

Reaction to Inaction: The United States and Chinese Censorship

Introduction

Over the past several decades, the Chinese economy has grown rapidly, partly thanks to increased free trade. However, China's progress has not aligned with the free flow of information domestically. In 1994, before the widespread use of the Internet, the United States granted China Most Favored Nation ("MFN") status for trading purposes.¹ Modern trade, though, includes the free flow of information. To the extent that the United States government considered freedom of expression in China at the time, the free flow of information has not prevailed in practice. Today, the Chinese government uses censorship and restrictions on foreign corporations' access to Chinese markets to suppress information.

American interest in the freedom of expression in China has waxed and waned. From 2006 to 2011, the United States government focused attention on China's censorship activities. Congressional hearings discussed Chinese censorship and its impact on the private and public sectors in the United States. Individuals who testified at the hearings hailed from information technology companies, such as Yahoo!, Google, Cisco, and Microsoft, as well as from the State Department, human rights organizations, and think-tanks. Prominent members of Congress and the State Department created numerous initiatives to raise awareness of Internet freedom, especially regarding China.

Since 2011, American governmental interest in freedom of expression in China has largely disappeared. This paper examines the evolving nature of the United States government's interest in Chinese censorship.

The Great Firewall of China

The “Great Firewall of China” is a moniker given to the Chinese government’s system that both restricts access in China to certain websites and other online content and also uses the Internet to monitor the online activities of its citizens. The Chinese government developed the Great Firewall in 1998 to limit the availability of certain information to Chinese citizens.² Each day over 50,000 Chinese government employees patrol the Internet in search of suspicious content.³ Subjects that are viewed as threatening – such as Falun Gong, Tiananmen Square, and democracy – are made unavailable online to the Chinese people through various means.

American technology companies have indirectly and largely inadvertently contributed to China’s censorship efforts. Cisco, for example, sold products to the Chinese government that allowed them to build the Great Firewall system.⁴ Other American Internet companies have entered the Chinese market and complied with at least some aspects of Chinese censorship regulations.

The Chinese government is largely able to sustain censorship because the Chinese people, fearful of the repercussions of challenging the government, engage in self-censorship.⁵ Although not explicitly told what they can and cannot say on the Internet, most Chinese people are aware of harsh consequences of attacking the government, even in speech. As a result, many often avoid searching or addressing topics on the Internet that the government could construe as controversial. The government’s ability to induce self-censorship demonstrates that the current Internet system is effective at limiting free and open discussion.

According to Freedom House, China's Internet is "not free." Content is limited and user rights are violated regularly. As of January 2015, there were approximately 649 million Internet users in China.⁶ In addition to censoring information already present on the Internet, the Chinese government developed a propaganda program to "post pro-government remarks and influence online discussions."⁷ The implementation of this rhetoric online subtly implies that although there are different political perspectives, only one is valid in China.

While the Chinese government has established extensive measures to ensure its censorship system is secure, individuals are often able to bypass the Great Firewall using virtual private networks ("VPNs"). The number of VPNs in China has increased over the past few years, especially since the Chinese government blocked Facebook in 2009.⁸ If people want information, they often can find a way to retrieve that information. Although censorship limits what the Chinese population can do on the Internet, should they choose to do so, Chinese people are able to work around these systems.⁹ Some citizens may be concerned that the use of VPNs will attract greater government scrutiny. Today, the major concern regarding Chinese censorship is the general existence of the Great Firewall and the extent to which the Chinese government currently regulates the Internet.

