

Regulating Blogging and Microblogging in China

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INTRODUCTION

China is probably the largest and fastest-growing market for blog and other social media services. According to an official report released by the China Internet Network Information Center, as of the end of June 2012, the number of blogs in China had reached more than 353 million and about 65.7% of Chinese Internet users had their own blogs.¹ In recent years, a vast number of Chinese Internet users have also shown strong interest in maintaining their own microblog, or *weibo*, which is the Chinese version of Twitter.² More than 273

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¹ Zhongguo Hulian Wangluo Xinxì Zhongxin (中国互联网络信息中心) [CHINA INTERNET NETWORK INFO. CTR.], Zhongguo Hulian Wanglou Fazhan Zhuangkuang Tongji Baogao (中国互联网络发展状况统计报告) [STATISTICAL REPORT ON INTERNET DEVELOPMENT IN CHINA] 25, 31 (July 2012), <http://www.cnnic.cn/research/bgxz/tjbg/201207/P020120719489935146937.pdf>.

² Like Facebook and YouTube, Twitter is a western social media service blocked in China. By contrast, the microblog (*weibo*) services are specially tailored for the Chinese

million microblogs have been launched in China, which means that about 50.9% of China's Internet users have been involved in microblogging activities.³ Numerous Chinese celebrities, such as actors and singers, have their own blogs or microblogs.⁴

At the same time, China's regulations and other controls that target blogging and microblogging activities are drawing as much attention around the world as the number of its rapidly growing blogs and microblogs. More than sixty government regulations, enforced at both the national and local levels, regulate online content.⁵ These regulations include the Measures for Managing Internet Information Services (2000 Measures), Provisions for the Administration of Electronic Bulletin Board System Services (BBS Provisions), the

market's censorship requirements. Domestic microblog service providers include Baidu, Netease, Tencent, People's Daily, Sina, and Sohu. Among others, Sina Weibo is dominant and continuously growing in the Chinese microblog market. *See, e.g.*, BILL DODSON, CHINA FAST FORWARD: THE TECHNOLOGIES, GREEN INDUSTRIES AND INNOVATIONS DRIVING THE MAINLAND'S FUTURE xvi (2012) ("With Twitter blocked in China, Weibo has become the default microblogger of choice for hundreds of millions of Internet users in the country."); Jonathan Sullivan, *A Tale of Two Microblogs in China*, 34 MEDIA, CULTURE & SOC'Y 773, 773 (2012) ("[T]he leading Chinese microblog service, Sina Weibo, had around 150 million users in August 2011 and is growing at a rate of almost 10 million per month.") (citation omitted); *Chinese Internet Companies: An Internet with Chinese Characteristics*, ECONOMIST, July 30, 2011, at 71, 71, available at <http://www.economist.com/node/21524821> ("A recent addition to this innovative group is Sina Weibo. Run by Sina, another leading internet firm, it is often billed as the 'Twitter of China.'"); Gady Epstein, *Sina Weibo*, FORBES ASIA, (Mar. 3, 2011, 6:00 PM), <http://www.forbes.com/global/2011/0314/features-charles-chao-twitter-fanfou-china-sina-weibo.html> (Charles Chao, with a new Chinese version of Twitter, Sina Weibo, gambled on a politically sensitive Internet service. "So far his move is paying off."); Owen Fletcher, *Sina's Weibo Shows Strong User Growth*, WALL ST. J. (Aug. 18, 2011, 5:03 PM), <http://online.wsj.com/article/SB10001424053111903596904576515290822467846.html> ("China's Sina Corp said the number of accounts for its Twitter-like Weibo service jumped about 40% in three months to more than 200 million users . . ."); Jeffrey Hays, *Weibos, China's Twitter-Like Microblogs: Their Power, Popularity, Speed and Ability to Avoid Censors*, FACTS AND DETAILS (2008), <http://factsanddetails.com/china.php?itemid=1840&catid=7&subcatid=44> (last updated March 2012) ("China's Twitter-like microblogs are called weibos. . . . China's two major Twitter-like microblogs Sina and Tencent have more than 200 million registered users each.").

³ CHINA INTERNET NETWORK INFO. CTR., *supra* note 1, at 25.

