

ROADBLOCK AND ROADMAP: CIRCUMVENTING PRESS CENSORSHIP IN CHINA IN THE NEW MEDIA DIMENSION

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I. INTRODUCTION

There is consensus that a free press is a fundamental prerequisite for societies to resolve their conflicts, promote their well-being and protect their liberty.¹ “Laws protecting the press rest on a rationale that suggests the press performs a valuable societal function distinct from the functions performed by other institutions and individuals.”² The role of the press has experienced an evolution from “journalists as nation builders” to “journalists as government partners,” and finally from

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1. See B.G. Verghese, *Freedom of Expression*, in WALKING THE TIGHTROPE: PRESS FREEDOM AND PROFESSIONAL STANDARDS IN ASIA 3, 31 (Asad Latif ed., Asian Media Info. and Comm’n Ctr. 1998) (“[F]reedom of expression is properly a human right because it is there, and not because it was enunciated in the Human Rights Charter in 1948 or in any other instrument, national or international, either before or since.”). See also Danilo Arbilla, *A Non-Delegated Freedom*, in FREEDOM OF THE PRESS AND THE LAW: LAWS THAT AFFECT JOURNALISM IN THE AMERICAS 14, 15-16 (Ricardo Trotti ed., Inter-Am. Press Ass’n 1999) (summarizing press freedom from the perspective of two philosophers); SUN XUPEI, AN ORCHESTRA OF VOICES: MAKING THE ARGUMENT FOR GREATER SPEECH AND PRESS FREEDOM IN THE PEOPLE’S REPUBLIC OF CHINA 79 (Elizabeth C. Michel ed., Praeger 2001) (claiming that it is essential to national unity and socialization “to promote information flow, we should progressively ease restrictions on news selection, decrease coverage of speeches, and raise the level of press freedom.”).

2. Laura Hendrickson, *Press Protection in the Blogosphere: Applying a Functional Definition of “Press” to News Web Logs*, in BLOGGING, CITIZENSHIP, AND THE FUTURE OF MEDIA 187, 195-96 (Mark Tremayne ed., Routledge 2007).

“journalists as agents of empowerment” to “journalists as watchdogs.”³ The “watchdog” role (also called the “fourth estate”⁴) emphasizes that the function of the press is to discover and disseminate information about conditions that are unlikely to be discovered except by the press. Under this view, it is journalists, not the citizenry, that are seen as the essential “check” on government excess. However, nowadays the new information and communication technologies (ICTs) “break down many of the existing barriers between journalists and the public” and provide a communication channel for “egalitarian informal conversation.”⁵

In this era of the new media, technology is substantially expanding the number of people who can engage in communicative and press-related functions. The ICTs have “given millions of people the equivalent of a printing press on their desks.”⁶ It “marks a significant departure from the [traditional] media and, according to A. J. Liebling’s observation, the ‘[f]reedom of the press belongs to those who own one.’”⁷ This kind of “‘participatory journalism’, a practice whereby citizens ‘are combining powerful technological tools and innovative ideas’ [has been] fundamentally altering the nature [and development] of journalism [since the end of last] century.”⁸ The rising popularity of the interactive new media has intensified social pressures to alter the relationship between the government, the traditional news media, and the public.

3. Angela Romano, *Asian Journalism: News, Development and the Tides of Liberalization and Technology*, in *JOURNALISM AND DEMOCRACY IN ASIA* 1, 2-10 (Angela Romano & Michael Bromley eds., Routledge 2005).

4. Joseph Chan & Clement Y. K. So, *The Surrogate Democracy Function of the Media: Citizens’ and Journalists’ Evaluations of Media Performance in Hong Kong*, in *JOURNALISM AND DEMOCRACY IN ASIA* 66, 68 (Angela Romano & Michael Bromley eds., Routledge 2005) (“In western democracies the media are often regarded as the fourth branch of the government—in other words, as independent institutions monitoring the executive, legislative and judicial branches of the government. Although there are debates...many journalists do accept and uphold this view.”).

5. Paul Grabowicz, *Weblogs Bring Journalism Into a Larger Community*, 57 *NIEMAN REPS.*, Fall 2003 at 74, 74.

6. Rebecca Blood, *Weblogs and Journalism: Do they Connect?*, 57 *NIEMAN REPS.*, Fall 2003 at 61.

7. PATRICK M. GARRY, *SCRAMBLING FOR PROTECTION: THE NEW MEDIA AND THE FIRST AMENDMENT* 59 (Univ. of Pittsburgh Press 1994).

8. Mark Tremayne, *Harnessing the Active Audience: Synthesizing Blog Research and Lessons for the Future of Media*, in *BLOGGING, CITIZENSHIP, AND THE FUTURE OF MEDIA* 261, 263 (Mark Tremayne ed., Routledge 2007).

The new media opens a window to the world but that window also lets the world look in.⁹ Although the new media can be used to create a greater space for independent news and information within a society, governments have developed legal and technical measures to control these information technologies. In Singapore, one member of parliament has justified such manipulation and press control by saying: “Just as cars can knock down people, ideas can also be dangerous. . . ideas can kill.”¹⁰

This paper will explore the impact of the new media on the freedom of the press in China, a nation which has historically been closed to press freedom. Although the freedom of the press is guaranteed in the Chinese Constitution, contradictions exist between the Constitution and relevant lower-level regulations and policies. “The result of these contradictions is that the Constitution is put on the shelf while various arbitrary regulations control the press.”¹¹

The arrival of the new media has had many of the same societal impacts in China as in the west, but it has also had a very different impact on this society. The new media not only poses questions for the party-press system and the so-called socialist press freedom in China, but the new media also exerts subtle influence on the way information is gathered and distributed in China. The new media essentially defeats the dominant monopolistic position of the state-owned traditional media and makes the Chinese media more accessible, participatory and conducive to social dialogue. As a result of the new media, for the first time the Chinese authorities realize that sometimes isolation is not a viable option. Additionally, the new media has also caused the Chinese authorities to realize the power of the ordinary citizens in pursuing the truth, and promoting a democratic society. Therefore, the new media provides a great opportunity for China to improve its fundamental political relationship between the party authorities and the masses.

This paper is divided into three major parts. Part II will review the emergence of the new media and take a critical look at its impacts. Part III is an analysis of China’s party-press system and an examination of the socialist press freedom in China. After a quick overview of the Chinese legal regime on press related issues, there is an exploration of

9. David Banisar, *Surveillance and Free Media*, in *NEW MEDIA: THE PRESS FREEDOM DIMENSION, CHALLENGES AND OPPORTUNITIES OF NEW MEDIA FOR PRESS FREEDOM* 67 (Barry James ed., UNESCO 2007).

10. Belsie, Laurent, *Cyber-Angst: A Web that Both Lures and Repels*, *CHRISTIAN SCI. MONITOR*, Aug. 26, 1998, available at <http://www.mail-archive.com/web-consultants@just4u.com/msg03372.html>.

11. XUPEI, *supra* note 1, at 92.

the role of the new media in disseminating information under strict press control policies in China. Part IV is an examination of four major news events (the SARS epidemic, the Tibet Riot, the Olympic Torch Relay, and the Wen Chuan Earthquakes) that took place in China between 2003-2008. The purpose of examining these events is to analyze the impact of the new media on China. The discussion addresses how the features of the new media (participatory, interactive, and borderless) can influence the dissemination of the news and communication of different viewpoints. Finally, Part IV is an exploration of the changes of press policies in China and an argument that the new media developing along with these events is knocking at the door of freedom of the press in China.

II. THE NEW MEDIA AND FREEDOM OF THE PRESS

A. The Emergence of the New Media

There have been four great communication revolutions in human history. The emergence of writing and the alphabet was the first and the invention of printing was the second. These two revolutionary changes provided important technological support for the emergence of the newspaper and introduced substantial changes to the way in which people interact socially. The next two revolutions in communication technology, “the introduction of electric-powered relays in communication”, and “the convergence of telecommunication, computers, and digitalization”¹² were as profound as the invention of writing and printing, and have greatly expanded the sphere of the press.

The press, which originally referred to the newspaper, was “considered ‘extensions of human organs’ improving the limited human capability of information gathering.”¹³ The press acts primarily as a signaler, alerting the public to important developments as soon as possible after they happen.¹⁴ However, the purpose of the press was not confined to “provid[ing] ‘neutral’ information”, and soon it was extended to “represent[ing] a point of view within society.”¹⁵ The press became a medium devoted to the exchange of ideas and a channel

12. SLAVKO SPLICHAL, *PRINCIPLES OF PUBLICITY AND PRESS FREEDOM* 9 (Rowman & Littlefield Publishers 2002).

13. *Id.* at 13.

14. See WALTER LIPPMANN, *PUBLIC OPINION* 4 (The Free Press 1965).

15. See Daniel C. Hallin & Robert Giles, *Presses and Democracies*, in *THE PRESS* 4, 12 (Geneva Overholser & Kathleen Hall Jamieson eds., Oxford Univ. Press 2005).

dedicated to the supply of information.¹⁶ “The press can serve an indispensable function in informing the public, criticizing the institutions, exposing abuses in government, and generally acting as a counterweight to the established centers of power.”¹⁷

Because the conception of press freedom is “heavily dependent on the relations between the rulers, the press and the public”, the function of the press is understood differently by different political systems (e.g., the socialistic system and the democratic system).¹⁸ The basic principle under the authoritarian model is simple. It contends that the press functions from the top down and “a printing press (or, later, a broadcasting facility) cannot be used to challenge, criticize, or in any way undermine the sovereign.”¹⁹ The press “promotes hierarchical communications” whereas “the ostensibly ‘more knowledgeable elites provide information and insights to mobilize the mass public.’”²⁰ Within this framework, information is “a scarce national resource” that becomes “the property of the state.”²¹ Therefore, the approach does not place much “emphasis on ‘interpersonal networks, social context and the importance of allowing some mechanisms for the masses to give feedback to the elite.’”²² The bottom-up communications are weak and the media is required by law to support authority and not challenge it. Under the authoritarian model, the press is regarded as ‘government-say[s]-so’ journalism.

The libertarian model portrays the news media as the public’s ‘eyes and ears’. Under the libertarian model, the press not only provides “a means for the government to disseminate its policy to the public” but also has “a mission to be the ‘citizen-critic’ on behalf of society.”²³ Contrary to the authoritarian model, this approach suggests a stronger role for citizens. It believes that citizen participation provides “the

16. ANNE S. Y. CHEUNG, *SELF-CENSORSHIP AND THE STRUGGLE FOR PRESS FREEDOM IN HONG KONG* 24 (Stanford Univ. 2001).

17. Thomas Emerson, *Foreword*, in *PRESS LAW IN MODERN DEMOCRACIES: A COMPARATIVE STUDY* xi (Pnina Lahav ed., Longman 1985). *See also* Timothy E. Cook, *The Functions of the Press in a Democracy*, in *THE PRESS* 115, 116-19 (Geneva Overholser & Kathleen Hall Jamieson eds., Oxford Univ. Press 2005) (summarizing the different functions that the press serves in a democratic political system as a “marketplace of ideas”, “agenda setter”, “watchdog”, “information disseminator”, and as a “mobilizer”).

18. *See* CHEUNG, *supra* note 16, at 24.

19. WILLIAM A. HATCHEN & JAMES F. SCOTTON, *THE WORLD NEWS PRISM: GLOBAL INFORMATION IN A SATELLITE AGE* 18 (Blackwell Publishing 7th ed. 2007) (1987).

20. *See* Romano, *supra* note 3, at 3.

21. WILLIAM A. HATCHEN, *THE WORLD NEWS PRISM: CHANGING MEDIA OF INTERNATIONAL COMMUNICATION* 32 (Iowa State Univ. 4th ed. 1996) (1981).

22. *See* Romano, *supra* note 3, at 3.

23. *See* CHEUNG, *supra* note 16, at 24.

mechanism by which citizens can communicate information about their interests, preferences, and needs and generate pressure to respond.”²⁴ Under this framework, the main function of the news media is to act as “a ‘watchdog’ [(the fourth estate)] concerning the actions of the government and those in power. . .”²⁵ The watchdog role of the press has been defined as follows:

“(1) independent scrutiny by the press of the activities of government, business, and other public institutions, with an aim toward (2) documenting, questioning, and investigating those activities, in order to (3) provide publics and officials with timely information on issues of public concern.”²⁶

With the advent of the new media, the role of the press needs to be expanded. In the new media dimension, with some exceptions, “horizontal information flows in [a way in] which citizens learn about the needs, interests and activities of fellow citizens” and this flow has expanded the definition and the role of the press. For example, the watchdog role (otherwise known as the fourth estate) of the press needs to be expanded to harmonize with the development of the new media. “The concept of the press as the fourth power, fourth estate, or watchdog assumes that the press is “a corporate entity serving collective interests”²⁷ and it is journalists, not the citizenry, that are seen as the essential check on government excess. This role has been contradicted with the development of the new media, which has led journalism to “expand from a centralized, top-down, one-way publication process to the many-hands, and perpetual feedback loop of online communications.”²⁸ Additionally, “ignoring the press’ role in providing a social communication forum, the fourth estate model reveals its inability to protect the new [media] which focus on providing an [interactive communicative area].”²⁹ In order to understand the role of the press in the new media dimension, it is pertinent to first examine the features of the new media.

24. Esther Thorson, *Mobilizing Citizen Participation*, in *THE PRESS* 203 (Geneva Overholser & Kathleen Hall Jamieson eds., Oxford Univ. Press 2005) (quoting SIDNEY VERBA, KAY LEHMAN SCHOLZMAN & HENRY E. BRADY, *VOICE AND EQUALITY: CIVIC VOLUNTARISM IN AMERICAN POLITICS* 1 (Harvard Univ. Press 1995)).

25. Hallin, *supra* note 15, at 12.

26. W. Lance Bennett & William Serrin, *The Watchdog Role*, in *THE PRESS* 169, 169 (Geneva Overholser & Kathleen Hall Jamieson eds., Oxford Univ. Press 2005).

27. SPLICHAL, *supra* note 12, at 2.

28. Paul Andrews, *Is Blogging Journalism?*, 57 *NIEMAN REPS.*, Fall 2003 at 63, 64.

29. GARRY, *supra* note 7, at 85.

Although the types of the new media³⁰ are varied, they do have certain general characteristics in common, when compared to the traditional media, including the participatory, borderless and interactive characteristics. The new media is participatory in that it allows citizens to have greater control over how and when they receive information and, much more than ever before, citizens can participate and be an active part. The public no longer has to take a strictly passive or consuming role in the communication process. One of the unique features of the electronic communication system is the inclusion of non-professional journalists in the information-sharing process.³¹ The new media is blurring the line between the news gatherer and the audience and the new media encourages a greater non-journalistic participation in the communication process.

The new media is also characterized as being borderless. The revolution in communication systems and technologies has brought us much closer to the concept of the “global village.”³² The traditional media was largely constrained by geography and was aimed at people in particular physical places, whereas the new media is demographic and aimed at physically separated but spiritually connected individuals.³³ Developments in the ICTs have enhanced the ability to gather and disseminate information across national and international borders. The new media greatly satisfies people’s need to know about the events taking place not only in their community, but also across the world. The consensus is that the new media makes a community of minds and replaces the community of geography.

Finally, the new media is interactive. New electronic networks differ from the traditional press in that the latter rely on a one-to-many model, while the former has a level of interactivity through a talk back mechanism that allows people to communicate one-to-one, one-to-

30. See AJE-ORI AGBESE, *THE ROLE OF THE PRESS AND COMMUNICATION TECHNOLOGY AND IN DEMOCRATIZATION: THE NIGERIAN STORY* 26 (Molefi Asante ed., Routledge 2006) (referring to new media as the means of communication rather than the source of communication, including “computers, satellites, teleconferencing networks, electronic messaging systems, videocassette recorders (VCRs), the Internet, and cellular phones”).

31. See GARRY, *supra* note 7, at 6.

32. Michael Kirby, *The Impact of Global Media on the Rule of Law*, in *WALKING THE TIGHTROPE: PRESS FREEDOM AND PROFESSIONAL STANDARDS IN ASIA* 63, 65 (Asad Latif ed., Asian Media Information and Communication Centre 1998) (“The term ‘global village’ was coined in the 1960s by Marshall McLuhan of the University of Toronto to describe the way in which the global media were linking humanity in all parts of the world.”).

33. See GARRY, *supra* at note 7, at 50-52 (explaining that geographic limitations now are less meaningful, people will be linked to the media not only through geography but also according to interests and information needs).

many, or many-to-many.³⁴ The interactive new media transforms the passive characteristic of our traditional media, gives audiences more control over what they receive, and permits decentralized decisions over media content, thus creating a more fluid relationship between users and senders.

Given these features of broadened participation, limitation of borders and increased interactivity, the new media undermines the conventional understanding of the press and has expanded its definition and enriched its role. Within the new media dimension, the primary role of the press is to provide a social communication forum. Currently, “there is an increasing thrust toward having the press serve as a mechanism for achieving greater citizen communication and political participation”³⁵ which causes a tremendous impact on the society.

B. The Impact of the New Media

The necessity of the traditional media “derives from the incapacity of human beings to remove . . . barriers of space and time that would prevent them from acquiring knowledge,”³⁶ and the same applies to the new media. The new media can be thought of as a remarkable medium that allows “easy access to an almost infinite storage bin of information.”³⁷ As one author suggests, the new media, in giving the ordinary people the means to record events, distribute information and register viewpoints, is “changing the relationship between the government, the mainstream news media and the people.”³⁸

1. Impact on the Traditional Media

The rising popularity of the interactive new media has intensified social pressures to reform the mainstream press. “[A]ll [the] pressures for change [have made] the [traditional] media more accessible, participatory and conducive to social dialogue.”³⁹ However, many people initially underestimated the impact of the new media and were

34. AGBESE, *supra* note 30, at 26; *See also* GARRY, *supra* at note 7, at 59 (predicting that computers will allow the media of the future to be interactive rather than passive and will facilitate a shift from one-way to two-way communication).

35. GARRY, *supra* note 7, at 88.

36. SPLICHAL, *supra* note 12, at 7.

37. EVERETTE DENNIS, *MEDIA DEBATES: GREAT ISSUES FOR THE DIGITAL AGE* 161 (Thomson Wadsworth 2006).

38. Joyce Y. M. Nip, *Changing Connections: the News Media, the Government and the People in China's SARS Epidemic*, in *JOURNALISM AND DEMOCRACY IN ASIA* 28, 29 (Angela Romano & Michael Bromley eds., Routledge 2005).

