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REGULATIONS RESTRICTING INTERNET ACCESS: ATTEMPTED REPAIR OF RUPTURE IN CHINA'S GREAT WALL RESTRAINING THE FREE EXCHANGE OF IDEAS

Scott E. Feir

Abstract: The People's Republic of China is in a paradox: While China needs computer networks to assist its plans for modernization, the government fears the uncontrolled exchange of information between China and the rest of the world. Therefore, the People's Republic of China enacted restrictive regulations controlling Internet usage. This comment examines China's attempt to control Internet use in light of these regulations and current censoring technology viewing China as a test case for other countries. If a combination of an authoritarian government, restrictive regulations, and physical network controls cannot prevent users in China from accessing and supplying prohibited information, then similar efforts by other countries will likely fail as well.

I. INTRODUCTION

The People's Republic of China ("China") is an emerging economic world power. To compete effectively in the global market, China is enhancing its communications infrastructure, and business is looking to it as a viable market for technology products such as computer hardware, software, and other telecommunications equipment.¹ Included in China's revitalization and modernization plan is the adoption of the Internet² as a necessary communication tool for successful economic competition.³

Yet Internet technology threatens to compromise China's ability to control information exchange. Increased ability to communicate and access information enables Chinese citizens to freely exchange ideas and information over the Internet. To restrict this new found freedom, China enacted the Interim Internet Management Rules.⁴ These regulations provide

¹ Chris O'Malley, *Connecting China*, POPULAR SCI., Aug. 1996, at 75-76.

² The Internet is a mechanism for data transfer from one computer to another using certain protocols. See, e.g., Alan Phelps, *Ready, Set Click: The Internet Races into the Mainstream*, 4 PC NOVICE GUIDE TO THE INTERNET (special reprint, 1996), at 7.

³ See, e.g., Lisa Frazier, *China's Hard Drive to the Future*, WASH. POST, Nov. 29, 1995, at D1. See also *Getting Plugged into the World*, ASIAN BUS., June 1995, at 55, available in LEXIS, Busfin Library, ABI File.

⁴ *Text of Interim Internet Management Rules*, XINHUA NEWS AGENCY, Feb. 2, 1996, translated by F.B.I.S., available in *World News Connection* <<http://wnc.fedworld.gov>> [hereinafter *Internet Regulations*]. A full text of China's Internet regulations is attached as Appendix A. See also *China Seeks*

notice to users, service providers, and application developers as to the governmentally approved methods of access and permissible content of Internet communications. In addition to and consistent with these regulations, China is working with private technology companies to physically limit its citizens' access to the Internet by various means such as filtering, blocking, and establishing a proprietary Chinese intranet.⁵

This comment examines whether a combination of authoritarian control, restrictive regulations, and physical limits on technology can successfully restrict the exchange of censored material on the Internet. China, known for its comprehensive control of its citizens, will be a test case for Internet restriction. If China cannot effectively prevent its people from full access to information available on the Internet through a combination of laws and physical limits, then it is doubtful that other countries will have much success either.

Part II of this comment provides a summary of the development and physical nature of the Internet so that the reader may understand the difficulties of restricting access to it. Part III examines a citizen's right to access Internet information in light of the legal restrictions imposed by China's current regulations. Part IV discusses China's attempt to control Internet communications through domain blocking and content monitoring. Part V identifies the challenges facing companies seeking to do Internet business in China. Finally, Part VI concludes by evaluating the likelihood that the regulations will succeed in restraining the free flow of information in China.

II. EMERGENCE OF THE INTERNET IN CHINA

A. *Global Internet Origins*

One can better appreciate the challenge China faces in attempting to control Internet access when one understands the basic nature of Internet design. The Internet is a group of computer networks that communicate

to Control Internet Access, BBC SUMMARY OF WORLD BROADCASTS AND MONITORING REPORTS, Feb. 9, 1996, available in LEXIS, News Library, BBCSWB File.

⁵ An intranet is a subset network of computers that can limit the exchange of information between it and other networks. See, e.g., Kyle Schurman, *Intranet: Creating an In-House Internet*, 4 PC NOVICE GUIDE TO THE INTERNET (special reprint, 1996), at 82.

using TCP/IP protocol⁶ and are connected through high speed telephone lines for the purpose of sharing information.⁷

The Internet began in 1969 when the U.S. Defense Department wanted to construct a computer network that would remain functional after a nuclear attack.⁸ In order to accomplish this goal, the Defense Department commissioned the Advanced Research Projects Agency Network ("ARPANet") to provide a secure network to support military research.⁹ ARPANet designed the network so that if a portion became inoperable due to some catastrophe, the individual computers on the network could reroute the message and still deliver it.¹⁰

The Internet's growth was astonishing. By 1971 the number of network host computers had expanded to twenty-three.¹¹ Two years later, England and Norway joined the ARPANet as the first international connections,¹² and in the next decade, a new computer joined the network every twenty days.¹³ Advancement in network interoperability came through a standardized communication protocol¹⁴ officially adopted by ARPANet in 1983.¹⁵ Computer networks using this protocol became known as the "Internet."¹⁶ The new protocol enabled a computer to efficiently determine the existence of other computers on the Internet.¹⁷ As a result, the computer sending data could route information to its intended recipient

⁶ TCP/IP protocol allows different types of networks to communicate through standardized rules. See, e.g., TRACY LAQUEY & JEANNE C. RYER, *THE INTERNET COMPANION: A BEGINNER'S GUIDE TO GLOBAL NETWORKING* 22-23 (1993).

⁷ GWYNETH TSENG ET AL., *THE LIBRARY AND INFORMATION PROFESSIONAL'S GUIDE TO THE INTERNET* 6, 9 (1996).

⁸ *Id.* at 9.

⁹ ED KROL, *THE WHOLE INTERNET USER'S GUIDE & CATALOG* 11 (1992).

¹⁰ ADAM C. ENGST ET AL., *INTERNET STARTER KIT FOR WINDOWS* 34 (1994). See also DANIEL P. DERN, *THE INTERNET GUIDE FOR NEW USERS* 9 (1994). Beginning in September of 1969, main computers for ARPANet were installed at University of California Los Angeles, Stanford Research Institute, University of California at Santa Barbara, and University of Utah and were soon exchanging information with one another.

¹¹ Robert Hobbes Zakon, *Hobbes' Internet Timeline v2.5* (visited Nov. 4, 1996) <<http://info.isoc.org/guest/zakon/internet/history/hit.html>>.

¹² *Id.*

¹³ DERN, *supra* note 10, at 9.

¹⁴ LAQUEY & RYER, *supra* note 6, at 22. The new protocol developed during the 1970's and still in use today is known as TCP/IP, i.e., Transmission Control Protocol (TCP)/ Internet Protocol (IP). *Id.*

¹⁵ DERN, *supra* note 10, at 11.

¹⁶ *Id.* at 11-12.

¹⁷ ENGST ET AL., *supra* note 10, at 34.

through the quickest means then available and detour around sections of the Internet that were inoperable.¹⁸

Internet growth continued at an incredible pace, and in the year after the adoption of the new communication protocol, the number of host computers on the Internet climbed to over one thousand.¹⁹ The retirement of ARPANet in 1990 brought newer, faster systems online,²⁰ and the Internet's growth showed no signs of slowing as the number of hosts broke one million in 1992.²¹ Four years later, nearly thirteen million hosts support the Internet and the number increases at times by as much as twenty percent per month.²² Currently estimates indicate that the number of online users in the United States is 15.2 million people.²³ Although it is difficult to measure the number of persons who use the Internet,²⁴ estimates place current global usage by some ninety countries at around sixty million²⁵ with the number of users doubling every year since 1993.²⁶

B. *Internet Development in China*

Although, thirty years ago, leader Mao Zedong labored to convince his people that China was one of the most advanced societies in the world, in reality, China lagged behind most economic world powers in the development and implementation of technological advances.²⁷

¹⁸ ENGST ET AL., *supra* note 10, at 34. This routing flexibility also presents difficulty for those seeking to block access to certain sites. The Internet was designed to be able to avoid "broken" or destroyed parts. *Id.*

¹⁹ TSENG ET AL., *supra* note 7, at 9; by 1985, increased Internet traffic and the need for faster data transmission speed prompted the birth of the National Science Foundation Network ("NSFNet"). NSFNet connected five high speed super-computing centers at U.S. universities. *See, e.g.*, ENGST ET AL., *supra* note 10, at 36; this development led to an explosion of new net connections. *See, e.g.*, LAQUEY & RYER, *supra* note 6, at 6; computer hosts on the net increased rapidly and by 1989 the number of hosts were over 100,000. *See, e.g.*, Zakon, *supra* note 11.

²⁰ ENGST ET AL., *supra* note 10, at 37.

²¹ Zakon, *supra* note 11. Zakon also notes that by 1994 some neighborhood businesses had connected to the Internet to increase business opportunities. For example, beginning in 1994, one could receive a home delivered pizza after ordering through an Internet connection. *Id.*

²² Zakon, *supra* note 11; ENGST ET AL., *supra* note 10, at 42.

²³ *Symantec Targets Dejected PC Users*, INVESTOR'S BUS. DAILY, Nov. 4, 1996, at A6.

²⁴ Ed Bott, *Internet Lies*, PC COMPUTING, October 1996, at 189.