⁴ *See* Sullivan, *supra* note 2, at 776 (stating that the most popular Weibo users are actresses and TV personalities); Shaojung Sharon Wang & Junhao Hong, *Discourse Behind the Forbidden Realm: Internet Surveillance and its Implications on China's Blogosphere*, 27 TELEMATICS & INFORMATICS 67, 71 (2010) (2006 and 2007 surveys showed audiences frequently visited actors', actresses', or other celebrities' blogs).

⁵ OPENNET INITIATIVE, ACCESS CONTROLLED: THE SHAPING OF POWER, RIGHTS AND RULE IN CYBERSPACE 456–60 (Ronald Deibert et al. eds., 2010); Trina K. Kissel, *License to Blog: Internet Regulation in the People's Republic of China*, 17 IND. INT'L & COMP. L. REV. 229, 233–34 (2007).

State Secrets Protection Regulations for Computer Information Systems on the Internet, etc.⁶ Furthermore, the Chinese government has employed quite rigorous technical controls over online information flows, and these controls significantly affect blogging and relevant online activities.⁷ Multiple stakeholders, such as Internet users, Internet service providers (ISPs), and Internet content providers (ICPs), are all accountable for illegal online content in China.⁸

Because Chinese bloggers and microbloggers publish their opinions under the government's scrutiny, an interesting issue is whether or not these social media have influenced Chinese people's perceptions and conceptions of human rights. Blogging and microblogging activities require user involvement, communications, connection, and sharing. Such social interaction may lead to the establishment of new social issues and substantial changes in values and ideas. In the blogosphere, where politics are not concerned, bloggers, microbloggers, and the Chinese courts have begun to define the scope of free speech.⁹ Therefore, social media's impact on China's politics and human rights—especially free speech and privacy—may be a gradual and subtle evolution, rather than a democratic revolution.¹⁰

From the perspectives of Chinese bloggers, the political control of online expression, such as censorship, is actually a tradeoff for free speech outside the political domain.¹¹ In this essay, I will first analyze how the Chinese government controls political blogging and microblogging activities. Then I will examine a recent Chinese defamation case, *Beijing Kingsoft Security Software Co., Ltd. v. Zhou*, in which Chinese courts first explored the social role of

⁶ E.g., Kissel, *supra* note 5, at 235–36.

⁷ Ashley Esarey & Xiao Qiang, *Political Expression in the Chinese Blogosphere: Below the Radar*, 48 ASIAN SURV. 752, 754–55 (2008) (“It is well known that numerous government agencies . . . participate in management of the Internet; the State employs tens of thousands of vigilant ‘Internet Police’”); Jyh-An Lee & Ching-Yi Liu, *Forbidden City Enclosed by the Great Firewall: The Law and Power of Internet Filtering in China*, 13 MINN. J. L. SCI. & TECH. 125, 129–35 (2012); Guobin Yang, *A Chinese Internet? History, Practice, and Globalization*, 5 CHINESE J. COMM. 49, 52–53 (2012).

⁸ Kissel, *supra* note 5, at 236–37; Lee & Liu, *supra* note 7, at 149–50.

⁹ See *infra* Part III (discussion of *Kingsoft I* and *Kingsoft II*).

¹⁰ Rebecca MacKinnon, *Flatter World and Thicker Walls? Blogs, Censorship and Civil Discourse in China*, 134 PUB. CHOICE 31, 44–45 (2008).

¹¹ *Id.* at 42; see also Sullivan, *supra* note 2, at 776 (“For the majority of users, however, it seems that ‘censorship and other forms of manipulation [are seen] as a necessary trade-off required to obtain the right to interact online.’”) (alteration in original).

microblogging and its relations with free speech.¹² The Chinese case exhibits some controversies similar to the recent U.S. online defamation case, *Obsidian Finance Group, LLC v. Cox*,¹³ which was decided by an Oregon federal district court around the same time. From the Chinese court decision, we can, to some extent, understand that vigorous social media activities have gradually influenced the human rights practices in China in a positive way.

I

POLITICAL CONTROL OF BLOGGING

The Chinese government both employs blogs as a tool to shape public opinion and, at the same time, stringently regulates citizens' blogging activities. It is reported that an army of government-trained online commentators writes blogs in support of the Chinese state and its various stances.¹⁴ Since 2005, in order to enable a "system for monitoring sites in real time," the government has mandated that all non-commercial websites, including blogs, be registered, and that the sites' developers or owners provide their identities.¹⁵ Bloggers may find their websites inaccessible if they fail to register.¹⁶ At the same time, for blogs found to serve as a tool for collective political protest, owners who do register may bear criminal liability for the blogs' content.¹⁷

Another effective government control over blogging is the imposition of filtering and censorship obligations on blog service

¹² Beijing Jinshan Anquan Ruanjian Youxian Gongsi Su Zhou Hongyi (北京金山安全软件有限公司诉周鸿祎) [Beijing Kingsoft Security Software Co. v. Zhou] (*Kingsoft II*), No. 09328 (The First Intermediary People's Court 2011) (China).