39. GARRY, *supra* note 7, at 71.

more willing to regard it as an extension or complement of the traditional media.⁴⁰ People who refer to online news providers are often probing deeper into something that they have seen in the traditional mass media; they are getting more, but largely not very different information.⁴¹ Others argue for the inclusion of the new media within journalistic discourse “as the fourth kind of journalism, after print, radio and television.”⁴² In a practical sense, the new media has been, and is, manifesting its capability, influence and potential as an independent kind of journalism.

The notion of the new media as an independent kind of journalism has, to some extent, caused the traditional media to worry about its situation and development, though competition among media is nothing new.⁴³ However, “the existing mass media should not worry about the competition . . . [or] extinction,” although these kinds of complex feelings are uncontrollable when introducing a new medium.⁴⁴ The traditional media and the new media each have different strengths and target audiences. Specifically, “the former cater[s] to “the tastes of much larger groups . . . and [does] not necessarily meet individual requirements of what a person needs to know in pursuit of knowledge” whereas the new media provides and caters to “the needs of individuals and cuts across the barriers of space, time and convenience.”⁴⁵

40. Peter Dahlgren, *The Public Sphere and the Net: Structure, Space, and Communication*, in *MEDIATED POLITICS: COMMUNICATION IN THE FUTURE OF DEMOCRACY* 33, 46 (W. Lance Bennett & Robert Entman eds., Cambridge Univ. Press 2001). *See also* DENNIS, *supra* note 37, at 163 (posing questions likely to arise if the internet is regarded as an extension of journalism press).

41. KEVIN A. HILL & JOHN E. HUGHES, *CYBERPOLITICS: CITIZEN ACTIVISM IN THE AGE OF THE INTERNET* 43 (Rowman & Littlefield Pub. 1997).

42. Terence Lee, *Going Online: Journalism and Civil Society in Singapore*, in *JOURNALISM AND DEMOCRACY IN ASIA* 15, 23 (Angela Romano & Michael Bromley eds., Routledge 2005).

43. *See* Thomas Patterson & Philip Seib, *Informing the Public*, in *THE PRESS* 189, 198 (Geneva Overholser & Kathleen Hall Jamieson eds., Oxford Univ. Press 2005) (“[T]he printed page has already faced challenges from radio and television for the better part of a century.”); *See also* Brajesh Bhatia, *The Impact of New Technologies on the Mass Media*, in *WALKING THE TIGHTROPE: PRESS FREEDOM AND PROFESSIONAL STANDARDS IN ASIA* 58, 59 (Asian Media Info. and Comm’n Ctr. 1998) (“[W]hen radio came on the scene, some people predicted the end of the newspaper; similarly at the introduction of television, the doom of radio was predicted. But nothing like that happened and all mass media in fact not only thrived but improved their circulation multifold.”).

44. Bhatia, *supra* note 43, at 61.

45. *Id.*; *See also* GARRY, *supra* note 7, at 44. (“The mass media revolution is being reversed; instead of identical messages being disseminated to millions of people, electronic technology now permits the adaptation of electronic messages to the specialized or unique needs of individuals.”).

The new media actually “offer[s] a virtual space where “information ignored by mainstream media can be published.”⁴⁶ Information that the traditional media is not willing or daring enough to publish could be exposed to the public through the new media. One scholar has noted the following:

“Since networked news can be interactive, on-demand, and customizable; since it can incorporate new combinations of text, images, moving images and sound; since it can build new communities based on shared interests and concerns; since it has the almost unlimited space to offer levels of reportorial depth, texture, and context that are impossible in any other medium, new media can transform journalism.”⁴⁷

Essentially, the new media has broken the dominance of the traditional media in terms of news gathering and news distributing, and has induced convergence within the media industries.

2. *Breaking the Dominance in News Gathering and Distributing*

“Who first reports the news?” and “How does the news get out?” are the two eternal issues in the journalistic discourse. In an era of the traditional media, the professional journalists who come from the institutional media undoubtedly dominate the news gathering and distributing. However, with the advent of the new media, more and more ordinary citizens participate in this process.

The “traditional media often block[s] innovation, particularly when they are heralds of particularistic interests of powerful interest groups behind them,” but the new media is “pluralistic in terms of both producers and users, and diversified in terms of content by its very nature—due to its decentered structure.”⁴⁸ Initially, people thought that the innovations of the new media “lie neither in breaking news nor on-site reporting, but in the publication of unadulterated letters and articles from readers, or the use of satirical or subversive humour, to outwit the conventionality of mainstream media.”⁴⁹ However, since the 1990’s, nations all over the world have begun “bowing to the inexorable force

46. Zizi Papacharissi, *Audiences as Media Producers: Content Analysis of 260 Blogs*, in *BLOGGING, CITIZENSHIP, AND THE FUTURE OF MEDIA* 21, 21 (Mark Tremayne ed., Routledge 2007).

47. HATCHEN & SCOTTON, *supra* note 19, at 56-57.

48. SPLICHAL, *supra* note 12, at 194.

49. Lee, *supra* note 42, at 23.

of those fancy technological innovations that make it less expensive to engage in electronic communication.”⁵⁰

The ease in communication has led to the collapse of the dominant status that the traditional media has enjoyed for such a long time. This collapse has occurred because “[i]ndividual citizens can now record events with miniature video cameras, digital cameras or mobile phones with virtually no training.”⁵¹ This poses a [great] challenge to the [mainstream] news media, whose teams of professional journalists have traditionally monopolized news gathering.⁵² Additionally, armed with the advanced new ICTs, the majority of people possess the capability to send information to multiple recipients. The ease in distributing information poses a challenge to the traditional dominance of the mainstream media in the dissemination of the news.⁵³

In some circumstances, the citizens are frequently on hand when a story breaks out and then have their own advantages in disclosing the information. For example, the first published photos, showing the true dramatic account, of the London subway attack actually came from Londoners trapped underground who caught the scenes with their cellphones.⁵⁴ It was a long time before the press photographers could reach the area. In other circumstances, the mainstream media outlets have chosen to cooperate with the citizens and use video clips and records of events supplied by them. “For example, photographs of the abuse of Iraqi prisoners by US soldiers shown in the mainstream news media are believed to have been taken with a digital camera by soldiers or government contractors.”⁵⁵

Another development that has come from the new ICTs is that the news can be “quickly [made] available to the world, not on television screens or in newspapers but on bloggers’ websites”⁵⁶ and on Youtube, MYSpace and other online media. The Monk’s Demonstration that happened in Myanmar last year is just one example.⁵⁷ Therefore, in an

50. W. Lance Bennett & Robert M. Entman, *Mediated Politics: An Introduction*, in *MEDIATED POLITICS: COMMUNICATION IN THE FUTURE OF DEMOCRACY* 1, 11 (W. Lance Bennett & Robert Entman eds., Cambridge Univ. Press 2001).

51. Nip, *supra* note 38, at 28.

52. *Id.*

53. *Id.*

54. HATCHEN & SCOTTON, *supra* at note 19, at 47.

55. Nip, *supra* note 38, at 29.

56. HATCHEN & SCOTTON, *supra* note 19, at 47.

57. See Wayne Drash, *Internet Cut in Myanmar, Blogger Presses On*, CNN, Sept. 28, 2007, <http://edition.cnn.com/2007/WORLD/asiapcf/09/28/myanmar.dissidents/#cnnSTC> Text; see also Ko htike’s Prosaic Collection, <http://ko-htike.blogspot.com>, Sone Sea Yar, soneseyar.blogspot.com; Ninayman, <http://niknayman.blogspot.com>.

era of the new media the readers sometimes “are creators as well as consumers of information . . . embodying the ideal of ‘receiver as source.’”⁵⁸ Putting consumers in the driver’s seat, the new media is changing the way news is currently gathered, produced, disseminated, and consumed, which “lessen[s] the public’s dependency on the journalist and other intermediaries for its information and communication needs.”⁵⁹

3. Media Convergence

The new media has, to some extent, led to a decrease in audience size for established mass media; this decrease is mainly seen in daily newspapers, broadcast radio and television.⁶⁰ While audiences for the traditional media have shrunk, they grew for such newer media as cable, satellite-delivered television and World Wide Web sites.⁶¹ Therefore, many mainstream news organizations began to “set their feet in the new communicative area”⁶² and use “the Internet to improve their product and make it more relevant to readers, viewers, and other users.”⁶³ Almost all mainstream traditional news organizations, such as TIME, CNN and BBC “launched Web editions that . . . updated continuously throughout the day.”⁶⁴ These traditional media have taken advantage of the new ICTs and their ability to attract more “hits” or “eyeballs” on the internet.

In addition to the uploaded audios, videos and news articles, the functions of the web versions of traditional media are more diversified than their traditional counterparts. They are often designed to be interactive, in which case it becomes possible for readers to talk back to journalists almost instantaneously. There has been a trend of

58. Shyam Sundar, Heidi Hatfield Edwards, Yifeng Hu & Carmen Stavrositu, *Blogging for Better Health: Putting the “Public” Back in Public Health*, in *BLOGGING, CITIZENSHIP, AND THE FUTURE OF MEDIA* 83, 83 (Mark Tremayne ed., Routledge 2007).

59. GARRY, *supra* note 7, at 7.

60. See Bennett & Entman, *supra* note 50, at 11.

61. See Rodney Tiffen & Ki-Sung Kwak, *Cable Television and Democratization in Taiwan and South Korea*, in *JOURNALISM AND DEMOCRACY IN ASIA* 135, 146 (Angela Romano & Michael Bromley eds., Routledge 2005) (“[T]he average percentage of households watching prime-time presidential appearances . . . under Nixon, Ford and Carter was just under 50 per cent, but the figure steadily dropped until, by Clinton’s time, it was less than 30 per cent, and cable television is the main explanatory factor in the decline.”).

62. Guy Pessach, *Media, Markets, and Democracy: Revisiting an Eternal Triangle*, 17 *CANADIAN J. OF LAW AND JURISPRUDENCE* 209, 223 (Jan. 2004).

63. DENNIS, *supra* note 37, at 161.

64. Michael Schudson & Susan E. Tift, *American Journalism in Historical Perspective*, in *THE PRESS* 17, 37 (Geneva Overholser & Kathleen Hall Jamieson eds., Oxford Univ. Press 2005).

intermingling amongst the various media forms and “the coming together of all communication technologies and functions into a single system, an integration of traditional print and electronic media.”⁶⁵ Moreover, “the convergence of all types of communication into a single, electronically based, computer-driven mode will, in turn, allow the existing media forms to concentrate on their particular strengths and specialties.”⁶⁶ In short, the press (old and new) in the twenty-first century will become more accessible to the individual and more conducive to interactive communication.

4. *Impact on the Public*

The pressures placed on newspaper, television and radio by the new ICTs, are accelerating and changing the way people get information and making them realize their desire for communication.⁶⁷ The basic reason for the phenomenal increase in new media users is the human need to communicate. “[T]he whole idea behind the [information technologies] was to empower people to use the news and not to make them dependent on government or a few journalists.”⁶⁸ Currently, “an individual is no longer a passive recipient of news” but also an “information seeker.”⁶⁹ During the time of the traditional media the news had taken the form of a dialogue between the viewer and the producer, whereas the new communication is more efficient and interactive because of the ease of the new media.

New ICTs have been defined “as part of a total communication environment whereby people choose from a range of available media to fulfill communicative goals.”⁷⁰ Initially, commentators once doubted the impact of the new media for the public. They argued that the new media (i.e., internet) is “unaffordable and/or impossible to access for most of the population . . . [t]hus the capacity of citizens and journalists to use new media technologies as a tool for expanding the bounds of democratic life is often limited, and such media serve as elite media rather than true mass media.”⁷¹ Further, “[o]wning a computer. . . does

65. GARRY, *supra* note 7, at 41-42.

66. *Id.* at 42.

67. WILSON DIZARD, JR., *OLD MEDIA, NEW MEDIA: MASS COMMUNICATIONS IN THE INFORMATION AGE* 11 & 23 (Longman 2000).

68. GARRY, *supra* at note 7, at 52.

69. HATCHEN & SCOTTON, *supra* note 19, at 53.

70. Sandra J. Ball-Rokeach & Elizabeth Gutierrez Hoyt, *Communication Technology and Community*, 28 COMM. RES. 355, 355 (August 2001).

71. Romano, *supra* note 3, at 13-14 (“The internet mainly serves an audience of expatriates, urban elites and the highly educated.”). *Id.*

not mean having access to the Internet.”⁷² Therefore, it is not a given that everyone can participate in the democratic process since not everyone has access to the ICTs. However, in the last five years, the new media has developed at an expeditious speed, the cost of access has decreased, and more and more people can now acquire and enjoy the new media. Because of the increase in access, the new media definitely has been playing an important role in expanding the field of public discussion.

Communication technologies currently provide a platform where citizens have some level of autonomy to participate in all issues affecting them.⁷³ People now are in full control of what they want to see, hear, browse through or give feedback to at their own convenience. Take the internet as an example. It “does indeed offer a citizen greater access to ideas and information than the traditional [media] outlets.”⁷⁴ If people were interested in a particular event, they no longer need to wait for the relevant news to be reported at a specific time through mainstream media outlets. Online news is “available instantaneously and updated around the clock.”⁷⁵ It is also possible for anyone to probe deeper into an issue by surfing the net and “studying the entire transcripts of press conferences and interviews or the complete background documentation provided by a governmental agency or a research organization.”⁷⁶ Since the new media has greatly expanded the number of places one can go to get news, it to some extent fosters self-reliance in the public’s search for information. Furthermore, human beings instinctively have a desire to talk about the news and to add value to the news by participating.

Generally, there are two levels of interactivity with the new media: high and low. Low-level interactivity, which was experienced in the 1990’s, is where professional reporters write and readers write emails or post comments on bulletin boards. In high-level interactivity, demonstrated in the 2000’s, reporters and readers are equals and they have equal opportunities. Readers can become reporters at any time they

72. AGBESE, *supra* at note 34, at 29.

73. See DAVID HELD, *DEMOCRACY AND THE GLOBAL ORDER: FROM THE MODERN STATE TO COSMOPOLITAN GOVERNANCE* 20-22 (Stanford Univ. Press 1995).

74. Robert Schmuhl & Robert G. Picard, *The Marketplace of Ideas*, in *THE PRESS* 141, 150 (Geneva Overholser & Kathleen Hall Jamieson eds., Oxford Univ. Press 2005).

75. Michael Schudson & Susan E. Tifft, *American Journalism in Historical Perspective*, in *THE PRESS* 17, 40 (Geneva Overholser & Kathleen Hall Jamieson eds., Oxford Univ. Press 2005).

76. Robert M. Entman, *The Nature and Sources of News*, in *THE PRESS* 48, 50 (Geneva Overholser & Kathleen Hall Jamieson eds., Oxford Univ. Press 2005).

want and can become “a part of the news process.”⁷⁷ “Citizen Journalism” is a term that has come to describe a form of media that involves moderated reader participation. It reverses the sender–receiver process of traditional journalism and “exhibits characteristics of share and discussion sites, because the emphasis is on participation and exchange of ideas.”⁷⁸ Therefore, the mainstream “media’s role of providing the first draft of history was being challenged by ordinary citizens.”⁷⁹ In short, the new media has initiated and reinforced a trend involving citizens in the news process.⁸⁰ This kind of “participatory journalism,” or moderated reader participation, to some extent has stimulated a new capacity for grassroots democracy.

5. *Impact on the Government*

The “government-press relationship and the media is ‘a mix of cooperation and conflict as well as dependence and independence.’”⁸¹ On the one hand, “[c]itizens depend on [the media] to inform them about the ‘actions of government and problems faced by communities and the nation,’” and “[r]eporters and media organizations depend upon the government to ‘provide them with information and protect their position as an essential element of a representative government.’”⁸² On the other hand, the government depends upon the media to disseminate its policies and maintain its political purposes, and the media depends on the public to realize its economic value and spread its ideological proposition.

Despite the ambivalence of the government-press relationship, both government officials and news organizations have the same client base, the public. All democratic societies are confronting the issue of “how the media, old and new, can be made accessible to citizens and

77. J.D. Lasica, *Blogs and Journalism Need Each Other*, 57 NIEMAN REPS., Fall 2003 at 70, 74.

78. Clyde Bentley, Brian Hamman, Jeremy Littau, Hans Meyer, Brendan Watson & Beth Welsh, *Citizen Journalism: A Case Study*, in BLOGGING, CITIZENSHIP, AND THE FUTURE OF MEDIA 239, 242 (Mark Tremayne ed., Routledge 2007).

79. HATCHEN & SCOTTON, *supra* note 19, at 47.

80. See DENNIS, *supra* note 37, at 163 (arguing that societies need a “well-trained, dedicated core of people running journalism—the journalists” and that we shouldn’t think of users of the new media as part of the press as they put their self-indulgent scribbles forward).

81. Martha Joynt Kumar, *Government and the Press: An Ambivalent Relationship*, in THE PRESS 221, 221 (Geneva Overholser & Kathleen Hall Jamieson eds., Oxford Univ. Press 2005).

82. *Id.*

how they can be used for the benefit of the citizens.”⁸³ Governments have long relied on the news media as the delivery mechanism for influencing a mass audience, but now they can go directly to the public. Therefore, nowadays many official organizations have begun to use websites or other electronic interfaces to make official information available to the citizens. “For instance, the full report by Kenneth Starr on the Clinton-Lewinsky relationship and President Clinton’s testimony were first released [not via the traditional media, but] on the internet.”⁸⁴ Another example of targeting the younger, tech savvy crowd occurred when the Vancouver Police Department launched an online recruitment program through both Facebook and YouTube, becoming the first force in Canada to use these latest new media tools.⁸⁵

Journalists of the traditional media regard “monitoring the government and serving as the mouthpiece of the people” as equally important, while citizens believe that “the provision of forums and the promotion of communication between officials and citizens” are more important than the media’s monitoring role.⁸⁶ The new media then, helps the citizens place more emphasis on communicating policy suggestions and social reforms to the government. One of the most powerful democratizing forces of the new media is its capacity for permitting interaction between the government and the public.

