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International Trade Commission

Foreign Censorship, Part 1: Policies and Practices Affecting U.S. Businesses

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United States International Trade Commission

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- In chapter 3, page 88, line 25 has been modified to remove the phrase, “including a research center” and further information has been included in footnote 388. February 4, 2022.

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Abbreviations and Acronyms

Terms	Definitions
AAP	Association of American Publishers
AI	artificial intelligence
AKP	Justice and Development Party (Turkey)
BCI	Better Cotton Initiative
BEA	Bureau of Economic Analysis, U.S. Department of Commerce
CAC	Cyberspace Administration of China
CCP	Chinese Communist Party
CFA	China Film Administration
CPV	Communist Party of Vietnam
DNS	domain name system
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
EDIS	Electronic Document Information System
ESNI	encrypted server name indication
EU	European Union
FDI	foreign direct investment
FICCI	Federation of Indian Chambers of Commerce and Industry
FSB	Federal Security Service (Russia)
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GFW	Great Firewall
GR	Government Regulation (Indonesia)
HKNSL	Hong Kong National Security Law
HRW	Human Rights Watch
HTTPS	Hypertext Transfer Protocol Secure
ICCPR	International Covenant on Civil and Political Rights (United Nations)
ICT	information and communications technology
ICTA	Information and Communication Technologies Authority (Turkey)
IHRL	international human rights law
IMF	International Monetary Fund
IP	internet protocol
ISBN	International Standard Book Number
ISP	internet service provider
IT	information technology
ITE	Law 11 of 2008 (Indonesia)
ITIF	Information Technology and Innovation Foundation
ITU	International Telecommunication Union (United Nations)
KPPU	Business Competition Supervisory Commission (Indonesia)
LCS	Law on Cybersecurity (Vietnam)
LGBT	lesbian, gay, bisexual, and transgender
Mbps	megabits per second
MCIT	Ministry of Communication and Information Technology (Indonesia)
MeitY	Ministry of Electronics and Information Technology (India)
MOU	memorandum of understanding
MPA	Motion Picture Association
MR 5	Ministerial Regulation 5 (Indonesia)
NAICS	North American Industry Classification System
NBA	National Basketball Association

Terms	Definitions
NetzDG	Network Enforcement Act (Germany)
NGO	nongovernmental organization
NRTA	National Radio and Television Administration (China)
OECD	Organisation for Economic Co-operation and Development
OS	operating system
OTT	over-the-top (media service)
RSF	Reporters Without Borders
SAPP	State (General) Administration of Press, Publication, Film, and Television (China)
SAPPRFT	State Administration of Press, Publication, Film, and Television (China)
SMEs	small and medium-sized enterprises
SMS	Short Message Service
STRI	Services Trade Restrictiveness Index
telco	telecommunications company
telecom	telecommunications
TIB	Directorate of Telecommunication and Communication (Turkey)
TLS	Transport Layer Security
UAE	United Arab Emirates
UCSD	University of California San Diego
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
URL	uniform resource locator
VPN	virtual private network
VK	Vkontakte (Russia, social network service)
WJP	World Justice Project
WTO	World Trade Organization

Executive Summary

This report identifies and describes various foreign government censorship policies and practices, including examples that U.S. businesses consider impediments to trade and investment. It is the first of two reports requested by the U.S. Senate Committee on Finance (Committee) in its letter to the U.S. International Trade Commission (Commission) dated April 7, 2021. The Committee stated that censorship and its impact on the flow of information and services are critical issues for the digital economy and requested that this first report include detailed information on the following:

1. Identification and descriptions of various foreign censorship practices, in particular any examples that U.S. businesses consider to impede trade or investment in key foreign markets. The description should include to the extent practicable:
 - a. the evolution of censorship policies and practices over the past five years in key foreign markets;
 - b. any elements that entail extraterritorial censorship; and
 - c. the roles of governmental and nongovernmental actors in implementation and enforcement of the practices.

In response to the Committee's request, this report identifies and describes censorship and censorship-enabling policies and practices and the evolution of these policies and practices over the past five years in six key foreign markets: China (including Hong Kong), Russia, Turkey, Vietnam, India, and Indonesia. For these key markets, the report also describes elements that entail extraterritorial censorship and the roles of governmental and nongovernmental actors in implementation and enforcement of censorship policies and practices.

In preparing this report, the Commission relied on information provided by a review of relevant literature, a public hearing, written submissions, interviews with representatives from industry, academia, the U.S. government, and nongovernmental organizations (NGOs), and publicly available data. The Commission held a public hearing on July 1, 2021, and participants included representatives of academic institutions, NGOs, and trade associations. The Commission also received written submissions for that hearing from a similar cross section of interested parties.

Defining Censorship

Censorship can be defined in various ways. For the purposes of this investigation, based on the request letter from the Committee to the Commission dated January 4, 2021, censorship is defined as the prohibition or suppression of speech or other forms of communication. This report addresses foreign government censorship policies and practices, including laws, regulations, and other measures that either directly target the suppression of speech or may be used to enable or facilitate its suppression. For purposes of this report, we refer to these measures generally as "censorship-related policies and practices" or simply "policies and practices." This investigation focuses on foreign government censorship-related policies and practices that impede trade and investment by U.S. businesses in key

markets.¹ Industries commonly subject to censorship include digital and non-digital media (such as newspapers, journals, and magazines); producers and distributors of audiovisual content (such as movies and online video, television, books, and music); and social media and internet search providers, as well as computer services more generally. The broad trend toward online publication and communication in the global media and audiovisual services sectors and the heavy reliance on digital distribution for the cross-border provision of news, information, and audiovisual content imply that foreign censorship of the flow of information over digital platforms is having a significant impact on the digital economy. Given this and consistent with the Committee's request, this report focuses on censorship in the online environment.

This report in chapter 1 briefly describes how international human rights law has sought to distinguish between measures that are and are not censorship and whether an instance of censorship may represent a legitimate exception to freedom of expression. For example, international human rights law considers such factors as whether a law provides clear direction and is not vague or ambiguous. However, it is beyond the scope of this report to determine whether a given law may be appropriate or inappropriate under international human rights law or other legal frameworks.

Key Markets Where Foreign Censorship Affects U.S. Businesses

In response to the Committee's request for information about foreign censorship policies and practices in key markets, the Commission identified six markets: China, Russia, Turkey, Vietnam, India, and Indonesia. These six key markets were selected because they meet two broad criteria. First, governments in these markets have introduced a wide range of censorship policies and practices, in particular with respect to digital content, that involve restrictions on firms, including U.S. businesses. Second, for the digital and media services most likely affected by censorship, demand in each of these markets is large enough to represent a significant market opportunity for U.S. firms. In identifying key markets, the Commission considered a range of potential foreign censorship policies and practices, noting that these may affect U.S. businesses either by restricting their existing access or limiting new access to a foreign market.

While the Commission relied on a variety of sources to inform its identification of key markets, an important starting point was information from Freedom House, a well-known human rights advocacy NGO, and its annual *Freedom on the Net* reports, which provide internet freedom scores related to obstacles to access, limits on content, and violations of internet user rights, as well as data on governments' use of nine "key internet controls" in regulating online platforms, content, and users. To assist in identifying the key markets with relevant censorship policies and practices, the Commission also reviewed data on the incidence of internet shutdowns, government requests for moderation of content, legal guarantees of freedom of expression, and the degree of freedom afforded the press in various countries around the world. To identify markets where demand is large enough to represent a significant market opportunity for U.S. businesses, the Commission looked at indicators of demand for digital media and audiovisual content. These included demographic indicators of consumer demand such as population and gross domestic product (GDP) per capita, as well as indicators of the size of a market's digital

¹ Some topics are outside the scope of the Committee's request. For example, this report does not focus on intellectual property infringement and actions taken by governments or private actors to respond to infringement in the online and offline environments.

economy, including the percentage of the population with access to the internet and the United Nations Conference on Trade and Development Readiness for Frontier Technologies Index, which assesses countries' rate of adoption of important internet technologies.

Overview of Censorship-Related Policies and Practices

To get a full picture of foreign government censorship regimes in the key markets, it is useful to understand the “who,” “what,” and “how” of these policies and practices, as well as their evolution, and the concepts of extraterritoriality and self-censorship. Many different governmental agencies and actors have a role in censorship-related policies and practices in the key markets—the “who” of censorship. Also, governments in the key markets often require the cooperation of nongovernmental actors, such as U.S. internet companies, to carry out censorship, given the growing importance of the internet for communication and speech.

Governments in the key markets censor a wide variety of content—the “what” of censorship. This content includes political, social, and national security-related topics as well as internet tools that can be used to circumvent censorship (such as virtual private networks). For example, based on an empirical analysis conducted by researchers at Harvard University's Berkman Klein Center for Internet & Society, 26 of 45 countries engaged in state-sponsored filtering of internet content through technical means in 2015–17 and before.² In particular, all of the key markets engaged in “pervasive” or “substantial” filtering of political content as well as other topics (figure ES.1).

Figure ES.1 Degree of filtering by thematic area and country, 2015–17

1 = selective filtering; 2 = substantial filtering; 3 = pervasive filtering. Underlying data for this figure can be found in appendix E, [table E.1](#).

Country	Political content	Social content	Conflict/Security	Internet Tools
China	3	2	3	3
Russia	2	3	3	2
Turkey	2	2	3	1
Vietnam	3	1	1	2
India	3	1	2	2
Indonesia	3	3	1	3

Source: Zittrain et al., “The Shifting Landscape of Global Internet Censorship,” 2017; OpenNet Initiative, “Vietnam,” August 7, 2012.

Note: “Selective” filtering is defined as either narrowly targeted filtering that blocks a small number of specific websites across a few categories or filtering that targets a single category or issue. “Substantial” is either a medium level of filtering carried out over a few categories or a low level of filtering carried out across many categories. “Pervasive” is defined as blocking that spans a number of categories while blocking access to a large portion of related content. Vietnam scores are based on 2011 findings.

Governments in the key markets operationalize censorship—the “how” of censorship—through policies and practices that can be broadly grouped into two categories: those that directly target speech for suppression and those that can in some circumstances operate to enable government censorship.

² While the empirical analysis focuses on intentional, state-sponsored filtering of online content, it does not identify whether it was carried out directly by the government or by internet intermediaries.

