

## Research Note

### Domestic Spheres or Universal Values, & The Future of Internet Governance

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July 2016

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#### Introduction

I lived in China for two years from 2003 to 2005 and returned a handful of times for extensive visits. After China, I remained living in Asia for the next five years before returning to the United States. During my years in Asia I became intrigued by the challenge China presented to the world's status quo and to my American values. China joining the World Trade Organization in 2001 began an explosion of change, opportunity, and crisis—within China and in its relationships with other countries. The years between 2001 and 2010 represent the formative years in China's re-emergence on the world stage, climaxing in the 2008 Beijing Olympics. Now, by 2016, the ramifications of China's re-emergence are clearer, and non-Chinese Internet companies in particular have been seasoned by their experiences in China. In 2010, two distinct visions of the Internet were formally defined, one by the United States and one by China. The fundamental question for the future of Internet governance worldwide became:

*Is cyberspace entirely made up of domestic spheres, each under a different country's sovereign rule, or is the Internet as a whole subject to international rule in the name of "universal values"?*<sup>1</sup>

#### Ethical Frameworks

In this paper I will review the actions of major Internet communications companies in China and identify the ethical framework each applied when operating in the Chinese market. To do so, I will use the ethical frameworks as outlined in our reading from *Ethics for the Information Age* by Michael Quinn.<sup>2</sup> Specifically, I will examine the decisions of Yahoo!, Microsoft, Skype, and Google, focusing on the period from 1999 when Yahoo! became the first Internet company to enter the Chinese market, to 2010 when Google decided to exit the Chinese market.

We will see the American Internet firm Yahoo! employ an ethical framework of *Cultural Relativism*—operating by one set of values in the United States, and a contradictory set of values in China. By implication, this contradiction demonstrates that Yahoo! operated by no universal value of right or wrong, and that, from Yahoo!'s perspective, these definitions change from

culture to culture. Additionally, we will see the fallout when this contradiction is brought to light, especially in Yahoo!'s culture of origin, the United States. By employing cultural relativism, Yahoo! had no way to reconcile its actions in the U.S. and China and chose to turn operations over to a Chinese company, essentially exiting the Chinese market. The European online communication company Skype also initially employed a cultural relativist approach in its partnership with Chinese telecommunications company TOM, which lead to similar disastrous results.

In Microsoft we will see an evolution in the ethical framework employed by the American company operating in China. Microsoft's approach most closely resembled that of *Ethical Egoism*. Microsoft believed it was in their best interest financially to operate in China and sublimated its American values to do so, favoring instead to the company's own best interests. Microsoft willingly engaged in censorship, claiming that some access to information is better for Chinese citizens than none. This may seem to be a *Utilitarian* approach, however, Microsoft's censorship went beyond what was obligated by the Chinese government by deleting blogs outside of China and censoring searches in simplified Chinese worldwide. It chose to appease and ingratiate itself with the Chinese government instead of serve in the best interests of the rest of the world—especially the Chinese diaspora outside mainland China. In this sense, Microsoft put its own interests ahead of its American values and also its benefits to the Chinese people. To its credit, Microsoft's does act by certain uncompromisable core values. Unlike Yahoo!, Microsoft is not willing to aid the Chinese government in jailing dissidents, an approach seen most clearly in the changes at Skype once Microsoft bought it in 2013.

Next we will examine Google's ethical framework when operating in China. Google's cautious and thoroughly considered approach stemmed not only from the lessons learned from Yahoo!, Skype, and Microsoft, but also from the importance of the company's clearly stated core set of values. An uneasy relationship between Google and Chinese authorities ended when Google detected a serious hacking intrusion it all but directly blamed on the Chinese government. In response Google exited the mainland and stopped filtering search results.

In its approach to China, Google employed a *Kantian* ethical framework. The company has clearly stated moral imperatives and endeavors to operate by these principles universally. While Google's initial foray into China contradicted these values, their core values remained the touchstone of the decision making process. A blog post announcing the Google.cn launch stated, "For several years, we've debated whether entering the Chinese market at this point in history could be consistent with our mission and values."<sup>3</sup> Eventually, the company concluded that its categorical imperative, reflected in the company's then slogan of "Don't Be Evil" and goal "to organize the world's information and make it universally accessible and useful,"<sup>4</sup> could not be compromised and could not be enacted successfully in China. By leaving China and refusing to censor information, Google lost access to the lucrative Chinese market, proving that Google doesn't see Chinese consumers simply as a means to make money, but as ends in themselves, potential beneficiaries of Google's moral imperative and universal values.

