

# FORBIDDEN FEEDS

Government Controls on Social Media  
in China

PEN  
AMERICA





**The Freedom  
to Write**

**FORBIDDEN FEEDS**

**Government Controls on Social Media in China**

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# EXECUTIVE SUMMARY

*Forbidden Feeds: Government Controls on Social Media in China* examines the development of the Chinese Communist Party's system of censorship and surveillance of online expression, in particular on social media platforms. The report demonstrates that under the leadership of President Xi Jinping, China has expanded its grip over Chinese social media in three ways.

The first is technological: Chinese authorities are continually developing and fine-tuning their ability to censor their citizens on social media, to access their private information, and to interfere with and surveil even private communications on social media platforms. The second is legal: Under Xi, China has enacted a raft of new laws and regulations enlarging the legal framework for its control of the internet, while centralizing power over social media in the hands of high-level decision makers.

The third—and perhaps the most important—is ideological: control of social media is an essential part of China's "cyber sovereignty" model, a vision that rejects the universalism of the internet in favor of the idea that each country has the right to shape and control the internet within its own borders. While the concept of cyber sovereignty predates Xi, he has actively worked to export it to the world, meeting a receptive audience in authoritarian leaders like Recep Tayyip Erdogan of Turkey and Vladimir Putin of Russia.

**Control of social media is an essential part of China's "cyber sovereignty" model, a vision that rejects the universalism of the internet in favor of the idea that each country has the right to shape and control the internet within its own borders.**

At a time when people across the world are increasingly concerned about the spread of misinformation online, about cyber-security, and about promoting a healthy and informed online civic discourse, Xi presents "cyber sovereignty" as a reasonable and thoughtful solution, as well as a government's right. But it is a poison pill, proposing a cure that is far worse than the disease. As *Forbidden Feeds* will demonstrate, China's system of online censorship is a broad-scale and daily attack on free expression. As an Appendix to this report, PEN presents a list of 80 cases of internet users who have been targeted or punished by the government for their online expression.

China's cyber sovereignty project has brought grave consequences to many, especially writers,

activists, and dissidents. Those who dare to test the limits of China's online censorship can face intimidation, job loss, years-long prison sentences, or find themselves forced into exile. The Party's centralized control over online expression brings a particular set of risks for writers, poets, bloggers, artists and other creatives, for whom free expression holds both a personal and a professional significance. Social media offers writers and others in the "creative class" the opportunity to expand the audience for their work, to remain connected with fans and with a like-minded community, and to offer up their own ideas within the context of broader civic conversation.

For many creatives, engaging online is now a necessary element of building one's career. However, the vague and broad nature of China's censorship rules means that the "red lines" of posting or conversing on social media are continually drawn and re-drawn, and socially-engaged authors and bloggers who wish to engage online are faced with difficult choices: take one's chances in speaking freely, self-censor, withdraw from the conversation, or leave the country. At a time when the line between a writer's official work and his or her social media presence is increasingly blurred, censorship and surveillance of social media means that there is no safe outlet for free expression.

*Forbidden Feeds* also considers the trade-offs facing foreign social media and technology companies as they consider entry into the Chinese market. PEN America argues that they should choose not to do so, because there is no way for them to operate in China at present without becoming an accomplice in widespread human rights violations.

The report's key findings include:

- Under Xi Jinping's leadership, the government is pursuing a strategy of increased censorship of online speech in China. New laws, strengthened regulations, centralized oversight bodies, and increasing enforcement actions have expanded the government's control over online speech. The government uses this regulatory power in tandem with new advancements in censorship technology in order to increasingly repress dissident voices and shape online conversation. Under Xi, the "Great Firewall" is getting taller.
- China's vision of "cyber sovereignty" provides the ideological framework for its efforts to control the internet. Despite China's attempts to cast this concept, which posits that each country



**Outspoken writers or artists risk total banishment from social media platforms, destroying their ability to reach a wide audience in China and, for some, ending careers altogether.**

- has the right to shape and control the internet within its own borders, as a rational regulatory approach, “cyber sovereignty” as envisioned and exercised by Xi is wholly incompatible with the international human rights of free expression, access to information, press freedom, and privacy. Moreover, China’s near-complete control over online spaces is essentially the desired endgame for authoritarian regimes around the world, making continued international attention and pressure on China’s practices of censorship important as a deterrent for Russia, Turkey, and others, as well as in their own right.
- Many writers, artists, and especially journalists in China are disproportionately affected by social media censorship because of their role as social commentators, their efforts to create works of societal significance, and their increasing reliance on social media to build an audience and make money. When creative professionals choose to push the boundaries of what the government deems acceptable online discourse, they face a backlash that may include having their content removed or their accounts closed. This often evolves into a game of cat and mouse in which individuals repeatedly try to evade censors, but typically ends with some form of surrender, whether that is self-censorship, a career change, or in some cases, exile. Outspoken writers or artists risk total banishment from social media platforms, destroying their ability to reach a wide audience in China and, for some, ending careers altogether.
  - China’s social media landscape is vast and vibrant. It is also one of the most strictly controlled on earth. This fine balance is likely what allows China’s model of online control to be so alarmingly successful; many of the censorship tactics employed by the state operate with a light touch, so that Chinese internet users do not necessarily detect the behind-the-scenes filtering and deletion of material that falls afoul of the censors’ rules. Other internet users may see it as an acceptable trade-off in light of all the benefits the digital realm offers. It is precisely the size and robustness of China’s social media space that helps disguise how effective the government is at controlling the space for online expression. For those who

would use social media to voice dissent or expose societal concerns, however, the blowback can be swift, and online debate of vital public interest on topics ranging from labor rights to feminism to environmental issues are constrained either by users’ inclination to self-censor or by overt government efforts to block further discussion of such issues.

- In Tibet and Xinjiang, two areas in Western China that have been marked by ethnic tensions, the fine balance of internet censorship struck in most of the country does not exist. Online restrictions more closely resemble the heavy-handed tactics used in places like Egypt or Turkey, and those whose social media activity runs afoul of the authorities are targeted far more harshly than in the rest of China. The distinction demonstrates that the government is deliberately choosing a degree of restraint across the country that it is unwilling to apply in what it considers restive regions.
- China’s legal system constricts domestic social media companies to be active participants in the monitoring and censorship of their own users. Chinese companies have no choice but to operate in accordance with the government’s demands. Foreign social media companies that are weighing entry into the Chinese market, however, face a stark and straightforward choice: Within the existing censorship framework, there is simply no way for foreign social media companies to operate in China without becoming active partners in the government’s efforts to silence dissent through censorship, mass surveillance, and the use of criminal charges. Such complicity would run directly counter to the professed values and mission statements of prominent social media companies, and they should stay true to those values and decline to enter the Chinese market until they feel confident they can do so without aiding in censorship.

*Forbidden Feeds* closes with the following recommendations for the Chinese government; for the United States government and the international community; and for foreign social media companies:

- To the government of the People’s Republic of China**
- Reform or abolish any laws and regulations affecting internet governance currently in force within China to comply with guarantees of the right of free expression contained in China’s Constitution and in international human rights instruments.

- End the practice of widespread state surveillance of online speech.
- Revoke all laws and regulations requiring internet companies to impose keyword filtering or other practices that support censorship.
- End the practice of "blacklisting" websites and preventing website access.
- Legalize the sale and use of Virtual Private Networks, regardless of government authorization. End technological and legal restrictions on VPN use.

#### **To the government of the United States of America**

- Unequivocally and publicly speak out in support of free expression and press freedom, in the U.S. and around the world.
- Publicly and privately advocate for the removal of restrictions on free expression, including but not limited to the online censorship regime, with diplomatic counterparts in China.

#### **To members of the international community**

- Consistently call and advocate for global internet policies that respect, safeguard, and uphold the right to freedom of expression and related rights. Raise concerns regarding the state of online expression in China at private and public engagements with counterparts within the Chinese government.
- Use China's upcoming Universal Periodic Review at the United Nations Human Rights Council in November 2018 to raise concerns about respect for internet freedoms in the country and make recommendations to the Chinese government about improving freedom of expression online.
- Refuse to participate in China's World Internet Conference unless and until it is re-oriented as an event that acknowledges and respects international human rights guarantees, and publicly reject any vision of internet governance that is inconsistent with international guarantees of free expression and related rights.

#### **To foreign technology and social companies**

- Refrain from doing business in the Chinese market unless you have secured an agreement with the government that the company will not be obligated to enforce Chinese laws and regulations

related to censorship, or to otherwise violate China-based customers' rights to privacy, free expression, access to information, or related rights.

- Make public and transparent any current or ongoing initiatives, programs, or technological developments that would provide any government with tools to filter, monitor, or censor the private or public posts of your users on any social media platform.
- Ensure that your organization has comprehensive pre-existing policies in place to protect users' free expression and privacy rights, to which employees can refer when asked by government officials—either formally or informally—to hand over private user data, constrain users' ability to access your social media platforms, or alter company algorithms or policies.
- Support and collaborate with non-governmental organizations and research groups that monitor and provide information on the mechanics of social media censorship in China, as well as groups that help develop technological solutions to Chinese censorship.
- In interacting either privately or publicly with Chinese officials—or officials involved with internet governance in any country—clearly express the importance of, and the company's commitment to, free expression and related rights.
- Refuse to participate in China's annual World Internet Conference unless and until it is re-oriented as an event that acknowledges and respects international human rights guarantees, and publicly reject any vision of internet governance that is inconsistent with international guarantees of free expression and related rights.
- Refuse to comply with any government request for a user's private data that is inconsistent with international guarantees of free expression, or where there is reason to believe the data will be used to violate the user's human rights.
- Refuse to provide business partners with sensitive user data or access to it where there is substantial concern that such data could be used to infringe upon the user's right to free expression or other human rights.



# INTRODUCTION

## An Unfulfilled Promise

In 2006, years before he received the Nobel Peace Prize, Chinese poet, writer, and activist Liu Xiaobo wrote that he thought the internet was “God’s present to China.”<sup>1</sup> Liu praised the internet’s ability to share important human rights information, enable citizens to mobilize, and promote a diverse civic discourse and government accountability.<sup>2</sup> Liu and hundreds of other dissidents, scholars, writers, lawyers, and journalists famously used the internet in December 2008 to publish “Charter 08.” The charter, a pro-democracy and human rights manifesto whose name refers to the “Charter 77” document produced by dissidents in then-Communist Czechoslovakia in 1977, was digitally signed by tens of thousands of Chinese citizens online.<sup>3</sup>

The government’s reaction was swift and ferocious. Liu was arrested before the charter was even formally published. The government blocked access to the website where Charter 08 was originally posted, worked diligently to remove references to it elsewhere online, and sent police to question all 303 of the original signatories.<sup>4</sup> A year later, in December 2009, Liu was sentenced to 11 years in prison for “inciting subversion of state power;” at the time, this was “the toughest sentence ever passed down to a dissident, including those arrested just after the Tiananmen Massacre in 1989.”<sup>5</sup>

Liu Xiaobo died on July 13, 2017, still in Chinese custody, of a cancer that developed and spread while he was in prison. News of his death sparked a worldwide outpouring of grief and outrage, with countless tributes honoring the tireless human rights defender and brilliant writer. But not in China. References to Liu were comprehensively censored across China’s internet and social media platforms—from public posts to even private chats.

If the optimism Liu and many others felt in the power of the internet during the mid-2000s was misplaced, it was only because it was difficult to imagine how the Chinese authorities could control a communication medium that seemed so far outside of any government’s grasp. Former U.S. President Bill Clinton famously described Chinese efforts to regulate the internet as an exercise in futility, akin to “nailing jello to a wall.”<sup>6</sup> Instead, despite all predictions to the contrary, the Chinese government has produced a national internet that is separate and distinct from the online spaces accessible to most of the rest of the world.<sup>7</sup> They have done so by building the world’s most pervasive and encompassing system of internet censorship, monitoring, and centralized control.<sup>8</sup> The

*The Chinese government has built the world’s most pervasive and encompassing system of internet censorship, monitoring, and centralized control.*

popular term for this censorship system, “The Great Firewall,”<sup>9</sup> is not only a clever historical reference; it is also an acknowledgement that internet censorship is a key project of the Chinese state.

Today, the promise of the internet as a tool for communal connection is not foreclosed; China has a flourishing space for creative and personal expression online. But that space operates only by the permission of the Chinese Communist Party (CCP), which acts with a heavy hand to shut down any online conversation that it deems a threat to its own power.

The emergence of social media platforms promised cyber-citizens a fresh way to express themselves. Social media offers every internet user the means to become a writer, an analyst, a commentator, a citizen journalist, an art critic, and a viral marketer, not to mention a more engaged friend, family member, colleague, and even citizen. Social media invites everyone into civic conversation, and provides them a space to share their opinion, with clear benefits for freedom of expression. In theory.

In China, however, the CCP has leveraged every option at its disposal to control and constrain expression in all online spaces: developing increasingly sophisticated technologies for censorship, expanding regulatory policies, effectively delegating much of the work of censorship to Chinese internet companies, engaging in widespread surveillance and monitoring of online activity, and sentencing Chinese citizens to years in prison for the crime of saying the wrong thing online.

In recent years, and under the leadership of President Xi Jinping, China has expanded its grip over Chinese social media in three ways. The first is technological: Chinese authorities are continually developing and fine-tuning their ability to censor their citizens on social media, to access their private information, and to interfere with and surveil even private communications on social media platforms.

The second is legal: Under Xi, China has enacted a raft of new laws and regulations enlarging the legal framework for its control of the internet, while centralizing power over social media in the hands of high-level decision makers.

The third—and perhaps the most important—is ideological: control of social media is an essential part of China’s “cyber sovereignty” model, a vision that rejects the universalism of the internet in favor of the idea that each country has the right to shape and control the internet within its own borders. While the concept of cyber sovereignty predates Xi, he has actively worked to export it to the world, meeting a receptive audience in authoritarian leaders like Recep Tayyip Erdogan of Turkey and Vladimir Putin of Russia.<sup>19</sup>

The enthusiastic promotion of cyber sovereignty—also termed “internet sovereignty”—goes hand-in-hand with efforts, spearheaded by President Xi himself, to establish the Chinese Communist Party’s explicit control over every sector of Chinese society: from official urgings to Chinese internet firms to maintain “ideological security” to Xi’s personal exhortation that media companies pledge loyalty to the Chinese Communist Party.”

Under Xi, Beijing has enacted new laws on national security and cybersecurity, providing a legal basis for methods of control on free expression that were long practiced by police and courts but not codified. In his speeches and public comments, Xi has consistently signaled his intent to restrain free expression at every turn, both offline and online, in the name of such concepts as “socialist culture”<sup>22</sup> and “social harmony.”<sup>23</sup> All this has happened as the Party has moved to relentlessly shut down any societal force that dares to operate outside the government’s control. Perhaps the most infamous example occurred in July 2015, when Chinese police detained or questioned more than 200 Chinese human rights lawyers and activists in a sweep that rights groups called “unprecedented.”<sup>24</sup> The wave of arrests has since come to be known as the “709 Crackdown, a reference to the June 9th start date of the government’s campaign.”<sup>25</sup>

It also occurs in the midst of Xi’s broad anti-corruption campaign, a years-long “crusade” that has been a hallmark of his administration.<sup>26</sup> Under this campaign, more than a million government officials have been punished.<sup>27</sup> Critics, including human rights groups, have continually sounded the alarm that this anti-corruption initiative has become a political purge intended to further centralize power under Xi and neutralize potential rivals.<sup>28</sup>

On October 25, 2017, Xi secured a second term as General Secretary of the Chinese Communist Party (CCP) after a Party Congress where he had

announced the beginning of a “new era” (*xin shidai*).<sup>19</sup> Months later, on February 25, the Party’s Central Committee announced its proposal to do away with constitutional term limits on the presidency; paving the way for Xi to be President-for-Life.<sup>20</sup> On March 11, China’s rubber-stamp legislature, the National People’s Congress, overwhelmingly passed the proposed constitutional amendment.<sup>21</sup> Writers and artists tell PEN America that they expect an intensification of the crackdowns on civil society that characterized Xi’s first five years in power.

At a time when people across the world are increasingly concerned about the spread of misinformation online, about cyber-security, and about promoting a healthy and informed online civic discourse, Xi presents “cyber sovereignty” as a reasonable and thoughtful solution, as well as a government’s right. But it is a poison pill, proposing a cure that is far worse than the disease. As this Report will demonstrate, China’s system of online censorship is a broad-scale and daily attack on free expression.

### **Social Media is a Lifeline, and a Risk, for Writers**

China’s cyber sovereignty project has brought grave consequences to many, especially writers, activists, and dissidents. Those who dare to test the limits of China’s online censorship can face intimidation, job loss, years-long prison sentences, or find themselves forced into exile. Liu Xiaobo is one well-known example, but there are countless others. Cases like these demonstrate that social media offers no safe harbor from the government’s pursuit of its critics. Today, many of China’s most prominent dissident writers, activists, and human rights advocates have been convicted of charges relating to both their online and their offline speech.

The Party’s centralized control over online expression brings a particular set of risks for writers, poets, bloggers, artists and other creatives, for whom free expression holds both a personal and a professional significance. Social media offers writers and others in the “creative class” the opportunity to expand the audience for their work, to remain connected with fans and with a like-minded community, and to offer up their own ideas within the context of broader civic conversation. For many creatives, engaging online is now a necessary element of building one’s career. This is the case in China, as it is the world over.

However, the vague and broad nature of China’s censorship rules means that the “red lines” of posting or conversing on social media are continually drawn and re-drawn, and socially-engaged authors and bloggers who wish to make their voices heard online are faced with difficult choices: take one’s



## ***U.S. social media companies cannot hope to enter the Chinese market without becoming full participants in the Party's censorship machine.***

chances in speaking freely, self-censor, withdraw from the conversation, or leave the country. At a time when the line between a writer's official work and his or her social media presence is increasingly blurred, censorship and surveillance of social media means that there is no safe outlet for uncensored creative expression.

### **Foreign Social Media Companies and the Chinese Market**

China is increasingly considering how to leverage its increasing economic power against foreign social media companies as well as foreign governments, pressuring them to accept as valid the cyber sovereignty theory of the internet that allows the Chinese government broad latitude to control online speech.<sup>22</sup> These efforts include China's annual "World Internet Conference," a government-organized forum for the discussion of internet issues and policy. China uses this Conference--whose attendees have included Russian Prime Minister Dmitry Medvedev and other world leaders, as well as the heads of major internet companies like Apple and Google--to develop and present its vision of

government control of the internet.<sup>23</sup> Human rights organizations such as Amnesty International and Reporters Without Borders have urged a boycott of the conference, deeming it an attempt to cloak China's pro-censorship ideology in a garment of responsible governance.<sup>24</sup> The Economist has joked that the unofficial motto of the conference should be "Censors of the World, Unite!"<sup>25</sup>

This report comes at a time in which many U.S.-based social media companies are considering entering (or in some cases re-entering) China's market. From a business perspective, this is perhaps an easy decision: China is the largest single-nation market in the world. However, from an ethical perspective, this Report will seek to demonstrate that it is also an easy decision. U.S. social media companies cannot hope to enter the Chinese market without becoming full participants in the Party's censorship machine and willing accomplices in violating Chinese internet users' rights to free speech, access to information, press freedom, and privacy. Most of these companies portray themselves as champions of free expression who not only offer a useful service but also provide a public good, facilitating a global conversation in which people anywhere in the world can talk, share information, protest, act as citizen journalists, demand accountability from their officials, and engage in no-holds-barred conversations. There is no way to square this vision with the realities of what they would be required to do in the Chinese market, and they should not enter that market until that changes. Doing otherwise would both indicate their full acceptance of China's censorship regime and send a clear message to other repressive governments that they can expect the same full compliance with their own efforts to suppress speech in their countries.

# OUTLINE AND METHODOLOGY

This report lays out the constraints on online expression faced by people living in mainland China, with a special focus on how it impacts the lives of writers and artists.

The report starts with an overview of China's system of social media censorship, beginning with a look at the social media landscape as a whole and the international legal framework for free expression and digital rights, followed by a short history of China's control of the internet and the policy, legal, and regulatory structures that enable it.

The second part of the report examines how those policies play out in practice, from both a technical perspective and in terms of how the typical social media user might experience censorship. This section includes a proposed typology of censored topics and features insights into the mechanics of censorship that are based in part on interviews conducted with current and former staff of several Chinese social media companies, and closes with a look at how censorship and online repression are markedly more severe in Tibet and Xinjiang.

The report's third section focuses on how Chinese writers and artists are navigating social media censorship. Individuals featured in this report work in a variety of mediums and genres, including journalism, essay-writing, novel-writing, poetry, film, painting, photography, visual art and performance art, to name a few. Some are well-known names and some are at earlier stages in their careers. Those interviewed range in age from their twenties to their sixties.

Finally, the report ends with an examination of recent developments in regards to foreign social media companies' relationship with the Chinese government and its regulatory restrictions.

The report also provides PEN America's recommendations for the government of China, the government of the United States and the international community, and foreign social media companies. All opinions and recommendations are issued by PEN America staff. An accompanying Appendix to this report identifies 80 cases where users have faced repercussions for their social media speech, as illustrative of the human toll of China's criminalization of entire categories of online speech.

For this report, PEN America has adopted a broad working definition of social media: Online-based applications or platforms that function primarily through the creation or enabling of social interaction. Notably, this definition includes private chat applications and blogs. While blogs are primarily an individualized online publishing platform, the social nature both of individual blog posts themselves and the online conversations they engender help place them within the social media space. Several of the specific online companies discussed within this report are best known for their blogging or 'micro-blogging' platforms.

PEN America interviewed social media users, social media experts as well as current and former employees of Chinese social media companies to provide new insights into how censorship is applied on a day-to-day basis. PEN America also drew from filings of Chinese internet companies that are publicly listed in the United States.

The Chinese government agency the Cyberspace Administration of China, the Chinese internet companies Sina Corp., Baidu, Beijing ByteDance Technology, and Tencent Holdings, and Facebook did not respond to requests for comment.

Unless stated otherwise, all comments from sources are drawn from interviews PEN America staff and consultants conducted from July 2017 to March 2018. Some sources spoke with PEN America despite the risk of possible repercussions from employers or authorities. PEN America offered anonymity to whomever requested this precaution. PEN America took steps to use encrypted communication methods whenever possible, and made sure to inform sources that their security could not be guaranteed.

In this report, the word "Chinese" generally refers to all citizens of the People's Republic of China, with the caveat that perhaps hundreds of different ethnic groups live within the country's official boundaries including those who do not self-identify as Chinese.<sup>26</sup> Hong Kong and Macau are semi-autonomous southern cities in China under the "one country, two systems" frameworks; as the Chinese government does not have jurisdiction to restrict Hong Kong and Macau's internet access, they are not examined within this report.<sup>27</sup>

PEN America recognizes the large body of research that has been conducted by scholars and other organizations on social media censorship in China, and which has helped to inspire and inform this report.



## KEY FINDINGS

- Under Xi Jinping’s leadership, the government is pursuing a strategy of increased censorship of online speech in China. New laws, strengthened regulations, centralized oversight bodies, and increasing enforcement actions have expanded the government’s control over online speech. The government uses this regulatory power in tandem with new advancements in censorship technology in order to increasingly repress dissident voices and shape online conversation. Under Xi, the “Great Firewall” is getting taller.
- China’s vision of “cyber sovereignty” provides the ideological framework for its efforts to control the internet. Despite China’s attempts to cast this concept, which posits that each country has the right to shape and control the internet within its own borders, as a rational regulatory approach, “cyber sovereignty” as envisioned and exercised by Xi is wholly incompatible with the international human rights of free expression, access to information, press freedom, and privacy. Moreover, China’s near-complete control over online spaces is essentially the desired endgame for authoritarian regimes around the world, making continued international attention and pressure on China’s practices of censorship important as a deterrent for Russia, Turkey, and others, as well as in their own right.
- Many writers, artists, and especially journalists in China are disproportionately affected by social media censorship because of their role as social commentators, their efforts to create works of societal significance, and their increasing reliance on social media to build an audience and make money. When creative professionals choose to push the boundaries of what the government deems acceptable online discourse, they face a backlash that may include having their content removed or their accounts closed. This often evolves into a game of cat and mouse in which individuals repeatedly try to evade censors, but typically ends with some form of surrender, whether that is self-censorship, a career change, or in some cases, exile. Outspoken writers or artists risk total banishment from social media platforms, destroying their ability to reach a wide audience in China and, for some, ending careers altogether.
- China’s social media landscape is vast and vibrant. It is also one of the most strictly controlled on earth. This fine balance is likely what allows China’s model of online control to be so alarmingly successful; many of the censorship tactics employed by the state operate with a light touch, so that Chinese internet users do not necessarily detect the behind-the-scenes filtering and deletion of material that falls afoul of the censors’ rules. Other internet users may see it as an acceptable trade-off in light of all the benefits the digital realm offers. It is precisely the size and robustness of China’s social media space that helps disguise how effective the government is at controlling the space for online expression. For those who would use social media to voice dissent or expose societal concerns, however, the blowback can be swift, and online debate of vital public interest on topics ranging from labor rights to feminism to environmental issues are constrained either by users’ inclination to self-censor or by overt government efforts to block further discussion of such issues.
- In Tibet and Xinjiang, two areas in Western China that have been marked by ethnic tensions, the fine balance of internet censorship struck in most of the country does not exist. Online restrictions more closely resemble the heavy-handed tactics used in places like Egypt or Turkey, and those whose social media activity runs afoul of the authorities are targeted far more harshly than in the rest of China. The distinction demonstrates that the government is deliberately choosing a degree of restraint across the country that it is unwilling to apply in what it considers restive regions.
- China’s legal system constricts domestic social media companies to be active participants in the monitoring and censorship of their own users. Chinese companies have no choice but to operate in accordance with the government’s demands. Foreign social media companies that are weighing entry into the Chinese market, however, face a stark and straightforward choice: Within the existing censorship framework, there is simply no way for foreign social media companies to operate in China without becoming active partners in the government’s efforts to silence dissent through censorship, mass surveillance, and the use of criminal charges. Such complicity would run directly counter to the professed values and mission statements of prominent social media companies, and they should stay true to those values and decline to enter the Chinese market until they feel confident they can do so without aiding in censorship.