Government policies and practices in the first category include laws that prohibit particular categories of speech, as well as the premarket review of audiovisual and other creative works by censors. They also include, in the online environment, government policies and practices that shut down the internet, block entire websites, filter access to particular content on sites, or make it more difficult to access websites (e.g., throttling).

By contrast, censorship-enabling policies and practices facilitate governments' ability to suppress speech. Such measures may include, for example, internet intermediary rules, data localization or local presence requirements, and foreign investment and market access restrictions. However, whether such measures should be considered censorship enabling depends on context and the end to which such measures are used. As detailed in chapters 3 and 4, in the key markets various measures work together, or may work together, to facilitate government censorship. For example, broad definitions of prohibited content are often combined with short deadlines for internet companies to identify and takedown prohibited content and substantial penalties for noncompliance. Or, for example, internet intermediaries are required to keep data and personnel in the jurisdiction, which can make it easier for governments to ensure compliance with content prohibitions. In addition, whether a policy or practice should be considered direct censorship or censorship enabling can be difficult to determine. This is particularly the case in the key markets where, for example, the same law may combine direct elements (such as banning specific categories of content) with censorship-enabling elements (such as data localization and local presence requirements). Table ES.1 provides examples of different types of censorship-related policies and practices (both direct censorship and censorship enabling) in the key markets. It also highlights some of the industries particularly affected by these policies and practices. (See chapters 3 and 4 for details of the examples listed in table ES.1.)

Table ES.1 Selected industries affected by different types of censorship-related policies and key market examples

Industry	Censorship-related policies and practices	Key market examples
Internet service providers (ISPs) and telecommunications companies	<i>Censorship:</i> internet shutdowns and blocking, filtering, or throttling at the network level.	<ul style="list-style-type: none"> China, through the "Great Firewall," blocks many foreign websites and uses keyword filtering to limit access to information on certain topics. India has shut down the internet more frequently than any other key market, mostly at the regional level. Russia has shut down the internet several times at the regional level. Russia requires that ISPs install deep packet inspection technology to facilitate blocking and filtering.
Video streaming	<i>Censorship:</i> premarket review, internet blocking, filtering, and throttling at the platform level. <i>Censorship-enabling:</i> investment and market access restrictions.	<ul style="list-style-type: none"> China's premarket review of all content is considered burdensome and nontransparent. China's censorship review process works together with foreign content limits of 30 percent, and the non-licensing of foreign-owned streaming platforms, to severely restrict market access. Indonesia's state-owned telecoms firm blocked Netflix for 4 years due reportedly to content restrictions.

Industry	Censorship-related policies and practices	Key market examples
Video games	<i>Censorship:</i> premarket review. <i>Censorship-enabling:</i> investment and market access restrictions.	<ul style="list-style-type: none"> • China requires individual censorship approval for each video game in processes considered burdensome and nontransparent. • China limits foreign investment and participation, and suspended approval of new videogames for nine months in 2018, encouraging game developers to self-censor more.
Mobile applications (apps) and app stores	<i>Censorship:</i> internet blocking, filtering, and throttling at the platform level. <i>Censorship-enabling:</i> internet intermediary requirements, and investment and market access restrictions.	<ul style="list-style-type: none"> • China requires platforms such as app stores to keep out apps that contain illegal content (including prohibited speech). • Russia has blocked apps on both Google and Apple's app stores related to voting. • India has blocked more than 200 apps due to their content. • Indonesia has blocked or throttled several apps both due to content and failure to register.
Search engines	<i>Censorship:</i> internet blocking, filtering, and throttling at the platform level. <i>Censorship-enabling:</i> internet intermediary requirements, data localization and local presence requirements, and investment and market access restrictions.	<ul style="list-style-type: none"> • China blocks access to most foreign search engines. • Russia has the largest number of takedown requests to Google of any key market during 2016–20. • India requires that “significant social intermediaries” maintain local personnel who may be held personally liable if the internet intermediary does not comply with content restriction requirements.
Social media	<i>Censorship:</i> internet blocking, filtering, and throttling at the platform level. <i>Censorship-enabling:</i> internet intermediary requirements; data localization and local presence requirements; investment and market access restrictions.	<ul style="list-style-type: none"> • China blocks most social media platforms and requires the few remaining to proactively take down certain political and social content. • Turkey has blocked access to a large amount of social media content. • Turkey requires social media companies to appoint a local representative, which industry experts suggest makes it easier to enforce censorship. • Vietnam throttled Facebook in 2020 due to content it hosted, effectively blocking access to the site. • India has the largest number of takedown requests directed at Facebook of any key market. • Indonesia has increasingly directed takedown requests at Facebook and YouTube. • Russia requires data localization which makes it easier to compel social media firms and others to comply with censorship laws.

Industry	Censorship-related policies and practices	Key market examples
Film and television	<i>Censorship:</i> premarket review. <i>Censorship-enabling:</i> investment and market access restrictions.	<ul style="list-style-type: none"> • China’s censorship review of films and television shows is considered burdensome and nontransparent. • China’s market access and investment limitations work together with censorship review processes to severely limit market access for foreign content. • India’s wide-ranging censorship review of foreign films reportedly negatively affects market access.
Books and journals	<i>Censorship:</i> premarket review. <i>Censorship-enabling:</i> investment and market access restrictions.	<ul style="list-style-type: none"> • China requires censorship review of books for approval for the domestic market in processes considered burdensome and nontransparent. • China has begun to conduct censorship reviews of books produced in China for other markets.
Newspapers	<i>Censorship:</i> premarket review. <i>Censorship-enabling:</i> investment and market access restrictions.	<ul style="list-style-type: none"> • China issues guidance to news agencies on stories that should or should not be covered. China has not renewed the visas of many foreign journalists; as of March 2021, there were only 39 U.S. journalists in China. • Russia makes news aggregators liable for restricted content included in the information they publish. • Turkey has blocked several news websites and television programs due to content restrictions. • Vietnam requires content filtering mechanisms for news websites and has laws against “distorting history” or “negating revolutionary achievements” that apply to news websites. • India lowered the foreign ownership cap for digital news media, which some observers noted could enable censorship.

Source: Compiled by USITC.

Note: The key market examples in this table relate to the 2016–21 period. They are discussed in detail in chapter 3 (China) and chapter 4 (other key markets).

The evolution of censorship policies and practices in the past five years in the key markets has largely been driven by the growing importance of the internet. U.S. internet companies report ever-growing numbers of government requests for the takedown of online content. Moreover, governments are using multiple levers—from data and personnel localization requirements to threats of retaliation—to pressure compliance with censorship policies. Technological developments, such as the growing reliance on artificial intelligence by governments and internet companies to identify and suppress large quantities of online content, also present substantial challenges.

Foreign governments’ censorship policies and practices may be augmented by extraterritoriality and self-censorship. Extraterritorial censorship occurs when governments seek to suppress speech outside of their borders. In some cases, a law or policy will expressly state that its prohibition on certain content applies to companies or persons outside the jurisdiction. A recent example of this would be the Hong Kong National Security Law, which criminalizes broad categories of offenses (including speech in favor of Hong Kong independence) and states that it applies regardless of where the crime is committed or who commits it. In other cases, which arise most notably in China, economic coercion is used to advance censorship goals even when the targeted speech is legal in the jurisdiction where it occurred. A well-

known example involves the Houston Rockets of the National Basketball Association (NBA), whose general manager posted images on Twitter supportive of Hong Kong independence. The Chinese government responded by, among other actions, stopping the broadcast of NBA games on Chinese state-owned television stations for more than a year.

Self-censorship involves censoring or suppressing one's own speech to avoid offending government censors or to facilitate market access. It is reportedly present in all of the key markets. Moreover, self-censorship can also occur extraterritorially; for example, movie studios reportedly have removed images from the master version of films, rather than just the China-specific version, that they believe may offend the Chinese government. Another example is Bloomberg reportedly not publishing a follow-up story on the wealth of Chinese officials in order to protect its financial markets terminal business in China. Additionally, in Turkey, almost two-thirds of Turkish citizens responding to a survey in 2018 reported that the fear of being jailed for posting political views or opinions on the internet contributed to self-censorship in the country.

Censorship-Related Policies and Practices in China That Affect U.S. Businesses

China has the largest GDP and is also the largest U.S. trading partner among the key markets. In the censorship-related indexes used in this report, China consistently rated as having one of the highest levels of censorship, across all sectors. Thus, China's censorship policies and practices comprise a separate chapter in this report and will be a focus in the second Commission report as well.

The Chinese government uses a mix of nontechnical and technical censorship tools to control information. Traditional nontechnical tools include closing publications or websites, and guidance to media on which stories to cover or avoid. To assist with censorship over the internet, China uses a range of more technical tools, including blocking of websites, throttling, and keyword filtering to limit internet users in China's ability to access information on certain topics. Collectively these form part of what is known as the "Great Firewall." Reportedly, the list of topics that are prohibited by Chinese censorship has expanded significantly over the last five years to limit criticism of the current regime.

Businesses in China also self-censor; however, when this happens it is rarely clear to the public as it is difficult to know the motivations for business decisions. For example, a book might not be published or may be edited for a variety of reasons, including to avoid offending the Chinese government or to increase sales, or both. Self-censorship is also extraterritorial; non-Chinese content developers often avoid topics they believe would be offensive to the Chinese government, even for content not intended for the Chinese market.

Many government agencies are involved in censorship in China, but the two that appear to have the most impact are the Central Propaganda Department and the Cyberspace Administration of China (CAC). The CAC was created in 2017, and its responsibilities have significantly increased since then, becoming the main internet regulator.

While Chinese censorship requirements are often vague or indirect, and may not be connected to a specific law, there were four laws or regulations published during the past five years that reportedly

affected all industries: the Cybersecurity Law, Provisions on the Governance of the Online Information Content Ecosystem, the Hong Kong National Security Law, and the Data Security Law (table ES.2).

