

## SEARCHING FOR INTERNET FREEDOM IN CHINA: A CASE STUDY ON GOOGLE'S CHINA EXPERIENCE<sup>♦</sup>

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## ABSTRACT

Google has been a giant in the global Internet economy, but the company has encountered a series of setbacks in China. In order to prevent its search results from being filtered out or slowed down by the Great Firewall, Google launched the Chinese search engine Google.cn in 2006 and self-censored the search results disapproved by the Chinese government. However, as the Chinese government's regulation of and policies toward the Internet have significantly affected the fundamental principles on which Google's business has been built, the company eventually terminated its physical search-engine operations in China in 2010 after several rounds of negotiations with the Chinese government.

Using Google.cn as a case study, this Article illustrates China's method of regulating the Internet, which may become a dominant approach in global Internet governance. Through the Great Firewall and rigid regulations on Internet business licenses, the Chinese government has illustrated how to effectively regulate the Internet by controlling relevant facilities and activities in the physical world within a nation's borders. Moreover, the Chinese regulatory model that pushes for the alignment of private interests with the authoritarian state's preferences and ideology may lead to serious accountability problems in both the domestic and global spheres. This Article proposes several strategies that Internet-related companies, national governments, and non-governmental organizations might use to solve such accountability crises.

## INTRODUCTION

*We believe strongly that in the long term, we will be better served—as shareholders and in all other ways—by a company that does good things for the world even if we forgo some short-term gains. This is an important aspect of our culture and is broadly shared within the company.*

—Larry Page & Sergey Brin<sup>1</sup>

Google is one of the most successful enterprises in the digital world. Its business model has been built around the Internet's open and transparent nature. The company is famous for its informal corporate maxim "Don't be evil." Nonetheless, Google has hesitated to insist on universal compliance with this maxim since the company started its exploration of business opportunities in China, where the government demanded strict control of search results and other online information. In fact, China is not the first or only national government to mandate

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<sup>1</sup> Google's co-founders Larry Page and Sergey Brin made this statement shortly before the company's initial public offering in 2004. See JEFF JARVIS, WHAT WOULD GOOGLE DO? 99 (2009).

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that Google's search service comply with domestic laws chiefly by filtering out unwanted online information. For example, Google eliminated pro-Nazi and racist sites from search results in its localized search engine at the request of the French and German governments.<sup>2</sup> In Thailand, Google has removed from its search results a variety of websites allegedly insulting to the country's king.<sup>3</sup> Therefore, when initiating Google.cn in 2006, the company believed that its "experience dealing with content restrictions in other countries provided some crucial insight as to how [the company] might operate Google.cn in a way that would give modest but unprecedented disclosure to Chinese Internet users."<sup>4</sup> Nonetheless, it turned out that the Chinese government's mandate of online information control became the most difficult one for Google to conform to. Compared to Google's struggle in China, the company's compliance with other domestic laws and removal of sensitive information have not caused any significant controversies or problems. This generally positive track record perhaps reflects the fact that the Chinese government's regulation of and policies toward the Internet have significantly affected the fundamental principles on which Google's business has been built. As a matter of fact, both the Chinese government and Google ended up testing each other's baseline.

The case of Google in China has demonstrated a number of interesting policy issues surrounding Internet governance. China and Google had a range of options in pursuing their relationship; however, they both decided to take a tough stand toward each other. The Chinese government has developed a unique way to regulate the Internet: leveraging the information flow to boost the economy while strictly eliminating some of the most important open and liberal characteristics underlying the Internet. Google has presented another story entirely different from its competitors Yahoo! and Microsoft, which have amenablely altered their business practices according to China's Internet policy. Google's approach has involved more insistence, even after some uncomfortable compromises.

The methodology we have used for this research is a classic single-

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<sup>2</sup> See, e.g., RICHARD L. BRANDT, *INSIDE LARRY AND SERGEY'S BRAIN* 134 (2009); *A Starting Point: Legal Implications of Internet Filtering*, OPENNET INITIATIVE, 5 (Sept. 2004), [http://opennet.net/docs/Legal\\_Implications.pdf](http://opennet.net/docs/Legal_Implications.pdf).

<sup>3</sup> See, e.g., BRANDT, *supra* note 2, at 134–35; Andy Greenberg, *Where Google Still Censors*, FORBES, Jan. 21, 2010, <http://www.forbes.com/forbes/2010/0208/outfront-technology-china-where-google-still-censors.html>.

<sup>4</sup> *The Internet in China: A Tool for Freedom or Suppression?: Joint Hearing Before the Subcomm. on Afr., Global Human Rights & Int'l Operations & the Subcomm. on Asia and the Pac. of the H. Comm. on Int'l Relations*, 109th Cong. 74 (2006) [hereinafter Schrage] (prepared statement of Elliot Schrage, Vice President for Corporate Communications and Public Affairs, Google, Inc.).

case approach.<sup>5</sup> We have studied Google's business in China as the unit of analysis to address. This Article will first analyze the evolving open, decentralized, and democratic nature of the Internet, and the importance of these attributes to Google's business model. Then we will explore how, by discarding some of the Internet's essential characteristics, China's Internet policies have shaped a new digital arena. Such policies have imposed great pressure on western Internet companies like Google. Using Google's experience in China as an example, this Article illustrates the Internet governance dilemma faced by multinational Internet-related companies today, as well as accountability crises in the global digital environment. By exploring these topics, we propose a framework that, supported by multi-stakeholders, should help to address these and related quandaries.

### I. THE NATURE OF THE INTERNET AND GOOGLE'S BUSINESS

Google's business model has been built on the open and decentralized nature of the Internet. Nevertheless, the Internet's characteristics are not immutable. Because of comingled technological, political, and commercial powers from the public and private sectors, the current status of the global Internet has evolved significantly since its inception. This evolution has, of course, involved adjustments by Google and other Internet companies to corresponding strategies. The study of Google's strategy for and Google's reaction to the Internet has provided important policy implications for Internet governance. In this section, we will first describe the changing nature of the Internet, and then explain why the study of Google's business in China has yielded important contributions to Internet law scholarship.

#### A. *The Evolving Nature of the Internet*

It has long seemed that the Internet was going to reorganize human society. The Internet has increasingly become an intimidating, exciting, and democratic collection of information and users.<sup>6</sup> This characteristic is part of what has compelled legal scholars like Lawrence Lessig, originally a constitutional theorist, to study the consequences of this new information economy and the promise it holds.<sup>7</sup> Legal scholars such as Yochai Benkler,<sup>8</sup> Eben Moglen,<sup>9</sup> and many others<sup>10</sup> have

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<sup>5</sup> ROBERT K. YIN, CASE STUDY RESEARCH: DESIGN AND METHODS 22–26 (3d ed. 2003).

<sup>6</sup> SIVA VAIDHYANATHAN, THE GOOGLIZATION OF EVERYTHING (AND WHY WE SHOULD WORRY) 1 (2011).

<sup>7</sup> See, e.g., LAWRENCE LESSIG, CODE VERSION 2.0 (2006)[hereinafter LESSIG, CODE VERSION 2.0]; LAWRENCE LESSIG, REMIX: MAKING ART AND COMMERCE THRIVE IN THE HYBRID ECONOMY (2008) [hereinafter LESSIG, REMIX].

<sup>8</sup> See, e.g., YOCHAI BENKLER, THE WEALTH OF NETWORKS: HOW SOCIAL PRODUCTION TRANSFORMS MARKET AND FREEDOM (2006).

<sup>9</sup> Professor Eben Moglen's series on free software and the Internet can be found at his website.

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devoted their time and energy to understanding whether or not—and if so, how—the Internet, believed to be free and open to everyone, will become the new fountain of mass collaboration and knowledge accumulation while redemocratizing our lives.<sup>11</sup>

It is true that the Internet, originally designed to serve as a global network allowing the unimpeded flow of all kinds of information, knows no borders, and this characteristic may have contributed to the acceleration of globalization. In the Internet's early days, a common perception was that this technology, seemingly decentralized, was ungoverned and open to all voices. However, it is now undeniable that we are living in an era of rapidly growing commercialization on the Internet. Today, international business depends upon Internet economies, and the era has passed when the decentralized Internet was inhabited mostly by a mixed population of professors, scientists, engineers, and hackers. As China has become the world's most important growing market, it seems fair to say that at this point in time, no countries and no Internet-related companies can afford to sever links between global Internet networks and China's domestic Internet networks. Even more important is the absence of exceptions for Internet giants such as Yahoo!, Microsoft, and Google.

### B. *The Study of Google and its China Experience*

At its core, Google is a search-engine service provider. People use Google to find and manage information they need from the Web. At the same time, Google is one of the most successful online advertising service providers.<sup>12</sup> Google has attracted online users with its search-engine service, made good use of these users' visits by transforming itself into an advertising company, and has further expanded into a media and software company.<sup>13</sup> As people shift an increasing amount of their Internet use to Google-branded services such as Gmail and YouTube, Google has grown to become one of the most powerful global institutions of our time and "on the verge of becoming indistinguishable from the Web itself."<sup>14</sup> As Siva Vaidhyanathan observed, Google competes with other Internet-related companies in

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*See Eben Moglen*, COLUMBIA LAW, <http://moglen.law.columbia.edu> (last visited Jan. 26, 2013).

<sup>10</sup> *See, e.g.*, JAMES BOYLE, *THE PUBLIC DOMAIN: ENCLOSING THE COMMONS OF THE MIND* 185–94 (2008); WILLIAM W. FISHER III, *PROMISES TO KEEP: TECHNOLOGY, LAW, AND THE FUTURE OF ENTERTAINMENT* 237–58 (2004); JONATHAN ZITTRAIN, *THE FUTURE OF THE INTERNET AND HOW TO STOP IT* 206–16 (2008).

<sup>11</sup> ELI PARISER, *THE FILTER BUBBLE: WHAT THE INTERNET IS HIDING FROM YOU* 5 (2011).

