

# Administrative Regulations on the Internet Expression in China: From the Perspective of Microblog

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## Abstract

With rapid development of the Internet, cyberspace is no longer the altar of “free speech and expression”, but also the source of “fraudulent, extreme, terror and other irrational speech”. Any lack of standardized systems, Internet speech expression with no regulation may lead to the abuse of rights, undermines social order. Therefore, it is necessary to regulate and supervise the irrational speech properly. However, the traditional regulation way— “containment” instead of “dredge” has been outdated. Only to establish a new regulation mode: “Government-led participation, industry self-discipline, cyber citizens self-regulation”, can we stop network chaos effectively.

**Key words:** Internet; Expression; Administrative regulation

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## INTRODUCTION

The ways to express views on Internet including microblog, wechat, blog, etc., where public concern for the microblog activity is most strong. China cyber citizens

began to use microblog in 2007. After a short test time microblog entered a period of rapid development. The first half of 2011, the number of China's microblog users had increased from 63.31 million to 195 million; microblog penetration rate among cyber citizens rose from 13.8% to 40.2%; mobile microblog usage proportion among cyber citizens rose from 15.5% to 34%.<sup>1</sup> Microblog fragmented dialogue constitutes the basis of rational consensus. Microblog has a variety of forms: such as concern, forward, comment, reply, private letters which making large-scale and multi-type Internet communication system. Microblog as the "fourth media" emerging power has unique advantages on the information spread. On the one hand, compared with the traditional media, as relatively equal, relatively free microblog easier to exchange dialogue among cyber citizens. On the other hand, compared with other online media, the emergence of microblog accelerates the rise of the Internet public sphere. By the end of 2014 the actual number of Internet users in China reached 649 million.<sup>2</sup> These statistics demonstrate both the rapidity with which citizens adopt new uses of technology and also portend the difficulties a government might encounter in regulating emerging technology. Since the development of the Internet, China's government has welcomed technological advances because of the increased opportunity for economic development and the potential for China to become a global leader in ecommerce. However, in order to take full advantage of the Internet, users must feel sure that their private information will be safe—not be used for improper purposes. On the other hand, the growth of the Internet brings with it super-capabilities relating to information and communication which also delivers an ever increasing menu of cybercrimes. Rumors and pornography occupy the Internet advertising space driving curious citizens to read. Internationally, law enforcement faces the following challenges: harmonization of countries' criminal laws; locating and identifying perpetrators across borders; and securing electronic evidence of crimes so that criminals may be brought to justice. All of these issues through the Internet unprecedented rapidly grow. It is time to take measures to promote better development of the Internet.

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## 1. THE NECESSITY AND STATUS OF REGULATION ON MICROBLOG

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### 1.1 The Necessity of Regulation

Development of the Internet greatly expands the space of expression. Due to the unique instantaneity, occult, no-boundary, equality, the Internet has become an

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<sup>1</sup> China Internet Network Information Center: "28<sup>th</sup> Statistical Report on Internet Development in China."

<sup>2</sup> CNNIC: 2015 35<sup>th</sup> of China Internet Development Statistics Report. Retrieved 2015, January 18 from <http://www.199it.com/archives/326814.html>

important platform for a person to show themselves and realize their own value. Internet users can freely express their ideas, views and opinions almost without social identity and social status restrictions which can stimulate, promote and enhance the development of personal ability. Freedom of expression is an extremely important social character and social value. As the major role in the developing individual talents, enhancing democratic participation and preventing the abuse of power, many countries make the “freedom of expression” as one of fundamental rights of citizens into constitution including our country. And the right of expression allows citizens to discuss public affairs freely which can truly reflect they will enhance their democratic awareness and sense of participation. Thus this makes a favorable political environment and democratic atmosphere. As Justice Holmes’s famous says “freedom for the thought we hate”, we must not only support our consent which can be generally accepted, but also support the views we censure and oppose. So as to establish (Doyle, 2010, p.24) a new path to express views on public affairs: Virtual cyberspace break the traditional mode of organizational boundaries and order in the public domain, providing people a more efficient, convenient, low-cost platform for political participation—the real positive interaction with the government.