¹³ *Obsidian Fin. Grp., LLC v. Cox*, No. CV-11-57-HZ, 2011 WL 5999334 (D. Or. Nov. 30, 2011).

¹⁴ Kissel, *supra* note 5, at 232.

¹⁵ Reporters Without Borders, *Authorities Declare War on Unregistered Websites and Blogs* (June 6, 2005), http://ar.rsf.org/print.php3?id_article=14010; see also MacKinnon, *supra* note 10, at 37.

¹⁶ MacKinnon, *supra* note 10, at 37. In China, when the government shuts down a blog, bloggers euphemistically describe it as being "harmonized"; however, a blogger can always open a new blog elsewhere. *E.g.*, Nicholas Bequelin, *Crackdown in China*, N.Y. TIMES, Apr. 7, 2011, <http://www.nytimes.com/2011/04/08/opinion/08iht-edbequelin08.html>.

¹⁷ See Charles Hutzler, *Wang Lihong, Chinese Online Activist, Sentenced to Prison for Staging Protest*, HUFF POST WORLD (Sept. 9, 2011, 4:55 AM), http://www.huffingtonpost.com/2011/09/09/wang-lihong-prison_n_955226.html (reporting that "[an] online activist [in China] was sentenced to nine months in jail . . . for staging a protest [on his blog]").

providers.¹⁸ In 2005, Microsoft was found to have censored its Chinese users' blog content at the behest of the Chinese government,¹⁹ removing words like "democracy" and "human rights."²⁰ Submitting again to official Chinese pressure, Microsoft later closed the website of Zhao Jing (pseudonym Michael Anti), one of the most famous bloggers in China.²¹ Zhao Jing's story eventually led to Congressional hearings in the United States regarding these matters.²² Microsoft's intervention in blogging activities was criticized by some commentators as simply unnecessary because servers hosting the blogs were actually in the United States, not China.²³

Another instance of censorship was the government shutdown of the blog platform bullog.cn (Niubo) on January 9, 2009, for "picking up harmful information on political and current affairs."²⁴ Blogbus and BlogCN are other popular blogs that were temporarily blocked by the Chinese government in its attempt to "'clean' them and make them politically correct."²⁵ In specific cases, blog service providers have handed users' personal information over to the government upon its request to avoid possible fines or revocation of business licenses.²⁶ Owing to the government's strict control of online political speech,

¹⁸ Kristen Farrell, *The Big Mamas are Watching: China's Censorship of the Internet and the Strain on Freedom of Expression*, 15 MICH. ST. J. INT'L L. 577, 587–88 (2007); MacKinnon, *supra* note 10, at 38.

¹⁹ AMNESTY INT'L, UNDERMINING FREEDOM OF EXPRESSION IN CHINA: THE ROLE OF YAHOO!, MICROSOFT AND GOOGLE 19–20 (July 2006), http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCEQFjAA&url=http%3A%2F%2Fwww.ethicsworld.org%2Fcorporatesocialresponsibility%2FPDF%2520links%2Famnesty.pdf&ei=Q61_UPPCHZDMigLv4CoCw&usg=AFQjCNEEJuZQFczMyK743VwkPP43i1Ltyw&sig2=yEQ1zSYnQQDDgK-74a2nXw.

²⁰ YONGNIAN ZHENG, TECHNOLOGICAL EMPOWERMENT: THE INTERNET, STATE, AND SOCIETY IN CHINA 66 (2008).

²¹ *Id.*

²² *The Internet in China: A Tool for Freedom or Suppression? Before the Subcomm. on Africa, Global Human Rights, and Int'l Operations and the Subcomm. on Asia and the Pacific and the H. Comm. on Int'l Relations*, 109th Cong. 3 (2006).

²³ See Surya Deva, *Corporate Complicity in Internet Censorship in China: Who Cares for the Global Compact or the Global Online Freedom Act?*, 39 GEO. WASH. INT'L L. REV. 255, 269–70 (2007).

