

**Google and Internet Control in China:
A Nexus Between Human Rights and Trade?**

Congressional-Executive Commission on China

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Mr. Chairman, thank you for inviting Human Rights in China (HRIC) to testify at this important and timely hearing. As a Chinese human rights NGO, HRIC appreciates this opportunity to share our experience and some modest recommendations. In light of the events of the past week, the topic for today is a story still in progress.

The loss of annual MFN review leverage in 2000 and a decade of delinking of human rights from trade has contributed to the lack of systematic and sustainable human rights progress, and an unstable, unpredictable climate for foreign business in China. In recent months, there have also been disturbing reports about a series of cyber-attacks, including the one publicized by Google in January of this year, emanating from China, targeting foreign governments, private businesses, and human rights advocates both in the United States and around the world. These cyber-attacks present serious cross-border human rights, diplomatic, and business challenges for China and the world.¹

As the comprehensive CECC Annual Report for 2009, the State Department Country report for China, and recent United Nations human rights reviews of China's record demonstrate, human rights violations in China – a country vital to U.S. security, trade, and human rights policy interests – remain serious, systematic, and widespread.² On top of the economic, political, and increasing soft power leverage of China, China exerts control over expression on the Internet through its state-of-the arts technology, state secrets and state security system, police and security apparatus, and resulting self-censorship.³ By doing so, the Chinese government's policy and practices on information control implicate two universally recognized and mutually reinforcing human rights – the right to freedom of expression and opinion and the right to privacy.⁴

The experiences of HRIC's own staff also illustrate that the Chinese authorities' repressive tactics at home extend to Chinese nationals and human rights defenders abroad. Such tactics include blacklisting, surveillance, and even inhumane denials of permission to return to China for family funerals. Additionally, the Chinese authorities have succeeded in preventing independent human rights NGO dedicated to China from succeeding in applying for ECOSOC status or UN conferences' accreditation – thereby undermining independent Chinese NGO voices.

Role of Technology

The rapid pace of technology developments globally and in China, including in mobile and connective technologies, has provided tools for increased social control and human rights violations in China, especially regarding freedom of expression and privacy. However, China's Great Fire Wall is impressive, but clearly not impregnable, as technology developments also provide tools for advancing fundamental rights and democracy in China. With over 384 million citizens online, 600 million mobile phone users, and between 26,000 to 30,000 Tweepers, all despite China's censorship regime, China is a prime target country for developing empowering potential uses for new technology, which will also have significant implications for the region and for the future security and viability of the Internet worldwide.

For more than two decades now, HRIC has focused on supporting Chinese lawyers, activists, journalists, writers, and other rights defenders in China. From our China office in Hong Kong, and our U.S. office in New York, and with a committed staff with Chinese and international law, technology, and media expertise, we have also been developing and deploying a range of technology approaches and tools to promote uncensored information flow into and out of China. Using Internet technology that bypasses China's censorship mechanism, HRIC has provided and continues to provide an uncensored platform for Chinese voices and disseminates independent news, discussion, and rights-related electronic publications through stable mass e-mail delivery to over 200,000 subscribers in every province and autonomous region in China.

HRIC's electronic publications provide access to proxy servers and six interrelated websites offering online Chinese publications, tools for activists, and online advocacy resources. Analysis of e-mail delivery rates indicate that since a new electronic biweekly was launched in June 2009, an average of 74% of biweekly e-newsletters reached the first Simple Mail Transfer Protocol (SMTP) server in mainland China. This program has enabled individuals in China, through the use of proxy technology and other circumvention tools, to have uncensored access to human rights information on the Internet and a space for debate and discussion. HRIC incorporated YouTube and Twitter into its advocacy strategy last year as well, launching an HRIC YouTube channel and regularly tweeting the latest human rights developments.

The Case of Liu Xiaobo: Who's Afraid of the Internet?

There is perhaps no better example of the Chinese government's anxiety underlying the official crackdown on freedom of expression on the Internet than the case of Liu Xiaobo, a prominent independent intellectual in China, long-time advocate of political reform and human rights in China, and outspoken critic of the Chinese communist regime.