However, as a coin has two sides, Internet expression has a double-sided nature. “Computer kingdom is not never a fully independent society, a society without real laws, regulations, polices and military constraints.” (Donn, 1998) “We cannot tolerate a situation in which anything goes.” (Riga, 1996, p.B2) Now the source getting social information is mainly from the Internet, social conflicts are often heard firstly in the form of Internet expression and then with the rapid spread in a very short period causing extensive concern. For example, “AIDS woman event” case occurred in October 2009 in Hebei which is a typical irrational Internet expression case making personal enmity become public event, affecting the normal life of others and violating legitimate right of others. Before the event actress Yan clarified the facts to police, her boyfriend used the microblog to spread rumors about her. She was by many unsuspecting netizens “human flesh searched” and then was deeply condemned and insulted by public opinion; more than 200 citizens’ normal work and life were greatly disturbed because of constantly receiving so-called “confirmation” calls as their telephone numbers are published. Although the event initiator (Yan’s boyfriend) was eventually arrested and sentenced to insult and libel. The damage caused was difficult to heal by Internet rumor.

Another one is “old yogurt and jelly were added industrial gelatin in the production process” case. The rumor in 2012 on the microblog crazy spread on the Internet. As the itigants fabricated false information triggering a public doubt the security of jelly and old yogurt, the rumor on the Internet undermined the credibility of the manufacturing industry seriously. Although China Bakery Sugar Products Industry Association, China Food Industry Association Candy Professional

Committee and China Dairy Industry Association issued a statement that old yogurt and jelly were added industrial gelatin in the production process on the microblog was false rumor, there were many jelly companies received notice and requirement (“jelly comprehensive products off the shelf to be examined”) from regulatory department of the local government which brought these jelly companies heavy losses.

The negative effects of Internet expression with no regulation are obvious. Online speech without institutional norm may lead to the abuse of rights and undermine the social order. As the immediacy and the occult characteristics of the Internet expression, irrational speech brought irreparable loss to the public interest sometimes. The most important foundation of the judicial authority is the mass, especially the litigant’s approval and understanding. So it is necessary to give appropriate regulation for the above appearing Internet irrational expression.

## 1.2 The Status of Legal Regulation

In 2004, a sentence was added into article 33 of the Constitution of the Citizens’s Republic of China, which is “the state respects and protects human rights.” The state responsibilities are provided by the clause. Article 35 of the Constitution of the Citizens’s Republic of China declares that “the state respects and protects citizens’ rights of speech and expression.” As a kind of human rights, speech and expression rights on the Internet shall also be respected and protected by the state. Therefore, it is necessary for the government to fulfill its constitutional obligations to protect the citizens’ rights of speech and expression.

In China, the protection of citizens’ freedom of speech and expression on Internet has not received due attention. Law of the Citizens’s Republic of China on the protection of rights of speech and expression and the law *The Decision on Safeguarding Internet Security* hold that government shall regulate rumors on the Internet, which are not fully considering the special needs of freedom expression of citizens on the Internet.

Regulation on the microblog had already existed from the beginning of microblog on Internet. The regulation in our country mainly on the subjects including government and Internet operators. “In 2011, Hebei Province hold the “signing the self-discipline convention on Internet expression” activities giving birth to “network of media self-discipline convention” and Chinese first “microblog user self-discipline convention”; the same year in December, Beijing issued the “provisions for the Beijing microblog development and management”; May 28<sup>th</sup> 2012, *Sina Microblog Community Convention (Trial)* and *Sina Microblog Community Management (Trial)* were formally implemented (Chen, 2010, pp.1-2) Concerned the legal regulation of the whole Internet expression, in order to strengthen the protection of infrastructure information networks and critical information systems *People’s Republic of China Computer Information System*

*Security Protection Ordinance* promulgated which is a programmatic document of our country's network information security responsibilities of different government departments.