Table ES.2 Recent Chinese laws and regulations related to censorship

Name of law or policy	Censorship effect	Entered into force
Cybersecurity Law	Creates Cyberspace Administration of China; makes clear that individuals or firms that post, host, and fail to censor illegal content are liable.	June 1, 2017
Provisions on the Governance of the Online Information Content Ecosystem	Defines illegal content, and establishes penalties for those that post, host, and fail to censor.	March 1, 2020
Hong Kong National Security Law	Allows indictment of those whose speech is deemed harmful to China regardless of location.	June 30, 2020
Data Security Law	Sets requirements for data localization, which observers anticipate will have a censorious effect.	September 1, 2021

Sources: Government of China, Standing Committee, Hong Kong National Law, June 30, 2020; Government of China, State Council, Cybersecurity Law, November 7, 2016; Government of China, Data Security Law, June 10, 2021; Government of China, Cyberspace Administration, Governance of the Online Information Content Ecosystem, December 15, 2019.

Chinese Censorship-Related Policies and Practices by Sector

Media and Online Content

U.S. content and media firms often face vague, nontransparent, and unevenly enforced premarket review, intermediary rules, and laws that suppress speech in China. These rules have become more centralized and restrictive over the last five years. Censorship of content and media services may often be politically motivated, but it can also be used to protect some of China's largest and most competitive content and media companies that support government policies and are expanding rapidly in global markets. Some U.S. firms that rely on the large and important Chinese market self-censor in China and in third-country markets to avoid offending China.

Mobile Apps and Mobile App Stores

China's Cybersecurity Law has facilitated the censorship of mobile applications (apps). Mobile app providers use platforms such as the Apple App Store and Google Play Store to distribute their products to consumers. While Chinese consumers have access to mobile devices with Android's operating systems, the Google Play Store is unavailable in China because Google is not active in China.³ On the other hand, Apple has created a China-specific version of its app store, allowing it to sell apps to Chinese consumers. In addition, many of the top global mobile apps, such as Facebook, are not authorized to appear in any app store in China, which decreases potential consumers for app developers.

³ For more information see search engine discussion in chapter 3.

Information Providers, Search Engines, and Social Media

U.S. social media and search engine providers are largely prevented from operating in China, while information services providers like Bloomberg and LexisNexis appear to participate in the Chinese market to a greater degree. Due to foreign investment restrictions, social media companies need a joint venture partner to operate in China. This requirement, coupled with strict laws prohibiting certain speech that also hold platforms liable for users breaking the law using their platform, has prevented most U.S. social media and search engine providers from operating in China. The Cybersecurity Law clarified and expanded requirements regarding intermediary liability and has been accompanied by stricter enforcement.

Other Industries

Chinese censorship policies and practices also affect U.S. businesses in other services and manufacturing industries, such as sports and entertainment, apparel and footwear, hotels and accommodation, and airlines. The Chinese government leverages access to its large consumer market to push companies to follow Chinese policies and practices concerning prohibited content not only in their company websites and other marketing communications in China, but also in their global communications.

Censorship-Related Policies and Practices in Other Key Markets That Affect U.S. Businesses

Outside of China, five other key markets (Russia, Turkey, Vietnam, India, and Indonesia) were identified as having restrictive censorship policies and practices that significantly affect U.S. firms.⁴ These markets use a variety of policies and practices to operationalize censorship and suppress speech, including criminal laws that suppress speech, internet shutdowns, and internet blocking and throttling. These policies and practices, coupled with policies and practices that may enable censorship in these markets such as internet intermediary rules, data localization, and local presence requirements, have evolved since 2016 to become more restrictive in each of the five markets. Many of these markets have introduced new policies and practices, or amendments to existing ones, that have increased censorship in sectors such as social media, video streaming, online content, and internet search (table ES.3).

Table ES.3 Recent laws and regulations related to censorship in other key markets

Country	Name of law or policy	Censorship impact	Entered into force
Russia	Federal Law 139-FZ	Prohibits certain types of speech, mandates data localization and encryption backdoors which can enable government monitoring and encourage self-censorship, and restricts foreign ownership of media. Has been amended several times recently to expand its scope.	2012
Russia	Amendments to Federal Law 139-FZ	Allow the government to block websites that discredit the reputation or honor of a Russian citizen or business, disrespect the Russian government or its officials, or contain misinformation.	2018–19

⁴ These markets are presented in this order based on their degree of policy restrictiveness and likely relevance for U.S. businesses' trade and investment.

Foreign Censorship Part 1: Policies and Practices Affecting U.S. Businesses

Country	Name of law or policy	Censorship impact	Entered into force
Turkey	Law 5651	Allows the government to block content related to threats to public order and security, or other dangers to the Turkish state. Has been recently amended to expand its scope.	2007
Turkey	Amendment to Law 5651	Allows the government to block content related to threats to public order and security, or other dangers to the Turkish state; requires internet intermediaries to respond to content removal petitions within 48 hours; also includes new local presence requirements, takedown requirements, data reporting requirements, and data localization requirements.	2020
Vietnam	Press Law	Prohibits publishing and broadcasting of information “that incites war against the independence, sovereignty, and territorial integrity of the Socialist Republic of Vietnam.” Additionally, the law broadly prohibits individuals or firms from “distorting history; negating revolutionary achievements; offending the nation and national heroes.” This law updates the 1989 Law on the Press.	2016
Vietnam	Law on Cybersecurity	Allows the government to regulate information that it considers a threat to national security, directly monitor online content, request removals of prohibited content in as little as three hours, and block content.	2018
India	Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules	Provides a legal basis for internet shutdowns under the Indian Telegraph Act of 1885.	2017
India	Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules	Provides rules for social intermediaries on the removal of content, maintenance of records, and responses to user complaints; for large social media intermediaries, establishes local presence requirements and requires firms to publish monthly compliance reports, identify the first originator of content, and use automated tools to identify certain types of illegal content.	2021
Indonesia	Government Regulation 71	Allows blocking of websites and services that contain prohibited content; clarifies data localization requirements.	2019
Indonesia	Ministerial Regulation 5	Uses broad and vague language to prohibit content; requires intermediaries to remove prohibited content in as little as four hours; requires digital firms to register and provide government direct access to their systems, data, and information about users.	2020

Source: Government of Russia, Federal Law 139-FZ, July 28, 2012; Government of Russia, Federal Law No. 28-FZ, March 18, 2019; Government of Russia, Federal Law No. 31-FZ, March 18, 2019; Government of Turkey, Law No. 5651, April 5, 2007; Government of Turkey, Parliament, Law No. 7253, July 29, 2020 (amending Law No. 5651); Government of Vietnam, National Assembly, Cybersecurity Law, June 12, 2018; Government of Vietnam, National Assembly, Press Law, April 5, 2016; Government of India, Department of Telecommunications, Temporary Suspension of Telecom Services Rules, August 8, 2017; Government of India, Ministry of Electronics and Information Technology, Intermediary Guidelines and Digital Media Ethics Code Rules, February 25, 2021; Government of Indonesia, Ministry of Communication and Information Technology, Regulation No. 71 of 2019, October 4, 2019; Government of Indonesia, Ministry of Communication and Information Technology, Regulation of the Minister of Communication and Information No. 5, November 16, 2020.

In most cases, governments in these markets also require the cooperation of other nongovernmental actors such as firms (both state-owned and private) to fully implement these policies, with censorship-

enabling policies enabling or facilitating governments' ability to secure firms' cooperation in implementing government censorship requirements. In addition, policies that contain vague definitions of prohibited speech, coupled with harsh fines and short compliance times, also contribute to an environment of uncertainty around speech, which can lead to self-censorship. Unlike in China, where censorship policies and practices focus on both domestic and extraterritorial speech, almost all censorship policies and practices in these five markets are focused on speech that occurs domestically, rather than speech occurring abroad; as such, censorship policies in these markets are not generally extraterritorial in nature.

Russia

Russia was viewed as having a relatively free and open internet before 2012, but now is viewed as having among the most restrictive digital policies in the world, according to the nongovernmental organizations Freedom House and Reporters Without Borders (RSF). Russia's recent legislative efforts to censor media and the internet originated with the country's 2012 "Blacklist Law" (Federal Law 139-FZ) which amended its earlier internet regulations (Federal Law 149-FZ) to block websites that contain prohibited content. Several recent amendments to Federal Law 149-FZ have also prohibited certain types of speech, mandated data localization and encryption backdoors, and restricted foreign ownership of media. These censorship-enabling policies may encourage self-censorship in the country (because they allow the government to monitor internet users and their speech) and provide leverage the government can use to compel firms to comply with censorship policies (particularly in combination with local presence requirements and other market access restrictions). Roskomnadzor (the Federal Service for Supervision of Communications, Information Technology and Mass Media) is the key governmental actor enforcing the compliance of censorship laws.

Enforcement of these laws, as well as censorship-enabling policies and practices, affect firms in the social media, search, video services, mobile apps, and other digital services sectors. While U.S. firms are key suppliers of many of these services in Russia, U.S. firms also face significant domestic competition, as in China but unlike in several of the other key markets. Russia has made extensive use of internet intermediary rules to request removal of content by U.S. firms, as well as blocking a large number of websites and engaging in sporadic internet shutdowns. In addition, Russia has been cited as a particularly dangerous country for journalists by RSF.

Turkey

Turkey has accelerated its censorship regime since 2016, leading to a large and rapid decline in freedom of speech during the period, according to the NGOs Freedom House and RSF. Turkey blocks and filters a large number of websites and the country also encourages self-censorship through the detention of journalists, activists, and government critics. Regulation of online content in Turkey is largely governed by Law no. 5651, originally enacted in 2007, with several subsequent amendments to expand its scope, specify penalties, and add further layers of regulatory compliance requirements. For example, in July 2020, Turkey enacted Law no. 7253, which requires social media companies with over 1 million users to open local offices and comply with content removal orders within 48 hours. The Information and Communication Technologies Authority (ICTA), the Directorate of Telecommunication and

Communication (TIB), and the National Intelligence Agency are key governmental actors for enforcing censorship.

U.S. social media firms are market leaders in Turkey, and this sector is the one most affected by Turkey's censorship environment. Website blocks and requests for content removal (with short turnaround times) are the most common forms of censorship experienced by these firms. In addition, foreign firms are required to appoint a Turkish citizen as a local representative and Turkish citizens face a higher risk of prosecution and fines for refusing to remove flagged content. U.S. firms have incurred significant fines for noncompliance with censorship-enabling policies and practices such as data localization and local representative requirements.