With the development of the new ICTs, government websites began to add many new interactive functions. Now the public can not only search the latest policies and administrative procedures, find detailed introductions on functions and responsibilities of different departments, but also can participate in online hearings on the hottest social issues, register viewpoints, and debate with experts and other ordinary citizens as well.⁸⁷ The services the e-governments now provide are expanded and directed communication with clients, without the media’s intervention, making the governments respond more efficiently. Furthermore, computer-aided direct communication between the government and the public serves as an early warning system for

83. See SPLICHAL, *supra* note 12, at 164.

84. Nip, *supra* note 38, at 30.

85. Chantal Eustace, *VPD: Virtual Police Department*, VANCOUVER SUN, May 29, 2007, http://www.gnwc.ca/files/2007may29_versun_vpd_virtual_police.pdf.

86. Chan & So, *supra* note 4, at 67.

87. See, e.g., Official Website of Hangzhou, Zhejiang Province, P.R. China, <http://www.hangzhou.gov.cn/main/czyz/wstz/> (last visited Mar. 18, 2009); Official Website of Pingliang, Gansu Province, P.R. China, <http://www.pl.gansu.gov.cn/PingLiangWebSite/Main/communication/PLCoA/PLCoAadvicetopicview.jsp?web=1> (last visited Mar. 18, 2009).

government officials of problems they may not have recognized or issues coming to the surface that they did not see coming. Especially in an era of the new media, the speed of information dissemination is high and opinions on social issues are diverse and intense, which place immense pressure on the government to respond in time. "Government officials thus have to act like firefighters, running around to quell the criticisms that spark up here and there."⁸⁸ The development of the Chinese government's feedback to the SARS epidemic is a good example (detailed discussion Part III). It is for sure that direct confrontation to its clients in the digital time makes the government more efficient and effective. At the same time, when people have access to the new media to articulate their viewpoints and aspirations to the government directly, the new ICTs will lead to "the introduction of electronic democracy."⁸⁹

"The role of the government in information dissemination to the news media [can] be conceived as [one of] suppressor, facilitator or spinner."⁹⁰

When the government does not want to see the event being reported as news, it plays the role of suppressor; it plays the role of facilitator when it provides the information needed for making an event into news in a neutral manner; and the government plays the role of the spinner when it steers the making of news towards a particular representation of the event.⁹¹

However, digitalization is now believed to "empower individual citizens and to change the societal power structure in the direction of democratization of society."⁹² Moreover, clusters of like-minded individuals with similar interests and passions on the net are not confined to a specific area, where the concerned government has the power to legitimize its authoritarian behavior. Therefore, the new ICTs have made it easier for the public to keep governments under international scrutiny, and push them to take a more active role in facilitating and spinning the information flow. In conclusion, the new media exhibits characteristics of "share and discussion" (participation and exchange of ideas), which to some extent forces the government to

88. See Chan & So, *supra* note 4, at 80.

89. James Curran, *What Democracy Requires of the Media*, in THE PRESS 120, 131 (Geneva Overholser & Kathleen Hall Jamieson eds., Oxford Univ. Press 2005).

90. Nip, *supra* note 38, at 29.

91. *Id.*

92. SPLICHAL, *supra* note 12, at 12.

consider and incorporate the public's interest when communicating through the press.

C. The Reasons and Measures for Restricting the New Media

As the noted Argentine thinker Juan Bautista said, "the press is a non-delegated power that the country retains in order to exercise it itself"⁹³ Therefore, freedom of the press is one right that the people do not turn over to the government and they keep it for themselves. Member states of the United Nations Educational, Scientific and Cultural Organization (UNESCO), at its General Conference in 1997, formally endorsed the Universal Declaration of Human Rights, Article 19 of which gave freedom of the press a clear annotation. It says that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas *through any media and regardless of frontiers*."⁹⁴ This philosophy about freedom of the press is usually accompanied by laws and legislations, which are entrenched in a specific country's legal system and can go as far down as its constitution. In a democratic political system, it would be ridiculous to think that governments are in any position to regulate free speech and press freedom and to censor the people. In the same way, the new media in cyberspace asked to be afforded the same freedom of the press rights as the traditional news media. Fascetto argued that "there must be no law or act of government that limits free speech or press freedom, whatever the medium of communication."⁹⁵

However, all media systems, even the "freest," must deal with government regulation to some degree because "press freedom is really an ideal."⁹⁶ "There are many fetters on [freedom of the press,] formal and informal, direct and indirect."⁹⁷ As William Hachten explains, in

93. Arbillá, *supra* note 1, at 16.

94. Johann Fritz, *New Media in New Democracies: Oxygen for Democracy*, in *NEW MEDIA: THE PRESS FREEDOM DIMENSION, CHALLENGES AND OPPORTUNITIES OF NEW MEDIA FOR PRESS FREEDOM* 80, 80 (Barry James ed., 2007).

95. Jorge Fascetto, *A Free Press is Essential to Democracy*, in *FREEDOM OF THE PRESS AND THE LAW: LAWS THAT AFFECT JOURNALISM IN THE AMERICAS* 10, 10 (Jairo Lanao ed., 1999).

96. John Merrill, *The Global Perspective*, in *GLOBAL JOURNALISM: A SURVEY OF THE WORLD'S MASS MEDIA* 1, 4 (John C. Merrill ed., Longman 1983).

97. J.B. Dissanayaka, *Social and Cultural Factors Affecting Press Freedom in Sri Lanka*, in *WALKING THE TIGHTROPE: PRESS FREEDOM AND PROFESSIONAL STANDARDS IN ASIA* 231, 231 (Asad Latif ed., Asian Media Info. and Comm'n Ctr. 1998).

Formal constraints include laws governing libel and defamation, the authority of the press council, methods of censorship and parliamentary privilege. Informal and indirect constraints include state ownership of the press, control of news-print, the issue of loans from state banks, denial of access to state advertising and

the relationship between government and mass communication, the basic question is “not whether government controls the press but the nature and extent of those controls.”⁹⁸ In the traditional media dimension, mostly the authoritarian governments would adopt direct controls over the press through ownership or legal measures.⁹⁹ In other circumstances, governments indirectly control the press through “newsprint and equipment subsidies, harassment, cooptation of journalists and more.”¹⁰⁰ Badeni argued that rules to regulate the press are acceptable only when “limited to technical matters, but not if they infringe on content.”¹⁰¹ Pessach further contended that the limitation is only “subordinated to very few exceptions [and] content-based state censorship should be prohibited.”¹⁰² But with the development of the new media, the line between technology and content is blurring. When governments limit technical matters, they actually curb the real information content and the means of communication. So, the new media sometimes is subjected to restrictions, regulating and censoring both access and content, that would not be accepted in the traditional media.

1. The Reasons for Restricting the New Media

The new media serves as a platform for dialogue across borders and allows for innovative approaches to the distribution and acquisition of information. These qualities are vital to press freedom. However, as the impact of the new media increases, so do regulation techniques that limit the free-flow of information. One reason why governments adopt censorship on the new media is because the new ICTs permit an unprecedented empowerment of the individual. “It is probably this feature, together with the speed and the global character of the Internet, which has made many governments worry about granting internet users the same right to freedom of expression as traditional media have in

threats to journalists. In addition to these constraints, which are basically political, legal and economic in nature, there are often factors - social and cultural - that affect the freedom of the press. *Id.*

98. HACHTEN, *supra* note 21, at 15.

99. Vicky Randall, *The Media and Democratization in the Third World*, 14 *THIRD WORLD Q.* 625-46 (1993).

100. AGBESE, *supra* note 30, at 20.

101. Gregorio Badeni, *The Age of Communication Allows No Restrictions*, in *FREEDOM OF THE PRESS AND THE LAW: LAWS THAT AFFECT JOURNALISM IN THE AMERICAS* 22, 24 (Jairo Lanao ed., 1999).

102. Pessach, *supra* note 62, at 209.

democratic societies.”¹⁰³ Although, it is true that the new media will improve technologically, its basic weakness is that people can spill “their uncritical and often pornographic and vituperative expressions into the cyber atmosphere”¹⁰⁴ which is another reason why the governments adopt censorship. Finally, governments also adopt censorships to combat terrorism. Specifically, “[s]ince the Sept. 11 terrorist attacks there have been many new laws adopted to allow surveillance of communications in the name of the war on terror.”¹⁰⁵ Therefore, although the new media can be used to create a greater space for independent news and information within a democracy, if governments are determined to limit the information flows, they can develop legal and technical measures to control most new ICTs.

2. *The Measures for Restricting the New Media*

The new media was not designed to protect message confidentiality. It is fast and fairly reliable but also easy to spy on and censor. Take the internet as an example, as soon as the internet user clicks, it is possible for others to know what you are looking at. Furthermore, “[w]hen a dictator cannot effectively censor the Internet, he can take a more radical approach, barring internet access to virtually everyone.”¹⁰⁶ The new media has also been used to enable the government “to filter and delete messages from online groups and chat rooms, and track the posters (the same filtering and tracking could now be applied to SMS) to control what could be disseminated.”¹⁰⁷ Specifically, there are many existing measures used by governments to restrict free access to and use of the new media. According to Schmidt here are the measures that are currently under the most intense use:

Some measures are financial, such as high taxes or tariffs; other measures are technical, such as filtering and blocking software on servers; and yet others are administrative, such as having to obtain permission from authorities to register web sites and a refusal to install international servers. In addition, there are

103. Mogens Schmidt, *New Media-Expanding Press Freedom: International Commitments Guarantee Media Freedoms*, in *NEW MEDIA: THE PRESS FREEDOM DIMENSION, CHALLENGES AND OPPORTUNITIES OF NEW MEDIA FOR PRESS FREEDOM* 6, 7 (Barry James ed., 2007).

104. DENNIS, *supra* note 37, at 163.

105. Banisar, *supra* note 9, at 67.

106. Julien Pain, *Circumventing the Censors: Dictators on Web 2.0*, in *NEW MEDIA: THE PRESS FREEDOM DIMENSION, CHALLENGES AND OPPORTUNITIES OF NEW MEDIA FOR PRESS FREEDOM*, 66 (Barry James ed., 2007).

107. See Nip, *supra* note 38, at 39.

sometimes legislative measures, for instance, in the form of special laws to block sites that are considered to offer ways of obtaining information contrary to certain political, sexual, or moral standards.¹⁰⁸

These restrictions adopted in one country or for one country, actually impact everybody beyond the border due to the new media.¹⁰⁹ Moreover, this attempt to restrict the communication (censorship) in an era of the new media, to some extent, results in “a cat and mouse game.” For example, “[f]ree email services such as Yahoo! and Google mail are banned in Burma.” Therefore, email users in Burma have to “use authorized email with a password given by the local Internet Service Provider, itself under direct government control.”¹¹⁰ However, during the Monks’ Demonstration in 2007, extensive blocking of website, internet telephone access and chat services by the military government could not prevent numerous photos and reports by citizen journalists from disclosing via the new media. Clever users have sought to bypass filters and restrictions with the help of proxy servers.¹¹¹ In one way, the new media makes it easier to monitor who is saying what and who is reading it and in another way it also makes information access and dissemination far easier. It is a double-edged sword. In an era of the new media, whether or not the news or information could be sent out depends on who is in control of the latest and the most advanced technologies.

In conclusion, the new media builds a forum of open debate, allowing competing ideas to be freely challenged and scrutinized, and has changed the way people interact with each other. However, as Agbese stated, the new media “could threaten authorita[tive] leaders, who could not ‘ensure themselves a safe environment’ because channels like the World Wide Web [a]re ‘beyond their control and manipulation.’”¹¹² Therefore, the tension between the authoritative

108. Schmidt, *supra* note 103, at 7.

109. See Guy Berger, *New Media and Old: A Need to Share Common Press Freedom Interests*, in *NEW MEDIA: THE PRESS FREEDOM DIMENSION, CHALLENGES AND OPPORTUNITIES OF NEW MEDIA FOR PRESS FREEDOM* 14, 19 (Barry James ed., 2007). Press censorship on the traditional “media in one country deprives persons in that country of information directly and all other countries indirectly.” *Id.* But when there is a violation of press freedom on the new media, “with its international reach, then the globe is directly deprived of significant knowledge.” *Id.*

110. Sein Win, *On Internet, Burma’s Diaspora Journalism, Challenges Myanmar’s News Blackouts*, in *NEW MEDIA: THE PRESS FREEDOM DIMENSION, CHALLENGES AND OPPORTUNITIES OF NEW MEDIA FOR PRESS FREEDOM* 69, 69 (Barry James ed., 2007).

111. See Drash, *supra* note 57.

112. AGBESE, *supra* note 30, at 28.

government's desire to regulate and control the news media and the media's desire to remain unfettered is essentially unchanged in an era of the new media. In the next two Parts, the thesis will take China, a nation adopting strict press control policies, as an example to further examine the impact of the new media in terms of circumventing press censorship.

III. THE PARTY-PRESS SYSTEM AND FREEDOM OF THE PRESS IN CHINA

“New and diverse print, broadcast, and electronic media outlets have burgeoned during China's astounding economic boom.”¹¹³ However, media diversity and economic development are not spontaneously linked to respect for freedom of the press.¹¹⁴ China still earns a miserably low grade on the international score card of press freedom.¹¹⁵ Most Chinese officials still subscribe to the view that the media should serve the Chinese Communist Party's (CCP) political ends, and may not oppose state policy.¹¹⁶ Therefore, in westerners' eyes, freedom of the press in China is a contradiction. On the one hand, China claims that it puts its people first and their interests above all; on the other hand, it practically restricts freedom of the press which is one of the most basic rights that the Chinese people should enjoy. Frankly speaking, the Chinese also feel uncomfortable about relating the idea of freedom of press with their country.

113. BILL SWEENEY, *ATTACKS ON THE PRESS IN 2004* 101 (Committee To Protect Journalists 2005).

114. *Only Peace Protects Freedoms in Post-9/11 World*, REPORTERS WITHOUT BORDERS http://www.rsf.org/article.php3?id_article=29031 (last visited Mar. 18, 2009) (ranking Singapore 144 in a list of 169 nations, and is used as an example to demonstrate that economic development is not linked to respect for press freedom); see also *Freedom of the Press 2008 – Singapore*, FREEDOM HOUSE, Apr. 29, 2008, <http://www.unhcr.org/refworld/country,COI,FREEHOU,,SGP,4562d8cf2,487ca25a2,0.html>. Freedom House (2008) rates Singapore political rights score: 5 (out of 7), civil liberties score: 4 (out of 7) and confers it the “partly free” status. *Id.*

115. DEUTSCH KARLEKAR & BRIAN KATULIS, *FREEDOM OF THE PRESS 2004: A GLOBAL SURVEY OF MEDIA INDEPENDENCE* 11 (Rowman & Littlefield 2004); see *Only Peace Protects*, *supra* note 114. Freedom House rates China political environment score: 35 (out of 40), legal environment score: 28 (out of 30), and economic environment score: 21 (out of 30) and confers it the “not free” status. *Freedom of the Press 2008 – China*, FREEDOM HOUSE, Apr. 29, 2008, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=4871f5f821&skip=0&query=freedom%20of%20the%20press,%20china,%202008>.

116. Willy Wo-Lap Lam, *China: State Power Versus the Internet*, in *LOSING CONTROL: FREEDOM OF THE PRESS IN ASIA* 44-45 (Louise Williams & Roland Rich eds., Asia Pacific Press 2000).

Freedom of the press has always been a sensitive and complicated issue in China. The Chinese reactions to press freedom include (i) denouncing it as capitalistic and deceptive;¹¹⁷ (ii) being afraid that the Chinese traditional culture and values (the Confucian Culture) would be challenged;¹¹⁸ (iii) regarding it as an indispensable part of democracy; and (iv) mysticizing it as a mirage, a dream that could never be realized. China has been experiencing an irresistible impact and challenge from the new media on its media control policies, which has been adopted for more than half a century. More importantly, the new media also provides a great opportunity for China to improve its fundamental political relationship between the party authorities and the masses.

A. *The Socialist Press Freedom in China*

1. *The Party-Press System*

China's media reform which was initiated in the year of 1978 is a process filled with contradictions and ambiguities.¹¹⁹ With the communist authority controlling the direction and pace of the reforms but offering no coherent framework for the media industry, China's media reform is doomed to take many unlikely twists and turns. It is regarded as a process of uneasy collusion between the party-state authorities and media practitioners aimed at preserving the party-press system.¹²⁰ There are two guiding principles of China's media reforms: crossing the river by groping for the stones and maintaining the

117. From their point of view, "freedom" connotes irresponsible abandon, discarding socialist principles, disrespecting laws, and publishing based on personal preference. See XUPEI, *supra* note 1, at 2. (noting that, in the past, people have been afraid to talk about it but today "freedom of the press has become a topic of increasingly heated public debate").

118. See Verghese, *supra* note 1, at 21, 29. (noting that history and culture have "been a basic influence on the way the concepts of press freedom shaped themselves"). For example, the United States "made possible the freedom of information laws which give a unique stamp to press freedom in that country." *Id.* at 21. But in China, the essence of Confucian culture and history is Three Obedience ("San Cong"). Chinese views stress national unity and consensual democracy and do not support individual rights. *Id.* at 29. See also XUPEI, *supra* note 1, at pxxv. (explaining that based upon its history and tradition, it would be inappropriate for China to imitate western-style press freedom and therefore press freedom is seen as a threat in Chinese culture).

119. Chin-Chuan Lee, *Ambiguities and Contradictions: Issues in China's Changing Political Communication*, in CHINA'S MEDIA, MEDIA'S CHINA 3, 7-21 (Westview Press 1994).