On Christmas Day, 2009, a court in Beijing convicted Liu Xiaobo of "inciting subversion of state power" and sentenced him to 11 years in prison and two years of deprivation of political rights. The verdict cited as evidence passages from six essays Liu published online between 2005 and 2007 and his role in drafting *Charter 08*, an online petition for democratic reform issued on December 9, 2008, which has since garnered more than 10,000 signatures, predominantly from

Chinese in China. On February 9, 2010, a higher court rejected Liu's appeal and upheld the verdict.⁵

Liu Xiaobo's case elucidates one of the most crucial challenges facing the emerging Chinese civil society: the clash of visions between Chinese pressing for a democratic China governed by genuine rule of law, and the Chinese authorities, who demonstrate time and again their intolerance for diverse views and their need to maintain control at all cost. The outcome of Liu's case has made clear the authorities' willingness to trample on a fundamental human right protected in the Chinese Constitution and enshrined in international human rights law. It also raises serious concerns about the prospects for the rule of law, human rights, and democracy in China.

Liu's six essays cited in the verdict were the following:

- **The CPC's Dictatorial Patriotism** (posted on Epochtimes.com and 5 links): Liu debunks the notion successfully purveyed by the CPC that the ruling party is the Chinese nation itself, a fallacious concept that has enabled it to maintain absolute rule over the people.
- **The Many Aspects of CPC Dictatorship** (512 clicks; posted on observechina.net; secrechina.com): Liu describes the post-Mao regime—unlike that during the era of “Maoist totalitarianism”—as more skillful in using “pragmatic, flexible control methods” to maintain stability. Liu warns that “[t]he loyalty bought by the promise of a comfortable life has a soul that is rotten to the core,” and that the system is ultimately unsustainable.
- **Can It be that the Chinese People Deserve Only “Party-Led Democracy”?** (402 clicks; posted on epochtimes.com; observechina.net): Liu points out that the Chinese people—having been conditioned historically to view any benevolent policy as mercy granted by their ruler—are in fact complicit in their own oppression. Rather than waiting for the arrival of a “virtuous master,” they must, Liu maintains, place their hope in the “continuous expansion of the ‘new power’ among the people.”
- **Changing the Regime by Changing Society** (748 clicks; posted on epochtimes.com; observechina.net): Liu explores how a continuously growing civil society is the key to China's gradual, bottom-up transformation into a free society.
- **The Negative Effects of the Rise of Dictatorship on World Democratization** (57 clicks; posted on observechina.net; secrechina.com): Liu discusses China's use of “money diplomacy” to degrade world civilization, and the necessity of helping the

world's largest dictatorship transform into a free and democratic country with direct consequences for global democratization.

- **Further Questions About Child Slavery in China's Kilns** (488 clicks; posted on minzhuzhongguo.org; renyurenquan.org): Liu examines the extreme government corruption and lack of accountability that have enabled thousands of children to be kidnapped and used as slaves in kiln factories.

The verdict also cited *Charter 08* (5154 clicks; posted on chineseopen.org, boxun.org, minzhuzhongguo.org).

Liu Xiaobo was a principal drafter of *Charter 08*, an appeal for fundamental political transformation and for the implementation of key foundational principles—freedom, human rights, and equality, among others. The document also lists 19 essential features of a new, democratic government, including legislative democracy, judicial independence, urban-rural equality, freedom of association, assembly, expression and religion, social security, and transitional justice.

In their argument at trial, Liu's defense lawyers pointed out that the articles and *Charter 08* were posted on websites based outside China, not accessible by people inside China. However, the court's verdict provided the total number of clicks, as of December 23, 2009, on the articles and *Charter 08* as 7,361 (with the clicks on specific items ranging from a low of 57 to a high of 5,154). Even if all the clicks were made by Chinese citizens inside China, and even if each click represents a different visitor, the total number of people is an infinitesimally small portion of China's population of 1.3 billion.

If 7,361 people reading these documents can, in the view of the Chinese authorities, pose such a grave threat, whatever that reveals about the sense of security among those in power, Liu Xiaobo's case is also a testament to the power and necessity of freedom of expression.