²⁵ "China's Own 'Internet' to Start Operation at Year End", XINHUA NEWS AGENCY, Oct. 29, 1996, available in LEXIS, Asiapc Library, XINHUA File.

²⁶ Aril Louis, *Answernet*, DAILY NEWS, Oct. 27, 1996, at 46, available in LEXIS, News Library, DLYNWS File.

²⁷ Rone Tempest, *Market Focus; Internet Scales Great Wall of Communication with China*, L.A. TIMES, Apr. 25, 1995, at 2. *See generally* O'Malley, *supra*, note 1, at 75-76.

Subsequently when many countries of the world readily embraced Internet technology, China was slow to adapt its telecommunications infrastructure to support this technology.²⁸ China's major attempt at a national education network with a global Internet link did not occur until 1995 when China built the China Education Research Network ("CERNet") connecting approximately one hundred Chinese universities.²⁹

However, China now realizes the importance of strengthening its communication infrastructure as it attempts to compete in global markets.³⁰ China has taken numerous steps toward modernization and has committed over sixty billion dollars in the next five years for necessary communication infrastructure upgrades.³¹ Part of the infrastructure upgrade includes plans by the Ministry of Posts and Telecommunications to more than double the telephone switching capacity of the country by adding over seventy-nine million new phone lines.³² By 2010, China's goal is to have established over 420 million lines.³³ Other forms of infrastructure enhancement include recent installation by Motorola and Ericsson of the world's largest cellular network.³⁴ The network is designed to connect the mainland's twenty-six provinces and is predicted to support over thirteen million users by 2000.³⁵ China is currently the third largest user of pagers in the world behind only

²⁸ David Swinbanks, *Internet Fever Arrives in Japan, Worries China*, RESEARCH-TECHNOLOGY MANAGEMENT, July/Aug. 1996, at 7-8, available in LEXIS, News Library, MAGS File; ironically, China, the oldest continuous civilization in the world, possessed some of the most advanced communications networks imagined in times past. See, e.g., Wen-hui Tsai, *In Making China Modernized: Comparative Modernization between Mainland China and Taiwan*, (1993) OCCASIONAL PAPERS/REPRINTS SERIES IN CONTEMP. ASIAN STUD. 1, (117). See also G.J. MULLIGAN, COMMUNICATIONS AND CONTROL, NETWORKS AND THE NEW ECONOMICS OF COMMUNICATION, 33 (1991). This backwardness in communication infrastructure is surprising since the early Chow dynasty operated message services, and the Mongol Yuan Dynasty created five main message routes staffed by 70,000 men and 40,000 horses. The routes incorporated approximately 1600 post stations. *Id.*

²⁹ *China Building Network to Link to Internet*, MEDIA DAILY, Jan. 27, 1995, available in LEXIS, Market Library, IACNWS File; although the progressive inventor of the magnetic compass, gunpowder, block-printing, and paper currency, see, e.g., Tsai, *supra* note 28, at 1, China did not establish its first major Internet link (64-Kbps satellite link) outside the country until 1994. See, e.g., Swinbanks, *supra* note 28, at 7-8. See also CERNet, (visited Nov. 25, 1996) <<http://www.cernet.edu.cn/www/test/intro.html>>.

³⁰ Geoffrey Murray, *China Set Priorities for Massive Telecom Investment*, JAPAN ECON. NEWSWIRE, Mar. 31, 1995, available in LEXIS, Asiapc Library, JEN File.

³¹ O'Malley, *supra* note 1, at 75-76.

³² *Id.*

³³ Liu Manjun, *Telecommunications Goals for Ninth Five-Year Plan Period*, RENMIN RIBAO (Overseas Edition), Jan. 1, 1996, at 1, translated by F.B.I.S., available in World News Connection <<http://wnc.fedworld.gov>>.

³⁴ O'Malley, *supra* note 1, at 77.

³⁵ *Id.*

the United States and Japan.³⁶ Over the last three years, China's commitment to modernization has attracted thirty billion dollars in foreign investment per year and is anticipated to attract thirty-seven billion dollars in 1997.³⁷

Almost as fast as the growth of telecommunications, China's Internet industry expanded to assist China in competing more effectively in global economic markets. The Chinese government promotes the Internet in advertisements designed to attract new users.³⁸ AsianNet is conducting a major instructional campaign to educate businesses about Internet products and benefits.³⁹ China is expected to have 120,000 Internet users by the end of 1996 and one million users by 2000.⁴⁰ Also by 2000, China plans to include thousands more schools on its CERNet.⁴¹ Another network, ChinaNet, which came online June 1995, provides a repository for academic and scientific data.⁴² By 1998, China Wide Web, a network designed to assist business, hopes to be fully operational in about fifty cities.⁴³ A commercial online service, the "Yinghaiwei Cyberspace," is expected to start offering service in eight major Chinese cities by the beginning of 1997.⁴⁴ Internet users will be provided with a fully Chinese interface and

³⁶ *China Ranks Third in World in Pagers*, ZHONGGUO XINWEN SHE (Beijing), Apr. 22, 1996, available in *World News Connection*, <<http://wnc.fedworld.gov>>.

³⁷ Feng Xiuju, *Zhu Rongji Discusses Information Market*, XINHUA NEWS AGENCY (H. K.), Oct. 22, 1996, translated by F.B.I.S., available in *World News Connection* <<http://wnc.fedworld.gov>>.

³⁸ Steven Mufson, *China Opens a Window on Cyberspace*, WASH. POST, June 19, 1995, at A1. The advertisement boasts, "Just have a try. It [the Internet] will help you with knowledge, information and opportunities for success." *Id.*

³⁹ *AsianNet Launches Massive Internet Training Program*, ZHONGGUO XINWEN SHE (Beijing), Oct. 22, 1996, translated by F.B.I.S., available in *World News Connection*, <<http://wnc.fedworld.gov>>. AsianNet is a Taiwanese company whose goal is to educate and train others in Internet use. AsianNet plans over one hundred free training sessions on the Internet in Beijing by the end of 1997. *Id.* See also *Internet Training Launched in Beijing for Businesses*, BBC SUMMARY OF WORLD BROADCASTS AND MONITORING REPORTS, Oct. 30, 1996, available in LEXIS, News Library, BBCSWB File.

⁴⁰ Steven Mufson, *Chinese Protest Finds Path on the Internet; Beijing Tightens Its Control, Can't Prevent On-line Access*, WASH. POST, Sept. 17, 1996, at A9 (reporting estimates by New China News Agency).

⁴¹ Craig S. Smith, *Chinese Universities Will Join Internet*, ASIAN WALL ST. J., Jan. 30, 1995, at A14, available in LEXIS, Asiapc Library, AWS File.

⁴² Stephen Vines, *China Plans to Limit Flow of Internet Offerings*, S. F. EXAMINER, June 22, 1995, at A18; Feng Xiuju, *supra* note 37.

⁴³ Tom Korski, *Internet Service Opens with Controlled Cultural Characteristics*, S. CHINA MORNING POST, Oct. 22, 1996, at 4, available in LEXIS, Asiapc Library, SCHINA File; China Wide Web is an online intranet designed to foster trade ties between China and the rest of the world by providing business information to its subscribers. See, e.g., *Bay Networks to Provide Core For China Wide Web*, XINHUA NEWS AGENCY, Jan. 14, 1997, available in LEXIS, Asiapc Library, XINHUA File.

⁴⁴ Qin Chun, *Chinese-Language Internet Service Available in 8 Cities*, XINHUA NEWS AGENCY, Nov. 4, 1996, translated by F.B.I.S., available in *World News Connection* <<http://wnc.fedworld.gov>>. See

will have numerous options such as email, online shopping, games, and health information.⁴⁵ In the last year, 2.3 million Chinese have registered to try this new service when it becomes available.⁴⁶ In September 1996, Microsoft launched the Chinese language version of Internet Explorer 3.0.⁴⁷ Currently, 1.5 million computers are sold in China each year with a projected annual sales growth of fifty percent.⁴⁸

Although China has decided to embrace Internet technology, leadership wishes to maintain tight control over information exchange on the Internet.⁴⁹ The Chinese government readily admits that it is faced with huge difficulties in controlling this technology.⁵⁰ In 1989, the Chinese government became acutely aware of the power of the Internet to rapidly transmit information throughout the world when the Tiananmen democracy movement made considerable use of the limited Internet connections available in local universities.⁵¹ Recently, a Chinese student posted an electronic message on a computer bulletin board that called for a demonstration at the Japanese embassy in Beijing.⁵² The result of the bulletin board posting stunned Chinese officials as demonstrations took place in Hong Kong and hundreds of thousands of Chinese signed a petition expressing their outrage at Japan.⁵³ Although the Chinese government sympathizes with the people protesting Japan's position regarding the Diaoyu Islands, the government is alarmed at the student's effective use of the Internet to organize a political protest.⁵⁴

also China's English-Chinese Translation System for Internet. XINHUA NEWS AGENCY, Nov. 12, 1996, available in LEXIS, Asiapc Library, XINHUA File.

⁴⁵ Chun, *supra* note 44.

