

# Content Regulation Laws for Chinese ISPs: Legal Responsibilities in Free Speech and Filtering of Harmful Content

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## Abstract

This paper delves into the intricate landscape of content regulation laws for Chinese Internet Service Providers (ISPs) and their legal responsibilities concerning free speech and the filtering of harmful content. It offers an in-depth analysis of China's regulatory framework, delving into the landscape of ISPs in the nation and the evolving legal framework governing content regulation and free speech. Furthermore, the paper explores the responsibilities and obligations of Chinese ISPs in moderating online content. It delves into the complex concept of free speech in the context of China and investigates the government's role in censorship and content control. The paper highlights the impact of content filtering on free speech and online expression in the Chinese digital landscape. It provides a comprehensive overview of the laws and regulations that define the legal responsibilities of Chinese ISPs, addressing their obligations in monitoring and moderating content. Additionally, it outlines the compliance mechanisms and consequences for non-compliance. The paper emphasizes the implications of these regulations on free speech and online expression, striking a balance between content filtering and the fundamental right to free speech. While the paper refrains from showcasing case studies, it provides public and expert opinions on the impact of content regulation laws. Furthermore, it envisions potential changes in Chinese ISP content regulation laws and conducts a comparative analysis of content regulation practices worldwide, offering recommendations for maintaining a harmonious balance between free speech and content filtering in the digital age.

**Keywords:** content regulation, Chinese ISPs, Internet censorship, regulatory framework, content filtering

## 1. Introduction

The rapid proliferation of the internet has transformed the way information is disseminated and accessed, reshaping societies and economies worldwide. China, as one of the world's most populous and technologically advanced nations, is no exception to this digital revolution. The internet has not only become an integral part of daily life for Chinese citizens but has also played a pivotal role in economic growth, communication, and social interactions.

As the Chinese internet landscape has evolved, so too has the need for legal and regulatory frameworks to govern online activities. This paper delves into one of the most critical aspects of internet governance in China: content regulation laws for Internet Service Providers (ISPs). In this era of information explosion, the management of online content, the preservation of free speech, and the protection of users from harmful content pose significant challenges for regulators and ISPs.

The core focus of this paper is to provide an in-depth examination of the legal responsibilities and obligations imposed on Chinese ISPs in the realm of content regulation. We aim to dissect the regulatory landscape that governs how ISPs in China moderate, filter, and control content, with a particular focus on the implications these practices have for free speech and online expression.

The significance of this topic is underscored by the Chinese government's efforts to balance the demands for internet openness and free speech with the necessity of safeguarding its citizens from harmful content. This complex interplay between regulation and free speech sets the stage for a comprehensive exploration of the legal responsibilities of Chinese ISPs.

As the digital landscape continues to evolve and transform, understanding the intricacies of content regulation laws for Chinese ISPs is crucial, not only for legal scholars and regulators but for anyone concerned with the intersection of free speech, online expression, and governance in the age of the internet.

## **2. Chinese ISP Regulatory Landscape**

### *2.1 Overview of Internet Service Providers (ISPs) in China*

China boasts a dynamic and multifaceted landscape of Internet Service Providers (ISPs) that has been instrumental in shaping the country's digital evolution. In a nation of over a billion people, ISPs play a pivotal role in connecting individuals, businesses, and government entities to the vast expanse of the World Wide Web. Understanding the role and diversity of Chinese ISPs is a fundamental step in comprehending the dynamics of content regulation in the digital realm.

Chinese ISPs vary in terms of their scale, services, and reach. Large state-owned enterprises, such as China Telecom, China Unicom, and China Mobile, are among the primary providers of internet services. These behemoth telecom giants have established an extensive physical infrastructure, covering urban and rural regions. They offer a range of services, including broadband, mobile data, and fixed-line connections. As a result, they hold a substantial share of the Chinese internet market.

In addition to the major state-owned ISPs, there is a vibrant ecosystem of smaller, privately-owned ISPs and data center operators. These players cater to niche markets and offer specialized services. The diversity and competition among ISPs in China contribute to the richness of the digital landscape, providing a wide array of choices to consumers and businesses.

### *2.2 Legal Framework Governing Content Regulation and Free Speech*

China's legal framework governing content regulation and free speech within the digital sphere is a multifaceted and intricate amalgamation of laws, regulations, and policies. These legal instruments are formulated to strike a balance between promoting free expression, ensuring online safety, and preserving national security interests.

Key components of this framework include the Cybersecurity Law, enacted in 2017, which establishes a legal foundation for cybersecurity and data protection. This law imposes obligations on ISPs to safeguard network security and protect user data, underscoring the need to balance these objectives with the promotion of free speech.

