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## China's Great Balancing Act: Maximizing the Internet's Benefits While Limiting Its Detriments

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## COMMENT

# China's Great Balancing Act: Maximizing the Internet's Benefits While Limiting Its Detriments

AARON D. MCGEARY\*

### I. Introduction

Many years after the beginning of Communism in China, the country struggled economically and lagged behind many industrial countries.<sup>1</sup> Not wanting to be left behind, China pushed to gain ground on other nations who were progressing technologically and economically.<sup>2</sup> Beginning in 1978, market transformations, coupled with privatization measures, slowly moved the country from socialism towards capitalism.<sup>3</sup>

China has tried to change to a market economy while still maintaining Chinese Communist principles and social control.<sup>4</sup> Nonetheless, social and economic change may be coming to a head through one medium—the Internet. Because of the benefits the Internet offers in commerce and business, there is considerable incentive to allow for its growth and development in China. However, the Internet can be an incredible catalyst for social change. For that reason, China has a significant interest in controlling the Internet.

On the other hand, because the Internet offers enormous potential for economic progress and unsubstantiated growth in many sectors of business and international relations, regulation of the Internet may present a dilemma. If restrictive measures are put in place to monitor the Internet, then those measures might be a stumbling block to economic and technological progress.<sup>5</sup> This balancing act caused many governments to focus efforts on

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1. See Todd Kenneth Ramey, *China: Socialism Embraces Capitalism? An Oxymoron for the Turn of the Century: A Study of the Restructuring of the Securities Markets and Banking Industry in the People's Republic of China in an Effort to Increase Investment Capital*, 20 HOUS. J. INT'L L. 451, 452 (1998).

2. See *id.* at 452, 456; see also J.A.G. ROBERTS, *A CONCISE HISTORY OF CHINA* 289, 291 (1999).

3. See Rob Sewell, *China: The Death of Deng*, at <http://marxist.com/Asia/roddeng.html> (last visited Oct. 14, 1999); see also Ramey, *supra* note 1, at 462–63 (detailing China's limited privatization measures).

4. See Carlos Wing-Hung Lo, *Socialist Legal Theory in Deng Xiaoping's China*, 11 COLUM. J. ASIAN L. 469, 470 (1997); see Ramey, *supra* note 1, at 452.

5. See John H. Taylor III, *The Internet in China: Embarking on the "Information Superhighway" with One Hand on the Wheel and the Other Hand on the Plug*, 15 DICK. J. INT'L L. 621, 625 (1997) (discussing the balance between allowing progress and allowing harmful content on the Internet).

merely restricting certain content that might be deemed offensive or otherwise illegal rather than implementing broad restrictions.<sup>6</sup> This article examines China's efforts to regulate the Internet to protect social change on one hand, while trying to capitalize on its economic benefits on the other.

## II. China

### A. RELEVANT HISTORY OF THE PEOPLE'S REPUBLIC OF CHINA

When Mao Zedong proclaimed the Republic of China to be the People's Republic of China on October 1, 1949, it marked the beginning of Communism in China. This event was hailed as the people's victory over oppressive and imperial domination by countries such as the United States and the previous ruling regime in China.<sup>7</sup> The transition of Chinese society from the old regime to the new socialist society was one to be taken step-by-step.<sup>8</sup> Social reform was strongly centered around support of the Communist line, and thought reform was aimed at changing the psyche of the Chinese people.<sup>9</sup> In just a few short years, virtually all of China's industries were placed under government control.<sup>10</sup>

The failures of many pro-socialist programs intended to enhance China's industrial productivity marred Zedong's leadership of the Chinese Communist Party. Both the Great Leap Forward in 1958 and the Cultural Revolution, declared over in 1977, left China lagging behind in many industrial, social, and technological areas.<sup>11</sup>

Following Zedong's death in 1976, Deng Xiaoping took over as the leader of the Chinese Communist Party. The goal of the new regime was to develop China's economy through the Four Modernizations of agriculture, industry, national defense, and science and technology.<sup>12</sup> These modernizations took China into the 1980s and 1990s, but any progress still had to abide by the pattern laid by the Constitution.<sup>13</sup>

Deng moved China toward modernization by opening the Chinese economy to world trade in 1978.<sup>14</sup> Under Deng's leadership, the country pushed towards capitalism, but it was cloaked behind Deng's words as "socialism with Chinese characteristics."<sup>15</sup> Deng's programs included using foreign capital, foreign technology, banking reform, and securities market reform.<sup>16</sup> These programs not only provided investment capital to Chinese indus-

6. See *id.*; see also Amy Knoll, *Any Which Way But Loose: Nations Regulate The Internet*, 4 TUL. J. INT'L & COMP. L. 275, 276 (1996) (examining the varied attempts and efforts by different countries to effectively regulate the Internet).