Vietnam

Vietnam ranks as one of the most censorious countries in the world on several indices. According to some experts, Vietnam has sought to emulate China by implementing a similar model to restrict speech, public information, and the cross-border transfer of data. Vietnam has strengthened its ability to censor speech through the amendment of older laws (such as the 1989 Law of the Press) and the enactment of new laws (such as the 2018 Law on Cybersecurity) that give the government broader authority to censor. These laws prohibit certain types of speech, require internet intermediaries to remove prohibited speech upon request (firms must remove certain content within three hours of receiving notice), and allow the government to throttle and block websites that contain prohibited speech. The Ministry of Information and Communication is a key governmental actor for enforcing censorship.

U.S. firms in social media, search, and streaming have a large presence in Vietnam's growing digital market and are heavily affected by the censorship policies and practices that require the removal of prohibited content and allow the throttling and blocking of websites. In addition, U.S. firms are impacted by policies and practices, such as mandatory data localization and local presence requirements, that reportedly have been used to compel firms to comply with censorship rules.

India

The Indian government has a broad range of laws that it can use to censor all forms of communication, media, and entertainment in India. While India has a long history of censorship, Freedom House and RSF reported further declines in freedom of expression during 2016–20. In 2017, the national government issued new rules that formalized authority for internet shutdowns. In recent years the government has also issued new rules that allow authorities to block access to social media, as well as potentially censorship-enabling provisions such as rules limiting foreign ownership of digital media. Using these and other policies, the national government increased its use of internet shutdowns and takedown requests during 2016–20. The number of websites and user accounts blocked in India has also risen significantly. Key censorship actors range from the Ministry of Electronics and Information Technology to local police departments.

India represents a large market for media, entertainment, and online services and U.S. firms are major providers in these sectors. U.S. firms appear to have been increasingly affected in recent years by censorship in India. In particular, they have seen a substantial increase in requests for content removal. Foreign investment restrictions have also caused news operations to shut down their content sites in

India. In addition, harassment and intimidation of journalists and government critics contributes to self-censorship in the country.

Indonesia

As shown by its ranking on several indices of internet freedom and freedom of expression during 2016–21, Indonesia’s censorship policies and practices have intensified in an attempt to control the types of content that can be accessed online. Recent policy developments in Indonesia, such as Ministerial Regulation 5, have built on previous laws (such as Law 11 of 2008) to restrict speech in the country. These policies are viewed by many as containing vaguely worded definitions of illegal content, alongside short compliance times (firms must remove certain content within four hours of receiving notice) and large fines for noncompliance. Indonesia’s Ministry of Communication and Information is the main governmental actor implementing censorship policies in the country, while other state-owned enterprises such as telecom firms also play a role.

Indonesia represents a large market for U.S. firms, particularly in social media and video streaming, which are heavily affected by censorship policies and practices. U.S. firms have experienced increasing use of internet intermediary rules, with significant penalties and short compliance times, to require the removal of content. They have also experienced website blocking and censorship-enabling policies and practices such as registration and local presence requirements that make it easier for Indonesian authorities to ensure compliance with content prohibitions. Compliance with censorship policies and practices often requires extensive negotiations with both governmental and nongovernmental actors.

Chapter 1

Introduction

Overview

Censorship by foreign governments, or by private actors at the behest of foreign governments, of online activity—as well as more traditional modes of artistic expression and communication, such as movies, TV, books, newspapers, and music—is happening with increasing frequency and intensity in markets around the world. As digital services have continued to grow in importance in the global economy, several countries have introduced new policies and practices governing online communication and the flow of information across the internet, including restrictions on content that may be published on online platforms and company websites. The consequences of censorship-related policies and practices can be significant for U.S. firms, especially U.S.-based content producers and digital services firms, as they may restrict trade, impede market access, increase operational costs and reputational risks, or discourage foreign direct investment.

The Request

In light of growing concern about censorship becoming an important barrier to digital trade, in June 2020, the Subcommittee on International Trade, Customs, and Global Competitiveness of the U.S. Senate Committee on Finance (Committee) held a hearing on “Censorship as a Non-tariff Barrier.” The Committee subsequently requested that the U.S. International Trade Commission (Commission) conduct further research on this topic. In its letter dated April 7, 2021, modifying its letter dated January 4, 2021, the Committee asked the Commission to prepare two reports as part of an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. § 1332 (g)) into this important issue. The Committee stated that the Commission’s first report should include detailed information on the following:

1. Identification and descriptions of various foreign censorship practices, in particular any examples that U.S. businesses consider to impede trade or investment in key foreign markets. The description should include to the extent practicable:
 - a. the evolution of censorship policies and practices over the past five years in key foreign markets;
 - b. any elements that entail extraterritorial censorship; and
 - c. the roles of governmental and nongovernmental actors in implementation and enforcement of the practices.

The Committee specifically noted in its request that foreign governments use many tools to carry out censorship, including technological measures that restrict digital trade, and that the impact of censorship on the flow of information and services is a critical issue for the digital economy. The Committee requested that this report be delivered by December 30, 2021.

The request indicates that the second report should provide, to the extent practicable and including through the use of survey data, an analysis of the trade and economic effects of such policies and practices on affected businesses in the United States and their global operations. The Committee requested delivery of the second report by July 5, 2022.

Organization of the Report

In response to the Committee’s request outlined above, this is the first of two requested reports. It identifies and describes various foreign government censorship policies and practices, including examples that U.S. businesses consider impediments to trade and investment. Industries commonly subject to censorship include digital and non-digital media (such as newspapers, journals, and magazines); producers and distributors of audiovisual content (such as movies and online video, television, books, and music); and social media and internet search engines, as well as computer services more generally. In view of the broad trend toward online publication and communication in the global media and audiovisual services sectors and the heavy reliance on digital distribution for the cross-border provision of news, information, and audiovisual content, this report, consistent with the Committee’s request, focuses on censorship in the online environment, although offline restrictions on speech are considered as well.

The report has four chapters. This chapter describes how the Commission’s report responds to the Committee’s request. First, it sets out the definition of censorship used in this report that is drawn from the Committee’s letter of January 4, 2021, references international human rights law regarding freedom of expression as a relevant analytical framework, and describes how the censorship definition links to the scope of policies and practices that the Commission considers in this report. The chapter then describes the Commission’s approach to the selection of key markets, including a description of information sources used.

Chapter 2 provides an overview of the “who,” “what,” and “how” of foreign government censorship policies and practices in the key markets, as well as major trends in the evolution of these policies and practices. It also discusses the concepts of extraterritoriality and self-censorship. Chapter 3 focuses on censorship in China, beginning with a description of the development of China’s surveillance and censorship system, as well as many of the tools that are collectively known as the “Great Firewall.” Chapter 3 then provides descriptions of China’s censorship-related policies and practices that are relevant for various industry sectors, including: media and online content; mobile apps; information providers, search engines, and social media; universities; and other affected services and manufacturing sectors, such as sports and entertainment, apparel and footwear, hotels and accommodation, and airlines. Finally, chapter 4 provides details of censorship-related policies and practices in the other five key markets—Russia, Turkey, Vietnam, India, and Indonesia—in that order, based on their degree of policy restrictiveness and likely relevance for U.S. businesses’ trade and investment.

Scope of the Investigation

Defining Censorship

Censorship can be defined in various ways. For the purposes of this investigation, censorship is defined as the prohibition or suppression of speech or other forms of communication.⁵ This report addresses foreign government censorship policies and practices including laws, regulations, and other measures that either directly target the suppression of speech or enable or facilitate its suppression.⁶ For purposes of this report, we refer to these measures generally as “censorship-related policies and practices” or simply “policies and practices.” Censorship may be imposed or carried out by a wide range of government actors, including officials, agencies, and political parties. It may also be carried out by state-owned entities and private actors (such as internet providers or telecommunications companies) at the direction of a government, or to gain a market advantage or avoid a disadvantage from a government (such as facing selectively heightened regulatory requirements or scrutiny). Censorship-enabling measures might not rise to the level of censorship in and of themselves but when working in conjunction with other measures enable or facilitate censorship. Censorship can also occur extraterritorially or be self-imposed (“self-censorship”). Further detail and examples illustrating these concepts can be found in chapter 2 of this report.

This investigation includes these and other aspects of censorship, with a focus on foreign government policies and practices that impede trade and investment by U.S. businesses in key markets. However, some topics are outside the scope of the Committee’s request. For example, this report does not focus on intellectual property infringement, such as copyright infringement, and actions taken by governments or private actors to respond to such infringement in the online and offline environments. It also does not focus on data privacy regulations, such as the EU General Data Protection Regulation (GDPR). In the United States, and many other countries, these matters are governed by distinct constitutional and statutory regimes.⁷ With the exception of self-censorship, this report also does not focus on private conduct where there is no government involvement or regulation.⁸

While this investigation uses a specific definition of censorship, it acknowledges that censorship does not lend itself to a simple definition.⁹ Informally, it is regularly used to reference a wide range of activities carried out by various actors aimed at various types of speech. Aside from the lack of precision in common usage, censorship also lacks a specific legal definition in many jurisdictions. The range of

⁵ This definition is drawn from the request letter from the U.S. Senate Committee on Finance, January 4, 2021.

⁶ In some instances, it may be unclear if a measure enables or facilitates censorship. In such instances this report indicates that the measure may or potentially facilitates or enables censorship.

⁷ See, e.g., Digital Millennium Copyright Act, 17 U.S.C. § 512; European Union, European Parliament and the Council of the European Union, General Data Protection Regulation, April 27, 2016; see also Recording Industry Association of America, written submission to the USITC, July 22, 2021, 2–3; Information Technology and Innovation Foundation (ITIF), written submission to the USITC, August 18, 2021, 6–7, 11.

⁸ For example, a social media site (such as one that focuses exclusively on knitting) may decide to restrict posts outside of its focus (e.g., discussion of politics). This type of private action is not generally considered censorship. USITC, hearing transcript, July 1, 2021, 50–51 (testimony of Nathalie Maréchal, Ranking Digital Rights).

⁹ Keller, written submission to the USITC, June 24, 2021, 1 (describing censorship as a “loaded term,” particularly as every country prohibits some speech, and few consider their own restrictions to constitute censorship).

censorship-related policies and practices today is also more expansive than it has been historically due to the increasing centrality of the internet for information and communication. The perpetual evolution of technology that often outpaces the law also adds to the challenge of properly defining the term in the 21st century. Furthermore, whether or not a policy or practice can be considered censorship or censorship-enabling can depend on the context. The above definition is used recognizing these inherent challenges and to meet the objective of this investigation as outlined in the request letter.