Finally, we will return to the question stated in the introduction—the two divergent visions of Internet governance that developed between 2000-2010, now explicitly stated by the United States and China—and how American information companies are operating in China currently.

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## Yahoo! Approach 1999 - 2005

Yahoo! entered the Chinese market ahead of the curve, launching its Chinese service Yahoo! China on **September 24, 1999**. Shortly thereafter an America-China trade deal finalized on November 15, 1999, paving the way for China to join the World Trade Organization (WTO) in 2001. It was an optimistic and exciting time for businesses contemplating an untapped consumer market of over a billion Chinese people. To put it bluntly, “Foreign telecommunications companies are in awe of the prospect of access to the Chinese market.”<sup>5</sup> Yahoo! China operated in China, with Chinese employees and equipment storing user information located within the mainland. This was a mistake on the part of Yahoo! and served as an important lesson to Internet companies following Yahoo! into the mainland Chinese market, as we shall see.

In **September 2005**, an investigation by Reporters Without Borders revealed that **in 2004** Yahoo! China’s Beijing office had given Chinese authorities detailed account holder information—including email contents—at the request of the Beijing state security bureau. Based on that information, Chinese journalist Shi Tao was arrested and found guilty of “providing state secrets to foreign entities” and sentenced to 10 years in prison.<sup>6</sup>

What had Tao done to receive such a serious charge and lengthy sentence? He took notes from a meeting where a senior Chinese newspaper editor relayed to his staff government censorship instructions, detailing what could and could not be published in the weeks leading up to the June 4 Tiananmen Square massacre anniversary. Tao then logged into his Yahoo! China email account and emailed those notes to a New York-based editor. This simple act of relaying notes about newspaper censorship instructions was enough to warrant a ten year sentence in the eyes of the Chinese government.

Soon thereafter, Reporters Without Borders demonstrated that Yahoo! China complied with Chinese authorities in other similar cases, resulting in an eight year sentence for Li Zhi for “inciting subversion,” and a ten year sentences for Wang Xiaoning for “incitement to subvert state power.”<sup>7</sup>

The news that an American company colluded with Chinese suppression of free speech was not received well in the United States and worldwide. In congressional hearings held **February 15, 2006**, Congressman Tom Lantos told Yahoo! executives, “morally you are pygmies.” Congressman Chris Smith compared Yahoo! to companies that cooperated with the Nazis during World War II<sup>8</sup>, and stated, “Your abhorrent activities in China are a disgrace.”<sup>9</sup>

Disgraced, defeated, and looking for a way out, Yahoo! entered into a partnership with up-and-coming Chinese ecommerce company Alibaba, turning over control and operation of Yahoo! China to Alibaba in **October 2005**. In response, Lucie Morillon of Reporters Without Borders remarked that Yahoo! is, “trying, more or less, to hide behind Alibaba.”<sup>10</sup>

The Chinese owned Alibaba did not have the same ethical conflict and external pressures as Yahoo!. In response to a question about free speech, Alibaba CEO Jack Ma responded, “We are a business! Shareholders want to make money. Shareholders want us to make the customer happy. Meanwhile, we do not have any responsibilities saying we should do this or that political thing. Forget about it!”<sup>11</sup>

The damage to the Yahoo! brand was severe, not only on the world stage, but also to Chinese citizens who felt betrayed by the American tech giant. Well known and influential Chinese blogger Zhao Jing, known by his pen name, Michael Anti, remarked, “A company such as Yahoo! which gives up information is unforgivable. It would be for the good of the Chinese netizens if such a company could be shut down or get out of China forever,”<sup>12</sup> and “Yahoo is a sellout. Chinese people hate Yahoo.”<sup>13</sup>

In **August 2013**, Alibaba shut down Yahoo! China.

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## Microsoft Approach 2005

### Michael Anti & MSN

In **May 2005**, Microsoft launched the Chinese version of its Microsoft Network (MSN), an Internet portal to news, blog hosting, and email. Initial testing showed that the blogging service was subject to strict censorship.<sup>14</sup>

The aforementioned popular Chinese blogger Zhao Jing used MSN to publish his blog under the pseudonym Michael Anti. In **December 2005**, Chinese officials unofficially requested the Michael Anti blog be shut down after he posted behind the scenes details of a Beijing News staff protest. Microsoft complied with the request.<sup>15</sup>

According to the New York Times, “What was most remarkable about this was that Microsoft’s blogging service has no servers located in China; the company effectively allowed China’s censors to reach across the ocean and erase data stored on American territory.”<sup>16</sup> The move led even notable Microsoft supporter and blogger Robert Scoble to point out, “It’s one thing to pull a list of words out of blogs using an algorithm. It’s another thing to become an agent of a government and censor an entire blogger’s work.”<sup>17</sup>

It is also important to note that Microsoft removed the blog “without even receiving a formal legal request from the Chinese government.”<sup>18</sup> Without an official request, there is no way to confirm or track such requests, creating an arbitrary, opaque, and undefined regulatory environment.