## Section I

# AN OVERVIEW OF THE SYSTEM OF SOCIAL MEDIA CENSORSHIP

### The Prevalence of Social Media Usage in China

Social media in China is more tightly controlled than in any but a handful of countries, but it is also thriving. China has the largest number of social media users of any country in the world.<sup>28</sup> It is estimated that in 2018, there will be over 600 million people using social media within China.<sup>29</sup> That means that China alone accounts for approximately a quarter of social media users globally.<sup>30</sup>

Internet usage more broadly is even more widespread. China has some 770 million internet users<sup>31</sup>—approximately half of the country's population.<sup>32</sup> In 2016, China's number of internet users grew at the fastest rate in three years, expanding 6.2 percent with 43 million new users coming online.<sup>33</sup> Mobile network operators remain in fierce competition, with many companies offering affordable unlimited data plans—fostering the widespread adaptation of social media platforms including video streaming services.<sup>34</sup>

Ninety-five percent of Chinese users access the web primarily via smartphones, usually spending their time on a handful of popular applications.<sup>35</sup> Eighty percent of all internet users in China use Tencent's Wechat, which is more than just a chat app—it functions as an online ecosystem where people can shop, browse news, book gym classes, plan events, and order taxis.<sup>36</sup>

The average Wechat user spends 66 minutes per day on the app.<sup>37</sup> Some 83 percent use it for work communication, and 93 per cent of people surveyed in China's most developed cities use Wechat Wallet to make purchases, according to a 2017 report from the research division of Chinese internet company Tencent.<sup>38</sup>

"My friends and I don't hang out at the mall. Chinese like to stay home and play on their phones. I buy everything online," a university student in Beijing told PEN America. Her observations are consistent with a 2017 survey by Hootsuite, a social media management company, finding Chinese nationals spend an average of three hours a day using the internet on their phones.<sup>39</sup>

Many people in China have no trouble keeping track of dozens of chat groups focused on everything

from for professional and social networking to literature and art. On Sina Weibo, a short-form blogging platform similar to Twitter, Chinese celebrities have among the largest online fan bases in the world, with some exceeding 80 million fans. Chinese actress Xie Na has over 90 million followers on Sina Weibo, dwarfing President Donald Trump's follower count of 48 million.<sup>40</sup>

In China, restaurants and bars readily offer up charging docks, since a dead phone battery could mean lost business.<sup>41</sup> Credit card infrastructure is underdeveloped in the country.<sup>42</sup> Instead, the country has leapfrogged from a cash-based society to one where people use cellphones to pay for virtually any product or service imaginable.<sup>43</sup>

"In 1999 there was only about 2 million people in China online. It's amazing how the smartphone revolution took off. There's a real open embrace of technology among Chinese people," said Kaiser Kuo, former director of international communications for Baidu, one of China's largest and oldest internet companies.<sup>44</sup>

With so many dedicated users, things can go viral very quickly on the Chinese internet. Memes, like in the West, are popular in China. Some are openly politically satirical.<sup>45</sup> For example, memes frequently depict China as a panda with a man's face, scolding against things like "talking back to your father."<sup>46</sup> The joke pokes fun at the government's use of pandas in diplomacy, while skewering the country's paternalistic authoritarianism.<sup>47</sup>



"Against Taiwan Independence"  
"You dare to speak like this to your father!"

In 2016, mobile payments in China amounted to 50 times what they did in the U.S.—some \$5.5 trillion.<sup>48</sup> Wechat Wallet and AliPay are the preferred mobile payment methods.<sup>49</sup> The e-commerce boom has affected writers and artists, too, many of whom now rely on crowdfunding and selling their creative work directly to clients via digital payment.<sup>50</sup>

At a time of slowing economic growth, the Chinese government has backed internet expansion as a way to boost the economy.<sup>51</sup> In 2015, Premier Li Keqiang—the head of China's State Council—launched the



country's "Internet Plus" strategy to promote online banking, mobile internet and digital infrastructure to boost the e-commerce industry.<sup>52</sup>

Email is not commonly used for social communication.<sup>53</sup> Older people increasingly prefer to use chat apps where they can talk with friends and family via text and audio messages.<sup>54</sup>

#### *China's leading social media platforms*

**Wechat:** Launched in 2011 by Chinese company Tencent Holdings ("Tencent") and now with over 900 million monthly active users, Wechat is the most popular messaging app in China.<sup>55</sup> A chat group can include up to 5000 members.<sup>56</sup> Users can also set up public accounts that can be followed by any number of users. This makes Wechat a platform for a plethora of social media communities and businesses, which use it to sell goods and services directly to customers.

**Weibo:** The word "weibo" (微博) is a generic term that means "microblog."<sup>57</sup> Several Chinese companies offer weibo platforms that are similar to Twitter, featuring text, photo and video sharing functions as well as the ability to "mention" other users and use hashtags. Sina Weibo, launched in 2009, is the leading provider in China with over 340 million active monthly users,<sup>58</sup> topping Twitter's 330 million monthly active users worldwide.<sup>59</sup> When people refer to Weibo they usually mean Sina Weibo since it is by far the dominant company.<sup>60</sup> Unlike Wechat, most user accounts on Weibo are open to the public to view and to search.

**Qzone:** Tencent launched "QQ" in 1998 as an early instant chat service similar to MSN Messenger.<sup>61</sup> In 2005 it expanded to offer Qzone: a social blogging platform where users can write posts, listen to music, share photos and highly customize the appearance of their pages with bright colors and animations.<sup>62</sup> Qzone pages are usually only visible to users' friends' lists, similar to Facebook. The Qzone app allows people to edit and post photos and add voice clips. It is especially popular among teenagers, and boasts over 600 million monthly active users.<sup>63</sup>

**Baidu Tieba:** Baidu Tieba is an online community owned by Baidu, Inc., a company best known for its search engine and maps services. Baidu Tieba is similar to Reddit, in that it offers forums where users can have discussions around specific topics.<sup>64</sup> The platform encourages users to start forums on new topics, and they cover celebrities, books, films, comics and various current events issues.<sup>65</sup> Launched in 2003, when it was a pioneering social media platform, Baidu Tieba now has more than a billion registered users chatting on more than 20 million discussion boards.<sup>66</sup> Forum moderators have the option of deleting and

reporting comments to site administrators.<sup>67</sup>

**Douban:** Douban was launched in 2005 as a review-sharing platform for music, books and movies.<sup>68</sup> It is popular among students, intellectuals, writers, filmmakers and artists as it is the leading social network that focuses on discussion of artistic material.<sup>69</sup> The site also recommends potentially interesting works of various mediums to users, and operates an internet radio station. "Douban Location" allows users to promote and discover cultural events and activities.

**Live-streaming:** Video live-streaming is a fast-growing social media phenomenon in China, with over 200 platforms competing with one another and catering to different niche markets to attract live-streamers and viewers.<sup>70</sup> Nearly half of all Chinese internet users have accessed live-stream content.<sup>71</sup> The industry is valued at over \$3 billion dollars a year.<sup>72</sup> Broadcast stars tell jokes, perform music, do stunts or simply show off their good looks on camera, and receive money from viewers in the form of virtual gifts. Viewers can also interact with performers in real time by giving feedback, compliments and asking questions that pop up as messages.<sup>73</sup>

#### *The New Public Square, the New Commentariat, and the New Great Firewall*

Within China, those who are active on internet chat groups or blogs are often defined as *wangmin* (网民, "net-citizen"), or *wangyou* (网友, or "net-friend").<sup>74</sup> This amorphously-defined group—usually described with the label of "netizens" in the foreign press<sup>75</sup>—is often held out by commentators as a stand-in for China's online populace at large, in the same way that commentators on Twitter or Facebook are cited in Western news articles as representative of 'online reaction' to breaking stories.<sup>76</sup> Netizens have been responsible for online bursts of outrage at foreigners who have been deemed to disrespect China, but have also conversely been cited as responding with sarcasm and annoyance to sanctimonious government pronouncements.<sup>77</sup> China's "netizens" can be seen as today's new internet literati, a large and growing social class whose main entry criteria is familiarity with social media and viral content.

Even with censorship, there is no denying that the internet in China has offered an unparalleled opportunity for social connection and dialogue. Social media communities in China are often vibrant, expansive, creative, and cutting-edge.

Kaiser Kuo, the former head of international communications for Baidu, remarked to PEN America, "There is a real open embrace of technology among Chinese people. They understand implicitly its transformative capabilities." Kuo continued by noting that

“In much of China’s history, there hasn’t been what one would call a public sphere of any sort. Even the Democracy Wall in Beijing<sup>78</sup> reached only a tiny percentage of people in China. There was nothing like a full-fledged public sphere until the internet connected people.”

Prominent analysts have noted that foreign conceptions of Chinese censorship are often overstated and help contribute to an inaccurate understanding. Prominent Chinese cyber rights researcher Lokman Tsui, in his 2008 paper “The Great Firewall as Iron Curtain 2.0,” argued that the prominence of the rhetorical construction of a “Firewall” around the country encourages Westerners to erroneously think of Chinese internet users as a “repressed audience that is starved of uncensored information,” passively awaiting information from outside the Wall.<sup>79</sup> Those that PEN America spoke to were often quick to strike against this perception.

“By no means is [internet in China] a free internet,” Kuo noted to PEN America. “Speech online is not free. But it is a lot more free than I think the US public has probably come to imagine.”

Indeed, amongst the hundreds of millions of users of social media in China, there is a relatively free-wheeling and robust conversation that cannot be reduced to its relationship with government censors. The Chinese government has been remarkably successful at allowing its citizens to feel, legitimately, that they are free to use social media to enrich their lives in a wide range of ways, while also creating a system where that is unlikely—at least so far—to get out of the government’s control.

Chinese regulators in fact point to the size of China’s internet community as an argument that provides for sufficient online freedom. As one top Chinese internet official explained at the 2017 Internet Governance Forum—a global event where participants discuss pressing Internet issues—“Can you guess the number of websites in China? We have five million websites. That means that the Chinese people’s rights of speech and rights of expression are fully ensured.”<sup>80</sup> The implication being that as long as Chinese netizens have enough venues for conversation in its broadest sense, it doesn’t matter how that conversation is constrained.

This system of regulated speech—leaving ample room for robust conversation, but watched over and shaped by the Chinese Communist Party—may require a new metaphor. David Bandurski, co-director of the China Media Project at the University of Hong Kong, has proposed “The Great Hive”, saying:

“We talk still, when we refer to China’s vast system of technical and regulatory controls on

the internet, about a “Great Firewall” meant to insulate China from the contagion of the outside. It is probably more suitable now to think instead of a Great Hive of firewalls around the individual, a buzzing nest of connections from which users may be insulated at will. All may share in the collective illusion that they are part of a thriving, humming space, but all are joined to the Party’s re-engineered project of guidance and managed cohesion—and all are buzzing more or less at the same frequency.”<sup>81</sup>

This metaphor helps capture an important aspect of China’s goal over its citizens’ online speech: it not only wants to ensure that no one is directly threatening the government’s power, but also that all its citizens are “buzzing at the same frequency”: that is to say, accepting only the narratives, ideas, and ideology that the government propagates itself or otherwise approves. This conception of online speech is one that is entirely incompatible with international guarantees of free expression

#### **Digital Rights—Including the Right to Free Expression—Under International Law**

The right to free expression is the same online as it is offline. The comprehensive body of legal principles that enshrine free expression, freedom of the press, and related liberties extends to the digital realm.<sup>82</sup>

This includes the right to freedom of opinion and expression as enshrined in Article 19 of the Universal Declaration of Human Rights (UDHR) as well as in Article 19 of the International Covenant on Civil and Political Rights (ICCPR). Article 19 of the UDHR is widely acknowledged to constitute customary international law. China is a signatory to—although it has not ratified—the ICCPR. As a signatory, China is obligated to “refrain from acts which would defeat the object and purpose” of the treaty.<sup>83</sup>

Freedom of expression may be subject to certain restrictions under international law, but these are strictly limited: restrictions must be provided for by law and must be both proportional and strictly necessary.<sup>84</sup> As the Human Rights Committee has explained, restrictions on freedom of expression “may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.”<sup>85</sup>

Numerous international bodies have emphasized the inalienable link between free expression and digital rights.<sup>86</sup> The United Nations Human Rights Council, in fact, has repeatedly affirmed that freedom of expression “in particular” is one of the rights that remains undiminished by entry into the digital realm.<sup>87</sup>

Similarly, human rights instruments have



emphasized that freedom of the press protections also extend to the digital sphere. The Human Rights Committee has noted that freedom of the press extends to “bloggers and others who engage in forms of self-publication in print, on the internet, or elsewhere.”<sup>88</sup> It has further acknowledged the increasing importance of online media, urging parties to the ICCPR “to take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto.”<sup>89</sup>

Government acts that may infringe upon these rights include not only censorship but also mass surveillance. As the UN High Commissioner for Human Rights has noted, mass digital surveillance and the interception of digital communications have ramifications for a variety of well-enshrined human rights, including “the rights to freedom of opinion and expression, and to seek, receive and impart information; to freedom of peaceful assembly and association; and to family life” as well as the right to privacy.<sup>90</sup>

The right to privacy—as enshrined in Article 12 of the UDHR and Article 17 of the ICCPR—also protects against arbitrary or unlawful interference with one’s privacy, family, home, or correspondence,<sup>91</sup> including within the digital realm. As the Human Rights Committee has concluded in respect to the ICCPR, domestic authorization for interference with one’s privacy may still be “unlawful” if it conflicts with ICCPR provisions.<sup>92</sup> Government interference with one’s privacy must be “proportional to the end sought and be necessary in the circumstances of any given case” in order not to be considered arbitrary or unlawful.<sup>93</sup>

The United Nations General Assembly has repeatedly and explicitly called upon all states to respect and protect the right to privacy in the context of digital communications and to ensure that national legislation complies with these obligations.<sup>94</sup> The UN High Commissioner on Human Rights, the Special Rapporteur on Free Expression, and the Special Rapporteur on Privacy (the first of whom was appointed in 2015) have renewed and elaborated on these calls.<sup>95</sup>

#### *PEN Declaration on Digital Freedom*

Pronouncements from international civil society also help shape international human rights norms. In this regard, the Declaration on Free Expression and Digital Technologies—adopted at PEN International’s 78th International Congress in Gyeongju, Korea, on September 2012 by representatives of PEN chapters located in over 80 countries—helps set the contours for digital freedom, and the obligations of governments to respect such freedom. The Declaration on

Digital Freedom, as it is better known, centers around the four following principles:

1. **All persons have the right to express themselves freely through digital media without fear of reprisal or persecution.**
2. **All persons have the right to seek and receive information through digital media.**
3. **All persons have the right to be free from government surveillance of digital media.**
4. **The private sector, and technology companies in particular, are bound by the right to freedom of expression and human rights.**

The full Declaration is reproduced as an Appendix within this report.<sup>96</sup>

#### **China’s Control of Online Expression: A Historical Perspective**

The first email from China was sent in September 1987, only two years before China’s growing movement for democratic reform was put down by government force in Tiananmen Square. The email came from a set of Chinese researchers, who sent a message to a university in Germany: “Across the Great Wall, to every corner of the world.”<sup>97</sup>

Notably, China’s contemporary democracy movement<sup>98</sup>—which began in the late 1970s, a period known as the “Beijing Spring”—had perhaps its first manifestations in the “Democracy Wall Movement,” a reference to the wall-mounted posters that protestors put up on Beijing brick walls in 1978-79.<sup>99</sup> These posters where anonymous commentators could post their opinions, literature or even short statements, placed in a specific location for public view, were the analogue equivalent to the message boards and online conversations made possible by today’s social media.<sup>100</sup>

The internet became publicly available in China in the mid-90s.<sup>101</sup> Experts speculate that at the advent of the internet’s introduction to China, Chinese authorities quickly recognized its potential to foster public political debate and feared it could help trigger a Soviet Union-style collapse<sup>102</sup> or a repeat of the political conflicts that they saw as responsible for China’s disastrous Cultural Revolution.<sup>103</sup>

The government began systematically blocking some foreign media and human rights groups’ websites starting in August 1996,<sup>104</sup> setting in place the first building blocks of what would later be labelled the Great Firewall of China.<sup>105</sup>

Social media came fast on the heels of internet



*President Xi Jinping has overseen the centralization of internet control in China.*

access in China, with some of the country's most successful social media companies forming in the late 90s to early 2000s.<sup>106</sup> Since then, although they have allowed social media in China to grow into the most widely available civil space for the exchange of opinions and information in Chinese history,<sup>107</sup> authorities have been careful not to allow unfettered discussions of democracy to flourish online.<sup>108</sup>

In the mid-2000s, the state cracked down on writers and intellectuals participating in a wave of movements calling for democratic reforms.<sup>109</sup> These movements—such as those who signed the “Charter 08” manifesto for democratic reforms and those who tried to launch a “New Citizens’ Movement” for improved political rights—had largely relied on social media networks to gain attention, a fact which did not go unnoticed by Communist Party leaders.<sup>110</sup>

Nonetheless, social media increasingly emerged as a force for citizens to call out and expose corruption and government mismanagement.<sup>111</sup> An important moment for social media in the country came in May 2008, during the Sichuan earthquake that eventually claimed 90,000 lives.<sup>112</sup> News of the earthquake broke quickly on social media,<sup>113</sup> while the official state media’s response was tempered by governmental censorship decrees. Citizens then turned to social

media to criticize the government response to the quake, to organize volunteer response efforts, and to shine a light on allegations of corruption, cronyism, and cover-ups in relation to authorities’ disaster preparedness.<sup>114</sup> Since then, social media has increasingly served as an alternative space for citizens to share news about emergency events, outside of official news reports.<sup>115</sup>

China began expelling foreign social media outlets in the mid-to-late 2000s: Twitter and Facebook were both blocked from the country in 2009,<sup>116</sup> while Google China voluntarily shut down in 2010 rather than comply with censorship mandates.<sup>117</sup> Additionally, economic pressures from Chinese competitors, allegedly given preferential treatment from the government, helped force out foreign internet companies from the marketplace.<sup>118</sup>

At the same time, the wave of protests known as the Arab Spring helped underscore to Chinese governmental observers the potentially destabilizing effects of social media.<sup>119</sup> From the 2009 protests in Iran to the wave of anti-government demonstrations in Egypt and Tunisia that led to the ouster of those countries’ presidents in early 2011, protestors organized and agitated with the help of social media platforms.<sup>120</sup> Journalists dubbed uprisings the



“Facebook Revolution” or the “Twitter Revolution,” a description which helped emphasize the mobilizing influence that even a single social media outlet could wield.<sup>121</sup> The Obama administration welcomed and encouraged these “social media revolutions,”<sup>122</sup> a fact which deepened suspicion among Chinese leaders.

Since then, China has expended an ever-increasing amount of resources—in terms of technological development, law enforcement, regulatory developments, and ideological influencing of ‘public opinion’—in controlling the online speech of its citizens. There has never been a particularly good time for internet freedom in China, or for free expression on social media in China specifically. Yet, as this report will show, the space for free expression online has been under increasing and unrelenting pressure by the government under the tenure of President Xi Jinping.

### State Control over Social Media: Policy

China’s Constitution enshrines freedom of speech and press freedom.<sup>123</sup> Despite these constitutional guarantees, other laws carve out broad categories of speech as falling outside the protections of freedom of speech and opinion, with criminal consequences.<sup>124</sup> In practice, China has a broad pre- and post-publication censorship system for both publications and news within China.<sup>125</sup>

Overall, there is a massive, centralized, and powerful regulatory infrastructure designed to enforce censorship, including censorship of social media.<sup>126</sup> This is related to China’s concept of “cyber sovereignty”: its vision of the State’s sovereign right to shape and control the online space within its borders, including through its own determination of what constitutes harmful or unwelcome speech.<sup>127</sup> Recent bureaucratic reforms under Xi have enabled the government to more forcefully advance this goal, and they demonstrate the seriousness with which the current administration is pursuing this vision.<sup>128</sup>

#### *Centralization of Internet Censorship*

For a long time, China’s bureaucracy for overseeing social media platforms and enforcing internet regulations was large and unwieldy. Various government departments, including the State Council Information Office (SCIO), Ministry of Industry and Information Technology (MIIT), and the State Administration of Press, Publication, Radio, Film, and Television (SAPPRFT), were all able to issue censorship orders to both traditional and new media organizations.<sup>129</sup>

In 2011, China’s State Internet Information Office (SIIO) was established as a subordinate to the State Council Information Office (SCIO), for the purpose of providing central internet censorship

instructions and oversight; in essence, to serve as China’s internet watchdog.<sup>130</sup>

In November 2013, the Communist Party’s Central Committee announced the formation of a new high-level strategic planning group, the Central Leading Group for Internet Security and Informatization. The Central Leading group, which began functioning in February 2014, is led personally by President Xi Jinping.<sup>131</sup> The creation of this group was, in the words of media analyst David Bandurski, “an institutional reflection of [a] dramatic change,” as “Xi Jinping has progressively pulled the internet front and centre.”<sup>132</sup>

In April 2014, the SIIO received a ‘promotion’: re-dubbed the Cyberspace Administration of China (CAC), it was removed from the SCIO’s oversight and began reporting directly to the Central Leading Group for Internet Security and Informatization.<sup>133</sup> The agency’s authorities have since increased with the issuance of additional laws and regulations.<sup>134</sup> The CAC’s former head, Lu Wei, was a former high-ranking officer in the CCP’s Propaganda Department, and was seen as one of China’s most powerful officials before his fall from grace in a 2016 corruption scandal.<sup>135</sup> Even with Lu’s removal, the CAC remains the main body for internet censorship in China.

Acting in its capacity as the overarching supervisory body for all online content, CAC officials are in regular communication with major media organizations and social media companies.<sup>136</sup> Internet companies that fail to abide by regulations are fined and can be shut down.<sup>137</sup>

While the CAC has emerged as the central agency for online censorship, internet service providers are still affected by regulatory decisions from other government bodies, including SAPPRFT and the Ministry of Culture, who may regulate online conduct related to their mandate.<sup>138</sup> In addition, internet companies must also follow directives issued by the Central Propaganda Department, an organ of the Chinese Communist Party (CCP).<sup>139</sup> Given China’s one-party system, the Central Propaganda Department acts with authority equivalent to a high-level governmental ministry.

Despite the residual control that other government agencies have over online censorship, the centralization of internet censorship into one high-level agency—a move made under Xi Jinping—illustrates the desire to concentrate control of the internet into the hands of a few high-level decision-makers.<sup>140</sup>

It has also helped to make censorship of social media more streamlined and efficient. Johan Lagerkvist, a prominent Western academic on Chinese state-society relations, explained to PEN America, “Before the CAC, there were problems in implementation of policies. Different state entities didn’t coordinate,

didn't assist one another, and had turf wars on their respective policies. The CCP felt it was crucial to have technological and political control [of the internet]. So if that wasn't being accomplished due to inter-agency turf wars, that was a problem."

Kaiser Kuo agreed, explaining to PEN America that "[Authorities] realized that internet operating companies were exploiting the jurisdictional overlap of different regulatory bodies. You could play one regulatory agency against another, in a matter of speaking. It's like when your parents are on opposite ends of a house and you ask for permission to stay over at your friend's house." The formation and increased empowerment of the CAC has meant that "your parents are speaking from one voice, in the same room."

### State Control over Social Media: Recent Laws and Regulations

With dozens of laws related to internet controls, an additional body of law imposing controls on publishing, and criminal laws that penalize certain types of speech, China has an extensive framework of legislative scaffolding supporting its ability to censor, punish, or restrict online speech.<sup>141</sup>

In 2000, China's State Council enacted the Measures for the Administration of Internet Information Services,<sup>142</sup> which imposed the obligation on internet service providers to refrain from "producing, assisting in the production of, issuing, or broadcasting" information that contravened a laundry list of vague principles, including:

- i. **opposing the basic principles as they are confirmed in the Constitution;**
- ii. **jeopardizing the security of the nation, divulging state secrets, subverting state power, or jeopardizing the integrity of the nation's unity;**
- iii. **harming the honor or the interests of the nation;**
- iv. **inciting hatred against peoples, racism against peoples, or disrupting the solidarity of peoples ;**
- v. **disrupting national policies on religion, propagating evil cults and feudal superstitions;**
- vi. **spreading rumors, disturbing social order or disrupting social stability;**
- vii. **spreading obscenity, pornography, gambling, violence, murder, terror, or abetting the commission of a crime;**

viii. **insulting or defaming third parties, infringing on the legal rights and interests of third parties; and**

ix. **containing any other content prohibited by law or administrative rules.**<sup>143</sup>

Since then, China has followed a regulatory strategy of holding internet companies legally liable if they fail to ensure adequate compliance with censorship rules on their platforms.<sup>144</sup> In essence, China has 'delegated' most enforcement of social media censorship to the companies that offer social media services, forcing these companies to monitor and filter their own users.<sup>145</sup>

In the past few years, this legal framework has advanced—and expanded—significantly through new legislation, increased regulations, and in one important case even a judicial interpretation. With these newer laws and regulations, China has taken dramatic steps to restrict the independence of internet service providers, reduce the opportunities for netizens to 'jump' the Great Firewall, formalize new means of State control over the internet, and provide the legal basis for increased punishment of both social media users and social media companies for offending speech.