<sup>12</sup> *See, e.g.*, BRANDT, *supra* note 2, at 89–111; JOHN W. DOZIER, JR. & SUE SCHEFF, *GOOGLE BOMB: THE UNTOLD STORY OF THE \$11.3M VERDICT THAT CHANGED THE WAY WE USE THE INTERNET* 180–84 (2009); JANET LOWE, *GOOGLE SPEAKS: SECRETS OF THE WORLD'S GREATEST BILLIONAIRE ENTREPRENEURS, SERGEY BRIN AND LARRY PAGE* 93–104 (2009).

<sup>13</sup> VAIDHYANATHAN, *supra* note 6, at 16–17.

<sup>14</sup> *Id.* at 3.

more than a handful of markets, and it is “hard for regulators to get a sense of Google’s market power.”<sup>15</sup> In Vaidhyanathan’s eyes, Google has become “the victor in the winner-take-all race to serve as the chief utility for the World Wide Web” and “many established industry players have taken aim at Google.”<sup>16</sup> From the outset, what distinguished Google from its competitors was its refusal to accept any economic benefits from the ranking of pages in any of the search services it offered—a policy reflective of the company’s maxim: “don’t be evil.”<sup>17</sup> As Google explained, the maxim is “about providing [Google’s] users unbiased access to information, focusing on their needs and giving them the best products . . . . [I]t’s also about doing the right thing more generally—following the law, acting honorably and treating each other with respect.”<sup>18</sup> The company’s mission has been “to organize the world’s information and make it universally accessible and useful.”<sup>19</sup> By not being “evil,” the company has aimed to provide Internet users with information unfiltered by excessive entanglements with profit.<sup>20</sup> In other words, Google not only put previously unimaginable online resources at our fingertips, but also started offering neutral and democratic search ranking services.<sup>21</sup> However, this high goal set by Google has not been easily realized given the increasingly complicated commercial and political interests surrounding the online world.

When asked in 2009 by a journalist about the potential for governmental regulation of Google, Eric Schmidt responded, “[w]ould you prefer to have the government running innovative companies or would you rather have the private sector running them? There are models and there are countries where in fact the government does try to do that, and I think the American model works better.”<sup>22</sup> However, just as Vaidhyanathan pointed out, “[o]f course Google is regulated,” and “Schmidt also knew that his best rejoinder to concerns about Google’s enormous power was to remind people of Google’s internal code of ethical conduct: ‘Don’t be evil.’”<sup>23</sup> Vaidhyanathan further argued that, “without evidence or explanation,” it’s odd that Schmidt assumed “this ethic would survive at the company regardless of who ran it and how far

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<sup>15</sup> *Id.* at 17.

<sup>16</sup> *Id.* at 17–18.

<sup>17</sup> *Code of Conduct*, GOOGLE (Apr. 25, 2012), <http://investor.google.com/conduct.html>. *But see* BRANDT, *supra* note 2, at 13–17 (stating that “Google sometimes looks evil.”).

<sup>18</sup> *Id.*

<sup>19</sup> *Company Overview*, GOOGLE, <http://www.google.com/about/company> (last visited Jan. 26, 2013).

<sup>20</sup> JARVIS, *supra* note 1, at 99.

<sup>21</sup> VAIDHYANATHAN, *supra* note 6, at 2.

<sup>22</sup> *Id.* at 45.

<sup>23</sup> *Id.* at 45–46.

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into the future we might look.”<sup>24</sup> Whether Schmidt’s assumption that Google’s ethic will survive under any regime is right or wrong is difficult to prove; yet, the announcement by Google that it was discontinuing its cooperation with the Chinese government did turn the company’s China experience into a story worthy of more exploration from the perspective of human rights, and specifically, freedom of speech. Therefore, a preliminary examination of Google’s business practices in China might help us better understand not only the Chinese approach to Internet regulation but also this approach’s implications for the future of global Internet governance.

Several factors explain why Google is an excellent starting point for any study on regulatory pressures felt by Internet companies, particularly those exploring business opportunities in China. First of all, much literature has focused on Google’s unique culture and principles, which have made the company one of the most significant digital powers.<sup>25</sup> The way Google operates has long been praised as “a force for good and enlightenment” in the business world.<sup>26</sup> As Rebecca MacKinnon, one of the most insightful Chinese Internet observers, stated, “[t]he new digital superpowers [Google and Facebook] have begun to clash with conventional nation-states. A classic example was Google’s clash with the Chinese government. . . . Yet in the end, Google was not fully banned from China.”<sup>27</sup> In other words, Google is a fruitful object of study regarding the topic of why and how well-known Internet companies operating in China have decided to compromise with the Chinese government in exchange for business benefits.

A second factor explaining why Google is a good starting point for this and similar studies is the fact that Google has been shaping our digital life and behavior in a significant way. Regarding this point, Eli Pariser warned that Google can manipulate the subject we find online in a way that maximizes our values to advertisers, but probably minimizes the chances that we will obtain an adequate variety of information and views that we need as citizens.<sup>28</sup> Viewed from this perspective, it is not an overstatement to say that how Google deals with authoritarian China will shape our democratic lives. This is a particularly serious concern

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<sup>24</sup> *Id.* at 46.

<sup>25</sup> See, e.g., BRANDT, *supra* note 2, at 69–88; LOWE, *supra* note 12, at 148–179.

<sup>26</sup> VAIDHYANATHAN, *supra* note 6, at xi–xiii.

<sup>27</sup> REBECCA MACKINNON, CONSENT OF THE NETWORKED: THE WORLDWIDE STRUGGLE FOR INTERNET FREEDOM 7–8 (2012) (the outcome is that Google “retained its license to keep a business presence in China and continued some activities not related to search: Android mobile phone operating system development and support, advertising sales, plus research and development for future products.” MacKinnon noted that the reason for this outcome “has to do with Google’s own Chinese constituency: people who need access to at least some of Google’s products and services to do their jobs and build their own innovative businesses.”).

<sup>28</sup> PARISER, *supra* note 11, at 6–10, 16–18.

when we consider Siva Vaidhyanathan's warning, in his book *THE GOOGLIZATION OF EVERYTHING*, that Google represents a "techno-fundamentalism" ideology, which encourages Google users' "blind faith in technology".<sup>29</sup> It is certainly important to explore how Internet-related companies' internal decisions relative to Chinese markets will "affect our lives in ways we have never thought about, and whether our excitement with new technologies lulls us into accepting risks that we do not see or understand."<sup>30</sup> A third reason for the use of Google as a starting point in this field of research is that it illustrates how a government indirectly regulates citizens' behavior via directly regulating Internet-related companies. As Rebecca MacKinnon observed, "[i]t is now normal for the world's most powerful governments to consult with multinational corporations to shape a range of financial, trade, and foreign policy objectives."<sup>31</sup> Therefore, it is no surprise that "[c]ompanies and NGOs now show up in force to lobby their interests and causes at UN meetings on problems ranging from climate change to the new and thorny question of Internet governance."<sup>32</sup> It is further argued by MacKinnon that

Internet-related companies are even more powerful because not only do they create and sell products, but they also provide and shape the digital spaces upon which citizens increasingly depend. Governments of all kinds seek to control them precisely because of this power. Amid such dramatic changes in the power dynamic, it is important to remember the original purpose of democratic government and politics: to ensure that citizens' interests are served and that their rights are protected.<sup>33</sup>

Under this architecture of collaboration made possible by governments and Internet-related companies, people should ask the big questions raised by Google's China experiences: Who will control, block, filter, and deliver online information to us?

## II. GOOGLE.CN AND CHINA'S INTERNET POLICY

China is currently the world's largest Internet market.<sup>34</sup> By the end of 2011, the number of Internet users in China had reached over 500 million.<sup>35</sup> What's more significant is that the Chinese Internet

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<sup>29</sup> VAIDHYANATHAN, *supra* note 6, at 40, 50, 75–77.

<sup>30</sup> MACKINNON, *supra* note 27, at 10.

<sup>31</sup> *Id.* at 11.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> See e.g., Min Jiang, *Internet Companies in China: Between the Party Line and the Bottom Line*, 46 *ASIE VISIONS* at 6 (Jan. 2012), <http://www.ifri.org/downloads/av47internetcompaniesinchinadancingbetweenthepartylineandthebottomline.pdf>.

<sup>35</sup> JIANG, *supra* note 34, at 4, 7; *Top 20 Internet Countries—2012 Q1*, INTERNET WORLD STATS, <http://www.internetworldstats.com/top20.htm> (last updated June 19, 2012).



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market still has great potential to grow, a fact that lures multinational Internet-related companies to this apparent gold mine of a country.<sup>36</sup> Google has been no exception. However, Google, probably the most successful Internet company in the world, experienced a series of setbacks in China and eventually moved its search engine out of the country. Google's frustration with the Chinese market constitutes an important case for the study of global and Chinese Internet law.

A. *The Story of Google.cn*

Google had kept an eye on the Chinese search-engine market long before the existence of Google.cn. At the end of 2000, Google created a Chinese-language version of its home page.<sup>37</sup> Users of Google in China were directly linked to the Chinese-language search interface.<sup>38</sup> Providing search services entirely from California, Google acquired a twenty-five percent share of the Chinese search-engine market.<sup>39</sup> Nonetheless, the Chinese government's Internet filtering technology irregularly blocked Google.com in China from 2002 to 2003.<sup>40</sup> Although the website was restored later, the company was not satisfied with the quality of service it provided in China.<sup>41</sup> Although Google refrained from censoring search results, the Chinese government's filtering techniques abridged the results, slowed down their delivery for Chinese users, and even blocked the website occasionally.<sup>42</sup> In 2004, it was discovered that Google's search engine was not presenting certain anti-government content to Chinese users—a situation that Google attributed to “technical reasons”.<sup>43</sup> In 2005, it was estimated that Google's market share in China had dropped behind the local competitor Baidu.<sup>44</sup>

In January 2006, Google eventually established the Chinese search engine Google.cn, with a search speed close to that of Google.com in the United States.<sup>45</sup> However, Google.cn was self-censoring in

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<sup>36</sup> Danny Friedmann, *Paradoxes, Google and China: How Censorship Can Harm and Intellectual Property Can Harness Innovation*, in *GOOGLE AND THE LAW: EMPIRICAL APPROACHES TO LEGAL ASPECTS OF KNOWLEDGE-ECONOMY BUSINESS MODELS* 304 (2012).