7. See *Chinese Cultural Studies: Concise Political History of China*, at <http://acc6.its.brooklyn.cuny.edu/~lsall/texts/chinlist.html> (last visited Jan. 12, 2000) [hereinafter *Chinese Cultural Studies*].

8. See Constitution of the People's Rep. of China Preamble (1982) [hereinafter Constitution of P.R.C.].

9. See *Chinese Cultural Studies*, *supra* note 7.

10. See Ramey, *supra* note 1, at 454.

11. See ALDEN R. CARTER, CHINA PAST-CHINA FUTURE 100-01 (1994); see also *Chinese Cultural Studies*, *supra* note 7; Ramey, *supra* note 1, at 455.

12. See *Chinese Cultural Studies*, *supra* note 7.

13. See Constitution of P.R.C., *supra* note 8, preamble.

14. See ROBERTS, *supra* note 2, at 291 (describing China's opening up to world trade through foreign investment).

15. Sewell, *supra* note 3.

16. See Ramey, *supra* note 1, at 456.

tries but also solidified the Chinese economy.<sup>17</sup> Because of these reforms, China's economy and industry have undergone drastic change and improved remarkably.<sup>18</sup>

The history of China plays a significant role in shaping China's policy of today. What occurred in the past has given China a complex when it comes to falling behind industrially and technologically.<sup>19</sup> China lagged behind economically under the initiatives of Zedong, and as a result was perceived as the "sick man of Asia."<sup>20</sup> But after Deng's opening up of China, the country began to make gains economically.<sup>21</sup> Even though China enjoyed growth, it was very cautious to not sacrifice its socialist and communist foundation for capitalism.<sup>22</sup> China wanted to do it its way. Hence, the use of terms such as "socialism with Chinese characteristics" and a "socialist market economy" emerged.<sup>23</sup>

Undoubtedly, its past factored into China's Internet policy. Just as foreign investment was a key component in China's economic growth and revitalization, it has tremendously advanced China's technology infrastructure.<sup>24</sup> But overreaching regulation and control could discourage investors from putting money into China's economy.<sup>25</sup> If China is unable to maintain development in crucial areas, then it could be facing circumstances analogous to the aftermath of Zedong's rule.

## B. SOCIAL CONTROL AND CENSORSHIP IN THE PEOPLE'S REPUBLIC OF CHINA

To begin, the Chinese Constitution appears to grant citizens of China the same rights the Bill of Rights grants citizens of the United States. Article 35 of the Constitution states: "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration."<sup>26</sup> The government restricts these freedoms, however, by redefining them through other laws.<sup>27</sup> For instance, there are laws that do not allow citizens to engage in political acts directed against the government.<sup>28</sup> Article 25 of the Publishing Control Act does not allow a citizen to publish anything that opposes the basic rules of the Constitution, and Articles 7 and 12 of the Law on Assemblies, Processions and Demonstrations state that any assemblies, processions, or demonstrations

17. See *id.*; ROBERTS, *supra* note 2, at 291.

18. See Ramey, *supra* note 1, at 456.

19. See *Internet, Chinese Style: Rapid Growth, "Wild West" Atmosphere, But Will It Open Up Info Flows?*, 20 No. 7 E. ASIAN EXEC. REP. 8 (1998) (noting that national pride has been a factor in driving the development of the Internet in China, and citing a report in the *People's Daily* that expressed concern that developing countries may fall further behind as other developed countries benefit from science and technology).

20. FLEMING CHRISTIANSEN & SHIRIN RAI, *CHINESE POLITICS AND SOCIETY* 1 (1996).

21. See Ramey, *supra* note 1, at 456-57.

22. See *id.* at 452.

23. Wing-Hung Lo, *supra* note 4, at 470-71.

24. See *infra* Part III.A.

25. See, e.g., Daniel Walfish, *Two Lawyers Assess China's Lack of Internet Law, Virtual China* (May 22, 2000), available at <http://www.virtualchina.com/news/may00/052200-chinaregs-dw-dcm.html> (discussing the risk of investing in Chinese Internet companies because of government control).