Some of these laws and regulations provide new penalties for social media users, or new requirements for social media platforms. Other regulatory changes codify and formalize already-existing practices, giving China additional rhetorical cover for its censorship regime by portraying it as a matter of rule of law. As Emeritus Princeton Professor Perry Link wrote in his authoritative 2002 essay on Chinese censorship "The Anaconda in the Chandelier," flexible but authoritarian laws provide "a ready, face-saving justification for [the] exercise of arbitrary power."<sup>146</sup> Additionally, they communicate to a domestic audience that rigorous enforcement should be expected.

#### *Criminal Penalties for Online Speech*

One of China's most important—and certainly most repressive—methods of state control over the digital speech of its citizens is its set of criminal laws targeting certain types of speech—both online and offline.

China's Criminal Code includes a series of vaguely-defined crimes such as "'harm[ing] the motherland's sovereignty" or "subvert[ing] the political power of the State."<sup>147</sup> Such provisions carry years-long prison penalties. In practice, these provisions are wielded against dissidents, minority rights advocates, and others that authorities see as troublemakers, often resulting in outrageous criminal penalties for the peaceful exercise of free



## A 2013 judicial interpretation harshly punishes social media users if their “defamatory” posts go viral, and thus dramatically increases the risks for posting on social media.

expression.<sup>148</sup> Defamation—also vaguely and broadly defined within China’s Criminal Code at Article 246—remains a criminal offense within China, and extends to online speech.<sup>149</sup> Additionally, the charge of “picking quarrels and provoking troubles,” arising from Article 293 of China’s Criminal Code, can result in years of imprisonment and is frequently used by authorities as a catch-all charge to be wielded extensively against dissidents or others who exercise their free speech.<sup>150</sup>

In recent years, both legislative changes to and judicial interpretations of the Criminal Code have strengthened the State’s ability to criminalize online speech. A 2015 amendment to the Criminal Law imposes criminal penalties for the “fabrication” of reports of danger, epidemics, or natural disasters.<sup>151</sup> The amendment strengthened the government’s ability to penalize any sharing of information—including on social media—that contradicts their official narrative on major events of social importance.

Additionally, a 2013 judicial interpretation of China’s criminal defamation provision by China’s Supreme People’s Court declared that libelous online messages or posts can be considered a “severe” breach of the law if the offending post is clicked on more than 5,000 times or forwarded more than 500 times. The penalty is up to three years’ imprisonment.<sup>152</sup> This judicial decision harshly punishes social media users if their “defamatory” posts go viral, and thus dramatically increases the risks for posting on social media.

The 2013 judicial interpretation also addressed whether various other criminal provisions could be applied to online speech: perhaps most importantly, the Court confirmed that the charge of “picking quarrels and provoking troubles” could be applied to cyberspace, further transforming the law into a broad cudgel against dissent. PEN America’s Case Studies Appendix includes more than 20 examples of people charged or detained under this provision.

The Supreme People’s Court, along with the

Supreme People’s Procuratorate [China’s Public Prosecutor] and the Ministry of Public Security, also made a joint regulatory announcement in September 2016 confirming that Chinese authorities have the legal right to collect electronic data for criminal investigations, including web pages, blogs, micro-blogs mobile messaging, instant messaging, user registration, and a host of other information.<sup>153</sup> Thus, in China one’s speech may both constitute a crime, and be obtained by the State as evidence of that crime.

### *CAC Regulations Imposing Company and User Liability*

Under Xi, the Cyberspace Administration of China has promulgated an extensive set of new regulations that strengthen its control over online speech. These regulations impose onerous requirements on internet platform providers—including social media companies—to act to control their users’ speech. Additionally, several of them impose requirements on the individual users themselves, something that Chinese media scholar David Bandurski has labelled the “atomization and personalization of censorship” over the internet in China.<sup>154</sup> A review of just the past year demonstrates the rapid pace and extensive reach of the CAC’s regulatory pronouncements.

In May 2017, the CAC released an updated set of **Chinese Internet News Information Service Management Regulations**, which entered into effect on June 1 of that year.<sup>155</sup> Among the provisions, the Regulations mandate that only government-approved online news portals can legally publish original reporting or commentary. As these regulations extend over all forms of online speech—from online media, to blogs, to instant messaging—they function as a de facto prohibition against citizens using social media outlets to report on or provide analysis of political developments, natural disasters, or any other current event the government might deem sensitive.<sup>156</sup>

On August 25, 2017, the CAC released the **Internet Forum Community Service Management Regulations**, which required internet service providers to deny service to users who do not verify the real identities behind their internet names for online forums or message boards.<sup>157</sup> On the same day, they released the **Internet Thread Comments Service Management Regulations**, which called on Internet companies that provide commenting and posting services to create a ‘credit system’ where users are given different ratings: users who failed to comply with relevant regulations would see their ratings fall until eventually being banned from the platform.<sup>158</sup> The Regulations also called for the government to have access to these credit ratings.<sup>159</sup>

On September 7, 2017, the CAC released the **Internet User Public Account Information Services Management Regulations**, calling on all internet users to provide their national identity documents and phone numbers in order to obtain internet service, and calling for all internet companies to set up credit rating systems for their users.<sup>160</sup>

Also on September 7, they released the **Regulations on the Management of Internet Group Information Service**, making group chat initiators responsible and potentially criminally liable for messages in the group chat containing unlawful content, such as politically sensitive material or pornography.<sup>161</sup> These rules also call upon Internet companies to create a ‘rating system’ for chat group users.<sup>162</sup>

These last regulations included provisions that internet companies must monitor chat records and keep copies of chats for at least six months and notify authorities about unlawful conduct in group chats. Such regulations, it must be emphasized, are calls for internet companies to surveil and report upon the private conversations of their users.

Immediately after the Regulations on the Management of Internet Group Information Service was released, China’s national Public Security Bureau [China’s police agency] released a document listing several “taboo topics” for group chats: among them, “politically sensitive content,” “rumors” and anonymous rumors that damage the reputation of the police. The Security Bureau even included examples of such infringing behavior, including the example of a man in Anhui Province who was detained for criticizing the police in a group chat, as well as a group of residents in Hubei who were “educated” after using a group chat to organize a protest.<sup>163</sup>

It is unclear whether more group chat managers are reporting chat material to authorities in light of these new rules. As of publication of this report, no public cases of criminal charges against group chat managers were known.

#### *CAC Regulations and ‘Credit Systems’*

These new CAC regulations promote the idea that social media users should be “scored” by all social media outlets, with an eye towards kicking them off the platform if their score dips too low.

Sina Weibo appears to have been the earliest major adopter of such a system; in 2012 they debuted a credit system where users start out with a score of 80 and lose points if their posts are deemed to be violating Weibo’s terms of use after being flagged by Weibo moderators or other users. Such violations include “untrue information”—a problematic concept given the government’s insistence on declaring political criticism as rumors or lies—with more

***These social media “credit systems” may also presage a far more ambitious—and dystopian—idea that China is exploring: a social credit system that would assign a score to each one of its billion-plus citizens.***

points deducted the more people read the “untrue” post.<sup>164</sup> Although user scores would eventually reset after a period of non-infringement, a user score of zero would result in permanent suspension.<sup>165</sup> A 2013 report on the first year of Sina’s credit system noted that over 200,000 users received credit deductions.<sup>166</sup> This system, it should be noted, stands in addition to other company mechanisms by which a user may be banned or his posts deleted.<sup>167</sup>

The CAC’s call for such “rating systems” across the industry can be seen as an exhortation to companies to begin exploring how to best implement social credit systems. In essence, the government is encouraging corporate competition and innovation, for the purpose of ranking its citizens behavior. As Shazeda Ahmed, an academic who has analyzed China’s social credit systems, described to PEN America, “Tech companies appear to be taking cues from the state on how to design products that nudge citizens to behave the way the state wants them to, a symbiotic relationship that will affect more than just credit services.”

These social media “credit systems” may also presage a far more ambitious—and dystopian—idea that China is exploring: a social credit system that would assign a score to each one of its billion-plus citizens. In 2014, the State Council outlined a plan to create such a system.<sup>168</sup> Each Chinese citizen would be given a score—not unlike a Yelp review or a credit score—that would rank their civic virtue in the eyes of the state. The proposed system—like “Amazon’s consumer tracking with an Orwellian political twist,” as academic Johan Lagerkvist describes it—will reportedly be implemented by 2020.<sup>169</sup>

Any such ‘social credit score’ would presumably glean much of its data from social media. Currently, one of the companies licensed to come up with a system for such a social credit score is China Rapid Finance, a developer of WeChat and a partner of



Tencent.<sup>170</sup> Tencent now offers the opportunity for its users to buy into the social credit scheme, “Tencent Credit”, giving users a score from 300 to 850.<sup>171</sup>

If this ambitious plan is indeed implemented, it will mean that citizens’ comments on social media—or even the comments or conduct of others with whom they are linked on social media—could affect their access to credit, their online commercial interactions, their ability to work with government contractors, and any other of a gamut of possibilities. It would be, in short, a catastrophe for free expression.

#### *CAC Regulations and Real Name Requirements*

Importantly, several of the new CAC regulations include the requirement for website owners and internet content providers to register and verify the real-world identities of its users. This is not a new requirement. Since at least 2009, various governmental initiatives have attempted to create ‘real-name registration’ requirements for online service providers, including social media platforms.<sup>172</sup> This includes a set of regulations that predate the Xi administration: for example, a confidential 2009 directive issued by the State Council Information Office first ordered the mandatory real-name registration of new users commenting on news sites.<sup>173</sup> Under Xi, the regulatory push for real-name registration has continued to gain both momentum and traction.<sup>174</sup>

One reason that authorities have continued to pass iterative regulations for real-name requirements is because, as social media companies have frankly admitted in the past, it can be difficult for such companies to accurately verify the identity of every social media user.<sup>175</sup> In a 2012 financial filing to the U.S. Securities and Exchange Commission, internet giant Sina Weibo admitted that, despite their “significant efforts . . . we have not been able to verify the identities of all the users who post content publicly on Weibo.”<sup>176</sup> (Sina went on to note that their failure to do so “exposes us to potentially severe punishment by the Chinese government.”)<sup>177</sup>

To a great extent, these new regulatory pronouncements are an illustration of the Party’s intent to take real name registration more seriously. Reflecting on real name registration, professor at the Chinese University Hong Kong’s School of Journalism and Communication Lokman Tsui opined to PEN America that “The requirement was in place before, and it was easier to circumvent. But that changed under Xi. It has become more strictly enforced, certainly in the last two years.”

In the past, activists, writers, and others have continually attempted to get around real-name registration requirements: providing different registration for different accounts in order to keep posting content

after their original account is shut down. This has previously amounted to a game of ‘whack-a-mole’ between the censors and the censored: as soon as one account is shut down, the user will try to set up a back-up account. However, the continuous passage of new regulatory orders to strengthen the real-name regulatory requirements has made this increasingly difficult, to the point that interviewees tell PEN America that it is now functionally impossible to re-register after being kicked off a social media service. The government’s goal is to ensure that there is no such thing as online speech that is anonymous before its eyes, and its flurry of new regulations on real name verification sends a message to social media companies that it expects them to increase their efforts to make this a reality.

Within China, the appeal of being able to speak anonymously is obvious. China’s policy towards treating critical speech as a crime, its vaguely written legal provisions and the authorities’ enthusiasm for using them as a cudgel against dissent, and the lack of police accountability<sup>178</sup> or judicial independence<sup>179</sup> combine to create immense danger for those who would speak truth to power online. In this context, anonymous online speech is an essential safeguard to free expression. With these laws and regulations, Chinese regulators have systematically dismantled that safeguard.

#### *The Cybersecurity Law: A Major New Tool for Cyber-Censorship*

China’s Cybersecurity Law came into effect in June 2017.<sup>180</sup> Authorities have positioned the law as an effort to ensure information security and protect the national interest. They have also argued that the law helps protect individuals’ privacy by requiring companies to introduce data protection measures. But the law imposes sweeping obligations upon all internet companies operating within China to even more aggressively enforce censorship rules and raises the stakes for failing to do so.

The law further strengthens and codifies companies’ legal obligations to block the dissemination of “prohibited information.” Article 12 of the law prohibits individuals from using the internet to conduct such vaguely-labeled activities as “endanger[ing] national security, honour and interest,” a requirement that is already present in other domestic laws. Article 47 of the law obligates network operators to stop or prevent the transmission of such illegal speech. The law allows for a series of penalties, from fines to the closure of websites or revocation of business licenses. The fines under the Law are minor for corporations: an Article 47 violation results in a maximum of 500,000 RMB (Approx. \$80,000 USD) for

network operators, a drop in the bucket compared to such companies' yearly profits.<sup>181</sup> However, the Law also allows the levying of fines against corporate officers in a personal capacity, up to 1000,000 RMB (more than \$15,000 USD, a number that can be equivalent to the yearly salary for a middle-class person in China).<sup>182</sup>

On August 11, 2017, the CAC announced that it had begun investigations against Tencent, Sina Weibo and Baidu Tieba for violations of the Law.<sup>183</sup> The following month, a set of fines were imposed against the companies.<sup>184</sup> In addition, at least five local Public Security Bureaus [police] engaged in a series of enforcement actions under the Cybersecurity Law shortly after the Law was put into place, including at least one instance where a company's legal representative was personally fined 5000 RMB (approx. 800 USD).<sup>185</sup>

A notable aspect of the Cybersecurity Law, especially for U.S.-based tech firms considering entering the Chinese market, is its requirement that all technology companies (including foreign firms) store Chinese users' data on servers located in China. The mandatory storage of user data within Chinese jurisdiction is a key component of China's idea of "cyber sovereignty," and it has clear implications for the privacy and free expression rights of Chinese internet users. Foreign companies storing their data within China would be under tremendous pressure, from both a legal and business standpoint, to comply with Chinese authorities' requests for user data. Companies that fail to comply could be fined up to \$150,000 and face criminal charges.

It should be noted that countries around the world have different legal processes to compel internet companies to produce user data under state jurisdiction when it is relevant to a criminal investigation. However, China's extensive criminalization of online free speech means that internet companies would almost inevitably enable human rights violations if they comply with government requests to hand over private user information.

A democracy activist sending private chat messages to encourage protest, a concerned mother engaging fellow parents in a discussion about the state of the education system, a Uyghur imam posting about restrictions of his religious practice . . . all of these actions may be deemed "crimes" for which Chinese authorities could attempt to compel internet companies to hand over private user info as evidence.

#### *Closing the Gaps in the Great Firewall*

Another set of recent regulatory changes are aimed squarely at limiting citizens' access to Virtual Private Networks. Virtual Private Networks, or VPNs,



*Chinese cartoonist Badiucio depicts the VPN crackdown.*

are the only way a Chinese user can evade the Great Firewall, by allowing the user to create an encrypted connection to a non-Chinese computer that he or she then uses as a "proxy." Operating a VPN business without a license has been technically illegal since 2000, under Article 7 of the Telecommunications Regulations.<sup>186</sup> However, enforcement actions against VPN providers have in the past been episodic at best.

In January 2017, however, China's Ministry of Industry and Information Technology (MIIT) announced that it would require all VPN providers to receive government approval, explaining that the rules were designed to end "unauthorized internet connections." Unauthorized VPN providers can be shut down.<sup>187</sup> The government simultaneously announced a 14-month campaign to crack down on unauthorized VPN use.<sup>188</sup>

Over the summer, well-known domestic VPN providers GreenVPN and Haibei VPN announced that they were suspending their services after having received a "notice from regulatory departments to stop operating."<sup>189</sup> In July 2017, Bloomberg News reported that the government had ordered three major Chinese telecommunication companies—China Mobile, China Unicom, and China Telecom—to completely block access to VPNs by February 2018.<sup>190</sup> The MIIT denied the reports in a public statement, but stated



that “The object of the new regulation is those unauthorized enterprises and individuals who haven’t got the licence to use VPNs,” leading to a new round of speculation that even VPN use will be treated as illegal.<sup>191</sup> As of March 2018, it is still possible to use VPNs on these telecommunication platforms. Newer reports suggest that China intends to block overseas VPN providers at the end of March 2018.<sup>192</sup>

Also in July, Apple announced it had removed hundreds of VPNs from App Store in China, a development which this report examines in greater depth in its discussion on foreign social media companies.<sup>193</sup>

In December 2017, Wu Xiangyang, from the Guangxi Zhuang autonomous region, was sentenced to five and a half years in prison for selling VPNs without a license.<sup>194</sup> His is not the only case; Deng Jiewei, from Guangdong Province, was sentenced in September 2017 to nine months imprisonment for selling unauthorized VPNs.<sup>195</sup> (Deng was first taken in custody in 2016, before the new MIIT regulations, but he was only convicted in March 2017).<sup>196</sup>

Additional regulations on VPN usage can vary from province to province. One regional authority—the regional government in southeastern Chongqing Province—criminalized individual usage of VPNs in July 2016, with penalties including fines of up to 15,000 yuan, the equivalent of more than \$2,000.<sup>197</sup> Some have speculated that other provinces may soon follow suit.<sup>198</sup>

The actual use of VPNs has previously existed

in a legal gray area. However, the increasing crackdown on the technology shades this ‘gray area’ of the law into darker and darker tones, threatening to set the stage for wide-scale criminalization of VPN use and corresponding enforcement. It also undoubtedly casts a chill over those who wish to use or to sell VPNs.

It is clear that the MIIT’s regulatory announcement is designed to shore up the Great Firewall and help prevent netizens from accessing an uncensored Internet. But what is particularly startling is how regulators have pursued aggressive implementation.

These regulatory actions are in tandem to technological actions, with the government using technological means to detect and block unapproved VPNs. For example, in January 2018 the Financial Times reported that five international companies and organizations located in China had told the magazine that they had been experiencing technical difficulties using their VPNs in recent months.<sup>199</sup>

“The new VPN regulations make sense in terms of the increasing disruption of VPN services and technical innovation on how to block them,” Lokman Tsui said to PEN America. “It is a software code/legal code combination.”

VPN use has often been winked at, a way to allow users to escape the Great Firewall for personal or professional reasons. As China’s domestic internet grows, and as China’s concept of “cyber sovereignty” advances, that permissive attitude is disappearing.

## Section II

# SOCIAL MEDIA CENSORSHIP IN PRACTICE

### A Typology of Censored Topics

There is a broad and ever-expanding array of topics and issues that are censored on social media in China. Indeed, the list of things that internet service providers must prevent from disseminating is so broad that it can apply to virtually any content authorities deem inappropriate.

One ideological construction that China uses to develop and advance its censorship requirements—which apply to both social media users and social media providers—is the “The Seven Bottom Lines.”<sup>200</sup> The concept, created in August 2013 as a result of a China Internet Conference, details seven governing principles that social media posts must not contravene:<sup>201</sup>

- The rules and laws of the People’s Republic of China
- The socialist system
- The country’s national interests
- The legitimate interests of the citizens
- Public order
- Morality
- Authentic information

The “Seven Bottom Lines” is a list of behavior guidelines: part ideology, part regulatory guidance. Its vague and all-encompassing nature allows Chinese regulators significant room for movement.<sup>202</sup>

As well, Chinese laws and regulations often contain a laundry list of obligations to which it expects users of the Internet to adhere, including pledges to uphold such vaguely-defined concepts as “public order,” “social ethics,” “the honor and interests of the state,” or the “unity of the nation.”<sup>203</sup>

The broad and vague nature of these lists provides authorities with unfettered discretion to crack down on anything they deem inappropriate. Additionally, it helps instill self-censorship among internet users, who are left with very little sense of what types of social media postings are appropriate. The vagueness of this list also provides little clear indication as to the goals and aims of the censors, or as to what speech is most likely to be censored or punished. In other words, it obfuscates the true goals of the State.

As academic Perry Link notes in a 2002 article, such vagueness has long been a core value of Chinese censorship:

“Clarity serves the purpose of the censoring state only when it wants to curb a very specific kind of behavior; when it wants to intimidate a large group, vagueness works much better . . . The cognitive content of key terms is purposefully vague; only the negativity is unambiguous. To be safe, a person must pull back in every respect, and moreover must become his or her own policeman.”<sup>204</sup>

Failure to correctly predict where the poorly-illuminated ‘red lines’ are located can have life-changing negative effects. PEN America researchers have collected 80 cases between 2012-18 where Chinese citizens were subject to police action, criminal prosecution, or other forms of targeting based at least in part on their social media postings. While this list is not exhaustive, it helps demonstrate how a core aspect of the government’s tight-fisted control over China’s social media space is not limited to prevention of speech, but to punishment of those who speak out. This system of control has heavy consequences for individuals, who can be thrown in jail for months or years for their speech on social media platforms

PEN America’s research for this report has



A screenshot of the social media platform Sina Weibo: searching for the term “Liu Xiaobo,” the Nobel Peace Prize winner and dissident, returns zero results, along with the message “According to the relevant laws and regulations and policies, ‘Liu Xiaobo’ search results are not displayed.” (Accessed February 27, 2018)

illuminated a separate typology, identifying the types of posts that, in practice, are not only most likely to be blocked or deleted, but that are more likely to result in punishment for the author.

### 1. Posts calling for or encouraging collective action.

The primary goal of internet censorship appears to be that of shutting down the possibility of collective action: organizing or demonstration that may spark a people’s movement. The CCP’s fear of collective action extends even to protests ostensibly in favor of the government: authorities fear the destabilizing power of any social movement not under their control.

This focus on shutting down speech with an



'organizational' component has been a priority for the CCP since before their censorship regime was ever formally instituted: as *The Economist's* Gady Epstein notes, "The earliest significant act of domestic internet censorship, in September 1996, was to shut down an online discussion forum . . . [when] nationalist students began agitating for demonstrations against Japan."<sup>205</sup>

A 2013 study by US-based academics Gary King, Jennifer Pan, and Margaret E. Roberts helped provide the data confirming the assertion that China was most worried about collective action. Reviewing a data set of over ten million social media posts culled from over a thousand websites to see which posts were deleted in their entirety, they concluded that China's censorship program "is aimed at curtailing collective action by silencing comments that represent, reinforce, or spur social mobilization, regardless of content."<sup>206</sup> Meanwhile, many social media posts with "negative, even vitriolic, criticism of the state," which did not relate to collective action, were not deleted by censors, the authors observed.<sup>207</sup>

The *Economist*, reviewing the issue of Chinese internet censorship in 2013, described the government's willingness to allow some criticism while focusing on more significant threats to their leadership: "The online mob," it argued, "can make fun of censorship, ridicule party propaganda and mock the creator of the Great Firewall . . . it can rattle the bars of its cage all it likes. As long as the dissent remains online and unorganized, the minders do not seem to care. At the same time, though . . . Activists who directly challenge the central party organization or attempt to organize in numbers are crushed long before they can pose a threat."<sup>208</sup>

Censorship of calls to collective action does not track neatly with China's "Seven Bottom Lines" construction. Of course, concepts such as "public order" and "the legitimate interests of the citizens" are deliberately vague and allow for broad interpretation. It is also not surprising that Chinese authorities would refrain from spelling out their aversion to language around collective action in publicly available guidelines.

Importantly, the government's desire to prevent collective action helps explain instances where it has censored social media conversations of societal issues that do not necessarily lend themselves to criticism of the State or the Party.

King and his colleagues have proposed that the government's chief fear is "collective action potential": "people who join together to express themselves collectively, stimulated by someone other than the government, and seem to have the potential to generate collective action."<sup>209</sup> Notably, this includes

online discussions that do not call for collective action, but merely offer the potential for collective agreement that could at some point evolve into collective action.

Indeed, PEN America has found that important online conversations that are galvanized by recent events—be they a high-profile documentary or a wave of hashtag activism—are targeted by censors, in an apparent attempt to restrict online conversation on the topic. Just as censors fear 'organizational' posts, so do they also seem to fear that online social trends can develop into real-world mobilization. This is the censorship of "collective opinion," as a corollary to the government's censorship of "collective action."

A prominent recent example may be China's participation in the #MeToo movement. In China as elsewhere, women have been sharing their experiences of sexual harassment and assault on social media, often with the hashtag #MeToo or #MeTooInChina.<sup>210</sup> In response, government censors have blocked hashtags as well as the use of phrases such as "anti-sexual harassment" on social media.<sup>211</sup> Additionally, some of the signatories of online #MeToo petitions have been called in for questioning.<sup>212</sup>

Analysts have struggled to explain the censors' response to #MeToo purely in terms of protecting the legitimacy of the CCP, especially given the Party's stated commitment to gender equality.<sup>213</sup> However, the government's fear of social media enabling social movements to spread beyond their control helps explain why they would move quickly to corral the #MeToo movement.