<sup>37</sup> Clive Thompson, *Google's China Problem (and China's Google Problem)*, N.Y. TIMES, Apr. 23, 2006, at F64.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Schrage, *supra* note 4.

<sup>41</sup> Thompson, *supra* note 37.

<sup>42</sup> BRANDT, *supra* note 2, at 16–17, 136–37; MACKINNON, *supra* note 27, at 37; ELAD SEGEV, *GOOGLE AND THE DIGITAL DIVIDE: THE BIAS OF ONLINE KNOWLEDGE* 64 (2010); Thompson, *supra* note 37; Schrage, *supra* note 4.

<sup>43</sup> *Google in China: A Timeline*, WEEK, Mar. 22, 2010, <http://theweek.com/article/index/200837/google-in-china-a-timeline>.

<sup>44</sup> BRANDT, *supra* note 2, at 138.

<sup>45</sup> See James S. O'Rourke IV et al., *Google in China: Government Censorship and Corporate Reputation*, 28 J. BUS. STRATEGY 12, 14 (2007).

accordance with Chinese laws and regulations while it provided online search services to the Chinese people.<sup>46</sup> In this way, the company eventually entered the Chinese market “officially”; that is, the company eventually obtained an Internet Content Provider (ICP) license from the Chinese authorities.<sup>47</sup> Google.cn erased the links disapproved by the Chinese government, such as links associated with Falun Gong and the 1989 Tiananmen Square massacre.<sup>48</sup> The company admitted that its self-censorship “runs counter to Google’s most basic values and commitments.”<sup>49</sup> According to Google’s Chief Legal Officer, David Drummond, Google “launched Google.cn . . . in the belief that the benefits of increased access to information for people in China and a more open Internet outweighed our discomfort in agreeing to censor some results.”<sup>50</sup>

Google is not the only foreign company that cooperates with Chinese authorities in censoring the Internet. A number of other companies, including Microsoft, Skype, and Yahoo!,<sup>51</sup> have collaborated with the repressive regime for the purpose of entering into Chinese markets.<sup>52</sup> These foreign Internet search companies censor the results yielded by their Chinese-language search engines and eliminate politically sensitive content from their search results. Google’s co-founder Sergey Brin admitted that in order to provide Internet service to China, Google had to compromise its principles.<sup>53</sup> Some commentators blamed Google for facilitating the Chinese government’s efforts to abridge free speech and viewed Google’s decision as unethical and inconsistent with the company’s maxim “Don’t be evil.”<sup>54</sup> In fact, during U.S. Congressional hearings on the subject, the company’s

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<sup>46</sup> See, e.g., BRANDT, *supra* note 2, at 138; SEGEV, *supra* note 42, at 64; YONGNIAN ZHENG, TECHNOLOGICAL EMPOWERMENT: THE INTERNET, STATE, AND SOCIETY IN CHINA 66 (2008); Schrage, *supra* note 4.

<sup>47</sup> JIANG, *supra* note 34, at 17.

<sup>48</sup> Thompson, *supra* note 37.

<sup>49</sup> Schrage, *supra* note 4.

<sup>50</sup> David Drummond, *A New Approach to China*, GOOGLE OFFICIAL BLOG (Jan. 12, 2010), <http://googleblog.blogspot.com/2010/01/new-approach-to-china.html>.

<sup>51</sup> See, e.g., SEGEV, *supra* note 42, at 65; Ben Elgin & Bruce Einhorn, *The Great Firewall of China*, BUSINESSWEEK, Jan. 12, 2006, <http://www.businessweek.com/stories/2006-01-22/the-great-firewall-of-china>.

<sup>52</sup> Lindsay Eastwood, “Don’t be Evil”: *Google Faces the Chinese Internet Market and the Global Online Freedom Act of 2007*, 9 MINN. J.L. SCI. & TECH. 287, 288–89 (2008).

<sup>53</sup> Michael Sheridan, *China’s Great Internet Stand-Off*, SUNDAY TIMES (London), Jan. 17, 2010, at 8.

<sup>54</sup> See, e.g., JARVIS, *supra* note 1, at 99–100; O’Rourke et al., *supra* note 45, at 15; see also BRANDT, *supra* note 2, at 17, 138 (stating that “the decision to enter China is the one that nags most at the [Google] founders’ consciences,” and that Google’s decision to “open its own operations in China” and “self-censor forbidden topics” made the Internet communities believe that the company had “officially joined the ranks of ‘evil corporations.’”); Jon M. Garon, *Searching Inside Google: Cases, Controversies and the Future of the World’s Most Provocative Company*, 30 LOY. L.A. ENT. L. REV. 429, 470 (2010) (claiming that Google’s “decision to enter China, while not necessarily evil, was certainly an uncomfortable one.”).

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executives were compared to Nazi collaborators.<sup>55</sup>

Different from other search engines complying with Chinese censorship laws, Google announced it would “give notification to Chinese users whenever search results have been removed.”<sup>56</sup> This announcement illustrates how Google compromised its principles in the face of Chinese censorship. Transparency has long been an important feature of Google’s search service. Nevertheless, in order to enter the Chinese market, Google could only provide limited transparency to Chinese users. The removal notification provided to Chinese users exemplifies Google’s struggle to present the largest degree of transparency allowed by the Chinese censorship regime. The company’s official statements rested on the argument that such limited degree of transparency would be beneficial to the development of the Internet in China. On this very topic, Elliot Schrage, Vice President of Global Communications and Public Affairs for Google, Inc., testified before members of the U.S. Congress:

[W]e provide a clear notice to users on every search results page from which one or more links has been removed. The disclosure allows users to hold their legal systems accountable. This response allows Google to be respectful of local content restrictions while providing meaningful disclosure to users and strictly limiting the impact to the relevant Google website for that country. For China, this model provided some useful guidance for how we could handle content restrictions on Google.cn in [a] way that would afford some disclosure when links have been removed.<sup>57</sup>

Google has not been alone in the self-censoring project. In addition to censoring search results, Microsoft has censored its Chinese users’ blog content<sup>58</sup> and closed the website of Michael Anti (Zhao Jing), one of the most famous bloggers in China.<sup>59</sup> Microsoft’s spokesman explained its collaboration with the Chinese authorities: “Like other global organi[z]ations we must abide by the laws, regulations and norms of each country in which we operate.”<sup>60</sup> Yahoo! was accused of providing the Chinese government with the email-account information of Shi Tao, a Chinese journalist and cyber-

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<sup>55</sup> Thompson, *supra* note 37.

<sup>56</sup> Schrage, *supra* note 4.

<sup>57</sup> *Id.*

<sup>58</sup> AMNESTY INTERNATIONAL, UNDERMINING FREEDOM OF EXPRESSION IN CHINA: THE ROLE OF YAHOO!, MICROSOFT AND GOOGLE 20 (2006), available at <http://www.amnesty.org/en/library/asset/POL30/026/2006/en/1ce1ac2d-d41b-11dd-8743-d305bea2b2c7/pol300262006en.pdf>;

Eastwood, *supra* note 52, at 297; Jyh-An Lee, *Regulating Blogging and Microblogging in China*, 91 OR. L. REV. 609, 613 (2012); Thompson, *supra* note 37.

<sup>59</sup> ZHENG, *supra* note 46, at 66; Lee, *supra* note 58, at 613; O’Rourke, *supra* note 45, at 16.

<sup>60</sup> Eastwood, *supra* note 52, at 297–98.

dissident.<sup>61</sup> Shi Tao was then arrested and sentenced to ten years for violating state-secrets law by sending the text of a Communist Party message to foreign-based websites.<sup>62</sup> This is not the first time that Yahoo! turned its user information over to the Chinese government. In 2003, another Chinese citizen, Li Zhi, was sentenced to eight years in prison on the basis of the information supplied by Yahoo!.<sup>63</sup> Yahoo! now stores relevant data abroad so that it will not be accessed by the Chinese government.<sup>64</sup> In an effort to avoid being forced either to censor blog postings or to hand over dissidents' personal information to the Chinese government, Google decided "not [to] maintain on Chinese soil any services, like email, that involve personal or confidential data. This means that [Google] will not, for example, host Gmail or Blogger, [Google's] email and blogging tools, in China."<sup>65</sup> Prompted by the serious aforementioned privacy and free-speech concerns, the U.S. government introduced the bill known as the Global Online Freedom Act in 2006, 2007, and 2009 to regulate U.S. companies' compliance with Chinese censorship mandates.<sup>66</sup> Nevertheless, the bill failed to become law.<sup>67</sup>

Although Google tried to abide by the censorship requirements mandated by China, there were clashes between Google and the Chinese government. In 2009, the Chinese government initiated a crackdown on porn sites and denounced Google.cn for providing porn website links.<sup>68</sup> The government demanded that Google "cleanup" the porn websites and halted Google China's overseas Web-page search services.<sup>69</sup> It was not until 2009 that Google refused to cooperate with the Chinese government's mandate concerning Internet control, and thereafter, the Chinese government disabled some of Google.cn's search functions.<sup>70</sup>

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<sup>61</sup> See, e.g., AMNESTY INTERNATIONAL, *supra* note 57, at 18; ZHENG, *supra* note 46, at 66; Eastwood, *supra* note 52, at 297; Thompson, *supra* note 37.