⁴⁶ *Id.*

⁴⁷ Mufson, *supra* note 40, at A9. Microsoft Chairman Bill Gates visited China in June 1996 and indicated that he expected Internet use in China to grow rapidly though mostly through intranets and domestically restricted services. *Id.*

⁴⁸ *Id.* Projected sales made by Microsoft Chairman Bill Gates. *Id.*

⁴⁹ Vines, *supra* note 42, at A18.

⁵⁰ *Id.*

⁵¹ Peter Costantini, *Communications-Technology: Wrestling with Elusive Internet*, INTER PRESS SERV., Apr. 23, 1996, available in LEXIS, News Library, WIRES File.

⁵² Mufson, *supra* note 40, at A9. The student wanted others to join in a protest of Japanese actions regarding five disputed tiny East China Sea islands, the Diaoyu Islands. Possession of these islands is disputed between China, Japan, and Taiwan. *Id.*

⁵³ *Id.*

⁵⁴ *Id.* The government was not so surprised, however, as to be unable to respond to the proposed political protest. One leader of the petition drive was banished to the remote Qinghai Province for his participation in the activity. Entire web sites are now devoted to the Diaoyu protest. See, e.g., *Diaoyu Islands Belong to Us, the Chinese!* <<http://ecs.school.net.hk/~swong/protest.html>>.

III. CURRENT INTERNET REGULATION IN CHINA

China enacted a restrictive set of Internet regulations in an effort to control the rapidly expanding and unrestrained use of the Internet.⁵⁵ The regulations were approved during the Forty-second meeting of the State Council on January 23, 1996, and were signed into law by China's Premier, Li Peng, on February 1, 1996.⁵⁶ Essentially, the regulations identify two means by which the Chinese government will attempt to control freedom of expression on the Internet. First, the Chinese government outlawed unregistered and content-unrestricted use of the Internet. Second, the government requires the development of "safe" connections in the form of limited physical Internet access.

A. *Regulations in Context with Chinese Legal Structure*

Part of understanding the impact these regulations will have on the Chinese people and companies doing business in China is understanding the nature of the enacting and enforcing agencies. The regulations identify several layers of governmental jurisdiction over Internet control.⁵⁷ The enacting government organ for these regulations is the State Council.⁵⁸ Second, the regulations mandate administrative control of international connections to the Ministry of Posts and Telecommunications.⁵⁹ Third, the regulations authorize the Ministry of Public Security (the police)⁶⁰ to enforce penalties against those users failing to register their Internet accounts.⁶¹

1. *State Council*

The State Council is the executive branch of the National People's Congress and is provided for in articles 57 and 85 of the Chinese

⁵⁵ *China Improves Computer International Networking*, XINHUA NEWS AGENCY, Feb. 4, 1996, available in LEXIS, Asiapc Library, XINHUA File.

⁵⁶ *Id.*

⁵⁷ *Internet Regulations*, *supra* note 4, arts. 5-7.

⁵⁸ *Internet Regulations*, *supra* note 4, art. 7. The State Council is the executive branch of the Chinese government responsible for administrative regulations and laws. See discussion *infra* Part III.A.1.

⁵⁹ *Internet Regulations*, *supra* note 4, art. 6.

⁶⁰ H.L. Fu & Richard Cullen, *National Security Law in China*, 34 COLUM. J. TRANSNAT'L L. 449, 451 (1996).

⁶¹ *Internet Regulation*, *supra* note 4, art. 14.

Constitution.⁶² Being the highest element of state administration, the State Council's powers are broad and the administrative regulations it enacts carry the force of law over the entire country.⁶³ To carry out its regulations the State Council has numerous ministries.⁶⁴ Administrative regulations enacted by the State Council are required by law to be identified by one of three terms of art as "regulations, provisions, or measures."⁶⁵

The regulations enacted by the State Council regarding Internet restrictions have been identified as "provisional."⁶⁶ Enacting a regulation as provisional is not unusual; nearly twenty-five percent of the regulations enacted by the State Council from 1979-85 were designated as provisional.⁶⁷ The provisional designation denotes that its enactment is experimental in nature and is expected to be revised.⁶⁸ However, provisional regulations carry the same force of law as other regulations.⁶⁹

2. *Ministry of Posts and Telecommunications*

The State Council mandated that international Internet connections will be limited to those provided by the Ministry of Posts and Telecommunications.⁷⁰ Essentially this Ministry will be responsible for the physical controls placed on Internet users. Such controls might include blocking objectionable sites, filtering out certain types of message content, or monitoring email. Information about the extent of this ministry's actual involvement is likely to be kept unavailable to the public. Also, in some circumstances, ministries under the State Council are given latitude to enact further rules consistent with State Council policies or necessary for the enforcement of the State Council's regulations.⁷¹ Thus, the Ministry of

⁶² ZHONGHUA RENMIN GONGHEGUO XIANFA [P.R.C. CONST.], arts 57, 85, translated in THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA, 1979-1982, 102 (1987) (compiled by Legislative Affairs Commission of the Standing Committee of the National People's Congress of the People's Republic of China).

⁶³ ALBERT H.Y. CHEN, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA 59-60 (1994). The State Council is also known as the Central People's Government. *Id.*

⁶⁴ *Id.* at 60.

⁶⁵ *Id.* at 89.

⁶⁶ *China Improves Computer International Networking*, *supra* note 55.

⁶⁷ Chen, *supra* note 63, at 89.

⁶⁸ *Id.* at 90.

⁶⁹ *Id.* at 89-90.

⁷⁰ *Internet Regulations*, *supra* note 4, art. 6.

⁷¹ Chen, *supra* note 63, at 83.

Posts and Telecommunications or other agencies may enact future rules as they strive to control Internet usage.

3. *Ministry of Public Security*

As part of the enforcement of the regulations, Internet users in China were ordered to register with the Ministry of Public Security within thirty days of receiving a warning notice from the government.⁷² The circular stated, "The requirement applies to units and individuals within Chinese territory who use physical communications channels to directly or indirectly establish contacts with computer information system networks outside the territory (including Hong Kong, Macao, and Taiwan region)."⁷³ One Public Security official asserted, "[T]his is the first step that China is taking to bring the Internet under proper control. It will be followed by a number of more comprehensive regulations"⁷⁴ Failure to comply with this mandate or with other parts of the regulations will result in that party being "severely dealt with."⁷⁵ Such registrations, as the one required by article 10, typically include information about the person's education and background in case the person comes under suspicion of wrongdoing.⁷⁶ The police, knowing the owners and locations of computer terminals, would be able to monitor them during a political crisis.⁷⁷

One foreign correspondent received an email message from her Internet provider informing her that she must comply with the new registration requirement.⁷⁸ The process was rather simple: it involved appearing at the local police station to provide basic demographic information and signing an acknowledgment of compliance with the

⁷² *Overseas Access Internet Users to Register with Police*, ZHONGGUO XINWEN SHE (Beijing), Feb. 14, 1996, available in *World News Connection*, <<http://wnc.fedworld.gov>>.

⁷³ *Public Security Ministry Circular on Internet Use*, ZHONGGUO TONGXUN SHE (H. K.), Feb. 29, 1996, translated by F.B.I.S., available in *World News Connection*, <<http://wnc.fedworld.gov>>.

⁷⁴ *Overseas Access Internet Users to Register with Police*, *supra* note 72.

⁷⁵ *China Improves Computer International Networking*, *supra* note 55.

⁷⁶ Jefferey Parker, *Internet-Surfers Must Promise Not to "Harm China."* REUTERS BUS. REP., Feb. 15, 1996, available in LEXIS, Asiapc Library, REUBUS File.

⁷⁷ Along with the Internet, fax machines were used to communicate with the outside world during the Tiananmen incident of 1989. See, e.g., Jeffrey Parker, *Users Don't Fear a Crackdown with China's New Internet Rules*, ROCKY MTN. NEWS, Mar. 10, 1996, at 52A. During the crisis, police were ordered to guard the machines and intercept fax messages. *Id.* Because the number of computers is growing so rapidly in China, however, physical control of individual computers seems unlikely. Solutions such as shutting down global access points are more probable.

⁷⁸ Teresa Poole, *Can Peking Tame the Net?*, INDEP., Apr. 29, 1996, at 10.

regulations.⁷⁹ Included as part of registration was paying a fee of 400 Yuan (about fifty U.S. dollars).⁸⁰ Failure to register can result in prison and heavy fines.⁸¹

B. *Analysis of Legal Requirements for Internet Use*

Article 13 of the regulations lists illegal uses of the Internet in China. Prohibited activities include transmitting information prejudicial to state security, leaking of state secrets, or producing, retrieving, duplicating, or disseminating anything prejudicial to public order.⁸² Definitions of state security, state secrets, or public order are not provided. However, insight into the legal meaning the Chinese government may give these phrases can be gleaned from other regulations and previous interpretations of similar provisions in analogous circumstances.

1. *Prejudicial to State Security*

This phrase has been broadly interpreted in the past. Beijing routinely uses state security statutes to punish those it feels may threaten the rule of the Communist leadership.⁸³ Current laws allow for punishment with long prison terms and even execution.⁸⁴ Human rights groups

⁷⁹ See, e.g., Parker, *supra* note 76.

⁸⁰ *China Keeps Wary Eye on Internet Users*, CHARLESTON GAZETTE, Apr. 15, 1996, at P3C.

⁸¹ Uli Schmetzer, *China Orders Internet Users to Register with the Police; Beijing Worried It is Losing Monopoly over Information*, CHI. TRIB., Feb. 16, 1996, at 7.