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## Skype Approach 2005 – 2008

### TOM-Skype

Skype is a popular free online voice, text, and video-call software that advertises secure end-to-end encryption.<sup>19</sup> In **September 2005**, Skype distributed a custom Skype client in the Chinese market through a joint venture with Chinese mobile Internet company TOM. Chinese users

wanting to download Skype were redirected to the TOM site and had no choice but to download TOM's Skype client.

In **2008**, security researchers revealed that the TOM version of Skype had been not only censoring conversations through a keyword filter, but also saving personally identifiable information including full text of conversations when particularly politically sensitive words appeared. This included communication within China, and internationally, as well. The study's lead researcher, Nart Villeneuve, wrote in his 2008 report *Breaching Trust*, "the underlying purpose of such widespread and systematic surveillance seems obvious. Dissidents and ordinary citizens are being systematically monitored and tracked."<sup>20</sup>

Publically, Skype denied the accusations, but the evidence Villeneuve compiled demonstrated these denials to be false. Eventually, Skype's Jaanus Kase explained, "As part of the joint venture, TOM provides guidance to Skype about how to cooperate with local laws and regulations in China. In every country we operate in, we always work with local authorities to follow local laws and best practice."<sup>21</sup> Best practice in this case apparently included not informing users that a program is secretly downloaded onto their computer and their communications possibly stored for Chinese authorities.

Later, Niklas Zennström, the chief executive of Skype, said that TOM "had implemented a text filter, which is what everyone else in that market is doing. Those are the regulations." He also stated, "One thing that's certain is that those things are in no way jeopardizing the privacy or the security of any of the users."<sup>22</sup> Again, Villeneuve's evidence proved this to be false. This incident and Skype's response should as Rebecca MacKinnon states, "raise[s] questions about how trustworthy Skype as a company really is."<sup>23</sup>

Microsoft bought the online communication service Skype in **2011** US\$8.5 billion. We will return to Microsoft-Skype later.

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## Bing 2009

Microsoft launched the Chinese version of its Bing search engine on **June 1, 2009**. By June 24, New York Times journalist Nicholas Kristof wrote that searches conducted in simplified Chinese (the type of Chinese used in mainland China) are censored *worldwide*.<sup>24</sup> At first Microsoft denied that Bing censored simplified Chinese results, claiming that any unusual results were the result of a bug in the newly launched service.<sup>25</sup> However, by November the company announced that results—especially images—were indeed censored to comply with Chinese law. Kristof notes, "Now Microsoft is sacrificing the integrity of Bing searches so as to cozy up to State Security in Beijing. In effect, it has chosen become part of the Communist Party's propaganda apparatus."<sup>26</sup>

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## Google Approach 2006 – 2010

In **2000**, Google began a Chinese language version of its main Google.com search. The service was set up outside China to serve the vast numbers of Chinese speakers worldwide, outside of mainland China. Users inside China could access Google's search engine and view unfiltered,

uncensored results. As a result, the Chinese government regularly blocked or significantly slowed Google.com and all Google related services, such as Gmail.

**By January 27, 2006**, Google decided to enter the Chinese market officially in an attempt to better serve Chinese users attempting to access Google's search, which was routinely blocked. Google seemed to have carefully considered how it would approach the Chinese market and its censorship requirements weighed against its corporate motto, "Don't Be Evil," and mission to make the world's information universally accessible.<sup>27</sup> According to a senior Google executive, "While removing search results is inconsistent with Google's mission, providing no information [or a heavily degraded user experience that amounts to no information] is more inconsistent with our mission."<sup>28</sup>

Google's approach to the Chinese market was carefully considered in an attempt to maintain its core values and also comply with Chinese government censorship requirements. To walk this thin line, Google took the following steps:

1. The Chinese mainland search engine (Google.cn) would exist alongside Google's uncensored Chinese language search (Google.com's simplified Chinese version). Users had the option to use either search and even compare results, when Google.com was not being blocked. This is in contrast to Yahoo! China and Bing.cn which each only offered one simplified Chinese language search service.
2. Google.cn *notified users* when their results were being filtered in accordance with Chinese law, making the censorship more explicit and transparent to users—in contrast to the secretive and opaque approaches by Skype-TOM and Bing.
3. While Google.cn's servers resided within mainland China for better speed and accessibility, servers storing personal or confidential user information like Gmail and Blogger would remain outside of China's borders—out of reach of Chinese authorities. This would ensure Google couldn't be forced to endanger people as Yahoo! China did in the Shi Tao case.
4. The Chinese government never publishes exactly what websites are forbidden. The censorship system relies heavily on companies self-censoring based on what they suspect *should* be censored. Often, companies will over-censor to remain in good standing with the government, avoid fines, and keep their Internet business license.<sup>29</sup> In order to avoid this Kafka-esque game of censorship Google established servers inside mainland China programmed to test websites against the Chinese firewall. Any websites that were blocked were added to Google's list blacklist.

Despite its best efforts to justify its decision to launch Google.cn, Google was heavily criticised for betraying its values and accused of colluding with the repressive Chinese government. **By January 2007**, Google admitted that its decision to censor its Chinese site had damaged the company. Google founder, Sergey Brin, said "On a business level, that decision to censor was a net negative."<sup>30</sup>

## Google Hacking Incident 2010

In **January 2010**, in a post on its official blog Google's Chief Legal Officer David Drummond announced Google had discovered a sophisticated and targeted attack on its servers that resulted in the theft of Google source code. The attack emanated from China, was focused on the email accounts of Chinese activists, and also involved at least twenty other large companies ranging from finance to the chemical industry.

As a result of these attacks, Google's already uncomfortable relationship with Chinese censorship came to a swift end. Google decided to stop censoring results on Google.cn—redirecting Google.cn traffic to Google's Hong Kong service, Google.hk. Hong Kong's special administrative status in China means that companies are not required to censor as they are on the mainland.

In that same blog post, Drummond stated that the seriousness of the incident finally ended an uneasy relationship and highlighted its broader implications. "We have taken the unusual step of sharing information about these attacks with a broad audience not just because of the security and human rights implications of what we have unearthed, but also because this information goes to the heart of a much bigger global debate about freedom of speech."<sup>31</sup>

For the first time an American Internet company had decided that its free speech values were more important than complying with China's censorship requirement in exchange for access to its huge market. Along these lines Drummond said that Google's business in China will certainly suffer in the short-term, but "over time, Google would benefit from taking a principled stand in China and elsewhere. It is good for our business to push for free expression."<sup>32</sup>

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## Internet Freedom Speech 2010

The dramatic exchange between China and Google and the hacking revelations prompted Secretary of State, Hillary Clinton to address Internet Freedom in her remarks on **January 21, 2010**. Clinton explicitly stated the United States' position of a *single, connected, international Internet*. "On their own, new technologies do not take sides in the struggle for freedom and progress, but the United States does. We stand for a single internet where all of humanity has equal access to knowledge and ideas."<sup>33</sup> She continued:

*...ultimately, this issue isn't just about information freedom; it is about what kind of world we want and what kind of world we will inhabit. It's about whether we live on a planet with one Internet, one global community, and a common body of knowledge that benefits and unites us all, or a fragmented planet in which access to information and opportunity is dependent on where you live and the whims of censors.*

She compared the virtual walls that are appearing on the Internet to the physical walls that separated countries during the Cold War, saying "a new information curtain is descending across much of the world. And beyond this partition, viral videos and blog posts are becoming the samizdat of our day."<sup>34</sup> In her speech, she highlighted the *freedom to connect*—the ability of people to connect with others without government interference, noting the contrast between

some governments' efforts to restrict citizen participation and America's rush to embrace connectedness for political gain as seen in the 2008 presidential campaign.

Finally, she emphasized that a distorted, asymmetrical flow of information can lead to further misunderstanding and potentially to conflict, and that countries that restrict the freedom to connect stultify development and innovation, saying "countries that restrict free access to information or violate the basic rights of internet users risk walling themselves off from the progress of the next century."<sup>35</sup>

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## Chinese Internet Sovereignty Whitepaper 2010

Six months after Clinton's speech on Internet Freedom, the Chinese government responded by releasing *The Internet in China*, a white paper outlining China's global vision of the Internet.<sup>36</sup> In sharp contrast to America's concept of a single Internet that all have freedom to connect to, China emphasized the concept of Internet Sovereignty. Much like its physical borders, China says, "Within Chinese territory the Internet is under the jurisdiction of Chinese sovereignty."<sup>37</sup> These information borders, in China's vision, should not apply just to China, but should be the international legal order, arguing that "each country has a right to strengthen control over its own domestic Internet, and that such actions will help safeguard order and stability on the global Internet system."<sup>38</sup> The Chinese version recognizes that even though cyberspace is commonly considered borderless, the Internet does manifest itself physically in a specific regulated infrastructure. For example, there are eight "gates" where China's Internet connects to the rest of the world. As China's Minister of Posts and Telecommunications said, "If you go through customs, you have to show your passport. It's the same with management of information."<sup>39</sup> Accordingly, each country will censor and regulate the Internet according to each country's government policy, meaning the Internet experience would vary from country to country.

