

# PRIVILEGE AND PUNISHMENT: PRESS GOVERNANCE IN CHINA

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## INTRODUCTION

In the grey aftermath of the Cultural Revolution, China's newspapers and magazines were dull, drab and thin. When the Communist Party announced its new policy of economic reform and renewal in 1979, the *Renmin Ribao* (People's Daily), the country's principal national newspaper, was a mere eight-page paper produced from two folded broadsheets. Today, those austere times seem a world away. Over the past two decades, the number and variety of newspapers and magazines has grown dramatically and China currently publishes over 2000 newspapers, boasting a total circulation of 26 billion.<sup>1</sup> The print media now includes glossy fashion and lifestyle magazines as well as well-designed, colorful newspapers featuring multiple sections and supplements. Major papers have also gone online to provide web versions and related sites for China's growing numbers of Internet users. The organization and structure of publishing enterprises is also changing rapidly. Since 1999, central and provincial authorities have fostered the formation of press groups to provide new, more commercially adaptable structures for newspaper and magazine publishing.

Newspapers no longer operate purely as public service entities largely dependent on government subsidies. Following the Party's formal decision in 1981 to lift its ban on advertising, the government has successfully pushed newspapers and magazines to seek advertising and cover price revenue.<sup>2</sup> According to government reports, "[n]ewspapers received over 13.5 billion *renminbi* (US\$1.63 billion) in advertising revenue in 2000, accounting for 19 percent of the estimated *renminbi* 71.5 billion in total advertising revenue."<sup>3</sup>

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<sup>1</sup> *China Punishes 27 Newspapers for "Violations,"* Jan. 17, 2000, at <http://www.chinaonline.com>; see also DANIEL LYNCH, *AFTER THE PROPAGANDA STATE: MEDIA, POLITICS AND "THOUGHT WORK" IN REFORMED CHINA* 157 (1999).

<sup>2</sup> In this article, the word "government" refers to the combined institutions and agencies of the Chinese Communist Party and the state. While Party and state bodies normally carry out different functions, any general reference to the Chinese government should encompass both.

<sup>3</sup> *Newspaper Ad Revenue Grows to US\$1.63B in '00,* PRESS AND PUBLISHING NEWS (*Xinwen Chuban Bao*), Jan. 18, 2001, at <http://www.chinaonline.com>.

While the advertising market in China has doubtless suffered with the rest of the world since the collapse of the Internet boom, advertising revenue is nonetheless now critical to the commercial success of Chinese newspapers and magazines.

The vibrant, glossy look of newsstands across China cannot, however, hide the serious challenges confronting the print media. As in most other countries, newspaper and periodical reading in China is in gradual decline.<sup>4</sup> Many Chinese increasingly rely on radio, television and the Internet for news and look elsewhere for entertainment. Some publications, especially the newer, more informal styled papers, have not suffered as much, but the long established papers carrying more government related news stories are struggling to keep their readers.<sup>5</sup> This decline is threatening the Party's basic press strategy: the fostering of commercially healthy newspapers that faithfully support its principles and policy objectives. Consequently, press regulators and editors are now searching for new methods and models of publishing that are more cost effective and that retain readers.

The commercialization of the media has also made the reform of media governance in China a more urgent and more difficult task. Confident of its ability to control sensitive media content, the Party has promoted the development of regional and national print media markets. But in doing so, the government appears unconcerned that the country's publishers, which arose as privileged instruments of Party and public policy, are now able to exploit those privileges in their search for profit and commercial advantage. The marriage of political power and economic opportunity is by now a familiar tale in contemporary China.<sup>6</sup> However, the mixing of public institutions and profit seeking inevitably gives rise to pressing questions about the ability of the state to maintain fairness and transparency in its commercial dealings as well as certainty and predictability in its public administration.

China's new media system rests on the seductive idea that a thriving, commercially successful media under Party control offers the best of both worlds: achieving the Party's many political aims while also fostering a dynamic media market. Yet it is more likely to lead to a press that is addicted to government protection and privileges, and media regulators that are corrupted by their close involvement in the commercial transactions of the media. Yet, so far,

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<sup>4</sup> Interviews, Beijing, Shanghai and Guangzhou, 2001.

<sup>5</sup> *Id.*

<sup>6</sup> See TONY SAICH, GOVERNANCE AND POLITICS OF CHINA 105 (2001).

the government has paid little attention to the issue of media governance and regulatory reform. Despite the creation of a blanket regulatory system for all forms of media, substantive issues are still decided at the discretion of Party-state media regulators through internal, unchallengeable processes. The Party leadership has shown a deep reluctance to initiate or permit any serious public debates on the meaning of freedom of the press in China and how that principle might be protected through law. Nonetheless, as China grapples with the long delayed question of political reform, the relationship between the Party-state and the media and the necessary development of media law will be central to that process. This article examines the regulatory regime governing China's print media sector as an illustration of the challenges to better governance that are imbedded within the country's media regulatory system as a whole. While technological convergence is breaking down many traditional distinctions between forms of media, the print media in China remains relatively distinct. It is also subject to its own specialized regulatory regime that provides a clear example of the principles and methods of Chinese media regulation as a whole.

## I. THE COMMUNIST PARTY AND THE PRESS

### A. *Party Control: The First Imperative*

The Chinese Communist Party has always sought to shape the way in which the people of China perceive their political and social world.<sup>7</sup> Indeed, during the Cultural Revolution, the entire population was mobilized in efforts to re-mold individual conscience to achieve the goals of Chinese socialism. Even now, in this comparatively relaxed post-Deng era, the Party has not wavered from Mao Zedong's fundamental policy of close, vigilant control over the media.<sup>8</sup> For the Party, control of the media is essential to stimulate support for its policies and to deny its opponents any substantial platform for their views.

This imperative is reflected in the "Party Principle," which underpins China's media regulatory regime and requires that all me-

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<sup>7</sup> See KENNETH LIEBERTHAL, *GOVERNING CHINA: FROM REVOLUTION THROUGH REFORM* 62 (1995).

<sup>8</sup> ZHAO YUEZHI, *MEDIA, MARKET AND DEMOCRACY IN CHINA* 19 (1998). See *China: Publishing Houses Attend Forum to Mark Communist Party's 80th Birthday*, BBC Worldwide Monitoring, New China News Agency (Xinhua She), June 23, 2001, for an example of Party exhortations on the need for vigilant control of the media. See GEREMIE BARMÉ, *IN THE RED: ON CONTEMPORARY CHINESE CULTURE* 11 (1999), for an alternative view of the complexities of the Chinese intellectual sphere and the ambiguities of government policy.

dia are subject to the principles and directives of the Party.<sup>9</sup> The principal news media are, moreover, not merely subject to Party control, but also have a positive duty to serve as the voice of the Party.<sup>10</sup> This task is not merely to publish authoritative statements of Party policy; it encompasses the manner in which essential factual information is presented to the public as well as the delimitation of the boundaries and content of public debate.<sup>11</sup> Consequently, the well known Party dictum that one must “seek truth from facts” (*shishi qiushi*) has never meant that the media or its regulators were free to cast aside a Marxist Leninist political perspective.<sup>12</sup> In short, the media’s task is to ensure that the public is well provided with information and a politically correct perspective on that information.

The Communist Party has never controlled all sources of information in China. Aside from its haphazard efforts to manage use of the Internet, the Party is plainly struggling to maintain its grip on the country’s vast number of newspapers and magazines.<sup>13</sup> Nonetheless, the Party does not need to exert total control over every form of media or block access to every unauthorized source of information to achieve its objectives. In this information battlefield, it is enough to have decisive control over the commanding heights. Long before the Internet appeared in China, ordinary Chinese people have received information from unapproved and informal sources. In common with any other highly censored society, informal information networks lace through China’s villages, neighborhoods and workplaces. “Side street news” (*xiaodao xiaoxi*), as these channels for information, rumor, and gossip were once known, have provided a ready supplement to government controlled news. The Internet and other improvements in communica-

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<sup>9</sup> See Wei Yongzheng, *Zhongguo Xinwen Chuanbo Fa Gangyao* 26-7(1999); see also GUANYU DANGQIAN BAOKAN XINWEN GUANGBO XUANCHUAN FANGZHEN DE JUEDING (DECISION CONCERNING THE DIRECTION OF PRESS NEWS AND BROADCAST PROPAGANDA), *supra* note 1, at 67 (reference to the 1981 Central Party which re-affirmed the fundamentally socialist nature of China’s media).

<sup>10</sup> See ZHAO, *supra* note 8, at 19; see also Kevin Latham, *Nothing but the Truth: News Media, Power and Hegemony in South China*, CHINA QUARTERLY 2000, at 633; see *id.* at 637-638 for a discussion on the Party mouthpiece principle.

<sup>11</sup> See *Commercial Websites Should Not Release News*, GUANGMING RIBAO, Sept. 15, 1999, at 5 (“China’s news media has maintained correct guidance of public opinion for a long time and has disseminated content beneficial to the building of socialist material and cultural life.”).

<sup>12</sup> Latham, *supra* note 10, at 638-642. See LIEBERTHAL, *supra* note 7, at 129-136 on the importance of this Maoist phrase in the Party leadership’s attempts to find a proper balance between pragmatism and political orthodoxy.

<sup>13</sup> See, e.g., *Freedom of Expression and the Internet in China* (2001), at <http://www.hrw.org> (last visited Oct. 4, 2002) on the difficulties of maintaining control over the print media in China. See LYNCH, *supra* note 1, at 156; see also ZHAO, *supra* note 8, at 82.

tions services have merely brought these networks into the twenty-first century.

China, like the rest of the world, is now awash in information. To cope with this growing deluge, residents of China must rely on authoritative media organizations to organize, select, and summarize news and other information. In these circumstances, the government's practical objectives are twofold. It must control and protect its own authoritative sources of information, while also eliminating or blocking access to any alternative, organized sources potentially available to ordinary Chinese people. In the print media, Party controlled newspapers are the main beneficiaries of this system of privilege and sanction. Other authorized periodicals, not under direct Party management, are in principle barred from original news reporting and other privileged activities. The resulting system is sufficiently effective to ensure that ordinary people do not have regular, convenient access to any organized news source not under Party control.

The Party-state's media policies are as complex and diverse as those of any major government. They affect both the structure of the industry as well as the content of publications, audiovisual programs, and films. Broadly speaking, the Party's basic goals are to maintain its monopoly on power and to achieve its objective of rapid economic growth in a stable social and political environment.<sup>14</sup> Restrictions on obscenity and indecency, the protection of consumers, the development of national culture, and the stimulation of employment and technological innovation in the media all figure in these goals. Nonetheless, the pursuit of public order and state security remain at the forefront of the Party's media policy. Since the Tiananmen crisis of 1989, the Party has made social and political "stability" the bedrock of its media policies. As the Party leadership recently admonished national editors and broadcasters, stability remains the golden rule and they must continue to guide the people positively and never to spark public controversy.<sup>15</sup>

The protection of public order and state security are essential objectives for any state. The more important issue is the manner in which a state recognizes other conflicting interests and strikes the necessary compromises between them and its own order and security objectives. In China, the recognition of competing interests is inevitably compromised by the Party's overriding need to maintain

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<sup>14</sup> See Saich, *supra* note 6, at ch. 3.

<sup>15</sup> See *China Tightens Control Over News Media*, THE STRAIGHT TIMES, Feb. 25, 2002, available at <http://www.chinaonline.com> (last visited Oct. 4, 2002).

itself permanently in power. It seeks to marginalize or eliminate any interests represented by an individual or group not under its control or supervision.<sup>16</sup> For the Communist Party, the news issues most threatening to order and security include the reporting of labor unrest, violent crime, health system failures, unemployment, and poverty, as well as pollution threats to health and livelihoods.<sup>17</sup> Aside from its efforts to restrict news coverage, the Party also uses the media for positive objectives, such as the controlled exposure of corruption cases and other wrongdoing.<sup>18</sup> It is, for example, a useful way for central government authorities to embarrass or intimidate local officials who are impeding central government measures or investigations.

### B. *Economic Reform and the Pursuit of Profit*

The Party introduced economic reforms to the print media early in the 1980s, cutting subsidies and pushing newspaper, magazine, and book publishers to rely on their own resources.<sup>19</sup> To some extent, these policies were a matter of necessity. Much of the print sector had been shut down during the Cultural Revolution and its huge capital investment needs clearly could not be met by the state alone. In 1983, the Party Central Committee and the State Council jointly announced the government's intention to "energetically develop printing facilities and thoroughly transform the situation of inadequate newspaper, magazine, and book printing administration, obsolete equipment, backward technology, and inadequate production capacity."<sup>20</sup> A year earlier, the Party had formally lifted its prohibition on advertising and also permitted the

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<sup>16</sup> In recent years, no doubt the best example of the Party's insistence on control over all organized activities in China is its determined efforts to crush the Falun Gong movement. See generally *The Crackdown on Falun Gong and other So-Called "Heretical Organisations,"* Amnesty International, Mar. 23, 2000, available at <http://www.amnesty.org> (last visited Oct. 4, 2002).

<sup>17</sup> Interviews, Beijing and Shanghai, 2000 and 2001 (to avoid risk, Chinese interview sources used in the preparation of this article are not specifically identified).

<sup>18</sup> See, e.g., Susan Lawrence, *A City Ruled by Crime*, FAR EASTERN ECON. REVIEW, Nov. 30, 2000, at <http://www.feer.com> (last visited Oct. 4, 2002); see also David Lague, *A New Vein of Openness*, FAR EASTERN ECONOMIC REVIEW, Oct. 4, 2001, at <http://www.feer.com> (last visited Oct. 4, 2002).

<sup>19</sup> The State Council formally acknowledged this shift in policy in 1984 in a regulatory notice stating that periodicals should become responsible for their own profits and losses; State Council, 1984 GUANYU DUI QIKAN CHUBAN SHIXING ZIFU YINGKUI DE TONGZHI (Notice concerning the Implementation of Responsibility for Profit and Loss by Periodical Publications).

<sup>20</sup> Party Central Committee and State Council, 1983 GUANYU JIAQIANG CHUBAN GONGZUO DE JUEDING Part IV (Decision concerning Strengthening Publication Work).

licensing of advertising services.<sup>21</sup> These policies have been relatively successful.<sup>22</sup> The Party-state has not only succeeded in substantially reducing its subsidies to the press, but it has also received an added bonus in surplus advertising revenue from the more popular newspapers and magazines.<sup>23</sup>

The government has attempted to follow the successful commercialization of the press with further reforms to the structure and organization of the print media. In 1999, the Central Party and State Council ordered government departments and agencies not responsible for media regulation to reduce sharply the number of newspapers and periodicals under their control.<sup>24</sup> This measure was intended to cut back the thicket of state commercial activities and to prepare the country's print media for a major reorganization. It did not, however, apply to the state press and publication authorities or to the Party's propaganda departments and bureaus, which jointly control the country's major press organizations.

The most important development in press restructuring has been the consolidation of major newspapers and other periodicals into press groups (*baoye jituan*).<sup>25</sup> These groups are typically formed around a principal Party newspaper, but also include other smaller specialized papers and magazines.<sup>26</sup> In 1988, the central government provisionally approved the formation of the first press groups in Guangdong province. Since then it has approved the formation of twenty-six regional press groups and has recently announced that these groups can begin to acquire publications outside their respective provincial bases.<sup>27</sup> The press group model

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<sup>21</sup> State Council, 1982 GUANGGAO GUANLI ZANXING TIAOLI (Provisional Regulations for the Administration of Advertising).

<sup>22</sup> See *Competition Heats Up Among China's Newspapers*, Apr. 19, 2002, available at <http://www.chinaonline.com> (last visited Oct. 4, 2002); see also *Media's Growing Role in China's Economic Development*, May 17, 2002, available at <http://www.chinaonline.com> (last visited Oct. 4, 2002).