The definition of censorship used in the report—the prohibition or suppression of speech or other forms of communication—covers a broad spectrum of actions. These actions to prohibit or suppress speech may range from legitimate regulation of harmful speech to illegitimate suppression of political dissent. International human rights law (IHRL) regarding freedom of expression provides a valuable analytical framework for distinguishing between these incongruent forms of censorship in an objective manner. The framework is recognized as the global standard for freedom of expression, widely adopted by governments, frequently integrated into private industry standards, and supported by nongovernmental organizations such as Freedom House and other key stakeholders.¹⁰ However, as application of this framework to the policies and practices described in this report is outside the Commission’s purview, the description in box 1.1 is provided for background and context only.¹¹

Box 1.1 International Human Rights Law Framework

The international human rights law (IHRL) framework regarding freedom of expression is derived from two primary sources: the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).^a Article 19 of the UDHR provides a “right to freedom of opinion and expression,” though Article 29(2) of the UDHR allows this right to be limited as “determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”^b While not technically legally binding as a United Nations General Assembly Resolution, the UDHR is broadly considered customary international law and thus legally binding universally through general acceptance and state practice.^c

The ICCPR is the primary basis for assessing whether a censorship measure is designed or implemented in contravention of the obligations established under the IHRL framework.^d It built on the UDHR and formalized many of its provisions as a binding, multilateral treaty currently ratified by 113 countries, including the United States. Countries that have signed but not ratified the ICCPR, like China, are still obligated to respect its “object and purpose”—that is, they are bound to not contradict the essential goals of the agreement.^e

¹⁰ Though the IHRL framework is not always followed in its entirety, it remains the global standard. Aswad, “The Future of Freedom of Expression Online,” 2018; academic professional, interview by USITC staff, July 7, 2021; see, e.g., Microsoft, “Microsoft Global Human Rights Statement,” accessed September 22, 2021; USITC, hearing transcript, July 1, 2021, 106–108 (testimony of Suzanne Nossel, PEN America); Richard Allan, “Hard Questions: Where Do We Draw the Line on Free Expression?” August 9, 2018.

¹¹ Reference to the IHRL framework has been made by NGOs, courts, and human rights bodies in several markets, as mentioned in the Selection of Key Markets section later in this chapter and in chapter 4.

Article 19 of the ICCPR, like the UNDR, provides a right to freedom of opinion and expression. In this context, freedom of expression includes “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”^f However, these rights are not absolute; the ICCPR allows for governments to limit an individual’s right to freedom of expression if three criteria are met.^g These criteria are legality, necessity, and legitimacy.^h The legality criterion in the IHRL framework asks whether the law provides clear direction without allowing broad and vague discretion by the state. Other key factors to examine when assessing legality are whether the law was enacted through the regular legal process and drafted with significant precision. The necessity criterion questions whether the censorship measure is implemented in the least restrictive means and imposed in a proportional manner. The standard for proportionality operates on a sliding scale based on the kind of speech in question, which often requires in-depth analysis and balancing of the interests involved to properly assess. The legitimacy criterion asks whether a censorship measure is justified by an enumerated exception.ⁱ The ICCPR allows for exceptions to the individual right to freedom of expression on the grounds of respecting “the rights or reputations of others . . . [or] the protection of national security or of public order . . . , or of public health or morals.”^j

Courts, human rights bodies, and other experts have applied the IHRL framework criteria to assist in distinguishing between legitimate suppression of harmful speech and the overly burdensome repression of the freedom of expression that often also acts as an impediment to trade and investment.^k As an example of the former, France’s Gaysot Act that criminalized speech denying the holocaust was ruled to not violate France’s obligations under the ICCPR despite the resulting suppression of speech because the law satisfied the criteria of legality, necessity, and legitimacy.^l As an example of the latter, France’s more recent Avia Law targeted at combating hate speech on the internet was struck down for violating the same criteria, particularly due to overly burdensome takedown timelines imposed on websites ranging from a single hour to a single day.^m

^a The United Nations, General Assembly, The Universal Declaration of Human Rights (UDHR), adopted December 10, 1948; Hannum, “The Status of the Universal Declaration,” 1996, 112; International Covenant on Civil and Political Rights (ICCPR), opened for signature December 16, 1966; academic professional, interview by USITC staff, July 7, 2021.

^b The United Nations, General Assembly, UDHR, adopted December 10, 1948, arts. 19, 29(2).

^c Nunziato, “How (Not) to Censor,” 2011; Hannum, “The UDHR in National and International Law,” 1998, 145.

^d Academic professional, interview by USITC staff, July 7, 2021 (General Comment No. 34 plays a key role in aligning State practice in this regard); USITC, hearing transcript, July 1, 2021, 109–110 (testimony of Maria Repnikova, Georgia State University) (discussing the fluctuation of norms).

^e Nunziato, “How (Not) to Censor,” 2011, 5–6. Note that more countries have ratified since the publication of the previously cited article. UN Treaty Collection, Status of the International Covenant on Civil and Political Rights, accessed October 5, 2021.

^f ICCPR, opened for signature December 16, 1966, art. 19(2).

^g Experts disagree as to whether or not activity that suppresses speech in a manner compatible with the ICCPR is not censorship or simply justified censorship. USITC, hearing transcript, July 1, 2021, 108 (testimony of Suzanne Nossel, PEN America); USITC, hearing transcript, July 1, 2021, 161 (testimony of Nigel Cory, Information Technology and Innovation Foundation). See also Center for Democracy and Technology, written submission to the USITC, July 22, 2021, 1–2 (does not constitute censorship); USITC, hearing transcript, July 1, 2021, 181, 191 (testimony of Daphne Keller, Stanford University) (constitutes censorship) and academic professional, interview by USITC staff, July 7, 2021 (constitutes censorship).

^h USITC, hearing transcript, July 1, 2021, 107–108 (testimony of Suzanne Nossel, PEN America); academic professional, interview by USITC staff, July 7, 2021. Note that slight linguistic variations of these criteria are used on occasion, though the legal requirements are substantially the same.

ⁱ The United Nations, General Assembly, Human Rights Council, *Report of the Special Rapporteur*, 2018; Strossen, “United Nations Free Speech Standards” 2021; Human Rights Committee, “General Comment No. 34, Article 19,” September 12, 2011; USITC, hearing transcript, July 1, 2021, 106 (testimony of Suzanne Nossel, PEN America); USITC, hearing transcript, July 1, 2021, 261 (testimony of Nigel Cory, Information Technology and Innovation Foundation).

^j ICCPR, opened for signature December 16, 1966, art. 19(3).

^k Center for Democracy and Technology, written submission to the USITC, July 22, 2021, 1–2; academic professional, interview by USITC staff, July 7, 2021; USITC, hearing transcript, July 1, 2021, 106–108 (testimony of Suzanne Nossel, PEN America).

^l *Faurisson v. France*, United Nations Human Rights Committee, (November 8, 1996), ¶¶ 9.4–9.7, 10.

^m *Decision n ° 2020-801 DC*, French Constitutional Council, (June 18, 2020), ¶¶ 8–9, 19–20, 26, 32.

Approach

Information Sources

For this report, the Commission relied on information provided by a review of relevant literature, a public hearing, written submissions, interviews with representatives of industry and trade associations, academic institutions, the U.S. government, and nongovernmental organizations (NGOs), and publicly available data. The Commission held a public hearing on July 1, 2021, and participants included representatives of industry and trade associations, academic institutions, and NGOs.¹² The Commission also received written submissions from a similar cross section of interested parties.¹³ Publicly available research used in this report includes academic articles, reports and indices published by NGOs focused on censorship issues, industry and trade association reports and white papers, official statistics, information from market participants and intergovernmental organizations, and previous Commission reports. The report also includes citations to laws and regulations in key markets.

To assist in identifying the key markets with relevant censorship policies and practices, the Commission also reviewed data on internet openness, legal guarantees of freedom of expression, and the degree of freedom afforded the press in various countries around the world. For example, Freedom House, a well-known human rights advocacy NGO, in its *Freedom on the Net* annual reports, provides internet freedom scores related to obstacles to access, limits on content, and violations of internet user rights, as well as data on governments' use of nine "key internet controls" in regulating online platforms, content, and users.¹⁴ The Commission also considered data published by Access Now, an NGO that tracks the frequency of government-imposed internet shutdowns each year around the world.¹⁵ The World Justice Project, another NGO, assembles independent data on the rule of law and publishes country rankings that assess the degree to which freedom of opinion and expression is effectively guaranteed.¹⁶ The World Press Freedom Index, compiled by Reporters Without Borders, evaluates the blockage of and impediments to journalism across the world.¹⁷ Also, in their regularly published Transparency Reports, Google provides data on foreign government requests to Google for takedown of content, while Facebook publishes its number of actions taken to amend or remove content in response to requests

¹² See appendix C for a list of hearing participants.

¹³ See appendix D for summaries of views of interested parties.

¹⁴ Freedom House, "Freedom on the Net 2021: Countries," accessed October 22, 2021; Freedom House, *Freedom on the Net 2020*, accessed October 22, 2021; Freedom House, *Freedom on the Net 2019*, accessed October 22, 2021; Freedom House, *Freedom on the Net 2018*, October 2018; Freedom House, *Freedom on the Net 2017*, November 2017; Freedom House, "Freedom on the Net 2021: Key Internet Controls 2021," accessed October 22, 2021.

¹⁵ Access Now, "Shattered Dreams and Lost Opportunities," March 2021.

¹⁶ WJP, "WJP Rule of Law Index: Current and Historical Data," accessed October 3, 2021.

¹⁷ RSF, "2021 World Press Freedom Index," accessed October 19, 2021.

(from governments or others) stating that the content violates local law.¹⁸ As described below, several of these indicators were considered in the Commission’s selection of key markets where foreign government censorship affects U.S. businesses’ trade and investment.