26. Constitution of P.R.C., *supra* note 8, art. 35.

27. See Frances H. Foster, *The Illusory Promise: Freedom of The Press In Hong Kong, China*, 73 IND. L.J. 765, 795 (1998) (explaining that China's constitutionally granted freedoms are not the equivalent to the broad freedoms enjoyed in Western democracies).

28. See Shingo Morikawa, *Citizen's Rights and Democracy Under the Constitution of the PRC, The China Connection Legal Forum*, at [http://www.cnstar.co.uk/china/law/articles/legal\\_e.html](http://www.cnstar.co.uk/china/law/articles/legal_e.html) (last visited Sept. 28, 1999).

that oppose the basic rules of the Constitution are prohibited.<sup>29</sup> Theoretically, such restrictions do not inhibit the citizen's rights because the Constitution is the citizens' rights.<sup>30</sup>

Based upon constitutionally granted powers, the Chinese Communist Party has exercised control over public information in China since the 1950s. The government has had sole control of the official press, has reviewed all material before printing, and in the past, essentially has used the press as a means to propagate the Communist party's goals and ideals.<sup>31</sup> In the 1980s there was a shift towards a relaxation in restricting the freedom of the press, but with the Tiananmen Square incident in 1989, tighter control was placed upon the media and press.<sup>32</sup>

The Chinese government restricts the flow of information into China through tight control of the press, communications, media, and other technologies. The reasoning behind much of the censorship is to protect socialist and communist ideals from pollution by banning anything that would be harmful to state security or disrupt public order.<sup>33</sup> China often uses broad state security statutes and public order laws to enforce free speech restrictions, making sure nothing unwanted is said or published within China.<sup>34</sup> Additionally, China has banned books and censored publications within the past few years that criticize the political status quo or point out China's human rights violations.<sup>35</sup> These practices are especially important in light of the emergence of the Internet in China.<sup>36</sup> Based upon history and even recent practices, the Chinese government does not want to allow any spiritual pollution or material threatening State security or public order to be disseminated or accessed via the Internet.

This background helps to understand the balancing act that China must engage in when regulating the Internet. China does not want to repeat the ills of the past by failing to progress economically, but it has considerable interest in not allowing information to flow past its borders unfettered.

### III. China and the Internet

#### A. THE BEGINNING OF THE INTERNET IN CHINA

Before the Internet was introduced, China was significantly behind in the development and use of advancing technology.<sup>37</sup> When China secured its first link to the Internet in 1993, China's telecommunications infrastructure was ill-equipped to handle Internet access on a large scale.<sup>38</sup>

The Institute of High Energy Physics Network (IHEPN), a part of the China Academy of Sciences, was China's first direct link to the Internet.<sup>39</sup> Funded by a grant from the State

29. See *id.*

30. See *id.*

31. See Taylor, *supra* note 5, at 629.

32. See Jennifer E. Morris, *Human Rights Violations During the Tiananmen Square Massacre and the Precedents Obliging United States Response*, 13 CARDOZO L. REV. 1375, 1390-92 (1991).

33. See Scott E. Feir, *Regulations Restricting Internet Access: Attempted Repair of Rupture in China's Great Wall Restraining the Free Exchange of Ideas*, 6 PAC. RIM. L. & POL'Y J. 361, 371-73 (1997).

34. See *id.* at 371-72.

35. See *id.* at 377.

36. See Wayne Arnold, *Cyberpatrols: Censoring the Net Isn't Easy, but It Can Be Intimidating*, ASIAN WALL ST. J., Sept. 11, 1996, available at 1996 WL-WSJA 12473281.

37. See Feir, *supra* note 33, at 364.

38. See Taylor, *supra* note 5, at 631.

39. See *id.* at 632.

Planning Commission of China, this direct link helped scientists at the National Science Foundation of China to engage in correspondence and collaboration with international scientists on high-energy physics.<sup>40</sup> The scientists and academics that were allowed access to the Internet were closely regulated and the information was strictly controlled.<sup>41</sup>

In 1995, China established the China Education Research Network that had a direct link to the Internet and connected 100 top universities in China.<sup>42</sup> But in April 1995, the Internet was officially opened to the general public.<sup>43</sup> China's ability to establish public use of the Internet was due in large part to assistance from foreign telecommunications technology.<sup>44</sup> In 1995 China Telcom, the public telephone monopoly, launched its own Internet Service Provider (ISP) business.<sup>45</sup> As these public Internet accounts were being made available in the summer of 1995, the cost of such accounts was extremely high. As a result, the Internet, for the most part, was realistically available only to the wealthy.<sup>46</sup>