<sup>23</sup> See ZHAO, *supra* note 8, at 57. Many newspapers continue to receive a form of hidden subsidy through mandatory subscriptions imposed by Party or state authorities on institutions under their authority.

<sup>24</sup> Central Committee General Office and State Council General Office, 1999 OPINIONS ON ADJUSTING THE PRESS STRUCTURE FOR IMPLEMENTING OFFICIAL DOCUMENT NO. 30 (*Circular regarding the Rectification of the Press Structure of Central Organizations and State Organs and Provincial Level Offices and Bureaus*); see *China Announces Major Restructuring of Press and Industry Publications*, PRESS AND PUBLICATION NEWS (XINWEN CHUBAN BAO), NOV. 22, 1999, available at <http://www.chinaonline.com> (last visited Oct. 4, 2002).

<sup>25</sup> These press groups are now the dominant form of press organization in China. See, e.g., Vivien Pik-kwan Chan, *Jiang warns of Foreign Influences*, SOUTH CHINA MORNING POST, Jan. 12, 2002, available at <http://www.scmp.com> (last visited Oct. 4, 2002).

<sup>26</sup> See *China's Newspaper Publishing Industry Diversifies*, HUASHENG BAO, Oct. 6, 1999, available at <http://www.chinaonline.com> (last visited Oct. 4, 2002).

<sup>27</sup> See Vivian Pik-kwan Chan, *Media Allowed to Grow after Policy Shift; Foreign Funds Still Banned, Propaganda Chiefs Told*, SOUTH CHINA MORNING POST, Nov. 6, 2001, available at <http://www.scmp.com> (last visited Oct. 4, 2002).

provides a more flexible structure for the operation of commercial press organizations. In this structure, managers can keep sensitive editorial functions under close control while aggressively developing the commercial potential of advertising and distribution services and investing in other business opportunities.

More recently, the government has permitted a gradually extension of this flexibility which has allowed some press groups to experiment with the flotation of subsidiary elements on Chinese stock exchanges.<sup>28</sup> The question of press group ownership, however, remains politically and legally problematic. The media are treated as public service organizations (*shiye*) rather than commercial enterprises (*qiye*) and, while in theory they belong to the people, they are clearly agencies of the Party-state.<sup>29</sup> How much further the process of structural change and commercialization can go without seriously undermining the mechanisms of Party control is an open question.

The commercialization of China's media is still quite limited. Newspapers and magazines are profit seeking, but none are fully exposed to market competition. The Party's decision to commercialize the media was always a shrewd combination of economics and politics. Commercially strong regional and national newspapers not only become revenue earners rather than subsidy takers, but they also develop into stronger voices for the Party. The Party was never likely to sacrifice these carefully nurtured mouthpieces in a competitive free for all.<sup>30</sup> Indeed, the Party continues to fund the press for strategically important purposes when commercial revenue is insufficient. In the late 1990s, for example, the central government invested heavily to launch the main Party media organizations as major Internet content providers after their relatively late start in creating online sites.<sup>31</sup>

At the same time, provincial and urban authorities are pursuing media policies that reflect their own economic agendas. While many are keen to support their own locally based media organiza-

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<sup>28</sup> See *Guangzhou Daily to Be First Large Scale Media Group to Go Public*, SECURITIES TIMES (ZHENGQUAN SHIBAO), April 17, 2002, available at <http://www.chinaonline.com> (last visited Oct. 4, 2002).

<sup>29</sup> See LYNCH, *supra* note 1, at 75.

<sup>30</sup> Where competitive conditions exist, newspaper publishing is often an unprofitable business. See COLIN SEYMORE-URE, *THE BRITISH PRESS AND BROADCASTING SINCE 1945*, ch. 2 (2d ed. 1996). However, the costs of entry are high and many newspapers publishers enjoy a dominant local market position. See GILLIAN DOYLE, *UNDERSTANDING MEDIA ECONOMICS*, ch. 119 (2002).

<sup>31</sup> Interview, Beijing, 2000. See *China Telecom Gives 12 News Sites Better Rates*, JINRONG SHIBAO (FIN. NEWS) June 1, 2001 available at <http://www.chinaonline.com> (last visited Oct. 4, 2002).



tions in their efforts to grow and increase revenue, some are plainly reluctant to lose advertising market share to competitors based elsewhere in China.<sup>32</sup> Their defenses include efforts to impede the distribution of non-local newspapers as well as the denial of licenses to competitors based in other regions.<sup>33</sup> Yet these tactics have only been partially effective and nimble operators use creative methods to enter new markets. For example, a small publication that is registered by the provincial Press and Publications Bureau in Hunan can be edited, published, and distributed in Beijing or Shanghai with minimal oversight from Hunan.

China's press sector is also substantially larger and far more complex than it was at the outset of the economic reform period twenty years ago and new opportunities for market entry are growing apace. The major press groups have developed wide-ranging publishing interests and non-Party entrepreneurs now easily obtain approval to publish non-contentious content, provided they can find a government affiliated body that is prepared to act as their registered sponsor and guarantor.<sup>34</sup> There are also many standard commercial agreements, such as consultancies and technology and skill transfers, that can be used to disguise illicit participation in the media. For the Party, there is an obvious danger that the transfer of editorial control into unapproved hands will be the quid pro quo for an illegal investment or payment.<sup>35</sup>

The government has fought these challenges to its regulatory system through constant efforts to plug the cracks in its system and expel unwanted elements. But the costs of maintaining the current system of press control are enormous. At a practical level, the system has become extraordinarily complex, as each breach is repaired through the issue of more rules and the imposition of new license requirements. More fundamentally, China's media is in a deepening crisis of governance.

From a liberal democratic perspective, China's media remains the antithesis of what a pluralist media should be. The Communist Party is utterly frank in its rejection of pluralism and any media system in which its monopoly on political power is openly questioned. Of course, Chinese society and media have changed considerably in recent years. Growing affluence and education have stimulated demands for more diverse content and the Party itself has accepted that complete control is neither technologically feasi-

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<sup>32</sup> Interview, Shanghai, 2001.

<sup>33</sup> *See id.*

<sup>34</sup> *See ZHAO, supra* note 7, at 127.

<sup>35</sup> *See id.*

ble nor politically necessary. Yet despite this trend towards limited diversity, there are obvious problems in the current situation, even judged by the governance values espoused by the Chinese government. The Party-state's secretive methods of media control have created an opaque system that refuses to articulate, in any detail, the substantive principles on which it operates. The result is a widespread uncertainty as to what is legally permitted as well as an underlying failure to distinguish among Party, public, and private interests.

State ownership of the media is not the root cause of these problems. Publicly owned media organizations are common throughout the world, including most liberal democracies. In Europe, the broadcast media were founded on state monopolies and public ownership continues to play a core role in European television and radio.<sup>36</sup> Nonetheless, state participation in the media gives rise to important governance issues. Aside from liberal democratic concerns about media pluralism, state participation inevitably increases the risk that government officials will benefit improperly from their control or influence over the media and that state connected media organizations will receive improper advantages. The risks are therefore not simply that public policy objectives for the media will be corrupted, but also that government abuse of the media will ultimately undermine its own legitimacy. State participation in the media consequently requires that the substantive principles of control are clearly expressed and that the allocation of licenses and other regulatory controls are fair and open to independent review.

### C. *Implementing Party Media Policy*

The Communist Party's national, regional, and local networks of committees and branches are the essential protectors of its media policies.<sup>37</sup> These committees and branches exist in some form in all media enterprises, although those under direct Party control have more developed Party structures.<sup>38</sup> The Party formulates me-

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<sup>36</sup> See ANTHONY SMITH, TELEVISION AS A PUBLIC SERVICE MEDIUM, TELEVISION: AN INTERNATIONAL HISTORY, (1998); see also ANDREW CRISSELL, AN INTRODUCTORY HISTORY OF BRITISH BROADCASTING (1997); RAYMOND KUHN, THE MEDIA IN FRANCE (1995); PETER HUMPHREYS, MEDIA AND MEDIA POLICY IN GERMANY (1994).

<sup>37</sup> "The most muscular instruments of control in contemporary China – almost completely invisible to outsiders – are the committees and branches where China's 64 million Communist Party members lead their 'Party lives.' All government departments, state-run academic institutions and state-run factories and enterprises have party committees." See LAWRENCE, *supra* note 18.

<sup>38</sup> See Interview, Beijing, 2001.

dia policies primarily through its Central Propaganda Department (CPD), a key body within the central Party organization.<sup>39</sup> This body sets media policies for the entire country and supervises their implementation by both national, regional, and local Party and state media authorities. It also oversees the work of key national media organizations based in Beijing, such as the *Renmin Ribao* (People's Daily) and China Central Television (CCTV). This dual role of policy maker and media manager is replicated by the Propaganda Bureaus of the provincial and major urban Party organizations. These Bureaus not only direct the activities of the principal newspapers and broadcasting stations under their jurisdiction, but also supervise the entire media industry based in that geographical area.

The Central Propaganda Department and its regional and urban counterparts are also important rule makers. While their directives are normally issued internally through government communication channels to media organizations, they also issue joint regulatory rules with state media authorities. Party directives and guidance are, in any event, not simply issued to key units and personnel. They are also discussed and explained in special meetings of relevant editors and journalists.<sup>40</sup> This effort to inculcate Party policies and decisions reflects the role that key personnel play in the Chinese media regulatory system.<sup>41</sup> Editors in the important media are approved by the Party and they are personally responsible for the implementation of policies and instructions affecting their publications.<sup>42</sup> As Party appointees, they can be demoted or forced to resign without resort to legal procedures. These disciplinary actions are not publicized outside the Party, but they are occasionally reported in the foreign press when the details leak out.<sup>43</sup> In 2001, for example, the American press reported on

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<sup>39</sup> See ZHAO, *supra* note 7, at 19. In 1998, the Central Propaganda Department decided to change its English name to the Central Publicity Department to escape the negative connotations of the word "propaganda." It is also sometimes referred to as the Information Department of the Party. However, the Chinese title (*Zhongyang Xuanchuan Bu*) did not change and "propaganda" is closer to the meaning of the Chinese word "*xuanchuan*" than publicity. This article retains the more accurate translation.

<sup>40</sup> See Interview, London, 2001.

<sup>41</sup> Perry Link identifies the personal inculcation of censorship as a long standing and distinctive element in media control in China under the Communist government. Perry Link, *China: The Anaconda in the Chandelier*, THE NEW YORK REVIEW OF BOOKS, Apr. 11, 2002, at 67-69.

<sup>42</sup> See, e.g., LYNCH, *supra* note 1, at 160-161.

<sup>43</sup> See, e.g., Katherine Arms, *Media Campaign Unleashed on Journalists*, UNITED PRESS INTERNATIONAL, June 19, 2001 (a report on disciplinary action taken in Henan province against *Dahe News*, a newspaper owned by the Henan Daily, the Henan Party Committee's primary newspaper).

the Guangzhou Party Committee's decision to demote two senior editors at the outspoken Guangzhou newspaper "Southern Weekend" (*Nanfang Zhoumo*).<sup>44</sup>

The strength of this nomenklatura system lies in its recognition that effective administration ultimately depends on the abilities of key individuals and their commitment to the principles and rules of the regime.<sup>45</sup> The Chinese system therefore emphasizes the selection, motivation, and control of these personnel. It also relies on secretive methods of communication to protect its policy making and implementation process from public scrutiny. Yet, the strengths of this method are also its weaknesses. Where the loyalty and commitment of key Party members in an organization falters, the system has few safeguards to fall back upon. State media regulations exist to reinforce the nomenklatura based control system. They impose detailed procedural requirements for press licensing and registration, but leave matters of substance to the discretion of government media authorities. Consequently, the sanctions authorized by these regulations may be used against errant newspapers or magazines, but their broadly phrased, substantive provisions give little guidance as to why particular conduct or content may or may not be acceptable.

The Party's chief concern is to prevent the fragmentation of its branch structures in the media sector and the consequent erosion of the personnel placement system. Its reach is certainly not as extensive as it once was. Not only is the growing private sector less susceptible to Party control, but commercialization and rampant corruption within the state sector has weakened its effectiveness.<sup>46</sup> Nonetheless, the Party is at its strongest in the still vast state sector, which includes state owned companies or affiliated organizations, such as universities. The leadership has consequently resisted any transfer of editorial decision making out of state affiliated hands, as such a move is likely to weaken or sever the Party connection.<sup>47</sup> The Party-state therefore remains, in principle, both owner and regulator of China's media.

The most important newspapers in China are not merely linked to the state, but are essentially operated by the Party. These Party newspapers (*dang bao*) reflect the geographical-administrative

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<sup>44</sup> See John Pomfret, *China Removes Top Editors; Party Cracking Down on Independent Minded Journalists*, WASHINGTON POST, June 7, 2001, at A26; see also Erik Eckholm, *When Weekly Finds Scandal, Beijing Purges Top Editors*, NEW YORK TIMES, June 7, 2001, at 3.

<sup>45</sup> See LIEBERTHAL, *supra* note 7, at 209-213 (on the Chinese nomenklatura system).

<sup>46</sup> See LAWRENCE, *supra* note 18.

<sup>47</sup> China News Service, *China Continues Ban on Foreign, Private Funding of News Media*, January 16, 2002, available at <http://www.chinaonline.com> (last visited Oct. 4, 2002).

structure of the Party. The *Renmin Ribao* (People's Daily), for example, is the principal press organ of the central Party organization and this relationship is replicated at provincial and local levels by similar Party mouthpiece publications. The *Henan Ribao* (Henan Daily), therefore, is the principal press organ of the Henan provincial Party Committee. Party affiliated organizations, including the All China Workers Federation and the Chinese Communist Youth League, also produce newspapers, including the influential *Beijing Qingnian Bao* (Beijing Youth Daily).<sup>48</sup> There are also a wide variety of non-Party publications in China. These include special newspapers produced by state departments and agencies, such as the Ministry of Health, as well as many others sponsored by various state affiliated bodies throughout China.<sup>49</sup>

#### D. *The Party Hand in the State Glove*

Chinese law does not directly address the relationship between the media and the Communist Party or the implications of that relationship for society in general. Certainly the Constitution states that the Party has a preeminent role in Chinese political, economic, and social life.<sup>50</sup> Other laws and regulations, including the State Council's 1997 Publication Regulations, also speak generally of the Party's role in directing the media.<sup>51</sup> But the law does not go beyond these broad generalities. Furthermore, the meaning of the Constitutional guarantee of freedom of expression in China is also unexplored in Chinese law.<sup>52</sup>

The laws and regulations of the state, nonetheless, do provide the essential framework for the exercise of Party power over the

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<sup>48</sup> See ZHAO, *supra* note 7, at 16.

<sup>49</sup> "Non-Party special interest newspapers, published by government departments, business enterprises, and other political and social organizations, came back with unprecedented vigor." ZHAO, *supra* at note 7, at 17.

<sup>50</sup> CONST. P.R.C. pmbl. (amended 1982).

<sup>51</sup> 1997 State Council, CHUBAN GUANLI TIAOLI §3 (Administration of Publication Regulations).

<sup>52</sup> See CONST., *supra* at note 50, art. 35. Freedom of the press is certainly a significant topic for discussion in government, media and academic circles within China. But public discussion of freedom of expression in China is locked into a Party imposed straitjacket of generalities. The constitutional freedom of Chinese citizens to freedom of speech and the freedom to publish is widely acknowledged to encompass the more specific concept of freedom of the press. See WEI, *supra* note 9, at 40-43. The Communist Party, however, is also quick to remind the public that the right to freedom of expression, as in all other countries, is not an unlimited one. The open ended nature of these limits is reflected in Article 51 of the constitution. This article states that, in exercising their freedoms and rights, citizens may not infringe upon the interests of the state, of society, or of the collective, or upon the lawful freedoms and rights of other citizens. Public debate in China has yet to move to the critical questions concerning the ways in which the balance between the freedom of expression and other interests should be struck. Ultimately, the Party still determines the limits of freedom of expression as it sees fit.

print media.<sup>53</sup> The backbone of this regulatory system lies in the licensing system imposed on newspaper, periodical, and book publishers. This system of control over publishers is reinforced through the additional licensing of printers as well as wholesale and retail distributors. Licensing determines not only who can publish, but also the authorized content categories for each publication and the authorized number of editions and copies per edition.

