Law of the People’s Republic of China on the Protection of State Secrets (State Secrets Law)’ and other relevant laws and regulations of China, in order to strengthen the administration of maintenance of secrets in the international networking of computer information systems and to ensure the security of state secrets.” When we refer to the State Secrets Law, we find that the Chinese definition of state secrets is so broad that it can cover almost everything.³¹ Moreover, each executive body which produces information has the final power to decide whether a particular piece of information is “state secret,” and the courts have no power to review such decisions. As a result, even unpublished interest rate changes,³² a speech to be made by Jiang Zemin,³³ and the statistics on the number of persons being executed have been treated as state secrets. Many dissidents and journalists have been convicted for “leaking state secrets.” The transmission of information on the Internet is readily caught under these new Regulations. Article 8 of the Internet Secrecy Regulations stipulates that “responsibility [for leaked secrets] is borne by the person who placed it on the network.” This does not, however, exempt each ISP’s obligation to monitor. Under Article 10, ISPs, BBS, chat rooms, and network news group organizers are required to set up their own management mechanisms to assist in ensuring that no state secrets are transmitted on the Internet by their

30. For the full text of the Internet Secrecy Regulations (in Chinese), see <http://www.cnnic.net.cn/html/Dir/2003/11/27/1482.htm>.

31. See PRC Law on Protecting State Secrets, art. 8, available at http://www.chinaonline.com/refer/legal/Mmeyer_laws/pdf/pdf_c/C00012671CEpdf. State secrets can include, for example, the color of the carpet in a ministerial tea room. Such decorating data was not so long ago also capable of being categorized as an “official secret” in the UK.

32. Xi Yang was a journalist with *Mingpao*, one of Hong Kong’s more notable newspapers. He was arrested for “espionage regarding state financial secrets.” The alleged secrets were “unpublished interest rate changes and information on the bank’s plan for international gold transactions.” He was subsequently sentenced to twelve years imprisonment at a closed trial. For a detailed discussion of this case, see *Article 19 and the Hong Kong Journalists Association, Freedom of Expression in HONG KONG: 1994 ANNUAL REPORT (JOINT REPORT OF THE ARTICLE 19 GROUP AND THE HONG KONG JOURNALISTS ASSOCIATION)* (June 30, 1994).

33. Leung Waiman was a journalist for the Hong Kong newspaper, *Express Daily*. She was arrested in Beijing in October 1992 while reporting the Fourteenth Chinese Communist Party Congress and the visit of Chris Patten to Beijing. She was accused of “offering bribes to mainland officials in exchange of confidential documents.” The “confidential document” in question was a copy of a speech to be made by the then Party Secretary General (and President) Jiang Zemin. For a detailed discussion of this case, see *id.*

users. Given the uncertainty of the ambit of the term state secrets in China, to avoid any violation, it is suspected that many of these information-organizers prefer to remove information once they have any doubt as to the nature of the information. If that is the case, then citizens' right to have access to official information is being compromised. Another problematic area with these Regulations is that information must be inspected and have obtained approval before it can be provided to or released onto the Internet.³⁴ This kind of prior censorship undermines the instant communication power of the Internet, as well as the free flow of information on the Internet.

Whilst considering the issue of the publication of state secrets on the Internet, one more piece of legislation should be mentioned—the Interpretation of the Supreme People's Court on Several Questions Relating to the Application of Law in Handling Cases involving Stealing, Spying into, Buying, and Unlawful Supply of State Secrets or Intelligence for Organisations or Individuals Outside the Chinese Territory (SPC Interpretation).³⁵ The SPC Interpretation was issued on January 17, 2001 and aims at setting out the sentencing guidelines for the crime of espionage under Article 111 of the Criminal Law. Article 6 of the SPC Interpretation, however, makes specific reference to the committing of relevant crimes using the Internet, and it states:

Whoever unlawfully disseminates State secrets or intelligence to any organ, organization or individual outside the territory of China through the Internet shall be punished according to Article 111 of the Criminal Law; whoever disseminates State secrets through the Internet, if the circumstances are serious, shall be punished according to Article 398 of the Criminal Law.³⁶

“Intelligence” is defined as “items concerning the security and interests of the State which have not been publicized or should not be publicized in accordance with the relevant laws.”³⁷ This provision casts an even wider net than the Internet Secrecy Regulations. The maximum sentence for anyone who is convicted of transmitting State secrets or intelligence to the outside world is the death penalty.³⁸

34. State Secrecy Protection Regulations for Computer Information Systems on the Internet, art. 8, available at http://www.novexc.com/state_secreey_internet.html (last visited Jan. 18, 2005).

35. For the full text of the SPC Interpretation, see Fa Shi [2001] 4 Hao Zuigao Renmin Fayuan Gonggao (Legal Interpretation [2001] No. 4 Supreme People's Court Notice) in FUJIAN RIBAO, Feb. 22, 2001.

36. SPC Interpretation, art. 6.

37. *Id.* at art. 1.

38. *Id.* at art. 6; Criminal Law of the People's Republic of China, arts. 111 & 113.

On January 29, 2002, the Internet Society of China, a non-governmental organization which has close links with the MII, issued the Self-Disciplinary Agreement for the Internet Industry in China (Self-Disciplinary Agreement).³⁹ All the players in China's Internet Industry, including Internet operators (those who engage in the provision of Internet application services) and Internet information services (those who develop and produce Internet products and network information resources) have been invited to sign this Agreement.⁴⁰ As set out in Article 1, the purpose of this Agreement is to establish a self-regulatory system within the Internet Industry so as to enhance the "healthy" development of the Internet Industry in China.⁴¹ Under the Self-Disciplinary Agreement, the contents of self-regulation include prevention of competition by using unlawful means,⁴² protection of the legal rights of consumers,⁴³ protection of copyright,⁴⁴ prohibition of illegal access and destruction of computer systems of others,⁴⁵ prohibition of malicious attacks on the computer programs of others,⁴⁶ and most importantly, ensuring no "harmful" information can be accessed through the Internet in China.⁴⁷ As far as control over Internet content is concerned, the requirements under the Self-Disciplinary Agreement are no more than a reiteration of those relevant measures as set out in various laws and regulations. Thus, the Self-Disciplinary Agreement is another tactic used by the Chinese government to strengthen its control over the Internet.

By November of 2002, three hundred Chinese firms were reported to have signed the Self-Disciplinary Agreement.⁴⁸ Yahoo, one of the biggest foreign-based Internet companies in China, is also a signatory. Yahoo's signing of the Self-Disciplinary Agreement was subject to strong criticism.⁴⁹ The Human Rights Watch organization condemned it as "facilitating censorship by the [Chinese] government" and violating the right to freedom of expression.⁵⁰

39. For the full text of the Self-Disciplinary Agreement (in Chinese), see Self-Disciplinary Agreement for the Internet Industry in China (Full Text) at <http://big5.china.com.cn/chinese/PI-c/590141.htm>.

40. Self-Disciplinary Agreement, art. 2.

41. *Id.* at art. 1.

42. *Id.* at art. 9.

43. *Id.* at art. 8.

44. *Id.* at art. 12.

45. *Id.* at art. 13.

46. *Id.*

47. *Id.* at arts. 10–12.

48. Ethan Gutmann, *Up Against the Firewall*, 119 RED HERRING, Nov. 2002, at 36.

49. See Editorial, *Yahoo's China Concession*, WASH. POST, Aug. 19, 2002, at A12.

50. Human Rights Watch, *Yahoo! Risks Abusing Rights in China: Human Rights Watch Letter to Terry Semel* (30 July 30, 2002), at <http://hrw.org/press/2002/08/yahoo-ltr073002.htm>; see also Human Rights Watch, *Yahoo! Risks Abusing Rights in China* (Aug. 9, 2002), at <http://www.hrw.org/press/2002/08/yahoo080902.htm>.

