

China's Censorship of the Internet and Social Media: The Human Toll and Trade Impact

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Chairman Smith and Chairman Brown, I appreciate the opportunity to again testify before the Commission to discuss China's censorship of the Internet. I am President and CEO of the Computer & Communications Industry Association (CCIA), an organization that has promoted openness, competition, and free trade for over 35 years.

I commend the Commission for examining the prescient issue of how restrictions on the free flow of information online pose not only significant human rights concerns, but economic concerns as well. CCIA has long been an advocate of openness online, as we ardently believe that freedom and openness are not only at the heart of our industry's rapid growth, but are also the core values underpinning our success as a democracy.

I know that traditionally freedom of expression has rightly been viewed through the lens of human rights, and I strongly support working through the United Nations and NGOs to put pressure on recalcitrant members of the international community who defy their commitments in this arena. We deeply admire the courage and sacrifice of activists such as Mr. Li's father and Pastor Zhang who seek freedom for their people. As their prior testimony makes clear, the human toll of such measures is enormous. A commitment to freedom, particularly the freedom of expression, is the keystone of our nation and has premeditated our foreign policy since America's incipency. It is also what has driven so many Tunisians, Egyptians and Syrians to sacrifice their lives in recent months. I firmly believe that the United States must continue its full-throated support of freedom of expression worldwide—both online and offline. In fact, some of our biggest domestic and foreign policy mistakes occurred when we have overlooked these principles in the name of diplomatic or political expediency. In this vein, I support our State Department's efforts to aggressively promote Internet freedom online and I caution our government against taking any actions, such as the misguided Intellectual Property enforcement bills before Congress as we speak, that might hamstring these efforts abroad.

In addition to doing great injury to human rights, actions to restrict the free flow of information online also have serious economic repercussions. The Internet increasingly represents the shipping lane of the 21st century. Others have likened it to a digital Silk Road, ferrying electrons around the world and enabling trade in service sectors that were not too long ago considered by economists to be nontradable. It erases distance, eliminates delivery costs, and connects the smallest businesses in

the most remote places with a worldwide market. Now a U.S. engineer, a German lawyer, a British banker or an Indian accountant can ply their trade anywhere in the world that has an Internet connection—and all without ever having to get on a plane and pass through a customs checkpoint. In fact, a recent McKinsey study found that the Internet accounted for 21% of GDP growth of mature economies over the last five years.¹

I. The Benefits of a Trade Approach

The Internet industry is one sector where the United States enjoys a comparative advantage over the rest of the world. Despite the best efforts of other nations, no other country has been able to duplicate Silicon Valley. Besides the Internet being a major input of nearly all traditional businesses, American companies whose main purpose is to facilitate communication and make information more easily accessible are some of our biggest and fastest growing companies. Google, currently the 28th most valuable company in the world with a market valuation of \$174 billion, and Facebook, whose estimated market value is \$83 billion, are both more highly valued than Goldman Sachs.² This is big business for America, and these businesses also happen to be the tools that empower people to communicate, assemble, and organize.

Since China gets full access to United States markets in sectors where it has a competitive advantage, such as low-cost manufacturing, it is disconcerting that the United States Government has not done more to ensure that America's Internet companies get the same liberalized access to the Chinese market, a market which now has more Internet users than the entire population of the United States—and the number of Chinese Internet users is growing briskly.³ This is an important market for our domestic Internet industry.