Since then, the Internet has continued to grow and become more popular and affordable to the average Chinese citizen. This growth can partly be traced to the government's efforts to encourage development of information networks in the interest of national development in the ever-increasing global economy.<sup>47</sup> Additionally, the increase in Internet availability and use was due in large part to the Chinese government's increased focus on the ailing telecommunications infrastructure.<sup>48</sup> China, recognizing the need to strengthen its telecommunications infrastructure in order to compete in the international economy, began pouring money into the modernization of its communications technology. China dedicated over \$60 billion to revitalize and update the telecommunications infrastructure, and received help from outside sources.<sup>49</sup> Many international firms and foreign investors, including Motorola and Ericsson, recognized an opportunity to capitalize on the growth of the Internet in China, and consequently volunteered to help finance technology improvements in certain sectors.<sup>50</sup> Overall, China's commitment to vitalizing its telecommunications infrastructure led to foreign investment each year of approximately thirty billion dollars, helping pave the way for more efficient Internet growth.<sup>51</sup> As a result, China's telecommunications system is second in size only to the United States' system and is at the forefront by using new digital technology on a large scale.<sup>52</sup>

## B. CHINA'S INTERNET TODAY

The Internet in China today is booming. At the end of 1998, the China Internet Network Information Center (CINIC) conducted a survey compiling many statistics about the In-

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40. *See id.*

41. *See* Knoll, *supra* note 6, at 295-96.

42. *See* Feir, *supra* note 33, at 365.

43. *See* Knoll, *supra* note 6, at 296.

44. *See id.*

45. *See China: Internet Service Providers*, INT'L MKT. INSIGHT REP., Aug. 26, 1999, available at 1999 WL 17739561.

46. *See Silencing the Net: The Threat to Freedom of Expression On-line*, 8 HUMAN RIGHTS WATCH, available at [http://www.epic.org/free\\_speech/intl/hrw\\_5\\_96.html](http://www.epic.org/free_speech/intl/hrw_5_96.html) (May 1996).

47. *See Internet, Chinese Style*, *supra* note 19.

48. *See id.*

49. *See* Feir, *supra* note 33, at 365.

50. *See id.*

51. *See id.* at 366.

52. *See Internet, Chinese Style*, *supra* note 19.

ternet and its users in China.<sup>53</sup> The survey indicated that the country had just over two million Internet users.<sup>54</sup> In just one year after the completion of the survey in December 1998, the number of users rose to over four million citizens.<sup>55</sup> This growth led some analysts to predict that the total number of Internet users in China would swell to around forty million by the end of 2001.<sup>56</sup> Additionally, the CINIC listed that there were 1.46 million computers connected to the Internet, which is a significant increase from the 747,000 reported at the end of 1998.<sup>57</sup>

### C. CHINA'S EFFORTS TO REGULATE THE INTERNET

The Internet looms as a bastion of information potentially allowing contamination of all kinds to seep within the borders of China and reach the computer screens and hard drives of Chinese citizens all over the country.<sup>58</sup> No doubt this very thought struck the minds of government officials in the early stages of Internet development. Consequently, China began to formulate regulations and pass legislation in an effort to maintain control over the flow of information on the Internet.<sup>59</sup>

In 1993, the Chinese government formed a committee called the Economic Information Joint Committee, later renamed the State Council Leading Group on Economic Informatization, to regulate the development of the telecommunications infrastructure.<sup>60</sup> The primary purpose of the council was to coordinate effective policymaking and implementation to deal with the concerns raised by the Internet.<sup>61</sup> Since the beginning of the Internet in China in 1993, China has enacted six pieces of legislation that directly effect computer information networks and the Internet in China.<sup>62</sup>

#### 1. *Interim Regulations*

In February 1996 China released a set of interim regulations that governed the management of the Internet in an effort to control Internet access.<sup>63</sup> These regulations were viewed

53. Statistical Report of the Development of China Internet, at <http://www.chinamirror.com/reports1.html> (last visited Jan. 11, 2000).

54. *Id.*

55. See *China's Internet Users Double to Four Million*, J. COM. ABSTRACTS 6, July 16, 1999, available at 1999 WL 6380832.

