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TikTok, *Mulan*, and the Olympics: Contesting Content Control through Trade in the U.S.-China Relationship

Aynne Kokas is an Associate Professor of Media Studies at the University of Virginia and a Senior Faculty Fellow at the Miller Center for Public Affairs and a 2021–22 Wilson China Fellow

Wilson Center | Asia Program | Kissinger Institute | Wilson China Fellowship

Abstract

Since the beginning of the COVID-19 pandemic, China's entertainment sector has radically grown in its influence in the United States. China became the largest global theatrical distribution market. At the same time, Chinese social media platform TikTok moved from a fringe app to one of the most dominant players in the U.S. social media landscape, despite national security concerns voiced by both the Trump and Biden Administrations. The following paper outlines Chinese government content control regulations shaping the U.S. market as Chinese influence on the U.S. entertainment industry increases. It then identifies the most prevalent forms of content control and the corporate rationale for such actions. Finally, the paper offers policy proposals that reflect potential options for the U.S. government to reshape this dynamic. Ultimately, the paper argues that for the United States to effectively contend with the challenge of Chinese firms influencing content in the U.S. entertainment industry, the United States must grapple with the relationship between free markets and freedom of expression domestically.

Implications and Key Takeaways:

- The United States needs to reevaluate the relationship between freedom of expression and the free market. Chinese firms controlling content via algorithm as well as Hollywood studios following international content control restrictions reflect a prioritization of free market interests. U.S. consumers are alienated from how and why the media they consume gets to them. This is not an issue of U.S.-China relations, but rather an issue of lack of transparency in the U.S. tech sector.

- The United States should expand state-level data security regulations nationally to protect consumers of digital entertainment in the United States from predatory data usage by both domestic and international firms.

- Building on national data security regulations domestically, the United States should work with allies and partners to establish multilateral alliances for data storage and security standards.

- Next, the U.S. government should recognize that tech algorithms offer a strategic national security asset as the Chinese government has done. They ensure both protection of long-term economic gains and military strength. It is thus important to work with tech firms to identify ways to limit the export of critical algorithms.

- To track content control practices, the United States should implement new regulations requiring content reporting and takedown notices from non-U.S. actors.

- The U.S. government should explore limiting investment by Chinese media and tech firms operating in the United States. Such financial pressure may offer the chance to renegotiate access for U.S. media and tech firms in China.

Introduction

Entertainment changed during the COVID-19 pandemic. Consumption of filmed entertainment dropped as theaters closed out of pandemic precautions, while social media platforms like TikTok saw a 75 percent growth in new users. Yet this practice of substituting one form of entertainment for another, while seemingly just another pandemic adaptation for most consumers, had significant implications for China's ability to shape the U.S. entertainment landscape and draw clear national security benefits from that influence.

In the wake of the COVID-19 pandemic, the United States faces a new entertainment environment. The Chinese market is the largest theatrical distribution market in the world. As I argue in my book *Hollywood Made in China,* Hollywood studios must cater to the financial interests of Chinese government regulators alongside global audiences to make their profits. With China's ascendance as the largest market globally, Hollywood studios now have a clear financial incentive to work with Chinese regulators, even as that market has increasingly complex conditions for access. Yet operating in parallel with China's increasing influence in the shrinking US theatrical entertainment market is the power of Chinese-owned social media entertainment platforms. TikTok, WeChat, and others are shaping users' entertainment experience. They harvest transfer valuable data resources available to Chinese government. This occurs through national security audits, civil-military fusion, corporate pressure, a seminal practice in advancing China's global digital sovereignty I refer to as "trafficking data."[1]

At its core, the challenge of content control via trade is an issue at the very center of U.S. interests in an economy with free trade and freedom of expression. It operates at the center of what Karl Popper described as the "paradox of tolerance" where unlimited tolerance leads to the disappearance of tolerance because it enables the emergence of authoritarian practices.[2] The following paper outlines Chinese government content control regulations shaping the U.S. market as a result of U.S. tolerance of and support for a free and open market economy as well as freedom of expression by U.S.-based content producers. It then identifies the forms of Chinese content control in the United States that are most prevalent with relevant examples. The paper follows the standards of content control with corporate rationale for such actions. Finally, the paper offers policy proposals that reflect potential options for the U.S. government to reshape this dynamic, recognizing the importance of preserving an environment of tolerance both in the present moment and in the long-term.

