

IR 2008 Update

Incorporating Responsibility 2008 (IR 2008), a research and monitoring project focusing on the Chinese government's human rights practices, is guided by three benchmarks—"Free all Political Prisoners and Human Rights Defenders," "Unshackle the Internet" and "Invest in Social Equity."

This quarter's IR 2008 update focuses on HRIC's activities aimed at monitoring and researching Internet censorship as well as individual case advocacy on behalf of Internet activists or journalists.

UNSHACKLE THE INTERNET: INDEPENDENT VOICES AND THE ROLE OF FOREIGN INTERNET COMPANIES OPERATING IN CHINA

Advances in information technology have the potential to empower individuals globally and to serve as a force for democratization. The number of Internet users in mainland China continues to increase at a phenomenal rate. From 1998 to 2005, China's online population grew from 1.17 million to 103 million,¹ with the most recent official count in January 2006 at approximately 110 million.²

In China, the Internet has become an increasingly important tool for empowering Chinese activists, journalists, rights defenders, intellectuals and grassroots groups by providing increased access to information as well as a virtual commons for the exchange of ideas between groups and individuals.

However, technology and control of the Internet have also been utilized by the Chinese government to implement censorship, surveillance and social and political control.

In the last several months, as foreign IT companies have come under media and U.S. government scrutiny, HRIC has been actively monitoring the human rights impact of their activities and developing suggestions for implementing the human rights responsibilities of foreign-based IT companies operating in China.

FREEDOM OF EXPRESSION IN CHINA

The Chinese Constitution protects freedom of speech, the press, assembly and association, and also privacy of correspondence and the right to criticize the government.³

Despite these protections, the Chinese authorities constrain the rights and freedoms of individuals and the media through legal, technical and social tools, resulting in censored and self-censored information. In particular, the criminal and state secrets legal framework⁴ has been increasingly and disproportionately invoked against human rights defenders.

The expansion of the Internet in China and associated technologies, including online forums, blogs and instant messaging programs, have undermined government efforts to censor and control freedom of expression. However, use of these tools is restricted and monitored by legal and technical controls, including strict regulations requiring Internet operators to police their sites for content that can "endanger state security" and "social order," the revocation of Internet café licenses, and the temporary or permanent closure of newspapers, magazines and other news sources that cover politically sensitive issues.⁵ These restrictions are reinforced by state-of-the-art technical controls such as firewalls, proxy servers, ISP filtration software, local-level filtration software and e-mail filtration.

In addition, the rapid growth in users is marked by a sharp digital divide between

urban and rural areas, and between demographic divisions within those macro levels. For example, while 16.9 percent of the urban population is using the Internet, only 2.6 percent of the rural population is online.⁶ As a result, the government's crackdown on Internet cafés has an increasingly disproportionate and detrimental impact on those living in rural areas, the substantial migrant floating population and the urban poor.

FOREIGN IT COMPANIES OPERATING IN CHINA

The investments, projects and operations of foreign IT companies in China greatly increased following the PRC's accession to the WTO in 2001 and the subsequent opening of the technology services sector. This increased presence has contributed to new and sophisticated techniques curtailing freedom of expression, with a direct impact on individuals. (See *sidebars for individual case profiles*.)

Foreign Internet providers and high technology companies have invested millions of dollars in producing and marketing software and hardware technology products such as Internet routers, remote camera surveillance and integrated information

Individuals Impacted: Li Zhi

Profile

- Former municipal government official in Dazhou, Sichuan Province;
- Convicted on charges of "conspiracy to subvert state power," stemming from his activities with the China Democracy Party and creation of a personal Web site that posted essays on democracy;
- Sentenced to eight years in prison.

Impact

- Violation of his right to privacy of communication protected by article 40 of the Chinese Constitution.
- Evidence used against Li Zhi included his online activities and the content of numerous personal e-mails;
- Witness testimony also stated that he had inquired about methods of circumventing Internet censorship;
- Yahoo! Holdings (HK) Ltd. provided evidence during the trial connecting Li Zhi to his yahoo.com.cn e-mail address.