## 2. An Increasing Crackdown on Insults Against the State or Party

While a certain amount of criticism or even insults may be permitted, there are many documented cases where the government responds forcefully to online commentary that it views not simply as critical speech, but rather as an attack on the state. Some of the government's most rights-abusive laws are aimed at criminalizing free speech that—in the eyes of the government—encourages subversion, separatism, or rejection of the State's authority. In addition, the CCP, the country's sole governing party for almost three quarters of a century, is willing to conflate attacks on the Party with attacks on the State.

Membership in the CCP has its privileges: the Chinese government uses censorship to protect the online reputation of its high-ranking members.

In his 2013 book, "Blocked on Weibo," Canadian social media specialist Jason Q. Ng wrote that the largest share of blocked words on Sina Weibo were names of people, the majority of whom were Chinese Communist Party members: "Protection from

criticism on Weibo seems to be a perk for rising up the ranks--while dissidents and people caught up in scandals or crimes make up the rest of the names.”<sup>214</sup>

One anonymous employee for a major Chinese social media company told PEN America that, in the employee’s experience, “Chinese politicians who are in favor at a particular point in time seem like they get the privilege of having their names blocked on social media, to prevent the potential embarrassment of public criticisms.”

This protection from criticism begins at the top, with people like Xi Jinping and other high-ranking officials whose leadership is seen in some ways as synonymous with the State. Qiao Mu, a former journalism professor in Beijing who left the country in late 2017, told PEN America that “All articles related to Xi Jinping are very dangerous,” noting that an article of his own—in which he criticized the ‘personality cult’ that has allegedly been forming around Xi—was deleted immediately after he posted it online.

While it is difficult to say conclusively, several analysts with whom PEN America spoke have argued that, under Xi, criticism of the State is increasingly punished even if its apparent relationship to collective action is less explicit. “Gary King’s [2013] study captured a snapshot of how certain things were at a certain time,” Samuel Wade, deputy editor for China Digital Times, a California-based bilingual website that tracks censorship trends in China, told PEN America. “A lot has changed during Xi Jinping’s tenure. Things have just escalated.”

“Things have changed a lot since 2013,” Kuo agreed. “It was true then that it was the ‘organizational’ language that was bound to get you in hot water. Nowadays, if you’re someone with enough of a following, you’ll find plain criticism with no organizational context being censored—or worse.”

Indeed, some of China’s most well-known activists have been jailed for their speech critical of CCP officials or of State policy. Perhaps best-known is civil rights lawyer Pu Zhiqiang. In 2014, Pu received a three-year suspended sentence for “inciting ethnic hatred” and “picking quarrels” based on seven Sina Weibo posts he wrote in which he mocked Communist Party officials and criticized government policy in Tibet and Xinjiang.<sup>215</sup> Pu remains under heavy police surveillance, according to recent media reports.<sup>216</sup> “Social media users have gotten arrested after posting anti-Communist Party comments, and Pu Zhiqiang was basically persecuted on his Weibo posts alone,” said Wade.

Internet commentator and freelance writer Chen Qitang was convicted of “inciting subversion of state power”<sup>217</sup> and sentenced to four years and six months in March 2017 for uploading photos he had taken of

the pro-democracy Occupy Central protest in Hong Kong, and voicing support for imprisoned women’s rights activist Su Changlan. He has also posted several political essays online, three of which he had written himself.<sup>218</sup> Prosecutors described his writing as a “harsh attack” on the CCP.<sup>219</sup>

The persecution of well-known activists for their social media criticisms is of course not inconsistent with China’s goal of preventing collective action. “There is a fuzzy line between the impact of criticism and the ability to organize,” noted Margaret Roberts, one of the academics whose studies have documented the government’s fear of collective action as a motivator for its censorship system, to PEN America. “Well-known people who criticize the state online, they also have a great deal of implicit organizational power. If that person says something, it’ll get censored. If someone with three followers says the same thing, it’ll go unnoticed.”

There are, however, also examples of lesser-known figures or even everyday citizens being targeted for their criticism of authorities. In some cases, individuals have faced multi-year sentences after their first brushes with the law, such as Wang Jiangfeng, who was sentenced to two years in prison in April 2017 for using satirical names for President Xi in private online chats with friends.<sup>220</sup> Blogger Liu Yanli spent eight months in prison for “defamation” after he copied posts that were critical of current and past Chinese leaders, including Chairman Mao Zedong, Premier Zhou Enlai, and President Xi Jinping, and posted them in a closed group of online friends on WeChat.<sup>221</sup>

Gary King, in his communication with PEN America, cautioned against concluding that examples of harsh punishments for critics of the regime indicate a change in the priorities or strategies that motivate China’s system of censorship and control over internet speech: “empirical evidence of the intentions or impact of the entire government . . . requires evidence at scale,” something that is “highly resource and time intensive,” he noted. “Seeing [the government] crack down in some other area we can observe is not evidence that they have changed their censorship rules.”

Even with this proviso regarding the motivations of the government, it is undeniable that such acts of persecution against social media critics, against the backdrop of Xi’s political purges and the creation of new laws and bodies that enable censorship, sends out a strong message that criticism of the CCP is unwise and unlikely to be tolerated.

Under Xi, it seems that not only is there less space than ever for criticism, but higher stakes for those who engage in such critiques. Zhang Yu, a



**“Criticism of local leaders is still permissible online. There needs to be a mechanism for letting off steam. The goal of [online censorship] is not total control. The real goal is sufficient control.”**

Chinese-Swedish writer and long-time coordinator of the Independent Chinese PEN Center, said that since Xi took power, there has been a significant uptick in persecution of Chinese writers based on their social media posts. “It’s become much worse. We have noted more instances where bloggers got charged with serious offences against the state, including inciting subversion and subversion of state power, whereas this used to be rare.” Zhang told PEN America.

Her comments to PEN America echo the public comments of Qiao Mu, a dissident academic who moved to the United States in an act of voluntary self-exile late last year. In 2015, while still in China, Qiao gave an interview in which he traced the progression of state control over dissident online voices: “Before Xi Jinping we feared only that they would delete our [online] posts. In the worst situation they would delete [your account]. But since Xi Jinping came to power this changed. They began to arrest people.”<sup>222</sup>

Part of this apparent increase in punishments for those criticizing the state on social media may be the result not of affirmative policy, but of the fact that state security officers across the country have felt increasingly empowered to crack down. Johan Lagerkvist, a Swedish academic and expert on Chinese state-society relations, hypothesized to PEN America that aspects of the expanding repression of free speech under Xi may be in some ways “less about political logic than bureaucratic logic. Haven been given vast resources to contain inklings of state subversion, the state security apparatus has the capability - but not necessarily the full mandate - to go further,” and punish increasingly large categories of speech.

This bureaucratic overreach may help explain some of the most outrageous examples of government critics being punished. One such example is that

of netizen “Zhang”, who in August 2017 was told by police he would be detained after complaining online about the food at his local hospital. The county police chief responsible was later suspended, with his superiors saying the punishment was not consistent with the law.<sup>223</sup>

The fact that “Zhang” was eventually exonerated<sup>224</sup> helps illustrate another important aspect of China’s censorship system. Experts—including those with whom PEN America spoke—have widely agreed that there remains significantly more space to criticize local-level leaders on social media, than there is for higher-ranking ones.

The reasons are three-fold: firstly, high-level authorities do not view local-level criticism as equivalent to an attack on the Party itself. Secondly, public outrage at local leaders’ mistakes serves an oversight and accountability mechanism for the government to catch misbehaving bureaucrats. The central government can then swoop in and punish the offender, promoting the perception of a benevolent and enlightened leadership. Such actions draw from a long historical narrative of the Chinese state: a benevolent emperor correcting his corrupt officials. But more recently, they tie into the broad “anti-corruption” campaign that President Xi launched in 2012 that has purged the government and the Party of various officials.<sup>225</sup>

Finally, a more permissive attitude towards criticism of local leaders allows for a certain amount of free space on the internet, allowing for criticism and dissent...as long as it stays at a manageable and local level. Lagerkvist described it to PEN America this way: “Criticism of local leaders is still permissible online. There needs to be a mechanism for letting off steam. The goal of [online censorship] is not total control. The real goal is sufficient control.”

### 3. “Rumors”, “Slander,” and “False Information”

Under Xi, a category of speech likely to be punished or shut down has come increasingly to the fore: “false rumors.” Accusations of peddling false information are easily used as a catch-all charge against any information the government deems false. In particular, such charges are often wielded against people who contravene official government narratives on important social and political issues, such as disaster response or the health of the stock market.

In 2013, China launched a campaign against “false rumors” that was aimed squarely at social media. Hundreds of bloggers and journalists, as well as many prominent social media users with large followings, were arrested.<sup>226</sup> Among the arrested was Qin Zhihui, who was found guilty of “slander” and “provoking troubles” and sentenced to three years in prison in

April 2014.<sup>227</sup> Qin's case is notable because he was the first person to be sentenced under the Chinese Supreme People's Court's new 2013 guidelines, which dramatically strengthened the penalties for "false information" if the offending post was shared more than 500 times or viewed more than 5,000 times.<sup>228</sup> The official Xinhua news agency claimed that Qin had written and posted several false reports, including one that said the Beijing government paid relatives of a foreigner \$32.3 million compensation for a fatal train crash in eastern China.<sup>229</sup>

Governmental campaigns against social media rumors did not begin with Xi: notably, the CCP engaged in a strong anti-rumors push in 2011, after social media coverage and discussion of the Wenzhou train crash outpaced and outstripped official narratives.<sup>230</sup> But these governmental efforts have gained both additional momentum and additional legal and regulatory support in the past few years.<sup>231</sup>

China's efforts to criminalize the sharing of information about developing news and public interest stories renders illegal the natural human desire to receive and share information in the aftermath of major events such as natural disasters. Additionally, because Chinese netizens know they cannot trust the sanitized version of events presented to them by state media, they are all the more inclined to seek out information from nontraditional sources. As academic Johan Lagerkvist describes it, "what many internet users would say is truth seeking [and what] academics would call crowdsourcing behavior," is instead labeled "spreading rumors" by government media and party leaders, with corresponding consequences.<sup>232</sup>

Furthermore, a review of the Chinese government's actions in cracking down on these 'false rumors' makes clear that their purpose is to guard the Party's claim to power, not to guard the sanctity of the truth. The Appendix to this report, which offers a list of illustrative cases of those arrested for their expression on social media, includes over a dozen cases in which internet users have been detained or faced charges related to the spreading of 'false rumors,'" including cases where it is clear that the only "crime" is in promoting a narrative that is at odds with the views of the Party.

Some of China's "false rumors" cases involve an apparent effort to curtail the spread of fraudulent or misleading financial information.<sup>233</sup> In early February 2018, Chinese state media announced that it had shut down over 5,000 accounts suspected of "illegal speculation," and arrested over 200 people accused of being part of "Network Navy" organizations.<sup>234</sup> The Network Navy (網絡水軍 or "network water army") is a term designating groups of paid internet posters who can be hired to artificially inflate a company's

reputation or tear down the reputation of a competitor. The "Navy's" tactics include trolling, algorithm manipulation, and fake news.<sup>235</sup>

However, many of these purportedly "false rumors" are, instead, simply information or conjecture that reflected poorly on the government. PEN America's Appendix includes cases like that of an anonymous Chengdu man who was detained in January 2017 for "spreading rumors" and "disturbing public order," after posting information about air pollution that government meteorologists were barred from sharing.<sup>236</sup> Another example is that of reporter Liu Hu, who was charged with "spreading rumors" after accusing a high-ranking State official of negligence.<sup>237</sup>

Other governments have also expressed alarm about the harm that can be done by the rampant spread of false rumors and fraudulent news online, and there is a global debate underway about the best approaches to mitigate this harm. China's use of criminal charges to pursue "false rumors"—which in practice often means pursuing political activists—is an excellent illustration of how laws that are purportedly intended to fight fake news online can be abused by authoritarian regimes to silence opponents, and applied so broadly and arbitrarily that they induce widespread self-censorship by internet users.

The cases of Huang Meijuan, who was detained for 10 days in September 2016 for "spreading rumors" via her WeChat account after posting a Voice of America report on riot police activity in the village of Wukan,<sup>238</sup> and a Wuhan resident, surnamed Rong, who was likewise detained in October 2016 for "rumors" after posting on Weibo a video of a worker demonstration outside a steel plant, are just two examples of the way in which these so-called attacks on fraudulent information are in fact used to stifle government criticism.<sup>239</sup>

PEN America addressed a range of issues related to the spread of false information online within the U.S. context in its October 2017 report *Faking News: Fraudulent News and the Fight for Truth*. Importantly, the report concluded that even a sober acknowledgement of the detrimental societal effect of fake news should not justify "broad new government or corporate restrictions on speech."<sup>240</sup>

As with other aspects of China's censorship regime, Chinese social media companies play a direct role in enforcement, one that is likely to expand. In September 2017, Internet services giant Baidu announced it was developing a system that would allow over 300 police agencies to monitor and respond to "online rumors," including those appearing on blogposts, microblogs, and online forums.<sup>241</sup> Given how such "rumors" can constitute a criminal offence, this system will essentially serve up Baidu's users for potential



arrest and prosecution, simply for sharing mistaken information or citing a fact the government refuses to accept.

One anonymous Chinese social media company employee with whom PEN America spoke argued that removing fraudulent news from the company's platform should be distinguished from ideologically-motivated censorship. "It's important to remember that the things we filter from our platform aren't only political stories," the employee told us. "In fact, that's just a minority. We mostly take the initiative to remove things that would negatively affect the user experience, such as pornography, graphically violent material and fake news. We would do so even if there weren't regulations obliging us to do so." At a time in which social media platforms around the world are evaluating their obligations to keep their platforms free from toxic content, many are experimenting with filtering out fraudulent news.

However, examples from the Chinese experience demonstrate how difficult it is to draw a clear line between removing demonstrably false information and aiding a regime's efforts to control the flow of information. As PEN America's report on fraudulent news recommends, action taken by internet companies should focus on "the purveyors of demonstrably false information that is being presented as fact in an effort to deceive the public" and should include an appeal mechanism for those who believe content has been removed in error.<sup>242</sup>

China's "war against rumors" is part and parcel of its vision of shutting down any counterweight to its own hegemonic control of the online narrative. As cyber rights researcher Jason Q Ng explained in a 2016 article, "The crackdown is also a strategic attempt to reclaim the commanding heights of mass communication by denigrating unofficial news and commentary outlets, among them the growing number of Chinese bloggers who have millions of followers—making them as influential as some of China's state newspapers or TV networks. And it is a strike against the potential use of rumors as a tool for political organizing . . . On the Chinese Internet, rumors serve as a collective response to injustice and a weapon of the weak."<sup>243</sup>

### **The Corporate Responsibility to Censor its Users**

The actual responsibility for ensuring the legality of hosted, published, or disseminated information falls on website owners in China.<sup>244</sup> This means that social media companies are responsible for ensuring that their users are not posting online content that violates any part of the vast web of Chinese laws and directives, and are thus charged with censoring their users' posts. Their responsibility covers what

their customers post as well as content that staff members produce and disseminate.<sup>245</sup>

As a result, social media companies are in many ways the primary censors of their users' content. The companies are the foot soldiers of the Party's social media censorship apparatus, even if that means working against their own clients.

The Cyberspace Administration of China, the country's internet watchdog, has been vocal in reminding internet companies of their obligations, issuing a series of highly public condemnatory statements in 2017.<sup>246</sup>

In July 2017, the CAC issued a statement saying leading technology firms must rectify their many offences, including misinterpreting policy directives, disseminating false information, distorting Chinese Communist Party history, plagiarizing photos and challenging public order.<sup>247</sup>

A few months later, in October 2017, the CAC made additional statements calling on firms to punish employees that post illegal content, and increase relevant training for all employees, including "at least 10 hours [of training] on the Marxist view of journalism."<sup>248</sup> The statements also said that social media service providers must improve their "security assessment systems" so that information that is forbidden by the law won't be spread via new technologies.<sup>249</sup> The statement did not say what companies would have to do to comply with the standards.<sup>250</sup>

"While we benefit from new applications or technologies... they are also improperly used by some people to post illegal information or even to commit crimes...Some content posted by the staff of news websites without sufficient training is still improper or illegal," the CAC said.<sup>251</sup>

PEN America spoke with three current employees of major Chinese internet companies with significant social networking platforms (each of the employees asked to remain anonymous for fear of losing their jobs). All three employees shared their belief that at least part of the rationale for these governmental pronouncements is not necessarily to push social media companies to censor more strictly, but rather to remind the public that authorities are watching.

"Personally," one employee shared, "I think that the statements the authorities say in public are more for propaganda purposes targeting internet users who use social media. They want to seem like they're being really tough on companies, so people may be more likely to self-censor if there's no point in trying to test the boundaries. Companies understand that we must comply with Chinese regulations in order to stay in business and be accountable to our investors, so I think the statements are more for public education."

Another employee commented on the fines levied against social media companies, saying “The fines were pretty low. It does seem to be not so serious now, like their words are tougher than their actions.”

However, the CAC has also demonstrated it is willing to take action. In recent months, Sina Weibo and leading news aggregation app Jinri Toutiao received direct criticism from the CAC for failing to adequately monitor its platforms for obscene and false content.<sup>252</sup>

In response, the government shut down Jinri Toutiao’s news reading app for 24 hours on December 29, 2017.<sup>253</sup> The company quickly announced that it would hire 2,000 more “content reviewers” to boost its monitoring ability.<sup>254</sup> Sina Weibo—with its 360 million monthly active users<sup>255</sup>—voluntarily suspended its major search portals, including its “hot search” site and celebrity news platform, for a week and promised tighter supervision.<sup>256</sup> These shutdowns, even when presented as voluntary, can damage stock prices and destroy revenue, leading to far greater costs than any fine.<sup>257</sup>

This gives a sense of the amount of pressure on Chinese social media companies and the scale of resources they must expend to manage all online ramblings of hundreds of millions of internet users.

*Censorship Directives: The How-To’s of Censorship*  
One of the main ways that regulators provide specific marching orders on censorship to social media companies is with censorship directives, specific memorandums laying out instructions to internet companies and media organization on subjects such as how to handle coverage of certain events or which new words to ban.<sup>258</sup>

These censorship directives are not public, so that the only way the outside world can see them is through directives that are leaked to media outlets or to outside groups. Even then, observers have noted that leaks have become less and less common, reflecting an increased atmosphere of risks for whistleblowers.<sup>259</sup> Whistleblowers who have been punished for revealing internal memos include journalist Gao Yu, who was sentenced to seven years imprisonment in 2015 for revealing “state secrets” after allegedly sharing a party memo that named human rights and free speech as “subversive influences” on Chinese society.<sup>260</sup>

The website China Digital Times, which tracks censorship trends in China, posts leaked censorship directives that help reveal how ideological, ubiquitous, and specific these directives can be.<sup>261</sup> For example, in December 2017, China Digital Times revealed that online outlets had received a directive from authorities telling them not to report on Christmas-related

***While purveyors of social media—through memes, popular posts, and other viral content—may try to quickly race in front of censors, the authorities are in many cases only one censorship directive away from catching up.***

news.<sup>262</sup> The directive came after information spread on Chinese social media about Chinese Communist Party members in Hunan province being asked to sign a code of conduct pledging not to participate in Christmas-related celebrations, because Party members should not “blindly follow the opium of Western spirits.”<sup>263</sup>

It is these censorship directives that comprise much of the everyday reality of the censorship system in China. The Cyberspace Administration of China issues censorship directives at a granular level: what language to use to describe the arrest of a group of “trouble-making lawyers”; which sources to use in reporting on natural or man-made disasters; how to avoid “hype or comment” in the aftermath of a military parade or a government meeting.<sup>264</sup> They are a continuous set of orders that social media organizations must obey.

From 2002-2015, China Digital Times has published over 2,600 censorship directives from the government and the Communist Party.<sup>265</sup> The actual number of directives, they have concluded, is likely far higher. “We know we only get a tiny fraction of the directives,” Samuel Wade, Deputy Editor of the site, told PEN America. “In September 2015, we got one that was an image and it was labeled directive number 320. Most of the times, the directives are passed on verbally to editors, in part so there’s less of a paper trail.” Wade went on to note that the number “320” only referred to the number of directives from that one censorship agency—the Central Propaganda Department.<sup>266</sup>

Such censorship directives, apparently numbering in the thousands, are the how-tos of China’s comprehensive censorship system, a system that is constantly fine-tuning itself and that responds quickly to new developments. While purveyors of social media—through memes, popular posts, and other viral content—may try to quickly race in front of censors,



the authorities are in many cases only one censorship directive away from catching up.

#### *The Corporate-Government Relationship*

Social media companies and government regulators are in a constant state of communication, though the specifics vary by corporation.<sup>267</sup>

As noted above, internet companies with social media platforms are the recipients of censorship directives from the CAC as well as other central and local state and Party departments. These directives are treated as orders from the government, and their instructions are both passed down to working-level employees monitoring users' posts, and incorporated into the filtering technology that companies use to block problematic content from ever being seen by their users.<sup>268</sup>

These censorship directives are easily supplemented by constant liaising between company officers and the officers of regulatory agencies. One anonymous employee noted to PEN America that "each company designates certain departments to liaise with authorities. We have very regular communication."

The specific internal organizational processes for liaising with authorities are, not surprisingly, opaque. PEN America wrote to four major Chinese Internet organizations—Sina Corp., Baidu, ByteDance (owner of news app Jinri Toutiao), and Tencent Holdings—to ask for specifics regarding their interaction with regulators, but did not receive a response.

Beyond this, Internet companies—like many other major Chinese companies—have chapters of the Chinese Communist Party organized amongst its officers.<sup>269</sup> The party constitution for the CCP actually mandates that any company with more than three Party members set up a corporate chapter within the organization, acting as a "battle fortress" for the Party and ensuring Party goals are incorporated within company plans.<sup>270</sup> This Party-mandated addition to corporate structure allows for yet another channel for the CCP to ensure the success of its censorship mandates within social media companies. Major Internet companies with social media portals—including Baidu, Sina Weibo, and Tencent—are known to have such party chapters.<sup>271</sup>

These open channels of communication are in addition to the occasional highly public warnings that regulators such as the CAC will occasionally issue when they determine that a social media company has deviated too far from the government's chosen course.

The resources that each social media company allocates towards censorship also vary, depending on the services the platform provides. As one anonymous employee shared with PEN America,

"Some companies are purely for entertainment and they don't have to worry as much about monitoring sensitive political content. Some, like us, give users platforms to discuss more serious topics so we have to devote more resources to monitor and use more advanced technology to filter content to comply with the laws. We don't have a choice since we're a Chinese company."

The constant pressure not to run afoul of the government's directives can lead to over-censorship, as company employees err on the side of caution.<sup>272</sup> "Basically, the government is not clear about what it wants us to censor, so some companies overdo it and block things that are not politically sensitive at all in order to placate authorities," an anonymous employee shared with PEN America. "We have to devote many resources to try to keep up with all the new regulations. It's a never-ending effort."

#### *Willing or Unwilling Partners?*

Chinese social media companies are placed in the inherently contradictory position of offering a platform for online speech, while simultaneously restricting their own users' voices. The continuous—and continuously unanswered—question is whether social media companies are willing or reluctant to act as censors.

Certainly, Chinese technology companies have benefited from the 'protectionist' policies of the Chinese government, and China's internet companies in particular have Chinese policy to thank for their lack of foreign competitors.<sup>273</sup> Social media heads, like Tencent founder Pony Ma or Baidu CEO Li Yanhong, hold respected positions in high-level government bodies such as the Chinese People's Political Consultative Conference and the National People's Congress.<sup>274</sup> Additionally, the Chinese government works to present an image of reality in which Chinese internet companies are enthusiastic about censorship as part of their responsibility to ensure a healthy and sanitized civic discussion online.

All of this is part of the ideological posturing that Xi wishes to present to the world: that Chinese attitudes towards the internet follow a concept of "Asian values" that reject an overly-individualistic preoccupation with human rights in favor of social harmony.

It is also an ongoing effort to woo and persuade leaders of internet companies to continue to buy into the Party's vision for their platforms. "I think forceful state propaganda has been very effective in winning over people, even young tech people," opined academic Johan Lagerkvist to PEN America. "They have bought into the narrative of China being bullied by the West, of rejecting outside ideologies. There is a new mentality within China's tech world, they have been habituated."

This “new mentality” illustrates the power of China’s construct of “cyber sovereignty.”<sup>275</sup> It is not just rhetorical cover for a system of censorship; it is also an appeal to the hearts and minds of Chinese citizens, netizens, and employees in its Internet companies. The censors’ emphasis on “responsibilities”, “social harmony,” and sanitized online conversation may still induce eye rolls amongst many netizens. But at a time when the global conversation over “fake news” and online rumors reaches its height, China’s model of centralized state control over social media may take on a certain appeal . . . as long as one doesn’t look too closely at the stories that censors squash, or the dissidents in jail for their online speech.