Entwined financial interests in media and entertainment production infrastructure in China and the United States have yielded a system where Chinese national champions can grow domestically. Restrictions on U.S. firms in China have led to reduced access to the Chinese market. China's national theatrical distribution market size enabled it to grow into the largest market in the world following a rapid progression of investments in film distribution capacity.[3] In 2020, China became the largest film market in the world,[4] a position it retained in 2021[5] as the U.S. recovery from the COVID-19 pandemic lagged behind China's.[6] Meanwhile, patriotic fare such as the Korean War epic *Battle of Lake Changjin* powered China's roaring box office performance.[7] Without the protections of the U.S.-China Film Treaty,[8] which expired in 2017 under the Trump Administration, U.S. films had limited access to the Chinese film market in 2021, with no Marvel Cinematic Universe films released in China.[9,10]

In parallel, PRC-based entertainment and communication platforms grew domestically in the U.S. and China. At the same time, U.S. tech firms saw a decrease in their already anemic Chinese market share. TikTok and WeChat survived Trump Administration Executive Orders[11, 12] to continue their operations in the United States with the support of enthusiastic users of the platforms as well as the U.S. legal system.[13] Beijing-based platform TikTok, a subsidiary of Beijing-based Bytedance and the international counterpart of Chinese social media platform Douyin, grew from over 11 million monthly users in in 2018 to over 100 million in 2022[14] in the United States. By contrast, Microsoft's LinkedIn, the last US social media platform standing in China, exited the market at the end of 2021.[15]

China's rise in the media and technology sectors aligns with long-term goals expressed in the 12th, 13th, and 14th five-year plans.[16] They also align as parallel parts of a vision for China to become a "*qiangguo*" (great power) across different areas of strategic competition. The Chinese government has singled out film and tech as two areas of interest for this great power competition: the film and tech realms. Specifically, the goals are for China to become a "*dianying qiangguo*" (great film power) and a "*wangluo qiangguo*" (great internet power) by 2030.[17] With that vision in mind, the Chinese government's efforts to influence content in the media and tech sectors in the United States appear to be not merely a financial strategy for global companies seeking to expand their wings but an explicitly conceived framework for great power competition.

Data Control as Content Control

Data control practices implemented by the Chinese government first created punishing restrictions for foreign firms operating in China that impacted their international business. This was followed by explicit efforts to control digital content outside China's borders. In 2017, the Chinese government instituted a Cybersecurity Law (*wangluo anquan fa*) that asserted that all "critical information" should be controlled by Chinese state-owned firms.[18] Linking issues of content control and data security, regulators have also used the phrase "core socialist values" (*shehui zhuyi jiazhiguan*) to nationalize foreign corporations' data storage facilities through the law.[19] The law structured China's data as a fixture of its national security apparatus. It established the government's role in the governance and control of critical national data. Corporations like Apple, operating in China but generating data locally, partnered with Chinese state-run corporations to store their data.[20] Apple set up a data-sharing partnership with Guizhou Yunshang in Guizhou province after being the subject of a lawsuit immediately after the law took effect and moved its China iCloud data to Guizhou Yunshang servers.[21] Still, in a move that proved to be prescient of future Chinese government efforts, there were reports of the iCloud data of U.S.-based iCloud accounts being swept up in the Apple data transfer.

In 2020, following the implementation of the 2017 Cybersecurity Law, the Chinese government introduced a draft of the 2021 Data Security Law. The 2021 Data Security Law expands on the 2017 Cybersecurity Law by laying out a more precise data access procedure.[22] This process formalizes government access to data, which the Chinese government introduced via its principles of military-civil fusion and the 2017 Cybersecurity Law. It creates a framework through which the government can access data generated by a company in China via national security review. It also empowers and mandates all government agencies to develop their data audit procedures according to the industrial sector they represent. But perhaps most importantly, the Data Security Law makes these laws apply to all Chinese companies everywhere, not just to firms operating in China.

This global reach has multiple implications. First, the national security review of data becomes explicit—not just for local firms but also for international firms with data stored in China. Corporations must be willing and able to make their data available for a national security review at any time.[23] The Data Security Law further expands China's extraterritorial enforcement of its data oversight mechanisms. This law subjects corporations to national data gathering, linking corporate data with data gathered by the nation. It implies that data collected by any Chinese firm worldwide becomes subject to Chinese national security review oversight.[24] The Data Security Law's extraterritorial scope reflects the increasingly international scope for Chinese jurisprudence.