<sup>62</sup> See BRANDT, *supra* note 2, at 136-37; ZHENG, *supra* note 46, at 66; Eastwood, *supra* note 52, at 297; Justine M. Nolan, *The China Dilemma: Internet Censorship and Corporate Responsibility*, 4 ASIAN J. COMP. L. 1, 7 (2009).

<sup>63</sup> Eastwood, *supra* note 52, at 297.

<sup>64</sup> James F. Scotton, *The Impact of New Media*, in NEW MEDIA FOR A NEW CHINA 28, 34 (James F. Scotton & William A. Hachten eds., 2010).

<sup>65</sup> Schrage, *supra* note 4.

<sup>66</sup> See, e.g., Eastwood, *supra* note 52, at 290, 305-308; Yutian Ling, *Upholding Free Speech and Privacy Online: A Legal-Based and Market-Based Approach for Internet Companies in China*, 27 SANTA CLARA COMPUTER & HIGH TECH. L.J. 175, 193-94 (2011).

<sup>67</sup> Friedmann, *supra* note 36, at 314.

<sup>68</sup> Wang Xing and Cui Xiaohuo, *Google 'Used' in Online Porn Tiff*, CHINA DAILY, June 22, 2009, [http://www.chinadaily.com.cn/business/2009-06/22/content\\_8307289.htm](http://www.chinadaily.com.cn/business/2009-06/22/content_8307289.htm).

<sup>69</sup> *Google Halts Part of Google China's Searching Businesses*, CHINA DAILY, June 19, 2009, [http://www.chinadaily.com.cn/business/2009-06/19/content\\_8303700.htm](http://www.chinadaily.com.cn/business/2009-06/19/content_8303700.htm).

<sup>70</sup> Zhang Lu, *Google.cn Huo Xin Chan Bu ICP Pai Zhao Che Di Bai Tuo Shen Fen Wei Ji [Google Obtained the ICP License from the Ministry of Industry and Information Technology and Completely Got Rid of the Identity Crisis]*, SOHUIT, July 19, 2007, <http://it.sohu.com/20070719/n254443711.shtml>.

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In December 2009, Google and a number of U.S. companies experienced cyber attacks in China.<sup>71</sup> Both Google and the U.S. State Department believed that the Chinese government should be held responsible for the cyber-intrusion and “that a primary goal of the attackers was accessing the Gmail accounts of Chinese human rights activists.”<sup>72</sup> Experts had examined the malware and suspected the attack was of Chinese origin.<sup>73</sup> On January 12, 2010, Google announced that it would stop the implementation of its self-censorship with the search results yielded by Google.cn—a condition of its operations in China—and consider removing all of its operations from the country.<sup>74</sup> U.S. Secretary of State Hillary Clinton soon delivered a speech in which she blamed the Chinese government for sponsoring its security services to conduct cyber-attacks upon servers located in the United States and further declared, “[c]ountries or individuals that engage in cyber attacks should face consequences and international condemnation.”<sup>75</sup> The Chinese government then quickly fired back, claiming that ‘the Chinese Internet is open’ and the United States has a responsibility ‘to respect the truth and to stop using the so-called Internet freedom question to level baseless accusations.’<sup>76</sup>

Other U.S. Internet companies, however, did not show full support for Google’s position. Alibaba, the Chinese partner of Yahoo! (another victim of the cyber-attack and an erstwhile ally of Google in this matter), later criticized Yahoo!, declaring that Yahoo!’s earlier statement in support of Google “was reckless given the lack of facts in evidence.”<sup>77</sup> Microsoft’s then-Chairman Bill Gates made an interesting statement to the effect that China’s “efforts to censor the Internet have been very limited” and viewed Google’s actions as overreactions.<sup>78</sup> After more than two months’ negotiation, Google closed down

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<sup>71</sup> See, e.g., Friedmann, *supra* note 36, at 304; Drummond, *supra* note 50.

<sup>72</sup> Drummond, *supra* note 50. See also Edward Wong, *Hackers Said to Breach Gmail Accounts in China*, N.Y. TIMES, Jan. 19, 2010, <http://www.nytimes.com/2010/01/19/technology/companies/19google.html> (“[Gmail] accounts of dozens of people pressing for human rights in China had been hacked.”).

<sup>73</sup> John Markoff, *Evidence Found for Chinese Attack on Google*, N.Y. TIMES, Jan. 20, 2010, <http://www.nytimes.com/2010/01/20/technology/20cyber.html>.

<sup>74</sup> See, e.g., JIANG, *supra* note 34, at 4; Andrew Jacobs & Miguel Helft, *Google, Citing Attack, Threatens to Exit China*, N.Y. TIMES, Jan. 12, 2010, <http://www.nytimes.com/2010/01/13/world/asia/13beijing.html?pagewanted=all>; James Temple, *Google Says It Might Pull Out of China*, S.F. CHRON., Jan. 13, 2010, at A1; Wong, *supra* note 72.

<sup>75</sup> Sec’y of State Hillary Rodham Clinton, Remarks on Internet Freedom at the Newseum, Jan. 23, 2010, available at <http://www.state.gov/secretary/rm/2010/01/135519.htm>.

<sup>76</sup> Mark Landler & Edward Wong, *China Rebuffs Clinton on Internet Warning*, N.Y. TIMES, Jan. 22, 2010, <http://www.nytimes.com/2010/01/23/world/asia/23china.html>.

<sup>77</sup> Adam Hartley, *Yahoo Stayed Quiet about Chinese Cyber-Attacks*, TECHRADAR (Jan. 16, 2010), <http://www.techradar.com/news/internet/yahoo-stayed-quiet-about-chinese-cyber-attacks-664102>.

<sup>78</sup> Sky Canaves, *China Ratchets Up Web Privacy Fight*, WALL ST. J., Jan. 28, 2010, <http://online.wsj.com/article/SB10001424052748703410004575028931978304>.

Google.cn, shifted its operations to Hong Kong, and redirected users of Google.cn to Google.hk.<sup>79</sup> The Minister of Industry and Information Technology of China later criticized this announcement as being “unfriendly and irresponsible.”<sup>80</sup> As expected, the search results and services provided by Google.hk have been occasionally filtered out in China.<sup>81</sup> Despite the closedown of Google.cn, Google has kept a number of services, such as music, translation, and mapping, in China,<sup>82</sup> and retained its license and continued such non-search businesses as Android mobile-phone development and sales.<sup>83</sup>

Google’s decision to terminate search-engine operations in China in 2010 probably surprised the Internet industry, as well as the international community, but the company perhaps had already foreseen this negative scenario when it first launched Google.cn. Testifying before members of the U.S. Congress on Google’s decision to enter the Chinese market in 2006, Elliot Schrage, Vice President of Global Communications and Public Affairs for Google, Inc., pointed out that

[w]ith the announcement of our launch of Google.cn, we’ve begun a process that we hope will better serve our Chinese users. . . . We are also aware that, for any number of reasons, this may not come to pass . . . . [W]e will carefully monitor conditions in China, including new laws and other restrictions on our services. If we determine that we are unable to achieve the objectives I’ve outlined above, we will not hesitate to reconsider our approach to China.”<sup>84</sup>

The tug-of-war between Google and China proceeded for months and finally ended in July 2010 when the Chinese government renewed Google’s ICP license.<sup>85</sup> The Chinese government remained silent on its reason for renewal, but Rebecca MacKinnon, a researcher who closely observed the Internet policy of China, pointed out that it ended up this way probably because China was concerned about its reputation of having a highly “politicized business environment.”<sup>86</sup> Furthermore, Google and China had to reach a compromise because China still needed the investment of foreign technical companies, which could

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<sup>79</sup> Miguel Helft & Michael Wines, *Google Faces Fallout as China Reacts to Site Shift*, N.Y. TIMES, Mar. 24, 2010, <http://www.nytimes.com/2010/03/24/technology/24google.html>.

<sup>80</sup> *Google in China: A Timeline*, *supra* note 43.

<sup>81</sup> JIANG, *supra* note 34, at 4, 19; Friedmann, *supra* note 36, at 308.

<sup>82</sup> JIANG, *supra* note 34, at 19.

<sup>83</sup> MACKINNON, *supra* note 27, at 7–8.

<sup>84</sup> Schrage, *supra* note 4.

<sup>85</sup> David Drummond, *An Update on China*, GOOGLE OFFICIAL BLOG (June 29, 2010), <http://googleblog.blogspot.com/2010/06/update-on-china.html>.

<sup>86</sup> Rebecca MacKinnon, *On Google’s License Renewal and Principled Engagement*, RCONVERSATION (July 9, 2010), <http://rconversation.blogs.com/rconversation/2010/07/on-googles-license-renewal-and-principled-engagement.html>.

enhance China's technical and economic performance.<sup>87</sup>

### B. *China's Internet Policy in the Case of Google.cn*

In general, China's Internet laws and policies are quite sophisticated and authoritarian. Because the Internet facilitates information flow in an unprecedented way, it is natural for totalitarian governments to impose censorship. In its white paper "The Internet in China", the Chinese government proclaimed its sovereignty over the Internet:

Within Chinese territory the Internet is under the jurisdiction of Chinese sovereignty. The Internet sovereignty of China should be respected and protected. Citizens of the People's Republic of China and foreign citizens, legal persons and other organizations within Chinese territory have the right and freedom to use the Internet; at the same time, they must obey the laws and regulations of China and conscientiously protect Internet security.<sup>88</sup>

To ensure its control over the activities on the "Chinese Internet," the Chinese government has been building up "walls" with Internet infrastructures and regulations targeting content deemed hazardous. Both the technological and legal approaches to this issue have significant effects on efforts to create and use search engines and efforts to conduct other Internet business in China.