This appeal is particularly successful as Xi continues his “crusade against corruption,” his high-level anti-corruption initiative that has bled over into a broader purge.<sup>276</sup> “This ‘moral crusade’ has allowed many people to adjust to a new wave of repression,” Lagerkvist argued. “It is what has made the censorship regime and the propaganda regime so successful: people have become persuaded.”

Chinese authorities have continually demanded that internet companies not only obey their precepts but buy into their vision of the internet. In their conversations with PEN America, however, some internet company employees revealed their frustration and confusion about authorities’ expectations, and the pressures to comply with a censorship regime that puts huge burdens on them while running counter to their instincts as service providers.

“It’s true that most people in China know and expect the internet is censored, but that doesn’t mean that they don’t get annoyed when they cannot access information they are looking for,” noted one employee. “We worry that every time they see an error message because a search term violates regulations, we lose a customer.”

A second anonymous employee offers similar comments: “We are a consumer-oriented company so we try to censor the minimum amount of things we need to censor in order to comply with local laws. This is still a lot. But as a Chinese company, we don’t have the luxury of being able to choose to leave China and its laws behind to focus on other countries, like Google did.”

Kaiser Kuo, the former director of international communications for Chinese internet titan Baidu, pushed back forcefully against the idea that Chinese social media companies are eager participants in internet censorship in his comments to PEN America:

“Baidu was doing its damndest to broaden people’s information horizons; it bristled at censorship demands. None of these companies like internet

## ***Experts argue that the Party is constantly evaluating both public response and the response of the international community to censorship.***

censorship. They’re all consumer-based companies. None of them labor under the illusion that people prefer censored search results. Of course they don’t. They’d do better as a business without censorship. Their natural instinct would be to oppose it, but they’d get shut down. They have stakeholders to be accountable to.”

In its filings before Western regulators, prominent social media companies formally acknowledge the business liabilities of compliance with China’s social media regime. For example, in a 2017 filing before the SEC, Sina Corp. stated that “The numerous and often vague restrictions on acceptable content in China subject us to potential civil and criminal liabilities, temporary blockage of our websites or complete shutdown of our websites.”<sup>277</sup> It noted, further, that the Supreme People’s Court’s new ruling on online defamatory information “may have a significant and adverse effect on the traffic of our websites, particularly those with user generated contents, and in turn may impact the results of our operations and ultimately the valuation of our stock.”<sup>278</sup>

On some level, these are garden-variety legal disclosures of potential risks, and they notably fail to mention the benefits Chinese internet providers have reaped from their government’s protectionist stance towards the internet. But, paired with these employees’ comments, these filings help cut against the authorities’ narrative that Chinese social media companies are uniformly willing cheerleaders for a system that obliges them to monitor and control their users’ speech.

While there is no meaningful space for companies to register public dissent, that does not mean there is not space for private pushback, where corporate officers can couch objections to censorship in terms of how it may affect company profits.<sup>279</sup> Additionally, experts argue that the Party is constantly evaluating both public response and the response of the international community. “They are constantly taking the temperature” of the response to new censorship initiatives, argued Kaiser Kuo to PEN America. “They are seeing how these new policy initiatives will play.



The government knows there are limits, and they are obsessed with public opinion.”

Still, Chinese regulators do not require enthusiasm for their censorship requirements, merely compliance. While employees and executives may not always share the zeal of government officials, they follow the restrictions because there is no other choice. This feeling of powerlessness in the face of government mandates has only increased under Xi, whose “War on Corruption” and crackdowns on civil society has widely broadcast the message that the Party will brook no disagreement.<sup>280</sup> To repeat the words of one anonymous employee, these companies do not have the “luxury” of leaving China’s laws behind.

### The Mechanics of Censorship

Maintaining China’s “Great Firewall” requires both advanced technology and human labor, but its inner workings are closely guarded. There is a significant expenditure of man and machine power, from both the government itself and corporations, involved in maintaining the government’s control over China’s internet space in general and its social media conversations in particular.

#### *Direct Governmental Methods of Online Control*

The first step of Chinese internet censorship is what many people think of when they describe the Great Firewall: the blockage of entire websites from being accessed within mainland China. The Firewall blocks thousands of URLs (website addresses), such as those for foreign media and human rights organizations, making them inaccessible in China no matter which network providers people choose to use, unless they are using a VPN. When someone in China tries to visit a blocked website, an error message appears. There is no transparency; the error messages do not say whether the website is inaccessible for technical reasons or whether it was blacklisted by authorities.

This level of censorship starts at internet routers and applies to entire internet networks. It also prevents certain smartphone applications (such as Youtube and Google Maps) from working on Chinese networks.<sup>281</sup> The firewall is primarily focused on blocking external content (content originating outside of the mainland) and the number of banned websites is always growing. Greatfire, a non-profit that monitors censorship in China, offers online tools where Chinese users with a VPN can input URLs to check which websites in China are blocked at any given time.

The CCP also engages in an extensive system of online surveillance of its citizens’ social media

postings. In 2013, the state-run *Beijing News* claimed that the government was employing some two million people as “public opinion analysts” to help monitor social media platforms and compile the information for decision-makers.<sup>282</sup> It is impossible to confirm if such a number is true, and other independent observers think the number is far lower, though still significant.<sup>283</sup>

The government also hires a set of internet commentators known as the “50-cent party members” (the nickname referring to the apocryphal story that they are paid approximately 50 cents per post) to influence public opinion in favor of the government.<sup>284</sup> While the exact number of “50-cent party members” is not known, it is estimated that they produce hundreds of millions of social comments per year, in a massive propaganda effort some scholars refer to as “astroturfing” or “reverse censorship.”<sup>285</sup> According to academics who have reviewed the dataset of thousands of “50-cent” posts, these commentators focus on promoting government efforts and redirecting internet commentary away from potentially destabilizing collective action.<sup>286</sup> It is not known whether “50-centers” play a role in flagging content to administrators.<sup>287</sup>

The severity of online censorship appears to increase during major political events, such as Communist Party meetings, and at times of heightened sensitivity, such as around the jailing or death of a prominent activist.<sup>288</sup> During the 19th Party Congress in Beijing in October, internet users in the capital reported dramatically decreased internet browsing speeds, non-functioning VPNs, and said that even widely-used apps, including WeChat, were inaccessible from time to time.<sup>289</sup> Chinese authorities have never confirmed whether they deliberately slow internet speed during political events.

#### *Company Censorship of its Users*

In addition to the many efforts directly undertaken by the government, a key feature of China’s censorship of social media is the obligations placed upon internet companies to affirmatively act to censor their users. As part of their responsibilities to enforce China’s censorship regime, companies are expected to have both the technology to automatically block and filter content and teams of staff to conduct manual content review. Technology firms are not only responsible for monitoring and censoring public social media content; they also have the ability and responsibility to monitor closed chat groups and even one-on-one conversations.

Companies utilize both human- and machine-power in tandem to censor online content. Policies may vary between social media platforms regarding what gets

automatically reviewed and what requires manual review. However, automated censorship plays a major role: Social media company employees tell PEN America that their companies' software automatically detects and deletes the majority of illegal content, while human monitors make decisions on whether to delete the rest. "I would say that for monitoring our platform, it's about 30 percent human labor and 70 percent machine filtering," one anonymous employee shared with PEN America.

Monitoring methods can vary significantly. For blog or forum posts, companies can set up pre-publication review for all posts, for certain topics, or for certain users. Automated review can be fine-tuned to review particular subsets of the online community, and employees can sort posted content to examine it based on who posted it, where it was posted, or even what IP address it was posted from.<sup>290</sup>

While it is unclear how many employees in different companies are tasked with the daily work of monitoring and censoring their users' social media posts, for larger social media organizations the number easily rises to thousands of employees. In 2014, the researchers Gary King, Jennifer Pan and Margaret Roberts created a fake Chinese social media platform and spoke to employees of censorship software companies to ask for their advice on enforcing censorship rules on their invented platform. These employees recommended that a social media platform have two to three censors for every 50,000 users.<sup>291</sup> This formula would lead Sina Weibo, with 340 million users, to employ at least 13,000 censors.<sup>292</sup>

Social media companies will not only censor their users' posts, but can bar users from the platform if they have broken the rules too egregiously or too often. While social media companies across the world reserve the right to block users who infringe upon their Terms of Service, within China the practice is routinely and overtly used to silence dissidents, activists, and anyone else deemed to stray from the Party's preferred lines. Typically, users are not given any explanation for why they have been blocked, nor any means to appeal the decision. And with the government's continuing push to require real-name registration, once a user account is blocked, it is extremely difficult to re-register for a new account.

Major social media platforms require their users to register for an account with their real names, mobile phone numbers, and national ID card numbers. This means the comments that people post online can usually be traced back to their real identities. Chen Guangcheng, the human rights lawyer who escaped from China in 2012 after repeated targeting by authorities for his human rights activism, explained the requirements to PEN America this way: "The

Chinese Communist Party has done its best to make everybody register with their real names on major platforms. The essence of this system is to intimidate people. If you want to post comments under your real name, you know you are risking conviction if authorities accuse you of spreading rumors."

Beyond the system of human and machine censorship employed by platforms, many websites—such as Sina Weibo or Baidu's Tieba forum—also encourage users themselves to flag or report content that may violate laws and regulations, which can lead to punishment or suspension for an offending poster. Part-time Tencent content reviewers who make at least 300 reports a month can earn virtual coins to make in-app purchases.<sup>293</sup> In cases where incentives are not offered, it is difficult to know what motivates people to flag content as inappropriate, and little is known about whether or how those flags are then reviewed by a platform's staff. A social news sharing platform employee told PEN America that human reviewers step in to decide on cases that are "unclear" but declined to offer specifics.<sup>294</sup>

Additionally, it is unclear how often users actually do flag content for being inappropriate or illegal. WeChat, for example, provides an error message for deleted public posts that claims "this content has been reported by multiple people." However, researchers at University of Toronto's Citizen Lab have cast doubt as to whether this is truly the case, suggesting instead that WeChat may be attempting to portray itself in the role of "a neutral third party in censorship decisions."<sup>295</sup>

### *China's Censorship Blacklist: Evolving, Dynamic, and Largely Invisible*

Perhaps the most identifiable aspect of China's censorship system is its ever-evolving list of banned terms and phrases. Entering these words into a search engine will return no results; similarly, the use of certain filtered terms in a social media post will result in its being flagged or deleted by machine-automated censorship software.

One oft-cited mnemonic for Chinese censorship is that the most-censored terms involve the "Three T's": Tibet, Taiwan, and Tiananmen. While these are indeed areas of speech that are frequently censored, they are far from the only ones.<sup>296</sup> In fact, China's blacklist of forbidden words is expansive, flexible, and nuanced, making it far more effective—and repressive—than a simple unchanging set of 'taboo' topics.

Even though the blacklist is a relatively well-understood aspect of China's censorship system, it is essentially invisible. The Chinese government does not publicly disclose which words are forbidden, and neither do the internet companies tasked with



ensuring that such offending concepts don't appear on their platforms.

As social media corporations are responsible for censoring their own members, the list of offending words varies somewhat on different platforms, because each platform makes its own decisions regarding which terms must be blocked in order to comply with the list of broad topics that are legally forbidden. There appears to be no one centralized blacklist of forbidden internet terms provided by the government to the companies.<sup>297</sup>

Analysts and social media company employees said in interviews with PEN America that it has become much more difficult to predict what kind of topics will be censored, and that there is a wider range of censored topics than in the past.

Researchers have also worked to evaluate which—and how many—keywords are blocked from users' public social media posts, from public forums and chat groups, and even from private chat groups. The Citizen Lab, a digital research lab at the University of Toronto that has led much of the research into Chinese censorship methods, has tracked trends in keyword blocking across different platforms—from China's most popular messaging apps,<sup>298</sup> to its social video platforms,<sup>299</sup> to mobile games.<sup>300</sup> The results of this research help illustrate the growing sophistication of current keyword filtering mechanisms.

#### *Censorship in a Black Box*

Much of our understanding of how China's internet censorship works, from a technological perspective, comes from information technology specialists in academic institutions and NGOs that analyze censorship patterns. Groups like the Citizen Lab, China Digital Times, FreeWeibo, and GreatFire all work to monitor the newest developments in China's internet censorship regime. Very little information about its workings is voluntarily shared with the public, either by the Chinese government or by the companies.

Based on what is known, there are two ways for social media companies to automatically delete content based on keywords. The first is server-side: when a user sends a message or clicks "publish" on a post, it passes through a remote server that contains rules for implementing censorship. If the message includes a keyword that has been targeted for blocking, the message will not be sent. This technique is used by WeChat and Sina Weibo, among other platforms.<sup>301</sup> Others, such as the live streaming platforms Sina Show and YY, instead use a second client-side method. With this approach, all the rules for what can and cannot be posted are contained in the application running on a user's device.<sup>302</sup>

To understand more about client-side censorship,

IT specialists can run tests to analyze censorship patterns and retrieve lists of banned keywords. This is done by reverse engineering the application to extract keyword lists used to trigger censorship.<sup>303</sup> But platforms that use a server-side approach make it harder for outsiders to observe how censorship works on the platform. "In that case we have to do sample testing by sending examples of keywords that we believe may be blocked or trigger blocking behavior and see what results are on the other side," said Masashi Crete-Nishihata, research manager at the Citizen Lab.

"The challenge there is that we can't get a comprehensive set of keywords from doing so, because the resulting output is only as accurate as the intersection of what your sample is and what is actually blacklisted," Crete-Nishihata told PEN America. In other words, researchers can test certain terms to see if they are blocked, but can never uncover a full list.

#### *Sina Weibo and Forbidden Words in Public Spaces*

Perhaps the best-analyzed list of forbidden keywords comes from Sina Weibo, the microblogging platform with almost 400 million monthly users that functions much like Twitter. Because Sina Weibo posts are public, it is easier to analyze which words are blocked from the platform. Jason Q. Ng, an internet researcher, developed a censorship testing program in 2011 to evaluate the search engine offered by Sina Weibo, which allows people to search for posts from Weibo users. Ng found that, among the 700,000 words and phrases that he initially tested, over 1,000 words were blocked.

The results of the tracking system are hosted on China Digital Times.<sup>304</sup> Due to technological changes in the way Weibo search functions, the automatic tracking mechanism has not worked since 2015, and CDT editors have manually updated the list since then. The list now contains almost 3500 words that have been added to the blacklist. Many of the words are not 'blocked' forever; instead, they are just blocked temporarily during breaking news events and later made accessible again once censors apparently judge that the 'subversive' connotations of the words have been forgotten.

Some terms are predictable, blanket prohibitions: phrases like "democratic China", "Taiwan independence," and "Tibetan government in exile" make the list, along with a host of terms related to the June 4, 1989 Tiananmen Square massacre.

Other terms, however, are in response to timely developments: a recent arrest, scandal, or other newsworthy occurrence. These censored words cross a variety of topics, including:

- Arrested dissidents (E.g. “free + Liu Xia,” “Freedom to Write Award” “Jia Jia + open letter”)
- Developing news: (E.g. Shaanxi + explosion, Yulin + big explosion, Sanlitun + terrorist attack, Yuyao + protests)
- Government scandals: (e.g. Zhou Yongkang + arrested, Hu Zhanfan + insider trading, Shang Fulin + graft)
- World events: (e.g. Panama Papers, Occupy Wall Street)

Reflecting on his research in the period since Xi assumed office, Ng shared his view with PEN America that “Improved technology is the main change. Whether there’s more or less censorship, it’s hard to say. What’s more interesting is how much more refined keywords are. There are more instances of specific keyword combinations getting blocked, but not the components. For example, “Xi Jinping” is okay but paired with certain phrases, it’s blocked. So censorship has become more sophisticated,” he said.

It takes mere moments to block new terms, allowing Sina Weibo censors to respond in real time to new social media developments and shape the public online discussion. Most recently, the news in late February 2018 that the Central Committee was planning to remove terms limits for the Presidency—paving the way for Xi Jinping to rule indefinitely—led

Sina Weibo censors to respond by blocking terms such as “Xi Jinping,” “amend the Constitution,” “ascend to the throne,” “immortality,” “term of office,” and even “immigration”.<sup>305</sup> The last term was presumably blocked after an uptick in Chinese internet users searching out—either seriously or satirically—immigration options as a reaction to the news.<sup>306</sup>

A blacklist of censored words and phrases may seem like a blunt instrument to outside observers, but China’s blacklist—or in this case, Sina Weibo’s blacklist at the government’s behest—is easily adaptable and expandable.

#### *WeChat and Forbidden Words in Group and Private Spaces*

Just as Sina Weibo is one of the most popular spaces for online public discussion in China, WeChat—with its almost 1 billion users<sup>307</sup>—is the most popular space for group chats and private messaging. It is also heavily censored.

For example, Citizen Lab researchers in 2016 identified 179 keywords that were blocked in WeChat group chats. The keywords covered a range of themes: from Tiananmen Square, to Tibet and Uyghur groups deemed as ‘separatist’ by the government, to corruption cases and pro-democracy movements. The Citizen Lab found that over 10% of the blocked keywords were connected to the names of high level CCP officials.<sup>308</sup> Another 2016 Citizen Lab report found that WeChat was blocking terms related to the “709” crackdown on

The number of phrases paired with “Xi” or “Xi Jinping” that are banned are myriad and vary from platform to platform. Search term combination blocked on Sina Weibo’s search platform includes references to

- Xi’s centralized power (“Xi” + “Crown Prince,” “Emperor,” “Lord,” “Chief,” “Master,” “Forbidden to Criticize,” “totalitarianism,” and “dictatorship”)
- His predecessors and his past (“Xi” + “Jiang,” “evaluate + Jiang,” “historical record,” “previous position”);
- His personal life (“Xi” + “woman,” “lover,” “former wife,” “mistress”);
- Personal scandals (“Xi” + “brother-in-law,” “brother-in-law + launder money”—referring to accusations made in the Panama Papers);
- Homonymous terms and nicknames (“Xi” + “Golden Vase,” “steamed bun”—a reference to Xi’s highly-publicized ‘man of the people’ outing to a steamed bun restaurant in December 2013)
- Insults (“Xi” + “pig,” “unbearable,” “disgrace,” “old”) and threats of violence (“Xi” + “explode,” “remove,” “explosion,” “assassinate”)

*List of results obtained from China Digital Times’s Database of Sensitive Sina Weibo Search Terms*



A WeChat user in Canada messages the sentence “China arrest human rights defenders” to a WeChat user in China . . . but the message never arrives. Image from Citizen Lab report “We (Can’t) Chat”, April 2017

civil rights lawyers, including terms like “Missing + China Human Rights Lawyer Concern Group” and “China arrests human rights defenders.”<sup>309</sup> Terms are blocked in both English and Chinese.

Citizen Lab researchers also found that censorship is applied differently between Wechat accounts registered with Chinese phone numbers and accounts registered with international numbers. Only accounts registered to mainland Chinese numbers had their messages filtered, although this keyword censorship persisted even if such a user later changed their number to an international number.<sup>310</sup>

Censorship also seemed more severe in forums on Wechat that have more members: More keywords are blocked on group chats, than in one-to-one chats.<sup>311</sup> Such findings are consistent with the theory that China is more concerned about monitoring group opinion and preventing political mobilization than with censoring one-on-one discussions.<sup>312</sup>

This system has become even more opaque in recent years: on the popular messaging app WeChat, for example, users were previously notified when their messages were blocked due to keyword filtering, but this is no longer the case.<sup>313</sup> More recently, users have not been informed when pictures sent in WeChat private messages have been blocked.

“Users might also be able to post or submit something, but it might not be viewable by others. And this isn’t apparent to the user. So there’s variations in censorship now. Censorship is much more nuanced than it was in the past,” Ng said. The result is a form of censorship that is quite literally almost invisible:

chat participants must compare notes to realize that their communication has been censored.

### *Censorship of Private Social Media Communications*

Social media users told PEN America that WeChat private chat groups are seen as relatively safer places to share information, since they have a maximum group size of 500 people. This helps people avoid the risk of a post going viral and leading to prosecution for spreading false rumors. Because they are viewed as a safer online space, private chat groups are also used by human rights advocates, journalists, writers and artists based in China, including to share information and engage in more sensitive discussions with journalists and supporters who are based overseas.

Veteran activists, however, are skeptical about the security of ‘private’ WeChat groups.<sup>314</sup> This skepticism is warranted; in 2017, reports increased of censorship within private chat groups and even one-on-one conversations on WeChat, as well as of shutdowns of private chat groups.<sup>315</sup> Well-known human rights activist Hu Jia, who still lives in Beijing, told PEN America that “The Party understands who are the main organizers of these WeChat groups, [and] they are able to track what’s being discussed. We know that, basically, police can see anything on WeChat. It’s very dangerous to use WeChat to organize activities.” Human rights lawyers have also noted that it is now more common to see everyday citizens with no prior record of offenses being punished for their private online speech.<sup>316</sup>

The way that authorities access the contents of private WeChat groups remains opaque. As mentioned above, new regulations require chat administrators to report participants’ infringing speech to authorities. Additionally, the larger the chat group, the easier it is for police or informants to infiltrate. More importantly, it is commonly understood amongst Chinese activists that police use digital surveillance tools to spy on private chat groups. What is unclear is to what extent this state surveillance is enabled through the active cooperation of the social media companies themselves.<sup>317</sup> Tencent Holdings, the owner of WeChat, has stated that they neither read nor monitor users’ WeChat records<sup>318</sup>—despite the fact that this would contravene relevant regulations—and experts PEN America spoke with said that WeChat’s statements still leaves significant room for interpretation. Tencent declined to respond to PEN America’s request for comment.

Chen Shouli, a construction site supervisor, was detained in September 2017 after making a joke in a private WeChat group about a rumored extramarital affair involving a top government official (see



Exiled Chinese political cartoonist “Rebel Pepper” re-labels WeChat as “WeCheck”.

Appendix for more details). Months later, *The Wall Street Journal* reported that Chen still had no idea how authorities found his comment: “Mr. Chen doesn’t know how his comment got flagged. While police often monitor the social-media accounts of known social activists, Mr. Chen had no previous run-ins with authorities, he says. He thinks the official’s name he mentioned may have been on a watch list, or perhaps someone among the chat group’s 453 members tattled.”<sup>319</sup>

This opacity is, of course, intentional. Creating uncertainty around what will trip the censors’ wires and whether any online forum is “safe” for free speech induces widespread self-censorship.

Meanwhile, the focus and scope of censorship on WeChat appears to continue to expand. The death of Chinese Nobel Peace Prize laureate Liu Xiaobo on July 13, 2017, marked a watershed moment in more than one way. In his last days, despite heavy police monitoring, Liu’s family sent photos and messages to friends who circulated them widely on social media, including foreign websites, helping to generate widespread international concern for Liu’s plight. Numerous observers, including PEN America, have concluded that China’s denial of timely medical care to Liu precipitated his death.<sup>320</sup> Immediately after his passing, the University of Toronto’s Citizen Lab observed that not only was there a blanket block on using his name, but images containing his likeness were also filtered, even within private WeChat conversations.<sup>321</sup> “His death is also the first time we see image filtering in one-to-one chat, in addition to image filtering in group chats and WeChat moments,” they noted.<sup>322</sup>

Zhang Yu, the coordinator of the Independent Chinese PEN Center (ICPC), also noticed heavier-than-usual censorship at the time of Liu’s death. “When I speak with writers in China one on one over Wechat,

I don’t want to get them in trouble by saying anything sensitive. But after Liu Xiaobo died, people in China asked me why I didn’t say anything when I had the freedom to do so (as someone living abroad). Actually, I sent several messages, but my contacts never saw them before they were automatically deleted,” Zhang told PEN America.

Much as the government cremated Liu Xiaobo and scattered his ashes at sea to ensure he would have no physical resting place around which protestors or dissidents could rally, so too did they use previously-unrevealed means of social media censorship to deny him a digital presence on the day of his death. This was surely motivated in part by their desire to prevent public mobilization in the wake of his death, but the new censorship capabilities deployed to remove images also underscore the Party’s expanding ideology of censorship.

Lokman Tsui, cyber rights advocate and professor at the Chinese University Hong Kong’s School of Journalism and Communication, told PEN America that “before [his death], it was possible to discuss Liu Xiaobo on WeChat. As long as you stayed away from certain topics—Charter 08, his medical care in his last months—you could still talk about him, although the conversation was on the government’s terms. After his death, it was a blanket ban on his name. It was as if [government censors] were announcing ‘This discussion is now over. We are done talking about this.’”

#### *Resisting Censorship: Techniques and their Drawbacks*

Despite the government’s sophisticated ecosystem of censorship, social media still plays a role in exposing important stories of public interest and fostering dialogue in China today.

It is not just dedicated activists who aim to evade censorship in China. The Chinese netizen—internet-proficient, cynical of government pronouncements, and conversant in memes—can lead online conversation around censors.

Internet users have had to become more savvy and creative to avoid the censors’ axe. Often, they deploy a sense of humor, and politically-engaged users may work as a team to spread information via semi-private channels that are less likely to get automatically censored. Although internet users’ ability to spread political commentary to large audiences is severely curtailed, there is still some space to maneuver.