²⁴ See OPENNET INITIATIVE, *supra* note 5, at 456–57 (internal quotation marks omitted).

²⁵ Wang & Hong, *supra* note 4, at 69.

²⁶ MacKinnon, *supra* note 10, at 37.

Chinese bloggers have learned to avoid publishing politically sensitive content²⁷ or to publish it in disguised or indirect ways.²⁸

II

POLITICAL CONTROL OF MICROBLOGGING

Microblogging, or *weibo*, is subject to primarily the same regulations as blogging in China. Microblogs are easier to use than blogs when it comes to the dissemination of information, including personal opinion. Because microblogging posts are relatively short,²⁹ microbloggers can always express their opinions easily and immediately via smartphones or other electronic devices. Microblogs have thus swiftly become a primary tool with which Chinese people express their thoughts to relatives, friends, or the world.

The prevalence and power of microblogs can be illustrated by the story of Wang Gongquan, a famous investor in China and a user of Sina Weibo. His microblog announcement that he had left his wife for his mistress was republished throughout China sixty thousand times within twenty-four hours.³⁰ Microblogs, however, are not just for personal or tabloid communications, as the popular and effective tool has facilitated Chinese people's coordination of large-scale campaigns (so long as they remain outside the political sphere).³¹

Like blog service providers, microblog service providers must, by law, guarantee that flows of information are under control through the

²⁷ See Wang & Hong, *supra* note 4, at 75 (“[I]f blogging is replete with the character of celebrity gossip, personal experience, and self-disclosure, the abundant diary-style blogs and the bloggers’ limited interest in politics demonstrate a new cultural phenomenon that obscures the impact of Internet censorship in China’s blogosphere.”); see also Sullivan, *supra* note 2, at 776 (stating that the use of Sina Weibo “is dominated by entertainment”).

²⁸ Lee & Liu, *supra* note 7, at 147–48; see also DODSON, *supra* note 2, at 24 (to avoid being censored, Chinese microbloggers “used the ancient Chinese character for river—*jiang*—to represent [Jiang Zemin’s] surname, though the character they used was different from that of the surname”); Xiao Qiang, *The Battle for the Chinese Internet*, 22 J. DEMOCRACY 47, 52–53 (2011) (introducing a number of homophones that Chinese netizens have used to avoid censorship).

²⁹ Like Twitter, each microblog post cannot exceed 140 characters. See, e.g., DODSON, *supra* note 2, at 24. However, the Chinese microblog Sina Weibo provides functions that Twitter lacks; namely, Sina Weibo permits users to circulate images, including videos, and to attach them to text messages. E.g., Guobin Yang, *A Chinese Internet? History, Practice, and Globalization*, 5 CHINESE J. COMM. 49, 50 (2012).

³⁰ MICHAEL J. SILVERSTEIN ET AL., *THE \$10 TRILLION DOLLAR PRIZE: CAPTIVATING THE NEWLY AFFLUENT IN CHINA AND INDIA* 179 (2012).

³¹ Yang, *supra* note 29, at 50.

providers' own implementation of censorship techniques.³² The Chinese government has justified this requirement by declaring that unregulated microblogging has led to the circulation of false rumors and other harmful speech with such untoward consequences as Urumqi's 2009 ethnic riots, which resulted in nearly two hundred deaths.³³ Using the same reasoning, the Chinese government has blocked Twitter from operations in China since July of 2009.³⁴ Local microblogging service providers will not be able to renew their license if they do not fulfill their censorship obligations.³⁵

In order to provide a high level of censorship, microblog service providers, such as Sina Weibo, need to use groups of human censors in addition to sophisticated censorship software.³⁶ In December 2010, Nicholas Kristof of the *New York Times* started microblogging with Sina Weibo to test its level of censorship.³⁷ His post regarding Tiananmen Square was deleted by the moderators within twenty minutes.³⁸ Kristof's microblog was eventually shut down after receiving wide attention from the media.³⁹

Another important aspect of censorship in this area is that the government as well as microblog service providers regulate the search function accompanying Chinese microblogs.⁴⁰ If a search on a microblog site contains politically sensitive keywords, such as "Falun Gong," the name of the outlawed spiritual organization, the microblog site will respond to the search by presenting a webpage declaring that, pursuant to "relevant laws, regulations and policies, the search results have not been shown."⁴¹ Since March 2012, the government has further required microblog service providers to implement real-

³² Sullivan, *supra* note 2, at 776. For example, in order to avoid being used as a tool for mobilization, Sina Weibo closed its search function during some critical events, such as the awarding of the Nobel Prize to dissident Liu Xiobo. Yang, *supra* note 29, at 50.