120. H. Chen, *China's Media Institutional Change Motivated by Economic Interests: A Case of the Press*, in THE CHINESE MEDIA: A NEW PERSPECTIVE 35-48 (Z. He & H. Chen eds., Pacific Century Press 1998) (explaining that economic reforms of the 1970's were a catalyst for change with respect to the role of Chinese media and its independence from the Chinese government).

fundamentals of the party-press system. These two principles set the parameters for determining what is to be changed and how changes take place.¹²¹ The Chinese media between 1949 and the end of 1990s belonged to the state. The press (newspapers, broadcast and television media) were state assets and they were controlled by the Party branches of these organizations.¹²² However, because the media is expected to be self-supporting and independent of government subsidy¹²³ and the external threat of global media (as China became a member of the World Trade Organization), China's media industry had to change. According to Article 5 of Some Decisions of the State Council on the Entry of the Non-public-owned Capital into the Cultural Industry,¹²⁴ in early 2005, the non-public-owned capital (including foreign investment and domestic private capital) was allowed to make investment by purchasing shares of the state-owned cultural enterprises. These purchases were in the field of the printing and distribution of publications, the advertising and distribution of press and publication entities, the program production of broadcasting and television stations in such aspects as music, science and technology, sports and entertainment. Nowadays, in China, the news media gradually acts "more like businesses, competing for advertising and circulation, and less like party mouthpieces."¹²⁵ Competition has pushed the media to pursue reports of "local corruption, crime, celebrity scandal, and natural and environmental disasters."¹²⁶

However, market forces alone are inadequate to create an independent press. What has been changed is obvious, but what has been maintained, the fundamentals of the party-press system, is worth paying more attention to. First, the media reform is confined to the peripheral of the media industry. Only limited fields such as retail sales of books and newspapers, or decoration and printing of prints and so on

121. Zhongdang Pan, *Media Change Through Bounded Innovations: Journalism in China's Media Reform*, in *JOURNALISM AND DEMOCRACY IN ASIA* 96, 102 (Angela Rose Romano & Michael Bromley eds., Routledge 2005).

122. XUPEI, *supra* note 1, at 75. For example, the typical characteristics of the newspapers in China at that time can be summarized as (i) the number of "newspapers are many"; (ii) newspaper "pages are few"; (iii) "information volume is small (and repetitive)"; and (iv) "advertising space is limited." *Id.*

123. *Id.* ("The government subsidizes newspapers; the government pays subscription fees, newspapers do not worry about survival; [whether] they perform well or badly, it is the business of the government.")

124. Some Decisions of the State Council on the Entry of the Non-public-owned Capital into the Cultural Industry (promulgated by the State Council Apr. 13, 2005, effective Apr. 13, 2005) LAWINFOCHINA (last visited Jan. 5, 2009) (P.R.C.).

125. SWEENEY, *supra* note 113, at 103.

126. *Id.*

have been opened up to non-public-owned investment. It is still prohibited for private investors to establish or engage in any press institution, radio office/station, and television office/station. Second, the absolute state control of the media also remains unchanged. For example, that the state-owned capital shall hold 51% or more shares in the cultural enterprises is clearly prescribed in relevant regulations and policies.¹²⁷ Third, the Party press still dominates the media industry. According to the China Newspaper Industry Annual Report (2005), the number of Party newspapers¹²⁸ of all the four levels (central, provincial, city and country) was as high as 1017, accounting for 53% of the total domestic newspapers.¹²⁹ Last, there are strict limits on foreign investment in China's media industry. It is still prohibited for a foreign investor to engage in business operations regarding the publication and general distribution of newspapers and journals.

Therefore, the basic principles of the Communist party-press system always remained heavily guarded and constantly fortified during the media reforms in China. No matter what has changed, "the Party's control over the media, the cadres who manage the media, the ideological direction of the media, and the properties of media organizations will not change."¹³⁰ The media practitioners then continue to play a cat-and-mouse game with the media controllers. But with the development of China's media reform, the press in China began to change from a purely party propaganda instrument to a market-based industry with the political mission of supporting the party-press system and its policies.¹³¹

2. *The Socialist Press Freedom in China*

Because of the lack of independence from the Chinese Communist Party (CCP), the press in China tends to be regarded as "playing the role

127. Decisions of the State Council, Article 6, *supra* note 124.

128. XUPEI, *supra* note 1, at 47. The aim of the daily Party newspaper is: "(1) to educate the readership toward socialist and communist thought; (2) to prioritize that content which promotes Party policy; (3) to direct the workforce; and (4) to target as their readership the advanced elements of the Party cadres and the proletariat." *Id.*

129. CHINA NEWSPAPER INDUSTRY ANNUAL REPORT (2005), available at <http://tech.sina.com.cn/other/2005-08-05/1634684930.shtml>.

130. Pan, *supra* note 121, at 99.

131. Z. He, *From Mouthpiece to Party's Propaganda Incorporation: The Evolution of Chinese Party-Press*, in *THE CHINESE MEDIA: A NEW PERSPECTIVE 70-72* (Z. He & H. Chen eds., Pacific Century Press 1998).

of lapdog rather than acting as a watchdog on behalf of citizens.”¹³² As Sun put it, western journalism theories emphasize the media’s “watchdog” function of criticizing government.¹³³ On the contrary, in China, only the function of transmitting opinions (the “mouthpiece” function) has been consistently strengthened over time, and that has been limited to communicating government propaganda from the top down, neglecting transmission of public feedback, supervision and criticism from the bottom up. Even if Article 41 of the Constitution¹³⁴ in China specifically stipulates that the citizens of the People’s Republic of China have the right to criticize and offer suggestions to all government organs and officials, in practice the so-called social masters (the people) are not entitled to criticize the social servants (the government). Moreover, the mouthpiece function is emphasized to such a degree that it supersedes and ultimately displaces all other functions. In the end, the Chinese media have virtually abandoned their function as purveyors of public opinion and only media reports that benefit the ruling party and state power can be published. This is the biggest difference between the western-style press and the socialist press in China. In western journalism theories, governments and the ruling parties may not interfere in news reporting, which is considered an encroachment on freedom of the press. But the foremost role of the socialist press in China is to guide the socialist system, communicating valuable information from the top down. This approach encourages the reporting of positive stories that share details of attempts to bolster social stability, build harmony between diverse groups, strengthen the economy and improve communities.¹³⁵ In essence, the socialist freedom of the press means that the media should be subject to supervision *by the people, by the Party, and by law* (“3 Bys”).¹³⁶

Theoretically, the proletariat has always been a major force in the struggle for and safeguarding of press freedom in history. The trailblazers of communist theory, Marx and Engels, both regard freedom

132. Laurence Wai-Teng Leong, *The Straight Times: News Media and Sexual Citizenship in Singapore*, in *JOURNALISM AND DEMOCRACY IN ASIA* 159, 161 (Angela Rose Romano & Michael Bromley eds., Routledge 2005).

133. XUPEI, *supra* note 1, at 50.

134. XIAN FA art. 41, (1982) (P.R.C.).

135. Even if reporting on problems and crises, the positive news would handle it in a way that avoids sensationalism. Such reports would highlight the causes of problems and list potential solutions, so that audiences could understand and act constructively to overcome crises rather than respond in an unproductive, desperate or destructive fashion. *See, e.g.*, Nip, *supra* note 38, at 32 (reports of the SARS).

136. *See* XUPEI, *supra* note 1, at 7.

of the press as the most basic of freedoms.¹³⁷ Without it, Marx argued, “all other freedoms are merely bubbles that burst one another as they collide; if one freedom is in question, all freedom is in question.”¹³⁸ He further maintained that the fundamental way to cure the system of censorship was to abolish it. In China, Chairman Mao Zedong also stated his agreement with this Marxist proposition: “The freedoms of speech, the press, assembly, association, political conviction and religion are the people’s most important freedoms.”¹³⁹ Therefore, socialist press freedom,¹⁴⁰ as other kinds of press freedom, actually should be understood as calling for a “market of opinions” or in other words a publication of all opinions that do not “run counter to the Constitution and laws, including praise, affirmation, criticism, and supervision.”¹⁴¹ However, theory is one thing; practice is a totally different story. In China, the basic assumption of the above mentioned “3 Bys” is that the ordinary people are generally poorly educated and have little wisdom to determine development policy for the public good. Under this mindset, the media should support authority and not challenge it. Thus, “*by the people*” means any person who wants to “criticize their public representatives through the news media, the approval must come from the very representatives they criticize”¹⁴²; “*by the party*” means that the party is the ultimate embodiment of public opinion.¹⁴³ The CCP has the final right to determine what news can be disseminated and what can not, because truth (and information) is essentially a monopoly of those in authority. “*By law*” means that the laws and regulations passed by China’s national legislature (the National People’s Congress) must be followed.¹⁴⁴ Nevertheless, the

137. See *id.* at 11. Marx began his revolutionary life by fighting for press freedom in “Comments on the Latest Prussian Censorship Instruction,” “The Ban on The Leipziger Allgemeine Zeitung,” and “Justification of the Correspondent from the Mosel.” *Id.* He denounced censorship of books and newspapers by Prussia’s feudal rulers. Engels also pointed out that without freedom of the press, right of association and right of assembly, no workers’ movement is possible. *Id.*

138. *Id.*

139. *Id.* at 12. Mao Zedong consistently made it a high priority of the struggle to win the freedoms of speech, publication, and the press. *Id.* He called for the abolition of any reactionary laws and decrees that suppressed those freedoms. *Id.*

140. Basically socialist press freedom is composed of four factors. They are (a) the freedom to report, (b) the freedom to express views, (c) the freedom to publish newspapers, and (d) the freedom to criticize. See XUPEI, *supra* note 1, at 19-35.

141. *Id.* at 61.

142. *Id.* at 29.

143. Pan, *supra* note 121, at 99.

144. Article 5 of the Constitution of P.R. China stipulates that “all...political parties and public organizations...must abide by the Constitution and the law.” XIAN FA art. 5 (1982) (P.R.C.).

Chinese legal system is immature. A clear-cut legal structure concerning the media and freedom of the press is still far away from China. Therefore, simply acknowledging the people's right to know in a culture where "some leaders who publicly affirm the people's right to know also believe that the government and people are one and the same" is futile in achieving real freedom of the press.¹⁴⁵

The purpose of the socialist press freedom is to provide a means to promote social justice, social fairness, and social progress. But the Chinese leaders uphold the view that order and stability are preconditions for the growth of successful economies and political systems. Moreover, those in power insist that open discussion of views will lead to ideological chaos. Therefore, freedom of the press often has to be sacrificed or tightly constrained for the sake of social stability and group harmony in China. Obviously, although respect for leaders, harmony and consensus are the essences of the Confucian culture, these values have been exaggerated and overused by the Chinese governments as an excuse to curb the press.

B. The Chinese Legal Regime on Press Freedom

By freedom of the press in China, I mean freedom of speech and freedom of publishing through such journalistic tools as newspapers, periodicals, radio broadcasting, television broadcasting, and news agencies. Although in the early 1980s the National People's Congress (NPC) proposed a specialized press law for China, "there is still no such legislation in sight."¹⁴⁶ China's Constitution and a few scattered laws provide what legal authority exists on press-related issues.¹⁴⁷ In fact, a free press is guaranteed in the Constitution, which stipulates that

145. XUPEI, *supra* note 1, at 20.

"[F]rom that line of thinking, the government – considering itself to be the people – assumes 'I know what is best; therefore the people never need to know, because the Party knows.' This mind-set obstructs public decision making and seriously inhibits any inclination the government might have to open information channels to the public." *Id.*

146. XUPEI, *supra* note 1, at 95. (distinguishing the difficulties of drafting press legislation by both western nation as well as China):

"[Chinese] Party officials discovered more about the press law....They realized that a press law would not only define press responsibilities and obligations, but would also safeguard press and citizen rights to free speech and publication as provided in the Constitution....[however] [a]ny specific definition of these rights would naturally impede the Propaganda Department's arbitrary interference with the press." *Id.* at 95, 97.

147. See XUPEI, *supra* note 1, at 85. The regulations concerning the press related issues exist in three layers: (i) the Constitution; (ii) all of the articles related to journalism and communication activities as they appear in various laws; and (iii) specific regulations on the media, such as newspapers, magazines, radio, and television. *Id.*

“Citizens of the People’s Republic of China enjoy freedom of speech, of the press”¹⁴⁸ Based on the Constitution, certain laws and many special regulations also have provisions that standardize journalism and communication activities. However, contradictions exist between the Chinese Constitution and relevant policy regulations. Furthermore, contradictions exist between regulation and implementation.

1. Contradictions between the Chinese Constitution and Relevant Policy Regulations

China’s press policies do not reflect freedoms of press and speech guaranteed in the Constitution. Although the Constitution states that China’s citizens enjoy the freedoms of speech and publication, most of the laws and regulations deal with control and management of the press. The reasons or excuses behind limiting press operation in China include (i) order and stability: because the media can and to some extent are an instrument for spreading not just misinformation but disinformation;¹⁴⁹ (ii) security of the state (sedition, threats to public safety and national defense): it is often cited as the cause for punitive or preventive action against the media;¹⁵⁰ and (iii) pornography, libel and slander, invasion of privacy.¹⁵¹

148. XIAN FA art. 22 (1982) (P.R.C.) (stipulating that “the state promotes the development of art and literature, the press, radio and television broadcasting, publishing and distribution services, libraries, museums, cultural centers and other cultural undertaking that serve the people and socialism”); *see id.* at art. 35 (providing that the “[c]itizens of the People’s Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.”).

149. *See, e.g.*, Article 11 of Measures for the Administration of Release of News and Information in China by Foreign News Agencies (promulgated by the Xinhua News Agency, Sept. 10, 2006, effective Sept. 10, 2006) LAWINFOCHINA (last visited Mar. 5, 2009) (P.R.C.) (stipulating that China’s national unity, sovereignty and territorial integrity should not be undermined and the spread of false information, information that disrupts the China’s economic and social order, or the information that breaks the China’s social stability is prohibited).

150. *See* Verghese, *supra* note 1, at 31, 37.

“[W]hile this might appear to some to be a sufficient cause of action, the definition of what constitutes ‘security’ or ‘friendly relations with foreign states’ is open to question. On a close examination, the security of the state may be found to be no more than a cover for avoiding embarrassment to the government of the day or even a particular official or dignitary.” *Id.* at 31.

151. *See e.g.*, Article 19 of Provisions for the Administration of Internet News Information Service (promulgated by the Ministry of Info. Indus., Sept. 25, 2005, effective Sept. 25, 2005) LAWINFOCHINA (last visited Mar. 5, 2009) (P.R.C.) (prescribing the information which propagate obscenity and violence, or abet crimes or humiliate or slander another person, or infringe upon the legitimate rights and interests of another person will be regulated by the Chinese government).

Because of these three concerns, the Chinese government adopts strict state control policies on the mass media through the following means. The first way is a strict registration process for establishing media firms in China. For example, to start a newspaper in a certain province, the approval from the local department of press and administration is not enough. The application should also be filed to the General Administration of Press and Publication (GAPP). Once both of them approve the newspaper can be registered.¹⁵² Except for the “Bi-Approval process,” there are other conditions that should be met before starting a newspaper. These prerequisites are not that easy to attain because the article itself is equivocal and the process is not transparent at all.¹⁵³

The second way is the direct and indirect appointment of directors to certain media firms by the party authorities. Then, the chief directors of the media outlets who mostly are appointed or approved by the Party and the administrative agencies at the beginning of the media registration play a major role in aligning the publication and broadcasting to the intention of the party authorities and adhering to its policies and principles.

Third, the media administrative agencies compose and implement relevant regulations and policies to influence the media’s independent operations indirectly. Before the media reforms, the administrative agencies had the right to manage the media’s daily operations.¹⁵⁴ Nowadays, the pre-examination no longer exists, but it is replaced by a post-reading system. The GAPP and its lower-level agencies still draft quality control standards by which to evaluate any given newspaper’s content, printing, and advertising. The lower-levels of administrative agencies must submit post-reading reports to their higher-level

152. See, e.g., Article 9 of the Provisions on the Administration of Newspaper Publication (promulgated by the Gen. Admin. of Press and Publ’n, Sept. 30, 2005, effective Dec. 1, 2005) LAWINFOCHINA (last visited Jan. 5, 2009) (P.R.C.) (prescribing that after being approved, registered and licensed, the newspaper then can be published; otherwise, it is regarded as illegal and will be banned).

153. See, e.g., Article 8 of the Provision on the Administration of Newspaper Publication promulgated by the Gen. Admin. of Press and Publ’n, Sept. 30, 2005, effective Dec. 1, 2005) (prescribing that one of the conditions for establishing a newspaper publication entity is to “have a competent entity in charge and the sponsor that complies with the conditions as determined by the GAPP”).

154. See XUPEI, *supra* note 1, at 89. For example, to control the quality of newspapers and magazines, the Agency of Media and Publications had devised regulations on proofreading. *Id.*

counterpart at regular intervals.¹⁵⁵ The newspapers that cannot meet the standards are forced to shut down and their registration is revoked. The Administration of Radio, Film and Television also has an equivalent post-censor system to supervise the quality of radio and television programs.

Last, except for the Ministry of Propaganda (MOP) who controls the ideology of the Chinese press, surveillance institutions like the General Administration of Press and Publication, the General Administration of Radio, Film and Television and their provincial sub-bureaus control administrative management. They have the right to punish the media for their illegal activities. Such punishments include warnings, fines, confiscating illegal income and publications, and canceling licenses. Therefore, contradictions do exist between Chinese Constitution and relevant laws, regulations and administrative rules and policies in terms of freedom of the press.

2. *Contradictions between Regulation and Implementation*

In addition, contradictions exist between regulation and implementation. Law is necessarily difficult to enforce in a society whose legal system is incomplete. The countries that benefit from press freedom are those run by the rule of law. However, the influence of the “arbitrary rule of man,” or more specifically, the impact of the “rule of the party” in China is so intensive that freedom of the press is mere words on paper. Actually, except for the Article 35 of the Constitution, there are no other provisions specifically on freedom of the press in China. So the constitutional guarantee has never been cited as a legal defense to protect press freedom. “The courts, which often follow instructions from high-level party officials, give freedom of expression [and freedom of the press] a narrow range and favor an expansive interpretation of the constitutional prohibition on disrupting the socialist state and the leadership of the Communist Party.”¹⁵⁶ Therefore, there is a vast difference between writing freedom of the press into the Constitution and having the ability to practise this freedom. Although the Chinese Constitution protects press freedom, it is mitigated in practice by a complex system of media regulations, which contain detailed provisions concerning press obligations, and little mention of their rights. Operating under such conditions, journalists must

155. *See Id.* at 92. The editorial standards include (i) adhere to Communist Party principle; (ii) emphasize the positive aspects of any given story; (iii) whether it is benefit to the society or not; and (iv) consider a story’s domestic and overseas ramifications. *Id.*

156. SWEENEY, *supra* note 113, at 102.

effectively manage the tensions between market forces and the party-press system in order to reduce the political and financial risks in reforming their media business.