#### 1. Technological Control of Search Engines

On the infrastructure side, the government has built up a sophisticated technical Internet-filtering system, known as the "Great Firewall," to block unwanted content.<sup>89</sup> The Great Firewall in China consists primarily of two layers. On the top level, four state-controlled companies operate several Internet-access providers (IAPs) and three Internet-exchange points (IXPs) that connect the country's Internet network to the global Internet.<sup>90</sup> Both IAPs and IXPs are subject to

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<sup>87</sup> *Id.*

<sup>88</sup> *THE INTERNET IN CHINA, SECTION V. PROTECTING INTERNET SECURITY*, CHINESE GOV'T'S OFFICIAL WEB PORTAL (June 8, 2010), [http://english.gov.cn/2010-06/08/content\\_1622956\\_7.htm](http://english.gov.cn/2010-06/08/content_1622956_7.htm).

<sup>89</sup> See, e.g., PARISER, *supra* note 11, at 138-39; MACKINNON, *supra* note 27, at xiii; Scotton, *supra* note 64, at 30-32; Eastwood, *supra* note 47, at 295-96; Jyh-An Lee & Ching-Yi Liu, *Forbidden City Enclosed by the Great Firewall: The Law and Power of Internet Filtering in China*, 13 MINN. J.L. SCI. & TECH. 125, 133 (2012); Ling, *supra* note 66, at 177, 180, 184; Katherine Tsai, *How to Create International Law: The Case of Internet Freedom in China*, 21 DUKE J. COMP. & INT'L L. 401, 415 (2011); David Pierson, *Great Firewall's Fall Opens the Web to China Briefly; Outage of Strict Internet Controls Lasts Several Hours*, WASH. POST, Jan. 5, 2010, at A9; Thompson, *supra* note 37.

<sup>90</sup> Lee & Liu, *supra* note 89, at 133-34; Ling, *supra* note 66, at 184.

strict government control.<sup>91</sup> On the lower level, end users purchase Internet access from Internet-service providers (ISPs), which are actually retail sellers of Internet access provided wholesale by a small number of IAPs.<sup>92</sup> In order to obtain these licenses from the Chinese government, ISPs must implement filtering hardware and software.<sup>93</sup> The filtering software has been built on the top and lower layers of the Chinese Internet so that the government can effectively control the online content flowing from abroad.<sup>94</sup> According to a study conducted by Jonathan Zittrain and Benjamin Edelman, the filtering techniques deployed by the Chinese government includes IP blocking, DNS and URL filtering, packet filtering, and connection reset.<sup>95</sup> Recently, with more and more Chinese netizens using virtual private networks (VPN) to “climb over” the Great Firewall and visit websites blocked by the government, the system has been updated to prevent possible breaches. For example, in 2012, volunteers of the Tor project, a network that helps Internet users go online anonymously for the improvement of Internet privacy, found that some Chinese entities may retrieve users’ online Tor-network information in order to improve the government’s Internet filtering.<sup>96</sup>

After Google first announced its decision to reconsider conducting business in China and later closed down Google.cn, all offshore Chinese news organizations’ reports on Google’s decision were blocked by the Great Firewall.<sup>97</sup> The national Chinese government also required local Chinese ISPs to censor users’ comments on Google’s decision.<sup>98</sup> Only negative comments on Google and its decision were retained on the domestic Internet network.<sup>99</sup> This censorship illustrates how a contemporary government can shape public opinion via power and technology.

In addition to blocking sensitive online information, the Internet-filter technology employed in China contributed to the birth of several Chinese-version search engines established by foreign Internet

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<sup>91</sup> Lee & Liu, *supra* note 89, at 134; Christopher Stevenson, *Breaching the Great Firewall: China’s Internet Censorship and the Quest for Freedom of Expression in a Connected World*, 30 B. C. INT’L & COMP. L. REV. 531, 540 (2007).

<sup>92</sup> Lee & Liu, *supra* note 89, at 134.

<sup>93</sup> See, e.g., Cynthia Liu, *Notes: Internet Censorship as a Trade Barrier: A Look at the WTO Consistency of the Great Firewall in the Wake of the China-Google Dispute*, 42 GEO. J. INT’L L. 1199, 1209–10 (2011).

<sup>94</sup> Lee & Liu, *supra* note 89, at 132–33.

<sup>95</sup> Jonathan Zittrain & Benjamin G. Edelman, *Internet Filtering in China*, IEEE INTERNET COMPUTING, 70, 76–77 (Mar. 2003), <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan011043.pdf>.

<sup>96</sup> Tim Wilde, *Knock, Knock, Knockin’ on Bridges’ Doors*, TOR PROJECT (Jan. 7, 2012), <https://blog.torproject.org/blog/knock-knock-knockin-bridges-doors>.

<sup>97</sup> MACKINNON, *supra* note 27, at 37.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 38.



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companies. At first, Chinese Internet users employed English-language search engines, such as Google, Microsoft MSN, and Yahoo!.<sup>100</sup> Nonetheless, it turned out to be quite difficult for these foreign search engines to compete with domestic ones because the filtering and censoring technology either blocked these foreign websites or slowed down their speed in China.<sup>101</sup>

For instance, in 2002, Google.com was blocked because it provided search results linking to information disapproved of by the Chinese government.<sup>102</sup> Although Chinese users could not open the government-banned website directed by Google.com, the Chinese government was not pleased with the constant reminder that a great amount of online information was blocked inside the country.<sup>103</sup> The Chinese government preferred “purged” search results, which erase websites whose content is inconsistent with Chinese government policies. What is more noteworthy is that the Great Firewall would trick users’ computers into operating as though Google’s search function was not working.<sup>104</sup> Local search engines that build their operations on Chinese soil are not subjected to any of the problems caused by the Great Firewall.<sup>105</sup> Therefore, it is increasingly difficult for foreign search engines like Google to enter the Chinese market purely through offshore operations—that is, outside China. In order to ensure their share of the Chinese search-engine market, foreign search-engine companies started to build local operations using Chinese-language versions easily accessible to Chinese users. For instance, Yahoo! initiated its Chinese language site in 1998,<sup>106</sup> and Microsoft launched its Chinese version of MSN in 2005, followed by Google’s Google.cn in 2006.<sup>107</sup>

## 2. Legal Control of Search Engines

On the regulation side, the Chinese government has employed various penalties to keep content clean<sup>108</sup> and has rigidly controlled Internet intermediaries, such as ISPs and Internet content providers (ICPs). It has also imposed censorship obligations on those

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<sup>100</sup> Eastwood, *supra* note 52, at 196; ZDNet China Staff, *Baidu, Google Dominate Net Search in China*, CNET NEWS (Aug. 30, 2005), [http://news.com.com/Baidu,+Google+dominate+Net+search+in+China/2100-1038\\_3-5844468.html](http://news.com.com/Baidu,+Google+dominate+Net+search+in+China/2100-1038_3-5844468.html).

<sup>101</sup> *See, e.g.*, Eastwood, *supra* note 52, at 296–97; Thompson, *supra* note 37.

<sup>102</sup> Thompson, *supra* note 37.

<sup>103</sup> *Id.* Rumor has it that the Chinese government blocked Google.com because of the instigation of Baidu, then a local search engine with 3% of the Chinese search-engine market, but now the largest search engine in China. *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> Eastwood, *supra* note 52, at 296.

<sup>107</sup> MACKINNON, *supra* note 27, at 37; Eastwood, *supra* note 52, at 296.

<sup>108</sup> Thompson, *supra* note 37.

intermediaries through the means of granting licenses. Since 1998, all ISPs and ICPs have been required to obtain a license from the government before operating their business.<sup>109</sup> According to the Measures on the Administration of Information Services, commercial information service providers must obtain licenses before they can legally start their operations, while non-commercial information service providers should be registered with the Chinese telecommunications administration authority.<sup>110</sup> In 2001, the government enacted “the Telecommunication Regulations of the PRC and Administration of Foreign-funded Telecommunication Enterprises Provision”, which promulgated that ICPs should obtain their licenses from regulatory authorities, such as the State Administration of Film, Radio, and Television (SAFRT), the Ministry of Commerce (MOFCOM), and the Ministry of Industry and Information Technology (MIIT).<sup>111</sup>

The granting of licenses has been one of the most important measures by which the government has controlled domestic and foreign Internet companies.<sup>112</sup> These companies exist under the specter that the government might suspend their licenses for legal operations, refuse renewal of the licenses, or even revoke the licenses if the companies do not comply with the government’s policies. Without an effective license, an Internet company’s operations will be mandatorily shut down in Chinese markets. One example stems from December 2002, when the Chinese government temporarily shut down the U.S. search engine AltaVista because of the company’s failure to comply with the Chinese government’s censorship mandate.<sup>113</sup> A more recent example arose in April 2012 when Sina, a domestic search engine and ICP, warned its investors—in its annual report filed with the U.S. Securities and Exchange Commission—that there was a risk of being shut down because of the company’s noncompliance with real-name registration of its Twitter-like microblogging sites.<sup>114</sup> Therefore, with its authority and discretion to confer licenses to Internet companies, the Chinese government makes sure that all the Internet companies within its

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<sup>109</sup> Hu Jung, *Zhong Guo Xheng Fu Dui Hu Lian Wang Di Guanzhi* [The Chinese Government’s Control over the Internet], 103 XINWENXUE YANJIU [MASS COMMUNICATION RESEARCH] 261, 263 (2010), available at <http://mcr.nccu.edu.tw/0103/07.html>.

<sup>110</sup> *Management Measures on Internet Information Service: Comparison Between Existing Version and Exposure Draft, Articles 7–8*, BRIDGE IP LAW COMMENTARY (June 12, 2012), <http://www.chinaiplawyer.com/management-measures-internet-information-service-comparison-existing-version-exposure-draft/>.

<sup>111</sup> JIANG, *supra* note 34, at 1, 27.

<sup>112</sup> *Id.* at 27–28; see also Lee, *supra* note 58, at 613–615 (describing how the Chinese government ensures blogging and microblogging service providers fulfill their censorship obligation by revocation of their business licenses and not renewing these licenses).