To assess the size of digital and non-digital media and audiovisual services markets in various countries, and therefore the market opportunity for U.S. firms that might be restricted by censorship policies and practices, the Commission considered several indicators published by the World Bank, the International Telecommunication Union (ITU), the United Nations Conference on Trade and Development (UNCTAD), and other international and intergovernmental organizations. Helpful demographic indicators include population, gross domestic product (GDP) per capita, and the percentage of the population with access to the internet.¹⁹ UNCTAD’s Readiness for Frontier Technologies Index gives an overall assessment of the development of the digital economy across countries.²⁰ U.S. services trade data published by the Bureau of Economic Analysis (BEA) provide some useful information about U.S. businesses’ recent participation in foreign markets. In particular, the Commission’s analysis considered U.S. bilateral cross-border exports in certain potentially censorship-affected sectors, including audiovisual services (production and distribution of movies, TV, books, and sound recordings) and information services (news agency services, database services, and other information services).²¹

Selection of Key Markets Where Foreign Censorship Affects U.S. Businesses

In response to the Committee’s request for information about foreign censorship policies and practices in key markets, the Commission identified six markets—China, Russia, Turkey, Vietnam, India, and Indonesia. These six key markets were selected because they meet two broad criteria. First, governments in these markets have introduced a wide range of censorship policies and practices, in particular with respect to digital content, that involve restrictions on firms, including U.S. businesses. Second, for the digital and media services most likely impacted by censorship, demand in each of these markets is large enough to represent a significant commercial opportunity for U.S. firms. In identifying key markets, the Commission considered a range of potential foreign censorship policies and practices, noting that these may affect U.S. businesses either by restricting their existing access or limiting new access to a foreign market.

With respect to the first criterion, the Commission used indicators of censorship listed in the “Information Sources” section above, in conjunction with information provided in the public hearing and interviews with representatives of industry, government, academia, and relevant NGOs, and other

¹⁸ The Google and Facebook data sources relied upon for this report on government censorship practices do not include data on substantial actions taken by both (and other internet-related companies) to remove content that violates their own standards and terms of service. Google, “Transparency Reports: Government Requests to Remove Content,” accessed August 11, 2021; Facebook, “Transparency Center: Content Restrictions Based on Local Law,” accessed August 5, 2021.

¹⁹ World Bank, “GDP per capita (current US\$),” DataBank: World Development Indicators database, accessed August 26, 2021; ITU, “Percentage of Individuals Using the Internet,” World Telecommunication/ICT Indicators Database 2021, July 2021.

²⁰ UNCTAD, *Technology and Innovation Report 2021*, 137–140.

²¹ USDOC, BEA, “Table 2.2. U.S. Trade in Services, by Type of Service and by Country or Affiliation,” July 2, 2021.

publicly available information to identify key markets. While the Commission relied on a variety of sources to inform its identification of key markets, an important starting point was information from Freedom House, a well-known human rights advocacy NGO. Using an approach grounded in IHRL, Freedom House assesses the level of internet freedom in about 70 markets each year, looking at a range of questions focusing on the free flow of information, the protection of free expression, access to information, privacy rights, and freedom from legal and extralegal repercussions arising from online activities. As mentioned above, in its annual *Freedom on the Net* reports, Freedom House provides internet freedom scores related to obstacles to access, limits on content, and violations of internet user rights, as well as data on governments' use of nine "key internet controls" in regulating online platforms, content, and users.²²

In its 2020 and 2021 *Freedom on the Net* reports, Freedom House rated China, Russia, Turkey, and Vietnam as "not free" and India and Indonesia as "partly free." China, Russia, Turkey, and Vietnam ranked in the top (that is, least free) 20 countries in Freedom House's overall scoring of internet freedom, and they ranked in the top (least free) 10 countries in specific scoring for limits on content.²³ India and Indonesia ranked in the top (least free) 30 countries for both total internet freedom scores and limits on content sub-scores.²⁴ Significantly, Freedom House's tracking of the use of so-called "key internet controls," indicates that all six of these markets have restrictive censorship regimes and employ many and various means of censorship, including social media blocking, website blocking, and internet shutdowns, as well as personal attacks, arrest, and imprisonment of internet bloggers and journalists. Freedom House's reporting in 2020 and 2021 on the presence of internet controls also highlights how

²² In Freedom House's annual survey of internet freedom around the world, questions on obstacles to access detail barriers to internet access, government actions to shut off connectivity or block specific applications, and legal, regulatory, and ownership control over internet service providers. Questions on limits on content refer to legal regulations on content, filtering and blocking of websites, other forms of censorship and self-censorship, and related concerns. Questions on violations of user rights inquire about legal protections and restrictions on free expression, surveillance and privacy issues, and legal and extralegal repercussions for disapproved speech online such as imprisonment, harassment, and physical violence. Freedom House, "Freedom on the Net Research Methodology," accessed September 13, 2021; Freedom House, accessed October 22, 2021; Freedom House, *Freedom on the Net 2020: The Pandemic's Digital Shadow*, October 2020.

²³ In Freedom House's 2021 "Freedom on the Net" index, China was scored the lowest, or least free, of all 70 markets included in the index. Iran, Myanmar, Cuba, and Vietnam were the countries next lowest scored as least free, respectively. China also ranked second worst out of 139 countries in the World Justice Project's 2021 ranking of how well a country guarantees freedom of opinion and expression. Freedom House, "Freedom on the Net 2021: Countries," accessed October 22, 2021; Freedom House, *Freedom on the Net 2020: The Pandemic's Digital Shadow*, October 2020; WJP, "WJP Rule of Law Index: Current and Historical Data," accessed October 3, 2021.

²⁴ India's and Indonesia's Freedom House's 2020 and 2021 internet freedom scores are not as low as those for China, Vietnam, Russia, and Turkey, and are higher than other countries not included in this report as key markets. However, India's and Indonesia's scores, together with their use of internet controls and other indicators of the countries' censorship policies and practices, as discussed below, led to their inclusion in this report as key markets. Further, as discussed below, many countries scoring lower than some or all of the key markets apart from China are markets for which demand for digital and media services from U.S. firms is low, for example, because of market size or trade restrictions. Freedom House, "Freedom on the Net 2021: Countries," accessed October 22, 2021; Freedom House, "Freedom on the Net 2021: Key Internet Controls," accessed October 22, 2021.

censorship policies and practices in these countries rely heavily on mechanisms that set rules for internet intermediaries and content publishers.²⁵

In all of the key markets except Turkey, in 2020 and 2021, Freedom House observed 8 or 9 (out of 9) “key internet controls” in at least one of the two years. (Turkey registered 7 in 2021, up from 6 in 2020.) The only other countries to have similarly high levels of internet controls, according to Freedom House, are Iran, Cuba, Uzbekistan, and Azerbaijan, all of which are closed to U.S. digital services firms due to sanctions and market access restrictions or are very small markets.²⁶ China is observed to have had all 9 of the 9 internet controls monitored by Freedom House in place in both 2020 and 2021. Russia and Vietnam both had 8 out of 9 internet controls in place in 2020, although Russia fell back to 7 observed controls in 2021. Vietnam was observed to have a more significant decrease in 2021, dropping from 8 controls to only 5 out of 9 controls. (Freedom House explains this change, noting that in 2021 the Vietnamese government did not repeat the connectivity disruptions and throttling of Facebook’s servers of the prior year, as Facebook agreed to increase censorship of “anti-state” posts on its platform.²⁷)

Separate information on the incidence of internet shutdowns and disruptions, published by Access Now, adds to this picture. Most notably, these data confirm that India employs internet shutdowns and disruptions more frequently than any other country by a wide margin.²⁸ Along with India’s recent sharp increase in the use of nearly the full range of internet controls, India’s very heavy reliance on regional internet shutdowns, a method of censorship that has affected a sizeable population of internet users, weighed heavily on the inclusion of India as a key market for purposes of this investigation.

Data published in Google’s transparency reports provide another lens to observe potential government censorship occurring through the imposition of restrictive internet intermediary rules. During the five-year period 2016–2020, the governments of all six key markets sent requests to Google for removal of content for reasons other than protection of copyrights and trademarks. However, the number of requests made by the Russian government stands out, with Russia responsible for over 61 percent of all such requests in the period. The next-largest country shares were those of Turkey and India, with 6.2 percent and 5.4 percent, respectively. Notably, only 11 markets around the world had shares greater than 1 percent of all such requests, while Russia, Turkey, and India were the only markets with shares above 5 percent.²⁹

²⁵ Freedom House’s data on governments’ use of nine types of internet control give information on how censorship is operationalized in various markets. Five of the controls are ways governments restrict visibility of content or moderate content on online platforms, and therefore relate to censorship policies embedded in internet intermediary rules. Four of the controls relate to government sanctions of internet users for disapproved conduct online. The Freedom House, “Freedom on the Net 2021: Key Internet Controls,” accessed October 22, 2021.

²⁶ Freedom House, “Freedom on the Net 2021: Key Internet Controls,” accessed October 22, 2021.

²⁷ Freedom House, “Freedom on the Net 2021: Key Internet Controls,” accessed October 22, 2021; Freedom House, “Freedom on the Net 2021: Vietnam,” accessed October 22, 2021.

²⁸ Access Now, “Shattered Dreams and Lost Opportunities,” March 2021.

²⁹ The number of requests made by the Chinese government to Google is likely to have been limited because Google does not have significant operations in China. See chapter 3 for further information on Google’s decision to largely withdraw from the Chinese market in recent years. USITC estimates. Google, “Transparency Reports,” accessed August 11, 2021.

Recent activity of markets in adopting or strengthening censorship policies and practices was also considered. For example, both the Indian and Indonesian governments have enacted far-reaching censorship laws in the past two years which are reflected in the sharp increase in the number of key internet controls reported by Freedom House in 2021 compared with 2020. Turkey has also recently enacted policies that expand the scope and application of its primary censorship law, enabling the Turkish authorities to block a large amount of online content.

The data on internet shutdowns and Google take down requests, taken together with the Freedom House scores and observations of key internet controls, as well as the World Justice Project's 2021 rankings of how well a country guarantees freedom of opinion and expression, illustrate how censorship-related policies and practices are becoming increasingly pervasive in all six key markets, relative to most other major markets for relevant digital services (see table 1.1).