In parallel, the Chinese government implemented national security oversight over algorithms developed by Chinese firms that the firm seeks to export to another country. Chinese tech firms that are China-dominant in their data gathering have a clear market incentive to localize their global data in China. Such an approach enables them to develop the most efficient algorithms they can with larger volumes of data because of the difficulty of exporting algorithms due to national security controls.

The Standing Committee of the National People's Congress passed the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region in 2020. Hong Kong national security law integrates control of content, infrastructure, and extraterritorial oversight. Article 38 of the law also provides for extraterritorial enforcement of national security review, which applies to the Special Administrative Region's technology sector.[25]

How U.S. Corporate Dependence on the Chinese Market Enables Content Control

While China's content control regulations are national laws, when combined with trade in the media and technology sectors with the United States, they functionally become international content regulations. The following sections examine how trade within the United States and China shapes content offerings by the U.S. media and technology firms in China and the United States.

The first way China's content regulations become global is the dependence of U.S. firms on China for market access. This takes place in both direct and indirect ways. Firms might shift the type of content they create to access the Chinese market. In practice, this can mean adjustments strictly for the Chinese market such as changes in the endings of *Fight Club* or *Winnie the Pooh* for Chinese market access. The Shanghai-set animated blockbuster *Abominable* (Jill Culton and Todd Wilderman, 2019) was released in September 2019 with high expectations for its global market performance. The film, about a young girl from Shanghai's emerging middle class and her abominable snowman pal, offers a global, cosmopolitan view of China's film industry. That is, until the film displayed a map of China's contested South China Sea maritime claim. This moment would eventually cause Vietnam, Malaysia, and the Philippines to ban the movie. Critics in the United States roundly panned the visible influence campaign in the film, but it went on to achieve box office success.[26]

However, market concerns with respect to content control are not the only limitations. There are also broader considerations concerning market access. For example, both Disney[27] and Universal have significant capital investments in China in theme parks. The firms are minority stakeholders in both enterprises and depend on their relationship with the Chinese government to continue operating in China. These two major Hollywood studios face a consistent bind between maintaining their political relationships within China and the type of content that they release globally. Objectionable content presents a challenge not just for Chinese regulators in content industries but also for theme park operators.[28]

This comes out most clearly in the case of NBC Universal, which is the U.S. broadcasting home of the 2022 Beijing Olympic Games. NBC Universal must contend with the risk that its coverage runs afoul of Chinese regulators not just concerning access to the 2022 Olympic Games, but also in questions of access to the Chinese market for the company. To mitigate these risks, NBC will not send reporters unfamiliar with the constraints of operating in China to Beijing, instead covering much of the Games from a studio in the United

States. NBC reporters based in Beijing will also cover the Games from outside the Olympic bubble. However, NBC's access to the Games and the stability of its theme park investment both are vulnerable due to the sensitive nature of the Olympic Games in China's international image.

Unlike in the media industries, market dependence in the tech sector takes the form of desired access to the Chinese tech sector and the modes of access for Chinese firms operating in the United States. U.S. tech CEOs have historically been willing to make significant market access concessions to access the Chinese market. Mark Zuckerberg met with then-Chinese internet regulator Lu Wei and had Xi Jinping's speeches on his desk. He later asked Xi to name his first-born child (an honor Xi immediately declined). In addition to storing its data on Chinese-government-run servers, Tim Cook legitimized China's Wuzhen Internet Conference, a Chinese-led site for consensus-building around digital standards, by speaking at the conference in 2017.[29] However, with increasing Chinese government data security regulations, the space for U.S. firms willing to share data with Chinese regulators has shrunk.