56. See Mary Mosquera, *China to Lead Internet Usage By 2005*, CMP TechWeb, Aug. 13, 1999, available at 1999 WL 2496676.

57. See *China's Internet Users Double to Four Million*, *supra* note 55.

58. See Taylor, *supra* note 5, at 622; see also Sean Selin, *Governing Cyberspace: The Need for an International Solution*, 32 GONZ. L.R. 365, 366 (1997) (noting the Internet's ability to intrude upon the moral and cultural sensibilities of citizens).

59. See Feir, *supra* note 33, at 361.

60. See Mo Zhang, *China Issues New Rules Strengthening Regulatory Structure over the Internet*, 19 E. ASIAN EXEC. REP. 9 (1997).

61. See *id.*

62. Two pieces of legislation were passed to deal with technology that invariably includes the Internet. China's first effort was the Rules of Security Protection of Computer Information Systems passed on February 18, 1994. These rules addressed issues revolving around the protection of information systems that receive or transmit data. In 1996, the Provisional Rules of Administration of Electronic Publication were passed to specifically deal with electronic publications. The definition was worded to include information that was stored electronically on computers and able to be accessed by other computers. Any electronic publication has to be published pursuant to a license and must further the goals of the people and socialism. See *id.*

63. Chinese Interim Regulations Governing the Management of Interconnecting Computer Networks, b. 4, 1996 [hereinafter Interim Regulations].

as intending to make surfing the Internet difficult for the citizens of China.<sup>64</sup> The regulations, entitled Chinese Interim Regulations Governing the Management of International Computer Networks, provided the framework to restrict the flow of information into China via the Internet.<sup>65</sup>

The regulations state that their purpose is to strengthen the control of the Internet and networking systems in an effort to ensure the efficient growth of international computer information transfers.<sup>66</sup> The function article of the regulations remains silent as to whether the regulations are intended to protect social ideals.<sup>67</sup> ISPs within China and any computer information networks within Chinese territory are covered by these regulations.<sup>68</sup>

Any entity that intends to supply direct access to the Internet must be under the control of the state.<sup>69</sup> This control is accomplished by requiring connections to the Internet be made through the Posts and Telecommunications Ministry's state-run public communications networks.<sup>70</sup> The rules expressly forbid anyone from creating his or her own channel or using a private channel for Internet activity.<sup>71</sup> Essentially, China controls all activity on the Internet conducted through these state networks. This structure creates a bottleneck where all Internet activity flows through the Post and Telecommunications Ministry, allowing it to serve as a filter for any questionable activity.<sup>72</sup>

Furthermore, a connection to the Internet can only be made through interfacing networks established in accordance to relevant state law.<sup>73</sup> All users are required to gain network approval and be appropriately registered before connecting.<sup>74</sup> Basically, to use any other means to access the Internet except through the interfacing networks under strict government regulation is illegal. After all, the interfacing networks must be linked through government networks in order to provide Internet access.<sup>75</sup>

Article 13 speaks directly to the type of content and activity that is deemed illegal. In addition to adhering to all relevant state laws, no one can make use of the Internet to threaten state security, or "produce, retrieve, duplicate or disseminate information prejudicial to public order and pornographic materials."<sup>76</sup> No further explanation, however, of the various illegal uses is provided in the code itself.<sup>77</sup> This definition gives broad power to regulate content that falls under these expansive terms. Anyone who violates these regulations is not only subject to fines, but can be held criminally liable for his or her conduct.<sup>78</sup>

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64. See Andrea Koppel, *China Places Roadblocks on the Internet*, at [http://cnn.com/WORLD/9602/china\\_information/index.html](http://cnn.com/WORLD/9602/china_information/index.html) (last visited Sept. 20, 1999).

65. Interim Regulations, art. 1; see Feir, *supra* note 33, at 361-62.

66. Interim Regulations, art. 1.

67. See Koppel, *supra* note 64 (stating some analysts believe both social ideals and greed are reasons behind the new rules).

68. Interim Regulations, art. 2.

69. *Id.* art. 6.

70. See Feir, *supra* note 33, at 369.

71. Interim Regulations, art. 6.

72. See Arnold, *supra* note 36.

73. Interim Regulations, arts. 9, 10.

74. *Id.*; see Feir, *supra* note 33, at 370.

75. Interim Regulations, arts. 7, 8.

76. *Id.* art. 13.

77. *Id.*

78. *Id.* art. 14.