HRIC Action

- HRIC has translated Li Zhi's appellate ruling to provide more transparency into the role that foreign IT companies and the increasing use of technology play in assisting in the conviction of individuals exercising their rights to freedom of expression and privacy.

systems that track Internet users. These products are sold not only to the private sector, but also to China's state security and police organs.⁷

Since 2002, more than 300 IT companies,⁸ including Yahoo!, have signed on to the PRC-issued "Public Pledge of Self-Regulation and Professional Ethics for China's Internet Industry."⁹ The pledge includes provisions stating that companies signing it will not allow the posting of, and will remove, any information considered harmful, or which may disrupt social stability. The pledge has an impact on both the content of information people can access in China and also on the privacy of individual e-mail accounts.

Individuals who subscribe to Yahoo! e-mail accounts in China must agree to a terms of service agreement that differs substantially from the Yahoo! U.S. and Hong Kong user agreements. The China user agreement holds users accountable for domestic laws proscribing content considered to endanger national security, including vague state secrets laws.

The human rights impact of these activities supported by foreign-based IT companies (as well as domestic Chinese IT companies) ranges from broadly-drawn



Corporate representatives of Cisco Systems, Google, Microsoft and Yahoo! appear before a joint hearing convened by subcommittees of the U.S. House of Representatives Committee on International Relations in February. Photo: AP Wide World Photos

restrictions on freedom of expression and access to information for Internet searches, to specific restrictions on expression for bloggers, to instances where evidence provided by e-mail

providers has been used to obtain criminal convictions.

RESPONSES TO PRC CENSORSHIP AND THE ROLE OF FOREIGN COMPANIES

U.S. government bodies

The role of foreign companies in contributing to human rights abuses came under intense scrutiny in late 2005 following the revelation that journalist Shi Tao's 10-year sentence for state secrets crimes was supported by evidence provided by Yahoo! with respect to his personal e-mail account. Additional cases were subsequently uncovered. Media attention then focused on Google's January 2006 launch of a new China-specific search engine that filters its results in accordance with Chinese regulations. News that Microsoft had removed the blog of Beijing investigative blogger Anti on its own accord because of apparent political sensitivity raised additional concerns and criticisms.

The activities of U.S. corporations Google, Yahoo!, Microsoft and Cisco came under scrutiny not only in the media, where criticisms from the human rights community were widely covered, but also in the U.S. Congress. The Congressional Human Rights Caucus held a briefing on the issue

Individuals Impacted: Shi Tao

Profile

- Former journalist with the *Dangdai Shangbao* (Contemporary Business News);
- Tried and convicted for "illegally providing state secrets overseas" on charges stemming from an e-mail he sent describing the contents of a meeting with the CCP Central Propaganda Bureau on security concerns relating to the 15th anniversary of the June 4th crackdown;
- Sentenced to 10 years in prison.

Impact

- Violation of his right to privacy of communication protected by article 40 of the Chinese Constitution.
- Court documents reveal that Yahoo! Holdings (HK) Ltd. provided personal user information that was key in the identification and subsequent conviction of Shi Tao.

HRIC Action

- Submitted Shi Tao's case to the UN Working Group on Arbitrary Detention in August 2005;
- Issued press releases and created an action page to highlight his case;
- Developed an online bilingual resource Web site on Shi Tao and Yahoo!'s involvement in his case, including translated documents such as Shi Tao's appeal, his essays and the e-mail he originally sent to *Democracy Forum*, to make more details available to a broader audience [<http://hrichina.org/public/highlight>].

on February 1, 2006, followed closely by a hearing called by two subcommittees of the U.S. House of Representatives Committee on International Relations on February 15.

At the hearing, for which HRIC was present and testified, all four corporations gave testimony and faced intense questioning from numerous congressmen, including Representative Chris Smith, who has since endorsed the draft Global Online Freedom Act.¹⁰ If passed, the act would establish monitoring mechanisms for foreign states' Internet policies, regulate the behavior of U.S. businesses with respect to the Internet by setting minimum corporate standards, including civil and criminal penalties, and regulate the export of sensitive Internet-related technology to Internet-restricting countries.