¹ James Manyika and Charles Roxburgh, "The great transformer: the impact of the Internet on economic growth and prosperity," MCKINSEY GLOBAL INSTITUTE, October 2011,

http://www.mckinsey.com/mgi/publications/great_transformer/pdfs/McKinsey_the_great_transformer.pdf

² *Financial Times* "FT Global 500 2011", <http://www.ft.com/intl/reports/ft-500-2011>; Ari Levy, "Facebook Valuation tops Amazon.com, trailing only Google on the Web", BLOOMBERG, <http://www.bloomberg.com/news/2011-01-28/facebook-s-82-9-billion-valuation-tops-amazon-com-update1-.html>

³ In 2010, China was reported to have 420 million Internet Users. See Gao Qihui, "China's Internet Population hits 420m", CHINA DAILY, July 15, 2010, http://www.chinadaily.com.cn/china/2010-07/15/content_10112957.htm

However, we are encouraged by the USTR's recent formal inquiry into the specifics of Chinese censorship practices. By using mechanisms available to it under the WTO, the USTR has put China in a position where it must divulge specific details about its notoriously vague censorship policies or face retaliation. As the first step of dealing with Chinese restrictions is to bring them into the light of day, this move is crucial. Although it is unlikely that enforcing trade commitments can "solve" the China censorship problem as much as freedom of expression advocates, myself included, would like, the route certainly has its advantages and provides U.S. negotiators tangible sticks and carrots that are not available in the human rights arena. Prominent human rights organizations such as Human Rights Watch have also recognized the potential benefits of pursuing a trade approach.⁴

Even though the WTO allows exceptions to its rules for matters of public morals and national security, it also requires that all regulations and restrictions be transparent, provide due process to affected parties, be the least restrictive as possible and apply equally to foreign and domestic players. As of today, China complies with none of these requirements. Furthermore, the WTO has interpreted the public morals and national security exemptions reasonably narrowly in the past, so there is even some question as to the legitimacy of much of Chinese filtering at its very core under international trade law. Even if some filtering is found permissible under trade law, forcing China "to justify each and every blockage or filtering" may dampen its enthusiasm to impose such measures.⁵ At the very least, it is likely that China would have to scale back, and better document, its censorship practices.

II. Chinese Censorship

The Chinese government censors, blocks, and discriminates against foreign-based web services and content, practices which directly or indirectly advantage domestic firms. It has repeatedly blocked sites and services, including Facebook, Flickr, Foursquare, Google and Twitter. China blocked Foursquare, a social networking service, ahead of June 4, 2010, in response to a number of users who had set their location to Tiananmen Square as a way to honor the 1989 protests.⁶ Additionally,

⁴ Human Rights Watch, *Race to the Bottom*, August 2006, page 86.

⁵ Tim Wu, "The World Trade Law of Censorship and Filtering," CHICAGO JOURNAL OF INT'L LAW (2006-07).

⁶ Claudine Beaumont, "Foursquare Blocked in China", THE TELEGRAPH, June 4, 2010.

China has singled out U.S. companies for censorship even when Chinese-owned services carry the same, banned content.⁷

Even a seemingly harmless site, like photo-sharing website Flickr, has been blocked in China, while its identical clone Bababian has grown steadily with foreign technology and no foreign competition. Likewise, blog-hosting sites Blogger and WordPress have long been blocked in China. Instead, Chinese netizens use Tianya, the 13th-most popular site in China. Far from being a sanitized land of boring blogs about daily activities, Tianya also hosts China's largest Internet forum, a vitriolic, sensationalized, and hate-filled arena that makes Western gossip sites seem like the *Economist*.⁸

This double standard strongly suggests that the motivation here is protectionism rather than morals.

In addition, “Google's decision to stop self-censoring its search results in mainland China and reroute traffic through its site in Hong Kong, where mainland China's censorship rules do not apply, has come at a high cost. Its share of the Chinese search market revenue plunged to 19.6 percent in the last quarter of 2010 from 35.9 percent the year before, according to Analysys International. Chief competitor Baidu has benefited greatly from Google's fading position, increasing its share of search market revenue to 75.5 percent from 58.8 percent during the same period.”⁹

China has also taken action against U.S.-based services in response to specific activities of American firms or the U.S. Government itself. For instance, in response to Congress awarding the Dalai Lama with the Congressional Gold Medal in October 2007 and the opening of a YouTube Taiwan domain, China manipulated its “Great Firewall” to redirect users entering the URL for U.S. search engines to Baidu, the Chinese search engine.¹⁰ This is the digital equivalent of diverting business to a competitor in direct contradiction to the customer's intentions.