## 2. Internet Regulations

The Ministry of Public Security passed the Computer Information Network and Internet Security Protection and Management Regulations on December 30, 1997.<sup>79</sup> These rules in many ways were a second promulgation of the February 1996 Interim Regulations. Nevertheless, there are some changes and differences between the two acts. First, the intent and purpose of the regulations is expanded. In addition to promoting and strengthening the computer information networks and the Internet, the regulations also seek to "preserve the social order and social stability."<sup>80</sup>

These regulations go into further detail by outlining what types of use of the Internet are illegal. For instance, it states that the Internet shall not be used to harm national security, leak state secrets, or hurt the interest of the state or society.<sup>81</sup> Furthermore, section five of Chapter 1 is more comprehensive in that it actually provides a list of the kinds of information that is prohibited from being created, replicated, retrieved, or transmitted over the Internet.<sup>82</sup> The list is far reaching and indicates the reluctance to relax the tradition of heavy censorship. Examples of the kind of information that is forbidden under the regulations include:

Making falsehoods or distorting the truth, spreading rumors, destroying the order of society;

Promoting feudal superstitions, sexually suggestive material, gambling, violence, or murder;

Terrorism or inciting others to criminal activity; openly insulting other people or distorting the truth to slander people;

Other activities against the Constitution, laws, or administrative regulations.<sup>83</sup>

It appears that the first item above is intended to broadly cover almost any possible information that the government could deem harmful. One subsection in particular allows the government to restrict a myriad of information that would not promote the ideals of socialism, as directed by the Constitution.<sup>84</sup>

The Public Security Organization is granted extensive powers to regulate, supervise, inspect, and guide any entity engaged in Internet business.<sup>85</sup> The act requires network users to apply to the Public Security Organization, and any individual desiring a public account must register the account and connection within thirty days and carry out the proper registration procedure contained in the regulations.<sup>86</sup>

Surprisingly, some observers felt that these regulations actually lifted restrictions. China's Deputy Security General of the State Council Steering Committee of National Infrastruc-

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79. 1997 Computer Information Network and Internet Security Protection and Management Regulations, Dec. 30, 1997 [hereinafter 1997 Internet Regulations].

80. 1997 Internet Regulations, ch. 1, § 1.

81. *Id.* ch. 1, § 4.

82. See Zhang, *supra* note 60.

83. 1997 Internet Regulations, ch. 1, § 5.

84. *Id.* ch. 1, § 5(9).

85. *Id.* ch. 2, § 8.

86. *Id.* ch. 2, §§ 11, 12.

ture, Yu Renlin, reported to the U.S. Embassy in Beijing that the regulations were actually a relaxation of controls over the Internet, and the relaxation was intended to encourage increased usage of the Internet.<sup>87</sup> Yu also noted that the regulations were intended to deter those who might casually visit blocked or banned sites and added that a person intent on accessing prohibited information will find a way to access that information.<sup>88</sup> Still, Yu noted that the Ministry of Public Security has enough current technology to track which Internet accounts are used to visit certain sites, and could no doubt obtain an arrest from information gathered if needed.<sup>89</sup>

On the other hand, when China's Assistant Minister for Public Security Zhu Entao announced the regulations, he admitted that the Internet had brought with it many problems.<sup>90</sup> While the Communist government in China has tried to keep pornography, politics, and Western news organizations from being accessed, Chinese Internet users have no difficulty accessing any information they desire to retrieve.<sup>91</sup> Because the Internet had raised security issues by allowing for the manufacture and publication of this kind of harmful information, Entao said the new regulations were designed to protect national security and ensure social stability.<sup>92</sup> Entao's comments reflected the struggle that China is having in allowing the Internet to grow and succeed in China.<sup>93</sup> The Internet offers so much in the way of building the nation economically, financially, and technologically, but Entao indicated advances could not come at the cost of undermining the Communist Party's strict political control.<sup>94</sup>

### 3. *Telecommunications Regulations and Internet Information Services Regulations*

The two most recent pieces of legislation that impact Internet activity are the Telecommunications Regulations (Telcom Regulations) passed on September 20, 2000<sup>95</sup> and the Measures for Managing Internet Information Services (IIS Regulations) issued on October 1, 2000.<sup>96</sup> The Telcom Regulations, as a whole, cover the entire telecommunications industry including the transmission or reception of "voice, words, data, images and information of any other form."<sup>97</sup> This wording brings any Internet activity under the Telcom Regulations. Nevertheless, China specifically passed the IIS Regulations to cover any information provided on the Internet.<sup>98</sup>

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87. See New PRC Internet Regulation, A January 1998 Report from U.S. Embassy Beijing, at <http://www.usembassy-china.org.cn/english/sandt/netreg.html> (last visited Jan. 11, 2000).