The establishment of the Global Internet Task Force by the U.S. Department of State in mid-February 2006 also reflects increasing interest by U.S. government

bodies in the activities of U.S.-based IT companies operating abroad.

The corporate community under fire

U.S. corporations have offered justifications for business practices in China that differ from those in the U.S. and elsewhere.

Google, for example, stated that promoting Google.cn, which actively filters search results, was done "in response to local law, regulation or policy."¹¹ Although Google gave no specific references, it was likely referring to a selection of regulations imposed on Internet providers as the relevant "local law."

Yahoo! and other corporations similarly rely on vague, abstract and inaccurate reference to "Chinese law" as justification for their activities in China. All of them seem to ignore provisions in the Chinese Constitution that cover privacy and freedom of expression, as well as international standards on the human rights responsibilities of businesses.

The use of self-censoring policy and censoring technology by Internet search engine companies such as Google enables and validates the Chinese government's control of information, ensuring that history and current events are reflected only through a government-sanctioned prism. The Chinese government has, in turn, cited the practices of these major companies as justification for their own censorship and information control.¹²

Such circular reasoning, combined with the unavailability of any comprehensive list of Web sites blocked in China, or of terms to be censored, suggests that restricting expression and speech is not based on any reasoned or static set of laws and regulations, but is dynamic and arbitrary, focusing on terms and ideas critical of government practice.

In response to media attention and criticism, corporations such as Google and Yahoo! have issued statements and policies that attempt to address some of these issues. Yahoo!, for example, has emphasized that it will restrict search results only if required to do so by law, and will actively engage governments in policy dialogue "with respect to the nature of the Internet and the free flow of information."¹³

In the wake of criticisms over the arbitrary and unannounced closure of the popular Anti blog, Microsoft released a new MSN Spaces policy stating that it will remove content only when it "receives a legally binding notice from the government indicating that the material violates local laws, or if the content violates MSN's terms of use."¹⁴ The policy further states that removed content will continue to be accessible in countries outside of the one issuing the removal order, and that users will be informed of "why that content was blocked."

While these statements and the development of coherent policies are beginning steps taken under intense media and government pressure, much more needs to be done.

NEXT STEPS

As part of its IR 2008 campaign, HRIC has actively participated in activities surrounding this issue, including the provision of various tools and analyses at its campaign Web site www.ir2008.org. (See "Additional Information" sidebar for some of these resources.)

Individuals Impacted: Anti (Zhao Jing)

Profile

- Research assistant for Beijing Bureau of *The New York Times*;
- Blogger who was widely read domestically and abroad, prior to the blog's closure;
- Just prior to the blog's closure, Anti had posted support for journalists at the cutting-edge *Beijing News* who were protesting the dismissal of its editor-in-chief.

Impact

- Censorship and restriction of freedom of expression as protected by article 35 of the Chinese Constitution
- Anti's blog at MSN Spaces was abruptly shut down by Microsoft on December 31, 2005, with no reason given;
- While the blog has resumed on a U.S.-hosted site, mainland Chinese readers will no longer be able to access it easily;
- Anti has stated, "Microsoft explained that the removal took place in accordance with local law. This is tantamount to saying that we writers who lost our space for discussing the incident at the *Beijing News* expressed illegal opinions as 'criminal suspects' We have no means in China to protect our own freedom of expression, which is precisely the fundamental rationale for why our generation must continue striving."

HRIC's Action

HRIC has translated Anti's open statement in response to his blog's closure by Microsoft, and proposed U.S. legislation on the activities of U.S.-based IT companies operating in China to make available a Chinese blogger's response to the increased media attention on these issues outside of China. A full translation of Anti's statement provided by HRIC is available at <http://ir2008.org/article.php?sid=138>. Original post by Anti is available at <http://anti.blog-city.com/1603202.htm>.