In essence, the state licensing system seeks to ensure that publishers who are not under secure Party control are prohibited from publishing mainstream news stories and that any suspect person is barred from the print media. The result is a flexible system that permits tight control over publishers not directly linked to Party organizations, but also allows much looser control over favored Party affiliated publishers. This is the flexibility to favor as much as it is to restrict or exclude and Party newspapers are consequently the privileged elite of the press. Their editors and senior journalists are highly trusted Party members and they consequently enjoy distinct advantages over the non-Party press, who are tolerated in the sports, consumer, and other non-sensitive parts of the market. The editorial staffs of the latter are under Party-state supervision, but the Party does not directly operate these publications.

These privileges go well beyond the right to provide a broader range of news and information than is permitted for other periodicals. Party newspapers have long enjoyed commercial and financial privileges, such as permission to invest in or acquire non-media enterprises.<sup>54</sup> As these Party newspapers provide the core publications for the regional press groups, their editors often provide the senior management for these new, more commercialized press organizations. Many are expanding into new publication areas to produce more popular style papers and magazines on the back of their gold seal of political reliability.<sup>55</sup> This resulting system, in which privileges and restrictions are bestowed unequally and arbitrarily, repre-

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<sup>53</sup> Unlike many western countries, China does not impose a lighter form of regulation on the print media as compared to the audiovisual media. Both forms of media are subject to licensing and to standards regulation. See ERIC BARENDT, *BROADCASTING LAW: A COMPARATIVE STUDY 2* (1993) (on the distinction between the print and audiovisual media in European legal systems).

<sup>54</sup> See ZHAO, *supra* note 8, at 67 (in 1988, the State Council lifted restrictions to allow newspapers to expand into a range of non-media areas of business). The approval process was formalized in §45 of the 1990 GAPP, BAOZHI GUANLI ZANXING GUIDING (Provisional Regulations for the Administration of Newspapers), which require that newspapers and other periodicals seek permission from the GAPP or regional press authorities before engaging in other commercial activities.

<sup>55</sup> The pursuit of profit through populist journalism has also brought rebukes from the Party and warnings to supervise the content of subsidiary papers more closely. PRESS AND PUBLICATION NEWS (XINWEN CHUBAN BAO), May 20, 1999, at 1, (quoted and discussed in

sents a further barrier to regulatory reform. Questions of impartiality and legitimate expectations are almost impossible to address where there is no underlying principle of equality in the treatment of applicants or licensees. In China, each media enterprise is a unique case, subject to whatever favors it may garner from the relevant Party-state authorities.

The nomenklatura model of press control is under increasing strain as the country's various media grow in size and complexity. Nonetheless, media regulators have shown no sign of abandoning this "owner-regulator" model. They have instead continually returned to basics and, in each new crisis, have attempted to restore or re-invigorate the existing system of control. Within the Party, this has involved the use of campaigns to unify and motivate members and to weed out unsuitable individuals.<sup>56</sup> At a more visible level, the state regulatory regime has undergone regular improvements and adaptations. In periods of popular unrest, such as the student demonstrations of 1987 and the Tiananmen crisis of 1989, the government has responded with root and branch reconstructions of the regulatory system. More frequently, the Party has launched rectification campaigns to cleanse the media of rogue operators who have crept in through weaknesses or failures in the system.<sup>57</sup>

#### E. *State Press Regulators*

State media regulatory bodies have come and gone as the Party's needs and policies have changed. Shortly after the establishment of the Communist government in 1949, the Party instituted a national system for the registration of all newspapers and periodicals. It also established a central government Press Office in Beijing.<sup>58</sup> This body was abolished in 1952, however, and by the mid 1950s, press licensing was carried out under the authority of the Political Bureau of the Central Communist Party. Press licensing and regulation remained a Party matter until well into the 1980's. It was only as economic reform encouraged a rapid growth in the

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Yang Zhi, *Survey of Important China Print Media*, 2001, available at <http://www.sinopolis.com> (last visited Oct. 4, 2002)).

<sup>56</sup> Most recently, the Party has conducted a major national campaign for Party members to study the concept of the "Three Representatives" under the direction of the Party General Secretary, Jiang Zemin. See SAICH, *supra* note 6, at 78.

<sup>57</sup> See, e.g., LYNCH, *supra* note 1, at 177-180 (the 1993 rectification campaign described).

<sup>58</sup> See 1952 ZHENGWU YUAN (predecessor to the State Council), and QIKAN DENGJI ZANXING BANFA (Provisional Rules for the Registration of Periodicals); see also WEI, *supra* note 9, at 315.

number of publications and in work units engaged in publication, that the Party began to delegate some licensing to state bodies.<sup>59</sup>

In 1987, the central government established the current state regulatory system. It carved the Press and Publications Bureau out of the Ministry of Culture and established it as the separate State Administration of Press and Publications, reporting directly to the State Council. In 2001, the government elevated the State Administration of Press and Publications to the rank of a ministry and re-named it the General Administration of Press and Publications (GAPP) (*Xinwen Chuban Zong Shu*).<sup>60</sup> The GAPP is the principal state authority responsible for licensing newspapers, periodicals, and books as well as audiovisual products and electronic publications.<sup>61</sup> Its provincial and city level counterparts, the Press and Publications Bureaus, carry out similar work. It was, not, however, thought necessary to create county level press and publications units. Local government cultural officials undertake any necessary work and, in any event, local governments are not allowed to license publications.<sup>62</sup>

The Central Propaganda Department of the Communist Party supervises the work of the GAPP, setting the policies and principles that guide its work and participating in its major personnel appointments. In China's Party-state system, the GAPP's authority as an administrative rule maker and decision maker depends on its relationship with the CPD as much as it does on its position as a department of the State Council wielding legal authority. Without this connection to the central Party, the GAPP's authority would not be recognized by other government bodies or by publishers.

The GAPP is not the only state institution within the administrative network (*xitong*) of the CPD having media related responsibilities.<sup>63</sup> The CPD also supervises the State Administration of Radio, Film and Television (*Guangbo Dianying Dianshi Zong Shu*) and the State Council Information Office (*Xinwen Bangongshi*), es-

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<sup>59</sup> See WEI, *supra* note 9, at 316-317.

<sup>60</sup> In this article, for the sake of clarity, the State Administration of Press and Publication (GAPP) will always be referred to under its current name, the General Administration of Press and Publications (GAPP).

<sup>61</sup> See WEI, *supra* note 9, at 312; see also LYNCH, *supra* note 1, at 158-159. According to s.11 of the 1990 Provisional Regulations for the Administration of Newspapers, *supra* note 54, the GAPP directly approves newspapers established by national level bodies and has the right of final approval over regional and local papers.

<sup>62</sup> Interview, 2001, Shanghai.

<sup>63</sup> The Central Propaganda Department and its *xitong* is a subsection of the Party's larger propaganda and education (the *xuanjiao xitong*) operating under the ultimate direction of the Propaganda and Education leadership Small group. LIEBERTHAL, *supra* note 7, at 197-199.



established in 1990 to direct foreign related news matters. The connection between Party supervisory networks and the functions of state regulatory bodies is not always clearly defined, however. The State Administration of Industry and Commerce (SAIC), for example, has responsibility for the regulation of advertising, but it is not within the network of the CPD. Yet advertising content certainly fall within the purview of the CPD and the SAIC is unlikely to ignore its views.

## II. PRESS LAW IN CHINA

### A. *Press Law and Press Regulation*

Media law in China is more concerned with the procedural requirements of approval, registration, and supervision than it is with matters of substance, which are typically expressed in general, non-specific terms. The media regulatory system is, in this respect, faithful to its socialist and Leninist foundations. The Party has always used mass communication primarily as an instrument to achieve its political and economic goals, both through the promotion of desirable content and the restriction of undesirable content. The organic connection between the Party and the institutions and laws of the state is the essential link that ensures that the Party maintains its firm grip on the media.

In western legal systems, it is common to distinguish between general laws, which define the rights and obligations of all persons, and sector specific regulatory intervention by the state.<sup>64</sup> While this distinction is by no means clear or absolute,<sup>65</sup> it does reflect the important relationship between liberal economic theory and western law. In principle, general laws provide the rules necessary for private individuals to operate in a free market economy, while regulation is associated with government intervention in the market to achieve public policy goals. In China, however, these liberal political and legal distinctions have no particular value for law and policy makers. Despite the government's introduction of market related reforms, direct and indirect government controls over economic relations as well as state ownership or control of key indus-

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<sup>64</sup> Anthony Ogus describes this as a general distinction between private, facilitative, decentralized law and directive, public, centralized law. ANTHONY OGUS, *REGULATION: LEGAL FORM AND ECONOMIC THEORY* 3 (1994).

<sup>65</sup> For example, the statutory and common law rules that comprise the English law of defamation (which counts as general law) largely concern the publication of potential libels in the media. On defamation in England, see GEOFFREY ROBERTSON & ANDREW NICOL, *MEDIA LAW* ch. 3, (2002).

tries remains broadly the norm.<sup>66</sup> The media is therefore only one of several strategic sectors in which the government insists on the principle of state ownership or control.<sup>67</sup> Chinese media law, consequently, reflects these assumptions of state intervention, and the distinction between general media law and media regulation is of much less significance.

Civil law is, nonetheless, increasingly important to Chinese publishers. Aside from contractual and intellectual property issues, the civil law of defamation, and to a lesser extent civil privacy rights, now present major practical issues for newspaper editors and journalists. China's constitution guarantees every citizen the right not to be subject to insults, libels, and false accusations.<sup>68</sup> This right was specifically addressed in the 1986 General Principles of Civil Law (*Minfa Tongze*) and has also been developed through interpretations of law issued by the Supreme People's Court.<sup>69</sup> Chinese citizens now routinely bring civil actions against newspaper, magazine, and book publishers for injury to reputation. This provides a growing headache for editors and journalists not accustomed to civil actions by their readers, but it has also given legal academics a welcome area for scholarship that is comparatively free from the political sensitivities that affect most questions of media law.<sup>70</sup>

China's media regulatory system is a blend of criminal and administrative law. The application of criminal or administrative sanctions for a particular act, in principle, depends on the seriousness of the act and its consequences. A small print run of mildly pornographic material may only merit an administrative sanction, but a major printing of highly pornographic material will incur criminal sanctions. In this sense, criminal offences are not clearly distinct

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<sup>66</sup> James Kyngé, *China's Burden*, FIN. TIMES, Jan. 3, 2002, at 16.

<sup>67</sup> For example, in the field of telecommunications, the government has severely limited the potential for foreign investment through a combination of restrictive foreign ownership rules and its control over all domestic providers. See Jonah Greenberg, *Foreign Firms on Wrong Foot as China Does Telecoms Shuffle*, SOUTH CHINA MORNING POST, Jan. 17, 2002, at Business 2; Michael Dudek, *Telecoms Regulation: China's Other Great Wall*, COMM. WEEK INT'L, Nov. 12, 2001, available at <http://www.totaltele.com> (last visited Oct. 4, 2002).

<sup>68</sup> XIANFA [CONSTITUTION], *supra* note 50, at article 38.

<sup>69</sup> National People's Congress, MINFA TONGZE Art. 101 (General Principles of Civil Law), 1988 Supreme People's Court, GUANYU GAUNCHE ZHIXING MINFA TONGZE RUOGAN WENTI DE YIJIAN (Opinion concerning Particular Issues in the thorough Implementation of the General Principles of Civil Law), 1993 Supreme People's Court, GUANYU SHENLI MINGYU QUAN ANJIAN RUOGAN WENTI DE JIEDA (Reply concerning Particular Issues in the Adjudication of Right of Reputation Cases), and 1998 Supreme People's Court, GUANYU SHENLI MINGYU QUAN ANJIAN RUOGAN WENTI DE JIESHI (Interpretation concerning Particular Issues in the Adjudication of Right of Reputation Cases).

<sup>70</sup> See YULUN JIANDU YU XINWEN JIUFEN [PRESS SCRUTINY AND PRESS DISPUTES] (Wang Qianghu and Wei Yong Zheng eds., 2000).

from related administrative offences. There are, of course, many important procedural and even substantive distinctions. In general, the courts apply the Criminal Law to individual conduct, while state media regulators impose administrative sanctions on publishing entities and their sponsoring organizations, and Party authorities discipline editors and other Party members. Yet, under China's unified Party-state, these three processes are all unavoidably linked. The same security and media authorities guide the application of criminal and administrative offences in conjunction with the Party's internal disciplinary procedures.<sup>71</sup> Established administrative precedents and practices, as a result, directly inform the application of criminal sanctions.<sup>72</sup> Moreover, in cases involving Party or state security, all relevant authorities are expected to act together to locate and punish those implicated.<sup>73</sup>

The lack of a clear distinction between criminal and administrative law also stems from the fragmentation of law making powers in China. While the National Peoples Congress (NPC) holds supreme legislative power and has enacted several laws important to the media, the State Council, through its powers to issue secondary regulations, is also a significant national law maker.<sup>74</sup> Central ministries and provincial level governments also have powers to issue tertiary regulations.<sup>75</sup> China's laws protecting state secrets amply illustrate this overlapping scheme of criminal and administrative powers. The Criminal Law, adopted by the NPC in 1979 and substantially revised in 1997, contains prohibitions on sedition, obscenity, and the disclosure of state secrets.<sup>76</sup> The latter are addressed more specifically in the NPC's 1988 State Secrets Law (*Baoshou Guojia Mimi Fa*), which also marks a shift from general

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<sup>71</sup> While Party departments are no longer directly involved in many areas of state administration, in the security and propaganda spheres the Party continues to manage and coordinate action by state authorities. Interviews, Beijing, 2000 and 2001.

<sup>72</sup> In any legal system, there is an inevitable overlap between criminal and administrative offences. There are, however, good prudential reasons for ensuring that the criminal law has its own distinct requirements and safeguards and that it should not be unduly informed by the state's regulatory practices or biases. In Britain, for example, the criminal law prohibits obscene publications and certain forms of indecency. Whereas the Broadcasting Act 1990 entrusts program standards to the television and radio regulatory agencies, requiring that they create codes of conduct to guide the conduct of licensees, including in matters which may offend against good taste and decency. These regulatory codes overlap with the criminal law, but have no direct relevance to its application. On the regulation of "good taste and decency" in British television and radio, see THOMAS GIBBONS, *REGULATING THE MEDIA* 73-81 (2d ed. 1998); COLIN SHAW, *DECIDING WHAT WE WATCH* ch. 3 (1999).

<sup>73</sup> See SAICH, *supra* note 6, at 127-129.

<sup>74</sup> See Peter Corne, *The Law Making Process*, *DOING BUSINESS IN CHINA* ch. 5 (Thomas Jones & Randy Peerenboom eds., 2002); see also Perry Keller, *Sources of Order in Chinese Law*, 42 AM. J. COMP. L. 711-59 (1994).

<sup>75</sup> See *id.*

<sup>76</sup> National People's Congress, 1997 *Xing Fa* (Criminal Law), Part II, Chapter I and II. .

provisions to sector specific rules. Article 20 of this law, for example, expressly applies the state secrets law to the print media. The State Council's 1990 implementing regulations for the State Secrets Law further develop these press specific rules on the disclosure of state secrets.<sup>77</sup> Other central government press regulations also incorporate and elaborate the rules guarding against the disclosure protection of state secrets in the print media.<sup>78</sup> There is, consequently, a near seamless shift from general law to highly specific regulatory rules.