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## Current Approach

In the roughly ten years between Yahoo! China's initial foray into China to Google's exit, American Internet companies have faced intense ethical challenges that forced them to define core values and reflect on their behavior when faced with the temptation of market access to over a billion potential customers. Despite the rhetoric of free speech and human rights, Internet companies' early advances into China failed ethically. In a rush to access the potential gold mine of the Chinese market, Internet companies helped jail dissidents, delete writings posted in another country without warning, censored and recorded text conversations without notifying users—and then lied about it, and censored search results—and then lied about that, too. Shameful behavior for companies whose businesses are based on creating and sharing information and facilitating communication, all ostensibly within the context of Universal Human Values.

It is interesting, looking back, to watch these companies travel up a learning curve in an effort to remain ethical within the requirements of a repressive information regime with such large potential riches at stake.

After the early ethical failures and public drubbing at the 2006 congressional hearing on Global Online Freedom, Yahoo, Google, and Microsoft formed a coalition with academics, human rights advocates, and IT leaders, known as the Global Network Initiative (GNI) in **October, 2008**. The goal of the GNI is “protecting and advancing the rights to privacy and freedom of expression,”<sup>40</sup> by providing a framework and pooling learning resources. For example, the GNI requires “governments to put information requests in writing and [that companies] interpret those requests as narrowly as possible.”<sup>41</sup> Since its formation, the GNI has added Facebook and LinkedIn to its list of members.

When Yahoo! entered Vietnam in 2009 in a government context similar to China’s, it located servers with confidential user information in Singapore, inaccessible to Vietnamese authorities.<sup>42</sup> Microsoft bought Skype in 2011. In 2013 Microsoft ended Skype’s relationship with TOM, and began encrypting messages.<sup>43</sup> In recognition of the difficult regulatory and business environment foreign companies face in China, Microsoft has made Chinese search company Baidu, not Bing, the default search for Chinese versions of Windows 10.<sup>44</sup>

Another approach that some American companies are taking is launching Chinese services that are similar but completely separated from their international offerings. LinkedIn, Evernote, and Uber are thriving within China based on stand-alone, isolated, Chinese only versions of their services. While this is congruent with China’s Internet Sovereignty approach, repressive governments representing smaller markets are unlikely to receive this level of differentiated service in a viable way.

As part of China’s push promote its Internet Sovereignty concept, it recently established its own World Internet Conference. Widely derided and a subject of amusement to Chinese citizens, one scheduled conference speaker, James A. Lewis, had this to say, “China’s on the losing side of history in this one...The Russians agree with them that free speech is a bad idea, but the Indians don’t, the Brazilians don’t, most of the world doesn’t.” It’s worth noting that participants at the World Internet Conference—which included Russia, Pakistan, Kazakhstan, and Kyrgyzstan—were given special access to an uncensored version of the Internet.<sup>45</sup> Also, it must be noted that China needs services like Google, especially for scientific and economic development. As Internet Freedom advocate Rebecca MacKinnon notes, “The government cannot afford to sever links between the domestic Chinese Internet and the international Internet without disrupting the international business, trade, and finance upon which its economy now depends.”<sup>46</sup> On the other hand, the Edward Snowden revelations show that the U.S. concept of freedom to connect may need to be amended to freedom to connect under surveillance.

Ultimately, China’s closed system of heavy monitoring, censorship, and active information manipulation is unlikely to succeed as the chosen standard of world Internet governance. The only reason for the existence of such an expensive, inefficient policy is to ensure the continuation of the Chinese Communist party in power. This, however, doesn’t mean the U.S. model of one universal Internet will succeed by default. Behind Hillary Clinton’s flowery language are the machinations of the NSA and other monitoring agencies. Additionally, private companies are

continually expanding control over Internet access, be it services such as Facebook or Google, or telecommunication companies such as Comcast. Between all of these great powers are the individuals who must continually push to defend their rights and privileges.

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