⁸² *Internet Regulations*, *supra* note 4, art. 13. The regulations also prohibit transmission of "pornographic materials." *Id.* For general information on pornography in China, see John F. Copper & Ta-ling Lee, *One Step Back, Human Rights in the People's Republic of China in 1987/88*, 1989 OCCASIONAL PAPER/REPRINTS SERIES IN CONTEMP. ASIAN STUD. 1, 71-74 (No. 3) (also quoting Deng Xiaoping that some publishers should be executed). On February 8, 1996, the Communications Decency Act of 1996 (CDA) was signed into law in the United States by President Clinton. 47 U.S.C. §§ 223(a)-(h) (1996). The CDA prohibits users of interactive computer services from sending or displaying material which is "patently offensive as measured by contemporary community standards" to persons under 18 years of age. 47 U.S.C. § 223(d)(1) (1996). Two recent cases challenging the CDA's ban on "patently offensive communication" as being unconstitutionally overbroad resulted in preliminary injunctions against its enforcement. *ACLU v. Reno*, 929 F. Supp. 824 (E.D. Pa. 1996); *Shea ex rel. Am. Rep. v. Reno*, 930 F. Supp. 916 (S.D.N.Y. 1996).

⁸³ *China Orders Net Users to Register with Police*, L.A. TIMES, Feb. 15, 1996, at D5. See generally Fu & Cullen, *supra* note 60 (extensively analyzing China's National Security Law). China is deeply concerned about its security and inspects various organizations to determine their compliance with security laws. Local governments can enact additional security regulations to correct problems surfacing in their jurisdiction. See, e.g., *China Capital to Tighten Secrecy Rules*, REUTERS WORLD SERV., Sept. 5, 1996, available in LEXIS, Asiapc Library, CHINA File.

⁸⁴ *China Orders Net Users to Register with Police*, *supra* note 83, at D5.

recognize "state security" as a common justification that various countries employ to defend free speech restrictions.⁸⁵ Because the concept of a "state security violation" occurring in the context an Internet communication is well illustrated by examples involving the "leaking state secrets" and the disruption of "public order," its discussion will be included in those sections *infra*.

2. *Leakage of State Secrets*

The regulations do not provide examples of what constitutes a state secret. "State secret" has been defined by Chinese officials in a relatively broad sense, and agencies in charge of keeping information private are authorized to add new categories of state secrets as the need arises.⁸⁶ China's National Security Law, enacted 1993, contains a provision identifying "leaking state secrets" as a national security threat when secrets are sold to foreign persons for profit.⁸⁷

An item that qualified in the past as a state secret was a speech to be given by Secretary-General Jiang Zemin at the Fourteenth Party Congress.⁸⁸ The speech was leaked to a Hong Kong newspaper which published it a week before it was given.⁸⁹ As punishment, the government sentenced the individual responsible for the leak to life imprisonment in the summer of 1993.⁹⁰ In a separate incident, a reporter who used unreleased government information about China's economic wealth was arrested for stealing and leaking state secrets.⁹¹ While the above cases provide insight into activities characterized as leaking state secrets, public explanations are not always

⁸⁵ KEVIN BOYLE, ARTICLE 19: INFORMATION, FREEDOM, AND CENSORSHIP 295 (1988).

⁸⁶ Hungdah Chiu, *Institutionalizing a New Legal System in Deng's China*, 1994 OCCASIONAL PAPER/REPRINTS SERIES IN CONTEMP. ASIAN STUD. 1, 18 (No. 3) (citing 1989 Law on Guarding State Secrets). In 1989, the Law on Guarding State Secrets was enacted containing a catchall provision (art. 8) allowing authorities to designate things as state secrets. *Id.* "State secret" can be almost anything not officially made public including traffic fatalities and suicide statistics. Lena H. Sun, *Casualties of a Paper War in China*, WASH. POST, July 25, 1993, at C1.

⁸⁷ Fu & Cullen, *supra* note 60, at 453-54.

⁸⁸ Allison Liu Jernow, *Don't Force Us to Lie: The Struggle of Chinese Journalists in the Reform Era*, 1994 OCCASIONAL PAPER/REPRINTS SERIES IN CONTEMP. ASIAN STUD. 1, 71-72. (No. 2).

⁸⁹ *Id.* Wu Shishen is the person identified as the source of the speech. *Id.*

⁹⁰ *Id.* An editor, thought to be the Wu Shishen's wife, was sentenced to six years for her participation in the crime. *Id.*

⁹¹ *Id.* The offending article reported on China's gold reserves. The reporter is identified as Xi Yang and reports for Hong Kong's MING PAO. *Id.*

provided regarding the specifics leading to an accused's arrest.⁹² Thus, it is likely that other behaviors are considered to be "leaking state secrets."

The Law on Guarding State Secrets contains various articles specifying punishment for those violating its provisions.⁹³ Those punished under article 186 for leaking "important state secrets and the situation is serious," are susceptible to a maximum sentence of seven years in prison.⁹⁴ If the offense is deemed counterrevolutionary in nature, the person will be charged under article 97 which provides for life imprisonment or death.⁹⁵ Those offenses not rising to the level of "serious" will be dealt with as an administrative sanction discussed *infra*.⁹⁶

3. *Public Order*

"Public order" is also undefined by the Internet regulations. In other circumstances, Chinese officials have gone to great lengths to protect public order. Prime Minister Li Peng, the official who signed this legislation into law, also signed the May 20, 1989, order declaring martial law to "safeguard public order."⁹⁷ The "crisis" that prompted the order was a group of students on a hunger strike for free press and speech and those people from the community who turned out to support the strikers.⁹⁸ Ironically, the result of the government's attempt to safeguard of "public order" was over one thousand dead and over 6000 injured Chinese civilians.⁹⁹

Spreading counterrevolutionary rumors also is considered by officials to endanger public order.¹⁰⁰ China Central Television intercepted an ABC

⁹² See, e.g., *China Charges Journalist with Leaking Secrets*, REUTER LIBR. REP., Oct. 14, 1993, available in LEXIS, Asiapc Library, REUWLD File (discussing lack of public disclosure of facts surrounding reporter's detention other than that she leaked state secrets).

⁹³ Chiu *supra* note 86, at 18-19.

⁹⁴ *Id.* (citing Criminal Law of the People's Republic of China, art. 186 (1979)).

⁹⁵ *Id.* (citing Criminal Law of the People's Republic of China, art. 97 (1979)).

⁹⁶ *Id.*

⁹⁷ Hungdah Chiu, *Chinese Attitude Toward International Law of Human Rights in the Post-Mao Era*, 1989 OCCASIONAL PAPER/REPRINTS SERIES IN CONTEMP. ASIAN STUD. 1, 36 (No. 5). The duty to protect "public order" confers very broad and arbitrary power to Chinese officials. The authority to safeguard public order has been rationalized to apply to even completely private and localized circumstances. Interview with Mr. Ping Yu, Ph.D. candidate University of Washington, in Seattle, Wash. (Feb. 11, 1997).

⁹⁸ Chiu, *supra* note 97, at 35-36.

⁹⁹ *Id.* at 35.

¹⁰⁰ Public order is "agitated" as the result of counterrevolutionary activity. See *Rumor-Monger Sentenced to Imprisonment in Dalian*, XINHUA NEWS AGENCY, July 14, 1989, available in LEXIS, Asiapc

News report featuring an interview with a Chinese citizen stating that the military had killed thousands of people in the Tiananmen Square conflict of 1989.¹⁰¹ An intermediate court determined that the citizen was guilty of "spreading counterrevolutionary rumors" and "agitation" and imposed a ten year prison sentence.¹⁰² If providing information unfavorable to the government via television camera is counterrevolutionary, it is likely that providing the same information over the Internet would also be counterrevolutionary.

Similarly, distributing protest leaflets may be considered a counterrevolutionary offense in China.¹⁰³ By analogy, sending messages to email addresses or to electronic bulletin boards also would be considered counterrevolutionary and therefore subject to similar sanctions.

Because Chinese law preventing the disruption of public order is applicable to a wide array of actions, Chinese authority to eliminate undesired behavior is broad. As the number of computer users rises in China,¹⁰⁴ the potential threat posed to public order will also increase. It seems probable that the government will sanction disruptions of public order originating on the Internet as it sanctions disruptions of public order originating in other media.

4. *Criminal Activity*

The regulations explicitly condemn use of the Internet for criminal activity.¹⁰⁵ However, no precise definition of what rises to the level of criminal activity is provided in the regulations. Also, if a violation of the regulations is not criminal, it may be administrative in nature. Sanctions for administrative violations vary depending on the nature and severity of the

Library, XINHUA File; Ta-Ling Lee & John F. Copper, *Failure of Democracy Movement: Human Rights in the Peoples Republic of China*, 1991 OCCASIONAL PAPER/REPRINTS SERIES IN CONTEMP. ASIAN STUD. 1, 100-01 (No. 2); Chiu *supra* note 97, at 36-37.

¹⁰¹ Lee & Copper, *supra* note 100, at 95-96. The man providing the report to ABC News was forty-two year old office worker Xiao Bin.

¹⁰² *Chinese Execute 2 More Linked to Antigovernment Protests*, CHI. TRIB., July 14, 1989, at C14; *Rumor-Monger Sentenced to Imprisonment in Dalian*, *supra* note 100.