88. See *id.*

89. See *id.*

90. See *China Issues New Net Controls*, REUTERS, Dec. 30, 1997, at <http://www.wired.com/news/news/email/other/politics/story/9423.html>.

91. See *id.*

92. See *id.* (implying that the regulations were intended to decrease social pollution resulting from widespread Internet use).

93. See *id.*

94. See *id.*

95. Telecommunications Regulation of the People's Republic of China (Sept. 20, 2000).

96. Measures for Managing Internet Information Services (Oct. 1, 2000).

97. Telecommunications Regulation of the People's Republic of China, § 1, art. 2 (Sept. 20, 2000).

98. Measures for Managing Internet Information Services, art. 2 (Oct. 1, 2000).

According to the Telcom Regulations, any entity wanting to establish Internet service in China must first be licensed according to the conditions outlined in the regulations.<sup>99</sup> The provisions require any telecommunications carrier to be a professional company that is not less than 51 percent owned by China.<sup>100</sup> Furthermore, telecommunication carriers are given the power to terminate any transmission of content in violation of the security provisions contained in the regulations.<sup>101</sup> The carrier is instructed to keep records of the violation and report it to the government.<sup>102</sup>

The IIS Regulations go a step further by actually regulating users utilizing telecommunication carriers to provide information on the Internet. The measures require any commercial Internet information provider to be licensed in accordance to the requirements under the IIS Regulations, as well as the additional conditions contained in the Telcom Regulations.<sup>103</sup> Likewise, any non-commercial information provider must report to officials for their records about basic facts on the sponsor or person in charge, website addresses, and the type of service to be provided.<sup>104</sup> The result is to place both business and personal websites under government supervision by either requiring a license or a report before posting information on the Internet.

All providers must keep records of information that appears on the website, including data posted by visitors, and maintain such records for sixty days in the event a police examination is needed.<sup>105</sup> If a provider changes its Web address or service, the provider is required to process the change with the appropriate government authority thirty days before the change.<sup>106</sup>

Like all other Internet regulations, including the Telcom Regulations,<sup>107</sup> these rules contain a provision detailing what type of content is illegal to provide. Internet information providers are prohibited from producing, reproducing, or disseminating information that contains any of the following:

1. Information that goes against the basic principles set in the Constitution;
2. Information that endangers national security, divulges state secrets, subverts the government, or undermines national unity;
3. Information that is detrimental to the honor and interests of the state;
4. Information that instigates ethnic hatred or ethnic discrimination, or that undermines national unity;
5. Information that undermines the state's policy towards religions, preaches the teachings of evil cults, or that promotes feudalistic and superstitious beliefs;
6. Information that disseminates rumors, disturbs social order, or undermines social stability;
7. Information that spreads pornography or other salacious materials; promotes gambling, violence, homicide, or terrorism; or instigates crimes;

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99. Telecommunications Regulation of the People's Republic of China, § 2, pt. 1 (Sept. 20, 2000).

100. *Id.* § 2, pt. 1, art. 10, no. 1.

101. *Id.* § 5, art. 62.

102. *Id.*

103. Measures for Managing Internet Information Services, arts. 4, 6 (Oct. 1, 2000).

104. *Id.* art. 7.

105. *Id.* art. 14.

106. *Id.* art. 11.

107. Telecommunications Regulation of the People's Republic of China, § 5, art. 57 (Sept. 20, 2000).

8. Information that insults or slanders other people, or infringes upon other people's legitimate rights and interests; or
9. Other information prohibited by the law or administrative regulations.<sup>108</sup>

Any violation of this article or any other provision can result in fines between three to five times the amounts of any illegal income. In the case of no illegal income, fines can range from \$12,079 to \$120,788.<sup>109</sup> Serious violations will result in the website being shut down,<sup>110</sup> and may result in the violator being held criminally accountable.<sup>111</sup>

While China's regulatory efforts have been in the interest of strengthening and supporting the growth of the Internet and its technology, an overriding concern has been the threat of social contamination and eventual social unrest.<sup>112</sup> This concern is shown in the government's steps to block access to sites ranging from major U.S. media sites to pornographic websites.<sup>113</sup> In short, all the regulations seek to strengthen the Internet infrastructure and facilitate its development while setting up enforcement mechanisms to police Internet activity.