Apart from imposing responsibilities on various players in the Internet industry, the Chinese government itself (as the ultimate gatekeeper) has also taken numerous measures to control Internet content. Using firewalls and other filtering technologies to block "undesirable" information and censor emails has long been a major method used by the Chinese government. Most of these powerful technologies were bought from foreign firms who have been happy to accept the lucrative contracts on offer.⁵¹ For example, it has been reported that China bought a firewall product with the ability to track the activities of Internet users from Nortel.⁵² The government also authorizes routine crackdowns on BBS, chat-rooms, and Internet bars. The use of the criminal law is still, however, the most intimidating method of control.

As the popularity of the Internet continues to increase, it is not surprising that the number of Internet-related crimes is also growing. This phenomenon is not unique to China and is seen in other countries as well. The situation in China, however, is somewhat different from that found in liberal-democratic jurisdictions. Undoubtedly, the continuous increase in the number of Internet-related crimes in China is partly due to the deliberate misapplication of the Internet for purposes such as "hacking," tax evasion, and online fraud. This growth in the incidence of crime, though, is also partly attributable to the Chinese government's enthusiasm for maintaining a "politically pure" Internet environment.

In recent years, the Chinese law enforcement agencies have been actively fighting Internet crime. Most of these crimes are related to the 'illegal' application of the Internet in a political sense, such as criticizing government bodies or the CCP, calling for political reforms in China, and sending politically sensitive information (including information concerning the Falungong, a quasi-religious group which was proscribed by the Chinese government in 1999) via the Internet.⁵³

D. Public Policy Impact

Despite all the restrictions, access to the Internet in China has now

51. See Gutmann, *supra* note 48.

52. David Lee, *Multinationals Making a Mint from China's Great Firewall*, S. CHINA MORNING POST, Oct. 2, 2002, at 16.

53. For a summary of some recent internet-related cases in China, see generally Human Rights Watch, *Freedom of Expression and the Internet in China: A Human Rights Watch Backgrounder*, at <http://www.hrw.org/backgrounder/asia/china-bck-0701.pdf> and Human Rights Watch, *China Human Rights Update*, Feb. 2002, at http://hrw.org/backgrounder/asia/china_update.pdf.

grown to such an extent that it has become a key zone for the public discussion of “hot topics.” As in the West, it is the more educated, usually urban class that is most likely to have ready Internet access—the same class that tends to have the greatest impact on shaping public opinion.

Over recent years, “citizen-discussions” on the Internet have traversed a range of matters including the handling of the SARS crisis in China,⁵⁴ certain international incidents, abuse of power and position by the newly wealthy, and high profile instances of police and official corruption and abuse of power. Such general discussions almost always steer clear of “forbidden topics” such as the legitimacy of the OPS, the performance of the most senior leaders, and Tibet and Taiwan separatism. Increasingly, though, such discussions do canvass day-to-day official performance that can, in turn, give rise to some spirited policy debates.

Although at one level, the OPS seems all powerful, at another, the very centrality of the CCP amplifies its vulnerability. It is the only serious political party allowed to exist in China. It follows, then, that the CCP is nominally responsible for all government policy failures and government operational failures. This is a key reason why the CCP is so sensitive about public opinion—and why it devotes so much energy trying to control information flows and manage public perceptions. Stark, day-to-day abuses of official power are clearly beyond any justification by the CCP (indeed, the CCP repeatedly claims to be dedicated to stamping them out). Such abuses comprise a constant source of discussion amongst ordinary people and, with the arrival of the Internet (and other cheap, swift mass communication modes), those discussions can quickly draw-in millions of observers and participants.⁵⁵

