

REGULATION OF THE INTERNET: THE CHINESE APPROACH

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Abstract: As China is readily embracing information technology (IT) revolution, it has to deal with an accompanying problem: regulation of the Internet, which cuts to the heart of issues that are key to China's future, such as how much market competition will be allowed and whether the free flow of information, crucial for economic development, will be hindered by political concerns. While the newly promulgated rules on the Internet feature the usual restrictive rhetoric, they should not be so restrictive as to deny free access to the Internet.

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INTRODUCTION

China is now embracing the Internet without a lot of fanfare, and is taking a giant leap toward the 21st century. A series of figures may be illustrative: In 1994 there were fewer than 100 Chinese Web pages. As late as 1996, most Internet traffic to and from China had to flow through a single 56-kilobite circuit that prevent more Chinese from access to the Internet. Now China has a pipeline a hundred times wider. As a consequence, the access to the outside world has increased enormously over the recent years. There are currently 6 million Chinese with access to the Internet, far exceeding the expected number of 4 million (Romos, 1998 p.34 - 38).

As in the West, one big problem facing the Chinese government is the regulation of the Internet. As a result, recent years saw the promulgation of numerous regulations on the Internet. Among them are the Regulations on the Safeguard of Computer Information System (18 February 1994), the Interim Provisions on the Administration of International Wiring of Computer Information Networks (1st February 1996, revised on 20 May 1997), the Rules for the Administration of International Wiring of Computer Information Networks (9 April 1996), Circulars of the Ministry of Public Security on the Recording of the Internationally-wired Computer Information System (29 January 1996), the Interim

Rules on the Connection between Specialized Networks and the Public Network (Ministry of Post and Telecommunication 24 July 1996) (Zheng, 1998 p.237 - 243).

However, while international observers habitually notice the Chinese government has already taken measures to regulate the Internet, they fail to perceive the inter-linkage between the new rules and the bureaucratic obstacles to open market competition in the telecommunication industry. It is also easy to underestimate the inherent power of the Internet and, particularly, to ignore the ambition of the Chinese government to adapt to the technological opportunity. The government is readily embracing the information technology (IT) revolution, the Internet rules should not be so restrictive as to deny free access to the Internet. It is undoubtedly meaningful to overview the Chinese approach to the regulation on the Internet both from the freedom of speech point of view and from the open competition point of view.

AN OVERVIEW OF THE INTERNET RULES

It is not difficult to find that the Interim Provisions on the Control of International Wiring of Computer Information Networks are the governing rules from which the other regulations derive. As the term "administration" or "guanli" indicates,

the purpose of the regulations is to strengthen the administration of international wiring of computer information networks. An agency, i. e. the Informatization Work Leadership Group (IWLG) under the auspices of the State Council, was established to this end. IWLG is entrusted with a wide range of powers, including making detailed rules for the implementation of the regulations, regulating the rights and duties of channel providers, Internet service providers and users, and supervising and inspecting the international wiring of networks (The Law Commission of the National People's Congress Standing Committee, 1999, p.19).

The regulations require that all traffic to the Internet be effectuated through the pipeline maintained by public telecommunication networks, de facto namely China Telecom, Ministry of Education, Chinese Academy of Sciences and Jitong Communications Company. No persons or units may establish or use other channels for Internet traffic without prior approval from the government (The Law Commission of the National People's Congress Standing Committee, 1999, p. 19). Restrictions also exist on the Internet wiring. With respect to Internet service providers, any unit intending to plug on to the Internet has to file an application with the relevant government agencies for Internet wiring; a unit intending to operate business on the Internet has to procure a license. Individuals are excluded from the scope of Internet service providers. In relation to users of Internet service, any individual, corporate and other organization intending to plug on to the Internet is required to register with the police, i. e. the Public Security Bureau (PSB). Failure to register may result in forced de-wiring by PSB (Zheng, 1998, p.239).

According to the regulations, entities and/or individuals engaging in the business of international wiring, should fully comply with the relevant state laws and administrative regulations, and must not commit acts endangering national security, disclosing state secrets, and refrain from making, checking, copying and transmitting pornographic information (The Law Commission of the National People's Congress Standing Committee, 1999, p.19; 21). Also, according to the Regulations on the Safeguard of Computer Information System, endangering the security of computer networks, is also punishable (Zheng,

1998, p.238). In this regard, it should be noted that, though the regulations feature the usual restrictive rhetoric, they are clearly designed to reduce the adverse effect to the society as a whole to the minimum level. From the government's point of view, some controls are needed to help combat "spiritual pollution".