³³ Sullivan, *supra* note 2, at 775.

³⁴ Qiang, *supra* note 28, at 51; *see also* Epstein, *supra* note 2.

³⁵ Brook Larmer, *Where an Internet Joke Is Not Just a Joke*, N.Y. TIMES MAG. (Oct. 26, 2011), http://www.nytimes.com/2011/10/30/magazine/the-dangerous-politics-of-internet-humor-in-china.html?_r=3&pagewanted=all.

³⁶ Sullivan, *supra* note 2, at 776. Sina maintains more than one hundred employees to monitor the content twenty-four hours a day. Epstein, *supra* note 2.

³⁷ Nicholas D. Kristof, *Banned in Beijing!*, N.Y. TIMES OPINION PAGES, Jan. 23, 2011, <http://www.nytimes.com/2011/01/23/opinion/23kristof.html>.

³⁸ *Id.*

³⁹ Nicholas D. Kristof, *Blogs Interrupted*, N.Y. TIMES OPINION PAGES, Jan. 22, 2011, <http://kristof.blogs.nytimes.com/2011/01/22/blogs-interrupted/>.

⁴⁰ Epstein, *supra* note 2.

⁴¹ *Id.*

name registration systems for all microblog users so that it can control microblogging activities more easily.⁴²

III

FREE SPEECH IN THE BLOGOSPHERE

Although blogging and microblogging are extensively regulated in China, they still change the way that information flows and people communicate with the aid of digital technology. Different from mainstream media artifacts, which are subject to strict ex ante editorial checks and reviews, blog and microblog content is immediately available to the public once it is written. Even politically sensitive content may be instantly forwarded or available to thousands of users before it can be censored. Such real-time features of social media serve as a catalyst for free speech. This may explain why blogging and microblogging have been frequently associated with free speech in China.⁴³ In the blogosphere outside political speech,⁴⁴ Chinese netizens and courts have begun to treat free speech seriously as a fundamental human right protected by the Chinese Constitution.⁴⁵

Among all the discussions on digital free speech in China, the most salient ones are those relating to defamation. Chinese courts constantly deal with the boundaries delineating microbloggers' right of free speech from others' right to privacy and to freedom from

⁴² Kathrin Hille, *Real Name Rule to Add to Sina Weibo's Woes*, FIN. TIMES (Feb. 28, 2012, 5:06 PM), <http://www.ft.com/intl/cms/s/0/e995b7aa-6201-11e1-807f-00144feabdc0.html#axzz27FVkoXM4>.

⁴³ See *Chinese Microblog Must Not Sacrifice Free Speech*, WANT CHINA TIMES, July 1, 2012, <http://www.wantchinatimes.com/news-subclass-cnt.aspx?id=20120701000080&cid=1701&MainCatID=17> (claiming that microblogging activities have brought about a certain degree of free speech in China); Keith B. Richburg, *In China, Microblogging Sites Become Free-Speech Platform*, WASH. POST, Mar. 27, 2011, http://www.washingtonpost.com/world/in-china-microblogging-sites-become-free-speech-platform/2011/03/22/AfcsxlkB_story.html (stating that microblogging websites have become platforms for free speech in China).

⁴⁴ But see Zheng Yongnian et al., *China's Politics: Preparing for Leadership Reshuffling and Maintaining Status Quo*, 4 E. ASIA POL'Y 5, 6 (2012) ("Chinese citizens today are no longer apolitical or passive; their deft usage of social networking sites like *Weibo* (or mini-blogs, Chinese equivalent to Twitter) to challenge China's political establishment is testimonial that China has entered a new age.").