### B. *Awaiting the "Press Law"*

For many years, China's media regulators as well as editors, journalists, and academics have debated the merits of enacting a national law to govern the media. This discussion has centered on the adoption of a "press law" (*Xinwen Fa*) by the National People's Congress. The idea of a press law began circulating within the Party soon after the launch of economic reforms in 1979. By the mid 1980's, the Party had approved three separate, officially sponsored press law research and drafting projects.<sup>79</sup> However, this preliminary drafting work came to an abrupt end in the political crack-down that followed the suppression of the Tiananmen demonstrations in 1989, when public debate and academic research regarding the press law was firmly stifled. It was not until the late 1990s that careful discussion of media law reform resumed in academic and official circles.<sup>80</sup> Recently, the Legislation Commission (*Fazhi Gongzuo Weiyuanhui*) of the NPC Standing Committee has sponsored research on press law matters, but actual drafting on the law has apparently yet to resume.<sup>81</sup>

The press law project has become something of a holy grail for many reform-minded journalists and academics. There is, however, little consensus on the scope, content, and timing for this proposed legislation. For some, the press law represents an opportunity to bring comprehensive order and greater certainty to the principles governing the media and opening the way to greater

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<sup>77</sup> 1990 State Council, BAOSHOU GUOJIA MIMI FA SHISHI BANFA (Procedures for the Implementation of National Secrets Law).

<sup>78</sup> See e.g., 1997 ADMINISTRATION OF PUBLICATION REGULATIONS, *supra* note 51, at §§25, 26, and 45; see also 1992 State Secrets Bureau, Central Party Foreign Propaganda Group, State Press and Publications Bureau, Ministry of Radio, Film and Television, XINWEN CHUBAN BAOMI GUIDING (Rules on the Protection of Secrets in News and Publishing).

<sup>79</sup> See, e.g., Zhang Ximing, *Shiba Nian Fengyu Jiancheng Xinwen Fa Hu zhi Nanchu*, ZHONGGUO ZHENGZHI TIZHI GAIGE WENTI BAOGAO [REPORT ON ISSUES IN THE REFORM OF CHINA'S POLITICAL STRUCTURE] 265 (Liu Zhifeng ed., 1999).

<sup>80</sup> See *id.*

<sup>81</sup> See interviews, Beijing 2000 and 2001.

freedom of the press.<sup>82</sup> Others see the issue not in terms of freedom of expression, but as a means of protecting the privileges and authority of the media in relation to other elements of the Party-state.<sup>83</sup> Even those who share objectives for the press law often disagree on the timing for legislation. While some believe that a press law is urgently needed to expand media freedoms, others argue that a press law adopted in current conditions would merely cement existing restrictions and regulatory discretion.<sup>84</sup>

Given the rapid pace of change in the Chinese media, it seems unlikely that the Party will achieve a consensus on the content or appropriate timing for a press law anytime soon. The nature of the press law debate itself has shifted under the impact of commercialization as economic issues have become as important as political and institutional ones.<sup>85</sup> In particular, a growing awareness of the potential for foreign involvement in the domestic media has sharpened awareness that China is no longer isolated from the global media industry. As a result, the structure of the entire media sector is changing as the government makes determined efforts to build regional, and now national, media organizations to develop and defend the domestic market.<sup>86</sup> There is, therefore, some force to the argument that the dust needs to settle before press legislation can be contemplated.

The importance of the Press Law project can also be over estimated. There is, firstly, an important difference between the Chinese and English terminology. In China, the law is usually described as a "*xinwen fa*" which literally means a "news law." However, Chinese and western writers usually refer to it as the "press law" in English, which is only accurate to the extent that the term "press" in English is sometimes used to refer to the news media generally. The other common use of the word "press" in English to mean the print media, is entirely misleading.<sup>87</sup> The *xinwen fa* or press law project is intended to cover the mass media in general with a strong emphasis on the gathering, processing, and publication of news and information by the media. Any law designed spe-

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<sup>82</sup> See *id.*

<sup>83</sup> See *id.*

<sup>84</sup> See *id.*

<sup>85</sup> See ZHANG XIMING, *supra* note 79, at 270.

<sup>86</sup> Regional press groups are now well established across China. The government has also approved the formation of national press groups as well as the creation of a national book publishing group. The State Administration of Radio, Film and Television has announced parallel moves to consolidate control of China's broadcast and cable television within a national, state owned, corporate group. Dai Chunrong, *Restructuring the Broadcast Industry*, CHINA ECON. TIMES, Nov. 30, 2001, at 2.

<sup>87</sup> See Wei, *supra* note 9, at n.1.

cifically to address print media issues is likely to be called a "publication law" (*chuban fa*).

Second, the legal and political significance of a press law adopted by the National People's Congress will depend on the future direction of law reform in China. At present, NPC legislation is typically used to settle major principles of law already partially developed through the application of regulations and administrative action or, much less often, through the resolution of cases in the courts. NPC laws are intentionally stated in general language and are open to considerable interpretative flexibility are therefore rarely determinative of legal issues.<sup>88</sup> In these circumstances, the adoption of a press law is likely to be more of a symbolic milestone than the creation of an effective legal instrument. If enacted, it would serve more as a point of reference in legal and political argument than as a determinative instrument creating precise rights and obligations.

There can be little realistic expectation that a national press law would provide an effective means of implementing China's constitutional guarantee of freedom of expression. At present, the constitution is not enforceable through the courts and has little practical relevance in Chinese law, although there are tentative signs of a movement towards direct enforceability.<sup>89</sup> China's constitution is therefore a largely political statement of policies, general principles and goals.<sup>90</sup> The NPC could, in principle, enact a law to establish justiciable principles regarding freedom of the press,<sup>91</sup> but the actual interpretation of such a politically sensitive law would inevitably remain in the hands of the Party's media authorities.<sup>92</sup>

Third, the press law debate is also an argument about institutional power. The long established role of the media as a mouth-

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<sup>88</sup> See CORNE, *supra* note 74.

<sup>89</sup> The question of direct application of the constitution has arisen in several recent cases that appear to test the accepted proposition that China's constitution has no direct effect. See, e.g., the 2001 case of Qi Yuling decided by the Shandong Higher Court, in which the Supreme People's Court appeared, in a terse direction to the Shandong court, to accept an link between the breach of a civil right and the breach of a constitutional right.

<sup>90</sup> See DON CLARKE, PUZZLING OBSERVATIONS IN CHINESE LAW: WHEN IS A RIDDLE JUST A MISTAKE, STUDIES IN CHINESE LAW: ESSAYS IN HONOR OF PROFESSOR JEROME A. COHEN, (C. Stephen Hsu ed., 2002).

<sup>91</sup> Some media related laws and regulations do refer to constitutionally protected principles. See, e.g., 1997 State Council Administration of Publication Regulations, *supra* note 51, at §5 (refers to the right to freedom of publication (*chuban ziyou*) and to related obligations to respect the law and not to damage interests and rights of others). However, the interpretation of these constitutional principles is effectively a matter of administrative discretion.

<sup>92</sup> See Randy Peerenboom, *Let One Hundred Flowers Bloom, One Hundred Schools Contend: Debating Rule of Law in China*, 23 MICH. J. INT'L L. 471 (2002).

piece for the Communist Party has endowed the principal media organizations with a quasi-official status.<sup>93</sup> However, the relationship of the media with other arms of the Party-state is now in flux and its status is under pressure. Many editors and journalists hope that the law will confirm the special status of the official media, including their rights to investigate, interview, and report.<sup>94</sup> In particular, the law is expected to settle the difficult relationship between the media and the courts, in which the rules governing court reporting are unresolved. The press law is also expected to address the question of media ownership and control. The Party has so far resisted pressure to approve minority private or foreign investment in the media,<sup>95</sup> but the media's growing need for capital investment has made this policy difficult to enforce. Without a political consensus within the Party on how to resolve the issues of status and ownership, there is no basis for a legislative solution.

In any event, the absence of a national press law has not left a regulatory vacuum. Over the past two decades, the Party-state has amassed a patchwork of rules and procedures that collectively govern all aspects of newspaper, magazine, and book production and distribution. Press regulatory law is currently based on two major State Council regulations adopted in 1997: the Administration of Publication Regulations (*Chuban Guanli Tiaoli*) and the Administration of the Printing Industry Regulations (*Yinshuaye Guanli Tiaoli*). The State Council adopted these and other regulations as part of its mid 1990's drive to establish a national regulatory framework for the media through the use of its own secondary legislative powers.<sup>96</sup> However, the 1997 publication and printing regulations did not sweep aside the pre-existing law, such as the GAPP's own 1988 Provisional Regulations on the Administration of Periodicals

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<sup>93</sup> See ZHAO, *supra* note 8, at 16-18.

<sup>94</sup> See interviews, Beijing, 2000 and 2001. The concept of freedom of the press in China is heavily influenced by the related concept of "public supervision" (*yulun jian du*). Broadly speaking, this term simply refers to the right of Chinese citizens to criticize or comment on actions of the state (a principle that is enshrined in Article 41 of the constitution). This right is of course also subject to the leadership and guidance of the Party, which determines the acceptable targets and limits of such criticism. In practice, however, *yulun jian du* refers to the role of the media in supervising and criticizing government actions on behalf of the people. As such, the concept of public supervision has provided a stronger intellectual and ideological basis for media powers than afforded by the more general idea of freedom of press. As quasi-governmental bodies closely linked to the Communist Party, China's major media organizations contend that they have an institutional privilege and obligation to investigate and scrutinize other branches of the Party-state. *Yulun jian du* provides a platform for these claims.

<sup>95</sup> See China News Service, *supra* note 47.

<sup>96</sup> These include the 1996 *Dianying Guanli Tiaoli* [Administration of Film Regulations] and the 1997 *Guangbo Dianshi Guanli Tiaoli* [Administration of Radio and Television Regulations].

(*Qikan Guanli Zanxing Guiding*) and 1990 Regulations on the Administration of Newspapers (*Baozhi Guanli Tiaoli*). These important regulations remain in force and now supplement the 1997 State Council regulations. But while the combined State Council and GAPP press regulations have created a national regulatory framework for the press, they do not articulate the basic rights and obligations of the press in relation to government or civil society.

### III. REGULATING PUBLISHERS

#### A. *Regulating the Editorial Process*

In a country as large and populous as China, absolute control over the publishing industry has never been a realistic goal for the government. Even in its most repressive and intrusive periods, the government of the PRC has probably never eradicated illegal local printing and clandestine distribution networks. In comparison to films and television programs, books and periodicals are relatively easy to produce in local printing workshops. Consequently, enforcement of content rules, from copyright through obscenity to sedition, depends of the willingness and ability of various local officials to detect and report suspect publications. Indeed, in many circumstances, it is local, state-owned enterprises that engage in illicit publishing. The central government is therefore engaged in a constant struggle to maintain the integrity of the national control system and the commitment of countless key personnel. In 1991, for example, the central authorities expressly targeted the lax enforcement of press controls, declaring that regulatory measures were incomplete and the implementation of existing regulations was often slipshod.<sup>97</sup> The same directive denounced the lenient treatment of offenders and the failure of local officials to deal with the problem with sufficient seriousness, particularly the threat posed by local networks of publishers, printers, and distributors.

China's media regulatory controls are broadly similar to those used elsewhere in the world. In general, a state cannot effectively regulate an industry unless it exerts some physical control over critical links in the production and distribution chain.<sup>98</sup> In the press

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<sup>97</sup> 1991 Supreme People's Court, Supreme People's Procuratorate, GAPP, Ministry of Public Security and State Administration of Industry and Commerce, GUANYU JIN YI BU YANLI DAJI FEIFA CHUBAN HUODONG DE TONGZHI (Notice concerning further Hard Strikes against Illegal Publication Activities).

<sup>98</sup> Even the Internet, which at first appeared to be beyond practical state control, is now acknowledged to be vulnerable to increasingly sophisticated government use of blocking, filtering, and tracing technology as well as government controls over advertising and subscription revenue. See generally *Putting it in its Place*, THE ECONOMIST, Aug. 11, 2001, at 18.



sector, the traditional organization of production invited the creation of regulatory distinctions between editorial decision-making, printing, and distribution. The imposition of separate legal responsibility for each of these functions also tends to reinforce their technical and organizational distinctiveness. In China, press regulation is clearly driven by a keen appreciation of the need to control these critical processes. Indeed, Party directives stress that the entire press production chain is a series of critical links (*huanjie*) that must be kept under tight government control.<sup>99</sup>

Intensive control of the editorial process is the cornerstone of Chinese press regulation. In 1983, the central Party issued a major policy statement on the reform of the publishing sector that underscored the critical importance of the editorial function. It declared that "editorial work is the central link in the entire publication process; it is work of a highly political, intellectual, scientific and specialist nature."<sup>100</sup> To ensure that editorial work can be maintained as a distinct formal activity, the regulatory system formalizes this function in the legal concept of a "publication unit" (*chuban danwei*).<sup>101</sup> Each publication unit must be approved by relevant press and publications authorities before it can lawfully operate.<sup>102</sup> Any person or organization that publishes a newspaper, magazine, newsletter, or book, without formal approval as a publication unit, or without acquiring other exceptional authorization, is therefore guilty of an act of "illegal publication."<sup>103</sup>

The 1997 Administration of Publication Regulations require that every publication unit be established by an approved state affiliated sponsor (*zhuban danwei*).<sup>104</sup> The sponsor need not be a government department, but must be a public institution of some

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<sup>99</sup> 1983 Central Committee, State Council, GUANYU JIAQIANG CHUBAN GONGZUO DE JUEDING (Decision concerning Improvement of Publication Work).

<sup>100</sup> *See id.*

<sup>101</sup> *See* ADMIN. OF PUB. REGULATIONS, *supra* note 51, at §8

All publications including newspapers, periodicals, books, audiovisual products, electronic publications must be published by a publication unit. In these regulations, publication work unit means a newspaper publisher, periodical publisher, book publisher, audiovisual publisher or publisher of electronic publications. In the case of a legal person that publishes newspapers or periodicals, but which does not establish a newspaper or periodical publisher, the publisher will be deemed to be the editorial department of the newspaper or periodical.

<sup>102</sup> *See* ADMIN. OF PUB. REGULATIONS, *supra* note 51.

<sup>103</sup> 1987 State Council, GUANYU YANLI DAJI FEIFA CHUBAN HUODONG DE TONGZHI (Notice concerning Severe Strikes against Illegal Publication Activities) ((1) aside from publication units authorized by the state, any other unit or individual who publishes, for general distribution, books, periodicals or audiovisual materials is engaging in illegal publication activities; and, (2) non publication units that publish non commercial books and periodicals for internal use without state authorization are engaging in illegal publication).

<sup>104</sup> *See* ADMIN. OF PUB. REGULATIONS, *supra* note 51, at §11.

kind. In principle, the sponsor bears ultimate responsibility for the content of any materials published by the publication unit.<sup>105</sup> The regulations also require that the sponsor must be supervised by an approved government department (*zhuguan bumen*).<sup>106</sup> Nonetheless, interviews with editors suggest that these basic regulatory requirements are by no means uniformly applied.<sup>107</sup> While every publisher must hold a license issued by the GAPP or a provincial level press and publications bureau, major publishers operating under direct Party control work, to a large extent, under self regulation.

Publication regulations absolutely prohibit the unapproved transfer of rights of publication to any other party.<sup>108</sup> Where the GAPP has discovered explicit or covert transfers of editorial decision making powers into the hands of non-licensed bodies or individuals, it has frequently suspended or revoked publication licenses.<sup>109</sup> In January 2000, for example, the GAPP announced the punishment of twenty-seven newspapers for various offences, including several for contracting out control over the newspaper to unauthorized individuals.<sup>110</sup> In serious cases, the state public security organs have brought the full force of the criminal law to bear on illegal publishers.<sup>111</sup>

Yet, despite these prohibitions and sanctions, the illicit transfer of editorial control is a persistent problem, particularly where it is disguised through apparently innocent contractual links with other parties.<sup>112</sup> The government's policy of fostering a dynamic, innovative, and economically efficient publishing industry has encouraged innovative ways of raising capital, acquiring technology and skills, and increasing revenue. Yet these changes have made it

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<sup>105</sup> It is common practice for the sponsoring organization to pre-vet any publication the publication unit plans to publish, including every issue of a newspaper or magazine. Interview, Beijing, 2001.