However, it is worth noticing that the vaguely worded provision may leave room for the government to deal with cases that otherwise may be dealt with on other grounds, e. g. tort. There is a risk for the PSB to tend to charge the violating business on the intimidating ground of endangering national security. The person who is in charge of this kind of business may be sentenced to ten years' imprisonment or even life imprisonment in accordance with the Penal Code. For example, a private Internet service provider was prosecuted for allegedly endangering national security by disclosing the e-mail addresses of his clients to an overseas institution identified as anti-government organization (Lawrence, 1999). It is also illegal in the West for a business to disclose, without prior consent, its clients' information obtained through commercial channels. However, in China the PSB would not find it in a position to charge the violating business--because there is no rule or no well-established rule.

Fortunately, there are signs that the Chinese courts are not always willing to support the accusations against the Internet users for "endangering national security". It is interesting to note a high-profile case in Fujian Province. The Chen brothers who are Internet users of China Telecom set up a phone service via the Internet, selling calls to the United States at a fraction of the state monopoly's price. Acting on request from China Telecom, the local police arrested the brothers, seized their property including their computer and accused them of "endangering national security" and committing "a new type of crime." The brothers responded by suing the police, arguing that their actions were not criminal because there was no law banning Internet phone service. (Such a regulation was approved, apparently only to maintain monopoly, in September 1998, nine months after the business of the Chen brothers were shut down). The brothers won the first round in the case (Pomfret, 1999).

BACKGROUND OF THE INTERNET RULES

Indeed, governments tend to favor regulation although others see the Internet in a different way. For them cyberspace is itself a regulator and governmental regulation is redundant and therefore conventional politics should not apply to the Internet. Technically, if the unfettered access to the Internet is being threatened, the dream of universal access will remain only a dream. Politically, without free and unfettered access to the Internet, this exciting new medium could become little more than a souped-up television network. Internet is "the most participatory form of mass speech yet developed," and should be entitled to "the highest protection from governmental intrusion." In view of this, they firmly hold that government censorship of the Internet violates the freedom of speech. In the West, the government has traditionally had an interest and been allowed to regulate access to such issues as indecency in the following way: it can block out kids as long as it keeps access open for adults on the ground that the government may serve the good of the society as a whole.

In China, the government regulation on the Internet is taken for granted. The justification should be traced back to the unique Chinese culture. In China, the advent of new forms of technology is always a cause for public anxiety and unease. The age-old mantra was *zhongxue weiti, xixue weiyong*, or, Chinese thinking for our essence, western learning for application, is evidence. Historically, the government never hesitated to block access of its people to information it deemed politically or culturally suspect. The Internet, with its staggering ability to disseminate information quickly and to give an amplified voice to minority views, would pose a fundamental challenge to China's tightly run society. In this connection, it is fair to argue the emergence of the Internet rules in part result from political concern.

However, the regulations are also a result of pressure from the monopoly in the telecommunication industry. Companies, e. g. China Telecom, have long since enjoyed monopoly. Facing the enormous potential competition that the Inter-

net will bring forth, they are naturally reluctant to lose their monopoly. Their ambitions are reflected in the new regulations, both because of the influence of the monopolies and their allies in the administration and because of the vesting of the regulatory power in the industry. It is a known fact that the Ministry of Information Industry (formerly called Ministry of Post and Telecommunication), which is the governing department of China Telecom, is vested with the power to regulate the telecommunication industry. Though the regulatory power has been shifted officially from the Ministry to the Informatization Work Leadership Group (IWLG) in the field of Internet administration, these bodies are, to some extent, still intertwined.

CONCLUDING REMARKS

Given the restrictive feature of the Internet regulations, a question normally arises whether there are any risks that China will build the electric equivalent of the Great Wall or that the Chinese government will facilitate all sorts of filtering of all sorts of content, at any level on the distributional chain, turning the Internet from this great space of freedom and openness into a space of maximum regulability.

The questions have to be explored in the contexts of market-oriented reform and technological aspect of the Internet. In the tech-minded leadership, the Internet is considered a technological area *vis-à-vis* print publishing that is more restricted. Given technology and competitiveness are deeply linked and the Internet can serve the purpose of making China competitive, what concerns the leadership most is how to get Chinese onto the Internet in an orderly way and how best to explore the Internet, not how to keep the Internet off altogether. In this regard, it is not likely that monopoly of the Internet service will be maintained in the long run and that the government will architect an Intranet whose essence is the control of access and content.

It is proposed, in relation to regulation of the Internet, that special telecommunications zones be established with open competition and uncensored Internet access, much like the special economic zones of the 1980s that allowed China to experiment with western ideas and institutions.

This is to be prompted by the desire of the government to tap the benefits of the Internet and shows the most revolutionary features of China's information openness. It is also inspiring to note that a new press law is reported to have been drafted, which might result in a gradual relaxation of control on the Internet.

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