<sup>113</sup> Eastwood, *supra* note 52, at 294.

<sup>114</sup> Loretta Chao, *Microblogs Survive Real-Name Rules—So Far*, WALL ST. J. (China), Apr. 30, 2012, [http://blogs.wsj.com/chinarealtime/2012/04/30/microblogs-survive-real-name-rules-so-far/?mod=google\\_news\\_blog](http://blogs.wsj.com/chinarealtime/2012/04/30/microblogs-survive-real-name-rules-so-far/?mod=google_news_blog).

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borders follow its rules governing the management of the Internet. In 2006, Google agreed to self-censor search results in order to get its operating license for Google.cn in China.<sup>115</sup> In addition to these licensing issues, most executives in Internet companies in China are terrified that failure to enforce the censorship obligations may lead to serious criminal liabilities.<sup>116</sup>

In sum, the Chinese government has established a border fence on the Internet with a multi-layered system conducted by both machines and people. To filter websites, the government has built up the Great Firewall, which blocks unwanted content outside the Firewall. To control the content inside the Firewall, the government first ensures the compliance of Internet companies by licensing operation permits, and then delegates the censorship work to the companies, be they domestic or foreign. According to the Chinese regulations governing execution of censorship, the companies have to block a wide range of content with both filtering machines and professional personnel. Although the companies occasionally receive instructions from the government on what type of content to filter, the companies usually have to figure out the content to be filtered independently.<sup>117</sup> For foreign Internet-related companies operating in China, complying with the censorship regulations may be one of the great challenges of conducting business in this country.

### III. POLICY IMPLICATIONS FROM THE CASE OF GOOGLE.CN

Siva Vaidhyanathan was likely correct in observing that Google's March 2010 announcement that it would no longer offer Google.cn services under the censorship of the Chinese government was mischaracterized and overly praised as a victory for human rights.<sup>118</sup> Indeed, Google's experiences with China and its decision to discontinue Google.cn have provided dynamic policy implications for Internet-law scholarship.

Google's withdrawal from China has had some immediate effects. First, it led to a decrease in Chinese Internet users' access to information. Although Google, Yahoo!, Microsoft, and Baidu all censored the results yielded by the companies' own search-engine services, interestingly, there has been little overlap between the keywords and the websites filtered out.<sup>119</sup> This is probably because the

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<sup>115</sup> MACKINNON, *supra* note 27, at 37.

<sup>116</sup> Thompson, *supra* note 37 (describing that executives of Internet companies were worried about being sent to the jail because of noncompliance with censorship regulations).

<sup>117</sup> *Id.*

<sup>118</sup> VAIDHYANATHAN, *supra* note 6, at 118–19.

<sup>119</sup> Nart Villeneuve, *Search Monitor Project: Toward a Measure of Transparency*, THE CITIZEN LAB, 13–16 (2008), <http://www.nartv.org/mirror/searchmonitor.pdf>.

Chinese government does not provide an official blacklist of sites or words that search engines must filter out.<sup>120</sup> Among all these search engines, Baidu, the local search engine with more than sixty percent of the market share,<sup>121</sup> censors the largest quantity of content.<sup>122</sup> As a result, the existence of each search engine can increase the Chinese people's access to online information. Further, the claim that limited access to information is better than no access was one of the main explanations for Google's decision to launch Google.cn in 2006.<sup>123</sup> According to Google, this decision was "based on a judgment that Google.cn will make a meaningful—though imperfect—contribution to the overall expansion of access to information in China."<sup>124</sup> In this sense, Google's decision to shut down Google.cn would decrease the online information available to Chinese users. Moreover, some commentators believe that Google's departure from China may negatively affect the country's technological development.<sup>125</sup> However, it may take time to examine such predictions given the fact that China has been rapidly developing new Internet-related companies with business models similar to those operated in the Western world.<sup>126</sup> In this section, we will explore two policy implications from the case of Google.cn, which exemplifies how the government regulates the Internet through its sovereign power within geographical borders and through cooperation with the business sector.

#### A. *Global Network, Local Internet*

The Internet has long been viewed as an inherently global and borderless medium.<sup>127</sup> Nonetheless, it would be too naïve to claim that all online activities are beyond government control. To the contrary, as the China story of Google shows, governments can effectively regulate the Internet by controlling relevant facilities and activities in the

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<sup>120</sup> See, e.g., JIANG, *supra* note 34, at 18; Thompson, *supra* note 37.

<sup>121</sup> China IntelliConsulting Corp., *China Search Engine Survey Report 2008 Released*, I ASK CHINA (2008), <http://www.iaskchina.cn/en/Report/view/id/13>.

<sup>122</sup> Villeneuve, *supra* note 119, at 13–16.

<sup>123</sup> See, e.g., David Barboza, *Version of Google in China Won't Offer E-Mail or Blogs*, N.Y. TIMES, Jan. 25, 2006, <http://www.nytimes.com/2006/01/25/technology/25google.html>.

<sup>124</sup> Schrage, *supra* note 4.

<sup>125</sup> See, e.g., Michael Wines, *Stance by China to Limit Google Is Risk by Beijing*, N.Y. TIMES, Mar. 23, 2010, <http://www.nytimes.com/2010/03/24/world/asia/24china.html>.

<sup>126</sup> The Chinese company Baidu provides search-engine services, similar to Google's, to Chinese Internet users. Moreover, although Facebook and Twitter have been blocked in China, Chinese companies have developed similar applications such as the Renren social network and Weibo, which attract enormous amounts of Chinese users. See, e.g., JIANG, *supra* note 34, at 11; Liu, *supra* note 93, at 1205–06; Kate Torgovnick, *8 Extremely Popular Chinese Internet Memes*, TED BLOG (July 30, 2012), <http://blog.ted.com/2012/07/30/8-extremely-popular-chinese-internet-memes/>.

<sup>127</sup> See, e.g., Dan Jerker B. Svantesson, "Imagine There's No Countries": *Geo-Identification, the Law, and the Not-So-Borderless Internet*, 10 No. 9 J. Internet L. 1, 1, 20 (2007).

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physical world within a nation's borders. This is why Jack Goldsmith and Tim Wu have argued that "geography matters" as far as Internet regulations are concerned.<sup>128</sup>

The case of Google China illustrates the geographical and local nature of the Internet and corresponding regulations. By hosting servers outside Chinese territory, Google failed to provide satisfying search-engine services to Chinese users and decided to launch Google.cn in 2006.<sup>129</sup> This illustrates how a government (here, the Chinese government) has exercised its power, via technology and sovereignty, on Internet-related companies. By blocking Google's search services provided remotely from California, the Chinese government had not only prevented objectionable online information from flowing into the country but also spurred Google to build a physical operation in the country. Once Google put operating resources and assets in China, the Chinese government had further control—further leveraging power—over the company and the services it would provide to local users. In this sense, the Chinese government developed a successful policy to attract digital foreign investment and to monitor relevant online services and activities.

By adopting the above policies, the Chinese government has successfully claimed "Internet sovereignty" over its territory as far as Google.cn is concerned.<sup>130</sup> From the perspective of Google, providing services directly from Chinese soil is an inevitable consequence of entering China's domestic market and competing with other market players.<sup>131</sup> Once Google established its operations inside China, the company had to abide by Chinese laws requiring censorship. In other words, the powerful Great Firewall built by the Chinese government eliminated the borderless nature of the Internet and Google's search services.

More and more governments have followed the Chinese Internet-governance model, trying to draw borderlines on the Internet.<sup>132</sup> Take India, the largest democratic country in the world, as an example.<sup>133</sup> The High Court of Delhi warned several Internet companies, including Google and Facebook, that the Indian government would block access in the country if they failed to abide by a lower court's ruling censoring

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<sup>128</sup> JACK GOLDSMITH & TIM WU, WHO CONTROLS THE INTERNET: ILLUSIONS OF A BORDERLESS WORLD, 49–63 (2008).

<sup>129</sup> See *supra* text accompanying notes 43–46.

<sup>130</sup> JIANG, *supra* note 34, at 33.

<sup>131</sup> *Id.* at 17–18.

<sup>132</sup> See, e.g., Séverine Arsène, The Impact of China on Global Internet Governance in an Era of Privatized Control (June 2012) (unpublished manuscript presented at the Chinese Internet Research Conference, Los Angeles, United States), available at [http://hal.inria.fr/docs/00/70/41/96/PDF/circ\\_14mai.pdf](http://hal.inria.fr/docs/00/70/41/96/PDF/circ_14mai.pdf) (last visited Jan. 26, 2013).

<sup>133</sup> *India Profile: Overview*, BBC NEWS, <http://www.bbc.co.uk/news/world-south-asia-12557384> (last updated Aug. 29, 2012).

obscene and religiously objectionable content.<sup>134</sup> The Court defended India's grounds for censoring the Internet, arguing simply, "[l]ike China, we too can block such websites."<sup>135</sup> After the warning, Google removed the offending content, but still argues that the company was already compliant with India's information regulations.<sup>136</sup> Currently this case remains under review.<sup>137</sup> Nevertheless, the Court's statement echoes Tim Wu and Jack Goldsmith's argument that a borderless Internet has been an illusion.<sup>138</sup> As a result, the Internet could be Balkanized into multiple local Internets governed by various political and legal systems.

### B. *Leveraging Commercial Power to Regulate the Internet*

Although most countries' governments build their own primary Internet networks, commercial involvement from the private sector is essential for a robust Internet industry and economy. The Chinese government certainly understands that it alone lacks sufficient resources to develop its Internet economy and effectively control online information.<sup>139</sup> Consequently, the government has chosen to regulate online activities by leveraging commercial power from the private sector. Put differently, if "code is law", as Lawrence Lessig famously declared,<sup>140</sup> Chinese authorities have endeavored—through political forces—to weave their values into computer code or technologies developed by corporations. In order to run their businesses in a politically safe environment, Internet-related companies may mandate that their executives and programmers follow the authoritarian political will.