Table 1.1 Censorship indicators for key markets

Freedom House scores are calculated on a scale of 0 (least free) to 100 (most free). "Freedom House 2021 country ranking, total score" is a USITC estimate of country rankings based on their Freedom House total internet freedom score, where (1 = least free) out of 70 countries. "Freedom House 2021 country ranking, limits on content score" is a USITC estimate of country rankings based on their Freedom House limits on content score, where (1 = least free) out of 70 countries. WJP = World Justice Project; RSF = Reporters Without Borders.

Country	Freedom House 2021 internet freedom category	Freedom House 2021 country ranking, total score	Freedom House 2021 country ranking, limits on content score	Freedom House 2021 key internet controls present (number, out of 9)	Internet shutdown incidents, 2016–20	Share of government takedown requests to Google, 2016–20, in percent	WJP 2021 freedom of expression country ranking	RSF 2021 World Press Freedom Index country ranking
China	Not free	1	1	9	2	0.8	2	4
Russia	Not free	13	9	7	4	61.4	19	31
Turkey	Not free	18	9	7	10	6.2	6	28
Vietnam	Not free	5	3	5	2	0.5	27	6
India	Partly free	30	30	8	389	5.4	65	39
Indonesia	Partly free	27	23	9	5	0.2	97	68

Source: Freedom House, "Freedom on the Net 2021: Countries," accessed October 22, 2021; Freedom House, "Freedom on the Net 2021: Key Internet Controls," accessed October 22, 2021; Access Now, "Internet Shutdown Tracker," accessed September 27, 2019 and August 4, 2021; Google, "Government Requests to Remove Content," Google Transparency Report, accessed August 11, 2021; WJP, "WJP Rule of Law Index: Current and Historical Data," accessed October 3, 2021; RSF, "2021 World Press Freedom Index," accessed October 19, 2021.

Notes: Freedom House, in its *Freedom on the Net 2021* report, assigns a category and computes a total score for the degree of internet freedom in 70 countries, comprised of sub-scores for obstacles to access, limits on content, and violations of user rights. "Internet shutdown incidents, 2016–20" is the total number of internet shutdown incidents during 2016–2020, as listed on Access Now Internet Shutdown Tracker. "Share of government takedown requests to Google, 2016–20" is a USITC estimate of the country percentage share of government requests to remove content that were received by Google worldwide during 2016–20, excluding requests related to copyright and trademark infringement. The number of requests made by the Chinese government to Google is likely to have been limited because Google does not have significant operations in China. "WJP 2021 Freedom of Expression country ranking" is the World Justice Project (WJP) 2021 "Factor 4.4: freedom of opinion and expression is guaranteed" ranking out of 139 countries, modified by the USITC: low number ranking indicates fewer legal guarantees for freedom of expression. Country ranking worst = 1. "RSF 2021 World Press Freedom Index country ranking" is based on the Reporters Without Borders (RSF) 2021 World Press Freedom Index, modified by the USITC: the index ranks the degree of freedom available to journalists in 180 countries. Country ranking worst = 1.

The second criterion for selecting the markets for purposes of this investigation was that demand for the digital services and content most impacted by censorship is large enough in each market to represent a significant opportunity for U.S. firms. The size of these markets in terms of both the number of internet users and their consumer spending power further support the selection of China, Russia, Turkey,

Vietnam, India, and Indonesia as key markets. Given their demographics and levels of consumer demand and digital development, these are sizeable export markets and investment destinations, either now or potentially in the future if market access restrictions are lifted, for U.S. firms in industry sectors where censorship policies are likely to be particularly relevant (see table 1.2).

Given its size, China represents a major global market for content producers and providers of all types of digital services. The other five key markets also feature large and growing populations of internet users (most notably, India, where 41 percent of the population, or nearly 570 million users, has access to the internet). In each country, internet users therefore wield significant spending power. In addition, in all of the key markets other than China, U.S. firms are market leaders in major digital services sectors, including social media, search, and video streaming, which suggests that these markets are important destinations for U.S. exports and investment.³⁰

Table 1.2 Market statistics for key markets

In millions of people, in percentages, GDP in dollars per capita (\$ current), UNCTAD index scores measuring a country's adoption of digital technologies (index values between 0 and 1), and millions of dollars (million \$)

Market	Population, 2020 (millions)	Internet users as a share of population, 2020 (%)	GDP per capita, 2020 (\$ current)	UNCTAD Readiness for Frontier Technologies Index	U.S. exports of audiovisual services and information services, 2020 (million \$)
China	1,402.1	70.6	10,500	0.76	826
Hong Kong	7.5	92.4	46,324	0.88	95
Russia	144.1	85.0	10,127	0.75	130
Turkey	84.3	77.7	8,538	0.55	85
Vietnam	97.3	70.3	2,786	0.49	18
India	1,380.0	41.0	1,901	0.62	109
Indonesia	273.5	53.7	3,870	0.40	28

Source: World Bank, "Population, Total," DataBank: World Development Indicators database, accessed August 26, 2021. ITU, "Percentage of Individuals Using the Internet," World Telecommunication/ICT Indicators Database 2021, July 2021. World Bank, "GDP per capita (current US\$)," DataBank: World Development Indicators database, accessed August 26, 2021. UNCTAD, *Technology and Innovation Report 2021*, 2021, 137–140. USDOC, BEA, "Table 2.2. U.S. Trade in Services, by Type of Service and by Country or Affiliation," July 2, 2021.

Notes: Market statistics for Hong Kong are published separately by BEA, ITU, UNCTAD, and the World Bank; note that for the censorship indicators in table 1.1 above, Hong Kong information is included in the scores for China. Data on India internet users are for 2019. UNCTAD Readiness for Frontier Technologies Index (published in UNCTAD's *Technology and Innovation Report 2021*) assesses countries' ability to use, adopt, and adapt 11 frontier digital technologies, such as artificial intelligence and internet-of-things technologies. The index provides results for 158 countries, with the United States, Switzerland and the United Kingdom receiving the highest scores on a scale of 0 to 1; a lower score indicates a low level of readiness and a higher score indicates a high level of readiness. U.S. export totals exclude data suppressed to avoid the disclosure of data of individual companies. "Audiovisual services, total" are comprised of audiovisual production services, rights to use audio visual products (movies and television programming, and books and sound recordings), and audiovisual originals (movies and television programming, and books and sound recordings). "Information services" are comprised of news agency services, and database and other information services.

Several medium- to large-sized markets—such as Egypt, Saudi Arabia, the United Arab Emirates, and Thailand—were not included as key markets in this report because the Committee's request focuses on the impact of censorship policies and practices on U.S. businesses; these markets' censorship and censorship-enabling policies are reportedly slightly less restrictive of businesses than those of the six

³⁰ See chapter 4 for more details about U.S. firms' market presence in these sectors in Russia, Turkey, Vietnam, India, and Indonesia.

markets selected.³¹ Policies and practices in these markets often rely more heavily on encouraging self-censorship and restricting the actions of local internet users and journalists. For example, in Egypt and Thailand, strict censorship policies and practices target local individuals and organizations that post disapproved content, using this approach more heavily than restrictions on internet intermediaries to block users' access to a wide range of websites and content.³² Similarly, although their governments maintain relatively open access to the internet and internet penetration rates are very high, according to Freedom House, Saudi Arabia and the United Arab Emirates severely enforce restrictions on certain types of content, target individual users' activities, and encourage self-censorship.³³

This report also does not focus on markets where U.S. firms in relevant sectors are not substantially active, although censorship in these markets may be significant.³⁴ U.S. businesses' commercial presence or export sales to a given market may be limited, for instance, when the market is largely closed to U.S. digital services and content firms because of geopolitical conflict, broad market access restrictions, or export sanctions.³⁵ Additionally, the potential business opportunity for U.S. firms to increase their exports is relatively limited in a number of smaller markets noted by Freedom House and other sources for having highly restrictive censorship regimes. In these markets, demand for digital services and content is likely to remain relatively low, either because overall consumer demand (in terms of population and GDP per capita) is small compared to major markets or because the country's digital economy is relatively undeveloped. Uzbekistan, Kazakhstan, and Azerbaijan are examples of smaller markets with significant censorship. Pakistan has a larger population, but its digital economy is not as

³¹ These countries, for example, were observed by Freedom House to have between 4 and 7 (of 9) "key internet controls" in place in 2020 and 2021, while all six key markets except Turkey were observed to have 8 or 9 in place in at least one of the two years. Turkey had 7 out of 9 internet controls in place in 2021, up from 6 in 2020. Freedom House, "Freedom on the Net 2021: Key Internet Controls," accessed October 22, 2021.

³² According to the submission to the USITC from the Tahir Institute of Middle East Policy, the Egyptian government's emphasis on silencing individuals or organizations who may be criticizing its policies or publishing disapproved content has engendered a strong culture of self-censorship. In line with this, Egypt is ranked as the worst of the 139 countries included by the World Justice Project in its index assessing whether "freedom of opinion and expression is guaranteed." TIMEP, written submission to the USITC, July 23, 2021, 2–4; WJP, 2021 Rule of Law Index, accessed September 7, 2021; Freedom House, "Freedom on the Net 2021: Egypt," accessed October 22, 2021.

³³ However, these markets also use website blocking in certain instances, such as when the content is deemed to be critical of the government authorities. For example, under the legal authority of the 2018 Press, Media and Media Regulation Law, Egyptian authorities have blocked a large number of websites posting government-disapproved content. Also, in the United Arab Emirates, video chat services like WhatsApp and FaceTime remain blocked, despite the announcement in late 2020 of discussions on removing the restriction. ITU, "Percentage of Individuals Using the Internet," World Telecommunication/ICT Indicators Database 2021, July 2021; TIMEP, written submission to the USITC, July 23, 2021, 5; Freedom House, "Freedom on the Net 2021: Saudi Arabia," accessed October 22, 2021; Freedom House, "Freedom on the Net 2021: United Arab Emirates," accessed October 22, 2021; Freedom House, "Freedom on the Net 2020: Countries," accessed August 12, 2021.

³⁴ If the Commission's survey indicates that some U.S. firms are not active in certain markets because of censorship or self-censorship, it will be noted in the second report.