Instead, an emergent challenge is the advocacy of U.S. firms for Chinese tech platforms operating in the United States to ensure continued financial success. WeChat has been documented to restrict content on the platform and surveil users, not just in communications between the United States and China, and not just on Chinese run accounts, but in both countries.[30] One of the central arguments against the Trump Administration's Executive Order 13943 banning financial transactions with WeChat was that it would create a financial penalty for U.S. firms operating in China that depend on the firm to do business with their customers in China. However, the current landscape means that U.S. firms rely on WeChat to retain market share in China. Of course, such dependence on WeChat did not occur in a vacuum. Instead, it resulted from systematic support for Chinese tech national champions and the suppression of foreign tech firms operating in the market.[31] For companies like Walmart and General Motors, this means retaining market share in one of the most dominant global markets for their products.[32]

In the case of TikTok, there were examples of users being pulled from the platform, limitations on LGBTQ content, biased portrayals of Hindu/Muslim conflict in India, censorship of discussions of Xinjiang and Hong

Kong, and more. However, in a similar vein, U.S. industry associations like tech advocate NetChoice stood with TikTok following the issuance of the Trump administration's Executive Order because of concerns that other companies in the United States already depended on the firm for marketing and advertising across a wide range of industries. Such market dependence is no longer dependence on the Chinese market but rather on firms born and bred out of China's legal framework for cyber sovereignty.

Corporate Rationale for Content Control

These forms of content control come with different forms of corporate justifications. It is essential to understand the rationale for policy purposes because of the close entanglement of the U.S. media and technology sectors with the U.S. regulatory apparatus.

Rationale 1: Responding to Chinese Censors Reflects Cultural Sensitivity

One important rationale is the issue of cultural sensitivity. Both Hollywood Studios and U.S. tech firms have suggested that controls on content are essential to reflect international norms. For example, in the Marvel Cinematic Universe films *Dr. Strange* and *Iron Man 3*, filmmakers adjusted their characters to correct the Orientalist portrayals of characters from the original comic source material. The "Ancient One" in *Dr. Strange*, a Tibetan character, was shifted to a Celtic figure. The "Mandarin" from *Iron Man 3* was repurposed as a character who was an out-of-work actor portraying a character with this name, but no other characteristics. Stripping Orientalist source material from new films is an important practice. However, the MCU created follow-up films rife with other forms of stereotyping, from Asian martial artists in *Shang Chi and the Legend of the Ten Rings* to blatant parodies of Eastern Europeans in *Black Widow*.

In *Mulan*, Disney argued that choosing not to speak out about lead actor Crystal Liu's decision to offer her public support for Hong Kong police officers who were beating protesters, and or about the company's decision to work with government offices in Xinjiang associated with reeducation camps were efforts to respect the decisions of local actors. While this may have been true, it is a self-serving justification that side-stepped thorny political issues. Disney did, however, speak out about concerns related to Xinjiang when it became clear that there would be a marketing blackout in China—and financial consequences—for the film due to bad press in the United States.[33] Similarly, TikTok and WeChat's claims that their algorithm are just sensitive to China's cultural environment works within a Chinese context, but does not hold water in a U.S. context.[34]

Rationale 2: Corporations must be "apolitical" or "universal"

A second rationale for content control by U.S. companies when seeking to justify content control practices in relation to Chinese firms and the Chinese market is the claim that businesses who seek to serve all customers must remain variously "apolitical" or speak "universally." Such an approach reflects the challenging situation U.S. corporations operating in China and Chinese firms operating in the United States face. The diverging regulatory environments of the two countries are increasingly difficult to navigate for global firms. Media and technology firms operating in the United States have responded with different strategies.

DreamWorks Animation pulled out of its Chinese joint venture, Oriental DreamWorks, because of concerns about political risks related to content production in China.[35] This approach reflects a way in which the firm deemed the political risk of operating its Chinese studios also to be an economic risk.[36] The company was concerned that the shifting regulatory environment in China would prevent long-term growth for the company's interests in China.

In contrast, Disney chose to continue working with partners in Xinjiang even as it built reeducation camps and rumors of detentions escalated. Disney did not comment on the scandal surrounding its cooperation with government agencies in Xinjiang until its CFO responded to investors' queries that the film had "generated a lot of issues."[37] However, Disney's still depended on its capital investment in Shanghai Disney, an even greater concern given China's more successful coronavirus recovery and, by extension, more robust theme park industry.

Netflix has sought to justify its—largely unsuccessful—efforts to enter the Chinese market by making cuts to films through the idea that films are censored for many different contexts. Reed Hastings, CEO of Netflix, has justified cuts made to film and television for China as similar to "airplane" cuts that might be appropriate for general audiences. For its part, the Motion Picture Association of America has given cover to both approaches. Its current chair Charles H. Rivkin noted that the main goal of the Motion Picture Association is to tell "universal stories."[38] Such a rationale enables firms to cut content that they would not distribute globally.