Google and other search companies' self-censoring of their own search results is just one example of how authoritarian governments regulate online activities by leveraging commercial power and how companies, in looking out for their own interests, cooperate with these governments. The Google.cn case provides some important implications for Internet regulatory models. China has been developing the *network authoritarianism* model, where the government leveraged corporate resources, including technology and finance, for political

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<sup>134</sup> Marta Cooper, *India's Face-off with Internet Freedom*, UNCUT (Aug. 10, 2012), <http://uncut.indexoncensorship.org/2012/08/india-internet-freedom>.

<sup>135</sup> Emil Protalinski, *Facebook, Google Argue Against Web Censorship in India*, ZDNET (Jan 16, 2012, 1:31 PM), <http://www.zdnet.com/blog/facebook/facebook-google-argue-against-web-censorship-in-india/7428>.

<sup>136</sup> Amol Sharma, *Facebook, Google to Stand Trial in India*, WALL ST. J., Mar 13, 2012, <http://online.wsj.com/article/SB10001424052702304537904577277263704300998.html>.

<sup>137</sup> *Id.*

<sup>138</sup> GOLDSMITH & WU, *supra* note 128, at 179–84.

<sup>139</sup> See JIANG, *supra* note 34, at 23; Anupam Chander, *Trade 2.0*, 34 YALE J. INT'L L. 281, 326–27 (2009).

<sup>140</sup> LESSIG, CODE VERSION 2.0, *supra* note 7, at 5–6.

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ensorship and surveillance.<sup>141</sup> The authoritarian state has employed private firms “as a proxy for social control.”<sup>142</sup> As Professor Min Jiang states, “Baidu, Google, and Jike are acting not only as businesses but, in the eyes of the central government, as an extension of the state ideological apparatus.”<sup>143</sup>

This regulatory model may push private interests to align with the authoritarian state’s political ideology and preferences. In exchange for a ticket to the world’s largest market, technology companies are incentivized to collaborate with the government in abridging human rights.<sup>144</sup> As Rebecca MacKinnon has pointed out, some of these international companies do not express much concern over human rights, and instead, focus on the ultimate goal of earning profits for shareholders.<sup>145</sup> Using China as an example, she further elaborates:

The technologies and policies that make surveillance and censorship possible in China and many other countries are closely connected to policy, business, and technical decisions being made by governments and companies in the democratic West. Sometimes those decisions are made by people who understand the implications of their actions but simply have other priorities. Others have good intentions but are ill-informed about the dynamics of power, control, and freedom across a global Internet.<sup>146</sup>

China’s abovementioned *network authoritarianism* regulatory model is effective not only for foreign companies, but for domestic companies as well. Foreign and domestic companies share the same goal of profit maximization. Because domestic companies may better understand the authoritarian nature of the Chinese government, they may have comparatively fewer concerns over collaborating with the government.<sup>147</sup> This is probably why Robin Li, one of the founders of Baidu, once admitted that his company would cooperate with the Chinese authorities for business purposes.<sup>148</sup> In light of his company’s faithful compliance with the Chinese government’s filtering rules, the Chinese government awarded Baidu the “China Internet Self-Discipline

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<sup>141</sup> VAIDHYANATHAN, *supra* note 6, at 32.

<sup>142</sup> JIANG, *supra* note 34, at 34.

<sup>143</sup> *Id.*

<sup>144</sup> ZHENG, *supra* note 46, at 66.

<sup>145</sup> MACKINNON, *supra* note 27, at xiv.

<sup>146</sup> *Id.* at xiv.

<sup>147</sup> *See, e.g.*, JIANG, *supra* note 34, at 35 (“For Chinese Internet companies listed overseas, the moral hazard of censorship has been largely accepted as part of ‘national conditions.’”); Chander, *supra* note 139, at 326 (stating that Baidu feels much more comfortable than Google does when facing the Chinese government’s Internet regulations).

<sup>148</sup> JIANG, *supra* note 34, at 16.

Award” for “fostering healthy, harmonious Internet development.”<sup>149</sup>

#### IV. THE ACCOUNTABILITY CRISIS IN INTERNET GOVERNANCE

A detailed study of the Google China case may support some pessimistic views of the future of the Internet. The Chinese government has crafted its own Internet in accordance with the demands of their authoritarian blueprint. Western companies, such as Microsoft and Yahoo!, as well as domestic ones, such as Baidu, have aligned their commercial interests with the Chinese government, effectively enabling authoritarian control of the Internet.<sup>150</sup> Although some would deem Google China an exceptional and endemic case in the digital world, it is possible that China’s practices could become the norm in the global Internet sphere. In this regard, Rebecca MacKinnon wrote that “regulators in the world’s largest markets make decisions that ultimately shape global technical standards and business norms.”<sup>151</sup>

The most serious concern facing Internet policy, illustrated by the Google.cn case, is that of accountability. An unprecedented crisis threatens democracy when political powers can embed their own values in technology enterprises without any check-and-balance mechanism. In this section, we will describe how the accountability crisis arises and propose solutions to effectively manage it.

##### A. *The Problem of Internet Accountability*

The case of Google.cn indicates two levels of accountability problems presented by the Chinese Internet regulatory approach: those which exist within the Chinese territory and those that spillover to other territories. With regard to the domestic accountability issue, the Great Firewall is a classic example of Professor Lawrence Lessig’s code-is-law or regulation-by-code argument. As Lessig points out, when the government uses technology or other digital architecture to regulate human behavior, accountability issues arise because such regulation lacks transparency.<sup>152</sup> Because the Chinese government has been silent about the details of its censorship system,<sup>153</sup> and there is tremendous difficulty in detecting the overall regulatory effect created by technology like the Great Firewall, people and institutions are unlikely to hold the government accountable for its technology-based regulations.<sup>154</sup>

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<sup>149</sup> *Id.* at 16–17.

<sup>150</sup> MACKINNON, *supra* note 27, at x–xi, xxii.

<sup>151</sup> *Id.* at xxi–xxii.

<sup>152</sup> LESSIG, CODE VERSION 2.0, *supra* note 7, at 138–39.

<sup>153</sup> For instance, there are no official blacklists on what key words will be censored. JIANG, *supra* note 34, at 18.

<sup>154</sup> Lee & Liu, *supra* note 89, at 138–40; *see also* SEGEV, *supra* note 42, at 63 (“[T]he lack of government transparency makes it difficult to assess what information is censored in China and



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The accountability problem in China has grown even more complicated as foreign and domestic Internet companies have increasingly become accessories to the government's control over online information.<sup>155</sup> In other words, the problem of holding Internet companies accountable for the search services they provide is as serious as the problem caused by technology-based regulations. Although many companies and scholars claim that a business' social responsibility is to pursue maximum profits for its shareholders, the argument might only be applicable to businesses operating in free societies.<sup>156</sup> As Professor Anupam Chander pointed out, a business that aims at profit maximization and sacrifices the benefits of its stakeholders—such as customers, employees, and creditors—by providing questionable services to totalitarian authorities, may put itself in unethical situations and render the goal of “maximizing profits for shareholders” unsubstantial.<sup>157</sup> Moreover, as the events of the Arab Spring exemplified, today's Internet, in which user-generated content plays an important role, is not merely a one-way medium used to spread messages; it can also be a tool for users to advance social and political campaigns.<sup>158</sup> With these new roles, Internet companies should be expected to keep up with “a professional ethic . . . to protect the freedom-enhancing aspects of cyberspace.”<sup>159</sup>

Not many Internet companies have become fully aware of this new expectation and instead, have committed this responsibility to their users. MacKinnon argues that “the corporations and governments that build, operate, and govern cyberspace are not being held sufficiently accountable for their exercise of power over the lives and identities of people who use digital networks. They are sovereigns operating without the consent of the networked.”<sup>160</sup> In the case of Google China, although Google realized the reformative capacity of its important role as an information provider and tried to hold the Chinese government and legal system accountable to a certain degree by notifying Chinese users of the government-censored Internet content,<sup>161</sup> ultimately, the costs of holding a large authoritarian government accountable was exceedingly high, and, perhaps one of the most promising Internet accountability mechanisms faded away with the shutdown of Google.cn.

Regarding the second level of the Internet-accountability problem

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<sup>155</sup> MACKINNON, *supra* note 27, at xxi.

<sup>156</sup> Anupam Chander, *Googling Freedom*, 99 CALIF. L. REV. 1, 25 (2011).

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* at 27.

<sup>159</sup> *Id.*

<sup>160</sup> MACKINNON, *supra* note 27, at xxi.

<sup>161</sup> See *supra* text accompanying notes 53–54.

(i.e., the “spillover” of one country’s regulatory strategy into another country), the present and future effects of China’s Internet regulatory strategy is particularly worrisome.<sup>162</sup> As many governments are using Internet companies such as Google and Facebook to exercise power over people outside the governments’ jurisdiction, regulators are essentially making decisions that shape global technical standards and business norms. The Chinese Internet governance model has showed—through its exercise of power over multinational enterprises, such as Google, Yahoo!, and Microsoft—that Chinese regulatory policies influence how these multinational companies design their products, services, and architectures. In this way, regulatory policies adopted by the Chinese government can exert an indirect but powerful influence on markets outside China, where multinational companies provide the same products and services as they do in China.