HRIC Action Promoting Freedom of Expression

Action on the Digital Divide

- *Logging on in China's Internet Cafés*: Providing a closer look at marginalized Internet users [<http://www.ir2008.org/article.php?sid=58>]
- *Huaxia Bao weekly E-newsletter*: Providing a forum for diverse voice inside mainland China [<http://www.huaxiabao.org>]

Action on the activities of foreign-based IT companies

- *Google.cn: Not too late for corporate leadership*: HRIC analysis and comparative study on censored Chinese Google search engine [<http://www.ir2008.org/article.php?sid=135>]
- *HRIC IT Best Practices Matrix*: A preliminary framework for developing best practices to help companies doing business in China [<http://www.ir2008.org/article.php?sid=139>]
- *HRIC testimony at U.S. Congressional Hearing: "The Internet in China: A Tool for Freedom or Suppression?"*: Presented recommendations for the corporate community and U.S. government actors [<http://www.ir2008.org/article.php?sid=140>]

Action on Internet Censorship

- *Delivering uncensored flows of information*: Delivering articles covering issues of social concern
- *Providing access to the greater uncensored Internet*: Providing the means to access blocked Internet Web sites

Some areas for future steps and exploration include:

Clarification of issues and roles

- Numerous issues raised by the activities of foreign companies in China remain unclear, including lack of transparency and information about the actual practices of the companies. For example, what terms are censored and trigger filtration; the process by which IT companies are contacted to block Web sites or filter content; and what agencies of the Chinese government are involved in monitoring IT company activity and requesting individual e-mail account information.

Development of industry-wide standards

- Companies such as Yahoo! and Google have begun to issue statements regarding their policies on restricting information. Beyond these aspirational statements, an IT industry-wide standard that references international norms would strengthen implementation of human rights protections, and would set a standard for all IT companies, not simply those that have come under media scrutiny.
- The development of any standard must

be specific, and include effective monitoring and reporting provisions that are operationalized throughout the company. HRIC has begun to develop a matrix of best practices for IT companies in China, which draws on international standards and addresses the differing sectoral concerns of various IT companies;¹⁵

- Finally, any industry standard should move beyond the narrow conception

that technologies are used in isolation of one another. Technologies such as software applications, Internet Web browsing, VoIP, e-mail, instant messaging, SMS and podcasting work in inter-related spheres, impacting journalists, students, activists, organizations and individuals in their access to and dissemination of knowledge.

Foreign-government monitoring and activity

- Corporations have clearly delineated responsibilities under the laws of the countries in which they operate, those of the countries in which they are based, and international laws and regulations.
- U.S. legislation such as the draft Global Online Freedom Act is an effort to regulate the activities of corporations when self-regulation has failed to address the complexities of doing business in China. However, proposed legislation must also address freedom of expression in China and the privacy of Chinese users. Further, any legislation must be written in a technically accurate and specific language.

Promoting Chinese civil society

- The close of the Turin Winter Olympics has turned the world's attention toward Beijing 2008. With China already in the spotlight over crackdowns on the media and extended human rights violations, the human rights community must continue to highlight the link between Bei-



Students For a Free Tibet protest in front of Google's headquarters in Mountain View, California.

Photo: Reuters

jing's Olympic commitments and current activities. More significantly, human rights, labor rights and other groups should leverage extended human networks to more effectively promote the concerns of mainland Chinese voices. Networking the global blogging community and individual Internet users through ongoing discussions, online petitions and related initiatives will help to promote these issues among a broader audience.

- International civil society groups can also support domestic human rights concerns by continuing to monitor initiatives, promote case work and develop suggestions for reasonable, long-term solutions to improve China's human rights record. HRIC has contributed to this process by developing recommendations on multiple levels—individual, bilateral and multilateral.

The role of IT companies in restricting or promoting access to information and individual privacy is increasingly complex, and the rise of the Internet in China presents issues of a much broader scope than the monitoring of specific factories and supply chains. As a result, the development of answers to these issues will have to be creative, combining industry initiatives, government regulation and civil society efforts.