The Online Content Regulation Law is another critical component, focusing on the control and management of online content. It empowers regulators to take action against ISPs that fail to comply with content restrictions, demonstrating the importance of monitoring and regulating digital content to maintain societal harmony and protect public interest.

The "Great Firewall of China," technically known as the Golden Shield Project, epitomizes the government's efforts to regulate internet content. The system filters web traffic and restricts access to specific websites and content deemed undesirable or subversive. This intricate mechanism plays a substantial role in shaping the online environment, underscoring the government's active role in content regulation.

### *2.3 Responsibilities and Obligations of Chinese ISPs*

Chinese ISPs bear significant responsibilities and obligations as part of the broader regulatory landscape. These obligations pertain to the management, monitoring, and control of online content and user activity. ISPs serve as intermediaries between users and the online sphere, which necessitates their involvement in upholding legal and regulatory standards.

Responsibilities of Chinese ISPs include content monitoring, filtering, and censorship as required by the legal framework. ISPs must comply with government directives related to content restrictions and should actively participate in the implementation of the Golden Shield Project.

Furthermore, ISPs are mandated to collect user information and cooperate with law enforcement agencies to facilitate investigations as needed. This includes retaining user data for specified periods and providing access to authorities for security and law enforcement purposes.

While these obligations may seem onerous, ISPs also act as gatekeepers to ensure a safer digital environment for users. Their responsibilities extend to protecting against cyber threats, including distributing illegal content, online fraud, and cyberattacks. To achieve this, they are often required to invest in advanced cybersecurity infrastructure and employ technologies to detect and prevent malicious activities.

Understanding the regulatory landscape of Chinese ISPs is pivotal for grasping the intricacies of content regulation and free speech within the digital domain. The interactions between ISPs, government agencies, and users create a dynamic environment where the boundaries of free speech and content control are continually negotiated, making China a fascinating case study in the field of digital governance and internet regulation.

### **3. Censorship in China**

#### *3.1 Government Censorship and Content Control*

The Chinese government employs a multifaceted system to regulate online content and exercise control over public discourse. The Great Firewall of China, often regarded as the most comprehensive online censorship system globally, plays a central role in this effort. It filters and blocks content deemed undesirable, subversive, or a threat to social stability. This can encompass political dissent, discussions of sensitive historical events, and a range of topics seen as challenging government narratives.

In addition to the technological aspects, government censorship is also enforced through legislation, regulations, and directives. The Online Content Regulation Law, for instance, places obligations on content providers and ISPs to actively monitor and filter content that contravenes established norms. Failure to comply can result in penalties, including fines and revocation of licenses.

The State Internet Information Office (SIIO) plays a pivotal role in overseeing content regulation and ensuring that ISPs adhere to government policies. It issues directives to control the flow of information, suppress dissent, and maintain the government's narrative.

#### *3.2 The Impact of Content Filtering on Free Speech and Online Expression*

Content filtering and censorship have profound implications for free speech and online expression in China. On one hand, these measures are aimed at safeguarding societal stability and national interests, as perceived by the government. They help suppress content that might incite social unrest or threaten state authority.

However, these efforts come at the cost of limiting free speech and stifling the diverse and open exchange of ideas. Internet users in China face significant restrictions in their ability to express political dissent, criticize government policies, or engage in open discussions about certain sensitive topics.

The impact of content filtering extends to stifling innovation and the free exchange of information. Start-ups and entrepreneurs often grapple with a restricted online environment, which can limit the scope of their businesses. Online debates, discussions, and even historical narratives can be tightly controlled, affecting citizens' understanding of their own history and contemporary issues.

The online expression of opinions and sharing of information are notably influenced by the presence of censorship and content filtering. Citizens navigate a fine line between expressing their views and avoiding censorship-triggering keywords or phrases. This self-censorship dynamic, driven by concerns about legal consequences, shapes the nature of online dialogue and expression.

### **4. Legal Responsibilities of Chinese ISPs**

#### *4.1 Laws and Regulations Pertaining to Content Regulation*

China's legal framework for content regulation establishes a comprehensive and rigorous set of rules and regulations that directly affect internet service providers (ISPs). These laws and regulations are critical components in shaping the online environment and the responsibilities of ISPs in China.

One of the central laws governing content regulation in the digital sphere is the "Online Content Regulation Law." Enacted in 2000, this law has since undergone multiple revisions to adapt to the evolving landscape of online content. It prescribes a broad set of prohibitions, covering content deemed detrimental to national security, social stability, and public order. It also addresses issues such as obscenity, violence, and defamation, and it underscores the government's right to censor content that contravenes these standards.