¹⁰³ Lee & Copper, *supra* note 100, at 100. Liu Qing, editor of an unofficial journal devoted to democracy and human rights issues, was imprisoned for 10 years for distributing leaflets protesting the secrecy of another dissident's trial.

¹⁰⁴ China is the fastest growing market for computer sales in the world and is expected to have annual sales reaching 6 million units by the year 2000. Lesley Meall, *Western IT Breaches the Great Wall*, ACCT. 38, 38 (1996).

¹⁰⁵ *Internet Regulations*, *supra* note 4, art. 13.

regulatory violation.¹⁰⁶ Although supposedly less serious than criminal punishment, administrative sanctions can be quite harsh and are often imposed without trial or opportunity for appeal.¹⁰⁷

Those guilty of failing to register, "disturbing public order" in a minor way, or "leaking state secrets, not serious" may be subject to "security administrative punishment" ("SAP"). SAP includes a warning, a fine, or up to fifteen days in jail.¹⁰⁸ Recently, these SAP's have become reviewable by petition to a higher security organ and by application to the court.¹⁰⁹ However, if a person, committing a minor offense not deserving of a criminal sentence, is deemed to be a "counterrevolutionary," or an "anti-socialist element," the individual may be subjected to one to three years of re-education through labor.¹¹⁰ Unlike SAP's, no judicial review of this sanction is available.¹¹¹ Also eligible for re-education through labor are troublemakers who refuse to correct themselves after criticism and those who engage in antisocial conduct.¹¹²

If a given use of the Internet is classified as a crime, a separate judicial mechanism prosecutes the case. However, predicting whether conduct will be classified as a crime or as an administrative violation is difficult due to the broad interpretive latitude inherent in the Chinese legal system. Chinese Criminal Law, composed of 192 articles, allows for a fluid determination of guilt contingent upon the disposition of the court.¹¹³ Article 79 reads: "Crimes that are not expressly defined in the Specific Provisions of this Law may be determined and punished according to whichever article in the Specific Provisions of this Law that covers the most closely analogous crime, but the judgment shall be submitted to the Supreme People's Court for approval."¹¹⁴

¹⁰⁶ Hungdah Chiu, *China's Criminal Justice System and the Trial of Pro-Democracy Dissidents*, 1992 OCCASIONAL PAPER/REPRINTS SERIES IN CONTEMP. ASIAN STUD. 1, 9 (No. 6).

¹⁰⁷ *Id.* at 9-10, 20.

¹⁰⁸ Chen, *supra* note 63, at 167.

¹⁰⁹ *Id.*

¹¹⁰ Chen, *supra* note 63, at 167-68. See also Chiu, *supra* note 86 at 19. Re-education through labor is not specifically prescribed by the Internet regulations but is available as a general power of the Ministry of Public Security; for a graphic description of labor camp conditions, see Fergus M. Bordewich, *Into the Bamboo Gulag*, READER'S DIG., June 1990, at 53-59.

¹¹¹ Chen, *supra* note 63, at 168.

¹¹² Chiu, *supra* note 106, at 10.

¹¹³ *Id.* at 2-3.

¹¹⁴ Criminal Law of the People's Republic of China, art. 79 (1979), reprinted in LEGISLATIVE AFFAIRS COMM'N ON THE STANDING COMM. OF THE NAT'L PEOPLES'S CONGRESS OF THE PEOPLE'S REPUBLIC OF CHINA, THE LAWS OF THE PEOPLES REPUBLIC OF CHINA 1979-1982, at 102 (1987) (English translation of Chinese Criminal Law).

The principle that one is guilty of a crime because one's actions remind the judiciary of another crime, which one has not committed, is contrary to the principle of *nullum crimen sine lege*.¹¹⁵ Criminal conviction for violating an unspecified law is also contrary to the Universal Declaration of Human Rights which states, "No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense under national or international law, at the time it was committed."¹¹⁶

IV. ANALYSIS OF PHYSICAL INTERNET RESTRICTIONS

The Internet regulations designate the Ministry of Posts and Telecommunications as the gatekeeper for international access.¹¹⁷ Private channels must be authorized by this ministry. Beijing leaders are candid that Chinese citizens do not need unrestricted access to the Internet.¹¹⁸ Premier Li Peng noted that "[W]e absolutely cannot permit unconditional influx of Western-polluted information into China. We must lose no time in taking concrete measures."¹¹⁹ One of the efforts by the Ministry of Posts and Telecommunications to physically control the access to information on the Internet has been to use filtering programs.¹²⁰ Filtering programs search out and block information from suspect Internet sites using site addresses or

¹¹⁵ *Nullum crimen sine lege* means "no crime without a law authorizing it." BRYAN A. GARNER, A DICTIONARY OF MODERN LEGAL USAGE 604 (2d ed. 1995). A related phrase is *nulla poena sine lege* meaning "no punishment without law authorizing it," a basic principle of law in many cultures. *Id.*; Mao Zedong declared that the court system would be oppressive to those from hostile classes. *See, e.g.*, Chiu, *supra* note 106, at 1; representation by a lawyer is a questionable affair because in 1980 the National People's Congress passed regulations declaring all lawyers to be state legal workers who are required to guard the interest of the state as well as the interest of their client. Lee & Copper, *supra* note 100, at 95; the Chinese government now boasts a ninety-five percent conviction rate of all arrestees. Scott Shepard, *How China's Legal System Works*, S. F. CHRON., June 23, 1989 At A23.

¹¹⁶ *Universal Declaration of Human Rights*, G.A. Res. 217 III (A), U.N. GAOR, 3d Sess., Supp. No. 127, at 71, U.N. Doc. A/810, (1948) (art. 11). *See also* <<http://www.un.org/overview/rights.html>> (Internet access to United Nations documents).

¹¹⁷ *Internet Regulations*, *supra* note 4, art. 6.

¹¹⁸ Tim Healy & David Hsieh, "Great Firewall of China?" *Beijing Slaps Restrictions on Internet Access*, ASIaweek, Oct. 18, 1996, at 11, available in LEXIS, Asiapc Library, ASIawK File.

¹¹⁹ Michael Hoffman, *China Defends Itself Against the Net*, MAINICHI DAILY NEWS, Oct. 3, 1996, at 33, available in LEXIS, Asiapc Library, MAINWS File.

¹²⁰ *See, e.g.*, Graham Earnshaw, *China Opens Up Cautiously to the Internet*, REUTERS WORLD SERV., Oct. 29, 1996, available in LEXIS, Asiapc Library, REUWLD File.

keywords.¹²¹ Currently, China has blocked access to over one hundred such “politically subversive” sites such as the Washington Post, the U.S. Wall Street Journal, the New York Times, the Cable News Network, Time Magazine, the Economist, Chinese critical commentaries, information by dissidents, and various human rights advocates.¹²²

Blocking access to non-government news sources is characteristic of China’s totalitarian control, forcing conformity of speech and action by its people.¹²³ Spanning from 213 BC to the literary inquisition during the reign of the Manchu Emperor Chi’en Lung in the eighteenth century, China persecuted scholars who asserted their freedom of expression.¹²⁴ During the 1960s, most top journalists of national and local newspapers were purged and replaced with those more sympathetic to the government.¹²⁵ Conservative estimates of the 1989 Tiananmen Square protest place the death toll at over one thousand demonstrators.¹²⁶ Shortly after the Tiananmen incident, the government banned nearly thirteen percent of the country’s publications.¹²⁷

Banning certain Internet sources is also consistent with China’s recent censoring of books and publications that challenge the political status quo or offer critique on China’s human rights positions.¹²⁸ At a recent booksellers exhibition, government officials advised booksellers not to show books concerning Taiwan or human rights.¹²⁹ However, one bookseller noted that because of the Internet, customers can order books directly and are no longer dependent on screening by government officials.¹³⁰ The Chinese government is used to controlling all aspects of the press and works diligently at eliminating opposition press.¹³¹

¹²¹ China “Blocks Access to World Wide Web sites,” THE STRAITS TIMES (Singapore), Sept. 6, 1996, at 20, available in LEXIS, Asiapc Library, STRAIT File. See generally Elizabeth Panska, *Patrolling the Internet*, 4 PC NOVICE GUIDE TO THE INTERNET (special reprint, 1996), at 133.

¹²² Hoffman, *supra* note 119, at 11; China “Blocks Access to World Wide Web sites,” *supra* note 121.

¹²³ CHALMERS A. JOHNSON, FREEDOM OF THOUGHT AND EXPRESSION IN CHINA, COMMUNIST POLICIES TOWARD THE INTELLECTUAL CLASS I (1959).

¹²⁴ *Id.*

¹²⁵ BOYLE, *supra* note 85, at 124.

¹²⁶ Lee & Copper, *supra* note 100, at 17.

¹²⁷ *Id.* at 78.

¹²⁸ Fons Tuinstra, *Chinese Imports of Foreign Books Expected to Rise, Despite Censorship*, DEUTSCHE PRESSE-AGENTUR, Oct. 24, 1996, available in LEXIS, News Library, WIRES File.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ INTERNATIONAL PRESS INSTITUTE, IPI SURVEY NO. 5: THE PRESS IN AUTHORITARIAN COUNTRIES 45-46 (1959).