3. *From Prohibitions to Self-censorship*

As Pan put it, to reduce the political risk, “the news media often set up strict internal policies prohibiting what were termed oppositional points of view in reporting and a multi-layered internal review process to winnow out any segment that might be rejected by the political censor”.¹⁵⁷ This kind of “self-censorship”, accurately describes the relationship between the party authorities and the Chinese press.¹⁵⁸ In China, most press regulations regulate which stories to encourage and which to forbid. The intent of such “content restrictions are to control the selection of news and maximize social benefit.”¹⁵⁹ In general, this mechanism guarantees a hierarchy of control extending from the central government to the news editors.¹⁶⁰ But it is paradoxical that the right to judge whether the social effect is beneficial or detrimental does not belong to the reporter and the press, but to the Propaganda Department. Therefore, the Chinese news media outlets devised strict internal regulations on proofreading and post-reading system. Moreover, most journalists in China have resigned themselves to the fact that their fundamental task is to unify the people’s thinking with that of the highest authorities. The criteria for winnowing are “various expressions of the basic party-press principles, such as ‘the social benefits,’ ‘national stability’ and ‘the propagation of the Party and government’s policies.’”¹⁶¹ Anything deemed contrary to the Communist Party and the socialist system generally is banned by the media itself. Thus, media’s

157. Pan, *supra* note 121. For example, a journalist in the News Probes once said that in some seasons the internal censor suppressed more than eighty percent of their reporting ideas for the show. *Id.*

158. See Cheung, *supra* note 16, at 28-31. The self-censorship is defined as the media practitioners voluntarily consent to the legitimacy of party control and submit themselves to such control. *Id.* There are two intersecting freedoms—freedom from, and freedom to—that impinge on journalism closely. *Id.* Freedom from external restrictions runs through the familiar checklist of censorship, licensing, other press laws, other laws and non-legislative measures. *Id.* Freedom to be an honest writer for a public journal means overcoming internal constraints on professionalism such as self-censorship, irresponsibility and inaccuracy, apart from outright corruption, which is the debasement of professional integrity for personal gain. *Id.* These threats from freedom, so to say, are as powerful as the threats to freedom. *Id.*

159. XUPEI, *supra* note 1, at 89.

160. See *id.* at 87 (“China’s media decided what to publish based on what is deemed beneficial to society. Anything deemed contrary to the Communist Party and the socialist system is banned.”).

161. Pan, *supra* note 121, at 102.

“checking function” or supervision of Party, government, and senior officials in fact, has never existed in China.

In all, supervision by public opinion, communicated through the news media, should be a function of the press. However, in China only the function of transmitting opinions (the “mouthpiece” function) has been consistently strengthened over time in an era of the traditional media. Countering this is the remarkable divisibility of the new media, which has created a whole new world of personal communication and human connectivity. The new media not only poses questions for the party-press system and the so-called socialist press freedom in China, but also has already exerted subtle influence on the way information is gathered and distributed in China. The impact of the new media on China (which has historically excluded press freedom) is far-reaching and beyond most people’s imagination.

C. Fettering the Chinese Press in the New Media Dimension

Chinese citizens are avid media consumers, either for television, newspapers or magazines, and millions of people have already started to use the new media. According to the government researcher China Internet Network Information Center (CNNIC), “by December 2007, the total [number] of citizens in China had increased to 210 million,” who spent an average of 16.2 hours a week online.¹⁶² Nearly 74% had watched online news and participated in discussions on the bulletin board system.¹⁶³ In addition, according to the statistics of the Ministry of Information Industry (MOII), by December 2007, mobile-phone users in China had reached 547 million, 39 million of which were active Wireless Application Protocol (WAP) users.¹⁶⁴ Such intense use of the

162. See CHINA INTERNET NETWORK INFORMATION CENTER, 21ST STATISTICAL SURVEY REPORT ON THE INTERNET DEVELOPMENT IN CHINA 9, 40 (Jan. 2008), available at <http://www.cnnic.net.cn/uploadfiles/pdf/2008/2/29/104126.pdf>. There is a “sharp increase of 73 million in the year of 2007, at an annual growth rate of 53.3%.” *Id.* at 9. Over the year of 2007, the daily average increase was 200,000. “Now the total of netizens in China is slightly lower than the 215 million of the United States, ranking the second in the world.” *Id.* at 10. But “[i]n view of access methods, broadband netizens have reached 163 million and mobile phone netizens 50.4 million, both of which have been in a rapid growth.” *Id.* at 9.

163. *Id.* at 51.

164. X.F. Fen & Q.Q. Huang, *The Current Situation of Chinese Cell-Phone Users*, CWW, <http://www.cww.net.cn/news/html/2008/1/27/20081271000029158.htm> (last visited Mar. 7, 2009); C.Z. Liu, *The Investigation of WAP Users in China*, CHINANNEWS, <http://www.chinanews.com.cn/it/xw/news/2007/06-10/954252.shtml> (last visited Mar. 7, 2009). WAP is a secure specification that allows users to access information instantly via handheld wireless devices such as mobile phones, pagers, two-way radios, smartphones and communicators. *Id.*

new ICTs results in the new media being placed in the hands of ordinary citizens, which frightens the authorities.

1. Ambiguous Attitude of the Chinese Government to the New Media

In an era of the traditional media, the information flow in China was limited to “communicating government propaganda from the top down, neglecting transmission of public feedback or ‘supervision’” from the bottom up.”¹⁶⁵ However, the horizontal and vertical integration of information and communication networks, increasingly combining both hardware and software, is helping to build a platform on which information communication is not one way, but bi-directional or even omni-directional in the new media time. This kind of netlike communication is a big challenge for the traditional hierarchical transfer of information in China. Even if the use and development of the new media to some extent benefits the people, advances in the technology of telecommunications have proved an unambiguous threat in many Chinese officials’ eyes.¹⁶⁶ Still, the Chinese government’s attitude toward the new media has been ambiguous from the beginning. On the one hand, the government promotes use of the new media, which it believes to be critical to China’s economic development.¹⁶⁷ But, on the other hand, since the new media empowers the ordinary Chinese citizens and grants freedom of the press to the people, the Chinese government is trying to stop the flow of information and communication by passing harsh laws (regulating access, monitoring use, and restricting content) and fixing criminal penalties.¹⁶⁸ Therefore, although the new media can be used to create a greater space for independent news and information in China, the Chinese government endeavors to develop legal and technical measures, such as blocking certain internet sites, supervising news sites, censoring chat room and

165. XUPEI, *supra* note 1, at 58.

166. Rupert Murdoch, *The Consumer is in the Saddle, Driving the Telecommunications Industry*, THE TIMES, Sept. 2, 1993, at 1 (stating that technological advances in communications, such as the fax machine and digital phone, place logistical problems on state control over the press).

167. See Romano, *supra* note 3, at 13. The Chinese government has begun a process of “informatization”, which is using the new information and communication technologies to modernize the economy, decentralize decision-making and make administrative processes more transparent. *Id.* If left free to evolve, the new media in China definitely would offer a wider public opportunity for communication that has not been possible since the nation’s birth. *Id.*

168. KARLEKAR & KATULIS, *supra* note 115, at 79.

bulletin board contents and cracking down on internet cafes to control most functions of the new media.¹⁶⁹

2. Legal and Administrative Measures for Curbing the New Media in China

Like the laws regulating the traditional media, the new media laws and regulations also dress up their controls with appeals to positive-sounding objectives like protecting morality, promoting social harmony, economic development, and so forth. There is a comprehensive, though not necessarily coherent nor transparent, legal regulatory framework regulating the new media in China. The legal structure includes a broad framework of national security, criminal and state secrets laws, and media and internet regulations. A number of new regulations concerning the new media have been issued in the past few years covering publications management, receipt and dissemination of publications to individuals and organizations overseas, video games, electronic publication, and internet regulations.

Most of the new regulations and policies concerning the new media are administrative regulations. The majority of them deal with the license process. For example, the Provisions for the Administration of Internet News Information Services (“the Rule”) require that all the bulletin board systems, and online text messaging services should register as news organizations under proper administrative procedures.¹⁷⁰ Any website that had not been established by an official news outlet (“news work unit”) was forbidden from gathering or editing its own news or commentary.¹⁷¹ Furthermore, only state-owned organizations are qualified to file an application for providing video program services on the internet.¹⁷² The Chinese government’s intention of keeping a tight control over the qualification of providing diversified online programs actually limits the non-state owned organizations from setting foot in the new media industry.

169. SHANTHI KALATHIL, *THE INTERNET AND STATE CONTROL IN AUTHORITARIAN REGIMES: CHINA, CUBA AND THE COUNTERREVOLUTION* 5-6 (Carnegie Endowment for International Peace 2001).

170. Provisions for the Administration of Internet News Information Services (promulgated by the State Council and Ministry of Info. Indus., Sept. 25, 2005, effective Sept. 25, 2005) LAWINFOCHINA (last visited Dec. 5, 2008) (P.R.C.).

171. *Id.*; see also SWEENEY, *supra* note 113, at 110 (explaining that the regulations outlawed the kind of self-generated news and commentary that had become a fixture of search portals, like Sina and Sohu and popular bulletin board systems such as Xici Hutong).

172. See Article 8 of the Administrative Provisions on Internet Audio-Visual Program Service (promulgated by the Ministry of Info. Indus., Dec. 20, 2007, effective Jan. 31, 2008) LAWINFOCHINA (last visited Mar. 6, 2009) (P.R.C.).

The dominance of the state-owned firms in the new media industry guarantees that the news and information disseminated through the new media are still in line with the intention of the party authorities. The Qiangguo BBS, for example, is the largest bulletin board system in the Chinese language on political issues. It belongs to People's Daily, the China Communist Party official newspaper. So you can imagine that no postings on Qiangguo can be allowed against the laws and policies of the Chinese government. Some of the rules listed by Qiangguo BBS on the website may be found on almost any BBS in the world, while others are very specific and unique to the Chinese BBS.¹⁷³ The state-owned essence and these unique baselines show that the situation of the new media in China is not that different from the traditional media.

Surveillance of the new media in China is mainly conducted on the contents of the reports. An Open Network Initiative (ONI) report documented the Chinese government's efforts to prevent access to a wide range of sensitive materials, from pornography to religion and political dissent. Clearly, the majority of content blocked was political (e.g., websites containing content related to the Taiwan Issue and Tibetan Independence, Falun Gong, the Dalai Lama, the Tiananmen Square incident, opposition political parties, or a variety of anti-Communist movements). "In addition, provincial and central propaganda departments routinely issue bans on a changing list of topics."¹⁷⁴ Any new media agencies or their users who spread politically sensitive information can be penalized. The web sites posting restricted news content can be fined or shut down and the users can even be put into jail.¹⁷⁵ In China, the state-owned telecommunications providers definitely would be willing to provide the entire client's information (name, address, instant messages, mobile using record, etc.) that

173. *Qiangguo BBS Administration Rule*, CHINA PEOPLE'S DAILY, http://ids.people.com.cn/ids/admin/userhome/regUser_ReadMe_RMW.htm (last visited Mar. 7, 2009) (stating the rules and a list of do's and don'ts along with a caution that postings would not be allowed if against the laws, interest and honor of the nation).

174. SWEENEY, *supra* note 113, at 103. ("Media blackouts were imposed on riots in the countryside, coal-mining accidents, and the regular influx to Beijing of petitioners seeking redress from the central government (who were detained by the tens of thousands during the September plenum).")

175. OPENNET INITIATIVE, CHINA (INCLUDING HONG KONG) 3-4 (2007), <http://opennet.net/sites/opennet.net/files/china.pdf> ("The government-run People's Daily reported in February that censorship agencies permanently shut down 338 publications in 2004 for printing 'internal' information, closed 202 branch offices of newspapers, and punished 73 organizations for illegally 'engaging in news activities.'"); Committee to Protect Journalists, *Attacks on the Press 2005: China*, Feb. 12, 2006, <http://cpj.org/2006/02/attacks-on-the-press-2005-china.php>.

Chinese authorities needed as evidence if necessary.¹⁷⁶ Therefore, it can be seen that direct censorship has also been applied to the new media. With multiple levels of regulation and technical control, the censorship system involves diverse ways of censoring content transmitted by multiple methods, including web pages, web logs, on-line discussion forums, university bulletin board systems, and email and cell-phone messages.

*3. Double-Insurance: Human Intervention and Technical Measures
Curb the New Media in China*

With the development of the Web 2.0, the new media is becoming even more interactive and more information can be shared instantaneously with numerous people. To avoid financial and political risks, the new media agencies, endeavor to adopt a double-insurance method, which is human intervention and technical measures.¹⁷⁷ For example, there are two ways in which the new media may be censored in China. The first step involves software that automatically checks the content of the posting on the new media.¹⁷⁸ If the posting contains some offensive words or phrases, the software will detect it and stop it instantaneously.¹⁷⁹ The software then hands the messages off to the chief-editors or webmasters, who will read it carefully at once. The second step involves censoring directly by the chief-editors or webmasters.¹⁸⁰ The chief-editors read every piece of news stopped by software and decide whether to let the reports appear on their website. As to other websites aimed at involving readers in the process of news reporting, there is one or even multiple webmasters (the number depends on the scope of any specific new media firm) in every new media agency at any given time. They even check every posting that has passed the software filter and appeared on the website. They can also delete postings if they think that a specific posting includes sensitive

176. See Pedro Uria-Recio, *China Telecommunications Panorama*, IT SOLUTIONS NETWORK, Mar. 18, 2009, http://www.e-isn.com/home/article.php?article_id=220. In China, the telecommunication industry has not been opened up, and the top 3 state-owned companies, China Mobile, China Telecom, China Unicom monopolize the market. *Id.*

177. Wenzhao Tao, *Censorship and Protest: the Regulation of BBS in China People Daily*, 6 FIRST MONDAY, Jan. 8, 2001, http://firstmonday.org/issues/issue6_1/tao/index.html.

178. *Id.*

179. *Id.* (explaining further that the software stop list is composed based on the government lists and includes the names of political leaders, special political issues and is modified to meet to circumstances and needs).

180. *Id.*

wording.¹⁸¹ The website editors normally resign themselves to the internal self-censorship policies so as to make the reporting on the new media keep on appeasing the party authorities. Therefore, all the postings are controlled by both human intervention and relevant software techniques. In addition, to keep a tight grip on what is written and downloaded by users, the Chinese government also hires armies of cyber-police to monitor communications through the new media.¹⁸²

4. The "Trade" Behind the Technical Measure

Obviously, except for legal and administrative measures, China has invested heavily in development of a state-of-the-art technology infrastructure of firewalls and content filtering. Admittedly, China's internet filtering regime is the most pervasive, sophisticated, and effective in the world. It has the political weight to force the major companies in the sector—such as Yahoo!, Google, Microsoft and Cisco Systems—to do what it wants them to, and all these multinationals have agreed to censor their search engines to filter out web sites critical of the Chinese authorities. For example, in 2004, Google launched a Chinese-language news service that does not display Web sites blocked by Chinese authorities. In response to criticism, the company argued that its decision was in line with its policy to avoid displaying links whose content is inaccessible.¹⁸³ Besides, to maintain its ongoing censorship and repression of the media, China is a big client of those multinational Hi-tech companies. For example, the United State's company Cisco and Canada's Nortel Networks are two close technology providers with the Chinese government.¹⁸⁴ It is these multinational enterprises who

181. *Id.* (stating that on-the-web punishments (except for legal and administrative punishments) for offending participants are classified into three degrees):

The first and lightest is public criticism by the Webmaster. This occurs for postings with irrelevant subject matter or for those containing unfit language. The second and main punishment is the deletion of a specific posting. These postings may be blocked by software filters or deleted by one of the Webmasters. This punishment focuses on content and generally reasons for deletion are not provided. The third and most serious punishment is to block the IP address and register name of a specific individual. This punishment is given to those who frequently post messages that need to be deleted or whose actions are considered as deliberately offensive. Once you have been punished at this level, it is impossible to login and send messages later on this specific platform. *Id.*

182. See Pain, *supra* note 106, at 66.

183. Michael Bazeley, *Google Site in China Under Fire*, SAN JOSE MERCURY NEWS, Sept. 25, 2004, at 1C. Google ventured into China in the early of 2005, at that time, it could not obtain an Internet Content Provider (ICP) license in China since its strict prerequisites and complicated procedures. *Id.* Google then had to acquire a local information classification website-ganji.com to expand its business in China. *Id.*

184. SWEENEY, *supra* note 113, at 104.

facilitate the Chinese authorities in monitoring Internet users and filtering content. Almost all multinationals venturing into China are interest (money) oriented. The Chinese government takes advantage of this and has achieved many a “trade” with them. Then, these high-tech multinationals use their advanced technologies to help the Chinese government continuously implement the press censorship on the new media, thereby earning huge profits in the Chinese market. A good example is Yahoo’s provision to Beijing of a user’s identity details.¹⁸⁵

In conclusion, the Information Age, the market economy’s development, and an ever-increasing demand for more and faster information have brought about a corresponding demand for the new media in China. But the attitude of the Chinese government for the new media is not that clear and it endeavours to copy the press censorship which adopted for the traditional media to the new media. All the above mentioned measures (legal, administrative, technical) adopted by the Chinese government do work to some extent. The Chinese media, old and new, keeps on serving the interests and priorities of the authoritarian governments rather than public interests. However, the destructive effect of limiting press freedom would be magnified in emergencies in an era of the new media. Many cases such as the SARS (severe acute respiratory syndrome) epidemic, the Tibet Riots, the Olympic Torch Relay, and the Sichuan Earthquakes will be discussed in the next section to further explore the impact of the new media in changing the situation of freedom of the press in China.

IV. THE NEW MEDIA: PUSHING LIMITS, QUESTIONING CHINA’S PRESS CENSORSHIP

Because of the existing written and unwritten regulations that already control and manage the press, the new media in China was not allowed full play without government interference and citizens were not free to contribute information without the fear of persecution.¹⁸⁶ However, the new media gradually overthrows the party authorities’ understanding and expectation for the new media. Computer-based communications such as electronic bulletin boards (BBS), email and cell-phone SMS were the main channels that were used to disclose information in the early part of this century, while nowadays instant messenger (ICQ, MSN, SKYPE), and content (video, audio, words)

185. *Statement of Chairman Lantos at hearing, Yahoo! Inc.’s Provision of False Information to Congress*, U.S. H.R., COMM. ON FOREIGN AFFAIRS, Nov. 6, 2007, http://foreignaffairs.house.gov/press_display.asp?id=446.