In addition to such direct censorship, CCIA Members report that content filtering harms the quality of service that foreign firms are able to deliver, indirectly advantaging domestic Chinese services.

⁷ Simon Elegant, “Chinese Government Attacks Google Over Internet Porn”, TIME, June 22, 2009.

⁸ Jordan Calinoff, “Beijing's Foreign Internet Purge”, FOREIGN POLICY, January 15, 2010, *available online at* <http://www.foreignpolicy.com/articles/2010/01/14/chinas_foreign_internet_purge>.

⁹ John Boudreau, “Google Struggles to Succeed in China Market”, SAN JOSE MERCURY NEWS, April 24, 2011.

¹⁰ Maggie Shiels, “China Criticised Over YouTube”, BBC, March 25, 2009, *available online at* <<http://news.bbc.co.uk/2/hi/technology/7962718.stm>>.

For instance, China filters content and services at the international gateway as transmissions enter the country and become available to users. In filtering the services and content that enter their networks, China ensures that the foreign services available to users are degraded iterations of the service available to users in other markets. As a result, foreign service and content providers must compete with degraded products against non-filtered domestic products, and as such are disadvantaged in comparison to the domestically based competitors in those countries.

Internet censorship is part of a continuing pattern of the Chinese government using trade and regulatory policies that seek to either restrict access to Chinese markets or force foreign companies to acquiesce to Chinese government demands as the price of access. China's behavior signifies its belief that access to its markets is a coin that enables them to buy their way out of playing by the global trading system rules. From its "Indigenous Innovation" policies to its export quotas for rare earth elements, China has consistently shown a willingness to flaunt international trade rules until confronted by multiple trading partners.

III. Domestic Precedent

In this Commission's most recent annual report it correctly identified a troubling aspect of China's censorship regime.

Chinese Internet regulations contain vague and broad prohibitions on content that, for example, 'harms the honor or interests of the nation,' 'spreads rumors,' or 'disrupts national policies on religion.' In China, the government places the burden on Internet service and content providers to monitor and remove content based on these vague standards and to maintain records of such activity and report it to the government.¹¹

Pending IP enforcement legislation before the House and Senate (S. 968 and H.R. 3261) share some disturbing similarities with China's approach to centralized Internet control as pointed out by the Commission. The bills create vague standards for liability and ask private companies and Internet intermediaries to police and censor their users. When coupled with blanket immunity provisions for

¹¹*Congressional-Executive Commission on China Annual Report 2011*, page 58.

actions taken while attempting to comply with the legislation, this bill would encourage overbroad filtering that will remove both legal and illegal content.

Although the purported goal of fighting intellectual property infringement is completely different from Chinese authoritarianism, legitimizing censorship and prior restraints on speech and enforcing it through a draconian system of DNS filtering allows China to point to our own actions to justify theirs and makes the job of our diplomats much harder. Even when attempting to achieve laudable ends, like preventing intellectual property infringement, we should not require our Internet service providers to monitor their customers' communications and maintain Internet blacklists. As a letter from over 100 law professors recently pointed out, the proposed legislation goes even further than China on some fronts.

The Act represents a retreat from the United States' strong support of freedom of expression and the free exchange of information and ideas on the Internet. At a time when many foreign governments have dramatically stepped up their efforts to censor Internet communications, the Act would incorporate – for the first time – a principle more closely associated with those repressive regimes: a right to insist on the removal of content from the global Internet, regardless of where it may have originated or be located, in service of the exigencies of domestic law. China, for example, has (justly) been criticized for blocking free access to the Internet with its Great Firewall. But even China doesn't demand that search engines outside China refuse to index or link to other Web sites outside China. The Act does just that.¹²

We must take care not to undermine our own foreign policy and trade goals by setting bad precedent in our domestic laws.