Chinese internet users use a wide range of techniques to circumvent or minimize censorship, but all of them come with drawbacks:

1. **Word play**, including the use of homophones



A vigil for Liu Xiaobo in Hong Kong, after his death is announced, includes a printed-out Facebook message of support. Both the medium (Facebook) and the message (Liu Xiaobo) would have been cause for censorship within mainland China.

for comedic effect, has traditionally been a large part of Chinese linguistic culture, and now serves as a popular censorship circumvention technique. Some workarounds are quite easy to comprehend. For example, to refer to the Tiananmen massacre on June 4, 1989, social media users used to type in the words, “willow, silk” which sound like “six” and “four” in Mandarin—before censors caught on and blocked instances of the word combination “willow, silk.” Other homophones are more obscure, such as the use of the word “river crab” (hexie) to poke fun at the Chinese Communist Party’s obsession with social “harmony” (hexie) and its use of the sanitized term “harmonize” to refer to censorship and political persecution. Common and less creative examples of wordplay include referring to famous activists only with their surnames, such as “Mr. Liu” for Liu Xiaobo.

The usage of word play as a tool to get around social media censorship is so widespread that, in 2009, netizens began producing satirical memes, songs, and videos about a series of “mythical creatures” that were in fact homophones for forbidden concepts.<sup>323</sup>

Yet censors can block creative wordplay almost as quickly as people can coin and popularize it. Also, more politically engaged people end up talking in such coded language online that no one outside that circle can understand them. This makes it harder for them to spread information and commentary, and effectively achieves the censors’ goal for them.

2. **Images and memes** are harder to censor, especially if they also contain vague or suggestive text captions. Social media users can share screenshots of text to try to avoid automatic blocks on words that authorities may deem sensitive. For years, many social media users shared pictures of Winnie the Pooh to make fun of President Xi, whose face and figure is said to resemble the yellow bear. In July 2017, and again in late February 2018 major online platforms mass deleted images of Pooh bear.<sup>324</sup>

Information conveyed in images, however, cannot be retrieved in search functions on most social media platforms, making it harder for people to find. Authorities also appear to be selectively implementing censorship technology that can scan and automatically delete certain images. As noted within this report, authorities have recently revealed their ability to block images even in private chats after the death of dissident Liu Xiaobo. This is a striking development because it closes a major loophole that citizens use to get around online censorship.

3. **VPNs** allow users to access foreign social media sites such as Twitter and Facebook and chat apps including WhatsApp and Signal, as well as the broader internet that is blocked in China. Some Chinese nationals are very active on foreign social media sites, and have tens of thousands of Chinese followers. While these conversations may take place outside China’s great firewall, information can still trickle back into Chinese civil society and spread. In some cases, Chinese nationals tell friends based overseas to share information online that they do not feel safe sharing themselves.

Only a small proportion of China’s population uses VPNs, however.<sup>325</sup> Those who use foreign social media sites to speak out are aware that they are mostly reaching foreigners and sympathetic Chinese supporters, rather than communicating with the average Chinese internet user. Additionally, as detailed above, the government appears to be increasingly serious about its efforts to shut down unauthorized VPN use.

4. **Private chat groups**, as discussed within this report, are often used to share information and have relatively more secure conversations; communities of writers, activists, poets, artists, and lawyers maintain numerous online chat groups that can have hundreds of members each. These group conversations commonly take place on WeChat, and less often on foreign chat applications such as WhatsApp or Signal. While content in chat groups

cannot be viewed publicly, members often give permission for others to share their messages outside the group. Thus, information can spread to other groups or to public social media accounts. Chat group users say that while they assume authorities can monitor their private conversations, their messages don't seem to get deleted as much as if they had shared the same comments on their public social media accounts.

Of course, it is harder to reach a large audience by sharing information on group chats with membership in the hundreds, versus sharing on a public account that could have millions of followers posted on their

public accounts. There is also the risk that, given the sensitivities around collective organizing, authorities could see group chats as the beginnings of subversive organizations and crack down on their users. Authorities have broken up and arrested people at events—planned via chat groups—that focused on politically sensitive topics, such as commemorations of the Tiananmen massacre or meetings to discuss the Hong Kong pro-democracy movement. WeChat messages have been used by Chinese prosecutors as evidence to convict people on charges such as “inciting subversion of state power” and “picking quarrels and causing trouble.” (See Report Appendix for examples).

### Wordplay To Evade Censorship

五月三十五: *Wu yue san shi wu* means May 35, an imaginary date that internet users employed to try to refer to the June 4<sup>th</sup> massacre in Tiananmen Square. Censors caught on and the phrase is now often blocked on social media platforms.

米兔: *mi tu* (rice bunny) a dual-language homonym referring to the #MeToo anti-sexual harassment/assault movement. While state-run media has reported on the movement, authorities have begun censoring “#MeToo” posts, leading to efforts to get around censors.<sup>326</sup>

草泥马: *Cao ni ma* (grass mud horse) is the Chinese name for a species of alpaca, but it also phonetically sounds like the slur, “fuck your mother.” It came into common usage in 2009, and in 2012, Chinese internet users designated July 1 “grass mud horse day,” coinciding with the date of the

founding of the Chinese Communist Party. The phrase, now banned across the Chinese internet, is still a symbol of resistance against the Chinese state's repression of freedom of expression.

维尼熊:<sup>327</sup> The words *Weini Xiong* (Winnie the Pooh), as well as images of the cartoon character were blocked on Chinese social media websites in 2017. Since 2013, Chinese internet users have been joking about how the bear's profile with his round belly resembled the physique of President Xi Jinping. It is not clear what spurred authorities to finally crack down on the numerous Pooh and Xi comparisons, but Winnie the Pooh memes are now increasingly censored. After the February 2018 announcement that the government was considering lifting term limit restrictions, some netizens responded with pictures of “King Winnie.”<sup>328</sup>



From left to right: A picture of “King Winnie”, which made the internet rounds after the news that the government aimed to abolish Presidential term limits; an image from Weibo of “mi tu”, the “rice bunny”; a popular Winnie the Pooh/Xi Jinping meme, captured via Weibo screenshot



### Tibet and Xinjiang: Special Targets for Social Media Censorship and Repression

Given China's fear of social media as a tool for instigating collective action, it comes as little surprise that social media censorship appears to be particularly harsh in Tibet and Xinjiang, two areas in Western China that have been marked by ethnic tensions.<sup>329</sup> In addition, authorities appear to engage in particularly vicious targeting of those who run afoul of such social media restrictions in these areas.<sup>330</sup> These efforts come in addition to surveillance and malware campaigns that the Chinese government has launched against Tibetan and Uyghur civil society groups both within and outside the country, several of which have been amply deconstructed and documented by Citizen Lab.<sup>331</sup>

Numerous human rights groups, including PEN America,<sup>332</sup> have documented how Chinese authorities have engaged in systematic repression of Tibetan and Uyghur rights to cultural and religious identity and expression in Tibet and Xinjiang.<sup>333</sup> China's tight-fisted control over social media use in these areas is part and parcel of that repression.

After nearly 200 people died in ethnic violence between Muslim Uyghurs and Han Chinese in the far western **Xinjiang** region in July 2009, authorities completely cut off internet service in the entire region for ten months.<sup>334</sup> To explain the drastic move, the official Xinhua news agency said the riots were orchestrated by people using the internet, text messages and long-distance phone calls.<sup>335</sup>

Since then, under the guise of "public safety," the Chinese government has imposed internet controls in the Xinjiang Uygur Autonomous Region that are far stricter than in other parts of the country.<sup>336</sup> While officials blamed Muslim "religious extremists" and "separatists" for the unrest, rights groups have stated that the riots were a response to cultural and religious repression of the Uyghur minority, and noted that further clampdown is counterproductive.<sup>337</sup>

Under telecommunications rules passed in 2015, vendors in Xinjiang must give police the personal details of anyone who purchases a phone or computer.<sup>338</sup> At checkpoints, armed police routinely check phones for banned foreign apps such as Twitter or Facebook and look through text messages for discussions about religion.<sup>339</sup>

China's laws are unclear about what constitutes "terrorist content" or "illegal" religious material, and thousands of Uyghurs have been imprisoned under vague charges.<sup>340</sup> This includes economist—and recipient of PEN America's Freedom to Write Award<sup>341</sup>—Ilham Tohti, who was widely regarded as a moderate voice based on his Sina Weibo blog,<sup>342</sup>

and who co-founded the website Uyghur Online to promote understanding between ethnic Uyghurs and Han Chinese.<sup>343</sup> In 2014, he was jailed for life for advocating "separatism", after a trial that PEN America declared was a "farce."<sup>344</sup>

In 2016, Ilham Tohti's niece was seized by police after they found photos of her uncle along with news articles from Radio Free Asia about him on her cellphone. She has since reportedly been given a ten-year sentence for unspecified crimes, though publicly-available information on her case is scarce.<sup>345</sup>

Last May, a Uyghur woman in Xinjiang who praised Allah and quoted from the Quran on her QQ social media page was arrested by police, who said in a statement that the suspect "admitted to the truth of uploading extremist religious words and graphics to the QQ space."<sup>346</sup> Her current status is unclear.

Thousands of Uyghurs whom local officials label as "vulnerable" to Islamic extremism are arbitrarily detained and sent to "political education" camps, where they are subject to Chinese propaganda and forced to learn the Mandarin language, according to official Chinese news reports<sup>347</sup> and rights groups.<sup>348</sup> Authorities claim their efforts are aimed against "terrorist elements."<sup>349</sup> In actuality, this governmental campaign operates from the presumption that a massive section of the Uyghur population are "extremists," and treats the peaceful exercise of cultural or religious expression as evidence of dangerous subversion.<sup>350</sup> One of the 'offenses' for which Uyghurs can be sent to these camps is the use of Western social media apps.<sup>351</sup>

Xinjiang is an area where China is willing to test several of its most ambitious and invasive surveillance technologies, leading not only to widespread invasions of privacy in the region itself but also the possibility that the government could later expand these surveillance projects to other parts of the country.<sup>352</sup>

In July 2016, the government of Xinjiang's capital of Urumqi told city residents they were required to install an app on their smartphones that automatically detects and deletes "subversive" material.<sup>353</sup> Since August 2016, the Xinjiang Bureau of Public Security has acknowledged the existence of an "Integrated Joint Operations Platform," a data-aggregation platform that apparently collects data on individuals from various sources for the purpose of political monitoring. This includes information from "wifi sniffers" that collect IP addresses of smartphones and computers. As Human Rights Watch has documented, this monitoring system is used by security forces to target and detain people, and even send them to 'political education' camps.<sup>354</sup> It is unclear the extent to which this system may include social media monitoring.

"If Uyghurs don't use their smart phone in a smart way—which is to say, to self-censor in order to avoid government punishment—they can be sent to 're-education camps', be sentenced to long-term jail, or simply disappear," Zubayra Shamseden, Chinese Outreach Coordinator for the Uyghur rights group Uyghur Human Rights Project, summarized for PEN America.

PEN America's Report Appendix contains several examples of people in Xinjiang arrested for their speech or conduct on social media. This includes a reported crackdown against "spreading religious extremism" in Xinjiang in the summer of 2013, in which over 100 individuals were reportedly detained.<sup>355</sup> These arrests were reportedly connected to China's campaign against "online rumors."<sup>356</sup>

In **Tibet**, the internet and social media censorship picture is even murkier. Foreign journalists are not allowed to report in the region unless they are invited by authorities.<sup>357</sup> Tibet—or more specifically, any discussions that touch upon the idea of Tibetan independence—has long been defined as one of the three "T's" of most-frequently censored topics in China, in addition to Tiananmen and Taiwan.<sup>358</sup>

In the Tibet Autonomous Region (TAR), the administrative region which China has demarcated and which contains much of the Tibetan populace, possessing or displaying images of the Dalai Lama has been banned since 2008. Although the level of enforcement varies in different parts of the region, those who violate the ban have been sentenced to as many as 18 years in jail.<sup>359</sup>

The ban includes images disseminated via social media.<sup>360</sup> In March 2017, Gedhun, a young man from Sershul country in eastern Tibet was beaten and arrested for sharing an images of the Dalai Lama and the banned Tibetan national flag online.<sup>361</sup> PEN America's report Appendix includes six other reported cases of Tibetans punished for sharing or even possessing photos of the Dalai Lama, or of trying simply to celebrate his birthday. This includes a 2014 case in which twenty monks were detained for supposedly sharing images of the Dalai Lama on WeChat, among other possible charges.<sup>362</sup>

An unknown number of Tibetans have been imprisoned for online posts, including prominent blogger Druklo (who also goes by the pen name Shokjang),

***"If Uyghurs don't use their smart phone in a smart way—which is to say, to self-censor in order to avoid government punishment—they can be sent to 're-education camps', be sentenced to long-term jail, or simply disappear."***

who was jailed in February 2016 for "inciting separatism" and "causing instability" after he wrote a blog post about heavy police presence in Tibet and shared images on Wechat.<sup>363</sup> He is currently serving a three year sentence.<sup>364</sup>

PEN America's Report Appendix contains seven cases of Tibetans arrested for their social media activity. As noted above, this includes Tibetans detained or charged for sharing photos of the Dalai Lama. It also includes people detained for sharing information about the occurrence of self-immolation protests in Tibet. Over the past eight years, more than 140 Tibetans have reportedly self-immolated as a form of protest against Chinese policy in Tibet.<sup>365</sup> Scholars and activists have argued that China's restrictions on information about these self-immolations—including its controls over social media—have helped keep these protests relatively unknown in the international arena.<sup>366</sup>

Given the lack of international access to the Xinjiang Uygur Autonomous Region and to the Tibet Autonomous Region, it is difficult to obtain accurate numbers over how many people have been arrested for crimes relating to their free expression over social media. Overall, however, a review of Chinese internet censorship policies in Tibet and Xinjiang leads to the inexorable conclusion that authorities are repressing the right to free expression online in these areas more severely than in other parts of the country.



## Section III

# IMPLICATIONS FOR WRITERS AND ARTISTS

Social media is as central to the work of many writers and artists in mainland China as it is for their counterparts around the world. Chinese writers and artists use social media platforms to network, share their work, identify topics for new projects, and communicate with and expand their audiences. Journalists and news editors use them to source new stories and promote their articles and multimedia offerings. Domestic social media platforms are by far the most popular way to accomplish these goals; foreign social media sites play only a minor role in the work of most writers and artists with whom PEN America spoke.

Increasingly, writers in China are producing articles, essays, poems and fiction exclusively for online audiences. A host of online news and literature platforms have sprung up in the past decade, most of them outside the sphere of traditional state-owned media. China's online literary industry is booming, bringing in USD \$2 billion in 2017, according to government reports.<sup>367</sup> Many of these websites include options for crowdfunding and comments sections, fostering audience engagement. On Baidu, the search engine provides catalogues of online novels. Authors can charge fees for their online novels, which are published either in full or as installments. Reading web novels and web comics has become a favorite pastime for many Chinese.<sup>368</sup> On WeChat, some writers operate accounts to self-publish work or collaborate with groups of writers to create online publications. Anyone who has downloaded the WeChat application can follow these accounts and receive notifications for new posts. Writers earn money from advertisements, from custom pieces for sponsors, or from receiving "tips" that their readers can conveniently send using WeChat Wallet. Some of these options offer, at least theoretically, a space outside the formal publishing system controlled by the state, where books or journals are routinely altered or barred from publication for violating censorship restrictions.<sup>369</sup>

Besides being a platform to promote and sell works, social media also provides writers and artists with important networking opportunities. Interviewees told PEN America they frequently seek the support and advice of people in their respective industries via social media. In WeChat groups for independent photographers, for example, participants exchange advice on techniques and share samples

of their work for feedback, and editors commission photo packages from freelancers. In groups for poets and filmmakers, participants give feedback on members' works and organize poetry readings and film screenings, including private events where potentially politically sensitive works are read or shown. As mentioned earlier, Douban is a popular platform for creatives to write and share reviews of books, songs and films.

However, as the popularity of online literature platforms grows, so do government efforts to expand control over their content. In June 2017, the State Administration of Press, Publication, Radio, Film, and Television (SAPPRFT) announced its plans to "score" literary websites on a scale of 1-100, with platforms that score below 60 being subject to additional review.<sup>370</sup> Up to 15 of these points will be awarded based on the websites' publication and dissemination of "excellent works", putting government regulators in the position of evaluating the literary merit of these websites' public pieces.<sup>371</sup> Up to 45 points will be awarded for how well the platforms uphold socialist values.<sup>372</sup> While these plans are still in the early stages, the announcement creates a strong incentive for both writers and the managers of these platforms to publish content that will please the Party, as well as an implied threat to those who do not.

The SAPPRFT's move to exert more control over the content published on literature platforms as their appeal grows reflects a broader pattern of state agencies' responses to social media phenomena. Manya Koetse, editor-in-chief of Chinese social trend tracking website *What's on Weibo*, observed, "In the moments after a new form of media pops up, there's a gap where there is more space for experimentation, such as livestreaming when all these crazy videos came out [in 2016], and when Wechat first became popular."

When WeChat first launched in 2011, observers noted that provided a relatively open space for speech in its first months before censors apparently took notice of the increasingly popular platform. Similarly, when livestreaming first gained popularity in 2016 on platforms like Yizhibo and Douyu, users posted a remarkable range of videos, with hosts livestreaming themselves doing everything from pole-dancing, to dressing up as mermaids, to eating noodles.<sup>373</sup> Then, in May 2016, Chinese regulators passed a series of regulations to stop "inappropriate or erotic content" on livestreams, including a ban on eating bananas seductively as well as a ban on wearing stockings and suspenders.<sup>374</sup> "Now even for livestreaming, people need to register their names and have to adhere to certain guidelines," Koetse told PEN America.

**The fact that some of these stories are allowed to spread online up to a point suggests that authorities feel social media can play a useful role as a pressure release valve for public opinion.**

Even on established social media platforms that have entrenched censorship mechanisms, thought-provoking content is often allowed to flourish, but the more popular it becomes, the more likely its spread will be halted. For example, an unknown migrant worker became an overnight sensation in April 2017 after literary social media platform Noon-story published her essay about her struggles in Beijing. The essay, “I am Fan Yusu”, was quickly read by over a million people.<sup>375</sup> Even Chinese state-owned media, including the official government news agency Xinhua, published profiles of Fan and ran stories about the plight of disadvantaged rural migrants in China’s metropolises.

However, despite the positive coverage from state media, Fan’s essay was deleted a week after it first went viral, with no reason given. “It’s very comparable to what happened with the *Under the Dome* documentary about China’s pollution problems by Chai Jing. State media initially endorsed it and the same happened with Fan Yusu’s essay. Then they were removed because the hype became too big,” Koetse said. *Under the Dome*, a 2015 environmental documentary often compared to Al Gore’s “Inconvenient Truth,” received millions of views and a favorable response from government officials upon its release, before being ordered blocked by CCP censors only a week later.<sup>376</sup>

These examples help demonstrate the authorities’ careful monitoring of any force with the potential to shape public opinion or spark mobilization, particularly concerning sensitive topics like pollution or the grim conditions faced by many laborers. Anything that goes viral online is potentially suspect and closely watched, to be shut down at any moment. At the same time, the fact that some of these stories are allowed to spread online up to a point suggests that authorities feel social media can play a useful role as a pressure release valve for public opinion, allowing people to feel they have some ability to make their voices heard.

Ultimately, however, the government’s fear of collective action stimulated by anyone other than the government puts popular literary works, documentaries, essays or other works of social expression squarely in the crosshairs.

Authorities remain in firm control of when social media users are permitted to be heard, and prominent online voices risk making themselves a target simply because of their large audience. Chinese authorities launched a crackdown in 2013 on a range of social media influencers, known as “Big Vs” in China. V refers to the “verified” badge on their account that confirms their identity, though the term is used generally to refer to users with large followings.<sup>377</sup> Many Big Vs were wealthy entrepreneurs, celebrities, writers, and academics, and those targeted had often voiced criticism of the Party. The crackdown coincided with a broader government campaign against “false rumors,” as well as President Xi’s long-term project to eliminate rival power centers and consolidate his hold on the Party. An editorial published in September 2013 in state media outlet Xinhua said: “The freedom of speech does not mean freedom to make up rumors. No country in the world could tolerate freedom of speech which includes rumors or lies. There are boundaries to freedom of expression.”<sup>378</sup>

High-profile targets of the campaign included Wang Gongquan, an outspoken venture capitalist who was detained in September 2013 and formally arrested the next month, charged with “disturbing public order” after he promoted an online campaign for the release of activist Xu Zhiyong.<sup>379</sup> Billionaire investor and outspoken government critic Charles Xue, who had millions of followers on his Sina Weibo account, was arrested in August 2013 ostensibly on charges of soliciting a sex worker.<sup>380</sup> But in his televised “confession” on state broadcaster CCTV, which was almost certainly made under enormous pressure, he focused on disavowing his social media posts.

Xue, who was often cited as one of China’s most well-known liberal internet commentators, was known for wading into controversial social and political issues.<sup>381</sup> “It’s not right for [popular bloggers] to behave higher than the law. If there is no moral standard or cost for slander, you can’t manage the Internet. And there are no limits. It becomes a big problem,” he said in his “confession”.<sup>382</sup> He was eventually released from prison on bail in 2014 due to illness, according to Beijing police.<sup>383</sup>

Mere days before his arrest, Xue was one of eight Big Vs who took part in a public round-table conversation on the “social responsibilities of internet celebrities” with Lu Wei, the State Internet Information Office director then described as the country’s “Internet czar.”<sup>384</sup> Lu—who would himself later fall



from grace amidst charges of corruption—told the crowd that Big Vs had a civic responsibility to “deliver more positive and constructive messages” and to “promote virtue and trust” to their followers.<sup>365</sup>

The Big Vs crackdown raised an alarm for social media users. Some became so nervous that they requested the removal of their verified badges to lower their profiles, according to media reports.<sup>366</sup> Others told PEN America that they now feel more secure when using social media platforms that only share information among added contacts, like Wechat, than on Sina Weibo, which is much more open to the public. “[WeChat has] more of a living room feel rather than a big public arena, and people don’t have the ability to ‘share’ your posts and make them go viral,” one writer said. Even on WeChat, users are cautious: “I definitely avoid certain words on WeChat, and the writers I follow don’t post anything sensitive. I haven’t been on Weibo lately but from my activist friends I can see that accounts get blocked easily. Most writers in China self-censor to a certain degree,” said Alice Xin Liu, a writer and translator based in Beijing.

Making a deliberate effort to avoid having a post go viral or to amass too large an online following is another form of self-censorship, one that is particularly self-defeating for writers and artists trying to expand their audience and make a living through online engagement. As Chinese authorities take new measures to restrict online spaces and curtail the influence of prominent voices, social media’s promise as a medium for creative expression is dimming.

### **The Effects of Censorship on Artistic and Literary Expression**

Since social media has become so important for people in all walks of life and a wide range of industries, many people in China pay careful attention to social media censorship constraints even if they do not see themselves as activists or even particularly political. “Just for socializing alone, not just work, getting banned from using WeChat would be a disaster,” one writer shared with PEN America. “No one would be able to reach me. Very few people, even my good friends, have my phone number.” For writers and artists, whose incomes and important professional contacts are tied to social media platforms, getting banned from certain sites or apps can also ruin careers.

For those who wish to broach political or other sensitive subjects, of course, the risks are great and continue to grow. Analysis of China’s censorship regime frequently, and importantly, focuses on its impact on pro-democracy activists and human rights defenders. However, China’s creative and artistic communities are also constrained by this system,

and the struggles they face are at times overlooked. Many artists and writers who choose to provide social and political commentary are not faring well amid the escalating crackdowns on social media under President Xi.

Writers express frustration with the opaque and ever-shifting rules regarding what subjects or terms are banned. They tell PEN America they are wary of drawing the attention of authorities, with most saying they self-censor to some degree to avoid repercussions that could threaten their careers. But many are also unwilling to entirely avoid engaging on politically sensitive subjects, and they are constantly trying to gauge the point where social media posts will get deleted.

Despite their many frustrations, writers say there is still relatively more freedom of expression in online publishing, compared to the traditional print outlets. They say that the prominent role of social media in China has made creative fields more democratic as consumers have more ways to support creators, for example by participating in crowd funding, subscribing to serialized content, or sending online tips with digital payment apps.

One Way Street bookstore in Beijing, a well-known hub for Beijing’s young literary and intellectual community, has a strong presence on social media. Online, it tries to push the envelope to foster dialogue about social and political issues using its public accounts on domestic platforms Sina Weibo and WeChat, as well as foreign sites like Facebook and Instagram.

Wu Qi, editor of the bookstore’s publications, explained to PEN America that it has become more difficult to guess what authorities will find problematic. He likened it to a continuous experimental process. “We use more subtle references to political issues, and that is usually fine. But sometimes we just send something out (on social media), and see if it is deleted or not,” he said.

As online censorship restrictions tighten, a deleted post is the least of some users’ worries. Writers and organizations have to contend with the possibility that their social media accounts will get shut down entirely, or that administrators will get arrested for posting “illegal content.” Most interviewees told PEN America, however, that they have a rough idea of which topics they can test the waters on, such as certain social issues, and which topics are completely off-limits, such as direct criticism of the Communist Party’s legitimacy to rule.

Everyone also knows they should be particularly cautious during certain times of the year when authorities are on high alert, such as the June 4th anniversary of the Tiananmen Square massacre and

big political gatherings such as the annual “Two Congresses” (*lianghui*)—meetings of top leaders and political consultants in the spring.