TikTok has further advanced this idea of "universality" to justify political decisions made by the platform. TikTok has explicitly noted that the platform will eschew political speech. However, as social media becomes a central form of communication, this stance becomes complicated to defend. The platform served as the main communication vehicle for a protest against the Trump campaign that left an entire stadium empty for a Trump rally as TikTokers claimed tickets they never intended to use. The platform has also received criticism for its censorship of content relating to LGBTQ+, Hong Kong, and Xinjiang in line with Chinese government standards.

WeChat has also received criticism for its censorship of accounts in North America. However, upon closer examination of WeChat's terms of service, the firm offers a new framework for presenting a rationale of political neutrality while also following apparatuses for content control from China. WeChat's terms of service note that any platform users will be required to follow local laws. This applies to both users of the platform and the laws to which the platform is subject. By this logic, while the phrasing is neutral in the terms of service, it also extends the reach of Chinese government content control practices into the United States.

Rationale 3: Freedom of Speech

Beyond questions of cultural sensitivity and maintaining an apolitical corporate stance are the complex questions of freedom of speech that emerge with platform dependence on Chinese tech. WeChat offers a helpful case for understanding this dynamic. The Citizen Lab and other organizations have demonstrated censorship in North America on WeChat. At the same time, because of the restrictions on both foreign and domestic platforms operating in China,[39] WeChat still offers the only reliable pathway for real-time communication between communities in the United States and China. Northern District of California Judge Magistrate Laurel Beeler ruled in favor of the

WeChat Users' Alliance following the Trump Administration's Executive Order banning WeChat.[40] Her ruling was precisely because it was the only platform these users could rely on to communicate with friends, colleagues, and loved ones in China.[41] Beeler's ruling helpfully allowed people to remain connected to their friends, family, and business associates in China. However, it also offered a free speech justification for preserving access to a platform that constrains user expression, and support to a platform that is the only available communication venue because of Chinese government trade restrictions.

The legal structures of the Chinese market make it nearly impossible for foreign competitors to operate there or for Chinese platforms to allow the open exchange of ideas. Yet without such platforms, there would be no space for any exchange. This tension sits at the crux of Chinese government content control efforts. It is challenging to ensure the flow of media between China and the United States, recognizing that such a flow depends on the robust commercial relationship between China and the United States. Yet, at the same time, the flow of media and communication is also essential to maintaining the free speech of Americans when engaging with people in China.

Degree of Threat: Influence over Filmed Entertainment vs. Social Media

While both filmed entertainment and social media fall under the rubric of entertainment content, they present significantly different risk profiles. Both Chinese government influence over social media platforms operating in the United States and influence over the content of Hollywood studio films present a soft power challenge concerning the type of content that individuals around the world consume. Content control in filmed entertainment demonstrates the potential damage of the trade asymmetry between the United States and China on two dimensions—the ability to control content and shape industrial practices.

However, the acquisition of user data presents a much more significant potential security threat. It is not just concerned with the soft power issue of engaging content, but coercive, or sharp power attempts to conduct phishing operations, coerce individuals and groups, and grow China's civilian and military AI capabilities. As I argue in my forthcoming 2022 Oxford University Press book, *Trafficking Data: How China is Winning the Battle for Digital Sovereignty*, social media is increasingly becoming critical communications infrastructure for everything from disaster preparedness to social activism. Such influence occurs regardless of the stated corporate mission of an individual platform.[42] As the entertainment mix of the United States shifts from consumption offline to consumption entwined in networked platforms, the implications of content control by Chinese government regulations expands. Offline entertainment offers soft power, but online entertainment enables coercive control of infrastructure.

Policy Recommendations

To tackle the policy challenges presented by content control of the media and communications industries in the context of U.S.-China trade, I first urge the reconsideration of the relationship between content producers and distributors and the free market. Most of the challenges described result from the inherent tension between maximizing market size and enabling clear expression. What this paper has demonstrated is how the value of maximizing market size has repeatedly taken precedent over both freedom of expression and transparency about the process of generating content. While the U.S.-China relationship magnifies such challenges, it is also a symptom of domestic dysfunction within the United States. Thus, for any of the policy suggestions below to work, it is essential that the United States internally revisit how much power corporate market growth aspirations should have in shaping speech from Hollywood to Silicon Valley.