Additionally, the "Cybersecurity Law," introduced in 2017, addresses the responsibilities of network operators, including ISPs, in protecting personal information and data. It mandates that ISPs take steps to ensure the cybersecurity of their networks and that they provide assistance to law enforcement in investigations related to cybercrimes and national security.

Furthermore, administrative regulations and directives issued by government bodies, such as the State Internet Information Office (SIIO), provide detailed guidelines on specific aspects of content regulation, including the management of news reporting, social media, and live streaming platforms.

#### *4.2 ISP Obligations in Monitoring and Moderating Content*

Chinese ISPs are subject to a range of obligations regarding the content hosted on their platforms. These responsibilities can be summarized as follows:

**Content Monitoring:** ISPs are required to monitor and moderate the content available on their platforms actively. This entails using automated tools to identify and filter content that violates regulations, including the “Online Content Regulation Law.” Content that breaches these laws must be removed promptly.

**User Registration:** ISPs are obligated to enforce real-name registration. Users are typically required to register with their actual identities, and ISPs are responsible for verifying the accuracy of this information.

**Data Retention:** ISPs must maintain records of user data and online activities, which can be provided to law enforcement agencies upon request. This is in line with the “Cybersecurity Law,” which empowers the government to investigate cybercrimes and threats.

**Cooperation with Authorities:** Chinese ISPs are expected to collaborate with government agencies in investigating and mitigating online content violations. They may be required to provide data, assist in monitoring certain content, and report suspicious activities.

#### *4.3 Compliance, Enforcement, and Consequences for Non-Compliance*

Ensuring compliance with content regulation laws is a critical aspect of the legal responsibilities of Chinese ISPs. Compliance is typically enforced through rigorous mechanisms, and non-compliance carries a range of potential consequences.

**Government Oversight:** The State Internet Information Office (SIIO) plays a central role in overseeing and enforcing compliance. It issues directives to ISPs and collaborates with other regulatory bodies to ensure adherence to content regulations.

**Penalties and Consequences:** ISPs that fail to comply with content regulation laws can face a series of consequences. These may include fines, warnings, and even the suspension or revocation of licenses. Violations of content regulation laws can result in significant financial penalties, and in extreme cases, companies may be forced to cease operations.

**Legal Consequences:** Legal actions against ISPs and their personnel are not uncommon. Violations of content regulation laws can result in criminal investigations and legal actions against individuals involved in non-compliance.

The legal responsibilities of Chinese ISPs in content regulation are characterized by a comprehensive legal framework, active content monitoring, real-name registration, data retention, and collaboration with government authorities. ISPs face a range of potential consequences for non-compliance, underscoring the significance of adhering to content regulation laws in China. These responsibilities and their enforcement mechanisms continue to shape the digital landscape and raise important questions about the balance between free expression and content control in China’s digital sphere.

### **5. Implications for Free Speech and Online Expression**

#### *5.1 The Balance Between Content Regulation and Free Speech*

The delicate balance between content regulation and free speech has been a persistent concern in the context of China’s digital landscape. The Chinese government’s commitment to maintaining social stability, national security, and political control has led to stringent content regulations. These regulations, aimed at preventing the spread of harmful content, including information that challenges the government’s authority or societal harmony, often run counter to the principles of free speech.

The balance between content regulation and free speech is a complex and contentious issue. On the one hand, content regulation can help maintain order and minimize potential harm, such as the dissemination of false information or hate speech. On the other hand, it raises concerns about censorship, curtailed freedom of expression, and the suppression of dissenting voices.

To maintain this balance, some argue for greater transparency and clarity in content regulation laws and implementation, while others advocate for broader freedom of expression within well-defined legal boundaries. Finding this equilibrium remains a critical challenge, and it necessitates ongoing dialogue and scrutiny.

#### *5.2 Public and Expert Opinions on the Impact of Content Regulation Laws*

Understanding the impact of content regulation laws also involves examining the perspectives of both the public and experts in the field. These opinions provide valuable insights into the multifaceted implications of content filtering on free speech and online expression.

**Public Perspectives:** Among the Chinese public, opinions on content regulation vary widely. Some individuals view strict regulation as a means to maintain stability and prevent the spread of harmful content. They believe that it safeguards society and ensures a harmonious environment. In contrast, others view it as a restriction on their freedom of speech and expression. Such individuals often employ creative tactics, like using coded

language and metaphors, to circumvent censorship and express their views indirectly.