The recent announcement of the Chinese Communist Party’s intent to amend the Chinese Constitution to remove term limits for the presidency has been another time of heightened censorship. “I tried to make some critical comments on the constitution change on my personal Wechat Moments page,” an anonymous Chinese writer told PEN America. “Some hours later, I saw that I was blocked from my account. Now I can’t access my old account or see my old posts and contacts.” Although she was able to make a new account, the writer informed PEN America, “I haven’t tried posting about the constitution change again.”

Visual artists told PEN America they feel they generally have more freedom than writers, but the censorship rules for visual art can be even more unpredictable. “Sometimes my work gets deleted and I have no idea why,” an experienced photographer who works for several leading domestic websites said. “I think it might depend on the caption the editor chooses for my photo essays, or whether it goes viral and leads to heated discussions online. I don’t consider my work very political,” she said.

### Case Studies of Writers and Artists Struggling with Censorship

The stories of Chinese writers and creative professionals demonstrate the courage and persistence with which individuals continue to fight for the space to express themselves in China. Under a crushing and all-encompassing censorship apparatus, people nonetheless find ways—large and small—to resist and push back against the system. The creative drive to share one’s work may play some role, but so does economics; and while social media holds the potential to open up new opportunities and audiences for creation, the reality is one of a lifeline offered and then quickly withdrawn. Instead, writers and artists are caught in the cat-and-mouse game between censor and internet user, and over the long term, the cat usually wins. In this section, PEN America provides three short case studies to illustrate just a few of the ways in which writers, bloggers, and artists who choose to battle the censorship machine can be profoundly affected in life-changing ways.

PEN America also includes a fourth short case study on the #MeToo movement in China: a movement for social change that has been enabled by social media, and thus is dramatically affected by social media censorship.

#### Case Study 1: Feminist blogger turned painter “Hooligan Sparrow” Ye Haiyan

Renowned feminist activist Ye Haiyan is trying to live a quiet life as a painter in an artists’ colony on the outskirts of a major Chinese city. She used to be a prolific blogger. In 2010, when her journal of working as a sex worker for a day was censored on the larger Sina Weibo platform, she switched to her Tianya Weibo account. Her online clout meant that being forced to use a smaller platform did not prevent news of her exploits from spreading like wildfire.<sup>387</sup>

Describing her decision to provide sexual services for free to migrant workers for a day, Ye wrote, “We need a government more responsible for the poor people. We hope that society cares about sex workers and treats them as equals.”<sup>388</sup> Like other activists in China, Ye did not try to organize large-scale protests, which would likely result in mass arrests. Instead, she sought to amplify small individual gestures on social media to spread her messages.

In 2013, Ye’s posts went viral after she organized a small demonstration in the southern island province of Hainan, tapping into a groundswell of public anger against a spate of sexual assaults from government officials and school principals against schoolchildren. She posed for a photograph with a handmade sign saying, “Principal, get a room with me—leave the school kids alone.”<sup>389</sup> The picture quickly made the internet rounds, with thousands of internet users imitating her with their own signs.<sup>390</sup>

After that, she became the target of security agents who relentlessly harassed her. In May 2013, eleven people stormed her home and attacked her, an incident that was later featured in the 2016 documentary “Hooligan Sparrow”.<sup>391</sup> Ye managed to chase them off with a meat cleaver, but local police detained her for 13 days, saying she had injured several of her attackers.<sup>392</sup> Then in July 2013, she and her 14-year-old daughter were forcibly evicted from their home in southern Guangdong province.<sup>393</sup>

Since then, Ye has been moving from place to place to try to evade the attention of authorities. Her passport was confiscated so she is not able to travel overseas, and sometimes her electricity gets shut off.<sup>394</sup> In an interview with PEN America in the fall of 2017, Ye said, “The pressure only let up after I got married and moved in with my husband.”

She said she has completely stopped blogging and only uses her personal Wechat account to stay in touch with friends and sell her artwork. Ye taught herself how to paint in the Chinese classical style because she sees it as a less “political” form of expression. “I don’t want the government to see me as a dissident. I thought that maybe if I stayed away from politics and focused on painting for a while, they will start to see me as a normal citizen and it would be easier to engage in some dialogue with them,” she told PEN.



A 2015 Badiucao cartoon showing a gun to the head of human rights lawyer Wang Yu. In August 2016 Wang gave a televised “confession” in which she painted her human rights activities as part of a scheme by “foreign groups.” It is widely believed, including by PEN America, that her “confession” was coerced.

Ye described a painting that hangs in her bedroom, showing a sitting man in a scholar’s robes with eyes closed and back against his window, saying, “This painting represents my state of mind. The scholar is inside his house. He doesn’t want to engage with outside world. He’s waiting.”

### Case Study 2: Political Cartoonist Badiucao

Badiucao, one of China’s most well-known political cartoonists, was born in Shanghai and started off as a mainstream visual artist working in mediums including painting and sculpting. He joined Sina Weibo when it first became popular and became captivated by the breadth of wide-ranging public dialogue that was happening on the platform at the time. “It made me think, I want to be part of it, contributing my outlook,” Badiucao told PEN America in an interview.

But his older family members, who had suffered persecution and lost relatives during the Anti-Rightist Movement, an ideologically-motivated crackdown against intellectuals in the late 1950s, gave him an ultimatum: “My family said that if you want to be a political artist, you have to leave or give up on this.” Their concerns were likely for his safety but also for their own; families of dissidents in China are routinely threatened or detained in order to intimidate and punish the dissidents themselves.

“Even if you try to do something light and funny that doesn’t directly confront the system at all, you might still be stepping on their toes,” Badiucao said. “Unless you are prepared to take risks, like Ai Wei Wei and people like that, you really have to be prepared to be ‘disappeared’ for days.”<sup>395</sup> Knowing the risks of his chosen career path, Badiucao moved to Australia to pursue his work as a satirical cartoonist.

He wanted to remain a part of online discussions in China, so he shared his cartoons on his Sina Weibo accounts. He adopted a pen name to protect his identity and his relatives back home.

But as the political climate in China became more restrictive, and Badiucao’s popularity grew, he drew the attention of censors even though he had already left the country. “They started to freeze my accounts and then delete them. During that time, people who kept starting new accounts joked that we were going through (cycles of rebirth) like the Dalai Lama. We all had backup accounts, but they figured out how to detect and delete all of them. I eventually didn’t have the time and energy and power to fight the whole system of dictatorship,” Badiucao said.

“That’s when I gave up and moved to Twitter around 2012. The majority of my followers are Chinese who also went around the firewall [with VPNs]. Chinese activists and dissidents have been using Twitter for a long time as a platform to communicate and organize certain campaigns or activism,” he said. Badiucao is continuing to work, creating satirical comics on topics such as President Xi Jinping’s “new era” slogan and the eight-year prison sentence for Chinese blogger Wu Gan. He has over 29,000 Twitter followers<sup>396</sup> and collaborates with websites including the California-based China Digital Times and the Hong Kong Free Press.

### Case Study 3: Chinese Novelist Murong Xuecun

Murong Xuecun (the pen name of Chinese novelist Hao Qun), became famous after his 2002 debut novel, *Leave Me Alone: A Novel of Chengdu*, sold a million copies and was longlisted for the 2008 Man Asian Literary Prize.<sup>397</sup> Murong spent years self-censoring his literary works to get them past the authorities, but also voiced his criticism of the censorship restrictions in blog posts and in interviews with journalists. In 2010, he escalated this criticism, crafting a candid acceptance speech for the prestigious People’s Literature Prize—awarded by the Chinese publishing titan People’s Literature Publishing House—that skewered the sad state of censorship in his country. The event organizers prevented him from delivering the speech, but the text spread rapidly online before it was censored there, too.<sup>398</sup>

“I would...ask what kind of system could make me, a law-abiding citizen, a writer, live in indescribable fear?” he asked in the speech draft.<sup>399</sup> “Genuine bravery for a writer is ... about calmly speaking the truth when everyone else is silenced, when the truth cannot be expressed; it is about speaking out with a different voice, risking the wrath of the state and offending everyone, for the sake of the truth, and the writer’s conscience,” he wrote.

After that, he continued speaking out in favor of free speech and swiftly fell from his position as a celebrated, major literary figure to someone who is unwelcome at Chinese literary events and viewed as a troublesome dissident.

Murong had 8.5 million followers on his Weibo microblog accounts before they were shut down.<sup>400</sup> He attempted to set up new accounts, which were repeatedly shut down as well. The effort of continually trying to evade the censors, Murong shared with PEN America, eventually “wore him out.” Supporting himself with his writing might have been possible if he had continued to toe the Party line through self-censorship. But having made the choice to speak out, Murong’s once-promising literary career is on indefinite hold.

“I sell fresh fruit online and deliver the fruit to my customers now,” he said. “My online store is called ‘Murong Mai Gua’ (Murong sells melons). I am working on my next novel, but I don’t know if it can be published. Four years ago, all my previously published books were pulled off bookstore shelves and I lost the ability to make any money from writing in China,” he told PEN America.

“Online censorship is relentless. There is no space for honest political commentary. The official writers’ associations are eager to cooperate with authorities,” he continued. Murong said that even editors for less prominent publications are scared to commission his essays or articles, and his attempts to self-publish on Wechat public accounts have been thwarted. Even though his novels have been translated into other languages and are widely available for sale overseas, Murong said that appetite for books in translation from Chinese authors is limited, and he makes “less than \$2,000 a year from international book royalties.”

“The main question that banned authors weigh and persecuted intellectuals weigh is whether to wait it out in China to see if the environment will change, or leave the country while we still have the ability to go,” Murong remarked. He remains in China at present, and is active on foreign social media sites including Twitter and Facebook, even though he knows that authorities can easily monitor what he says on those accounts. “I am just telling the facts.”

#### **Case Study 4: Social Media and #MeTooInChina**

For months, as #MeToo conversations erupted around the world, the discussion was slow to catch on in China. Domestic feminist groups had succeeded over the years in raising awareness about sexual assault and domestic violence—but there were relatively few instances where women publicly shared their experiences and their stories went viral.

This changed on New Year’s Day 2018, when former Beijing doctoral student Luo Qianqian shared her story on the Sina Weibo platform, accusing her former supervisor of sexually assaulting her under the pretense of needing her help to water his plants.

Within hours, her post received three million views. The hashtags #Metoo and #MetooInChina became viral trending topics on the website, with tens of thousands of people joining in the conversation and speaking out about their experiences.

Students and alumni used various social media platforms to organize petitions, which they submitted to their schools, and professors from over 30 higher education institutions signed an online anti-sexual harassment manifesto.<sup>401</sup>

China’s Education Ministry, in a prompt response to the outpouring of complaints, said it had a “zero tolerance” policy and would establish a new mechanism to prevent sexual harassment.<sup>402</sup>

On January 11, Beihang University stripped computer scientist Chen Xiaowu of his position as vice-director of the graduate school after their investigation found he sexually harassed multiple students including Luo.<sup>403</sup>

In a country where collective action and speaking out about sexual abuse is risky, both international and domestic observers applauded the surprising developments.

PEN America researched the little-known backstory behind the viral sensation—finding that Chinese women had purposely banded together on social media to better spread their messages.

Guangzhou-based Sophia Huang Xueqin had been working since October, when the global #MeToo movement began, to collect stories about sexual harassment from women, with a focus on fellow female journalists.

“I reached out to women on social media to collect their stories, such as in Wechat groups and by contacting people through direct messages on Sina Weibo. I got nearly 1800 responses this way,” Huang told PEN America. Her survey found that over 80 per cent of female journalists in China have experienced workplace sexual harassment.<sup>404</sup>

On October 19, 2017, Huang started a Wechat public account called ATSH (Anti-Sexual Harassment) to share her findings and publish essays on women’s stories and other human rights issues.

“Luo Qianqian, even though she lives in California now, is still active on Chinese social media so she came across the ATSH public account and left a comment on an article saying she wanted to tell her story and wanted some help,” Huang said.

The two women talked online and created a private chat group for women with similar experiences



*President Xi poses with media figures during a February 2016 tour of national media headquarters.*

to support each other and plan out how Luo could share her story.

“On January 1, Luo published her story on her Weibo account and we published the same message from Luo at the same time on our ATSH account. Then we wrote follow-up posts as the reaction to her story evolved, such as Chen’s initial denial,” Huang said.

Amid the ensuing uproar, Huang also acted as an intermediary to field media requests for Luo from journalists contacting her through social media. Later, she wrote about how the #MeToo movement in China should expand beyond universities to workplaces as well.

But by January 19, online censors had deleted hundreds of posts about the #MeToo movement and closed down the related #MetooInChina topic forum on Sina Weibo.<sup>405</sup> Then on March 6, Huang’s Wechat account was shut down. She was only able to see a message on the app saying she had shared illegal content.

Dozens of posts on the ATSH platform disappeared along with her account. Huang said that earlier that day, she had written a post on her personal Wechat page criticizing China’s proposed constitutional amendment to get rid of presidential term limits, but she wasn’t sure if that was the whole reason why her account was shut down.

“Now, many of the female victims that I was speaking with earlier cannot get in touch with me. They don’t have my email address,” she said.

Since there is no standardized appeal system for those who get blocked from Wechat accounts, Huang is now working with a lawyer to challenge Tencent on its decision to shut down her account.

“They’re trying to silence me,” Huang told PEN America. “I am just telling the facts. I don’t think this should be a problem.”

### **Social Media and Investigative Journalism**

Investigative and independent journalists in China have also turned to social media as a forum less

constrained by censorship than print or the official websites of news outlets. But China’s censors have recognized this as well, and are working to ensure that social media as a source for the publication of news is tightly regulated.

Xi Jinping’s larger project to consolidate his power and that of the Party includes tightening the Party’s grip on the news media. Chinese journalists have always faced great risks if they dare to report on politically sensitive topics, or if their work could be construed as voicing support for human rights or democratic reform. However, their space to operate has shrunk dramatically since Xi took office. In the 1990s, “Despite persistent pressure from state censors and other tools of political control, investigative journalism flourished in China,” according to China media scholars.<sup>406</sup> But more recently, as a result of both political and economic shifts in China, investigative journalism is in full retreat, with long-time media observers reluctantly concluding that gains made in press freedom since the 1990s have “steadily disappear[ed] under Xi’s reign.”<sup>407</sup>

Even up to a few years ago, investigative journalists used social media to report some of China’s most compelling and powerful news stories. In 2012, for example, veteran investigative journalist Luo Changping released a bombshell exposé on the corrupt behavior of Liu Tienan, the former head of the country’s National Energy Administration and one of China’s top economic officials. “According to media rules in China,” Luo explained in a 2017 interview, “you need to get official permission to publish criticisms of officials at this level. And of course, you can’t get that permission.” Instead, Luo published his reports on the internet, including through WeChat.<sup>408</sup> Since then, however, censors have shut down several of Luo’s social media accounts. Luo has concluded that if he were to try now to publish the same investigative material on social media that he did only a few years ago in 2012, it would immediately be removed by censors.<sup>409</sup>

On August 12, 2015, a series of explosions at the port city of Tianjin killed over 170 people. Journalist He Xiaoxin of The Beijing Daily travelled immediately to the spot, publishing his photos and coverage of the event directly to Weibo.<sup>410</sup> Hours after the explosion, the CAC and other censors published orders that only official reports could be used for news coverage; at least one such order mandated that reporters “must absolutely not privately post to Weibo or WeChat friend circles about the explosions.”<sup>411</sup> Broader regulations passed in 2005—and placed in renewed effect after a July 2016 crackdown—forbid most Chinese news websites from independently reporting on social and political issues, forcing them

to instead rely on state media reports.<sup>412</sup>

Indeed, part of the reason censorship directives are so insistent that media outlets use only “official sources” in their reporting is that even state-owned media outlets used to cite social media accounts for breaking stories.<sup>413</sup> In 2016, the CAC responded by issuing the “Circular on Further Strengthening Management and Suppression of False News,” a new regulation making it illegal for journalists to publish unverified reports from social media.<sup>414</sup> These new rules are part of authorities’ ongoing attempts to abolish citizen journalism, and ensure that their control over social media is as complete as their control over more traditional publishing venues. Observers such as the University of Hong Kong’s David Bandurski noted that the CAC’s reference to “the correct guidance of public opinion,” in its agency announcement justifying the new regulations, made it clear that authorities were concerned about stopping unverified social media reports “on political grounds, even if [the information] is patently true and professionally verifiable.”<sup>415</sup>

These moves coincided with President Xi’s 2016 tour of the headquarters of the biggest state media organizations in the country, posing for photos sitting at an anchor’s desk, and soaking in applause from gathered journalists.<sup>416</sup> “All news media run by the party must work to speak for the party’s will and its propositions, and protect the party’s authority and unity,” Xi told the media officials.<sup>417</sup> The principle that journalists must serve the aims of the Chinese Communist Party has become an entrenched legal reality in the last several years.<sup>418</sup> Independent journalism in China is thus an ever more dangerous endeavor,<sup>419</sup> with China consistently ranking as one of the world’s biggest jailers of journalists.<sup>420</sup> The government also maintains a “blacklist” of Chinese journalists who have engaged in “illegal reporting,” with penalties including revocation of press credentials and restrictions on their employment in the industry.<sup>421</sup>

Responding to the dangerous and depressing atmosphere for investigative or independent reporting in China, many journalists are “abandoning or transforming their careers.”<sup>422</sup> Some of them have turned to the Do-It-Yourself approach, starting a blog or using other social media outlets to publish stories of public interest without being attached to a particular media outlet. In contrast to the state’s tight control over newsrooms’ print and online outputs, social media platforms offer lower barriers to entry, even with their many restrictions.

Social media by its nature has no system of pre-publication censorship equivalent to that of mainstream media publishing: there are no editors to ‘spike’ the story before it is posted online.

This means that an article that otherwise would be deemed too controversial to publish has a fighting chance to spread on social media and be captured in screenshots before the censors pull it down. To be sure, censorship techniques are rapidly becoming more sophisticated and in some respects amount to de facto pre-publication censorship. Word-filtering technology may detect and block stories on sensitive issues before they are posted, particularly if the story is on a major newsworthy event, a CCP leader, or a high-profile dissident. Additionally, corporate or government censors may spot a news story mere moments after it is posted. However, even with all these strictures, journalists posting their work on social media do not have to go through the formal process of submitting their work to others to ensure its conformity with the Party’s dictates: they can instead press ‘publish’ and see what happens.

WeChat is a popular forum for such independent journalists: the ability to ‘subscribe’ to a page’s content allows readers to follow journalists they admire, and WeChat has a function allowing readers to donate if they liked the content. As media professor lam-Chong Ip of Hong Kong’s Lingnan University explained in an analytical piece, the bottom-up contributory model of social media-fueled journalism allows independent journalists a degree of freedom that does not commonly exist in mainstream journalism. “They choose and research topics according to their own liking. Rather than pursuing ‘hot topics’, they typically follow the convention of reportage literature, by researching historical events such as grassroots stories from the Anti-Rightist Campaign and Cultural Revolution, or the history and culture of a particular place that has been neglected by the general public. Apart from reports, they also write commentaries,” he said.<sup>423</sup>

These benefits come with additional risks, Ip noted. “There are no reliable figures on how many journalists work in this mode in China, but it is clear that they are walking on a tightrope which carries immense risk, but can also yield opportunities.”<sup>424</sup> He added that the new rules criminalizing rumors and defamatory content that has been reposted 500 times or more means the stakes are especially high for independent writers who rely on social media for disseminating their stories.<sup>425</sup>

PEN America spoke to one such independent writer, Ye Weimin. Ye resigned from his job as senior editor at the *Southern Weekly* newspaper in Guangzhou in 2014, following crackdowns on the newspaper, which was famous for publishing hard-hitting investigative stories. The provincial propaganda department’s heavy-handed attempt to turn the paper’s New Year editorial into a propagandistic paean



led to staff objections and street protests in early 2013, and made the newspaper a symbol of growing crackdowns on press freedom in China.<sup>426</sup>

Ye now works in finance and told PEN America that not having to depend on journalism to make a living has made him feel liberated. He continues to write and said he was surprised that writing on social media platforms like Wechat public accounts has allowed him to reach a younger audience than he did while working in traditional media. “I find time to write at lunchtimes and in the evenings. I write about science and technology for online publications and magazines published as Wechat public accounts. I also make video tutorials about journalism. I find it more fulfilling now that a lot of the pressure is off,” he told PEN America. But, Ye readily acknowledges, he avoids writing about topics that tend to get censored.

It should be noted that this model of social media-fueled reporting is no substitute for institutionalized journalism. Indeed, some worry that the shift to social media-fueled models of journalism imperils journalistic institutions. Noting that social media has—in China as in many other countries—habituated its users to expect news content for free, Internet and media commentator Michael Anti told PEN America “Censorship has never eased. The more dramatic change is from Internet business models. We are losing financial support for real journalism.” Anti cautioned that support for journalism in China requires support for its institutions, not just individual reporters. “There’s no replacement for knowledgeable and institutionalized journalism,” Anti said. “Certain stories, you cannot use the internet model to fund.”

Freelancers told PEN America they try to avoid describing themselves as journalists on social media or in person when they meet interview subjects. They instead call themselves writers, essayists or photographers or documentarians.<sup>427</sup> Many have given up on making journalism work as a full-time vocation and now approach it as a hobby. Today, even accredited reporters with mainstream outlets are reluctant to tout their work on social media. One interviewee, a



*An image from He Xiaoxin's photo essay on Tianjin, in which a lone firefighter walks amongst a field of cars destroyed by the explosion. In the caption, He writes “These cars gutted by fire are like demons that have crawled out of Hell.”<sup>428</sup>*

politics reporter from the southern city of Guangzhou, told PEN America, “I am scared to talk about my reporting on social media. After working so hard to get established in the industry, now I feel like my work is useless. Many colleagues have already quit. I’m considering my options.”

While social media has brought new economic pressures to bear against journalistic institutions in China, it has also offered new avenues for journalists to reach their audiences. But censorship strictures are following journalists from the editorial board to cyberspace. The 2016 regulations against “unverified” social media reports have severed a once-promising way for social media and mainstream journalism to operate in tandem. Meanwhile, licensing regulations and criminal libel laws mean that independent journalists that use social media are taking a serious legal risk with every posting. Additionally, censors continue to improve their ability to remove social media stories before they can spread widely. Whatever the type of journalism—investigative, independent, “citizen” or freelance—China’s censors are adamant in their control over the online content.

## Special Section

# FOREIGN SOCIAL MEDIA

A fundamental promise of the Internet has been its potential to connect people worldwide instantaneously—the creation of an online world with no borders. But as this promise has developed, driven forward by the growth of social media networks, repressive governments and would-be dictators have taken notice and responded with efforts to establish “sovereignty”—or borders—for their country’s internet. China’s construction of a ‘national internet’—fenced off by the Great Firewall and vigilantly watched over by the ‘cyber sovereign’—has meant that foreign technology and social media companies have had a difficult time entering or remaining in the Chinese market.

YouTube was blocked in March 2008, the same month that a major wave of protests-turned-riots swept Tibet. Then-nascent Facebook and Twitter

***Foreign companies operating in China must abide by the country’s regulations and, by default, their censorship regime. This not only clarifies the technical terms of potential entry into the Chinese market, it also lays bare the clear moral question at the heart of the decision.***

were blocked the next year, soon after a wave of ethnic unrest swept Xinjiang in July 2009.<sup>429</sup> Virtually all major foreign social media platforms are currently blocked in China, including Instagram, Pinterest, Snapchat, Tumblr, and blogging platforms Wordpress and Blogger.

While Google is not a major social media service provider, the company’s history in China has been

influential in debates over whether foreign internet companies should even try to operate on the mainland. Google chose to shut down its mainland Chinese search engine in 2010 after discovering that a number of Chinese human rights activists’ Gmail accounts had been hacked. The move drew attention to the pressure on foreign internet companies to abide by local laws (which in China include full compliance with the censorship regime), and raised questions on whether foreign social media companies can ensure the security, privacy, and free expression rights of their users in China.

As detailed above, foreign companies operating in China must abide by the country’s regulations and, by default, their censorship regime. This not only clarifies the technical terms of potential entry into the Chinese market, it also lays bare the clear moral question at the heart of the decision.

### Using foreign social media platforms

For Chinese writers, journalists, and netizens, foreign social media platforms offer the possibility of posting without fear of censorship, but not without fear of punishment. In fact, the freewheeling nature of U.S.-based platforms like Twitter and Facebook can, paradoxically, put Chinese writers who remain in the country at greater risk than if they were writing on Chinese platforms.

Experts interviewed by PEN America noted that Chinese authorities appear to be somewhat less worried about criticism voiced by Chinese citizens on foreign social media platforms. Internet users on the mainland cannot access these platforms without using a Virtual Private Network, which has become more difficult as authorities pass new laws designed to restrict their availability. Thus, the potential impact domestically of a post on foreign platforms is much smaller.

However, precisely because U.S.-based social media platforms do not block and delete posts critical of the government, such criticism posted by a Chinese user may be more likely to come to the attention of authorities, making them a target for punishment. Another risk is that a critical comment will be shared by many others, drawing additional attention to the post. If, for example, a Chinese labor rights activist posts a story on factory strikes on Facebook, and other users respond by commenting “down with the CCP”, authorities may respond more harshly against the original poster.