Yet, banning access to information on the Internet may be far more difficult than banning a hard copy publication. First, because filtering software tries to prevent communications containing predetermined keywords, it lacks accuracy when evaluating material. A broad filtering protocol may mistakenly block helpful and important information, frustrating users by preventing access to legal material.¹³² Second, despite the government's attempt to restrict many Western news agencies, much of the information remains accessible,¹³³ and determined computer users, many of whom are quite ingenious, continue to find ways to obtain restricted information. A senior official with Shanghai's Posts and Telecommunications Bureau stated that the country is full of hackers who "have found so many holes in the (Chinese) servers it's ridiculous."¹³⁴

The Internet is enormous and provides numerous search tools to assist the user in accessing the information.¹³⁵ A knowledgeable user may be able to reroute information through channels that aren't banned.¹³⁶ In addition, security measures are continuously challenged by hackers.¹³⁷

As infrastructure strengthens in China, communication on the Internet will be available instantly. Through a technology known as Internet Relay Chat ("IRC"), users can receive and respond to electronic messages from interconnected groups of people throughout the world limited only by reading and typing speed.¹³⁸ Monitoring the instantaneous communication between millions of users on thousands of IRC channels is a colossal task.

Chinese users seeking officially sanctioned material will have help from others outside of China. Entire organizations are devoted to

¹³² See, e.g., *Internet Censorship: The Top Shelf*, ECONOMIST, May 18-24, 1996, at 84. A major service provider in the United States, America Online, faced many angry users when it mistakenly shut down access to a breast cancer forum because it mentioned the word "breasts." Even the official White House Web site has been blocked because it mentioned the presidential "couple."

¹³³ China "Blocks Access to World Wide Web sites," *supra* note 121, at 20.

¹³⁴ Earnshaw, *supra* note 120.

¹³⁵ *Internet Censorship: The Top Shelf*, *supra* note 132.

¹³⁶ Healy & Hsieh, *supra* note 118, at 33.

¹³⁷ LAQUEY & RYER, *supra* note 6, at 118-19. Hackers are those who attempt or achieve unauthorized access to data in secured systems. An example of the success hackers have had in penetrating security protected systems is illustrated by an incident in the United States. One hacker, in retaliation for an article written by *Newsweek* correspondent Richard Sandza on the electronic underground, electronically broke into the reporter's credit file at TWR and posted his account numbers, home address, social-security number, and wife's name on electronic bulletin boards around the country. *The Revenge of the Hackers*, NEWSWEEK, Dec. 10, 1996, at 81.

¹³⁸ Joe Sweeney, *IRC Puts Global Communication at Your Fingertips*, S. CHINA MORNING POST, May 21, 1996, available in Westlaw, ALLNEWSPLUS, File No. 1996 WL 3758261.

maintaining the free exchange of ideas on the Internet.¹³⁹ Individuals help subvert official control and protect free speech interests by posting material banned to users in one part of the Internet to a different part of the Internet which is still accessible.¹⁴⁰ For example, when German officials attempted to block a neo-Nazi site in America, "copies of the material appeared Hydra-like elsewhere."¹⁴¹ A similar happening occurred in China. As dissident Wei Jingsheng was sentenced to fourteen years in prison for unauthorized writing, email was sent to many of China's Internet users containing an electronic copy of Wei's censored paper *Fifth Modernization*.¹⁴²

Regardless of whether information is reposted, users desiring to see a blocked site on a portion of the Internet known as the World Wide Web can bypass restrictions and filtering software by requesting the information through email. There are computers programmed to automatically receive a request and return the information via email containing a file of the Internet page in a format that can be viewed by the standard web browser.¹⁴³ Currently this service is free of charge.¹⁴⁴ Dr. Jacques Vidal of UCLA notes that a really determined user can completely bypass government filters by using cellular technology to place an international call to an unrestricted server.¹⁴⁵ Once information has breached the Chinese network security protocols, copies of it can be distributed all over China.

However, circumventing governmental controls can be dangerous. The regulations enable the police to intervene.¹⁴⁶ This provision is effective

¹³⁹ See, e.g., the Electronic Freedom Foundation at <<http://www.eff.org>>.

¹⁴⁰ Conor O'Clery, *China Clamps Down on Internet*, IRISH TIMES, Sept. 10, 1996, at 10, available in LEXIS, News Library, ITIMES File.

¹⁴¹ *Internet Censorship: The Top Shelf*, supra note 132.

¹⁴² Jonathan Manthorpe, *Politics Powers Asian Bid to Curb Internet Freedom*, OTTAWA CITIZEN, Mar., 19, 1996, available in Westlaw, ALLNEWSPLUS, File No. 1996 WL 3596941.

¹⁴³ Telephone Interview with Glen Roberts, Founder of web@glr.com Web Service (Nov. 11, 1996).

¹⁴⁴ *Id.* To support the freedom of communication, Mr. Glen Roberts, a businessman in Pennsylvania, started a service to assist people in circumventing site blockers. As of November 1996, he was receiving over 300 requests for information per day including requests from the People's Republic of China asking for Western media information.

¹⁴⁵ Telephone Interview with Dr. Jacques Vidal, Founding Member of Computer Science Department at the University of California, Los Angeles (Nov. 10, 1996). Dr. Vidal was a pioneer in the promotion and international use of the Internet since the early days of ARPANet. Dr. Vidal notes that cellular technology is not an essential part of the possible bypass of governmental controls. Any international call to an accessible server will succeed in circumventing local restrictions. Availability of cellular technology is greater, however, due to China's current lack of telephone infrastructure.

¹⁴⁶ *Internet Regulations*, supra note 4, art. 14.

because it instills fear in the hearts of the citizenry.¹⁴⁷ Although the Chinese citizenry desires freedom of expression, it realizes that the government can harshly sanction violators who avoid government controls.¹⁴⁸ So that economic gains might be achieved, the government is willing to make a sacrifice by allowing limited Internet communication; however, the Chinese government cautions its people to be content with the selected information.

In addition to blocking certain Internet sites, the International Telecommunications Department, a part of Ministry of Posts and Telecommunications, is required to monitor the inflow and outflow of online messages.¹⁴⁹ The scope of this monitoring is not known and officials, while admitting such controls are in place, have declined to provide additional information.¹⁵⁰ China's security apparatus is well-equipped to monitor phone calls and faxes, and it would have little difficulty monitoring selected email messages as well.¹⁵¹ While it is possible to monitor electronic transmissions, the task may be cumbersome as Internet usage increases in China and additional access points are added.¹⁵²

With the knowledge that others might be eavesdropping on Internet communications, computer users employ several tools to conceal their identity from third parties. One such tool is an anonymous remailer. Essentially, an anonymous remailer is a computer server that removes the sender's name and email address from a message and then resends the message. Recipients of the retransmitted message are unable to identify the original sender.¹⁵³ In order for the Chinese government to discover the individual that sent the message, the message would have to be intercepted

¹⁴⁷ Telephone Interview with Dr. Jacques Vidal, *supra* note 145.

¹⁴⁸ *Id.* Dr. Vidal notes that the citizenry is quite aware of the government's willingness to use force to prevent freedom of expression. The government which enacted these Internet regulations is the same government that attacked student protesters in Tiananmen Square in 1989. Because of fear of reprisal in 1997, Hong Kong journalists are increasingly self-censored and selective in publishing articles. One journalist noted that "Self-censorship is a malignancy that's spreading." Jernow, *supra* note 88, at 77.

¹⁴⁹ *Ministry Tightens Monitoring Over Computer Networks*, ZHONGGUO XINWEN SHE (Beijing) Apr. 22, 1996, available in *World News Connection* <<http://wnc.fedworld.gov/cgi-bin/retrieve>>.

¹⁵⁰ *China Says Internet Management "Normal,"* REUTERS WORLD SERV., Sept. 12, 1996, available in LEXIS, Asiapc Library, REUWLD File; Graham Earnshaw, *China Relaxes Controls on Internet Accounts*, REUTERS WORLD SERV., Sept. 25, 1996, available in LEXIS, Asiapc Library, REUWLD File.

¹⁵¹ *China Keeps Wary Eye on Internet Users*, *supra* note 80 (statement of Chi Chihong, computer science professor at Chinese University of Hong Kong).

¹⁵² See, e.g., *Li Peng Signs Internet Management Decree; Issued Discussed*, XINHUA NEWS AGENCY, Feb. 2, 1996, available in *World News Connection*, <<http://wnc.fedworld.gov/cgi-bin/retrieve>>.

¹⁵³ André Bacard, *Anonymous Remailer FAQ*, (visited Nov. 3, 1996) <<http://www.cs.berkeley.edu/~raph/remailer-faq.html>>.

before it was made anonymous by a remailer. One reason that individuals set up such services is to assist others in enjoying the rights of free speech throughout the world.¹⁵⁴ One citizen of Taiwan translated remailer information into Chinese to assist individuals in Taiwan, Hong Kong, and the People's Republic of China in remaining anonymous when they communicate sensitive ideas.¹⁵⁵

Another privacy tool is encryption. Encryption allows users to scramble messages they send so that nobody except those with access codes can read the message.¹⁵⁶ An encryption program commonly used on the Internet is "Pretty Good Privacy" ("PGP"). PGP was developed by Phil Zimmerman and remains available free of charge via Internet download.¹⁵⁷ PGP not only encrypts the sender's message, but it creates a digital signature which enables the receiver to authenticate the sender and to determine if the email has been altered since it was written.¹⁵⁸ While the Chinese government could outlaw the use of encryption altogether, that law would hurt business relations as many companies use encryption to protect the contents of classified documents during electronic transmission.