<sup>106</sup> See ADMIN. OF PUB. REGULATIONS, *supra* note 51, at §10 (sets out conditions for the authorization of a "publication unit" (*chuban danwei*), including the approval of a sponsor, which is under the supervision of an approved government department).

<sup>107</sup> Interviews, Beijing, Shanghai and London, 2001.

<sup>108</sup> In the case of newspapers, see Provisional Administration of Newspapers Regulations, *supra* note 54, at §24.

<sup>109</sup> See, e.g., ZHAO, *supra* note 8, at 65.

<sup>110</sup> See Ming Pao, *China Punishes 27 Newspapers for Violations*, Jan. 17, 2000, available at <http://www.chinaonline.com> (last visited Oct. 4, 2002); see also Vivien Pik-Kwan Chan, *Beijing Orders Purge of Media*, SOUTH CHINA MORNING POST, June 27, 2001, available at <http://www.scmp.com> (last visited Oct. 4, 2002).

<sup>111</sup> See, e.g., 1991 Notice concerning further Severe Strikes against Illegal Publication Activities, *supra* note 103 (calling for a strike hard campaign against book merchants who use forged publication documents or otherwise falsely use the name of authorized publication units).

<sup>112</sup> Interview, Shanghai, 2000.

more difficult to enforce the principle of Party control or supervision of editorial decision making. In the book trade, for example, the government has struggled for many years to ensure that publishers do not allow their business partners to acquire covert editorial control. In 1988, the GAPP and the CPD jointly approved cooperative educational publishing in an effort to increase the quantity and quality of educational books. But the following year, the central government ordered a rectification of the cooperative publishing system, declaring that cooperative publishing units were ignoring editorial direction from the licensed publisher.<sup>113</sup>

The Party-state's ability to control editorial decision making would of course count for nothing if China did not also tightly restrict the distribution of foreign publications and also ban foreign ownership or control of publishers.<sup>114</sup> No foreign company or individual may therefore invest directly or indirectly in a Chinese publisher. The government has, however, permitted a small, but growing, number of joint ventures between Chinese and foreign publishers where the Chinese partner clearly retains ultimate editorial control.<sup>115</sup>

Whether these controls on foreign investment are particularly effective is open to doubt. There are certainly many anecdotal reports of illicit foreign and private investment in the Chinese media.<sup>116</sup> Direct mail distribution of periodicals from Hong Kong and elsewhere has also created a small chink in the armor of controls over the distribution of foreign publications.<sup>117</sup> Yet the government is clearly not ready to abandon the fundamentals of its press sys-

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<sup>113</sup> See 1989 GAPP, GUANYU ZAI QUANGUO CHUBANSHE ZHENGDUN XIEZUO CHUBAN, DAIYIN DAIFA DE TONGZHI (Notice concerning a National Rectification by Publishers of Cooperative Publishing and Delegated Printing and Distribution). In 1991, the GAPP reiterated that registered publishers must retain control of every link in the publication chain, see 1991 GAPP, GUANYU SUOXIAO XIEZUO CHUBAN FANWEI DE GUIDING (Rules concerning the Reduction of the Scope of Cooperative Publishing).

<sup>114</sup> See LYNCH, *supra* note 1, at 132-134.

<sup>115</sup> The principles for cooperative sino-foreign publishing were set as early as 1981 in the State Council approved *Jiaqiang Duiwai Hezuo Chuban Guanli de Zanxing Banfa* (Provisional Rules for the Strengthening of Cooperative Publishing with Foreign Parties). The American based IDG company has had noted success in Chinese publishing joint ventures, building its Chinese version of 'Computerworld' into a leader in national advertising revenue: *IDG Looks to Tie the Publishing Knot with China*, INTERNATIONAL FINANCE NEWS [GUOJI JINRONG BAO], Apr. 2, 2001, available at <http://www.chinaonline.com> (last visited Oct. 4, 2002). See James Harding, *China Relaxes Red Tape on the Written Word*, FIN. TIMES, Dec. 10, 1999, at 14; see also Loretta Leung, *Tom.com a Potential Buyer, Says Mainland Weekly Magazine*, SOUTH CHINA MORNING POST, Jan. 24, 2002, available at <http://www.scmp.com> (last visited Oct. 4, 2002).

<sup>116</sup> Interview, Shanghai, 2000.

<sup>117</sup> See *Foreign Firms Skirt China IT Investment Ban*, CHINA INFORMATION NEWS [ZHONGGUO XINXI BAO], Nov. 4, 2000 available at <http://www.chinaonline.com> (last visited Oct. 4, 2002).

tem, regardless of the difficulties of enforcement. In 2002, the GAPP reportedly issued new rules on the financing of domestic media groups.<sup>118</sup> In this directive, the government ordered a rectification of illegal private and foreign financing of newspapers, radio stations and television stations. Under these rules, private and foreign investors are restricted to advertising and distribution and are prohibited from acquiring any interest in the publisher's editorial unit.<sup>119</sup> Severe restrictions on foreign investment in publishers are also fully consistent with China's obligations under its recent accession to the WTO. Chinese obligations under the GATT, GATS and other WTO agreements do not oblige the government to open its media sector to foreign investment, although supplementary services, such as advertising and distribution, are affected.<sup>120</sup>

### B. *Newsletters, Newspapers, and Books*

The concept of approved publication units was a simple device in earlier times to maintain Party control over the print media. But the increasing complexity of the Chinese economy has forced the government to introduce intricate secondary regulations to reinforce the special status of the publication unit. Non-press businesses have, for example, attempted to circumvent publication restrictions by publishing periodicals disguised as limited circulation "internal newsletters." The government has acknowledged the importance of genuine "internal publications" for large enterprises and organizations, but it has also imposed strict limits on their circulation and content. In 1994, the CPD, GAPP, and other government bodies issued a joint notice criticizing, "some leading comrades who have failed to recognize the dangers of not distinguishing between internal and external publications."<sup>121</sup> This notice instructs propaganda and publication authorities to ensure that these internal publications are not used as a cover for the illicit publication of open circulation periodicals.<sup>122</sup>

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<sup>118</sup> See *New Rules Dictate Exit Strategy for Foreign Funds in Media*, HONG KONG COMMERCIAL DAILY, Jan. 22, 2002, available at <http://www.chinaonline.com> (last visited Oct. 4, 2002).

<sup>119</sup> See *China Continues Ban on Foreign, Private Funding of News Media*, *supra* note 38.

<sup>120</sup> See GATT Ministerial Conference, *Report of the Working Party on the Accession of China*, WT/MIN(01)/3, including the addendum *Schedule of Specific Commitments on Services*, WT/MIN(01)/3/Add.2.

<sup>121</sup> Central Propaganda Department, 1994 GAPP, Ministry of Posts and Telecommunications, State Administration of Industry and Commerce, GUANYU JIAQIANG NEIBU BAOKAN GUANLI DE TONGZHI (Notice concerning the Strengthening of Internal Publication Administration). This notice followed 1990 GAPP, NEIBU BAOKAN GUANLI YUANZE (Principles for the Administration of Internal Publication Administration).

<sup>122</sup> Notice concerning the Strengthening of Internal Publication Administration, *id.*, at §2.

The government's regulatory response to the growth of newsletters and similar limited circulation periodicals was to license them. Under regulations issued in 1990, publishers of "informal newspapers" must obtain an "internal newspaper or periodical registration permit."<sup>123</sup> These and other regulations emphasize the non-commercial nature and limited circulation of these publications.<sup>124</sup> GAPP regulations state that the permit is only available for non-commercial booklets and newsletters distributed strictly within a trade or network for the purpose of guiding work or exchanging experience and information.<sup>125</sup> Any subscription, distribution, display, or sale to the general public as well as the pursuit of any other commercial activities connected to the publication, including advertising, is prohibited.<sup>126</sup> A licensed internal publication also cannot be called a newspaper, magazine, or any similar name.<sup>127</sup>

This anxious demarcation of the distinction between publicly available periodicals and internal publications is intended to safeguard content controls over the mass media. Looser control over the content of newsletters and similar publications is tolerable so long as the potential harm they may cause to the Party's policies is limited to particular enterprises or organizations. The boundary is reinforced by the rule that regular newspapers are prohibited from using content taken from internal publications.<sup>128</sup> Yet these complex distinctions and supporting rules are clearly open to skilful avoidance.

Newspapers that are only open to a restricted class of purchasers or subscribers are not in the same category as internal newsletters. These restricted newspapers may contain politically or otherwise sensitive articles that are intended to inform debate within government and other institutions, but are judged inappropriate for mass consumption.<sup>129</sup> The 1990 Newspaper Regulations require that any newspaper open to general (*gongkai*) or restricted (*neibu*) sale or subscription in China must be approved and regis-

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<sup>123</sup> See Provisional Regulations for the Administration of Newspapers, *supra* note 54, at §6.

<sup>124</sup> See, e.g., Notice concerning the Strengthening of Internal Publication Administration, *supra* note 110.

<sup>125</sup> 1997 GAPP, NEIBU ZILIAOXING CHUBANWU GUANLI BANFA (Rules for the Administration of Published Internal Reference Materials).

<sup>126</sup> Provisional Regulations for the Administration of Newspapers, *supra* note 54, at §6; see also *id.* at §6.

<sup>127</sup> See *id.* at §5.

<sup>128</sup> See *id.* at §27.

<sup>129</sup> Interview, Beijing, 2000.

tered as an "official newspaper" (*zhengshi baozhi*).<sup>130</sup>

Newspaper publication is the most protected area in the print media. It is not sufficient to hold a mere license as a "publication unit" to publish a newspaper. Each newspaper is separately licensed and the publication of an unlicensed newspaper constitutes an act of illegal publication, punishable as an administrative or criminal offence.<sup>131</sup> Without formal approval and registration, a newspaper cannot receive a national periodical number or gain legal access to the GAPP-administered national unified printing system.<sup>132</sup> Nor can the publisher apply to the State Administration of Industry and Commerce for a permit to sell advertising space.<sup>133</sup>

The publisher of an authorized newspaper cannot, moreover, rely on its license to publish whatever articles might appeal to readers. The specific content range of every newspaper is subject to prior approval.<sup>134</sup> Once registered, a publisher cannot unilaterally alter the newspaper's registered purpose, editorial line or specialized area of work.<sup>135</sup> Similarly, the publisher must seek the approval of press and publication authorities to exceed its maximum copy numbers. As noted above, the enforcement of these rules depends on internal controls over senior staff as much as it does on effective enforcement by state regulatory bodies. While newspapers are legally required to support the Communist Party and its policies,<sup>136</sup> the Party's media authorities hold the power to approve senior personnel appointments within a paper to ensure its loyalty.

Book production presents its own special problems for the Chinese government, which has waged an inconclusive battle against illicit book publishing for the past twenty years. Illicit newspapers and other periodicals are, by comparison, easily detected if a publisher genuinely attempts to maintain a regular publication. Regularity in publication and distribution inevitably makes detection inevitable. But an illicit book publisher or dealer can dispose of the entire product in a single, wholesale transaction. Moreover, the product itself is reasonably durable and portable.

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<sup>130</sup> See Provisional Regulations for the Administration of Newspapers, *supra* note 54, at §3.

<sup>131</sup> See *id.* at §24.

<sup>132</sup> See *id.* at §3.

<sup>133</sup> See *id.* at §46.

<sup>134</sup> 1989 Central Committee General Office, State Council General Office, GUANYU ZHENGDUN QINGLI SHU BAKAN HE YINXIANG SHICHANG YANLI DAJI FANZUI HUODONG DE TONGZHI (Notice concerning the in the Rectification and Re-ordering of the Book, Periodical and Audiovisual Markets and the Strike Hard against Criminal Activities).

<sup>135</sup> See Provisional Regulations for the Administration of Newspapers, *supra* note 54, at § 25.

<sup>136</sup> See *id.* at §7.

The government uses the same publication licensing system for both books and periodicals. Book publishers must also apply for registration as publication units under the 1997 Administration of Publication Regulations, requiring both a state-affiliated sponsor and a supervising government department. Similarly, book publishing licenses set the content areas for publication and the number of new books that may be published each year. As an anti-evasion measure, “book publishing” is also defined quite broadly to ensure that book licensing requirements are not evaded through the publication of other printed materials. For example, a company or other organization that is not a registered book publisher is also prohibited from publishing or distributing calendars, printed pictures and photos.<sup>137</sup>

### C. *Book and Periodical Numbers*

Control over publishers is not limited to the authorization and registration of the publishing entity. Newspapers, periodicals and books are also registered separately through a joint national ISBN and ISSN periodical and book numbering system.<sup>138</sup> This system, supervised by the GAPP, not only provides a means of classifying and locating information, but also ensures, in principle, that every published copy can be traced back to its publisher. The national numbering system therefore presents an additional obstacle to illegal publishers, as they cannot openly sell or distribute their products without these essential assigned numbers.

The book and periodical numbering system has proven to be extremely difficult to enforce.<sup>139</sup> Despite regular crackdowns on violators and improvements to the system, its inherent complexity and rigidity has provided a host of opportunities for evasion. Illegal publishers may use entirely bogus numbers or, more often, genuine numbers obtained unlawfully from registered publishers.<sup>140</sup> The Central Propaganda Department has frequently underlined the importance of enforcing the book and periodical numbering system. In 1993, for example, the CPD issued a notice to enforcement authorities declaring that the illicit use of legitimate numbers leads to the publication of books containing “serious political mis-

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<sup>137</sup> Central Propaganda Department, 1992 GAPP, State Administration of Industry and Commerce, Ministry of Supervision, Ministry of Finance, State Tax Administration, GUANYU YANJIN FEI TUSHU JINGYING DANWEI FAXING TUSHU DE TONGZHI (Notice concerning the Prohibition on Non-Book Enterprises from Publishing Books).

<sup>138</sup> See LYNCH, *supra* note 1, at 86-87.

<sup>139</sup> See *id.* at 159.

<sup>140</sup> Lynch discusses the problems of covert arrangements between licensed publishers and illegal publishers and the use of false book numbers. See *id.* at 205.

takes, disclosure of national secrets, damage to ethnic unity, violations of national foreign policy, and feudal superstitions and pornography."<sup>141</sup>

The current numbering system was established in 1987. In the preceding years, the Party's priority was to stimulate book production and improve distribution systems so as to alleviate the national shortage of books and periodicals. Yet, when faced with student unrest and political instability in 1987, the government responded in part with a major reform of its controls over the print sector. It not only created the GAPP as a separate state regulator,<sup>142</sup> but also brought all pre-existing book and periodical numbering schemes together into a joint national system.<sup>143</sup> This numbering system now plays a significant role in the control of print production and distribution. The unauthorized transfer of book and periodical numbers is, for example, now prohibited by the comprehensive 1997 Administration of Publication Regulations.<sup>144</sup> It is also a criminal offence to infringe this prohibition in a serious or aggravated manner.<sup>145</sup>

For security and economic reasons, the government has also used the book and periodical numbering system to limit the number of new books and periodicals published each year.<sup>146</sup> On one level, this policy seems to show an unresolved conflict between the government's long-standing public order and security concerns and its newer economic objectives. The government's media control concerns apparently favor tighter restrictions on publication, while its economic and educational objectives apparently favor expanded production. More books, newspapers, and magazines stretch the capacity of the regulatory system, but, as a general matter, they also support economic growth and the achievement of social and cultural goals. Yet, in China's heavily protected media markets, regulators may also wish to restrict publication selectively

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<sup>141</sup> Central Propaganda Department, 1993 GAPP, GUANYU JINZHI "MAIMAI SHU HAO" DE TONGZHI (Notice concerning the Prohibition on the "Buying and Selling of Book Numbers"). Wei Yongzheng discusses the range of criminal and administrative measures specifically directed at those who illicitly provide book or periodical numbers to other parties for the production of pornographic publications. *See* WEI, *supra* note 9, at 127.