186. See XUPEI, *supra* note 1, at 42-49.

sharing forums (BLOG, SPACE, FACEBOOK, YOUTUBE) are the most popular new media for citizens to obtain information and register viewpoints. These latest communication technologies further expand the interactivity feature of the new media (empower the ordinary people to share information instantly), and greatly improve the efficiency and effectiveness of the news disclosure. As a matter of fact, freedom of the press is not a static right, but a “process that continuously develops in compliance with its nature and according to the conditions provided by history”.¹⁸⁷ Based on analyzing and comparing many cases (the SARS epidemic, the Tibet Riots, the Olympic Torch Relay, and the Sichuan Earthquakes¹⁸⁸), this portion of the article will probe deeper into the impact of the new media in terms of promoting press freedom, especially in a highly censored nation. During the SARS epidemic in 2003, the Chinese authorities for the first time began to realize that sometimes isolation is not a viable option.¹⁸⁹ In 2008, after experiencing the Tibet Riots, the Olympic Torch Relay and the Sichuan Earthquakes from March to May respectively, China was once again shocked by the impact of the new media and is stealthily adjusting its press censorship system, both technically and legally. The new media developing along with these events is knocking at the door of press freedom in China.

A. *The SARS Epidemic*¹⁹⁰

1. *The Role of the New Media in the SARS Epidemic*

The first news report about the disease in China appeared on January 3, 2003 with the headline “News of unknown disease caused Heyuan citizens’ panic buying of antibiotics.”¹⁹¹ However, two weeks later the famous evening newspaper in Guangdong Province, The Ram City Evening News, published a report clarifying that the disease was a rumour, which began the official censorship on reporting the epidemic.¹⁹² In the first few months, between the first SARS case and the Guangdong official news announcements, only a handful of news reports mentioned the disease. Therefore, the initial suppression of news

187. *Id.* at 39.

188. The background information of the SARS epidemic, the Tibet Riots, the Olympic Torch Relay, and the Sichuan Earthquake will be discussed.

189. XUPEI, *supra* note 1, at 40.

190. See generally *Severe Acute Respiratory Syndrome (SARS)*, WORLD HEALTH ORG., <http://www.who.int/csr/sars/en/index.html> (last visited Mar. 18, 2009) (explaining the nature of SARS and the outbreak in Guangdong Province on Nov. 16, 2002).

191. Nip, *supra* note 38, at 31.

192. *Id.*

about SARS turned the people away from the mainstream media to the new media channels enabled by the ICTs. The news disseminated through short text messaging systems, email, and internet chat rooms by those citizens “who were either too intimidated to speak to the mainstream media or had no access to them.”¹⁹³

For the first time, individual citizens took the place of government administrators and other insiders as major and useful sources of the news for each other.¹⁹⁴ By the first week of February, the news about the strange and deadly disease prevailing in the Guangdong Province also spread quickly via e-mails and SMS to almost all of the other provinces of China.¹⁹⁵ Then the Guangzhou City government and the Guangdong Province Board of Health decided to hold news conferences respectively on February 11, 2003 to try to quell the panic.¹⁹⁶ The statement¹⁹⁷ of retired Chief of Surgery Dr. Jiang Yanyong at a Beijing military hospital was widely circulated by email and posted on electronic bulletin boards in universities.¹⁹⁸ Additionally, a large number of other articles from the non-Chinese press were translated and sent to email accounts or uploaded onto the major BBS's all over China. Information about the virus was surging into mobile phones and computers. Before citizens could use the new media to fully disseminate the SARS related information, the information was rapidly suppressed.¹⁹⁹

Ironically, the Chinese government itself started to get involved in the new media by distributing information for the sake of maintaining

193. *Id.* at 39.

194. *Id.* at 31. Two surveys that were taken in different cities produced contradicting results as to what the primary source of information was. One suggested only 3.2 percent citizens relied on the internet while the other indicated 80 percent. *Id.*

195. *Id.* at 32 (telling how “there is a fatal flue in Guagnazhou” was sent as an SMS 126 million times in three days).

196. Nip, *supra* note 38, at 32.

197. Dr. Jiang Yanyong was recognized by Time Magazine for his valiant efforts of exposing the truth about the SARS epidemic. Yanyong initially wrote a letter regarding the true numbers of infection to the Chinese media but it had not effect. It was however leaked to Time who posted it on April 8, 2003. John Cloud and Michele Orecklin, *People Who Mattered in 2003: Jiang Yanyong*, TIME ASIA, Dec. 21, 2003, http://www.time.com/time/asia/2003/poypm2003/jiang_yanyong.html.

198. Eric Sautedé, *The Snares of Modernity: Internet, Information and the SARS Crisis in China*, 47 CHINA PERSPECTIVES 10 (2003), available at <http://www.cefc.com.hk/pccpa.php?aid=1861>.

199. See Nip, *supra* note 38, at 38. The Jiangsu Province Public Security Department began to monitor online messages related to atypical pneumonia after the SARS epidemic broke out, and between 2 April and 1 May had checked 4,089 messages, deleted the bulk of them, and charged 39 people for using messages to spread rumours and harmful information. *Id.*

its own interest. Under mounting international pressure, the SARS figures began to be announced every day instead of every five days by the Chinese government.²⁰⁰ Even though negative news (e.g., criticism or questioning of the official efforts) concerning the SARS epidemic continued to be suppressed, from then on, an avalanche of news reports about SARS flooded the Chinese news media.²⁰¹

The Chinese authorities did not depend only on the mainstream media to disclose information. The Chinese government endeavored to retain its dominance as the key source of information through direct communications with the community via the new communication technologies, such as the internet and mobile phones. In early April, the Department of Health provided, via the internet, daily updates on the status of the epidemic as well as treatment and prevention guidelines.²⁰² Therefore, the enabling effect of the new media did not apply to citizens alone, but also governments.²⁰³ Clearly by using the new ICTs, the government was able to bypass the news media to distribute information to the citizens directly, which enabled the Chinese government to act more effectively in the SARS epidemic. This is the first time that the Chinese authorities experienced the impact of the new media in an emergency.

In reporting the SARS epidemic, the international news media (TIME) first published the dissenting picture portrayed by Dr. Jiang Yanyong and the new media (Email, BBS, cell-phone SMS) helped disseminate the report of TIME Magazine, which prompted the World Health Organization (WHO) to demand investigations and in turn eventually forced China to report the true scale of the outbreak. The one-sided propaganda of Chinese authorities and their official media was under severe challenge for the first time by the new media.

200. *Id.* at 36.

201. See John Pomfret, *Outbreak Gave China's Hu an Opening; President Responded to Pressure Inside and Outside Country on SARS*, WASH. POST, May 13, 2003, at A1. The wave of news reports focused on four themes: (1) the disease under control and life as usual, (2) the chronology of events related to the disease, (3) the government crackdown on merchants who profited from the products said to help, and (4) the reasons for the widespread rumours. *Id.*

202. Nip, *supra* note 38, at 37.

203. *Id.* at 36-40.

2. *The Change of Chinese Press Freedom in the Post-SARS Era*

a. *Continuously Updating the Censoring Technologies by the Chinese Government*

At first the Chinese government and its mainstream news media portrayed the unofficial SARS news in an entirely dismissive way, giving the impression that everything disseminated via SMS or the Internet was nothing but rumour. Afterwards, the government's attitude changed greatly and the government even tried to take advantage of the new media to disseminate information and improve its relationship with the people of China. Some observers felt this may be a spring breeze of press reforms, but it is a pity that a few months later the wind appeared to blow in the other direction.²⁰⁴ In fact, as Nip put it, the reason why the cell-phone SMS was able to distribute information widely during the SARS epidemic was that "the technology for filtering messages with Chinese keywords had not yet been developed."²⁰⁵ Authorities increased surveillance of cell phone text messaging and digital video broadcasts in 2004 in response to the rapid flow of information throughout the country that those technologies enabled.²⁰⁶ In June 2004, China's Ministry of Public Security licensed China's first SMS filtering system.²⁰⁷ China also stepped up efforts to monitor internet users in 2004 by improving surveillance systems at internet cafes.²⁰⁸

Furthermore, the Chinese government began to keep a close eye on the latest technological developments and pay more attention to the technical measures of fettering the new media in China from distributing dissenting information. When instant messaging, such as MSN Messenger, became popular, Chinese authorities asked the firms that made these programs (such as Microsoft) to automatically block some key words.²⁰⁹ For example, it would make it impossible for Chinese users to talk about the Dalai Lama and Taiwanese independence.²¹⁰ Similarly, China signed an agreement with Skype to block key words. It is well known that the web phone service Skype gained its popularity among customers because its encryption technology made conversations hard to tap. But in China, how can one

204. See Pan, *supra* note 121.

205. See Nip, *supra* note 38, at 38.

206. See SWEENEY, *supra* note 113, at 101.

207. Nip, *supra* note 38, at 39.

208. See SWEENEY, *supra* note 113, at 104.

209. See Pain, *supra* note 106, at 65.

210. *Id.*

be sure that conversations are not being listened to? How does one know if Skype will not also allow (or already has allowed) the Chinese cyber-police to spy on its customers?

In 2008, the Beijing Olympics provided the Chinese authorities another opportunity to update its censoring technologies.²¹¹ The Chinese government began to use Vobile's technology²¹² to spot pirated videos. The Vobile's technology could send legal notices to violating websites within minutes of the posting of pirated videos.²¹³ In the hands of the Chinese authorities, this kind of copyright protection technology can facilitate the government's tracing of written, audio, and video content. As Heidegger stated, "the essence of technology is nothing technological."²¹⁴ The Chinese government can just make another Great Firewall on internet video searching functions.

Since the Chinese government controls almost all the available sophisticated technologies, the Chinese internet users are more alert to online censorship. Citizens are organizing themselves and creating new solutions to tackle the dictatorship, get around the filters and protect their anonymity. In response, the Chinese people are using and creating new media technology, encrypting their emails and using other tools that are still not detected by cyber-police.²¹⁵ In this new era of media, there is an ongoing cat-and-mouse game between the Chinese authorities and Chinese citizens.

211. Peter Burrows, *Why China is Finally Tackling Video Piracy: Beijing Wants to Prove it can Protect the Lucrative Broadcasting Rights for the Summer Games*, BUSINESS WEEKLY, June 9, 2008, at 73.

At a May gathering in Beijing, government officials warned executives from video sites to keep their hands off Olympic coverage or risk being shut down. 'Our goal is to make the Beijing Olympic Games a fine example of copyright protection,' said Hu Zhan Fan, vice-minister of media regulator State Administration of Radio, Film & Television. NBC Universal and the state-owned CCTV have Olympic broadcast rights in the U.S. and China, respectively. *Id.*

The Chinese government is making Web site owners responsible for screening out Olympic clips, much the way they're required to censor content on topics such as Tibet protests and the spiritual group Falun Gong. *Id.* But there's an added layer of protection, CCTV, NBC, and the International Olympic Committee are all using technology from Silicon Valley's Vobile Inc. to spot any pirated video that does end up online. *Id.*

212. *Id.* ("The idea is that Vobile's technology will flag unofficial clips, and then the authorities can take action against the offending Web site. 'Hopefully, this will be a success and a landmark in copyright protection.'"). *Id.*

213. *Id.*

214. MARTIN HEIDEGGER, *THE QUESTION CONCERNING TECHNOLOGY AND OTHER ESSAYS* 35 (Harper Perennial 1982).

215. See Pain, *supra* note 106, at 65.

b. The New Rules Concerning Freedom of the Press in China: Which Direction to Go?

During the SARS epidemic, the Chinese authorities realized that even if they could tightly control the traditional media, they did not have much control over the non-Chinese media or the new media. The negative influence is hard for the Chinese government to control or bear, especially in emergencies when news reports are composed by non-Chinese media and quickly forwarded and disseminated via the new media (e.g., Dr. Jiang Yanyong's statement reported by TIME and instantaneously distributed by email and BBS in China during the SARS epidemic). In response, right after the SARS epidemic, the Chinese government tightened its rules on foreign media investments in China. The government began to clamp down on foreigners' participation in China's burgeoning media industry by declaring that they would not allow any more foreign television channels and the government also declared that they would impose further restrictions on the thirty-one satellite broadcasters in China, in the name of safeguarding national cultural security.²¹⁶ Thus, it is not a surprise that China froze approvals for foreign satellite broadcasters entering its market and further strengthened restrictions on foreign television programs, books, newspapers and performances in an effort to exercise tighter control over the country's cultural life.

In the middle of 2005, the Propaganda Department, the Ministry of Culture and four other regulators announced a new administrative rule to make it more difficult for foreign companies to bring in foreign books, internet and video games.²¹⁷ Now, co-productions between Chinese and foreign film and television companies face stricter censorship, foreign magazines and newspapers can be sold only through state-controlled agencies, and imported internet games face strengthened censorship.²¹⁸ It is undeniable that the rule was only part of

216. Chris Buckley, *Beijing to Clamp Down on Foreign Media*, INT. HAROLD TRIB., Aug. 4, 2005, <http://www.iht.com/articles/2005/08/03/yourmoney/media.php> ("China's attitude toward Western firms' access to the domestic market has always been one of extreme caution, when China joined the World Trade Organization four years-ago, it made few commitments on opening up the media market to foreigners.").

217. Several Opinions of the Ministry of Culture, State Administration of Radio, Film and Television, General Administration of Press and Publication, National Development and Reform Commission and the Ministry of Commerce on Canvassing Foreign Investment into the Cultural Sector (promulgated by the Ministry of Commerce, Ministry of Culture, State Dev. and Reform Comm'n, July 6, 2005, effective July 6, 2005) LAWINFOCHINA (last visited Dec. 5, 2008) (P.R.C.).

218. *Id.* at art. 4, 7, 8.

a wider effort to clamp down on foreign influence over the Chinese culture.

The SARS epidemic did not solely bring an increase in control on the non-Chinese media or the new media in China. The impact of the new media during the SARS epidemic also surprised the Chinese government, as well as encouraged the Chinese authorities and ordinary citizens to rethink the basic rights, such as the freedom of press in China. The actual debate over the Emergency Response Law of the People's Republic of China ("the Emergency Law") which was drafted after the SARS epidemic is a good example. Traditionally, before laws become official, the drafts and regulations in China were seldom publicized, but the Emergency Law is an exception.²¹⁹ The draft of the Emergency Law was actively circulated to the masses in order to provide feedback to the legislature. When reading the draft, millions of people, including legal scholars, lawyers and the average citizen, signed a letter to the legislature protesting the contradictions between the law and the freedom of the press.²²⁰ The discussion became the most furious public debate on freedom of the press in China since China's establishment. Therefore, the final draft of the Emergency Law deleted two debatable articles: (i) the news agencies are not allowed to release the emergencies or urgent events on their own; and (ii) all levels of governments take charge of the unified management on reporting the emergency within their administrative districts.²²¹

For too long in China, the freedom of the press has been regarded as a capitalist concept and most Chinese people have been afraid to talk about it. However, after the SARS epidemic, freedom of the press has become a topic of increasingly heated public debate. Therefore, from a historical perspective, the SARS epidemic provided China an opportunity to review its press censorship. The debate over the freedom

219. See XUPEI, *supra* note 1, at 98. There was no public supervision over decision making in China. People were unable to access valid decision-making information and so could not exercise supervision (through the media) over the formulation of policies, laws, and regulations. *Id.* Newspapers were specifically forbidden to openly discuss political guidelines and policies. *Id.* It was impossible for people to consider from various aspects the provisions and policies of the state. *Id.* For example, press legislation has been discussed by more than 30 years, but the draft of the law has never been publicized. *Id.*

220. Henhenhen, *The Control and Freedom of the News Media During Emergency Events*, CENET, June 26, 2007, <http://bbs.cenet.org.cn/html/board92510/topic93920.htm> (noting that famous legal scholars in China such as Ping Jiang, Qianfan Zhang, and Zhe Lin all publicly commented the violation of some articles in the draft of "Behind the New Modification of the Emergency Planning Policy").

221. Sun Wa, *Behind the New Modification of the Emergency Planning Policy*, EPOCHTIMES, June 26, 2007, <http://www.epochtimes.com/b5/7/6/26/n1754953.htm>.

of the press was not only a delicate change in the daily life, but also a milestone on the road to achieving freedom of the press fully in China.

*B. The Tibet Riot*²²²

Tibet is still a sensitive issue to discuss in China or within the Chinese media as both the old and new media outlets have adopted a strict self-censorship in reporting Tibetan issues. Especially after the SARS epidemic, much stricter censorship on the new media was imposed by the Chinese authorities. However, this time the Tibet Riot news was disclosed immediately after it happened. How did the news get out? The development of the ICTs allowed the new media to become more participatory, interactive and borderless. How can these features of the new media influence the dissemination of the news and the communication of different viewpoints?

1. The Chinese Media Keeps Silent on the Riots

The riots in the capital city of China's Tibet Autonomous Region (Lhasa) began on March 14, 2008, and was a serious incident of civil unrest for decades. As usual, the Chinese government wanted to keep the publicity of this event low-key.²²³ Therefore, it is not surprising that news coverage of the protests was sparse in China. For example, People's Daily ("Ren Min Ri Bao" in Chinese, a daily newspaper of the Chinese Communist Party Central Committee or CCPCC), failed to publish any reports in print or on the web regarding the riots on the day they began. It was not until the next day that the Daily carried a Xinhua news agency dispatch on a Tibet Autonomous Regional official responding to Xinhua reporters' question on the events.²²⁴ Aside from the state-run news agencies, other media outlets were also largely silent on the riots. Tibetan independence was and is still a sensitive topic, which is why the Chinese new media (online news outlets) did not challenge the government's filtering technology and were self

222. China.org.cn, Lhasa riot documentary, http://www.china.org.cn/2008-03/21/content_13232442.htm, (last visited Nov. 30, 2008) (explaining the events surrounding the riots that occurred at the Ramoche Temple, Lhasa, Tibet Autonomous Region on Mar. 14, 2008).