Expand State-level Data Security Regulations Nationally

To better monitor how platforms move and use data with the support of users, it is also essential to enact national data security regulations. Models exist in different states to draw from, as California,[43] Virginia,[44] Utah,[45] and others offer different forms of data privacy regulations that allow users to access, correct, and delete personal data they choose not to share. This is an important response to risks of content control by the platforms and empowers users to monitor their data. While such a proposal has been suggested widely, one of the central challenges in its implementation is both a lack of capacity and willingness to implement such practices on a national level. As such, the barrier to implementing such a policy emerges both from the challenges of executing it and the challenges of passing such legislation across a country with diverse interests in and awareness of privacy and security in the tech sector.

National Security Control of Algorithms

A final, albeit more controversial, possibility to address content control concerns is through national security control of the export of algorithms. China used this strategy to take upon the threat that TikTok would move the development of its algorithm abroad. Such a move practically requires that user data storage and the development of algorithms only happen in countries with standards that the United States deems to be protective of free speech. Such an approach is a much more complex option than those policy proposals suggested previously. It would need to be executed with nuance and in partnership with industry needs. However, as TikTok and WeChat become more integral players in the U.S. information ecosystem and U.S. tech firms continue to operate in China, it may become necessary to have more transparency over how algorithms gather, share and distribute data. At a minimum, it is important to have more government visibility into what laws they follow when they do this.

Build Multilateral Alliances for Data Storage and Security Standards

To address the inherently global nature of data movement, it is important for the tech sector is to work across governments in the United States, Europe, Japan, Australia, Brazil, India, and Singapore, as well as other developed nations. Such collaboration should focus on standards for the movement and storage of data across borders. At present, global dominance by U.S. tech companies as well as differences in how corporations must treat data both within and between these countries presents a challenge to cooperation. The U.S. government could improve its credibility with allies and partners by strengthening data storage and security protections required of U.S. tech companies. Similarly, U.S. tech firms could offer more transparent data storage and security practices through voluntary industry-wide standards-setting. However, thus far, both federal government data storage and security standards and industry-wide standards have met with resistance from industry partners due to the financial value firms accrue by exploiting user data. While collaborative standards-building practice presents a significant challenge due to radically different approaches to data storage and security across developed tech markets, it remains an important aspiration. At this point, the United States lacks nationwide data storage and security standards. Such an international effort would need to operate in parallel with a national movement to reform U.S. data storage and security standards.

Reporting Content and Takedown Notices from Non-U.S. Actors

In response to the internationalization of Chinese government content controls, one important step would be to prevent U.S.-based media and technology firms from following foreign laws to remove content or share information with foreign governments while operating in the United States. This would need to apply to U.S. and Chinese firms with U.S. operations. While the United States has little leverage in changing Chinese laws, it can enforce corporate practices domestically.

Media and tech firms in the United States should be required to report content takedown notices and requests for information from international government officials and the specific law that the government officials cite. This is particularly important to prevent U.S. firms and those operating in the United States from just complying with general requests that are not grounded in legal jurisprudence. It also will allow for tracing particularly damaging laws and more focused policy initiatives. Of course, this is a highly sensitive subject, closely tied to questions of freedom of speech in the United States. I would argue that an initial first step should focus on reporting takedown notices rather than further devolving policymaking to tech firms. Higher quality data about the scope and scale of international takedown notices offers a first step to understanding the scale of the problem. It also forces tech firms to move away from transparency reporting that conceals their flaws. Such an approach would require infrastructure to monitor such practices. Such reporting could be directed to the Committee on

Foreign Investment in the United States, the SEC, or another agency with the capacity to take on this burden.

Domestic rule-making offers one path to constrain Hollywood studio financial interests from following Chinese government content regulations. However, there are several challenges that this proposal poses. First, this approach works contrary to one of the great strengths of Hollywood studio filmmaking in building American soft power—its relative independence from the U.S. government. Second, U.S. government interventions in Hollywood have a dark history grounded in the Hollywood blacklist denying employment to individuals deemed to be Communist sympathizers. Any U.S. government efforts must be narrowly grounded in tracking specific content takedown practices requested by Chinese government officials. While such practices would not capture concerns about the influence of Chinese regulations on the film development process, U.S. content creators need to retain creative autonomy if the regulations are to preserve the core values of freedom of speech they are meant to protect.