⁴⁵ XIANFA art. 35 (1982) (China) ("Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration."); *Kingsoft II*, No. 09328.

defamation.⁴⁶ The recent Chinese court decision *Beijing Kingsoft Security Software Co. Ltd. v. Zhou*, concerning microblogging defamation, involves several policy considerations similar to those involved in *Obsidian Finance Group, LLC v. Cox*, decided by the U.S. District Court for the District of Oregon.⁴⁷ In the *Kingsoft I* case, defendant Hongyi Zhou, the Chairman of Qihoo Corporation, published postings on a number of microblogs on May 25, 2010, that criticized the corporation's competitor, Kingsoft, as "touji mogou" (acting slyly and clandestinely), "gau yinmou" (plotting conspiracies), and "jiedao sharen" (killing people with a borrowed knife).⁴⁸ He also referred to Kingsoft as "heishan" (black mountain), strongly implying that the company was a dishonest one.⁴⁹ The next day, Kingsoft's market value fell about six hundred million Hong Kong dollars (HKD) according to its stock prices in Hong Kong.⁵⁰

Kingsoft then sued Zhou for defamation and asked for 1.2 million renminbi (RMB) in damages in the Haidian People's Court of Beijing.⁵¹ In March 2011, the district court ruled against Zhou, ordering him to delete the postings, apologize, and pay eighty thousand RMB to the plaintiff.⁵² Zhou then appealed to the First Intermediate People's Court of Beijing, the final court of appeal.⁵³ On August 25, 2011, the First Intermediate People's Court maintained the district court's decision, but decreased the damages to fifty thousand RMB and ordered Zhou to delete two, instead of twenty, microblog postings.⁵⁴

⁴⁶ See, e.g., *Chinese Professor Wins Defamation Suit Against Blogging Web Site*, POST-GAZETTE.COM (Aug. 13, 2006, 12:00 AM), <http://www.post-gazette.com/stories/business/technology/chinese-professor-wins-defamation-suit-against-blogging-web-site-445984/#ixzz273z4u1mg> (reporting that "[a] Chinese journalism professor has won a lawsuit against a blog hosting site that refused to remove remarks criticizing him by one of its users").

⁴⁷ *Obsidian Fin. Grp., LLC v. Cox*, No. CV-11-57-HZ, 2011 WL 5999334, at *1 (D. Or. Nov. 30, 2011) (drawing the line between defamation and free speech); *Beijing Jinshan Anquan Ruanjian Youxian Gongsi Su Zhou Hongyi* (北京金山安全软件有限公司诉周鸿祎) [*Beijing Kingsoft Security Software Co. v. Zhou Hongyi*] (*Kingsoft I*), No. 19075 (Haidian People's Court 2011) (China) (reasoning that there should be a reasonable limitation on the right of free speech in microblogging activities).

⁴⁸ *Kingsoft I*, No. 19075.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Kingsoft II*, No. 09328.

⁵⁴ *Id.*

Kingsoft is a milestone case in China because it is the first one where the courts investigated the social role of microblogging in the context of free speech.⁵⁵ Like the defendant in *Obsidian Finance*, Zhou claimed that blogs are a type of media that should, under the law, enjoy a wide scope of free speech.⁵⁶ Whereas the U.S. District Court for the District of Oregon did not agree that an investigative blogger constitutes “media,”⁵⁷ the Haidian People’s Court of Beijing stated that microblogs exhibit characteristics strongly indicative of “self-media,” which means that microblogs can influence unspecified and wide-ranging audiences.⁵⁸

Nonetheless, this decision made by the Chinese court does not mean that microbloggers are free to express any idea whatsoever on a microblog. The district court instead pointed out that there should be a reasonable limit on microblog free speech, and that this limit should concern the status of the given microblogger, the content of the corresponding post, relevant circumstances of the expressions therein, and the harm and other consequences caused by the post.⁵⁹ In the second instance, the First Intermediate People’s Court further articulated the roles of microblogs, particularly in relation to free speech:

Microblogs are a space for free expression. Citizens can express their thoughts about people or matters via short messages from an individual perspective. Microblogs provide a platform for free speech protected by our Constitution. Microblog speech is occasionally casual, subjective, or even astonishing. Nonetheless, criticism appearing on microblogs can usually function as the public’s own checks and balances to powerful interests. Because microblogs have important implications for enriching citizens’ spiritual life, each netizen should protect microblogs and avoid using them to attack other people. Otherwise, everyone is at risk of suffering undue harm stemming from other people’s microblog posts.⁶⁰

In addition to the issue of blogs or microblogs as a type of media, both *Obsidian Finance* and *Kingsoft* addressed the issue of “public concern.”⁶¹ Nonetheless, the U.S. and Chinese courts focused on

⁵⁵ *Kingsoft I*, No. 19075; *Kingsoft II*, No. 09328.

⁵⁶ *Kingsoft I*, No. 19075.