In addition to the high-profile case of Liu Xiaobo, there are countless other examples of China's use of the crime of "incitement to subvert state power" to punish expression on the Internet. Scholars, journalists, artists, lawyers, and rights activists have all found themselves prosecuted for "incitement to subvert state power," for doing nothing more than exercising their rights to freedom of expression and opinion online. As a consequence of using the Internet as a platform to speak out on such important issues as democratic reform, laborers' rights, state confiscation of lands, earthquake victims' rights, and government corruption, these individuals have been sentenced to draconian prison terms, some lasting more than a decade. In 2009, HRIC issued press releases on at least 12 individuals who had come under official scrutiny for their activities on the Internet.⁶

Looking Ahead and Recommendations

In the fall of 2012, the Communist Party of China (CPC) will hold the 18th National People's Congress. Due to term restrictions, Hu Jintao, the current President of the People's Republic of China, will be required to step down as the party's General Secretary at that time. The 18th National People's Congress will therefore be the first time in the CPC's history that a meeting to redistribute power will be held without a political strongman casting his shadow over it. It will decide on the dominant power in China's politics for the following five to ten years.⁷

The political contest surrounding the 18th National People's Congress is already having a clear effect on the current political situation in China. The pattern in the past has been that during the process of power transition within the CPC, various factions exhibit exceptional toughness in order to demonstrate their ideological orthodoxy and thus gain the upper hand in the power struggle. The comprehensive tightening of social controls by Chinese authorities since last year and their recent tough attitude in dealing with a series of both domestic and foreign events is a manifestation of this effect. One should not expect there to be any relaxation of this posture before the 18th National People's Congress convenes in 2012.

While the political climate for the next few years may not be encouraging, there are still concrete actions that the U.S. government and the private sector can take.

- **Individual cases:** In line with the U.S. government's renewed engagement with the UN Human Rights Council, the U.S. can **press for releases of individuals as part of China's compliance with decisions of independent UN human rights mechanisms such as the Working Group on Arbitrary Detention**, which has issued decisions on cases such as those of Shi Tao and Jin Haiké.⁸
- **Promoting empowering uses of technology:** The past decades of rapid-paced technology developments in China demonstrate that there is no one silver bullet for a sustainable solution to protect freedom of expression and advance open, safe, and secure access to information, both of which are critical to development of a democratic and open society and a rule of law. Effective technology solutions must be informed by human needs and deployed using approaches that are sensitive to local culture, politics, and human rights history and traumas.

Some specific areas in which the CECC could encourage greater support and development through various existing and expanded U.S. government programs and initiatives include:

- Expanding support for **uncensored multimedia platforms** for Chinese voices and independent news, discussion, and rights-related information, including through creative use of **social networking tools and YouTube**.
- Development and safe dissemination of **circumvention tools** beyond the small group of sophisticated netizens already able to use these tools.

- **Capacity-building initiatives** that more effectively use interactive web-based conference tools to allow a greater range of targeted participants that avoid the expense, travel restrictions, and other political limitations of on-site events.

- Promote diverse, concrete solutions and approaches for **doing business responsibly in China**,⁹ including multi-stakeholder initiatives, e.g., encouraging companies to join and help develop the Global Network Initiative. The February 2010 letter from Senator Richard Durbin to 30 technology companies asking them to join the Global Network Initiative and seeking more information about their business practices in China is one welcome step. In light of the global nature of the challenges, the U.S. should also explore joint initiatives with other governments.

The **Google decision** announced this week also illustrates the possibility of moving strategically **beyond an either/or mentality** of stay-and-censor or leave-the-country. By making its most recent move to redirect users from Google.cn to Google.com.hk, and by creating an additional website clearly and regularly updating the status of the Chinese government's interference, Google has contributed to increasing the transparency of and possible accountability for Chinese censorship. Although it's not clear whether this one-country, two systems move will evade the censorship system, at the very least, Google has taken a stand that it will no longer be complicit in Chinese government violation of human rights.

The human rights and business issues and challenges are complex, and as Google co-founder Sergey Brin stated, "The story's not over yet."

Thank you and I look forward to your questions.

¹ For more detailed discussion on cyber-espionage, see Ron Deibert and Rafal Rohozinski, "Tracking GhostNet: Investigating a Cyber Espionage Network," Information Warfare Monitor, Munk Centre, JR02-2009, March 29, 2009, <http://www.scribd.com/doc/13731776/Tracking-GhostNet-Investigating-a-Cyber-Espionage-Network>.