And then the *People's Republic of China Computer Information Network International Network Management Interim Provisions* and *Internet Information Services Management Approach* which were two direct-to-Internet regulations reflecting distinctive feature that Chinese adopt "firewall" strategy to foreign countries and enhance the management of domestic Internet service providers (ISP). *Decision on Strengthening the Network Information Protection* enacted in December 2012 more focused in the protection of information security. It mainly reflected that feature in three aspects: firstly, to strengthen the protection of citizens' personal privacy and information security; secondly, to safeguard network and information security from the perspective of national and public interests; and finally to further regulate the network activities clearing that the real-name system of backstage management would be used to promote the healthy development of the Internet.

The China government created many regulations these years and imposed control of the Internet through a variety of methods. After the first regulations were imposed in 1996, subsequent regulations were adopted either to strengthen or clarify previous regulations or to deal with an unforeseen problem caused by emerging technology. Two regulations promulgated in 2005, the *Registration Administration Measures for Non-Commercial Internet Information Services (Registration Measures)* and *The Rules on the Administration of Internet News Information Services (Administration of News)*, typify the reasons the China government creates new Internet regulations. These rules strengthen existing Internet laws and add new provisions for emerging uses of technology, which is accomplished through registration requirements for all non-commercial websites and stringent regulation of the posting of news-related content, including political commentary.

### **1.3 Regulatory Practice Model**

At present, Chinese regulation for microblog is still government-mainly-lead model. In this model, under the considerations of national security and maintaining social stability, the government used to stand in the perspective of "managers", adopting traditional regulation model to use administrative power to control the Internet rigidly. For example, on the one hand, governments often ignore the basic requirements of expression freedom on microblog. On the other hand, the government often use the advantages of their high administrative authority, in accordance with their own will, to obviously command or in disguised network operators to take such actions with no legal procedure to the voice of they do not like to hear: "review, delete, shield, close microblog".

There is no doubt that such administrative regulation model is difficult to achieve the desired objectives. It is easy to damage the right of citizens to

participate Discussion of public affairs of the Internet. In recent years, due to the rapid development of network media, especially the rise of microblog, social elite (also called opinion leaders) and the masses in political communication practice is becoming more active.

Our country takes this traditional administrative regulation mode—that is, the government as the main regulation subject, the Internet service licensing system as the basis, the campaign-style regulation as the means and the top-down administrative management. In practice, in the face of new problem and endless issues on Internet, this mode only can be maintained through continuous tightening of administrative examination and approval and to strengthen the Internet supervision. The result is that administrative costs are increasing and the Internet will fall into “Regardless of the chaos”. Therefore, in order to adapt to the trend of the Internet development and social transformation, it is urgent for China changes from authoritarian control (traditional regulation mode) to the stage of good governance according to law mode. Its basic features are that the law as the fundamental of regulation, social diversified subjects as the common governance basis, formative and post-mortem supervision as the stress- this is a new legal interaction and cooperation models. In this regard, we can learn from the more successful cases from the international community, such as the British “the Internet Watching Foundation” Australia “Network Warning Mechanism” and so on.

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## **2. THE PROBLEMS OF ADMINISTRATIVE REGULATION**

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There is no doubt that the value of Internet expression is huge. However, owing to the Internet expression -the special media, bad or illegal information can be “spread like wildfire” which will deeply destroy the social order and harm the interests of public. Thus, “an uncontrolled expression mechanism is unthinkable.” (Sunstein, 2001) Through the microblog survey activities it shows that China has established an Internet expression regulatory mechanism, however, there are still many problems and deficiencies constraining the regulatory effects.

Unlike the United States, China government seems to have a clear vision of how development and use of the Internet should proceed. Whether this vision is technologically feasible is another matter. China government’s simple goal can be described as “remove what is undesirable and keep what is good.” (Khan, 1996, p.A1) While this goal is the basis of any regulatory regime, China’s ability to implement it is aided by the government’s high degree of certainty regarding what is desirable and what is not. Having embraced the Internet and the risks it necessarily entails, the China government envisions a system oriented mainly towards business to serve as a tool to spur China’s economic development (Higgins, 1995, p.9). The international impact of the Chinese regulatory regime remains to be seen. The government’s other control mechanism, “firewall” software which blocks access

to objectionable areas of the Internet, is similarly flawed. The government intends to use such software to create a secure network, in which Chinese users will have unlimited access to each other, but must obtain approval to open a channel to an outside service provider.