Reporting Local Law Adherence to International Content Control Regulations in the United States

For both the film and social media entertainment sectors, a further requirement could include reporting which "local laws" any firm following laws outside of the United States in their U.S.-based media and technology activities are subject to with respect to content censorship. Such a policy is risky because it would increase firms' reporting requirements and has the potential to become unwieldly. Such legislation would also be so general as to capture not just pressures from Chinese regulations but from other countries around the world. One possible approach to mitigate the scale and paperwork burden of such a requirement would be to implement it for a short period of time or as a pilot in one industrial segment to carefully assess what type of laws are most commonly impacting the content of U.S. firms. Such an approach offers a valuable monitoring function for determining the size and scope of content control practices. By monitoring international content control practices over time, it becomes possible to mitigate international legal pressure through targeted local laws.

Limit Investment by Chinese Media and Tech Firms Operating in the United States

To create leverage for renegotiating the U.S.-China Film Treaty and the conditions under which U.S. tech firms operate in China by limiting the types of investments that Chinese firms can make in the United States in sectors that do not allow for U.S. investment in China. Such a move presents challenges because it risks further decoupling the U.S. and Chinese economies. It presents economic risks to U.S. corporations and investors. It also presents the possibility of further damage to the U.S. investment environment if the Chinese government penalizes U.S. corporations in response.

Then-Vice President Biden negotiated the treaty with then-Vice President Xi to allow a floor of 34 films to be admitted into China. Since the expiration of the treaty in 2017 under the Trump administration. Hollywood studios have been increasingly at the mercy of Chinese censors. For example, in 2021, no Marvel Cinematic Universe films were admitted into the Chinese market.[46] The limitations on Hollywood studios have the potential to drive firms to make increasingly undesirable content trade-offs to access what is now the largest market in the world.

The U.S.-China Film Agreement came about following the United States suing China in the WTO under violation of terms for A/V market access in 2007.[47] Particularly due to the Chinese market's strength relative to 2012, renegotiating an entry guarantee for U.S. films will be difficult at this juncture due to the lack of an incentive to admit the films for market growth purposes. It may be necessary to consider making a formal complaint in the WTO. Of course, such a move is complicated within the U.S.-China trade relationship. It would need to be balanced against other trade interests. While this multilateral/bilateral approach may help address some narrow challenges in the film industry, the issue of content control through trade is much more expansive.

Renegotiating the treaty would be difficult. The rise of China's media and tech industry domestically and internationally, the United States has lost much of its leverage to make market access demands. The failure to renegotiate the U.S.-China Film Treaty in 2017 when China's film market was still smaller than the United States' is a failure of U.S. foreign policy under the Trump administration. With China's theatrical market larger than that of the United States for two years in a row, the United States currently has little leverage in negotiating this point. One possible point of influence would be to prohibit the investment by Chinese film studios like Alibaba Films or Tencent Films in the U.S. market until the renegotiation of the U.S.-China Film Treaty. Unfortunately, such an approach harms these companies' U.S. partners, employees, and investors even as it offers potential options for market access, and indeed, there may not be a net financial gain for the U.S. film industry from blocking Chinese investment as a tool to enhance Chinese market access. As with all these policy approaches, any approach will be imperfect because of the asymmetry between the U.S. and Chinese regulatory landscapes paired with their economic interdependence.

The suggested policy proposals have clear downsides despite their ability to address the issues of data and content control through trade. The challenge of implementing any of these solutions underscores how the US and Chinese industrial ecosystems entwine. Ultimately, U.S.-China trade offers a hotbed of challenges for freedom of expression in the United States. U.S. firms depend on the Chinese market to sell films, television shows, cars, consumer goods, and a whole host of other products and services that require either direct market access or access to platforms based in China. However, the Chinese government has implemented increasingly tight controls over content and data over the past six years.

What remains is the need to restructure the U.S. media and tech landscape to protect consumers. This includes refining laws, enhancing trade protections, and requiring transparency from companies operating across borders. Such efforts demand greater clarity over what Chinese law firms operating in the United States follow and why. It requires more consumer protection of data that corporations share. Firms operating in the United States may need to exhibit greater transparency in their data gathering and use practices. However, these latter options should be held in reserve if other approaches fail to yield results. Finally, and perhaps most importantly, trade in media and tech between China requires a large-scale reassessment of how to effectively balance freedom of speech and corporate interests in the United States.

Notes

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