United States Government Involvement

Department of State

In the past, the State Department has advocated against censorship in China. In 2006, Secretary of State Condoleezza Rice established the Global Internet Freedom Task Force, an internal body with the mission to ensure freedom of expression, to promote human rights, and to

raise awareness of censorship.¹⁰ Secretary of State Hillary Clinton continued the momentum and renamed the force the NetFreedom Task Force.¹¹ Today the NetFreedom Task Force is involved with numerous organizations that support Internet freedom, including the Freedom Online Coalition and the Digital Defenders Partnership.¹² However, more can be done.¹³

Clinton also created the Office of the Coordinator for Cyber Issues while at the State Department. This office is responsible for overseeing cyber issues beyond censorship, including cybercrime and cybersecurity.¹⁴ Today, the office's focus has shifted away from censorship and towards other sectors of Internet policy now viewed as more important to national security. Key documents on the office's State Department webpage highlight the importance of cybersecurity and outline strategies to establish global stability.¹⁵

Congress

In years past, many prominent members of Congress believed Chinese censorship was an important issue and held hearings to address related concerns. Notable individuals included Representative Christopher Smith (NJ-R), Representative Thomas Lantos (CA-D), Representative James Leach (IA-R), and Senator Richard Durbin (IL-D). Of these, only Representative Smith and Senator Durbin remain in Congress. Representative Smith has been at the forefront of the Chinese censorship issue for over a decade. In addition to chairing the House International Relations Africa, Global Human Rights and International Operations Subcommittee and serving as co-Chairman of the Congressional-Executive Commission on China, Representative Smith sponsored the Global Online Freedom Act. This bill was introduced to Congress in five different sessions, but Congress never enacted the legislation. Representative

Smith's efforts have remained strong, but a present lack of support demonstrates declining interest in Congress. According to a summary report, the act:

Makes it U.S. policy to: (1) promote the freedom to seek, receive, and impart information and ideas through any media; (2) use all appropriate instruments of U.S. influence to support the free flow of information without interference or discrimination; and (3) deter U.S. businesses from cooperating with internet-restricting countries in effecting online censorship.¹⁶

Congressional hearings on China's censorship between 2006 and 2011 focused on both the human rights and the foreign policy consequences.

The Committee on International Relations in the House of Representatives held a hearing in February 2006 to discuss China's Internet policy and the role of American technology companies in China. Representatives from Microsoft, Google, Cisco, and Yahoo! were present, as well as numerous human rights activists and State Department officials. Members of the committee, including Representatives Smith, Leach, and Lantos, stressed the importance of free speech and addressed a growing need for open access on the Internet. They also expressed concerns about how American Internet companies were complying with Chinese censorship regulations.¹⁷ In May 2008, the Senate's Committee on the Judiciary held a hearing on global Internet freedom and the role of corporate America in China. Legislators emphasized the importance of human rights beyond foreign policy and the need to secure basic human freedoms. The hearing also focused on problems between the public and private sectors.¹⁸ Although the hearings addressed concerns, no resolutions were presented.

In June 2009, at a hearing titled “The State of Global Internet Freedom,” five human rights activists,¹⁹ very familiar with China’s censorship activities, explained the significance of China’s firewall system and its international influence.²⁰ The second part of the hearing, held almost a year later in March 2010, focused on the importance of human rights. Senator Durbin stated, “I will introduce legislation that would require Internet companies to take responsible steps to protect human rights or face civil or criminal liability.”²¹ Note that Senator Durbin has not introduced the proposed legislation six years later.

A hearing by the Congressional-Executive Commission on China in November 2011 focused on China’s then-recent actions of tightening its censorship policies and failing to maintain its WTO commitments.²² Soon after, though, hearings from this commission focused on cybersecurity issues, such as hacking and intellectual property rights, instead of censorship concerns in China.

Multilateral Organization Involvement

The United States government and various American companies have viewed censorship as a trade barrier between China and its trading partners. When China was officially admitted to the WTO in 2001, the United States Congress formed the Congressional-Executive Commission on China to examine China’s efforts in upholding its commitments to the WTO and to ensure that China was not violating basic human rights.²³ China agreed to numerous terms for its membership. The country pledged to revise its domestic laws to guarantee they were in accordance with the organization’s rules.²⁴ Ten years after China’s formal entrance to the body, the Congressional Commission held a hearing to examine China’s role within the organization.