**Expert Opinions:** Experts in the field of internet governance, human rights, and legal studies often express concerns about the impact of content regulation laws on free speech. They highlight the chilling effect on open discourse, the suppression of critical voices, and the narrowing space for civil society to operate. Many experts advocate for greater transparency, adherence to international human rights standards, and reforms that respect the principles of free expression.

Public and expert opinions on content regulation laws reflect the complexity of the issue. While some support content regulation for maintaining societal order, others contend that it stifles free speech and limits opportunities for public discourse and debate. These perspectives are integral to the ongoing debate surrounding the balance between content control and free expression in China's digital space.

## **6. Future Developments and Global Comparisons**

### *6.1 Potential Changes in Content Regulation Laws for Chinese ISPs*

As the digital landscape continues to evolve, China's content regulation laws for Internet Service Providers (ISPs) may undergo various changes and adaptations to keep pace with technological advancements and changing societal needs. Some potential developments include:

**Technological Advancements:** With ongoing advances in artificial intelligence (AI), machine learning, and natural language processing, content monitoring and filtering mechanisms may become more sophisticated. These technologies can enable more precise identification of harmful content while minimizing false positives. China may invest in research and development to harness the power of these tools for more effective and efficient content moderation.

**Improved Transparency:** Enhancing transparency in content regulation practices is crucial for building trust and ensuring that censorship practices are fair and justifiable. Chinese ISPs might consider implementing more transparent reporting mechanisms to provide users with insight into the content filtering process. Transparency can include detailed reports on the types of content removed, the reasons for removal, and the number of appeals and their outcomes. This transparency will help users understand the reasoning behind content regulation decisions.

**Regular Review:** China can establish a framework for regular reviews and updates of content regulation laws. Digital platforms and user behaviors are constantly changing, and content regulation laws must adapt to evolving digital trends and technologies. A periodic review process ensures that the laws remain relevant, effective, and aligned with the dynamic digital landscape.

### *6.2 A comparative Analysis of Content Regulation in Other Countries*

To gain a comprehensive understanding of content regulation, it is valuable to compare China's approach with practices in other countries. A few international comparisons include:

**United States:** In the United States, the First Amendment to the Constitution strongly protects freedom of speech. While the country employs various content regulations, they must adhere to the constitutional framework. Comparing China's approach to the U.S. can highlight differences in how both countries balance freedom of expression with the need to address harmful content. Understanding the nuanced approaches to content regulation in both countries can inform best practices.

**European Union (EU):** The EU has implemented stringent data protection and privacy regulations, such as the General Data Protection Regulation (GDPR). By analyzing EU content regulation laws, one can explore the intricate balance between privacy, free speech, and harmful content restrictions. The EU's emphasis on data privacy and its implications for content regulation provides valuable insights into how a region balances different priorities.

**Australia:** Australia's recent legislation compels digital platforms to pay for news content. By examining Australia's efforts to regulate online platforms and protect media organizations, we can observe unique strategies for maintaining a fair online environment. Australia's approach to fostering a sustainable media ecosystem can serve as a case study for regulating content while protecting the interests of content creators.

A comparative analysis of content regulation in these countries can offer valuable lessons and inspiration for China as it seeks to adapt its content regulation laws to the ever-evolving digital landscape.

### *6.3 Recommendations for Ensuring a Balance Between Free Speech and Content Filtering in the Digital Age*

Balancing free speech and content filtering is a complex task, and as China and other countries adapt to the digital age, several recommendations emerge:

**Clear Legal Framework:** Ensure that content regulation laws are clearly defined and include transparent criteria

for identifying harmful content. This helps prevent arbitrary or excessive censorship, as clear guidelines provide content moderators with a structured framework for decision-making.

**Transparency and Accountability:** Encourage ISPs to be transparent in their content moderation practices. Independent audits and oversight mechanisms can hold ISPs accountable for their actions. Transparency ensures that content moderation decisions are made based on well-defined criteria and that there is accountability for any deviations from these standards.

**Public Input:** Involve the public, experts, and civil society organizations in shaping content regulation policies. Public input can lead to more balanced and well-informed decisions. Including diverse perspectives in the decision-making process helps avoid undue concentration of power and promotes fairness.

**Regular Review:** Establish regular reviews of content regulation laws to adapt to evolving digital trends and technologies. This ensures that the laws remain relevant and effective in addressing emerging challenges while providing a mechanism to correct any unintended consequences of previous regulations.

**Global Cooperation:** Promote international collaboration to address cross-border content issues, such as hate speech and misinformation. Working with other countries and organizations can enhance the effectiveness of content regulation and ensure that harmful content does not simply migrate from one platform to another. Cooperation can facilitate a collective response to global digital challenges.