<sup>142</sup> *See id.* at 317.

<sup>143</sup> *See id.*

<sup>144</sup> *See* Administration of Publication Regulations, *supra* note 51, at §21; *see also* 1997 GAPP, GUANYU YANGE JINZHI MAIMAI SHUHAO, KANHAO, BANHAO DENG WENTI DE RUOGAN GUIDING (Certain Regulations concerning the Strict Prohibition on the Buying and Selling of Book Numbers, Periodical Numbers and Edition Numbers and Other Issues).

<sup>145</sup> Notice concerning further Hard Strikes against Illegal Publication Activities, *supra* note 97.

<sup>146</sup> *See* LYNCH, *supra* note 1, at 205, on the GAPP's efforts to curtail the trade in book numbers following the 1994 media rectification campaign.



to protect favored publishers from competitors and market volatility.<sup>147</sup> In 1994, for example, the government ordered a 10% reduction in publications, ostensibly to raise quality and rationalize resources.<sup>148</sup> Yet, this directive also provided that production reductions and ceilings could be waived for approved publication units.<sup>149</sup>

#### IV. REGULATING PRESS CONTENT

##### A. *Substance and Procedure in Content Rules*

All governments, regardless of their political character, face major difficulties when creating and applying rules to govern media content. Policy conflicts and inconsistencies are simply unavoidable given the range of policy areas that affect media content in some way, including national security, intellectual property, and consumer protection, to name but a few. Countries like China that have comparatively restrictive and intrusive media regimes, face even greater difficulties arising out of the larger number of content issues they seek to control. There is also an obvious policy tension between the government's efforts to stimulate growth in the media sector to achieve its economic, educational, and cultural goals and its efforts to limit the structure and pace of development to protect its content control systems.

Aside from external policy conflicts, there are also any number of internal inconsistencies and rifts to be managed within a specific policy area. In the control of obscene and indecent publications or programs, for example, the freedom to create images or literature for personal or commercial purposes must be weighed against the harm or offense they may cause to readers or viewers. These, like many other content issues, involve qualitative judgments that are not easily reduced to clear, precise rules. Indeed, when the regulatory rules are too precise, the law is inflexible and prevents the necessary balancing of the complex values and interests involved in each case. To give a different example, the protection of a right to privacy that prevents the unauthorized disclosure of personal information necessarily involves the weighing of the individual's interest in privacy against the public's interest in the disclosure of the information in question.<sup>150</sup> In many legal systems,

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<sup>147</sup> Interview, Beijing, 2000.

<sup>148</sup> 1994 GAPP, GUANYU DUI SHUHAO SHIYONG ZONGLIANG JINXING HONGGUAN KONGZHI DE TONGZHI §3 (Notice concerning the Implementation of Comprehensive Controls on Book Number Utilization Rates).

<sup>149</sup> *See id.*

<sup>150</sup> In Britain, the Human Rights Act 1998 has introduced the right to privacy enshrined

these conflicts of values and interests are decided by reference to general principles, as no set of precise rules could capture all the circumstances in which the public interest should take priority. Yet, on the other hand, when principles are expressed in broad, flexible language, the door is left open to arbitrary, subjective decision making and legal uncertainty for the media.<sup>151</sup> The management of adjudicatory discretion is therefore a major problem in media law.

In liberal democracies, the problem of channeling and limiting the necessary discretion of media regulators is typically addressed through the institutions and procedures in which content rules are defined and applied.<sup>152</sup> Although every national media system is unique, most democratic countries have adopted some form of independent regulatory agency. These agencies, in principle, operate at arms length from the political pressures of government.<sup>153</sup> Their discretion is also typically limited in a variety of ways, including internal procedural requirements and external recourse to the courts as well as accountability to the executive and legislative arms of government.<sup>154</sup> In theory, this model provides the foundations for impartial regulatory control in which regulators are compelled to consider relevant, competing values and interests, including the separate elements that together make up the right to freedom of expression.<sup>155</sup> The principles of liberal demo-

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in Article 8 of the European Convention on Human Rights directly into United Kingdom law. ANDREW NICOL, GAVIN MILLAR & ANDREW SHARLAND, *MEDIA LAW AND HUMAN RIGHTS* 88-95 (2001). The tension between privacy rights and the media's responsibility to disclose information to the public has consequently come to the fore in a series of important cases before the English courts. *See, e.g.*, the English case of *A v. B Plc*, [2002] EWCA Civ 337, [2002] 1 FLR 1021 (Eng. C.A.).

<sup>151</sup> This is readily seen in efforts by national governments to create clear legal prohibitions covering the vast range of images and words that might be perceived as obscene or indecent by ordinary people in different contexts. On the difficulties in creating and interpreting a legislative standard for obscenity in Britain, *see* ROBERTSON, *supra* note 65, at 155-89.

<sup>152</sup> Each of these regulatory bodies is a unique consequence of national political and industrial history, but they all broadly share similar features as liberal democratic, quasi independent media regulators. They include the Federal Communications Commission in the United States, the Independent Television Commission and the Radio Authority in Britain, and the Conseil Supérieur de l'Audiovisuel in France.

<sup>153</sup> The nature of this arm's length varies from country to country, but the principles are now well established in the liberal democratic world. *See, e.g.*, *Recommendation on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector* (2000), available at <http://cm.coe.int/ta/rec/2000/2000r23.htm> (last visited Oct. 4, 2002).

<sup>154</sup> On accountability mechanisms for media regulators in Britain, *see* GIBBONS, *supra* note 72, at 46-54; and, in the United States, *see* KENNETH CREECH, *ELECTRONIC MEDIA REGULATION* 79, 141-42 (2000).

<sup>155</sup> On the bundle of values and interests protected by the principle of freedom of expression, as articulated by the European Court of Human Rights, *see* NICOL ET AL., *supra* note 150, at 2-4, 10-31.

cratic media regulation therefore clearly extend beyond impartiality to include accountability, transparency, and predictability.

The Chinese Communist Party rejects a liberal democratic view of freedom of expression and media governance in general.<sup>156</sup> Even without probing that rejection, however, important questions about press regulation in China can be raised on the basis of the goals and standards officially embraced by the Party. The government has committed itself to the creation of a legal and regulatory system that is fair and free of corruption and that fosters a secure and predictable environment for economic growth and investment.<sup>157</sup> Nonetheless, comparisons between Chinese and western models of press content regulation, even on this limited basis, remain difficult. Not only does China lack similar quasi-autonomous regulatory bodies, but its rules governing press content are also spread across its blended criminal-administrative regulatory system. It is therefore difficult to isolate regulatory decisions within specific institutions or procedures.

The criminal law provides an overarching legal framework for the punishment of serious violators of rules on proscribed content. It contains many provisions that directly or indirectly apply to the press, including the endangerment of national security and the publication of obscenity, as well as the disclosure of state secrets (discussed above).<sup>158</sup> The concept of sedition is now dealt with under the broadly framed offense of "harming state security," which was introduced in 1997 to replace the old offense of "counter revolution."<sup>159</sup> These new offenses include advocating or inciting the splitting of the country, the overturning of the government, spreading ethnic hatred or prejudice, and resisting the due implementation of the law.<sup>160</sup> The 1997 amendments to the criminal law also extended the offence of harming social order (Part VI) to cover the production, sale, or transmission of obscene materials.

There is a close connection between these criminal offences and related prohibitions that are imposed by regulation. The 1997 Administration of Publication Regulations, for example, prohibits

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<sup>156</sup> On the Party's continuing reliance on the "mass propaganda and persuasion" media model, see ZHAO, *supra* note 8, at 4-7; and, on the continuing reluctance of China's leadership to embark on significant political reform, see SAICH, *supra* note 6, at 73-79.

<sup>157</sup> Randy Peerenboom has written extensively on the theoretical and practical significance of the repeated assertions of the Communist Party that China is striving to create a society ruled by law. See, e.g., *Let One Hundred Flowers Bloom, One Hundred Schools Contend: Debating Rule of Law in China*, *supra* note 92.

<sup>158</sup> See Criminal Law, *supra* note 76; see also *id.* at Part II, Chpt. IV, §9 (concerning obscene publications).

<sup>159</sup> See *id.*

<sup>160</sup> See *id.*; see also WEI, *supra* note 9, at 91-92.

the publication of any material that is contrary to the basic principles of the Constitution; injures the unity, sovereignty, or territorial integrity of the country; damages national security, reputation, or interests; incites ethnic splits, violates the customs and traditions of minority groups, or destroys the country's ethnic unity; divulges national secrets; propagates obscenity and superstition or exaggerates violence; damages public morals or national cultural traditions; insults or defames other persons; or contains any other content prohibited by laws and regulations.<sup>161</sup> Other media related regulations or directives contain similar lists of prohibited content.<sup>162</sup>

The repetition of press content prohibitions in both criminal and administrative instruments exposes an important aspect of press law uncertainty in China. In principle, a legal system that strives for transparency, predictability, and coherence will describe a basic offense in reasonably clear language in an authoritative legal instrument. However, the repetition of these prohibited categories in Chinese laws and regulations, in language that is often inconsistent from one regulation to the next,<sup>163</sup> indicates that these instruments are not fundamentally authoritative sources or statements of law. They are, instead, only indications of the intention of a law giving authority that has retained the power to vary their meaning in practice.<sup>164</sup>

This situation is not helped by the government's habit of issuing new, and often more stringent, directives during its periodic crackdowns on media content violators. Following the suppression of the Tiananmen demonstrations in 1989, for example, the cen-

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<sup>161</sup> See Administration of Publication Regulations, *supra* note 51, at 25.

<sup>162</sup> See, e.g., Provisional Regulations for the Administration of Newspapers, *supra* note 54, at §8; see also Administration of Radio and Television Regulations, *supra* note 86, at §22. The GAPP recently issued a directive prohibiting the publication of articles and pictures which negate the leading positions of Marxism, Mao Zedong Thought and Deng Xiaoping Theory; depart from the Party line, principles, and policies; leak state secrets, endanger state security, and harm national interests; run counter to policies towards nationalities and religion, undermine national unity, and affect social stability; give publicity to murder, violence, obscenity, superstition and pseudo science, erroneous political orientation, and vulgarities; spreading rumors, fabricating and disseminating false news, obstructing party and state work; and other offences against propaganda discipline and state publishing and advertising regulations. BBC Worldwide Monitoring, *China: Tabloids Face Tighter Controls*, ZHONGGUO XINWEN SHE (China News Agency), Aug. 8, 2001.

<sup>163</sup> Language discrepancies are to be expected in policy documents, but legal instruments show a similar disregard for consistency. See, e.g., the list of fundamental content prohibitions contained in the Administration of Publication Regulations, *supra* note 51, at §25. Adopted by the State Council in January 1997, it diverges in several clauses, for no apparent reason, from the list of fundamental content prohibitions contained in of the Administration of Radio and Television Regulations (adopted by the State Council a mere seven months later). See *id.* at §32.

<sup>164</sup> On the uses of vague legal language in Chinese media and security controls, see, LINK, *supra* note 41, available at [http://www.nybooks.com/article-preview?article\\_id=15258](http://www.nybooks.com/article-preview?article_id=15258) (last visited Oct. 17, 2002).

tral government initiated a period of intensive media control. In one important directive, Party and state media authorities denounced the publication of “spiritual poison” and “cultural garbage” and declared that “. . . serious problems have arisen in the book, newspaper, periodical, and audiovisual markets; there are more and more books, newspapers, periodicals, and audiovisual products that propagate bourgeois liberalization and make serious political mistakes, while others flood the markets with works filled with pornography, violence, and feudal superstition.”<sup>165</sup> From a legal perspective, these ad hoc instruments only serve to obscure the significance of the principal laws and regulations governing the press.

The control of press content in China works through a combination of prior approval through licensing linked to standards-based regulation. As described above, these content standards or objectives are broadly framed and leave Party and state regulators considerable discretion. For example, the prohibition of obscene publications is generally stated in several national laws and regulations.<sup>166</sup> The GAPP has issued further guidance on what constitutes obscenity<sup>167</sup> and has established a general distinction between obscene and erotic artistic works.<sup>168</sup> These directives also address the effects of obscene and violent media content on children.<sup>169</sup> Nonetheless, these guidelines only set out general concepts and leave government officials considerable discretion to determine what is obscene or indecent and what sanctions are merited in each case.

What is especially distinctive about the application of these standards is the very limited legal basis on which they can be challenged. Under Chinese administrative law, the courts may only

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<sup>165</sup> 1989 Notice concerning the in the Rectification and Re-ordering of the Book, Periodical and Audiovisual Markets and the Strike Hard against Criminal Activities, *supra* note 123. Two years later the Supreme People’s Court, Supreme People’s Procuratorate, GAPP, Ministry of Public Security and State Administration of Industry and Commerce jointly issued the Notice concerning Strikes against Illegal Publication Activities to support a renewed campaign against pornography, feudal superstition, political problematic and reactionary content. *Supra* note 97.

<sup>166</sup> These include the early and still important, 1985 State Council, GUANYU YANJIN YINHUI WUPIN DE GUIDING (Regulations concerning the Strict Prohibition of Obscene Materials).

<sup>167</sup> 1988 GAPP, GUANYU RENDING YINHUI JI SEQING CHUBANWU DE ZANXING GUIDING (Provisional Regulations concerning the Identification of Obscene and Indecent Publications).

<sup>168</sup> 1988 GAPP, *Guanyu CHONGSHEN YANJIN YINHUI CHUBANWU DE GUIDING* (Regulations concerning the Restatement of the Strict Prohibition of Obscene Materials).

<sup>169</sup> *See id.* at §2. Materials which are not obscene but nonetheless have explicit sexual content which will harm the physical and mental health of children must not be published, printed, sold, rented, or stored; *see also* Administration of Publication Regulations, *supra* note 51, at §26 (stating that materials should not contain terrifying, cruel, or other content which damages the physical or mental health of minors).

overturn an administrative decision if the officials concerned have violated their department's regulations or rules.<sup>170</sup> The courts, therefore, have little power to impose any external standard of review on administrative bodies. There is, moreover, no legal basis on which to mount a challenge to a press content decision for an alleged infringement of any fundamental right to freedom of expression.<sup>171</sup> Rights claims are the most potent form of challenge to standards based media regulation. They require the express consideration of specific non-governmental interests and a consequent balancing of the rights of the claimant against the needs of the government in which the state must make a positive case to justify intervention.<sup>172</sup> The potency of rights-based challenges to well established, standards-based media regulation can readily be seen in countries that have introduced judicially enforceable bills of rights.<sup>173</sup>

### B. *Regulating News*

The press regulatory system is intended to create a national news and information environment in which the Party's perspective on events constitutes reality for most residents of China.<sup>174</sup> One of the key principles of this system is that all news sources must speak with a consistent voice that is under Party control.<sup>175</sup> As discussed above, government licensing restrictions are designed to ensure that all politically and economically significant news is only provided by trusted media organizations operating directly under the Party. While many newspapers and magazines are licensed under this system to publish news, few are permitted to produce and publish their own articles on major news events. In 2002, for example, the Central Propaganda Department issued new guidelines that reiterated the importance of restrictions on news sourc-

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<sup>170</sup> See STANLEY LUBMAN, *BIRD IN A CAGE: LEGAL REFORM AFTER MAO* 204-216 (1999).

<sup>171</sup> See CLARKE, *supra* note 90.

<sup>172</sup> For a description of the balancing exercise mandated by the European Convention of Human Rights, see NICOL ET AL., *supra* note 155.