American government officials conveyed their disappointment in China's failure to uphold its obligations to the World Trade Organization.²⁵ In fact, the Office of the United States Trade Representative ("USTR") recently added Chinese Internet censorship to its list of current trade barriers.²⁶

Private Sector Involvement

American corporations such as Yahoo!, Google, Cisco, and Microsoft have faced problems with Chinese regulations on the Internet. Each corporation has attempted to enter the Chinese market in order to access the world's largest population of Internet users.²⁷ However, the Great Firewall system has created difficulties.²⁸ Many American companies are faced with a choice between complying with Chinese censorship regulations or defying the regulations and facing the wrath of the Chinese government as well as likely interference with their Internet and business activities in China.

In the 2006-2011 period, representatives from these companies testified at Congressional hearings to address concerns regarding Chinese censorship. Government officials agreed that censorship violated basic human rights while private sector witnesses expressed the complexity of censorship, revealing that doing business in China conflicted with a purely open Internet. Today, the government and the technology corporations have unsettled differences regarding an approach to censorship issues.

Yahoo!

In 2004, Yahoo! China “complied with a valid Chinese law-enforcement demand for user account data, which ultimately led the Chinese police to Shi Tao.”²⁹ Shi Tao, a journalist from China, was accused of sending private Chinese information to U.S.-based websites, which was in direct violation of Chinese government regulation. Shi Tao was arrested and sentenced to ten years in prison.³⁰ As stated by Michael Samway in a recent publication, “Shi Tao’s case gave a name, face and personal tragedy to the argument that U.S. technology companies were complicit in certain governments’ failure to protect the rights of their own citizens.”³¹ Ultimately, the case served as a further catalyst for the United States government’s attention to in Chinese censorship and the consequent human rights dilemmas that could arise.

Since 2004, Yahoo! has greatly decreased its role in China. Yahoo! sold the majority of its Chinese operations in 2005 to Alibaba,³² the “biggest online commerce company” in China “and by some measures – the world.”³³ As a result of the transaction, Yahoo! became an investor in Alibaba, which in turn maintained operational control of the business in China. More recently, Yahoo! essentially shut down its China operations, although the matter was apparently not a result of censorship concerns or direct government influence.³⁴ Therefore, Yahoo! is less affected by censorship in China today.

Google

Google initially created a system to censor information in compliance with Chinese government regulations.³⁵³⁶ The decision prompted anger in the American government because it showed that Google prioritized success in the Chinese market above human rights concerns and censorship issues.³⁷ Despite efforts to cooperate with the Chinese government, Google was regularly blocked and its customer interface in China was never stable.³⁸ After continued human

rights concerns, American government disapproval, and hacking issues within the Google China (Google.cn) network, the company decided to stop censoring information on its Chinese search system in 2010.³⁹ Today, when people in China try to access Google, they are redirected to Google's Hong Kong website. A Congressional hearing in 2010, following the transition, praised the company's efforts and stressed a strong relationship between the United States government and Google in order to work successfully against censorship in China.⁴⁰

Microsoft

During a 2006 Congressional hearing, Jack Krumholtz, an associate general counsel and head of federal affairs at Microsoft, explained the difficulties in striking a balance between what is morally right and complying with Chinese regulations.⁴¹ Microsoft's focus has largely revolved around concerns related to intellectual property rights, as an increasing number of independent sources have recreated Microsoft software.^{42 43} These issues have affected Microsoft's overall role in China. The Office of the United States Trade Representative recently released a report stating, "China remains on the Priority Watch List and subject to Section 306 monitoring in 2016."⁴⁴ As a result of the continued violations, Microsoft closely monitors its Chinese programs to ensure its systems are secure.

Cisco

The Chinese government purchased technological hardware from Cisco in 1994⁴⁵. As a result of the transaction, Cisco was accused of helping China create the Great Firewall system.⁴⁶ At a Congressional hearing in 2006, a Cisco representative claimed the company was initially unaware of its technological role in China, but then stated that Cisco did not discriminate in the

sales of its products.⁴⁷ Although Cisco's role was more complex than described, government officials disapproved of the company's involvement in China. However, the condemnation has come with few consequences.