223. Tini Tran, *Tibetan Protests Turn Violent, Spread Demonstrators Burn Cards, Shops in Defiance of Decades-Long Chinese Rule*, Grand Rapids Press, Mar. 15, 2008, at A11, available at 2008 WLNR 5220971 ("China is afraid of letting this protest mount. On the other hand, the world's eyes are upon China in advance of the Olympics. If they're too heavy handed, it could cause them a lot of problems.").

224. *China Party Paper Not Observed to Carry Tibet Riot Report*, BBC MONITORING ASIA PACIFIC, Mar. 16, 2008.

censoring. Before the Tibet Riot, specifically between December 20, 2007 and February 20, 2008, the State Administration of Radio Film and Television (SARFT), initiated an extensive investigation and censored the majority of websites who provided video sharing services. According to its Number 1 Notice,²²⁵ twenty-five unqualified websites were shut down, thirty-two sites were warned, fined and ordered to change within a limited period, and five were found as not having the proper license.

At the end of February, SARFT organized eight state-run online media outlets, such as renmin.com, xinhua.com and CCTV.com, who all co-signed The China Internet Video Program Service Self-discipline Pact.²²⁶ Within a short time, more than 100 commercial websites also applied to participate in this specific pact. Therefore, it is not surprising that when the Tibet riots broke out, searches for “Tibet” (“Xi Zang” in Chinese) on China’s largest search engine (baidu.com which is Google’s biggest competitor in China) did not produce anything in the top search results. Additionally, searches for “Tibet Riot” (“Xi Zang Bao Dong” in Chinese) turned up links to web pages that had been removed.²²⁷ Any sort of news coverage, other than Xinhua’s reports, was absent from China’s other major internet portals Sina.com and Sohu.com. Even China’s increasingly popular online-video websites Tudou.com and Youku.com (YouTube’s biggest competitors in China), which are famous for sharing user-generated video clips of newsworthy events, were also silent regarding the riots. Despite outside media coverage of the riots, China’s main stream media remained quiet.²²⁸ Moreover, the Chinese government blocked many international websites, such as YouTube, because dozens of videos related to the violent unrest in the Tibetan capital Lhasa had been uploaded to YouTube.²²⁹ As a result, those Chinese citizens who did hear about the riots were initially unable to find details of such politically sensitive news on the internet.

225. *Number 1 Notice of Internet Video Program Service Inspection*, STATE ADMINISTRATION OF RADIO, FILM AND TELEVISION (SARFT), available at <http://www.sarft.gov.cn/articles/2008/03/20/20080320142719970305.html>.

226. For an example of a regulation see SARFT, <http://www.sarft.gov.cn/articles/2008/02/22/20080222091027600537.html> (last visited Mar. 6, 2009).

227. Loretta Chao, *Focus on China: News of Tibet Protests is Hard to Find in China*, WALL ST. J. EUROPE, Mar. 18, 2008.

228. Xinhua News Agency is an official and national news agency. It is the biggest news center of information gathering and distribution in China. Xinhua News Agency, http://203.192.6.52:8080/xhs/2005-09/29/content_5257636.htm (last visited Nov. 30, 2008).

229. Jonathan Richards, *China Blocks YouTube, Yahoo! Over Tibet*, TIMESONLINE, Mar. 17, 2008, http://technology.timesonline.co.uk/tol/news/tech_and_web/article3568040.ece.

2. *The Internet is the World Wide Web not Chinese Wide Web*

The borderless feature of the new media provides a tool that is not easily censored or controlled solely by the Chinese authorities. Eyewitness accounts and photos were posted on the overseas internet as soon as the event broke out, portraying a chaotic scene in Lhasa.²³⁰ Many foreign travelers used mobile phones and blogs, such as the Tibetan tourism forums (used to give tips for bypassing bureaucracy or recommending places to visit in Tibet) as a useful and first-hand source.²³¹ In the Tibet Riot example, the personal blogs played an important role in the information sharing process. Unlike e-mail and SMS, which only connect you to the person you are familiar with, blogs are open to the public. Additionally, blogs quickly distribute the information among the people who are interested in this specific topic worldwide.²³² The new media helped information on the Tibet Riot disseminate faster than ever, in contrast to delayed coverage of the SARS epidemic which occurred when online video sharing had not become a mass phenomenon. The change in online video sharing led the Chinese government to promulgate an administrative rule blocking YouTube rights after the Tibet Riot.²³³ However, there were numerous citizens who had already viewed the video clips of the Tibet Riot before the Chinese government took action. The contrast between the SARS example and the riot example demonstrates how it was one time possible for the Chinese government to block news and isolate an area, but as the new media developed, the Chinese authorities were forced to acknowledge events such as the Tibet Riot.²³⁴

If the only difference between the traditional media and the new media was the method of disseminating information, the influence of the new media would be much more limited. The advantage of the new media is that it provides an equal opportunity for everyone to register

230. John Kennedy, *China: Fire on the Streets of Lhasa*, GLOBAL VOICES, Mar. 14, 2008, <http://globalvoicesonline.org/2008/03/14/china-fire-on-the-streets-of-lhasa/> (noting the speed at which news reaches the general public with the advances in technology); see XUPEI, *supra* note 1, at 40.

231. *Foreigners in Tibet Say Western Media Reports Not Conform with Facts*, BBC MONITORING ASIA PACIFIC, Mar. 25, 2008.

232. Hendrickson, *supra* note 2, at 265.

“In the blogosphere as a whole, the mechanism is the hyperlink. Bloggers often provide links to other web content and many have a blog roll: a list of links to favorite blogs as part of site navigation. By using their blog rolls or providing links in posts, bloggers collectively decide whose work is most important and most credible. Blogs and the links that connect them are referred to as the blogosphere, a term clearly derivative of the public sphere.”

233. See Chao, *supra* note 227; See also Richards, *supra* note 229.

234. See Drash, *supra* note 57.

his or her viewpoint. Normally readers can (and are encouraged to) leave comments in response to the author's post, thus helping society hear different voices and consider other perspectives. Take the Tibet Riot as an example, when there was a furious debate about Tibet independence on the internet right after the protest, a Chinese-Canadian posted a ten-minute video clip on YouTube.com entitled "Tibet was, is and will always be a part of China."²³⁵ The video introduced the China-Tibetan history and ignited a debate between Pro-China and Pro-Tibet citizens.²³⁶ When grassroots journalists made videos informing people of the history of Tibet and its relationship with Chinese central government, the Chinese authorities did not appreciate their endeavors and chose to block YouTube totally within China. The impact of the video clips composed by the citizens via the new media are no less than that of official press conference held by Premier Wen Jiabao. At that time, the Chinese government undoubtedly was shortsighted and stuck to the block policy. It attempted to prevent news of the riots being sent out, to minimize the negative influence and to portray a peaceful and prosperous nation ahead of the Summer Olympics.

3. *The New Media Does Not Resist Bias*

In reporting the Tibet Riot, it was difficult for both the Chinese and foreign mainstream media to report the unbiased facts regardless of viewpoint.²³⁷ Each media outlet has its own specific interests and political inclinations which can affect reporting of the facts. However, the new media empowers the ordinary person to record and share what they have seen, providing society with another perspective of the events and to some extent helps society to come closer to the truth. As for the Tibet Riot example, the biased main stream reports were challenged by individuals who shared what they had captured on their own digital devices. Therefore, the new media is important to providing another perspective of the event that is different from the mainstream media. When audiences receive information from both sides, they can often compare, contrast and overcome the distortion on both ends. This context provides an environment more apt to creating a fully informed

235. YouTube.com, Tibet WAS, IS and ALWAYS WILL BE a part of China, <http://www.youtube.com/watch?v=x9QNKB34cJo> (last visited July 7, 2008).

236. WenxueCity.com, Interview with Huang Jinshao, http://news.wenxuecity.com/BBSView.php?SubID=news&MsgID=548057&c_lang=big5 (last visited July 7, 2008).

237. Chao, *supra* note 227. While China Central Television, China's national broadcaster, has run footage from the riots of people taking to the streets and overturning cars, it only showed Tibetans attacking ethnic Han-Chinese interests. It didn't show the armed police who have stopped the protests in Lhasa. *Id.*

audience. With the help of the new media, the pool of all these views on the internet even could exert an incredible influence off the internet.

With regard to the Tibet Riots, the Chinese government, through its official news agency (People's Daily, "Ren Min Ri Bao in Chinese) pointed out that this was an incident of beating, smashing, looting and burning with the aim of disrupting Tibet's stability and development.²³⁸ However in foreign reports, the riot was described as a "peaceful" and "unarmed" demonstration which was cracked down by the Chinese government.²³⁹ Hearing the news reported by the prejudiced non-Chinese media, it would be natural to feel that a peaceful demonstration should not be described as beating, smashing, and looting. This belief lead to wide scrutiny of the reports provided by those authoritative media and to the finding of flaws and self-contradictions within the media coverage.²⁴⁰ Moreover, there are also cases of fictitious pictures and captions on the part of the foreign media. For example, pictures of Nepal and India riots were captioned by many western news media as the rebels in the Tibet Riot.²⁴¹

Because Tibet is still a sensitive topic in China, even if China was treated unfairly this time, the Chinese mainstream media still kept it silent. However, the new media is different altogether as it does not always resist bias. In this case, the new media confirmed that what happened in Tibet was, beyond all doubt, a violent incident of "beating, smashing, and looting" and at least this time the Chinese authorities did not lie. In March 20, 2008, Chinese overseas students began uploading on the internet the inaccurate photos that claimed to be of the Lhasa riot on March 14.²⁴² The collection comprised eleven photographs in addition to video broadcast footage. The media footage originated from Cable News Network (CNN), the British Broadcasting Corporation (BBC), FOX TV, the Washington Post, Berlinger Morningpost and other foreign media. Citizens highlighted the mistaken captions that originally accompanied these images and footage.²⁴³ As a result, hundreds of thousands of citizens have called for the condemnation of

238. See more about the Tibet Riot disrupting Tibet's stability at http://ah.xinhuanet.com/hfnews/2008-03/17/content_12711849.htm (last visited March 7, 2009).

239. "China Open Fire on Weekend Tibet Riot", *Reuters News*, on March 20, 2008.

240. *Chinese Netizens Criticize Western Media's "Distortion" of Tibet Riot Coverage*, BBC MONITORING ASIA PACIFIC, Mar. 23, 2008 (noting the lack of international news attention that the riots in Lhasa received).

241. INFO.51.ca, *Western Media Report Tibet Riot with Fictitious Pictures* <http://info.51.ca/news/world/2008/03/19/148004.shtml> (last visited Apr. 5, 2008).

242. *Chinese Netizens*, *supra* note 240.

243. See the whole collection of video clips produced by these western media on www.anti-cnn.com (last visited June 15, 2008).

CNN and a few other Western media organizations for distorting facts in covering the riot in Lhasa.²⁴⁴ The citizens who left messages on the site hoped to maximize the impact of the new media and pressure the foreign media to apologize to their Chinese audiences. Solidarity is power and in confronting such a huge number of people behind the scenes caused many foreign media outlets to reconsider the power of the new media and make corrections to their previous mistakes in reporting. For example, the German-based RTL TV and N-TV made corrections on their website on March 23 and 24 of the same year and apologized to the public.²⁴⁵ Therefore, the new media to some extent helped audiences to filter biased viewpoints and discern the truth themselves.

4. The Impact of the Tibet Riot Case for Freedom of the Press in China

The new media not only condemned the biased foreign media for their prejudiced news coverage, it also urged Chinese government to take a more neutral role in relaxing its media policies. In the case of Tibet, numerous citizens are using the new media to push the authorities to open up Tibetan areas for domestic and international media, because China clearly cannot earn the trust of the Chinese people or the international community through their current policy of locking out the press from the region.²⁴⁶ Maybe shocked by the power of the new media in clarifying what really happened in Tibet, in early April of 2008, the two biggest Chinese news portals, sina.com and sohu.com, both opened a site to talk about the Western media's distortion of the Lhasa riot, a discussion that drew millions of participants. This is the first time that the Tibet issue is under public discussion with the permission of the Chinese authorities. Chinese Premier Wen Jiabao said at a press conference that China will consider the possibility of organizing foreign media to go to Lhasa and report what happened there.²⁴⁷ In the press war of reporting the Tibet Riot, the traditional power structure of the media industry has been totally toppled down by the new media.

In conclusion, the electronic revolution allowed for greater openness and freedom of expression worldwide. It certainly became more difficult to keep secrets. Though the Chinese media, both old and

244. *Chinese Netizens*, *supra* note 240 (“The netizens say that CNN and some western media organizations have intentionally neglected cruelties of the mobsters, revealing the hypocrisy of “objectivity and fairness” they had flaunted.”).

245. *Id.*

246. *Chinese Academics Criticize Official Media Report On Tibet Riot*, KYODO NEWS, Mar. 22, 2008.

247. News.163.com, *Consider organizing overseas media to go to Tibet*, <http://news.163.com/08/0318/12/47ALQAVK0001124J.html> (last visited July 10, 2008).

new, initially cooperated with the government to hide the Tibet Riot, the World Wide Web did not. The information is no longer easy to hide by a single government in an era of the new media. Furthermore, arbitrarily blocking the new media could also impede the information which to some extent benefits the Chinese government. The new media by nature, is not on the opposite side of the Chinese government. The endeavours and contributions of pro-China citizens via the new media in the case of the Tibet Riot (e.g., the netizens composed a collection of incorrect pictures and biased reports by those foreign media and pressure them to make apology) let the Chinese government experience another facet of the new media. From then on, the attitude of the Chinese government to the new media gradually started to change from suppressing to leading.

*C. The Olympic Torch Relay*²⁴⁸

The Chinese government is becoming familiar with the new media and is also becoming accustomed to disseminating the news via the new media. Right after the disruption of the Olympic torch relay during the London leg, a statement was immediately posted on the official website for the relay by the Chinese Olympic Committee which blamed “a few protesters” for carrying out “several destructive actions.”²⁴⁹ Admittedly, during the SARS epidemic, the function of the new media was limited. Cell-phone SMS, email, BBS and so on played a role in the epidemic but only as channels for people to share *information* not *ideas*. However, with an ever-hastening pace toward an all-electronic media system, the communication channels aided by advanced information technologies are becoming more diversified than ever. Many innovative forms of communication (Facebook and YouTube for example) means that the new media is not restricted to being a device used only for the dissemination of factual information. The interactivity feature of the new media means that the new media welcomes different viewpoints and encourages debate.

248. *When Does a Relay Become a Scrum?*, THE OREGONIAN, Apr. 8, 2008 (noting the controversy and security concerns that surrounded the 2008 Olympic torch relay).

249. *China Plays Down Torch Protests*, HARTLEPOOL MAIL, Apr. 8, 2008, available at <http://torchrelay.beijing2008.cn/cn/news/headlines/n214296142.shtml>.

1. The New Media Encourages Debate

The global tour of the 2008 Beijing Olympic Torch was impeded by demonstrations in London, Paris and San Francisco.²⁵⁰ Spectators in these big cities were greatly angered by Tibetan separatists and their supporters attempting to disrupt the flame's global tour, but citizens were more disappointed and annoyed by the biased news from many non-Chinese media sources.²⁵¹ The majorities of the mainstream media's cameras were targeted only at separatists, focusing on how resentful people were toward the Olympic flame and did not even give a single picture to the other spectators who welcomed the torch.²⁵² CNN's bias in its reports on the recent protests in Tibet as well as the reports surrounding the Olympic torch relay ignited a strong groundswell of anger amongst protestors. The anger reached new heights on April 9, 2008, when CNN commentator Jack Cafferty described China as "basically the same bunch of goons and thugs they've been in the past 50 years."²⁵³ Admittedly, the fact that this kind of ultra wording could be broadcasted is a manifestation of the Freedom of Press in the western society, but it ignited anger felt by many Chinese citizens worldwide. The citizens began to discuss the possibilities and means on how to sue CNN and urge it to make apologies.²⁵⁴

The majority of the foreign media, including CNN, are largely unavailable in China, because of government restrictions on the channel. But as a result of the new media, the Chinese were given the chance to learn about the reports because video clips were collected and uploaded on video sharing websites. The CNN reports ignited the largest protest ever by the Chinese, which made the West realize how angry the Chinese people were as a result of the West's recent reports.²⁵⁵ The Chinese authorities undertook an endeavor to build up animosity in order to build an auspicious atmosphere right before the Beijing Olympics. But it is unlikely to be so easy to tamp down the

250. See *Xinhua Reports Olympic Torch Relay Finishes in Paris and Heavy Protests*, BBC MONITORING ASIA PACIFIC, Apr. 7, 2008. The torch's routes were altered to avoid protesters. *Id.*

251. *Relay Become a Scrum*, *supra* note 248; See also *Olympic Torch Relay*, *supra* note 250.

252. See generally Dexter Roberts, *Behind China's Anti-Foreigner Fever, Much of the Anger has been Directed at CNN for its Allegedly Biased Coverage of Protests in Tibet and Along the Route of the Olympic Flame*, BUSINESS WEEK, Apr. 25, 2008, available at http://www.businessweek.com/globalbiz/content/apr2008/gb20080424_222320.htm.

253. *Id.*

254. *Id.*

255. See *id.* YouTube.com, CNN report by Jack Cafferty, http://www.youtube.com/watch?v=K7FQsIIHV_w (last visited Mar. 6, 2009).

resentment against the foreign media this time around that is in part because of the timing, e.g. years of double-digit economic growth and a growing recognition of China's rise toward superpower ranks. The Chinese simply are not as willing to accept criticism from overseas. But it is also the result of the rapid growth of the Internet, whose mainland users have surged from 111 million three years ago to 298 million today.²⁵⁶ That digital medium has served as the primary platform for the Chinese to disseminate different viewpoints and criticism of the foreign media and it clearly is much harder for Beijing to control than traditional media outlets. Finally, CNN apologized and said the April 9, 2008 remarks were toward the Chinese government, not the Chinese people.²⁵⁷ In fact, the spokesman of the Ministry of Foreign Services has urged CNN to apologize to China.²⁵⁸

While CNN offered an official apology to the Chinese people, specifically the Chinese netizens, it has not apologized to the Chinese government.²⁵⁹ The subtle difference in expression is worth self-examination by the Chinese authorities. In this case, the reason why CNN apologized actually has nothing to do with the Chinese official media. It was those creative and critical online articles, video clips, websites and debates that not only agglomerated comprehensive thoughts among the masses, but also pushed many arrogant foreign media to adjust their media strategy toward China. In all, the new media provides an easy-to-access platform for brainstorming and debate which ultimately allows ordinary people the freedom to pursue the truth on their own.