In terms of the government regulation of Internet expression, China government has 9 departments are now responsible for this work forming a “law enforcement by many departments” pattern. However, regulatory body is the prerequisite and basis for the regulation of Internet expression and effective regulatory body is to protect the regulation measures effect. Currently regulatory body System has three following Problems:

Firstly, law is enforced by many government departments and authority disputes. Due to a number of departments have the same right to regulate speech on the Internet which easily lead to two situations: (a) many government departments fight for the same enforcement power on a case—forming “law enforcement internal strife”; (b) government departments shirk responsibility when they meet a complicated case—forming “law enforcement vacuum”. Whether “law enforcement internal strife” or “law enforcement vacuum”, its direct consequence must be the failure of regulation. So that the regulation may become an Internet cancer to curb the development of the Internet. Moreover, the law enforcement chaos also restricts normal and legitimate Internet expression.

Secondly, the lack of effective mechanisms for cooperation and communication between the regulatory body. In China, government department just does the work and take the responsibility clearly “of my own”. Lacking of effective communication and mutual assistance mechanism makes the regulation of Internet expression prone to all kinds of loopholes.

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### **3. SUGGESTIONS OF CHINA GOVERNMENT REGULATION**

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Internet expression regulation is double-edged sword—reasonable regulation can become sharp knife cut off bad network tumors; unreasonable regulation may also become a weapon to stifle freedom of expression. Thus, under the premise of protecting freedom of Internet expression how to set up an effective network regulation and purify the network environment is an important issue to us. As mentioned before, there are a variety of Internet expression problems and inadequate regulation. Inadequate regulations of Internet expression not only influence the network effect, but also result in undue restrictions on freedom of speech. Facing the reality of these problems, learning the experience of Western, the reform of China’s Internet expression regulation system has become an inevitable choice.

Firstly, we need to establish the specialized department which will regulate the Internet expression uniformly. We recommend that through legislation to set up a

special department to regulate the Internet expression exclusively. The professional department solely does the regulation work and takes the responsibilities. This way also can enhance authority of the department. Specialized regulatory department has two main responsibilities: First, they are responsible for the regulation of the Internet expression. When they find the illegal or dangerous information they need to take timely measures to prevent the expansion and they can make certain penalties for the illegal or dangerous information.

Secondly, we need to establish the communication and cooperation mechanisms. Given the diversity and complexity of Internet expression, the special department is impossible to completely separate regulation and work. The regulation works still need for synergies from other departments. In order to ensure the effectiveness of law enforcement we need a platform for sharing information among different departments. So that the special department can timely censor the illegal expression. In addition, different departments should work together with the special department and assist them to regulate the Internet expression.

Thirdly, we need to depend on the social organizations and network operator's autonomous regulation. Internet is a virtual world, this feature determines the regulation of the Internet expression depends on the path of social organizations and operations with the network providers. Because they have adequate manpower and technology to the Internet and work more effective than government departments. Healthy development of cyberspace is not an individual and passive process—it is the result of joint strives of all the Internet users, Internet companies, government departments and other social organizations. Thus, it is important to actively absorb and encourage social organizations and Internet companies to participate in the line of Internet expression regulation. In addition, the government department also should respect their autonomy. We should insist on the “autonomy-based and administrative supplement principle”.

Fourthly, we need to build the public citizen participation mechanisms. Internet order is set up relying on the “the participation of all Internet users in the network on the contractual basis and self-regulation”. Thus, keeping the normative Internet speech also inseparable from all Internet users. Internet users are the speech and expression maker, however, may also become the victim of speech. Thus, Internet users can become the supervisor of the Internet expression. It is very necessary for the government to guide Internet users to participate actively Internet expression regulation—safeguard the freedom of legitimate speech, to combat illegal speech and identify false statements.

In the United States, scholars generally consider content-based regulation of hate speech to be impermissible under the First Amendment. However, the European Court of Human Rights has found restrictions on hate speech to be valid under the limitations on freedom of expression present in the European Convention on Human Rights. In the future, it will be interesting to see whether the United States and



Europe develop a more similar approach to freedom of expression or whether each will retain its individual approaches. In an age when the impact of court decisions is often world-wide and the publication of information is not limited to the nation of origin, it seems likely that laws governing freedom of expression will eventually begin to transcend national boundaries. I believe that China government would do well to understand the merits and drawbacks of different approaches to regulating internet expression. So freedom of expression on the Internet can be adequately safeguarded in the future.