Human Rights Activists' Involvement

Human rights activists expressed concerns about censorship in China and raised awareness of issues regarding basic human freedoms. Distinguished human rights activists, including Harry Wu⁴⁸⁴⁹⁵⁰, Libby Liu⁵¹, and Xiao Qiang⁵²⁵³, testified at Congressional hearings in 2006, 2009, and 2011 to inform government officials of the resulting human rights violations from China's extensive censorship.

Even as the national discussion on censorship has declined, human rights activists continue to voice their concerns. Unfortunately, Harry Wu passed away in 2016, but his work exposed many ethical problems of Chinese censorship. The Laogai Museum in Washington D.C. displays many documents and artifacts that Harry Wu discovered.⁵⁴

Libby Liu, the President of Radio Free Asia, a non-profit media organization, created the Open Technology Fund in 2011 to enhance Internet freedom software.⁵⁵ The Open Technology Fund publishes a monthly report.⁵⁶ Libby Liu continues to contribute to this work today.

Xiao Qiang, founder of the China Digital Times, one of the leading media outlets exposing Chinese censorship, currently works at the University of California, Berkeley. There he teaches courses on Internet freedom and conducts research on how to control censorship in China.⁵⁷

Hypotheses for Declining Federal Interest in Chinese Censorship

At a recent conference hosted by the American Enterprise Institute, “An American Strategy for Cyberspace,” Senator Cory Gardner (R-CO) said, “Attention and action are two different things.” Since 2011, attention toward Chinese censorship has dwindled and little action has been taken. There is no clear indication for explaining the declining United States interest in Chinese censorship. Below, I propose potential reasons for why there is currently little focus on the discussion of this issue. It is likely that each theory is a piece of a larger puzzle.

I. Declining Media Attention

Although human rights activists continue to work on suppression-related issues, media outlets are giving these groups less attention. This is perhaps because large news sources such as *The New York Times* and *The Washington Post* want continued access to cover stories in China. In order to retrieve such information, news outlets must maintain friendly relations with the Chinese government. According to a recent statement from Joshua Philipp, a journalist at the *Epoch Times*,

The fact is that many news outlets have chosen to turn a blind eye to some of the most gruesome human rights violations in our time for the sake of maintaining favor with the Chinese Communist Party. For the sake of personal interest, many journalists, academics, and business leaders have chosen to self-censor, and by doing so they have assisted Chinese authorities in covering up its abuses of the Chinese people.⁵⁸

The theory does not account for the entirety of decreasing coverage by the media industry. Many important news outlets are still committed to conveying relevant and truthful information to the public. Media sources deliver news regarding China's human rights violations and associated wrongdoings, but there is little to no mention of censorship specifically. *The New York Times* even dedicates an entire section of its website to "Human Rights and Human Rights Violations" and another to "Sinosphere," which discusses all matters related to China.⁵⁹ Ultimately, the following question still remains unanswered: why do the news outlets continue to cover other similar stories but avoid addressing Chinese censorship directly?

Furthermore, media outlets in the United States follow a natural news cycle. Public attention often dwindles when hearing the same news daily. As a result, news that is not new or interesting is filtered out. Perhaps China's censorship activity is simply too mundane for the American people.

Most troubling for this theory is that news organizations covered Chinese Internet censorship closely from 2006-2011, a time period when the same news organizations sought access to China. The interest of news organizations in maintaining good relationships with the Chinese government has not changed.

II. Less Interest from Government Officials in Office

Over the past decade, three distinguished officials, Condoleezza Rice, Hillary Clinton, and John Kerry, have served as Secretary of State. Each maintained a unique personality in office and operated the State Department in accordance with his or her own unique leadership style. These changes may have accounted for policy developments and shifted the State Department's overall agenda.