⁵⁷ *Obsidian Fin. Grp., LLC v. Cox*, No. CV-11-57-HZ, 2011 WL 5999334, at *5 (D. Or. Nov. 30, 2011).

⁵⁸ See *Kingsoft I*, No. 19075.

⁵⁹ *Id.*

⁶⁰ *Kingsoft II*, No. 09328.

⁶¹ *Obsidian*, 2011 WL 5999334, at *5–6; *Kingsoft I*, No. 19075; *Kingsoft II*, No. 09328.

different parts of “public concern.”⁶² The Oregon district court carefully examined whether defendants’ statements regarding plaintiffs constituted a matter of “public concern.”⁶³ Under the *Obsidian Finance* precedent, when the subject of speech is a matter of public concern, defendants may enjoy a wider range of free speech than would otherwise be the case.⁶⁴ The Chinese courts in *Kingsoft* approached “public concern” in a quite different way.⁶⁵ Although Kingsoft is a publicly listed company in Hong Kong, the Chinese courts did not consider investors’ right of knowing and discussing the companies’ corporate affairs as well as other similar “public concerns.” Instead, both the Haidian People’s Court of Beijing and the First Intermediate People’s Court of Beijing indicated that defendant’s public persona, rather than the content of the speech, was of great importance in deciding the case.⁶⁶ The district court reasoned that “as a public figure, Zhou has a great number of fans and a powerful voice; therefore, he is supposed to resume more responsibility and to be more aware of the consequences resulting from his microblogging.”⁶⁷ The First Intermediate People’s Court of Beijing similarly ruled that, “as a public figure, Zhou should be more cautious of his behavior because he knows more about the wide scope and the high speed of Internet communications.”⁶⁸

In the United States, if a plaintiff is a public figure, he or she cannot claim defamation stemming from incorrect harmful statements unless there is proof that the writer or publisher acted with actual malice.⁶⁹ Whether the defendant is a public figure may not make any difference. In contrast, Chinese courts weighed considerably the fact that the defendant Zhou was a public figure and expected him both to bear a higher standard of care and to set an example for Chinese netizens.⁷⁰ This difference strongly suggests that Chinese law

⁶² *Kingsoft I*, No. 19075 (stating that the court should carefully examine whether defendant’s liability can be exempted because of public-interest concerns); *Kingsoft II*, No. 09328 (similarly suggested that public-interest concerns should be taken into consideration in deciding defendant’s liability and right of free speech).

⁶³ *Obsidian*, 2011 WL 5999334, at *6.

⁶⁴ *Id.* at *5–6.

⁶⁵ See *Kingsoft I*, No. 19075; *Kingsoft II*, No. 09328.

⁶⁶ See *Kingsoft I*, No. 19075; *Kingsoft II*, No. 09328.

⁶⁷ *Kingsoft I*, No. 19075; *Kingsoft II*, No. 09328.

⁶⁸ *Kingsoft II*, No. 09328.

⁶⁹ *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279–80 (1963).

⁷⁰ *Kingsoft I*, No. 19075.

comprises more moral components and has higher expectations of public figures than U.S. law.

CONCLUSION

Blogging and microblogging represent the largest and most dynamic communication platforms on the Chinese Internet. While it is not easy to evaluate whether blogging and microblogging will bring about regime change, it is obvious that social media has been serving as a catalyst for social change in the country. In this sense, the Nobel Laureate Liu Xiobo is certainly right in stating that the Internet is “‘God’s gift to China.’”⁷¹

Although China’s blogging and microblogging activities portray a lack of robust political expression, they have pushed Chinese courts and netizens to recognize the value of free speech. In cases where the disputed speech is not politically sensitive, the Chinese courts have begun to develop a more sophisticated theory of free speech, taking into account the free flow of information, individuals’ reputation and privacy, the nature of social media and its social effects, and so on. Although Chinese courts’ approaches to these issues differ from the approaches common in the United States and other democratic regimes, the continuous attention that Chinese courts have paid to free-speech issues may eventually promote relevant human-rights practices in the country. Digital technologies, thus, have the potential to stimulate democracy in China steadily, indirectly, and in unintended ways.

⁷¹ Andrew Jacobs & Jonathan Ansfield, *Nobel Peace Prize Given to Jailed Chinese Dissident*, N.Y. TIMES, Oct. 8, 2010, <http://www.nytimes.com/2010/10/09/world/09nobel.html?pagewanted=all>.