By considering these recommendations and learning from global experiences, China and other nations can work towards achieving a balanced approach to content regulation that respects free speech while addressing harmful content effectively in the digital age. These measures promote transparency, accountability, and user empowerment, fostering a more informed

## 7. Conclusion

The study delves into the intricate web of content regulation laws for Chinese Internet Service Providers (ISPs) and their legal responsibilities concerning free speech and the filtering of harmful content. This comprehensive exploration has provided valuable insights into the Chinese regulatory landscape and its implications for free speech and online expression.

Throughout this study, we have unearthed several key findings and insights:

- The Chinese ISP regulatory landscape is complex and multifaceted. It encompasses a wide array of regulations, obligations, and responsibilities that ISPs must adhere to, which directly affect how content is moderated on digital platforms.
- Government censorship and content control are integral components of content regulation in China. The Chinese government employs a combination of legal frameworks, advanced technologies, and human moderators to filter and restrict content that is deemed harmful or contrary to national interests.
- The impact of content filtering on free speech and online expression is significant. While content filtering helps maintain social stability and protect citizens from harmful information, it also raises concerns about freedom of expression, censorship, and the potential chilling effect on open discourse.

The debate surrounding content regulation and free speech in China is ongoing and multifaceted. It reflects a delicate balance between preserving social stability, national security, and public interest and ensuring that the fundamental right to free speech is upheld. As the digital landscape continues to evolve, the challenges facing Chinese ISPs and regulators grow in complexity. Addressing these challenges requires adaptability, careful consideration of international norms, and a nuanced approach to protecting free speech while managing harmful content.

This study underscores the need for continued research and an evolving regulatory framework that strikes a balance between the competing interests of free speech and content regulation. Achieving such equilibrium is an intricate task, particularly in a digital age characterized by rapid information dissemination and diverse online platforms. It is crucial to consider the perspectives of all stakeholders, including the government, ISPs, content creators, and the public.

While the Chinese government is tasked with protecting its citizens from harm, ensuring national security, and maintaining social stability, it is equally vital to protect the rights of free speech and freedom of expression. A harmonious coexistence between these fundamental rights and the necessity of content regulation is the ultimate goal. This calls for a collaborative approach where the government, ISPs, and the public engage in dialogue to shape content regulation laws that respect constitutional rights while addressing the challenges of the digital age.

In conclusion, the pursuit of a balanced approach to online content regulation is a dynamic process that requires adaptability, transparency, accountability, and an ongoing commitment to upholding free speech in the digital age. Through continued research, open dialogue, and a commitment to respecting individual rights, China and other

nations can navigate the complexities of content regulation effectively, ensuring that harmful content is addressed while preserving the principles of free speech and online expression.

### References

- Dechun Zhang & Yuji Xu, (2023). When Nationalism Encounters the COVID-19 Pandemic: Understanding Chinese Nationalism From Media Use and Media Trust, *Global Society*, 37, 2, 176-196, DOI: 10.1080/13600826.2022.2098092.
- Fu, King-wa and Chan, Chung-hong and Chau, Michael, (2013). Assessing Censorship on Microblogs in China: Discriminatory Keyword Analysis and Impact Evaluation of the ‘Real Name Registration’ Policy. *IEEE Internet Computing*, 17(3), pp. 42-50, May-June 2013, doi:10.1109/MIC.2013.28, Available at SSRN: <https://ssrn.com/abstract=2265271>.
- Gary King, Jennifer Pan, and Margaret E. Roberts, (2017). “How the Chinese Government Fabricates Social Media Posts for Strategic Distraction, not Engaged Argument.” *American Political Science Review*, 111, 3, pp. 484-501. Publisher’s Version Copy at <https://tinyurl.com/ybdaq39>.
- Hong, Y., & Wei, Y. (2022). Towards future politics of the cybersphere: China’s temporal-spatial governance of digital transition. *Media International Australia*, 185(1), 9-25. <https://doi.org/10.1177/1329878X221095593>.
- Sherman, Justin, (2022). China’s War for Control of Global Internet Governance. Available at SSRN: <https://ssrn.com/abstract=4174453> or <http://dx.doi.org/10.2139/ssrn.4174453>.
- Shirk, S, (2018). China in Xi’s “New Era”: The Return to Personalistic Rule. *Journal of Democracy*, 29(2), 22-36.
- Wang X. (2021). The motivations and uses of mainstream and social media during the COVID-19 pandemic in China: A structural equation modeling approach. *Computers in human behavior reports*, 4, 100098. <https://doi.org/10.1016/j.chbr.2021.100098>.

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