Prior to her appointment as Secretary of State, Condoleezza Rice served as a National Security Advisor to President George W. Bush and was already familiar with technology policy issues. During her time at the State Department, Secretary Rice helped create the Global Internet Freedom Task Force and included Internet freedom statistics on the State Department's annual Country Reports on Human Rights.⁶⁰ Secretary Rice also assembled a strong support team of highly qualified individuals to sustain the Global Internet Freedom Task Force. One notable government official was Ambassador David A. Gross, who served as the U.S. Coordinator for International Communications and Information Policy. His knowledge helped further the State Department's Internet freedom efforts. In addition to these programs, Secretary Rice also expanded government involvement by using public-private partnerships to increase innovative techniques in fighting censorship.⁶¹

The succeeding Secretary of State, Hillary Clinton, continued Condoleezza Rice's agenda of Internet freedom. In 2010 and 2011, Secretary Clinton delivered speeches to express her dedication to the issue. She announced the creation of the Office of the Coordinator for Cyber Issues and the modernization of the NetFreedom Task Force.⁶² Secretary Hillary Clinton also distributed grants to bureaus within the State Department to combat censorship.⁶³ Ultimately, the combined efforts of Secretaries Rice and Clinton prompted further dialogue on Chinese Internet freedom suppression and generated continued interest within the State Department.

The incumbent Secretary of State John Kerry has not sustained a similar level of interest in censorship, in a comparison of the number of speeches delivered and initiatives taken on this issue during his time in office. The State Department still believes that freedom on the Internet should prevail, but the issue is not a priority on Secretary Kerry's agenda. According to an official document on the State Department's website, the government currently supports the use

of “a variety of bilateral and multilateral engagements” to secure Internet freedom.⁶⁴ In part, the State Department is relying on international organizations, such as the United Nations, to create policies on censorship.

Secretary Kerry did reaffirm the United States’ commitment to fighting censorship in a 2015 speech titled “An Open and Secure Internet: We Must Have Both.” However, he failed to specifically mention China as a contributor to the discussion of Internet censorship today.⁶⁵ The decreasing role of the State Department has allowed China to continue and even expand its censoring activity.⁶⁶ Multilateral organizations are not able to work through these crises to the same extent that Secretaries Rice and Clinton were.

Congressional hearings on censorship in China were beneficial in raising awareness on the topic, but today, many of the active members involved in prior hearings are no longer in office. Representative Thomas Lantos passed away in 2008; he was instrumental in human rights concerns and foreign policy debates during his time in the House. After his death, Congress renamed the Congressional Human Rights Caucus to the Tom Lantos Human Rights Commission. Others, including Senators Tom Coburn and Representative James Leach, have retired and no one has picked up their past agendas regarding Chinese censorship. As a result of changing leadership, Chinese censorship has been placed aside while other issues have gained more momentum.

In a final speculation, private companies may have previously supported Congressional hearings in order to generate discussion on censorship in China. For any number of reasons – including the failure of prior hearings to affect Chinese government policies and hostile reactions from the Chinese government – corporate interest in further Congressional hearings may have diminished.

III. Diminished Interest from Public Policy Groups

Interest in Chinese Internet censorship from public policy groups has also declined in recent years. One example is the Global Network Initiative (“GNI”). The organization was created as a platform for companies and human rights organizations to discuss tough issues, such as censorship.⁶⁷ Notable company members include Google, Facebook, Yahoo!, Microsoft, and LinkedIn as well as seven telecommunication companies that joined GNI as observers⁶⁸ in February 2016. Academics, socially responsible investors, and human rights groups also play a key role as GNI members in sustaining and advancing the initiative.⁶⁹ The preamble of the GNI Principles notes the obligations of governments with respect to human rights:

The duty of governments to respect, protect, promise and fulfill human rights is the foundation of this human rights framework. That duty includes ensuring that national laws, regulations, and policies are consistent with international human rights law and standards on freedom of expression and privacy.⁷⁰

Yet many people are unfamiliar with the Global Network Initiative. Although their website displays current public announcements and reports that discuss the initiative’s recent work, it seems that GNI has failed to attract general interest. Furthermore, technology companies such as Apple, Twitter, Amazon, and Snapchat have not joined the Global Network Initiative, making it difficult to create a unified body to support these issues.