No statistics are available which indicate how prevalent these technologies currently are in China, but users are known to discretely meet in clubs to discuss such technology and how to evade government detection.¹⁵⁹ Anonymity provided by remailer and encryption technologies will make enforcing the Internet regulations difficult for the Chinese

¹⁵⁴ Telephone Interview with André Bacard, author of *THE COMPUTER PRIVACY HANDBOOK* (Nov. 6, 1996). Bacard notes that remailers can be set up with common computing equipment.

¹⁵⁵ *Id.* The translator of the Chinese version of Bacard's Anonymous Remailer FAQ can be visited on the Internet at <<http://www.isl.net.tw/~Terry/remailer-faq>>. The translator forwarded email to the author of this comment containing correspondence regarding remailer information in China. Currently, remailers are being discussed in newsgroups and are used by citizens in China. Electronic mail from Chen Tai-Wei, Translator, *Anonymous Remailer FAQ, Chinese version* (Nov. 27, 1996) (on file with PAC. RIM L. & POL'Y J.).

¹⁵⁶ *Pretty Good Privacy Inc.* (visited Nov. 30, 1996) <<http://www.pgp.com>>; in early 1997, the United States Commerce Department approved three companies to export 56-bit encryption technology. This technology is a much more powerful encryption tool than the often used 40-bit technology. *Three U.S. Companies Will Export Data Scramblers*, N.Y. TIMES, Feb. 4, 1997 at D4.

¹⁵⁷ Phillip Robinson, *The Key to Security*, CHI. TRIB., Nov. 15, 1996, at C1. Encryption programs available via Internet download include Zimmerman's "PGP" at <<http://www.pgp.com>>, Symantec's "Norton Your Eyes Only" at <<http://www.symantec.com>> and Genio USA's "CrypEdit" at <<http://www.geniousa.com/genio>>. *Id.* Although Phil Zimmerman, author of PGP, was investigated by the United States Government for possible export law violations regarding the distribution of his encryption program abroad, he has received official notice from the government that he will not be prosecuted. Steven Brier, *Taking in the Sites*, N.Y. TIMES, Jan. 13, 1997 at D2.

¹⁵⁸ Robinson, *supra* note 157, at C1.

¹⁵⁹ Seth Faison, *Chinese Tiptoe into Internet, Wary of Watchdogs*, N.Y. TIMES, Feb. 5, 1996, at A3.

government. Already the government is challenged by enforcement duties because individuals in China often use institutional accounts having multiple users who share login codes.¹⁶⁰

V. RAMIFICATIONS FOR COMPANIES DOING BUSINESS IN CHINA

Articles 9, 11, and 13 of the regulations require companies doing business in China to enforce regulation standards regarding the type and scope of Internet services they provide.¹⁶¹ Article 9(3)(4) uses broad language to require agencies to provide “sound security control” and to comply with other laws and State Council stipulations.¹⁶² Article 11 requires network administrative groups to provide “good and safe services to consumers” and to comply with other relevant laws.¹⁶³ Article 13 requires that “business shall strictly enforce safety and security control systems according to relevant state laws.”¹⁶⁴ These requirements place a heavy burden on companies providing Internet service because noncompliance penalties are unspecified. Furthermore, additional administrative laws may be added.¹⁶⁵

Companies seeking to provide online service to China will be in a difficult position because it will be arduous if not impossible to monitor millions of daily electronic transmissions. Yet, under articles 9, 11, and 13 of the current regulations, service providers are liable for message content.¹⁶⁶ This new liability affects business in two ways. First, numerous United States companies, already engaged in business in China, are now vulnerable to government sanctions.¹⁶⁷ The companies have little information available to help evaluate their risk exposure.¹⁶⁸ Second,

¹⁶⁰ Earnshaw, *supra* note 150. Institutional accounts comprise two-thirds of China’s total number of Internet accounts. *Id.*

¹⁶¹ *Internet Regulations, supra* note 4, arts. 9, 11, 13.

¹⁶² *Internet Regulations, supra* note 4, art. 9(3)(4).

¹⁶³ *Internet Regulations, supra* note 4, art. 11.

¹⁶⁴ *Internet Regulations, supra* note 4, art. 13.

¹⁶⁵ *Internet Regulations, supra* note 4, art. 5.

¹⁶⁶ *Internet Regulations, supra* note 4. In contrast, the Communication Decency Act in the United States specifically exempts service providers from liability who have no role in the creation of the content of the communication and have not conspired in the prohibited transmission’s delivery. 47 U.S.C.S. § 223(e) (1996). *See also supra* text accompanying note 82.

¹⁶⁷ For example, a month before the regulations were enacted, U.S. Sprint signed a multimillion-dollar agreement to connect 10,000 users to the Internet in the Jiangsu province. O’Malley, *supra* note 1, at 78.

¹⁶⁸ The regulations do provide for fines of less than 15,000 yuan, warnings, and termination of Internet service for violators of articles 6, 8, and 10 (requiring connections through government sources).

foreign computer service providers are delaying entry into China due to the uncertainty created by the regulations.¹⁶⁹ One American biomedical company, disturbed over the restrictive nature of the regulations, is hesitant about conducting further business use of the Internet in China.¹⁷⁰ If the regulations are not rescinded, the company is planning to boycott all business relations with China.¹⁷¹

Finally, businesses operating or providing Internet service in China must be willing to deal with unpublished rules. The Internet regulations authorize the State Council Economic Leading Group to add additional rules.¹⁷² The local rules may be unpublished and unavailable to the public.¹⁷³ Thus not only will complying with these "unknown" rules be difficult but businesses engaging in legal disputes with Chinese authorities will be in the untenable position of not having access to all relevant law.¹⁷⁴ Moreover, a business may not challenge these administrative regulations on the basis of the Constitution or other published laws or regulations.¹⁷⁵

VI. CONCLUSION

China, by committing over sixty billion dollars toward infrastructure growth in the current five-year plan,¹⁷⁶ has intentionally embraced new technologies to assist its economic revitalization.¹⁷⁷ One of these new

Internet Regulations, *supra* note 4, art. 14. However, the discussion here pertains to articles 9, 11, and 13 for which no specific punishment is expressed. See *Internet Regulations*, *supra* note 4, arts. 14, 15 (discussing penalties). The only guide to content violations remains analogous situations discussed in section III, *supra*.

¹⁶⁹ Keith B. Richburg, *A Great Wall of China Slowly Gives Way*, WASH. POST, Apr. 8, 1996, at A1. Jerry Yang, the founder of Yahoo!, indicated that these strict regulations will prevent his Internet company from entering China. Toh Han Shih, *Tough Laws Stop Yahoo from China Internet Foray*, BUS. TIMES, Sept. 30, 1996, at 20, available in LEXIS, News Library, PAPERS File. Yahoo! is a popular search engine capable of locating information and entertainment on the Internet. The engine can be accessed by the World Wide Web at <<http://www.yahoo.com>>. *Yahoo! Launches Inbox Direct Service to Users*. PR Newswire, Oct. 2, 1996, available in LEXIS, News Library, WIRES File.

¹⁷⁰ David G. Anast, *Don't Throw Our Chinese Clients in Jail, Using the Internet is Not a Crime*, BIOMEDICAL MARKET NEWSL. (Costa Mesa, Ca.), Feb. 1, 1996, available in LEXIS, News Library, NWSLTRS File.

¹⁷¹ *Id.*

¹⁷² *Internet Regulations*, *supra* note 4, art. 5.

¹⁷³ Chen, *supra* note 63, at 85. In contrast, in the United States, the Freedom of Information Act compels agencies to disclose interpretive rules, policies, procedures, and administrative manuals to the public upon request. 5 U.S.C. § 552 (1996).

¹⁷⁴ See Chiu, *supra* note 86, at 22.

¹⁷⁵ *Id.*

¹⁷⁶ O'Malley, *supra* note 1, at 75-76.

¹⁷⁷ *Freedom on the Net*, STAR-TRIB. NEWSPAPER OF THE TWIN CITIES, Jan. 2, 1996, at 12A.

technologies, computer enabled Internet communication, is ushering China into a new era of information exchange. Yet, this new technology has a hidden price for the biggest government in the world. China has encountered a paradox where the goal of economic revitalization, which encompasses necessary access to global information, collides with traditional ideologies permitting citizens only filtered information.¹⁷⁸

The Chinese government, not wishing to dissuade foreign investment nor to allow its people unfettered access to information,¹⁷⁹ is attempting to restrict access to the Internet through a combination of regulations and physical controls.¹⁸⁰ This attempt, backed by the rule of an authoritarian government, is likely to meet with only partial success. To the extent that the Chinese government can frighten its people, they will succeed in their control. Self-censorship on the Internet will occur as it does in the print media with journalists wishing to avoid governmental scrutiny.¹⁸¹ To the extent that the people's hunger for freedom outweighs government generated fear and control mechanisms, Internet communication cannot be restrained.