#### IV. Success of China's Regulation

Although the Internet regulations grant the government broad powers of control, maintaining tight control presents various problems. For instance, restrictions have been cited as a major obstacle to the development of the Internet in China.<sup>114</sup> Furthermore, the regulations have not been successful in completely restricting undesirable conduct and content.

Access to illegal material is easy because knowledgeable users are able to find ways around virtually all the state's efforts to block access to certain information.<sup>115</sup> This evasion is accomplished because China's regulatory scheme is dependent upon users connecting through ISPs who use government-controlled networks to access the Internet.<sup>116</sup> Once logged onto the Internet the government can block access to certain websites.<sup>117</sup> But most experts believe that this type of regulation is neither enforceable nor technically feasible.<sup>118</sup> The ISP must either program its routers to block certain Internet addresses or use filtering programs to block sites containing certain keywords.<sup>119</sup> The use of filtering software not only lacks accuracy, but it also can block users from accessing legal and beneficial content.<sup>120</sup> Additionally, because routers are not designed to filter content and block websites, censorship is likely to seriously hamper all kinds of Internet activity by decreasing the speed of data transmission.<sup>121</sup>

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108. Measures for Managing Internet Information Services, art. 15 (Oct. 1, 2000).

109. *Id.* art. 19.

110. *Id.*

111. *Id.* art. 20.

112. See Taylor, *supra* note 5, at 634.

113. See *id.* at 635.

114. See *Internet, Chinese Style*, *supra* note 19.

115. See Arnold, *supra* note 36.

116. See Zhang, *supra* note 60.

117. See, e.g., Knoll, *supra* note 6, at 296-97.

118. See Taylor, *supra* note 5, at 637.

119. See *id.* at 637-38; Feir, *supra* note 33, at 376-77.

120. See Feir, *supra* note 33, at 378.

121. See Taylor, *supra* note 5, at 637-38.

Additionally, many users know how to utilize proxy servers to reroute connections through other computers in order to bypass government blocks.<sup>122</sup> Also, through the use of Internet Relay Chat (IRC) programs, users are able to instantaneously send data to one another.<sup>123</sup> Efforts by the government to monitor immediate IRC communication among millions of users would be virtually impossible.<sup>124</sup> By the same token, ISPs have no practical way to monitor the online activity of its users to determine if illegal, but not yet blocked, information is being accessed.<sup>125</sup> To complicate regulation further, Internet users can access foreign ISPs through the use of phone lines and cellular technology, and completely avoid the entire system of regulation.

On the other hand, where actual enforcement is difficult, the regulations do have some impact as a result of intimidation.<sup>126</sup> Rather than face fines or imprisonment, many Internet users choose to abide by the rules regardless of how easy they may be to violate.<sup>127</sup> So in one way, the regulations have been effective because they place citizens in fear of the consequences they could suffer if they are caught sending or receiving illegal information.<sup>128</sup>

## V. Conclusion

Despite the failures of current technology and regulations, China is continuing to research and develop new methods of Internet control. China has already spent 600 million yuan (U.S.\$70 million) on efforts to build nationwide computer networks and police the Internet.<sup>129</sup> In the meantime, everything from pro-democracy literature to pornographic material is one mouse-click away from Chinese Internet users.

What does the Internet spell for China? Some commentators suggest that the effect will range from vast improvements in human rights to China becoming one of the leading economic superpowers.<sup>130</sup> As China enters the new millennium, it has a much different look than it did just twenty years ago. With generations of Chinese Web surfers being exposed to other cultures, thoughts, media, and ways of life, the effect on China's future may be immeasurable. And as other nations look on, China will continue its balancing act of maximizing the Internet's economic benefits while trying to limit its social detriments.

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122. See China's Internet Information Skirmish, A January 1998 Report from U.S. Embassy Beijing, at <http://www.usembassy-china.org.cn/english/sandt/webwar.htm> (last visited Jan. 4, 2001).

123. See Feir, *supra* note 33, at 378.

124. See *id.*

125. See Zhang, *supra* note 60.

126. See Taylor, *supra* note 5, at 639.

127. See Arnold, *supra* note 36.

128. See Feir, *supra* note 33, at 380.

129. See Martin Fackler, *China Looks Abroad for Latest Technology to Police Internet*, AP, Nov. 8, 2000, available in WESTLAW, APWIRE.

130. See Taylor, *supra* note 5, at 642.