Michael Samway, a former Vice President and Deputy General Counsel at Yahoo!, current adjunct professor at Georgetown University, and founding member of the Global

Network Initiative, recently authored the chapter “Business, Human Rights, and the Internet” for the book *Human Dignity and the Future of Global Institutions*. Samway discussed clear strategies that technology companies could use to ensure business growth and successful human rights policies and practices. Specifically, he stated that companies should implement human rights impact assessments, in order to carry out rigorous analysis of the human rights challenges and opportunities of entering a new market or offering online products or services in those markets.⁷¹ The chapter concluded by recognizing the importance of business in censorship activity today.

The conflict between the two uses of technology [both for and against citizen empowerment] often leaves companies in the middle of the competing forces of citizenry and government. Companies in the ICT sector in particular must adopt a new common sense business and human rights model and build capacity to make responsible decisions when confronted with growing human rights challenges around the world.⁷²

Despite the efforts of some activists and organizations to promote the technology sector’s involvement with human rights concerns in China and elsewhere, many civil society organizations focus less today on Chinese Internet censorship than in years past.

IV. Unwillingness of Multilateral Organizations to Investigate

Many diplomats view Internet freedom as an international issue.⁷³ They believe that multilateral organizations can be more effective than an individual country such as the United

States. But international organizations are generally unwilling to challenge a major country, such as China, on Internet censorship issues.

The World Trade Organization has not directly addressed Internet policies because many countries, not just China, have problematic Internet regulations. It is unlikely that the WTO will release a statement on China's censorship in the foreseeable future because the organization understands the importance of Chinese trade. Similarly, the United Nations has limited its action on Internet freedom because the fragile matter is likely to disturb current dynamics in the organization. There are numerous discussions on internet censorship, though, including a United Nations Educational, Scientific and Cultural Organization publication in 2011 titled "Freedom of Connection, Freedom of Expression" that examined the changing nature of the internet and included information on censorship. But the United Nations is unlikely to back these claims and the change the status quo regarding Internet censorship.⁷⁴

V. Extraneous Factors

In 2013, scandal erupted when Edward Snowden released classified documents revealing that the United States government was spying on its citizens through multiple telecommunication networks.⁷⁵ Until the publication of this information, the State Department held a strong public position in fighting against censorship and promoting Internet freedom. However, State Department publicity on censorship declined around the same time that Snowden's documents exposed the government's extensive espionage.⁷⁶ Although no evidence shows a relationship between the events, it is possible that the two are linked. It would have been hypocritical for the American government to actively promote Internet freedom while it was secretly using the Internet to watch its citizens. As Snowden's findings gained more interest, media sources

collectively focused away from Chinese censorship concerns and towards the release of the newly discovered government files. The same journalists covered both issues and failed to write on the two topics simultaneously. Perhaps because censorship had already been discussed, many authors turned away from the issue altogether.

Other national interests and security concerns have changed the role of censorship. The Chinese – government, companies, and individuals – illegally infiltrate websites and databases in order to gain access to programming codes that allow them to build innovative search engines and obtain valuable secrets. In 2013, the *New York Times* released a statement that Chinese hackers had gained access to its private servers and retrieved passwords and files containing valuable company information.⁷⁷ Since then, other servers have been compromised and the Chinese have acquired even more confidential information.⁷⁸ Because of these rising concerns, the United States is focusing less on censorship and more on issues such as the security of confidential information.

Conclusion

Between 2004 and 2010, the American government focused attention on problems associated with Chinese Internet censorship. In the past six years, United States government interest in this issue has largely diminished. There are several potential explanations for declining interest, none of which is entirely sufficient to justify what should be a strong and vocal position against censorship from the United States government. Censorship in China continues virtually unabated.

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