<sup>173</sup> In Britain, for example, the introduction of the Human Rights Act 1998 has led to major developments in the law of privacy and defamation. It has also given the courts greater powers to scrutinize not just media regulators but also the media when they carry out public duties, such as the allocation of broadcast time to political parties. See, e.g., the landmark decision of the Court of Appeal in *R (on the application of Prolife Alliance) v. British Broadcasting Corporation*, [2002] 2 All ER 756 (Eng. C.A.).

<sup>174</sup> See ZHAO, *supra* note 8, at 22-29; see also LYNCH, *supra* note 1, at 75.

<sup>175</sup> The CPD in Beijing holds daily meetings to decide how major news issues should be reported throughout China. These decisions are disseminated nationally through the provincial Party Propaganda Bureaus and through the GAPP and its provincial Press and Publications Bureaus. Interview, Beijing 2001. On the political responsibilities of the press generally, see WEI, *supra* note 9, at 135.

ing and stated that periodicals must obtain any major stories on government policy from the Party controlled Xinhua News Agency.<sup>176</sup>

News regulation therefore involves close coordination of the Party's internal system for guiding editorial decision making and the state regulatory system. Party instruction and guidance on news content ranges from basic statements of principle to direct instructions on the handling of a particular news story.<sup>177</sup> According to Zhao Yuezhi, "general rules and parameters for news operations can be found in Party resolutions, directives, announcements, and internal bulletins such as Propaganda Trend (*Xuanchuan Dongtai*)."<sup>178</sup> As noted above, Party propaganda officials also conduct regular study sessions for editors and journalists to ensure that the Party's current policies and requirements are understood and accepted. For example, in January 2002, President Jiang Zemin Jiang addressed a four-day national conference for high ranking media and Party propaganda officials. This meeting discussed national guidelines for media reporting of political and social events leading up to the 16th Communist Party Congress.<sup>179</sup>

Party and state authorities also issue joint directives on news-related matters. These directives buttress the Party's internal rules with the law making authority of the state and also ensure that the Party's prohibitions apply to publications regardless of whether their editors are under close Party control. For example, regulations issued in 1994 extended earlier prohibitions that reserved reporting on the lives or work of any important national leader to specially authorized newspapers and that also required publication of such articles be pre-approved by the GAPP.<sup>180</sup> More recently, the government published new rules reiterating the need for special authorization to report on military affairs.<sup>181</sup>

Although news control is well established and deeply engrained in the Chinese media, intensive control of this nature requires constant adjustment to maintain its effectiveness. Rules must

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<sup>176</sup> See *Beijing Reins in Media with New Rules*, THE STRAIGHT TIMES, Feb. 25, 2002, available at <http://www.chinaonline.com>; see also *China Tightens Control over News Media*, *supra* note 15.

<sup>177</sup> See Interviews, Beijing, Shanghai and London, 2001.

<sup>178</sup> See ZHAO, *supra* note 8, at 20.

<sup>179</sup> See Chan, *supra* note 25.

<sup>180</sup> 1994 GAPP, GUANYU QIKAN FABIAO YOU GUAN DANG HE GUOJIA ZHUYAO LINGDAOREN GONGZUO HE SHENGHUO DE WENZHANG, TUPIAN DE GUIDING (Regulations Concerning the Publication of Articles or Pictures Depicting the Work or Lives of Important Leaders of the Party and Country).

<sup>181</sup> Notice on Clarifying and Rectifying News Reporting on Military Affairs, (Feb. 6, 2001) *Xinwen Chubao Bao* (Press and Publishing News), [www.chinaonline.com](http://www.chinaonline.com).

be updated to include new areas of concern and the levers of control must be adapted to the changing structure of Chinese media organizations. Commercialization has also placed the news control system under greater strain as publications have begun to compete for readers and advertising revenue. Greater openness in Chinese society in general has also fed the public appetite for more interesting news stories and thereby increased the incentive to disregard prohibitions. The control system has consequently experienced a few spectacular breakdowns. In November 2001, for example, the press authorities ordered the seizure of millions of copies of *Securities Weekly* newspaper as it contained an article alleging financial misconduct by the NPC Chairman Li Peng and his family.<sup>182</sup> The author of the article was arrested and, one imagines, the newspaper's editors as well as its sponsor, the China Securities Market Design and Co-ordination Office, were severely disciplined.<sup>183</sup>

Despite these occasional ruptures, there is considerable evidence that the Party remains determined to keep its firm grip on the publication of news. According to Hong Kong press reports, the CPD and the GAPP have recently issued tougher rules on "politically incorrect articles" and have ordered the immediate closure or suspension of violators.<sup>184</sup> Under these rules, it is no longer sufficient for local governments simply to warn offenders or to order the restructuring of the offending newspaper's editorial committee.

The government has also acted to curb the growing use of investigative reporting by newspapers to attract readers.<sup>185</sup> In many instances, newspapers have relied on investigative reporting to produce news stories not previously disclosed by official primary news sources, a practice that in the Party's view has undermined the

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<sup>182</sup> See Chan, *supra* note 24.

<sup>183</sup> The violation of politically inspired news reporting rules is certainly not the only reason for the disciplining of editors and journalists in China. The commercialization of the media has given rise to rampant problems of checkbook journalism and disguised advertising. See generally LYNCH, *supra* note 1, at 53-104. See generally ZHAO, *supra* note 8, at 72-93. Companies and other organizations hoping to secure favorable reports are reported to provide journalists with lavish expense payments for attending press conferences and other events. See Richard McGregor, *All the News That's Fit to Buy: Journalists In China Are Being Paid "Red Envelope" Cash By PR Companies Keen To Get Coverage For Clients*, FIN. TIMES, Dec. 7, 2000 available at <http://www.counterpunch.org/pipermail/counterpunch-list/2000-December/004316> (last visited Oct. 7, 2002). Nonetheless, disguised advertisements and the purchase of bogus news reports are, in principle, illegal under Chinese law and are also prohibited by the Chinese Journalist's Association code of ethics. See 1995 *Advertising Law of the People's Republic of China*, CHINESE JOURNALIST'S ASSOCIATION CODE OF ETHICS 1991 (amended 1994), available at [http://www.novexcn.com/advert\\_law\\_95.html](http://www.novexcn.com/advert_law_95.html) (last visited Oct. 7, 2002); see also ZHAO, *supra* note 8, at 81-82.

<sup>184</sup> See Chan, *supra* note 25.

<sup>185</sup> See *Beijing Reins in Media with New Rules*, *supra* note 176.



principle of unified news reporting.<sup>186</sup> In 2001, the government therefore issued rules restating prohibitions on news gathering relating to major corruption scandals, major criminal cases, and human or natural disasters.<sup>187</sup> According to these rules, publications not authorized to report directly on these matters may only use dispatches from Xinhua News Agency for reports. Senior editors were also recently warned that reports on natural and man-made disasters should be strictly supervised to avoid intensifying public grievances.<sup>188</sup> Media authorities have also initiated a crackdown on the “social cultural” press which is seen as an increasingly scurrilous and social disruptive element in the print media. The CPD and GAPP have ordered the closure of “vulgar, poor quality, low circulation, and inefficient” newspapers and periodicals operating in the social-cultural press sector.<sup>189</sup>

The continuing effectiveness of these methods of news control is obviously open to question. As one journalist has written, “The Party would like to exercise more control . . . but with more than 2000 papers and so many issues now open to public discussion, they can’t watch them all and it’s impossible to have a policy for every issue.”<sup>190</sup> Nonetheless the system endures and, for two important reasons, it accomplishes many of the Party’s objectives. First, there is no room in China for lawyerly argument over what constitutes news of a particular type and whether a specific publication is licensed to publish a particular article. These issues are decided at the discretion of Party and state officials whose decisions are masked by vague regulatory language virtually immune from legal challenge.<sup>191</sup> The rules they apply are intended to be flexible and their meaning shifts according to the prevailing political and com-

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<sup>186</sup> See Erik Eckholm, *Mine Disaster Shows More About China’s News Media Than About Safety*, N. Y. TIMES, Aug. 4, 2001, at A4.

<sup>187</sup> See generally ZHAO *supra* note 8, at 65-67.

<sup>188</sup> See CHAN, *supra* note 25. These restrictions are rather light handed in comparison with those imposed on foreign journalists posted to China. The 1990 State Council *Waiguo Jizhe he Waiguo Changzhu Xinwen Jigou Guanli Tiaoli* (Regulations on Foreign Journalists and on Foreign Resident Press Offices) requires that each foreign news organization established in China and each journalist employed by that organization must be separately licensed. Foreign journalists also require advance official permission for any reporting trips planned outside Beijing and Shanghai. See *Beijing Bans Foreign Media Coverage of Spy Plane* SOUTH CHINA MORNING POST, May 1, 2001, available at <http://www.scmp.com> (last visited Oct. 4, 2002).

<sup>189</sup> BBC Worldwide Monitoring, *China: Tabloids Face Tighter Controls*, ZHONGGUO XINWEN SHE (text of report by China News Agency), Aug. 8, 2001.

<sup>190</sup> See Elizabeth Rosenthal, *China Struggles to Ride Herd on Ever More Errant Media*, N. Y. TIMES, Mar. 17, 2001, available at <http://www.nytimes.com> (last visited Jan. 21, 2003).

<sup>191</sup> See LUBMAN, *supra* note 170.

mercial climate.<sup>192</sup> Consequently, regulators can operate quickly and decisively to stop illicit news reporting.

Second, there are certainly newspapers and magazines in China that publish news articles in defiance or ignorance of the rules. But persistent or egregious reporting of unauthorized news carries unmistakable risks of serious punishment, including lengthy incarceration or even death in extreme cases. The Party's arbitrary and heavy handed punishments more than compensate for the shortcomings of its media control system. It does not need a policy or rule for every issue. By simply raising anxiety and uncertainty among writers and publishers, the Party is able to chill public debate and instill an instinct for self-censorship.<sup>193</sup>

## V. CONTROLLING PRINTING AND DISTRIBUTION

### A. *Regulating Printing*

The regulation of the printing industry is critically important to press regulation in China. Unauthorized publications cannot reach the print market without prior access to printing facilities. Consequently, the government has expended considerable attention and resources on its control over this essential gateway. Indeed, regulatory controls imposed on the printing industry are in some ways stricter than those placed on publishers. The result is that the simple business of sending a work for printing or other reproduction has become a highly regulated process requiring the careful verification of permits by both the publisher and the printer.<sup>194</sup> This intensity of regulatory control not only shows the practical importance of printing to illicit publishers, but also reflects the fact that the Party does not exercise managerial control over most printing businesses, unlike its more intrusive role in the operation of major media organizations.

In the printing industry, the government's current regulatory problems ironically stem the successes of its economic reform program. In the early 1980's, Party policies fostered the establishment of new printing operations to spur book and periodical produc-

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<sup>192</sup> On statutory and regulatory language in China, see Perry Keller, *Sources of Order in Chinese Law*, 42 AM. J. COMP. L., 711, 749-52 (1994).

<sup>193</sup> See LINK, *supra* note 41.

<sup>194</sup> See, e.g., 1997 GAPP, CHUBANWU YINSHUA GUANLI GUIDING §14 (Regulations on the Administration of the Printing of Published Materials) (detailing the special procedures for entrusting the printing of books, newspapers or periodicals to a publication materials printing enterprise). These requirements were not new to this regulation and are contained in several regulations and directives. See, e.g., 1991 Notice Concerning Further Hard Strikes Against Illegal Publication Activities, *supra* note 97.

tion.<sup>195</sup> This policy, however, resulted in increasing numbers of unsupervised printing establishments set up to take advantage of this relaxation in official controls.<sup>196</sup> The easing of the printing bottleneck may have brought many new books and periodicals to the market, but these included a number of publications found to breach content prohibitions.

In 1987, the government turned its attention to resolving the role of the printing industry in supporting the growth of unlawful publications. In that first year of significant student unrest since the end of the Cultural Revolution, the Party leadership forced the resignation of the Party General Secretary Hu Yaobang and acted to suppress political heterodoxy.<sup>197</sup> These measures included a State Council directive ordering a crackdown on "chaos in the book and periodical printing industry". It called for improved controls over each element in the publication cycle from editing through printing, binding, wholesale, retail, and returns.<sup>198</sup> Local governments were ordered to find retired cadres or politically reliable workers from bookstores, cultural centers, and similar outlets to act as inspectors of local printers, book stalls, and audiovisual shops.<sup>199</sup> The directive focused attention on the problem of unauthorized printing and distribution, particularly in collective printing enterprises at the township level.

The Public Security authorities were also ordered to treat the printing industry as a "special category industry" (*tezhong hangye*).<sup>200</sup> As a result, printing establishments cannot operate without also obtaining a license from the relevant Public Security authorities in addition to their licenses from the local bureau of Press and Publications and bureau of Industry and Commerce.<sup>201</sup> State media regulators also ordered that paper producers should tighten their controls to help cut off supplies to illegal printers.<sup>202</sup> In addi-

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<sup>195</sup> 1989 GAPP, JIAQIANG SHU BAO KAN YINSHUA GUANLI DE RUOGAN GUIDING (Certain Regulations on the Strengthening of Book, Newspaper and Magazine Printing Administration).

<sup>196</sup> See LYNCH, *supra* note 1, at 90.

<sup>197</sup> See generally LIEBERTHAL, *supra* note 7, at 60, 139.

<sup>198</sup> Notice Concerning Severe Strikes Against Illegal Publication Activities, *supra* note 103.

<sup>199</sup> *Id.* at §6.

<sup>200</sup> *Id.* at §10.

<sup>201</sup> *Id.*

<sup>202</sup> 1987 GAPP, Ministry of Radio, Film and Television, Ministry of Culture, Ministry of Public Security, Ministry of Justice, State Administration of Industry and Commerce, Ministry of Light Industry, Ministry of Railways, Ministry of Transport Communications, Ministry of Posts and Telecommunications, China Civil Aviation Bureau, and Ministry of Finance, GUANYU GUANCHE LUOSHI GUOWUYUAN "GUANYU YANLI DAJI FEIFA CHUBAN HUODONG DE TONGZHI" DE TONGZHI (Notice Concerning the thorough Implementation of the State Council "Notice Concerning Severe Strikes Against Illegal Publication Activities").

tion, large shipments of published materials from printers were made subject to special approval.<sup>203</sup>

By late 1988, however, a thaw in the political climate brought renewed support and safety for critical and innovative publications, including the daring Shanghai based newspaper *Shijie Jingji Daobao* (World Economic Herald).<sup>204</sup> But this era was short lived and the suppression of the Tiananmen demonstrations in 1989 brought a rapid reassertion of tight control over the entire media sector. For printing establishments, the year culminated in a massive rectification campaign in which every printer was required to reapply for its various licenses.<sup>205</sup> Aside from these licensing demands, the central government also required that each printer operate under the specific supervision of an approved government department.<sup>206</sup>

In 1997, the State Council consolidated many of the rules governing the printing industry in the Administration of the Printing Industry Regulations (*Yinshuaye Guanli Tiaoli*). These regulations confirmed the shared responsibility of the GAPP, Ministry of Public Security, and the State Administration of Industry and Commerce for the control of printing and copying.<sup>207</sup> The regulations also restated the positive duty of printing establishments to ensure that any material accepted for printing or copying does not contain unlawful content.<sup>208</sup> This duty not only extends legal responsibility for content from publishers to include printers, but also illustrates how the transfer of materials from publisher to printer has become a focus for regulatory control.

In the 1989 crackdown on unauthorized publications, the central authorities singled out the publisher to printer connection for greater attention. The GAPP directed that a printer must not accept material for printing from a publisher located outside a printer's registered locality or from an enterprise or organization that is not licensed as a publication unit, unless that publisher has received special authorization.<sup>209</sup> This directive also stressed the importance of maintaining the distinction between printers ap-

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<sup>203</sup> See *id.*

<sup>204</sup> See ZHAO, *supra* note 8, at 161-62.