For the most part, attempts to physically limit Internet access, are merely a nuisance to determined users.¹⁸² Like the many Chinese who desire freedom of expression and operate underground publishing houses despite the penalties threatened, Internet users will continue to seek and provide restricted sources of information.¹⁸³ However, the Internet is not tangible like a book and is more difficult to "find" than an underground publishing house. One United States political scientist notes that China is "using nineteenth century modes of repression for twenty-first century ideology and it's not very successful."¹⁸⁴

¹⁷⁸ Telephone Interview with Dr. Jacques Vidal, *supra* note 145. See also Lee & Copper, *supra* note 100, at 78 and Tuinstra, *supra* note 128.

¹⁷⁹ Vines, *supra* note 42, at A18.

¹⁸⁰ Hoffman, *supra* note 119.

¹⁸¹ Internet providers police themselves in an attempt to avoid government scrutiny of their network service. Businesses are also taking a proactive position by opening dialog with government officials regarding strategies for content control. See, e.g., Dexter Roberts, *No Great Wall Across Net*, BUS. WK., Aug. 26, 1996, at 24.

¹⁸² Jonathan Manthorpe, *Internet Poses Challenge for Censors*, OTTAWA CITIZEN, Sept. 20, 1996, at F12. See also Michael Clough, *Battle to Control the Information Highway*, BUFFALO NEWS, Feb. 18, 1996, at F7.

¹⁸³ ILAN PELEG, PATTERNS OF CENSORSHIP AROUND THE WORLD 129 (1993). Estimates in 1987 placed the number of underground printer/publishers in China at around 200.

¹⁸⁴ Costantini, *supra* note 51 (quoting Benjamin Barber).

New technologies, which make control difficult, emerge on a regular basis. In addition, recent technological developments now permit most Internet material to be automatically translated into Chinese enabling many more Chinese citizens to understand Internet information.¹⁸⁵ Recently, Microsoft Chairman Bill Gates announced plans to create a world satellite network that would allow users to connect to the Internet from their desktop without telephone lines.¹⁸⁶ This satellite network could allow users to bypass most current government controls.

Companies providing Internet service are challenged because of the vague nature and flexible interpretations given to the regulations. Furthermore, companies must be mindful that additional rules may be enacted that will remain unpublished and inaccessible. Should a company become involved in a dispute over Internet service, its legal recourse is severely limited.

When the regulations are viewed as a whole against the backdrop of what the government does in analogous situations, they are not as innocuous as they may seem at a first reading. Freedom of expression is limited and punishments can be severe. The regulations affirm that the provisions of the Chinese Constitution giving citizens of the People's Republic of China "freedom of speech, press, assembly, association, process, and demonstration,"¹⁸⁷ are essentially powerless. The regulations also violate the spirit of Article 19 of the Universal Declaration of Human Rights declaring that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."¹⁸⁸ While China's regard for human rights has been largely negative, China cannot evade the subject as it expands foreign commerce and encounters international law containing human rights provisions.¹⁸⁹ However, the current impact of these restrictive laws is uncertain because President Clinton supports China's most-favored-

¹⁸⁵ *China's English-Chinese Translation System for Internet*, *supra* note 44.

¹⁸⁶ Thomas W. Haines, *Net Access for All Mankind*, SEATTLE TIMES, Sept. 29, 1996, at D1.

¹⁸⁷ P.R.C. CONST., *supra* note 62, art. 35.

¹⁸⁸ *Universal Declaration of Human Rights*, *supra* note 116, (art. 19). See also <<http://www.un.org/overview/rights.html>> (Internet access to United Nations documents).

¹⁸⁹ Chiu, *supra* note 97, at 8-9.

nation trading status, effectively easing the pressure on China's human rights record.¹⁹⁰

The immediate future for the Internet in China is uncertain. For the time being, Deng-style capitalist reforms, which to date have rescued some 160 million people from poverty,¹⁹¹ continue in China. Internet popularity grows at a phenomenal rate.¹⁹² However, current policies may change following Deng's death in early 1997.¹⁹³ How new leaders will deal with the freedom of expression and access to the Internet in China is not known. There is concern that Internet technology is weakening the Chinese Communist party's control over the people.¹⁹⁴ Yet the precise impact of Internet technology on China remains to be seen. It is indisputable that as the Internet expands, it tempts the Chinese people with freedom of expression. In fact, technology and the Internet may give the Chinese people unstoppable freedom of information, a goal Professor Fang Lizhi proclaimed is important to many Chinese:

Although China has some very deep-seated problems that have caused it to lag behind developed countries, our history shows that Chinese have long sought the same kind of progress and development as people everywhere regardless of their race or nationality, that when it comes to such common aspirations, Chinese are no different from any other people. Like all members of the human race, Chinese are born with a body and a brain, and with passions and a soul, and they ought to be able to enjoy the same inalienable rights, dignity and liberty as other human beings.¹⁹⁵

¹⁹⁰ See Norman Kempster, *House Votes to Renew China's Trade Status*, L.A. TIMES, June 28, 1996, at A8. See also Chiu, *supra* note 97 at 9 (analyzing Chinese attitude and interest in human rights).

¹⁹¹ See *The Titan Stirs*, ECONOMIST, Nov. 28, 1992, at 3.

¹⁹² Schmetzer, *supra* note 81, at 7N (indicating that the Ministry of Electronic Industries expects eight million computers in use by the year 2000). See also Jeffrey Parker, *China Internet: Between A Green and Yellow Light*, SEATTLE TIMES, Feb. 20, 1996, at A2.

¹⁹³ See generally Pat K. Chew, *Political Risk and U.S. Investment in China: Chimera of Protection and Predictability?*, 34 VA. J. INT'L L. 615, 631-3 (1994).

¹⁹⁴ Clough, *supra* note 182, at F7.

¹⁹⁵ Fang Lizhi, *Acceptance Speech for Robert F. Kennedy Human Rights Award*, quoted in Lee & Copper, *supra* note 100, at 136 (held up in the US Embassy in Beijing following the post-Tiananmen crackdown).

APPENDIX

Provisional Regulations for the Management of International Networking with Information Networks of the People's Republic of China

Article 1. These regulations are formulated to strengthen the management of computer information networks to secure a healthy development of international computer information exchanges.

Article 2. Computer information networks within the territory of the PRC intending to hook up with international networks shall follow these regulations.

Article 5. The State Council Economic Information Leading Group (hereinafter to be abbreviated as the leading group) shall be responsible for coordinating and resolving major Internet-related issues. The leading group office shall formulate concrete management procedures in accordance with these regulations, explicitly stipulating the rights, obligations, and responsibilities of units providing international inward and outward channels, interactive and interfacing units, and the consumers. The leading group office shall also be responsible for checking and supervising the Internet.

Article 6. Computer information networks intending to directly hook up with the Internet shall use international inward and outward channels provided by the Posts and Telecommunications Ministry's state public telecommunications networks. No organizations and individuals shall be allowed to establish their own channels or use other channels for Internet access.

Article 7. All established interactive networks, after adjustments in accordance with relevant provisions of the State Council, shall be respectively managed by the Posts and Telecommunications Ministry, Electronics Industry Ministry, State Education Commission, and Chinese Academy of Sciences. All new applications for interactive networks shall be referred to the State Council for approval.

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Article 8. Interfacing networks must go through interactive networks for Internet linkage. Units intending to establish interfacing networks should apply to departments or units in charge of interactive units for approval, attaching such information as the nature of their computer information networks, scope of application, and addresses of principal machines.

Article 9. Interfacing units must possess the following conditions:

- (1) status of an enterprise or institution legal person duly incorporated according to law;
- (2) corresponding technical and management personnel for computer information networks;
- (3) sound security control management systems and technology-safeguarding measures; and
- (4) other conditions in compliance with laws and State Council stipulations.

Article 10. Individuals, legal persons, and other organizations (hereinafter to be generally referred to as consumers) intending to hook their computers or computer information networks into the Internet must go through the interfacing networks. Computers or computer information networks requiring linkage to interfacing networks under provisions of the preceding clause should seek the interfacing unit's consent and be duly registered.

Article 11. Units providing international inward and outward channels and interactive and interfacing units shall establish a network management center to strengthen the management of their own units and their consumers according to the relevant laws and state regulations, to improve network information security management, and to provide good and safe services to consumers.

Article 12. Interactive and interfacing units shall provide Internet technical training and management education to their consumers.

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Article 13. Units and individuals engaging in Internet business shall strictly enforce safety and security control systems according to relevant state laws and administrative regulations, and shall not make use of the Internet to conduct criminal activities—including activities prejudicial to state security and the leakage of state secrets—or to produce, retrieve, duplicate, and disseminate information prejudicial to public order and pornographic materials.

Article 14. Public security organs—or public security organs acting on opinions of units providing international inward and outward channels, interactive and interfacing units—may warn, criticize through circulars, terminate Internet services, [and/or] impose fines less than 15,000 Yuan against violators of Articles 6, 8, and 10 of these regulations.

Article 15. Any party found to be violating these regulations and simultaneously contravening other relevant laws and administrative regulations shall be punished under such laws and administrative regulations. When a crime has been committed, the offender/s must be criminally liable.

Article 16. These regulations shall apply to hook-ups with computer information networks in Taiwan, Hong Kong, and Macao.

Article 17. These regulations shall take effect upon promulgation.