Moreover, the Chinese regulatory model of leveraging commercial power for political purposes may gradually be taken for granted and become a model for other countries aiming to control the Internet stringently. If we believe that the Chinese Internet regulatory model is harmful to human rights, then the emergence of similar versions of this regulatory model may represent a “race-to-the-bottom” phenomenon in global Internet regulatory competition.<sup>163</sup> Viewed in this way, the Chinese government is exercising power over people denied the right to vote for the legislators and policymakers who exercise this power, and without the right to vote, the people have no formal, effective way of holding the Chinese government accountable.<sup>164</sup> Consequently, it is not an overstatement to say that “[t]he power of corporations to shape netizens’ digital discourse and hence our political lives will not be constrained without new mechanisms and strategies for collective bargaining by netizens with corporations” because “[t]he existing political and legislative processes of nation-states are failing to do the job.”<sup>165</sup> In addition, in his 2009 book, *COMMUNICATION POWER*, Manuel Castells thoughtfully warns that the victories digital empowered citizens have won will not necessarily last “because the power-holders in the network society”<sup>166</sup> will do everything possible to “enclose free communication in commercialized and policed networks.”<sup>167</sup>

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<sup>162</sup> See *supra* text accompanying note 35.

<sup>163</sup> Originating from the corporate and securities law scholarship, “regulatory competition” means that states compete with one another when crafting laws or regulations serving to lure investors, whereas “race-to-the-bottom” refers to a situation where worse and worse laws become dominant in regulatory competition. See, e.g., Jordan M. Barry & John William Hatfield, *Pills and Partisans: Understanding Takeover Defenses*, 160 U. PA. L. REV. 633, 635, 637, 654, 692–93 (2012).

<sup>164</sup> MACKINNON, *supra* note 27, at xxi–xxii.

<sup>165</sup> *Id.* at 243.

<sup>166</sup> MANUEL CASTELLS, *COMMUNICATION POWER* 346–62 (2009).

<sup>167</sup> *Id.* at 432.

### B. *Solutions to the Digital-Accountability Problem*

To evaluate the harm brought by the digital-accountability crisis, we need to imagine “what kind of world are those Internet-related companies helping to create, and should that not concern them?”<sup>168</sup> The physical and virtual Jasmine revolutions of 2011 have taught us that although the Internet empowers dissent, it does not automatically result in freedom. This is why MacKinnon argues that

it is time to stop debating *whether* the Internet is an effective tool for political expression, and to move on to the much more urgent question of *how* digital technology can be structured, governed, and used to maximize the good it can do in the world, and minimize the evil.<sup>169</sup>

To address the problems faced and created by Internet companies operating in China and other regimes, it is nearly impossible to take a one-size-fits-all solution. However, there are still approaches that might help people hold governments and corporations accountable. On the basis of the recommendation proposed by the Global Network Initiative, we suggest a collaborating framework consisting of stakeholders, including Internet companies, governments, and non-government organizations (NGOs), to improve the accountability problem. Regarding Internet companies, they should first realize their new responsibility in the Internet era.<sup>170</sup> These companies should recognize that protecting users’ human rights actually complements their businesses’ long-term interests.<sup>171</sup> In fact, the goal of maximizing profits is certainly correlated to the quality of products and services. Companies like Google offering various online services should care about customer satisfaction. If companies unconditionally handed over consumers’ personal information to the government upon its request, the market might ultimately discard the offending companies. Regarding Internet companies, the case of Google.cn indicates that they need to reconsider the costs of cooperating with authoritarian governments and taking measures like self-censoring. The short-term costs are probably not significantly high given the lucrative market opportunities to be explored. Nonetheless, the long-term costs may far exceed expectations. Once companies decide to follow repressive mandates and enter markets overseen by authoritarian governments, the companies may eventually find themselves locked into the authoritarian way of doing business and obliged to continuously follow authoritarian

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<sup>168</sup> MACKINNON, *supra* note 27, at xxiii.

<sup>169</sup> *Id.* at xx.

<sup>170</sup> See *supra* text accompanying notes 158–159.

<sup>171</sup> MACKINNON, *supra* note 27, at 195.

mandates with few or no alternative options that would permit the companies to recoup their investments. In this sense, the story of Google.cn reminds multinational companies about the long-term costs of cooperating with authoritarian government. Once they understand such costs, few would agree to the conditions, such as self-censoring, without hesitation, and the accountability problem illustrated previously would be less likely to arise.

However, asking companies to recognize their human-rights responsibilities does not mean that Internet companies should entirely withdraw from markets where government mandates violate human-rights principles. The “environmental” approach argues that “positive changes in the life a country, including pro-democratic regime change, follow, rather than precede, the development of a strong public sphere,” and Internet companies’ presence in markets could therefore help nurse a more open Internet environment.<sup>172</sup> For example, with human rights principles in mind, companies can evaluate the social milieu in a regime and develop a more balanced business strategy, such as continuing to offer formally unsanctioned products and services while helping to incubate an environment capable of fostering social changes.

The Global Network Initiative, a non-government organization, published a report recommending steps companies can take to lessen violations related to the aforementioned dilemma. One of the steps is to exchange information about the jurisdiction with other parties, such as companies, the government, and NGOs. Another step is to assess “whether the domestic legal systems and practices conform to international human rights and rule of law requirements.”<sup>173</sup> If, after the assessment, a company concludes that doing business in the country could incur human-rights violations, the company should carefully plan to minimize the risk.<sup>174</sup>

In fact, some Internet companies, including Google and Twitter, have realized their new social responsibilities as Internet companies and have tried to find ways of mitigating the risk of human-rights violations. For example, Google and Twitter have periodically published reports revealing government requests to take down content.<sup>175</sup> To address

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<sup>172</sup> Clay Shirky, *The Political Power of Social Media: Technology, the Public Sphere, and Political Change*, 90 FOREIGN AFFAIRS 28 (Jan. –Feb. 2011), [http://www.gpia.info/files/u1392/Shirky\\_Political\\_Poewr\\_of\\_Social\\_Media.pdf](http://www.gpia.info/files/u1392/Shirky_Political_Poewr_of_Social_Media.pdf).

<sup>173</sup> Ian Brown & Douwe Korff, *Digital Freedoms in International Law*, GLOBAL NETWORK INITIATIVE, 5–6 (June 14, 2012), [http://globalnetworkinitiative.org/sites/default/files/Digital%20Freedoms%20in%20International%20Law\\_0.pdf](http://globalnetworkinitiative.org/sites/default/files/Digital%20Freedoms%20in%20International%20Law_0.pdf).

<sup>174</sup> *Id.* at 6.

<sup>175</sup> Bianca Bosker, *Twitter Transparency Report Show Government Requests for User Data. Now It's Facebook's Turn*, HUFFINGTON POST, July 2, 2012, [http://www.huffingtonpost.com/2012/07/02/twitter-transparency-report\\_n\\_1644596.html](http://www.huffingtonpost.com/2012/07/02/twitter-transparency-report_n_1644596.html); Rebecca Rosen, *How Google Decides: Google's Transparency Report and What It Reveals About the Company's Role in the World*, THE ATLANTIC, June 18, 2012, <http://www.theatlantic.com/technology/archive/2012/06/how-google->

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China's censorship problem, Google has launched a new service advising Chinese users about sensitive words and suggesting alternatives if users type sensitive words in Google's search box.<sup>176</sup> With these tools and information, companies, governments, NGOs, and even individuals might develop a deeper understanding of these issues relative to specific jurisdictions and make increasingly sensible decisions.

Although it would be difficult to hold repressive regimes accountable, governments supporting democracy could support companies that diligently align themselves with human-rights principles. They could also encourage Internet companies and NGOs to research and develop technologies capable of circumventing censorship. The Global Network Initiative report suggests that governments could consider applying "civil legal liability" to companies that fail to make due diligent assessments of relevant market censorship and fail to avoid complicity in abuses of Internet freedom.<sup>177</sup>

Unlike companies intent on pursuing business interests and governments wary of causing diplomatic controversies, third party NGOs could form a nexus in efforts to devise a framework capable of improving Internet accountability. In addition to educating companies about their human-rights responsibilities and strategies for dealing with human-rights violation problems,<sup>178</sup> NGOs could consistently oversee human-rights problems related to Internet freedom, including censorship and privacy issues in individual countries. Moreover, NGOs could provide platforms not only for signaling warnings, but also to gather information. In addition, NGOs could develop Internet-freedom standards and recommendations, such as the conditions necessary for removing and blocking content.

## CONCLUSION

The case of Google China provides a number of Internet-policy issues besetting the global digital sphere. Google's journey in China has been thorny from the beginning. The Chinese government has effectively employed various regulatory modalities to shape the Internet and people's digital lives. Through the Great Firewall and rigid regulations, even the most innovative companies, including Google, Microsoft, and Yahoo!, have reluctantly compromised because of their desire to enter the Chinese market. Although Google has been quite

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decides-gogles-transparency-report-and-what-it-reveals-about-the-companys-role-in-the-world/258633.

<sup>176</sup> See, e.g., *Google Helps China Search Users Avoid Censored Keywords*, BBC NEWS, June 1, 2012, <http://www.bbc.co.uk/news/world-asia-china-18291969>.

<sup>177</sup> Brown & Kroff, *supra* note 173, at 6.

<sup>178</sup> *Id.* at 7.

successful dealing with local filtering regulations in other countries, it failed to understand the differences between the Chinese market and others; in China, the primary master that Google needs to please is the government, not consumers—a formula that is the opposite of standard scenarios in many other countries.

A more serious issue for Internet scholarship is how the Chinese government is shaping the Internet according to its ideologies and preferences and how this process will affect the global Internet in the long run. If the authoritarian state significantly changes the nature of the Internet, the benefits and values promised by digital technologies may lapse or even fail to take hold. Therefore, the case of google.cn casts a problem that none of the world's democracies have yet solved: How do we make sure that people with power over our digital lives will not abuse the power?

When political power successfully leverages commercial and technological power, a serious accountability crisis will occur and more importantly, the crisis will have a spillover effect in different jurisdictions. In order to solve the crisis, we propose that Internet-related companies, governments supporting democracy, and NGOs should be aware of their positive roles in the digitally networked environments. These stakeholders' efforts to shape a transparent and democratic global Internet may not have instant positive results, but they are crucial to the robust development of Internet technologies and economies.