2. *The Focus is No Longer Easy to Remain*

Unlike the existing media, the new media creates a press that encourages public involvement and participation in the information-sharing process. In practice, not willing to accept "government news" as absolute truth, many Chinese citizens have begun to search for more

256. China Internet Network Information Center (CNNIC), <http://www.cnnic.net.cn/html/Dir/2009/01/12/5447.htm> (last visited Mar. 6, 2009).

257. Roberts, *supra* note 252.

258. Media Conference by the Ministry of Foreign Service, P.R.C., *available at* <http://news.sohu.com/20080417/n256364544.shtml> (last visited Mar. 6, 2009).

259. *China Demands apology from Cafferty*, CNN, May 1, 2008, *available at* <http://edition.cnn.com/2008/WORLD/asiapcf/04/15/cnn.china/>. China says Cafferty violated the ethics of journalism, and CNN says he was offering opinion about Chinese government, not its people. *Id.*

varied news angles and perspectives by going online.²⁶⁰ Therefore, when citizen journalists found that the mainstream media had not broadcasted the whole picture of the story, they felt it was their responsibility to let the world know what really happened. Take the Olympic Torch Relay as an example; videos by spectators, mainly overseas Chinese, on the torch relay around the world were uploaded to the biggest video sharing websites. However, because of the interactive feature of the new media, it is difficult for the netizens to remain on a specific topic focus on the internet. It is easy for the netizens to expand the event disseminated through the new media channels and jump over to another focus. Disruptions in the Paris leg of the Beijing Olympic torch relay have fanned anti-French sentiment in China. On the two biggest BBS (Tianya and Xicihutong respectively) in China, the netizens began calling for a boycott of French companies operating in China, including the French supermarket chain Carrefour and luxury goods maker LVMH Mot Hennessy Louis Vuitton (LVMH).²⁶¹ On the internet, the change of focus from torch relay to boycott Carrefour happened overnight while offline dozens of Chinese protesters rallied outside Carrefour, voicing anger over the recent disruption of the Olympic torch relay in Paris. Facing the largest protests in China since anti-Japanese demonstrations in 2005, several Carrefour stores were forced to close.²⁶² There were reportedly plans for much bigger protests outside Carrefour and the French Embassy in Beijing on May 1 which was sent through emails on the internet. Then, China's state-run Xinhua news agency issued an official commentary calling on the Chinese to express patriotism in an orderly and legal manner.²⁶³

In an era of the traditional media, a protest may not be that easy to enkindle. However, in the era of the new media, the speed of disseminating information has been improved greatly. Because everyone has the right and opportunity to participate equally, different kinds of inputs would easily distract the original news focus on the new

260. THE 23RD CHINA INTERNET DEVELOPMENT STATISTICAL REPORT, Jan 12, 2009, <http://www.cnnic.net.cn/html/Dir/2009/01/12/5447.htm>.

261. Roberts, *supra* note 252.

262. See *Carrefour China Reiterates Support for Beijing Olympics*, BBC MONITORING ASIA PACIFIC, Apr. 29, 2008 (“‘Carrefour has cancelled its three-day sale planned for the May Day holiday on the Chinese mainland, which will cut 20 per cent off its sales volume on this market during that period,’ said Chen Bo, the media manager of Carrefour China’s headquarters in Shanghai, in a fax reply to Xinhua.”); see also *Beijing Slams Paris Honour For Dalai Lama*, STRAITS TIMES, Apr. 23, 2008.

263. *Anti-Carrefour Protests Spread*, CHINA ECONOMIC REVIEW, Apr. 21, 2008, available at http://www.chinaeconomicreview.com/dailybriefing/2008_04_21/Anti-Carrefour_protests_spread.html.

media. This uncertainty feature of the new media posed a new challenge to the Chinese authorities, which soon became an excuse for the Chinese cyber-police to further trace e-mail flow and other instant messages through the new communication technologies.²⁶⁴ Therefore, the attitude of the Chinese government to the new media is rocking. On the one hand, the Chinese authorities began to question the effectiveness of its press control policy on the new media and were willing to give the new media more room to develop. On the other hand, facing the new problems brought about by the new media, their first reaction is to continuously and forcefully control the new media. The inconsistent attitude of the Chinese authorities ultimately leads to vibrational policies and instructions.

*D. The Sichuan Earthquake*²⁶⁵

China has won praise overseas for giving the media a relatively free hand in the instance of the Sichuan earthquake.²⁶⁶ China's handling of the earthquake was in stark contrast to China's handling of the Tibet Riots, when China totally banned visitors and journalists from the region following the outbreak of unrest. In reporting the earthquakes, journalists, both domestic and international, were able to come to the epicentre immediately and without any barriers. The change in climate is very significant for China's image to the outside world, though nobody is sure how far it will go and how long it will last. However, in actuality, after the quakes hit, China initially refused to allow the journalists into the Sichuan province as usual. All the media, old and new, received a ban²⁶⁷ from the Ministry of Propaganda which prescribed that no media outlets should appoint journalists to the earthquake spot and that the media agencies could only use uniform dispatches from Xinhua News Agency. But after facing such a huge tragedy, not a single media followed the rules and the so-called ban was automatically abated from the very beginning. As Romano put it, the

264. *Ministry of Public Security Licenses China's First System for Monitoring and Recording SMS*, INTERFAX CHINA BUSINESS NEWS, June 15, 2004, available at <http://chinadigitaltimes.net/2004/06/ministry-of-public-security-licenses-chinas-first-system-for-monitoring-and-recording-smsinterfax/>.

265. *See Tragedy in Sichuan*, CHINA ECONOMIC REVIEW, June 1, 2008, available at http://www.chinaeconomicreview.com/cer/2008_06/Tragedy_in_Sichuan.html (explaining the events surrounding the earthquake).

266. *News.Wenxuecity.com, Sichuan Earthquake Ignite Interview Storm: the Ban of Ministry of Propaganda Abated*, available at <http://news.wenxuecity.com/messages/200806/news-gb2312-618133.html> (last visited July 10, 2008).

267. *Id.*

news media's effectiveness is inversely related to the degree of government intervention.²⁶⁸ However, it is undeniable that the reason why the Chinese officials this time allowed more lenience was that the event was caused by nature, distinguishable from the SARS epidemic, the Tibet Riot, and the Olympic Torch Relay.

1. The New Media: An Important Partner of the Mainstream Media in Disseminating the Quake Information

It is undeniable that the new media, including the internet and mobile services have played a significant role in reporting the earthquake and its aftermath.²⁶⁹ According to the General of the Internet Bureau of the State Council Information Office,

“[B]y 10 p.m. Beijing time on May 20, four major official news portals, Xinhua.net, People.com.cn, CCTV.com and China.com.cn, had published 123,000 pieces of text, audio and video reporting the earthquake. Besides, four major commercial news portals, Sina.com, Sohu.com, Tencent.com and 163.com, had produced 133,000 news items. Together, the eight portals have received 11.6 billion clicks and 10.63 million comments to their message boards since the earthquake. In addition, China Mobile and China Unicom sent free messages to 15 million subscribers and 7 million subscribers respectively. Bloggers used mobile phones to post 2.33 million articles on the four major commercial news portals. . . .”²⁷⁰

Therefore, unlike in the SARS epidemic, where there was suppression of citizens' use of the new information and communication technologies to circulate their own news about the rapid spread of SARS, the new media enjoyed a relatively loose climate in reporting the earthquakes. The Chinese authorities initially were worried they would hear harsh voices from the new media when they loosened press control.²⁷¹ However, since the very beginning, the game between the Chinese government and the public power is not a “Zero-sum” solution.²⁷² As soon as the earthquake struck, there was an unimaginable

268. See Romano, *supra* note 3, at 8.

269. *Internet Reporting of Earthquake a “Milestone,”* CHINA IT NEWSWIRE, May 22, 2008 (noting the increased use of online reporting as a means of conveying information and updates regarding the earthquake in Sichuan province).

270. *Id.*

271. See *Sichuan Earthquake*, *supra* note 266.

272. JAMES N. WEBB, GAME THEORY: DECISION, INTERACTION AND EVOLUTION 61 (Springer 2007). “As it suggests, a zero-sum game is one in which the payoffs to the players add up to zero.” *Id.*

unanimity between the government and the public. Both people and the press had a clear view that it was more important to overcome the disaster and save more lives. No one has ever questioned the profession of the rescue teams and the quality of the buildings. The press, old and new, both avoided sensational news reporting and helped the public regain confidence and courage.²⁷³ In all, online reporting of the earthquake in Sichuan has become a “milestone” for Chinese media, since it is the first time that the new media in China became an important partner of the mainstream media in distributing news. It is the most no-limits reporting ever since the Tiananmen Square Event. After the Chinese authorities open the door of free press, just a little though, a question is raised whether it will be closed again or opened wider?

2. The Door of Press Freedom in China is No Longer Easy to Close

In China, the State Council is always on the side of reform and is more open-minded and liberal-oriented in press reform, while the Ministry of Propaganda (MOP) is much tougher and inclined to stricter media control policies. For example, in the Sichuan Earthquake case, the specific rules concerning the reporting and interviewing in Sichuan province changed quickly and greatly.²⁷⁴ The contradictions and variations show that the government is still swinging on its press policies. Thus, it was just a matter of time before the Chinese government pulled back from its relatively liberal attitude toward news coverage of the Sichuan quake. In the back of the authorities' mind, there is a fear of looming unrest. To the Chinese government, the principle of its approach is to address the problem in a way they can control. Under these circumstances, the MOP sent out two notices²⁷⁵ on May 23, and May 25, 2008, respectively, which regulated the principle of reporting earthquakes and listed many issues that the news could not report, such as “ToFu Zha Construction”²⁷⁶ of collapsed school buildings, the fact that earthquakes were forecasted before hand, the failure to distribute rescue resources reasonably, and so on. The “Zero-sum” game between the public and press controllers got started. When inputting “Earthquakes” (Di Zheng in Chinese) and “Poor

273. See *Sichuan Earthquake*, *supra* note 266.

274. Mei Fong, *China restricts portests and media in quake zone -- Police break up rally on childresn's deaths; new rules over access*, WALL ST. J. ASIA, June 4, 2008 (noting that local governments were distributing new media passes that covered an entire province).

275. See *Sichuan Earthquake*, *supra* note 266.

276. See Baike.Baidu.com, <http://baike.baidu.com/view/242771.html> (last visited Feb. 8, 2009). In China, this term refers to poor construction, especially for the reason of corruption. *Id.*

Construction” (Dou Fu Zha Gong Cheng in Chinese) on baidu.com, it turned out that “the result of the search may not be accorded with relevant laws, regulations and policies.”²⁷⁷ Confronting the new media, the Chinese authorities are always standing in an awkward position. They like it while at the same time they hate it; they would like to leave more room for its development while at the same time they have to control it tightly in order to maintain their own interests.

However, it is undeniable that the new media provides a communication forum for the ordinary Chinese citizens to share information and register viewpoints, which in turn propels the process of press freedom in China. The Chinese authorities began to realize that the new media cannot be limited or controlled by a single government and in the past few years, China has begun to adjust its press control policies. On June 20, 2008, Chairman Hu Jing Tao visited “Strong China Bulletin Board” (“Qiao Guo Lun Tan” in Chinese) and spoke to ordinary citizens in person.²⁷⁸ This is the first time that the highest political leader of China showed intimacy with the new communication technologies in public. It highlighted recent efforts by the Chinese government to directly communicate with the ordinary people. The new media also has pushed the Chinese government to lift many bans on press related issues. For example, Prime Minister Wen Jiabao signed a decree on October 17, 2008, under which the foreign reporters do not need government permission to travel within China or to interview its citizens.²⁷⁹ This easing of restrictions on foreign journalists enacted for the Olympics would become permanent.²⁸⁰ This is not only a big step forward for China in opening up to the outside world, but also a milestone for further facilitating reporting activities by foreign journalists. Furthermore, it is because the internet can spread information as fast as censors can delete comments that the Chinese government has started to loosen its control on the negative information. The central government has permitted local authorities to publicize negative news themselves, without the need to report to upper

277. See *Sichuan Earthquake*, *supra* note 266.

278. News.Wenxuecity.com, Strong China Bulletin Board, <http://news.wenxuecity.com/messages/200806/news-gb2312-637017.html> (last visited July 2, 2008).

279. Regulation of the People’s Republic of China on News Coverage by Resident Offices of Foreign News Agencies and Foreign Correspondents (promulgated by State Council, Oct. 17, 2008, effective Oct. 17, 2008) LAWINFOCHINA (last visited Mar. 18, 2009) (P.R.C.).

280. *China Eases Rules for Foreign Media*, THE ASSOC. PRESS, Oct. 17, 2008 (explaining China’s temporary policy of lifting requirements for international journalists to obtain permission to enter China to conduct an interview specifically because of Beijing’s commitment to hold the 2008 Summer Olympics).

governments anymore.²⁸¹ Therefore, the impact of the new media in circumventing press censorship in China cannot be neglected and undervalued. However, admittedly, the new media remains as a “catalyzer,” or an external power, that can only accelerate the pace of press freedom, but cannot cause “qualitative change” in China right away.

V. CONCLUSION

The technology revolution that exploded in the middle of the 20th century and over the next decades projected “freedom of the press to a dimension so significant that a reversal becomes unimaginable.”²⁸² The fact that millions of individuals can now tap into a massive variety of information worldwide means that the days when whole peoples could be kept in ignorance of what was going on outside their country’s borders are forever gone.²⁸³

However, for those non-democratic systems of government, freedom of the press is an extremely problematic concept. Strict control of access to information is critical to the existence of most non-democratic governments (e.g., China) and their associated control systems and security apparatus. But the impact of the new media is not confined to breaking down the dominance of the traditional media in news gathering and distributing and involving more and more ordinary citizens into the news process. Moderated reader participation has stimulated a new capacity for grassroots democracy. On the one hand, democracy provides the climate for basic press freedom; but on the other hand, the new communication technologies provide the much-needed oxygen for the democratization process.²⁸⁴ In the past decade there have been numerous examples of how the advanced dissemination

281. See Wenxuecity.com, News, Nov. 23, 2008 <http://news.wenxuecity.com/messages/200811/news-gb2312-743078.html> (last visited Nov. 24, 2008) (stating that the Chinese government is allowing the media to report on unrest in the hope it can manage the impact of bad news; this decision appears to be a response to the speed at which news of protests and disorder spread around the country).

282. See *Badeni*, *supra* note 101, at 23.

283. See Derek Ingram, *Press Freedom in Commonwealth Countries*, in *WALKING THE TIGHTROPE: PRESS FREEDOM AND PROFESSIONAL STANDARDS IN ASIA* 50, 57 (Asad Latif ed., Asian Media Info. and Comm’n Ctr. 1998); STATEMENT, COORDINATING COMMITTEE OF PRESS FREEDOM ORGANIZATIONS, *PRESS FREEDOM IN NEW COMMUNICATION MEDIA* Feb. 14, 2007, available at [http://www.wpfc.org/site/docs/pdf/Statement%20\(English\).pdf](http://www.wpfc.org/site/docs/pdf/Statement%20(English).pdf) (issuing a statement defending and promoting press freedom on the internet).

284. See Chan & So, *supra* note 4, at 66-67 (explaining that press freedom and democratization are interdependent).

of information played a central role in resisting dictatorial regimes.²⁸⁵ This research takes China as an example to study, as a totalitarian country adopting strict press control policy, the challenges and opportunities it has encountered in an era of the new media. In a time of the new media, numerous facts and experiences have already made Chinese authorities realize that legal restraints on the new media destroyed the community, bred fear and uncertainty and filled the air with rumors.

In China's history, two important communication technologies invented thousands of years ago by the ancient Chinese, printing and paper, have played crucial roles in propelling world progress.²⁸⁶ This time, the impact of new information and communication technologies, such as cell phone, satellite televisions and internet, are no less crucial than those ancient inventions. They have great significance not only for life and productivity but also for the development of grassroots democracy. In the SARS epidemic, for the first time, the Chinese authorities realized that even if they tightly control the traditional media channels, the new media (at that time mainly email, BBS, cell-phone SMS) would still help disseminate the information. By 2008, realizing that information was no longer easy to hide in the era of new media, the Chinese government learned to take advantage of the new communication technologies to achieve its political purposes. China has found itself swept along in the global tides of social, political, and economic liberalization and the communication revolution, which have been pushing the nation toward an ever-increasing degree of freedom and openness in the communication of information.

It is because the regulation of the new media is still in the process of being formed that there are many important issues with few easy solutions. Such questions as access, censorship, the definition of freedom of the press and its relationship with freedom of expression are still being grappled with.²⁸⁷ As Kitchen notes, the legal conflicts around regulation reflect the larger power struggle to define the internet's future.²⁸⁸ However, one thing which is beyond controversy is that the freedom of the press calls for freedom from censorship, from political control and from unreasonable economic influence. Since the new media is "by design a decentralized medium" and must remain global, we must oppose the actions of governments to "build walled gardens

285. See Fritz, *supra* note 94, at 21.

286. See XUPEI, *supra* note 1, at 79.

287. See Bennett & Entman, *supra* note 50.

288. ROB KITCHEN, *CYBERSPACE: THE WORLD IN THE WIRES* 12 (Wiley 1998).

that limit free expression and access to information, and to develop a separate set of standards that will surely be deployed to enclose the medium.”²⁸⁹ Although the Chinese authorities still exercise prudence in reporting sensitive topics, they have begun to loosen the Chinese press control policies. Simply believing that freedom of press is necessary for China and that the new media is an enormous external power that must be protected does not make it materialize. Ultimately, the opening-up of the Chinese media, old and new, consists of the Chinese authority’s confidence in China’s economic and political systems and its trust in the public’s consciousness of democracy.

289. Leslie Harris, *Internet Benefits From A Light Touch*, in *NEW MEDIA: THE PRESS FREEDOM DIMENSION, CHALLENGES AND OPPORTUNITIES OF NEW MEDIA FOR PRESS FREEDOM* 12 (Barry James, ed., 2007).