

China: A Broken Link on the Web?

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Overview

Recent actions by China raise the question: Who's in charge of the Internet now?

Everyone's a publisher -> every government is a filter and an interceptor !?!

Exploring the dilemma of State power in the context of decentralized network control.

- The Chinese Challenge to the Internet - ISPs as government agents
- Retrospective on the First Phase of the Internet Free Expression Revolution
- Directions for Future

I. The Chinese Challenge to the Internet - ISPs as government agents

Yahoo 'helped jail China writer'

BBC 7 September 2005

*"Internet giant Yahoo has been accused of **supplying information to China which led to the jailing of a journalist for "divulging state secrets"**. Reporters Without Borders said Yahoo's Hong Kong arm helped China link Shi Tao's e-mail account and computer to a message containing the information. The media watchdog accused **Yahoo of becoming a "police informant"** in order to further its business ambitions.*

*Just like any other global company, **Yahoo must ensure that its local country sites must operate within the laws, regulations and customs of the country in which they are based,**" said Mary Osako (Yahoo).*

Yahoo is not alone. Google and Microsoft have been involved in similar Chinese police actions.

I. The Chinese Challenge to the Internet - Content-Filtering

Internet Filtering in China in 2004-2005: A Country Study
Harvard Law School and Oxford University, OpenNet Initiative

China's Internet filtering regime is the most sophisticated effort of its kind in the world. Compared to similar efforts in other states, China's filtering regime is pervasive, sophisticated, and effective. It comprises multiple levels of legal regulation and technical control...

It censors content transmitted through multiple methods, including Web pages, Web logs, on-line discussion forums, university bulletin board systems, and e-mail messages....

*Chinese citizens seeking access to Web sites containing content related to **Taiwanese and Tibetan independence, Falun Gong, the Dalai Lama, the Tiananmen Square** incident, opposition political parties, or a variety of anti-Communist movements will frequently find themselves blocked....*

[However] most major American media sites, such as CNN, MSNBC, and ABC, are generally available in China (though the BBC remains blocked).

Response: International Commercial Internet Community

*"[W]e believe that **our services have promoted personal expression and enabled far wider access to independent sources of information** for hundreds of millions of individuals in China and elsewhere in the world.*

*While we will actively work to encourage governments around the world to embrace policies on Internet content that foster the freer exchange of ideas and promote maximum access to information, we also recognize that, acting alone, our leverage and **ability to influence government policies in various countries is severely limited.**"*

Microsoft and Yahoo! Inc. Joint Statement to U.S. Congress Human Rights Caucus on Policies Related to Access to Internet Content (1 February 2006)

Challenging Business Ethics

Speaking about the Google credo "Don't be evil" CEO Eric Schmidt explained how the company weighed the decision to self-censor in China for more than a year before making the decision. "We even made an evil scale and decided it was more evil not to go in than to go in," Schmidt said.

*On hearing that, Microsoft CEO Bill Gates muttered into his microphone: **"That's do less evil."***

In response, Schmidt said: "I don't want to get caught up in semantics."

"The Semantics of Evil"

IHT Blog Deliving Into Davos - Thomas Crampton on January 27, 2006

Postscript (5 May 2006): Senior Google policy strategist says of the 'no evil' slogan: "[it] has now become an albatross around Google's neck."

Response: Human Rights Community

Reporters Without Borders Principles:

1. Email: No US company should host email services in a 'repressive country' -- demands for access would have to go government to government.
2. Search: No search engine should filter 'protected' words such as demomcracy
3. Content hosting (blogs, etc.): No US company should be allowed to host content in a repressive country.
4. Internet filtering: No US company should be allowed to sell filtering technology to a repressive country.
5. Surveillance: US companies must obtain persmission from the USG to export Internet surveillance technology.
6. Training: No training in filter or surveillance to repressive states without US Department of Commerce permission.

Response: Democractic Governments

US: "China can grow even more successful by allowing the Chinese people the freedom to assemble, to speak freely and to worship."
President Bush, 20 April 2006 ([Washington Post](#))

UK: "In a country that is developing very fast ... there is unstoppable momentum there toward greater political freedom, progress on human rights," PM Blair, 6 September 2005 ([Guardian](#))

UN: Special Representative of the Secretary General on human rights and transnational corporations ([report](#))

II. Retrospective on the First Phase of the Internet Free Expression Revolution

China and the first (revolutionary) principles of Internet regulatory framework.