Finally, due process and relief procedure are institutional safeguards to prevent arbitrary administrative executive. In order to prevent the arbitrary administrative executive to the Internet expression, to ensure that the effect of regulation we also require regulatory subject to follow due process of law and establish the relief procedure system. In the regulatory process of Internet expression, arbitrary administration, non-compliance with legal procedures, is not only a violation of the rule of law, but also a violation of the fundamental expression right of citizens'. In view of this, we should construct and improve the system of administrative procedures to Internet expression and relief procedure for inappropriate regulation. Since there is no legal basis, government without citizens' application can not delete posts, close microblog as they like. That is to say the executive has no power to make such acts or decisions. However, deleting posts and closing microblog are seems effective means to regulate Internet irrational speech and rumours. The paper recommends that we should Legislate clearly to limit this executive power title and the unify the criteria for censorship. At the same time, we must set strict procedures to prevent the abuse of regulatory power.

The due process of regulation on Internet expression should be required as follows: firstly, there is no interest relationship between the administrative subject or other regulatory subjects and regulated person or thing; secondly, before the regulatory subjects make a decision which is not conducive to netizen, they should hear netizen's statements and arguments; involving netizen's major interests, they should give netizen the hearing rights. Thirdly, when the administrative subjects make administrative decisions or punitive measures (such as deleting posts and closing microblog, etc.), they should explain the reasons. Of course, we should also further clearly define the consequences by legislation that if the regulation subjects do not follow or violate the law due process.

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## **CONCLUSION**

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The continuing development and expansion of on-line communication present a valuable opportunity for the international community. Under the best of circumstances, the Internet could flourish as a truly international forum, correcting the information asymmetries which impede economic development. Permitting

current trends in on-line communication policy to continue, however, will frustrate this result. The national regimes imposed by China apply norms to a cyberspace in an attempt to constrain a medium whose principal value is its flexibility. These regimes will also inevitably lead to additional restrictions, as governments, frustrated and embarrassed by their inability to enforce existing limitations on Internet communication, are forced to resort to more effective measures. While non-regulation is in many ways the ideal alternative, it is no longer realistic in light of the strength of the political forces against it. As a result, the reform of the government departments and cooperation with social organizations, a consensual regime of user self-regulation, implemented through the creation of rating systems and the distribution of screening software, is a sensible compromise position. Such a regime (both China and American government) must acknowledge the very real hazards of objectionable Internet content and Internet misuse, but operates by empowering users to control what they see, rather than by controlling what content providers may contribute (Delacourt, 1997). Regulation of this kind can thus be described not so much as censorship, but as the re-establishment of the balance between speaker and listener. The power of content providers to make their voices heard will remain undiminished, but the power of users to select the voices to which they wish to listen will be restored. Thus the Internet listener select speakers finally—the best self-regulation to assist the government regulation.

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## REFERENCES

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- Chen, Q. K. (2010). *In the view self-regulation of Microblog community governance framework's construction—based on the “Sina Microblog” analysis* (Master's thesis) (pp.1-2). China University of Political Science and Law.
- Delacourt, J. T. (1997). The international impact of internet regulation. *Harvard International Law Journal*, 38, 235.
- Donn, B. P. (1998, September 10). *Fighting computer crime, a new framework for protecting information*. Wiley.
- Doyle, R. P. (2010, January 1). *Banned books, challenging our freedom to read* (p.24). American Library Association.
- Higgins, A. (1995). *China tries to shunt out internet anarchy* (p.9). GUARDIAN.
- Khan, J. (1996). *Chinese firewall: Beijing seeks to build version of the internet that can be censored crackdown of outside views also includes satellite TV and financial news wires*. WALL ST. J.
- Riga, A. (1996). *Governments grappling with net curbs* (p.B2). MONTREAL Gazer.
- Sunstein, C. R. (2001). *Republic.com*. Princeton University Press.