Chinese nationals also risk arrest on charges such as disclosing “state secrets” or “subverting state power” with posts on their Twitter, Facebook, or other foreign social media accounts. For example, in November 2012, investment banker and blogger Zhai Xiaobong was arrested for comparing the 18<sup>th</sup> Party Congress political meeting to the supernatural horror movie *Final Destination* on Twitter. He was detained for a month under suspicion of “spreading false terrorist information.”<sup>430</sup>

Increasingly, Chinese nationals who fled persecution or voluntarily migrated overseas play a role in disseminating information that is heavily censored in mainland China. They were often prominent writers, artists, activists and lawyers with large networks in China before they left the country—and often maintain close ties with their contacts via social media.

For example, free speech activist and journalist



Wen Yunchao, commonly known by his online alias “Bei Feng”, now maintains a popular email newsletter for information on Chinese human rights and free speech news. Wen fled to Hong Kong and then New York in 2011 after his friends were increasingly being arrested and he feared he and his family could be next.<sup>431</sup> He shares information with his nearly 400,000 Twitter followers.<sup>432</sup> However, Wen told PEN America he is still cut off from being able to communicate with internet users in China, estimating that only 5 percent of his Twitter followers are people living in China and accessing Twitter with VPNs.

Dissident academic Qiao Mu shared a similar experience with PEN America: the constant censorship he experienced on Chinese social media outlets pushed him to use foreign social media instead, giving him the ability to engage with foreign journalists and provide commentary on Chinese politics and policy. However, he could no longer reach the same number of followers within China. “I had over a million followers on one of my old Sina Weibo accounts. When I couldn’t use it I moved over to Twitter, but on Twitter I only have 4,000 followers,” Qiao said. (Note: at the time of publication, Qiao had approximately 12,200 Twitter followers.)<sup>433</sup> Censorship would also lead Qiao to leave China in December of 2017.<sup>434</sup>

The usage of foreign social media platforms, then, involves a trade-off: In order to speak freely, one must abandon the very audience that one wants to reach the most. This is an ‘escape’ from Chinese censorship in name only; in reality, this digital exile is consistent with the censors’ goal of marginalizing dissenting voices.

Despite the difficulties, there are numerous people like Wen and Qiao who feel an obligation to use their freedom living abroad to share information that cannot be easily spread in China. Rather than trying to reach audiences in China, they see their role as funneling information from their sources in China to the outside world—often involving translation from Chinese to other languages, primarily English. Rose Tang, a journalist formerly based in China who fled the country after being targeted for her reporting, shared this perspective with PEN America:

“Chinese dissidents/activists overseas have been playing a crucial role in protesting the totalitarian regime and assisting and even guiding activists inside China. The Chinese overseas connect with those inside China via social media to get their news out to the world, to the journalists, NGO workers, diplomats, academia and activists in other countries. This is done on a daily basis by a number of dedicated people overseas, most of whom operate as individuals and do not belong to any NGOs or groups. Some are journalists themselves, some are just people with

normal jobs but have the passion and commitment.” Tang also has an active social media presence, but is completely off Chinese social media.

Su Yutong, another journalist who went abroad after being targeted, agreed that foreign social media has allowed concerned Chinese citizens abroad to play a role in spreading the word on important issues. She shared the case of activists Wang Lihong, Zhu Chengzhi and Wu Gan, who used social media within China to call for protests in the country. When they were arrested in 2010,<sup>435</sup> Su recalls, “We did not have a complete record of many aspects of this case, but we sent out what we knew on social and gained the support of some Chinese citizens who told us more and we were able to publicize a more complete picture of what happened to the world.”

Su has been on Twitter since 2009: “On [Twitter], I did not need to be censored over and over again. I freely express my thoughts and make a record of things happening in China.” In contrast, Su recalls, much of what she had previously posted on Sina Weibo was deleted, including important reporting on public health matters in China including syringes contaminated with HIV and Hepatitis C. “Finally,” she recalls, “all the Weibo accounts I opened were blocked. I had to stop using Chinese social media because I refused to self-censor.”

Foreign messaging apps such as WhatsApp and Signal are particularly appealing to some Chinese users as platforms for private communication, because these messaging services encrypt their users’ communications. Facebook, which owns WhatsApp, introduced end-to-end encryption for messages on WhatsApp in 2016.<sup>436</sup> It is one of the more popular encrypted messaging platforms in China. However, the app stores metadata, which means that if a user’s app gets hacked, intruders would be able to see basic information such as which users are participating in a conversation.<sup>437</sup> And beginning in mid-2017, WhatsApp has been intermittently blocked in China.<sup>438</sup>

Chinese activists tell PEN America that when a person is feared to have been detained by police, the WhatsApp group administrator will remove the person from group chat to try to reduce the risk that authorities will identify other activists when searching the detained person’s phone. After the person is released from police custody, the person usually gets re-added to the group chat.

However, even with group chats on encrypted chat services such as WhatsApp or Signal, the groups tend to be very large and they are “leaky” by design. Chat groups involving activists, lawyers and human rights bloggers often have hundreds of members, and sharing information within them risks exposing it to infiltrators. Technical solutions for internet privacy—such

as encryption—can only go so far, even if they are an invaluable tool for many activists and journalists.

One possible example of the dangers of such “leaky” WhatsApp groups is the case of Chinese human rights activist Zhang Guanghong, who last year used WhatsApp to share an article criticizing Xi Jinping. In September, Zhang was detained and charged with insulting the government. The evidence against him at trial included printouts of Zhang’s WhatsApp conversations.<sup>439</sup>

According to Zhang’s lawyer, authorities claim they used a technological backdoor to access the chat.<sup>440</sup> However, independent experts have concluded it is more likely the government gained the transcripts either through an informant in the group chat or by hacking the conversation.<sup>441</sup> The New York Times, reviewing the case, concluded that the arrest “sends a warning to those on the American platform, which is encrypted, that they could also be held accountable for what’s said there.”<sup>442</sup>

### Foreign Media Eyes the Chinese Market

U.S.-based tech firms are increasingly eyeing entry (or in some cases, re-entry) into the Chinese market, the largest single-nation market in the world. Such a move offers clear financial benefits. Chinese laws and policies, however, make it impossible for such companies to enter the Chinese market without becoming active participants in the human rights abuses detailed throughout this report: censorship, mass surveillance, intimidation and arrest of human rights activists and others for their social media activity, and widespread repression of the right to free expression, the right to privacy, and a host of other civic and political rights.

Chinese leaders have been very clear about the terms of the agreement they are offering foreign internet companies: you are welcome, if you accept our conditions. In a prelude to China’s 2016 World Internet Conference, the CAC’s Deputy Director Ren Xianliang responded to a question about Google and Facebook by saying “As for foreign internet companies, as long as they respect China’s laws, don’t harm the interests of the country, and don’t harm the interests of consumers, we welcome them to enter China.”<sup>443</sup> In December 2017, another CAC official, Qi Xiaoxia, made an identical statement at the Internet Governance Forum conference in Geneva: “If they want to come back, we welcome [them]. The condition is that they have to abide by Chinese law and regulations. That is the bottom line. And also that they would not do any harm to Chinese national security and national consumers’ interests.”<sup>444</sup> The maxim “abide by China’s laws” is an unambiguous reminder that re-entry is predicated on compliance with China’s censorship regime.



Exiled cartoonist “Rebel Pepper”, on the 2017 World Internet Conference.

In January 2018, exiled human rights lawyer Chen Guancheng laid out his understanding of this new dynamic:

“Many American tech companies have been tripping over themselves to get into China [...] For such companies, the Chinese market is simply too big of a temptation when weighed against less quantitatively measurable things like human rights and freedom of expression.

“The Chinese regime makes no apologies about its human rights violations and seems not to care whom it crushes in its quest for power and control, whether it is the Nobel Peace Prize laureate Liu Xiaobo, who died last year in Chinese custody, or the many human-rights lawyers and activists who have been detained and tortured in recent years.

“When dealing with the Chinese regime, American companies should likewise not apologize for their commitment to the fundamental values —human rights, democracy, freedom of information, the rule of law —that have allowed them to flourish. American companies should not follow practices in authoritarian countries that are illegal in the United States.”<sup>445</sup>

As mentioned in the Introduction, one of the ways that foreign internet companies have indicated their interest in the Chinese market—and perhaps their willingness to negotiate on the issue of Chinese censorship—has been by attending China’s World Internet Conference, China’s yearly government-sponsored conference at which the CCP pushes its vision for cyber sovereignty. At the



most recent Conference, held in December 2017, Google CEO Sundar Pichai and Apple CEO Tim Cook were conspicuous presences.<sup>446</sup> Both Cook and Pichai spoke at the Conference, with Cook giving a keynote address.<sup>447</sup>

At the same conference, Mei Janming, the director of a government-affiliated anti-terrorism research institute, proposed to the crowd that China should be pushing foreign social media companies like Twitter to change their Terms of Service to more easily restrict posts from “subversive” groups.<sup>448</sup> Such a push by China would clearly constitute a broad-scale governmental effort against free speech worldwide, especially when one considers the Chinese government’s expansive definition of “subversion.”

In 2017, Apple came under fire from international observers for agreeing to remove VPN software from its App Store in mainland China, and also removing some sixty other apps including that of the New York Times. Apple admitted to removing over 600 VPN applications. It is unclear how many people in China use Apple products; however, one 2016 estimate puts the number of Chinese iPhone users at over 130 million.<sup>449</sup> Concerned about these developments, US Senators Ted Cruz and Patrick Leahy sent an inquiry to Apple asking for an explanation of their decision.<sup>450</sup> Apple responded in a public letter in November 2017, stating in part:

“Now celebrating its eighth year in China, the App Store serves as a powerful platform for human expression, education, artistic freedom, and economic empowerment . . . We believe that our presence in China helps promote greater openness and facilitates the free flow of ideas and information. Our products and services offer our customers opportunities to communicate in many forms—including through personal communications services, podcasts, photos, and millions of apps . . . We are convinced that Apple can best promote fundamental rights, including the right to free expression, by being engaged even where we may disagree with a particular country’s law . . . we express our opinions about the impacts of laws and regulations forthrightly to policymakers.”<sup>451</sup>

Three months later, in February of 2018, it was reported that as part of Apple’s movement of Chinese user accounts to Chinese servers, the company would move the encryption keys for these accounts from the United States to within China as well.<sup>452</sup> The result is that China can legally compel Apple to turn over the keys to its user data, without going through any other legal system.<sup>453</sup> In a statement, Apple said that “While we advocated against iCloud being subject to these laws, we were ultimately unsuccessful.”<sup>454</sup>

By agreeing to remove VPN software, Apple has facilitated China’s recent crusade against VPN use—the only widely-available way that Chinese users can circumvent the Great Firewall and access banned websites and a lifeline of sorts for writers and other users who are blocked from Chinese social media, as this report has shown. Lo Shih-hung, a professor at Taiwan’s National Chung Cheng University, noted that some of the VPN apps were still available in China if one used the Google-owned Android system instead. “This indicates that Apple is not ‘forced’ to comply” with authorities’ requests, Lo argued. Instead, “people suspect that it is proactively performing an ‘obedient’ role,” presumably with an eye towards market entry.<sup>455</sup>

Additionally, at around the same time, Apple admitted that it had removed the popular communication app Skype from its App Store, after being “notified by the Ministry of Public Security” that the application “did not comply with local law.”<sup>456</sup> Skype, a popular chat app, uses end-to-end encryption for both its calls and its texts.<sup>457</sup> In January 2018, Apple also agreed to store its Chinese user data within Chinese jurisdiction, a requirement under China’s new Cybersecurity Law, and to partner with state-linked Chinese company Guizhou-Cloud Big Data (GCBD) to manage this data storage.<sup>458</sup>

Chen concluded of the move, “Apple is selling out . . . This kind of partnership between an American company and a dictatorial regime is at odds with the image Apple has built as a company committed to privacy and a willingness to stand up to pressure from larger entities like the United States government.”<sup>459</sup>

Taiwanese academic Lo Shih-Hung came to a similar conclusion, contrasting Apple’s decision with its refusal to build a ‘backdoor’ for private iPhone data on behalf of the US Department of Justice. Lo concluded: “The handover of China iCloud to GCBD is unquestionably a performance of submission and kowtow,” noting that, “online, several people have quipped: “the Chinese government is asking for 50 cents, Apple gives her a dollar.”<sup>460</sup>

As a result of this data-sharing agreement, the press freedom organization Reporters Without Borders (RSF) issued a warning to all reporters and bloggers who use Apple Cloud China to “change their geographic region or to close their accounts by 28 February, when control of their data will pass to the Chinese state.”<sup>461</sup> Press freedom advocates also noted that Apple had apparently added a clause to the user agreement that gave not only Apple, but GCBD, the right to access “all user data (including content).”<sup>462</sup>

In February 2018, the Taiwanese computer company Asus shut down cloud service in China, on the grounds that it could not in good conscience comply

with the new requirements to hand over its user data.<sup>463</sup> Hong Kong-based cyber-rights expert Lokman Tsui responded to the news on Twitter by contrasting the company's actions with that of Apple, announcing "it's time to leave iCloud."<sup>464</sup>

Discussing the incident with PEN America, Tsui said "We forget sometimes that companies have agency as well. They have choices they can make. That is most clear in the contrast between Asus, who decided to pull out, and Apple who decided not only to have their services inside China, and leave its cryptographic keys there." When asked if foreign companies can use their agency to support free expression while operating in China, he replied "I see very little option for that. That is because the government has rigged the rules in such a way that there is almost no way to stay in and do right by free expression at this point."

Facebook founder Mark Zuckerberg has also raised eyebrows with a series of meetings with Chinese authorities—including former head of the Central Propaganda Department Liu Yunshan—and gestures such as asking President Xi to name his baby or taking a photo-opportunity-friendly jog through Tiananmen Square.<sup>465</sup> This has been accompanied by more formal overtures by the company, such as its tentative plans—reported in late 2017—to open an office in Shanghai.<sup>466</sup> This has led to fears that Facebook may agree to censor its platforms in exchange for entry to the Chinese market.

These fears seemed to be validated when, in November 2016, the story broke that Facebook was developing confidential new censorship tools designed with the intention of gaining access to the Chinese market.<sup>467</sup> Facebook employees, speaking anonymously, revealed that Facebook had developed software that would suppress posts from appearing in people's Facebook feeds, dependent on where in the world they were located.<sup>468</sup> The employees stressed that the censorship tool had thus far gone unused.<sup>469</sup> Such software would, if approved and put to use in China, presumably be managed by a Chinese company—almost certainly State-owned or possessing substantial connections to both the government

and to the CCP-- which could use the software to monitor popular stories and topics.<sup>470</sup> This Chinese partner would then have full control over whether such posts show up in Chinese users' feeds.<sup>471</sup> The Chinese partner would also presumably be able to monitor which users were posting on which controversial subjects. Facebook did not respond to PEN America's request for comment.

Months later, Facebook released a Chinese version of its "Moments" photo-sharing app in China, with the name "Colorful Balloons," through a local Chinese company without any acknowledgment that it was affiliated with Facebook.<sup>472</sup> When the link to Facebook was discovered and reported, the company responded with a statement that they had "long said that we are interested in China, and are spending time understanding and learning more about the country in different ways."<sup>473</sup>

Western companies making such moves have argued that they have no choice but to comply with Chinese laws, even laws that will foreseeably lead to wide-scale human rights abuses. This is not true. Companies have a choice: not to comply with Chinese censorship in the first place. Beyond the simple binary question of entry/no-entry, however, foreign social media outlets must make a decision not to be proactively obedient to governmental mandates.

As this Report demonstrates, Chinese authorities feel little pressure to refrain from enacting additional laws and regulations that provide them with more and more control—over online speech, over private user data, and over the direct conduct of internet companies themselves. If foreign internet companies do not draw a clear line over the principles of free expression that they claim to espouse, they will find themselves giving away more and more to China's "cyber sovereign." Other countries in which these platforms already operate will doubtless demand the same concessions, enacting a vicious cycle of increasing censorship. U.S.-based tech companies face a pivotal moment in their history, and a decisive one for their legacy. They must seize this moment to stand firm in their professed dedication to upholding free expression and democratic ideals.



## CONCLUSION

Every single aspect of China's system of online censorship has accelerated under President Xi's tenure. Regulatory enforcement has become more rigorous, domestic social media companies are on thinner ice with their government minders, advancing technologies for censorship are allowing for more effective filtering of words and images, and criminal punishments for speech have become more widespread and harsh.

By the time that Liu Xiaobo stood trial in 2009 for his "crime" of using the internet to call for democratic reforms, it is unclear whether his optimism about the transformative power of the internet in China had waned. What is clear is that his optimism about the future of free speech in China remained undimmed. In the closing statement he wrote but was not allowed to deliver at his trial, he said:

"I look forward to [the day] when my country is a land with freedom of expression, where the speech of every citizen will be treated equally well; where different values, ideas, beliefs and political views ... can both compete with each other and peacefully coexist . . . I hope that I will be the last victim of China's endless literary inquisitions and that from now on no one will be incriminated because of speech."<sup>474</sup>

In China today, broad categories of speech are treated as crimes, both online and offline. Words, themes, and ideas are erased from online discourse if they do not meet with government approval. People are jailed for years for something they write in a blog post or even in a non-public conversation. It does not have to be this way. Many in China are still waiting, and fighting, for this dream of free expression.

# RECOMMENDATIONS

On the basis of this report's findings, PEN America has developed the following recommendations for the Chinese government; for the United States government and the international community; and for foreign social media companies.

## **To the government of the People's Republic of China:**

- Reform or abolish any laws and regulations affecting internet governance currently in force within China to comply with guarantees of the right of free expression contained in China's Constitution and in international human rights instruments.
- End the practice of widespread state surveillance of online speech.
- Revoke all laws and regulations requiring internet companies to impose keyword filtering or other practices that support censorship.
- End the practice of "blacklisting" websites and preventing website access.
- Legalize the sale and use of Virtual Private Networks, regardless of government authorization. End technological and legal restrictions on VPN use.

## **To the government of the United States of America**

- Unequivocally and publicly speak out in support of free expression and press freedom, in the U.S. and around the world.
- Publicly and privately advocate for the removal of restrictions on free expression, including but not limited to the online censorship regime, with diplomatic counterparts in China.

## **To members of the international community**

- Consistently call and advocate for global internet policies that respect, safeguard, and uphold the right to freedom of expression and related rights. Raise concerns regarding the state of online expression in China at private and public engagements with counterparts within the Chinese government.
- Use China's upcoming Universal Periodic Review at the United Nations Human Rights Council in November 2018 to raise concerns about respect for internet freedoms in the country and make recommendations to the Chinese government about improving freedom of expression online.

- Refuse to participate in China's World Internet Conference unless and until it is re-oriented as an event that acknowledges and respects international human rights guarantees, and publicly reject any vision of internet governance that is inconsistent with international guarantees of free expression and related rights.

## **To foreign technology and social companies**

- Refrain from doing business in the Chinese market unless and until you have secured an agreement with the government that the company will not be obligated to enforce Chinese laws and regulations related to censorship, or to otherwise violate China-based customers' rights to privacy, free expression, access to information, or related rights.
- Make public and transparent any current or ongoing initiatives, programs, or technological developments that would provide any government with tools to filter, monitor, or censor the private or public posts of your users on any social media platform.
- Ensure that your organization has comprehensive pre-existing policies in place to protect users' free expression and privacy rights, to which employees can refer when asked by government officials—either formally or informally—to hand over private user data, constrain users' ability to access your social media platforms, or alter company algorithms or policies.
- Support and collaborate with non-governmental organizations and research groups that monitor and provide information on the mechanics of social media censorship in China, as well as groups that help develop technological solutions to Chinese censorship.
- In interacting either privately or publicly with Chinese officials—or officials involved with internet governance in any country—clearly express the importance of, and the company's commitment to, free expression and related rights.
- Refuse to participate in China's annual World Internet Conference unless and until it is re-oriented as an event that acknowledges and respects international human rights guarantees, and publicly reject any vision of internet governance that is inconsistent with international guarantees of free expression and related rights.
- Refuse to comply with any government request for a user's private data that is inconsistent with



international guarantees of free expression, or where there is reason to believe the data will be used to violate the user's human rights.

- Refuse to provide business partners with sensitive user data or access to it where there is substantial concern that such data could be used to infringe upon the user's right to free expression or other human rights.

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## APPENDIX

# SELECTED CASES ON CHINESE CITIZENS TARGETED FOR SOCIAL MEDIA USE

PEN America has prepared an Appendix to this report presenting 80 cases in which Chinese citizens have been targeted or punished by the government for their online speech. The full Appendix can be accessed at [www.pen.org/forbidden-feeds](http://www.pen.org/forbidden-feeds). The 80 cases included in the Appendix have been gathered from publicly-available reports by English and Chinese-language sources. They do not provide an exhaustive or complete examination of the facts. The case summaries provide basic information for each case; given space constraints, they are not comprehensive descriptions. The official charges listed for each case are based on publicly reported charges or, where this was not readily available, PEN America's determination of the legal provisions consistent with public descriptions of the charges. Nothing in the Appendix should be construed as PEN America's acceptance of, or belief in, the factual or legal allegations made against these individuals, or any acceptance of China's legal determination of their guilt.

The cases in this Appendix range widely: from human rights activists and whistleblowers sentenced to years in prison, to netizens being detained and questioned by police after posting a critical comment. Overall, however, the cases help demonstrate how China's system of "cyber sovereignty" is backed up by varying degrees of retaliation against those who dare to run afoul of the "cyber sovereign." This is not an exhaustive list of cases involving punishment for online speech in China. These cases are presented to demonstrate the wide range of ways an internet user can find him or herself facing serious consequences for remarks made online, and to demonstrate how the Chinese government's criminalization of online speech has tangible—and at times devastating—effects on the lives of its citizens.

## Appendix II

# PEN DECLARATION ON DIGITAL FREEDOM

### Declaration on Digital Freedom

PEN International promotes literature and freedom of expression and is governed by the PEN Charter and the principles it embodies—unhampered transmission of thought within each nation and between all nations.

PEN recognizes the promise of digital media as a means of fulfilling the fundamental right of free expression. At the same time, poets, playwrights, essayists, novelists, writers, bloggers, and journalists are suffering violations of their right to freedom of expression for using digital media. Citizens in many countries have faced severe restrictions in their access to and use of digital media, while governments have exploited digital technologies to suppress freedom of expression and to surveil individuals. The private sector and technology companies in particular have at times facilitated government censorship and surveillance. PEN therefore declares the following:

- 1. All persons have the right to express themselves freely through digital media without fear of reprisal or persecution.**
  - a. Individuals who use digital media enjoy full freedom of expression protections under international laws and standards.
  - b. Governments must not prosecute individuals or exact reprisals upon individuals who convey information, opinions, or ideas through digital media.
  - c. Governments must actively protect freedom of expression on digital media by enacting and enforcing effective laws and standards.
- 2. All persons have the right to seek and receive information through digital media.**
  - a. Governments should not censor, restrict, or control the content of digital media, including content from domestic and international sources.
  - b. In exceptional circumstances, any limitations on the content of digital media must adhere to international laws and standards that govern the limits of freedom of expression, such as incitement to violence.
- 3. All persons have the right to be free from government surveillance of digital media.**
  - a. Surveillance, whether or not known by the specific intended target, chills speech by establishing the potential for persecution and the fear of reprisals. When known, surveillance fosters a climate of self-censorship that further harms free expression.
  - b. As a general rule, governments should not seek to access digital communications between or among private individuals, nor should they monitor individual use of digital media, track the movements of individuals through digital media, alter the expression of individuals, or generally surveil individuals.
  - c. When governments do conduct surveillance—in exceptional circumstances and in connection with legitimate law enforcement or national security investigations—any surveillance of individuals and monitoring of communications via digital media must meet international due process laws and standards that apply to lawful searches, such as obtaining a warrant by a court order.
  - d. Full freedom of expression entails a right to privacy; all existing international laws and standards of privacy apply to digital media, and new laws and standards and protections may be required.
  - e. Government gathering and retention of data and other information generated by digital media, including data mining, should meet international laws and standards of privacy, such as requirements that the data retention be time-limited, proportionate, and provide effective notice to persons affected.
- 4. The private sector, and technology companies in particular, are bound by the right to freedom of expression and human rights.**
  - a. The principles stated in this declaration equally apply to the private sector.
  - b. Companies must respect human rights,
  - c. Governments should not block access to or restrict the use of digital media, even during periods of unrest or crisis. Controlling access to digital media, especially on a broad scale, inherently violates the right to freedom of expression.
  - d. Governments should foster and promote full access to digital media for all persons.



including the right to freedom of expression, and must uphold these rights even when national laws and regulations do not protect them.

- c. Technology companies have a duty to determine how their products, services, and policies impact human rights in the countries in which they intend to operate. If violations are likely, or violations may be inextricably linked to the use of products or services, the companies should modify or withdraw their proposed plans in order to respect human rights.
- d. Technology companies should incorporate freedom of expression principles into core operations, such as product designs with built-in privacy protections.
- e. If their operations are found to have violated the right to freedom of expression, technology companies should provide restitution to those whose rights were violated, even when governments do not provide remedies.

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