Recent examples of this phenomenon at work include the case of Sun Zhigang and the death of Li Siyi. In the first case, Sun Zhigang, a graphic designer from Wuhan in Hebei Province, was detained by police in Guangzhou in Guangdong Province on March 17, 2003 because he was not able to produce the local, temporary residence permit which the police said he had to carry. Within a week he died from beatings he received whilst in official custody.⁵⁶ In the second case, a three-year old girl was left to starve to death in the city of Chengdu in Sichuan

54. Severe Acute Respiratory Syndrome (SARS) hit China, Hong Kong, Singapore, Vietnam, Taiwan, and Toronto in Canada seriously in early 2003 resulting in many deaths and major outbreaks of illness. See generally D.K. Srivastava & Richard Cullen, *SARS in the HKSAR: Some Important Legal Issues*, (July 2003) HONG KONG LAWYER 71.

55. Bobson Wong, *The Tug-of-War for Control of China's Internet*, at [http://iso.hrichina.org/download repository/2/a3 togofwar.2004.pdf](http://iso.hrichina.org/download/repository/2/a3_togofwar.2004.pdf).

56. For further details, see *Chinese Protest Online: The Case of Sun Zhigang*, at <http://humanrightswatch.org/campaigns/china/beijing08/voices.htm> (last visited Jan. 15, 2004); see also *Sun Zhigang's Brutal Killers Sentenced* (June 6, 2003), at http://www.chinadaily.com.cn/en/doc/2003-06/10/content_168514.htm.

Province in June 2003. The local police arrested and detained the girl's drug addict mother—and then failed to take the necessary steps to look after the baby girl despite the fact that they had been told by the mother that Li Siyi was locked in her room alone.⁵⁷

Details of both these cases found their way into the public domain initially via the Internet. As the facts became known in these (and other) cases, public outrage spread rapidly across China and grew in intensity. As this process gathered pace, the regular media began to repeat the stories. Official investigations eventually followed, and public disciplinary measures and criminal punishments were imposed on certain police officers and other officials held to be responsible.⁵⁸

The publicity surrounding the Sun Zhigang case also led directly to Beijing scrapping the decades old anti-vagrancy laws, which had led to Mr. Sun's detention by the police in the first place.⁵⁹

The Sun Zhigang case had further consequences. One of China's most successful and liberal newspapers is the *Southern Metropolis News*, based in Guangzhou. The editor of the *Southern Metropolis Daily*, Cheng Yizhong, ran an expose on Sun Zhigang's case after discussion of it began to spread rapidly on the Internet. Local CCP officials in Guangzhou objected strongly to Mr. Cheng's decision, and he was arrested and held in custody for approximately five months on fraud charges. This time pressure was brought to bear in Beijing by some party elders in Guangzhou, who were unhappy with this fairly obvious attempt to punish Cheng for running the story on the scandal surrounding the arrest and slaying of Sun Zhigang whilst he was in official custody. Pressure was also brought to bear as a result of spirited online discussions by

57. See BBC World News, *China Police Leave Child to Starve* (June 26, 2003), at <http://news.bbc.co.uk/1/hi/asia-pacific/3023030.stm>; see also, Ren Bumei, *After Li Siyi*, (No.4, 2003) CHINA RIGHTS FORUM 33, available at http://www.hrichina.org/fs/view/downloadables/pdf/downloadable-resources/a3_Lisiyi4.2003.pdf.

58. The two police officers who put Li Siyi's mother under detention were convicted of neglecting their duties and sentenced to three years' and two years' imprisonment respectively. See Chongqing Wanbao, *Let Persons who Neglect their Duties to be Accountable*, CHONGQING EVENING POST, Dec. 20, 2004. The principal offender in Sun Zhigang's case was convicted of dereliction of duty and sentenced to death, and other defendants in this case were convicted of the same offence and sentenced to a suspended death sentence, life imprisonment, or fixed-term imprisonment.