IV. Multilateral Approach

We highly appreciate the Commission's interest in the issue of Chinese Internet censorship and its resolve to address it. CCIA has long stated that this issue is beyond the scope of any one company

¹² "Professors' Letter in Opposition to "Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011," July 5, 2011. <http://blogs.law.stanford.edu/newsfeed/files/2011/07/PROTECT-IP-letter-final.pdf>

or industry to deal with and that it is imperative for U.S. companies to have the support of the U.S. government if they are to effectively compete in foreign markets where their operations are being obstructed. These companies' problems are exacerbated by the highly competitive nature of Internet-based industries. The low barriers to entry and extreme economies of scale characteristic to the Internet services industry mean that companies must constantly fight off follow-on competitors seeking to replicate their success. It is possible to rapidly create (and China has indeed created) a domestic search engine, social networking site or blogging platform. Because they can be easily replaced by a domestic alternative, U.S. companies have little bargaining power vis-à-vis countries such as China.

Of course, the situation in China bears little resemblance to a competitive market in which companies legitimately compete on the merits of their product. Indeed, Chinese censorship seems to have the added objective of clearing the competitive deck of foreign competition as the Chinese government actively promotes and protects its domestic Internet companies at their expense.

Chinese search engine Baidu enjoys its dominant player position while competitor Google struggles with Chinese government regulatory bodies. Renren and Youku were able to grow fast while the original Facebook and Youtube had been banned in China. Thus, Chinese users didn't have options but simply chose the Chinese versions of social network and video sharing service when the world's largest services were blocked in their country.¹³

Renren ultimately availed itself upon U.S. capitals markets, conducting a "spectacular" IPO on the New York Stock Exchange where it benefited handsomely from its access to the Chinese market, while its U.S. competitor was excluded.¹⁴ In such an environment, any ceding of market share by U.S. companies plays right into Chinese hands, leaving China with a much more malleable and compliant Internet sector.

¹³ Amanda Min Chung Han, "Will Investing in Chinese Information Technology Companies be Another Tulip Speculation?", ASIA-PACIFIC BUSINESS AND TECHNOLOGY REPORT, August 8, 2011, *available online at* <<http://www.biztechreport.com/story/1492-will-investing-chinese-information-technology-companies-be-another-tulip-speculation>>.

¹⁴ [Clare Baldwin](#) & [Jennifer Saba](#), "Renren's Big Day, a Prelude to Facebook IPO", Reuters, May 4, 2011, *available online at* <<http://www.reuters.com/article/2011/05/04/us-renren-ipo-idUSTRE7433HI20110504>>.

We would also submit that the issue is beyond the scope of any unilateral action by the U.S. Instead it requires the cooperation of other like-minded countries in multilateral fora. The potential of combating Internet censorship as a trade barrier lies in the fact that the rules-based international trade system is crucial to continued Chinese growth. Characterizing censorship in the context of a system whose rules China cannot afford to blatantly ignore is likely to achieve a political response in a way that traditional human rights approaches have not. Thus, CCIA strongly supports USTR's action last month seeking detailed information regarding China's Internet restrictions and their impact on U.S. trade. What success we have had in attaining Chinese concessions on issues such as Green Dam or Indigenous Innovation have come after coordinated efforts with other trading partners such as the European Union and Japan. This underscores the importance of utilizing an official multilateral forum like the WTO, and the need to incorporate new 21st century issues such as the free flow of information into the international trade system.

V. Conclusion

China's Internet censorship is first and foremost a deplorable practice that perverts what should be the greatest tool for communication and freedom into a tool for an authoritarian regime's control of information and of its citizens. However, the major economic distortions of this practice also demand action under the international trade system, one that China must at least be seen as respecting due to its own dependence on trade. While from a human rights perspective, it may seem akin to going after Al Capone for tax evasion, addressing Chinese censorship as a trade barrier is a legitimate, multilateral and potentially effective approach that needs to be pursued by our government at the highest levels. As the nation that invented the Internet, and as the global standard bearer in both economic and political freedom, we must continue to lead in holding the Chinese government accountable, and we must lead by example.