The Internet lead to a revolutionary new way of thinking about media regulation and free expression:

- Abundance replaces scarcity
- User control replaces censorship
- Carrier liability limits

Abundance vs. scarcity

"A unique characteristic of the Internet is that it functions simultaneously as a medium for publishing and for communication. Unlike in the case of traditional media, the Internet supports a variety of communication modes: one-to-one, one-to-many, many-to-many. An Internet user may "speak" or "listen" interchangeably. At any given time, a receiver can and does become content provider, of his own accord, or through "re-posting" of content by a third party. The Internet therefore is radically different from traditional broadcasting. It also differs radically from a traditional telecommunication service."

European Commission Legal Advisory Board ([1997](#))

Abundance vs. scarcity

"The information society has the potential to improve the quality of life of Europe's (and the rest of the world's) citizens, the efficiency of our social and economic organisation and to reinforce cohesion."

Martin Bangeman, [Europe and the global information society](#) (1994)

Abundance vs. scarcity

"The Internet is a far more speech-enhancing medium than print, the village green, or the mails.... The Internet may fairly be regarded as a never-ending worldwide conversation."

ALA v US Department of Justice, United States District Court for the Eastern District of Pennsylvania, Judge Stewart Dalzell (June 1996)

User control vs. censorship

"[C]urrently available user based software suggests that a reasonably effective method by which parents can prevent their children from accessing sexually explicit and other material which parents may believe is inappropriate for their children will soon be widely available.... [I]n the absence of evidence to the contrary, we presume that governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it.

The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship."

United States Supreme Court (ACLU v. Reno)

Carrier liability limitations

In decentralized networks, responsibility must shift to the end-points:
(see content filtering)

- Libel
- criminal and 'harmful' content
- even intellectual property violations*

Globalization of Internet Regulation

US Policy in mid-1990s: *The private sector should lead.*

"Commerce on the Internet could total tens of billions of dollars by the turn of the century. For this potential to be realized fully, governments must adopt a non-regulatory, market-oriented approach to electronic commerce, one that facilitates the emergence of a transparent and predictable legal environment to support global business and commerce.

Official decision makers must respect the unique nature of the medium and recognize that widespread competition and increased consumer choice should be the defining features of the new digital marketplace.'

Ira Magaziner, Framework for Global Electronic Commerce (1997)

China Reacts - Turning regulatory model of the Internet on its head

Weak point in 'hands-off' deregulatory strategy:

- **abundance:** open web -> no limits except for political speakers
- **user control:** choice of content by users -> choice by government
- **carrier liability:** limited liability for free flow of information -> carriers as agents of the State

III. Directions for Future

- National Sovereignty - accept the inevitable
- International Human Rights of Free Expression - real support for the first time?
- Global transparency of national law and government actions

National Sovereignty

One view:

“there is no legitimate basis for giving any single law a kind of global constitutional status.”

Tim Wu and Jack Goldsmith, WHO CONTROLS THE INTERNET: Illusions of a Borderless World. (Oxford, 2006)

International Human Rights of Free Expression

“[E]veryone has the right to freedom of opinion and expression ... includ[ing] [the] freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Universal Declaration of Human Rights, Article 19 (1)

Global transparency: law, government action, corporate behavior

Google's aspirational transparency principles:

1. transparency to users: including an indication of what's blocked \
2. transparency to the world: letting everyone else know what Google blocks and, where possible, why
3. protection of customer information
4. insistence on rule of law and due process
5. Shareholders in companies (especially minority shareholders) should insist on compliance with openness principles.

But, revealing filtering practice violated China State Secrets Law.

Conclusion -- on an optimistic note

Backdrop of reform in China:

bifurcation: advance economic reform in advance of corresponding political openness.

China-oriented human rights groups -- political reform will follow due to domestic demands.

W3C has [opened an Office](#) in China and is looking forward to the chance to engage with the technical community in China.