² See U.S. Congressional-Executive Commission on China, 2009 Annual Report, available at <http://www.cecc.gov/pages/annualRpt/annualRpt09/CECCannRpt2009.pdf>; U.S. Department of State, 2009 Human Rights Report: China (includes Tibet, Hong Kong, and Macau), available at <http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135989.htm>; United Nations Committee Against Torture, "Concluding observations of the Committee against Torture: China," UN Doc. CAT/C/CHN/CO/4, December 12, 2008, available at <http://www2.ohchr.org/english/bodies/cat/cats41.htm>; United Nations Committee on the Elimination of Racial Discrimination, "Concluding Observations of the Committee on the Elimination of Racial Discrimination: China," UN Doc. CERD/C/CHN/CO/10-13, August 28, 2009, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>. See also HRIC's recent parallel reports to UN bodies: Human Rights in China, *Implementation of the Convention on the Elimination of All Forms of Racial Discrimination in the People's Republic of China: A Parallel NGO Report by Human Rights in China*, June 2009, http://www.hrichina.org/public/PDFs/Reports/2009-CERD_Report.pdf; Human Rights in China, *Implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the People's Republic of China: A Parallel NGO Report by Human Rights in China*, October 2008, <http://hrichina.org/public/PDFs/Submissions/HRIC-CAT-2008-FINAL.pdf>; Human Rights in China, *Implementation and Protection of Human Rights in the People's Republic of China: A Parallel NGO Report by Human Rights in China*, September 2008, http://hrichina.org/public/PDFs/Submissions/2008_HRIC_UPR_Report.pdf (submitted to the UN Human Rights Council in advance of China's 2009 Universal Periodic Review).

³ For more detailed discussion on the Chinese government's tools for suppressing information access and exchange, see Ronald Deibert, *China's Cyberspace Control Strategy: An Overview and Consideration of Issues for Canadian Policy*, February 2010, available at <http://www.canadianinternationalcouncil.org>; James Fallows, "The Connection Has Been Reset," *The Atlantic Monthly*, March 2008, <http://www.theatlantic.com/magazine/archive/2008/03/-ldquo-the-connection-has-been-reset-rdquo/6650/>; Andrew Lih, "In Brief: Google's China Move," Andrew Lih Blog, posted on March 23, 2010, <http://www.andrewlih.com/blog/2010/03/23/in-brief-googles-china-move/>; and Rebecca MacKinnon, "China, the Internet and Google," Rconversation Blog, posted on March 23, 2010, <http://rconversation.blogs.com/rconversation/2010/03/china-the-internet-and-google.html>.

⁴ For instance, Article 19 of the Universal Declaration of Human Rights (UDHR) states that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers," while under Article 12, "[n]o one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." UDHR, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

⁵ Complete English translations of the criminal verdict of the Beijing No. 1 Intermediate People's Court and the decision of the Beijing Municipal High People's Court against Liu Xiaobo have been made available by HRIC in its quarterly publication *China Rights Forum*, 2010, no. 1, and will soon be made available at <http://www.hrichina.org/public/contents/category?cid=1043>. In addition, English translations of the six articles by Liu Xiaobo that formed the basis of his criminal conviction have been made available by HRIC in the same issue of *China Rights Forum*; a complete English translation of *Charter 08* has been made available by HRIC at <http://www.hrichina.org/public/contents/85717>.

⁶ For more information on these and other individuals, see HRIC's press releases and statements at <http://www.hrichina.org/public/contents/category?cid=1052>.

⁷ Presently, two factions within the party, known as the Princeling Faction and the Youth League Faction, are engaged in an intense power struggle. The Princeling Faction has currently seized favorable geopolitical and socioeconomic conditions to gain the upper hand. Their representative, Xi Jinping, is preparing to take over the duties of General Secretary of the CPC from Hu Jintao. Meanwhile, Li Keqiang, the representative of the Youth League Faction, is preparing to take over from Wen Jiabao as the Premier of the State Council. However, much can happen between today and the fall of 2012, and what will happen in the end is still uncertain.

⁸ Since May 2002, HRIC has submitted 60 individual cases to the WGAD with 17 opinions issued by the WGAD. The conclusion of each and every one of these opinions is that the detention in question is arbitrary, meaning that individuals were being detained for exercising fundamental freedoms or that the circumstances of their detentions violated international standards and norms. The U.S. government should urge action on the part of the Chinese government in these and other cases of arbitrary detention of courageous activists and individuals. By releasing these individuals, China will demonstrate its respect for international human rights and its compliance with the decisions of international human bodies.

⁹ See Human Rights in China, "Human Rights: Everyone's Business," *China Rights Forum*, 2008, no. 1, <http://www.hrichina.org/public/contents/category?cid=164873>.