Stakeholder dialogue between the private sector, foreign governments and the human rights community should also continue to draw upon the expertise of those groups, take advantage of opportunities such as corporate social accountability interest in China and the 2008 Beijing Olympics, and explore the development of practical answers and human rights tools.

Elisabeth Wickeri and Shirley Hao were the primary drafters of this article.

NOTES

1. China Internet Network Information Center (CNNIC), *16th Statistical Survey Report on the Internet Development in China*, July 2005, 50.
2. China Internet Network Information Center (CNNIC), *17th Statistical Survey Report on the Internet Development in China*, January 2006, <http://www.cnnic.net.cn/images/2006/download/2006011701.pdf>.
3. Constitution of the People's Republic of China, article 35, article 40 and article 41. An English translation of the constitution is available at <http://english.people.com.cn/constitution/constitution.html>.
4. The state secrets framework criminalizes the distribution of information determined by government departments to be classified on criteria including whether it is harmful to national security. Publicly available information can also be retroactively classified if it is deemed to have caused harmful consequences. The definition of what constitutes a state secret, however, "matters that affect the security and interests of the state" (PRC Law on the Protection of State Secrets, Art. 2), is extremely broad, and the restriction on freedom of expression goes far beyond the "least restrictive" standard required under international law. See also HRIC with China Labour Bulletin, "Labor and State Secrets," *China Rights Forum* No. 3, 2004, pp. 23–33.
5. Media crackdowns include the closure of the *China Youth Daily* supplement *Freezing Point* in January 2006, and the recent dismissals of top editors at the *Public Interest Times* and *Beijing News*. See the February 2006, "HRIC Trends Bulletin: Media censorship intensifies with new round of crackdowns" available at <http://hrichina.org/public/contents/27228>.
6. China Internet Network Information Center (CNNIC), *17th Statistical Survey Report on the Internet Development in China*, January 2006, <http://www.cnnic.net.cn/images/2006/download/2006011701.pdf>.
7. See HRIC, "IR 2008: Olympics Update," *China Rights Forum* No. 2, 2005, pp. 111–114 for additional information on Olympics construction, including the security system.
8. Amnesty International, "State Control of the Internet in China," Nov. 26, 2002, available at <http://web.amnesty.org/library/Index/engASA170072002?OpenDocument&of=COUNTRIESCHINA>.
9. The Internet Society of China's "Public Pledge of Self-Regulation and Professional Ethics for China's Internet Industry" can be read online at <http://www.isc.org.cn/20020417/ca102762.htm>.
10. For the full text of the Global Online Freedom Act, see <http://thomas.loc.gov/cgi-bin/query/z?c107:H.R.4780.IH.>
11. Eric Auchard and Doug Young, "Google to censor sensitive terms in China," *Yahoo News*, 25 January 2006, available at http://news.yahoo.com/s/nm/20060125/wr_nm/google_china_dc;_ylt=Ahdz2INNjRLySdED0sn9QNQBxg8F;_ylu=X3oDMTBjMHVqMTQ4BHNIYwN5bnN1YmNhDA.
12. See Joseph Kahn, "China's top monitor defends Internet censorship," *The New York Times*, February 14, 2006.
13. Yahoo, Press Release, "Yahoo! Our Beliefs as a Global Internet Company," available at <http://yhoo.client.shareholder.com/press/ReleaseDetail.cfm?ReleaseID=187401>.
14. For the full text of Microsoft's new MSN Spaces policy, see "Microsoft Outlines Policy Framework for Dealing with Government Restrictions on Blog Content", available at <http://www.microsoft.com/presspass/press/2006/jan06/01-31BloggingPR.msp>.
15. See HRIC, "Human Rights and Spam: A China Case Study", in *SPAM 2005: Technology, Law, and Policy*, Center for Democracy & Technology, available at <http://ir2008.org/article.php?sid=57>