<sup>205</sup> Certain Regulations on the Strengthening of Book, Newspaper and Magazine Printing Administration, *supra* note 195.

<sup>206</sup> See *id.*

<sup>207</sup> 1997 YINSHUAYE GUANLI TIAOLI §4 (Administration of the Printing Industry Regulations).

<sup>208</sup> See *id.* at §20. This heavy legal responsibility for unlawful content is also set out in the Regulations on the Administration of the Printing of Published Materials, *supra* note 183, at §3.

<sup>209</sup> Certain Regulations on the Strengthening of Book, Newspaper and Magazine Printing Administration, *supra* note 195.

proved for national publications and printers only approved for regional publications. The government has also established restrictions to prevent publishers of internal newsletters and other internal publications from evading the stringent controls on access to printing facilities and distribution channels.<sup>210</sup> A newsletter cannot be printed or copied outside the originating organization without the grant of an official printing permit (*zhun yin zheng*).<sup>211</sup> Foreign participation in the printing industry, which China conceded in its WTO accession agreements, is also subject to careful regulation.<sup>212</sup>

### B. *Regulating Distribution*

The Chinese government treats the sellers of illegal publications just as severely as it treats their printers, prohibiting the sale of such publications under both administrative regulations and criminal law.<sup>213</sup> Nonetheless, while book and periodical sellers are licensed and subject to regulation, the sector has seen enormous changes in the past decade. During the 1990s, the government gradually permitted collective enterprises and private individuals to engage in distribution and sales, an area once under exclusive state ownership.<sup>214</sup> By 2001, there were reportedly more than 10,000 private book and periodical sellers licensed in China.<sup>215</sup>

Private operators were initially prohibited from competing on equal terms with state-owned book and periodical sellers.<sup>216</sup> Under

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<sup>210</sup> See *id.*

<sup>211</sup> Rules for the Administration of Published Internal Reference Materials, *supra* note 125, at §3.

<sup>212</sup> In the wake of China's WTO accession, the government has partially opened the print sector to foreign companies. However, wholly owned foreign enterprises may only engage in the printing of packaging. Sino-foreign joint ventures may engage in the printing of newspapers, magazines, and books only if the Chinese joint venture partner holds a controlling interest, *Foreign Investment Permitted in the Printing sector*, SECURITIES TIMES (ZHONGGUO XINWEN SHE), Feb. 25, 2002, available at <http://www.chinaonline.com>. When Chinese printing establishments contract to print books or other publications for a foreign publisher, regulations require that all copies produced must be exported. Administration of the Printing Industry Regulations, *supra* at note 126, at 25. Despite these restrictions, foreign companies are increasingly active in the China's printing sector. For example, the German media group Bertelsmann and the Shanghai Printing Group have reportedly created a joint venture printing enterprise. Richard McGregor, *Bertelsmann Vies for Chinese Printing Market*, FIN. TIMES, Jan. 22, 2002, (Companies & Finance Asia-Pacific) at 30.

<sup>213</sup> Notice concerning Severe Strikes against Illegal Publication Activities, *supra* note 103, at §3.

<sup>214</sup> See LYNCH, *supra* note 1, at 92.

<sup>215</sup> See Raymond Li, *Small Book Distributors Aim for Bigger Play*, SOUTH CHINA MORNING POST, Apr. 27, 2001, available at <http://www.scmp.com> (last visited Oct. 4, 2002).

<sup>216</sup> 1989 GAPP, State Administration of Industry and Commerce, GUANYU JIAQIANG JITI GETI SIYING SHUDIAN (TAN) GUANLI DE ZANXING GUIDING (Provisional Regulations Concerning the Strengthening of the Administration of Collective and Individual Private Bookstores (stalls)).

state regulations, private booksellers can only purchase publications from a limited number of approved sources, including New China Bookstores, Antiquities Bookstores, Foreign Language Bookstores, and authorized book and periodical publishers as well as the postal authorities.<sup>217</sup> It is only in recent years that private sellers have gained access to most domestic publishers. They are still not permitted to enter the wholesale book trade or to sell books imported from foreign countries or from Taiwan, Hong Kong, or Macao, or to sell any publications approved only for restricted circulation within China.<sup>218</sup> Nonetheless, market competition is forcing major changes on the government-controlled distributors and resellers. In 2002, the central government approved the consolidation of major state book publishers, printers and retailers to form regional and national book industry groups in an effort to protect its declining position in book sector distribution.<sup>219</sup>

The traditional method for newspaper and periodical distribution in China is through postal distribution or by sale at newsstands operated by local postal bureaus. Although the postal bureaus still dominate periodical sales, there are an increasing range of competitors in newsstands and other distribution businesses. Some newspapers have, for example, begun to experiment with their own distribution services.<sup>220</sup> There are, however, occasional reports that local governments are using their control of the local postal bureau to block the distribution of newspapers that threaten the advertising and subscription revenue of local newspapers. In 2001, the Shenzhen postal bureau allegedly refused to distribute distribution of the *Nanfang Dushi Bao* (Southern Daily Urban News) through its newsstands to protect local papers from this Guangzhou financed rival.<sup>221</sup> As the bureau owns 1000 of Shenzhen's 1300 newsstands, its refusal to distribute the *Nanfang Dushi Bao* caused the paper's sales to plummet until the parties resolved their differences.<sup>222</sup>

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<sup>217</sup> Notice concerning further Hard Strikes against Illegal Publication Activities, *supra* note 97. See generally LYNCH, *supra* note 1, at 215.

<sup>218</sup> See generally LYNCH, *supra* note 1, at 215.

<sup>219</sup> In early 2002 the government announced the creation of a national holding company for the book sector to be called China Publication Group. This group includes 12 major book publishers and retailers operating under Central Propaganda Department and GAPP supervision. Loretta Leung, *State level Group Planned to Meet Foreign Challenge*, SOUTH CHINA MORNING POST, February 8, 2002, available at <http://www.scmp.com> (last visited Jan. 21, 2002).

<sup>220</sup> See Yang Zhi, *Survey of Important China Print Media*, SINOPOLIS.COM, available at <http://www.sinopolis.com/archivesindex/reports/media/distrib.htm> (last visited Sept. 25, 2002).

<sup>221</sup> See *Postal Bureau Enforces Ban on Nanfang Dushi Bao*, FIN. DAILY (CAIJING SHIBAO), May 14, 2001 available at <http://www.chinaonline.com> (last visited Oct. 4, 2002).

<sup>222</sup> See *id.*

### C. *A Crisis of Governance?*

China's system of press control continues to be remarkably effective in shaping the content of the national print media. The Party-state controls all the major national and regional press organizations and guides the daily selection and presentation of the news throughout the country. By dominating the high ground, the Party has left its opponents at the margins of the Chinese information world. They can only struggle to make their voices heard in the chaotic flow of disorganized facts and rumors carried by foreign and obscure websites, e-mail newsletters, and fly-by-night publications. Even more daunting, they cannot expect to make much headway in China's pervasive climate of self censorship, which is maintained through the government's skilful use of arbitrary and frightening sanctions.

Yet despite the Party's position of overwhelming dominance, the media regulatory system clearly has its internal weaknesses. At a time when the government's political and economic objectives for the media are increasing in scope and complexity, the system continues to rely heavily on the loyalty and integrity of Party-approved officials and editors. In these circumstances, persistent regulatory failure is likely. Aside from the potential for outright corruption, which is now rife in China, the government's promotion of media commercialization obscures the distinction between public and private interests.<sup>223</sup> A newspaper that uses its privileged position as a quasi-state body to increase its revenues, albeit while enriching the management and their business partners, can also claim to be achieving an important government economic objective. So far, the government has made no effort to create a legal or regulatory framework to distinguish between legitimate and illegitimate uses of media privilege in the ruthlessly commercial environment it has fostered.

The entanglement of public and private interests in China's print media is a consequence of the Party's basic principle that it must control or supervise all newspaper, magazine, and book publishers.<sup>224</sup> With some justification, the Party leadership believes that control of the media is essential if the Party is to remain in power indefinitely. It therefore remains dedicated to a control system that fosters public support by presenting news and information in a pos-

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<sup>223</sup> The problem of official corruption in China is widely recognized. See, e.g., SAICH, *supra* note 6, at 53-79. See generally LIEBERTHAL, *supra* note 7, at 179. Interviews have yielded anecdotal reports of corruption amongst some press regulators. Interviews, Shanghai, 2000 and 2001.

<sup>224</sup> See LINK, *supra* note 41.

itive light and by marginalizing or excluding dissenting voices. This control imperative also ensures that Party media authorities and their appointees are responsible for commercial decision making of the media industry.

The costs of Party control, both for the press sector and for government, are rising. The growing sophistication of media operations, including the use of joint ventures to produce content as well as to supply advertising and distribution services, has made it much harder to map out or implement the concept of Party control. In principle, the regulatory system has merely sharpened its focus, maintaining a tight grip on editorial decision making while allowing outside interests into the less sensitive parts of the publication process, including advertising and distribution. But in practice, having allowed commercial interests in the door, it is proving difficult to keep them from influencing, or even directing, editorial decision making.

The legitimacy of the regulatory system is also undermined by the clear lack of any real substantive content in the principle of Party control. The Communist Party controls the press in order to promote whatever long- and short-term goals it currently embraces. The basic principles on which the media operates are consequently determined and implemented through the closed processes of the Party and not through processes governed by the constitution and national legislation, or even through the press regulations issued by the State Council. These laws are broadly stated and are easily interpreted or applied in accordance with the Party's changing priorities. For the media, this functional relationship with the Party has provided a welcome umbrella of official protection and quasi-governmental authority.

This situation has parallels with the television and radio broadcasting regimes instituted in western Europe following the Second World War. In many of these countries, governments chose to provide broadcasting services as a public monopoly, ostensibly to prevent the abuse of an influential and scarce public resource by private interests. In these privileged circumstances, Europe's public broadcasters were under little pressure to develop precise principles setting out their purposes or the legitimate scope for their activities. The existence of the state sponsored monopoly provided an apparent justification for the growth and extension of the broadcaster's services. As a result, the broadcaster's mandate was largely defined by the limits of its technology and financial resources. The British Broadcasting Corporation, for example, was established under a broadly worded Royal Charter that merely de-



manded that the Corporation should inform, educate, and entertain its viewers and listeners. It is only since the development of competitive, commercial broadcasting in Europe that these governments have been forced to clarify the legal limits of public service broadcasting and the mandates of publicly-owned broadcasters.

In China, the commercialization of the press has not led to a similar clarification of the public purposes and responsibilities of Party-state press organizations. Their commercial interests and relationships are developing without effective outside scrutiny. Party control or supervision, in combination with state ownership, remains the dominant model for both the broadcasting and print media and no newspaper or magazine is genuinely free of Party control or influence. There is, consequently, no independent press sector capable of playing a role similar to that of private broadcasters of Europe in forcing the question of abuse of privilege. Press competition in China occurs between various Party-sponsored, state-owned newspapers and magazines and many rely on their Party-state connections as much as they are restricted by those of their competitors.

Chinese media regulation is, moreover, not underpinned by a legal or political principle of equality of treatment. No licensee has the right to receive the same treatment as any other. Central and provincial governments are therefore free to license and regulate each publisher and publication according to its political reliability, economic importance and revenue potential. Under this system, Party press organizations automatically enjoy privileges that are denied to other print media operations not under direct Party control. The latter are restricted to less sensitive areas and cannot grow too large or profitable without attracting greater Party involvement.

The situation is further complicated by the lack of any single hierarchy of privilege. The administrative and geographical fragmentation of the Chinese government allows both central and regional authorities to promote the fortunes of their own favored press organizations. This power of patronage has, not surprisingly, led to problems of local protectionism. Non-local publications not only pose a threat to local advertising, subscription and cover price revenue, but also undermine the long-term viability of the local print media. Local governments are therefore known to hinder the distribution of non-local publications and may also refuse to license publications proposed by outsiders.

This unhealthy relationship between government authorities and press groups not only leads to the distortion of ostensibly com-

petitive markets, but also raises questions about the influence of the major press groups on government policy making. In the People's Republic, the principal media outlets, such as the People's Daily or the China Central Television, have always been influential operational units of the Communist Party. These established elements within the Party's propaganda and education network (*xuan jiao xitong*) existed long before the state media regulators were created. Many leading editors and managers are therefore key players in the Party's propaganda system; some enjoy status equal to or greater than senior regulatory officials in the Party hierarchy and are also afforded direct access to senior Party figures. In this situation, the creation of large corporate press groups with ambitious commercial objectives gives these relationships added significance. The managers of press groups and other media organizations are in a position to use their relationships within the Party to advance their commercial ambitions. This is, in effect, a Chinese version of regulatory capture. But, in China's case, regulatory capture is much harder to identify or address than it is in systems where public purposes are more openly defined and scrutinized.

These problems are the product of China's media system and they cannot be resolved without change in that system. The Party remains firmly wedded to media control and, therefore, radical change in media regulation in China is out of the question for the foreseeable future. At the same time, however, the leadership has given clear commitments to improvements in governance, especially in connection with China's recent accession to the World Trade Organization. China's trade partners expect eventual improvements in the transparency and predictability of China's regulatory systems in every economic sector, including the media. Yet, it must be remembered that the media is, at present, beyond the reach of many WTO disciplines and is not the top priority on anyone's list for administrative reform.

Nonetheless, press regulation is certainly ripe for review. The decision making processes are opaque to anyone outside the Communist Party. The substantive legal rules concerning press content are simply not stated in sufficient detail to give practical guidance to anyone who lacks access to CPD documents and official guidance. This lack of transparency in major and minor decision making is compounded by the inordinate complexity of regulatory requirements. The primary purpose of state press regulation is to maintain the categories, distinctions, and approval procedures that frame the Party's system for controlling the press. The state regulatory system has gradually developed through constant efforts to re-

new the system in the face of new forms of evasion and non-compliance. As a result, it is now a thicket of restrictive and confusing red tape. Moreover, from a public perspective, China's press and publications regulations lack certainty and predictability. There is, of course, predictability in the sense that privileged organizations will continue to receive privileges and that deals must be negotiated with the powerful. What is lacking is the certainty and predictability that comes from transparency and equality of treatment.

China is by no means unique in adopting legal rules whose meaning in actual practice is only understood by a small number of participants in the industry in question. There is always a complex interplay between regulatory rules and regulatory relationships. This is particularly so in the media, where there are typically only a few major players who are often dominant in national or regional markets. It is also a sector in which governments tend to pursue social and cultural policies that require considerable intervention and detailed rule making. Consequently, these formal rules are often interpreted and applied through close cooperation between the state and the regulated industry. In normal circumstances, the rules cannot be properly understood outside the context of this relationship.

In these general terms, press regulation in China is similar to broadcasting regulation in many European countries. But, in the European model, when disputes arise and these informal understandings begin to fray, the participants tend to fall back on the formal rules. In exceptional cases, they may even resort to the courts to determine the meaning of the formal rules and the rights of the parties. In China, however, there is no similar assumption that the formal rules can have any meaning other than that meaning ascribed to them by the Party-state regulatory authorities. In short, the law does not provide a separate sphere for the resolution of disputes.

It remains the central weakness of China's press regulatory system that it is not adequately underpinned by constitutional or other substantive legal principles. It seems clear that any serious attempt to confront the conflicts of interest that are growing within China's print media must involve real progress on fundamental rule of law issues. The Communist Party has so far devoted its energies to improving the economic potential of its many media assets. There is, however, some hope for eventual improvements in the governance of the press. Many Chinese editors, journalists, and government officials, who remain skeptical about the benefits of

liberal democracy, are nonetheless committed to greater transparency, accountability, and predictability in China's media sector. Yet, ad hoc, arbitrary methods of media control plainly suit the interests of any regime intent on retaining a monopoly on political power. Creating a more open, predictable, and accountable media system will only occur when the Party concedes a significant role for non-Party voices and interests in China's system of government.