59. The Measures for the Custody and Repatriation of Vagrant Beggars in the Cities, which was promulgated by the State Council in May 1982, was abolished in June 2003. See *Abolishing the Measures for the Custody and Repatriation of Vagrant Beggars in the Cities*, Xinhua Net, June 19, 2003, available in China Internet Information Centre, at <http://www.china.org.cn/chinese/law/349194.htm>.

academics in Guangzhou and Beijing outraged by what had happened to Cheng Yizhong. As a result of public indignation and this pressure, Cheng Yizhong was released from official custody without being charged, and it seems he will resume his editorial duties.⁶⁰

What these and similar cases indicate is that, although the OPS has thus far been fairly successful in putting the Internet to use in the interests of the State, the Internet is clearly a “knife which cuts in more than one direction,” despite all the attempts to control it. The CCP cannot justify—and does not want to justify—day-to-day abuses of power; and the growth in mass, cheap, person-to-person communication modes in Mainland China means the State has increasingly limited control over group discussion of such issues. In the case of the old anti-vagrancy laws, reform was affected almost at the stroke of a pen and with few immediate cost implications. We now, thus, see in certain limited circumstances the CCP being directly influenced in its public policy decisions by Internet-driven mass discussions.

III. CONCLUSION

The Internet has developed very quickly in China in recent years, but official policy has been to try and restrict its development so as to serve economic and, to a lesser extent, social purposes. The Internet has had an impact in terms of opening political discussion in China to a limited degree, but its chief political role, increasingly, has been to improve and increase CCP control. It has been used to convey Party policy and to help control and suppress opponents. In this respect, it is being used just like the traditional media.

For the last two centuries, China’s attitude towards western technology has been to adopt such on a “need to use” basis. The major purposes behind acceptance have always been: a) the strengthening of the sovereign power; and b) the enhancement of economic prosperity. For example, during the “Self-Strengthening Movement” in 1860, the most popular slogan propagated by the Qing government was “Chinese teachings as fundamental basis, Western learning for practical usage.” The “Open-Door” policy proposed by Deng Xiaoping also aimed at improving the economic development of China whilst strengthening the CCP. It is arguable that this conflicted attitude towards technology, innovation, and new ideas provides part of the explanation for China’s comparative political and economic backwardness.

As the 21st century begins, this historical legacy is as evident as ever in China’s less-than-complete embrace of the Internet. It is widely

60. Leu Siew Ying, *Outrage Prompted Editor’s Release*, S. CHINA MORNING POST, Aug. 31, 2004, at A8.

believed, however, that economic prosperity and political development need, over the medium-long term, to proceed hand-in-hand.⁶¹ Neither of them can maintain steady, successful development, other than over a short term, without the support of one another. In other words, in the long run, if China is going to continue advancing its economic development, it is left with little choice but to make some political concessions. With respect to the Internet, this means that while China is trying to maximize the economic benefits available from the Internet, the Chinese government should be preparing itself to tolerate (if not embrace) the predictable “side effects.” To date, the full political implications of the Internet are still too much for the Chinese government to accept. This is clearly evident in the regulatory approach with respect to the Internet detailed above. The government has produced a multi-layered, often jumbled, regulatory regime designed principally to control information flows on the Internet—a regime which is still growing.

Despite this growth in control mechanisms, the Internet is having some impact in freeing up information flows. It has facilitated both mass and specialist discussions on a range of matters including everyday abuses of official power and certain other topics which, in today's China, are now considered less risky to talk about. The CCP is officially committed to making Mainland China a better, fairer place for the citizens of China. It is more difficult today for the Party to suppress demands by citizens for remedies to particular ills in Chinese society that the CCP says it too wants to remedy. At the same time, it is easier than before for citizens to engage in electronic mass discussions focused on such issues.

It is clear that in the near to medium term, the tension between the benefits arising from the free flow of information and the desire for government control will continue to be the chief unresolved problem in the development of China's Internet.

61. See, e.g., Cesar Bacini, *Nation's Economic Growth could Provide a Market for Democracy*, S. CHINA MORNING POST, Jan. 13, 2003, at 15.