³⁵ This is the case for many of the 22 markets categorized as "not free" by Freedom House in its *Freedom on the Net 2021* report, including Iran, Syria, Cuba, Venezuela, Ethiopia, Sudan, Myanmar, and Belarus. For example, some of these countries, such as Iran and Cuba, are subject to comprehensive sanctions programs administered by U.S. Treasury's Office of Foreign Assets Control (OFAC). USDT, OFAC, "Sanctions Programs and Country Information," accessed October 18, 2021; Freedom House, "Freedom on the Net 2021: Countries," accessed October 22, 2021.

well advanced; it ranks among the top 10 least-free markets for internet freedom according to Freedom House, but its low internet penetration rate (only 17.1 percent of the population had access to the internet in 2019, according to the UN's ITU) means that the net impact of its censorship restrictions is relatively limited.³⁶

Countries where censorship does not appear to be a significant deterrent to trade and investment also are not considered to be key markets for purposes of this investigation, no matter how large a market they may be for U.S. firms. The United Kingdom and Germany, for example, are very important destinations for U.S. digital services exports, and access to the internet and online content is very open. Neither market employs the various internet controls monitored by Freedom House, with the exception of Germany's recent laws increasing certain online surveillance powers of government law enforcement.³⁷ The United Kingdom and Germany both scored among the top 10 most free countries in Freedom House's recent *Freedom on the Net* reports (in 2021, for example, they scored 63 and 65, respectively, out of a total of 70 countries).³⁸ However, as even a small degree of trade restrictiveness from censorship in these markets could be economically significant for U.S. digital services firms, Freedom House has noted recent examples of increased regulation of online speech in both countries.³⁹

³⁶ Freedom House, "Freedom on the Net 2021: Countries," accessed October 22, 2021; Freedom House, "Freedom on the Net 2020: Countries," accessed August 12, 2021; ITU, "Percentage of Individuals Using the Internet," World Telecommunication/ICT Indicators Database 2021, July 2021.

³⁷ In 2020, U.S. exports of audiovisual services and information services to the United Kingdom and Germany totaled \$4,574 million and \$860 million respectively. In its 2021 *Freedom on the Net* report, no key internet controls were observed in the United Kingdom and only 1 control was observed in Germany. BEA, "Table 2.2. U.S. Trade in Services, by Type of Service and by Country or Affiliation," July 2, 2021; Freedom House, "Freedom on the Net 2021: United Kingdom," accessed October 22, 2021; Freedom House, "Freedom on the Net 2021: Germany," accessed October 22, 2021; Freedom House, "Freedom on the Net 2021: Key Internet Controls," accessed October 22, 2021.

³⁸ Freedom House, "Freedom on the Net 2021: Countries," accessed October 22, 2021.

³⁹ Germany has a law to regulate online hate crime and the UK is debating an online safety bill. See chapter 2 for information on Germany's Network Enforcement Act (NetzDG) (also known as the "Facebook Act"). Freedom House, "Freedom on the Net 2021: United Kingdom," accessed October 22, 2021; Freedom House, "Freedom on the Net 2021: Germany," accessed October 22, 2021; Freedom House, "Freedom on the Net 2020: Countries," accessed August 12, 2021.

Chapter 2

Overview of Censorship-Related Policies and Practices in Key Markets

Introduction

This chapter provides an overview of the “who,” “what,” and “how” of foreign government censorship and major trends in the evolution of censorship policies and practices in the key markets. The chapter highlights approaches to censorship-related policies and practices in the key markets and discusses the concepts of extraterritoriality and self-censorship. Subsequent chapters provide detailed information on U.S. participation in relevant industries and censorship-related policies and practices in China (chapter 3), and Russia, Turkey, Vietnam, India, and Indonesia (chapter 4).

Summary of Key Findings

- Many different governmental agencies and actors have a role in censorship-related policies and practices in the key markets—the “who” of censorship. Governments in the key markets also require the cooperation of nongovernmental actors, and particularly internet companies, given the growing importance of the internet for communication and speech. Moreover, foreign governments censor a wide variety of content—the “what” of censorship. This content includes political, social, and national security-related topics, as well as information on internet tools that can be used to circumvent censorship policies. In recent years, governments in all of the key markets engaged in “pervasive” filtering, or restricting access to internet content, in one or more of these categories, according to empirical analyses.⁴⁰
- Governments in the key markets operationalize censorship—the “how” of censorship—through policies and practices that can be broadly grouped into two categories: those that directly target speech for suppression; and those that may operate to enable or facilitate government censorship.⁴¹ The evolution of censorship policies and practices in the key markets has largely been driven by the growing importance of the internet. Recent laws often take a multipronged approach by including direct censorship measures and potentially censorship-enabling measures in the same law or package of laws. They set forth broad categories of prohibited topics; require

⁴⁰ Zittrain et al., “The Shifting Landscape of Global Internet Censorship,” 2017; OpenNet Initiative, “Vietnam,” August 7, 2012.

⁴¹ USITC, hearing transcript, July 1, 2021, 98 (testimony of Maria Repnikova, Georgia State University); Center for Democracy and Technology, written submission to the USITC, July 22, 2021, 1 (digital censorship can involve direct or indirect state action that seeks to prevent or suppress communication through practices that are inconsistent with international human rights obligations).

internet companies to remove speech related to these topics on tight time frames; require local storage of data and local personnel; and include substantial civil and/or criminal penalties.⁴²

- Foreign governments' direct and censorship-enabling policies may be augmented by the extraterritorial application of censorship, and by the decisions of companies and individuals to self-censor. Extraterritorial censorship occurs when governments seek to suppress speech outside their borders. In some cases, a law or policy expressly states that its prohibition on certain content applies outside the jurisdiction. In other cases, governmental pressure or economic coercion is used to compel compliance with a country's censorship rules outside of its borders, even where there is no expressed basis for a claim of extraterritorial jurisdiction.⁴³ Self-censorship involves censoring or suppressing one's own speech to avoid offending government censors or to facilitate market access.⁴⁴

Who Censors

A wide range of governmental actors in the key markets are involved in censorship policies and practices—from telecommunications and internet authorities to election commissions and security agencies. Moreover, governmental actors often cannot implement censorship policies without the compliance of state-owned entities and private companies. This section briefly describes important governmental and nongovernmental actors in the key markets.⁴⁵

Governmental Actors

In China, the Cyberspace Administration of China, and the Chinese Communist Party's (CCP) Central Cyberspace Affairs Commission headed by President Xi Jinping, are principal regulators of content on the internet.⁴⁶ The CCP's Central Propaganda Department also maintains tight control over the internet and traditional and digital media content to ensure consistency with CCP dictates.⁴⁷ Similarly, the Communist Party of Vietnam (CPV) and the Vietnamese government substantially control online and media content in the country. They exercise authority over print, broadcast, online, and electronic media, primarily through the Ministry of Information and Communications (MIC) and with the guidance

⁴² Human Rights Watch, written submission to the USITC on Censorship in India, Indonesia, and Vietnam, July 23, 2021, 1.

⁴³ USITC, hearing transcript, July 1, 2021, 33-34 (testimony of Aynne Kokas, University of Virginia); USITC, hearing transcript, July 1, 2021, 79-80 (testimony of Maria Repnikova, Georgia State University). See also, USITC, *Foreign Censorship Survey*, Definitions, accessed October 3, 2021.

⁴⁴ USITC, *Foreign Censorship Survey*, "Definitions," accessed October 3, 2021; USITC, hearing transcript, July 1, 2021, 13-14 (testimony of Suzanne Nossel, PEN America).

⁴⁵ Certain policies and practices in the European Union (EU) also are mentioned because of the involvement of U.S. internet companies and the "ripple effects" of the EU approach in other markets, as discussed below. See also Keller, written submission to the USITC, June 24, 2021, 3-4; Cato Institute, written submission to the USITC, July 22, 2021, 2-3; Mchangama and Fiss, "The Digital Berlin Wall," November 2019, 17.

⁴⁶ Freedom House, "Freedom on the Net 2021: China," accessed October 22, 2021; Gao, "Data Regulation with Chinese Characteristics," 2019; Fedasiuk, "Buying Silence," January 12, 2021.

⁴⁷ Practical Law China, "Understanding the 2018 Governmental Institutional Reform: China," accessed June 29, 2021; Bandurski, "When Reform Means Tighter Controls," March 22, 2018; Freedom House, "Freedom on the Net 2021: China," accessed October 22, 2021.

of the CPV Propaganda and Education Commission.⁴⁸ Reportedly, the Vietnamese government and the CPV officials regularly meet with online outlets to instruct them to remove content they deem problematic.⁴⁹

In Russia, the Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor), a branch of the Ministry of Telecom and Mass Communications Media, is the chief regulator of the media and information and communication technology (ICT) sectors.⁵⁰ With regard to the internet, Roskomnadzor sends takedown notices to internet companies and requires internet service providers to install deep packet inspection technology that reportedly is used for website blocking and surveillance.⁵¹ In Turkey, the Information and Communication Technologies Authority and other ministries and officials are authorized to demand that internet companies remove content or block websites.⁵² In India, the Ministry of Electronics and Information Technology, the Cyber Police Station of Mumbai, and the Election Commission are major sources of requests to U.S. internet companies for the takedown of online content.⁵³ Indonesia's Ministry of Communication and Information Technology is currently responsible for regulatory issues relating to internet companies, after it was restructured in 2018 and again in 2020.⁵⁴

Nongovernmental Actors

While governmental actors are the ones defining what is prohibited content, they often rely on nongovernmental actors to implement censorship policies and practices, so that in practice, state-owned entities and private companies play an important role.⁵⁵ In China, where U.S. internet and social media companies are mostly excluded from the market, Chinese internet companies remove prohibited content as a condition of their operating licenses.⁵⁶ The Chinese government also reportedly enlists thousands of individuals to monitor online communications, promote official views, and counter

⁴⁸ USDOS, *Vietnam 2020 Human Rights Report*, March 2021, 16–17.

⁴⁹ Freedom House, "Freedom on the Net 2021: Vietnam," accessed October 22, 2021.

⁵⁰ Freedom House, "Freedom on the Net 2020: Russia," accessed October 22, 2021.

⁵¹ Deep packet inspection technology enables a government to monitor not only the metadata associated with a communication but the actual content of the communication as well. Russia also requires firms to retain metadata about communications and hand over encryption keys, which assist the government in monitoring communication and enforcing laws which prohibit certain types of speech. Ramesh, et al., "Decentralized Control: A Case Study of Russia," February 2020, 5; Maréchal, "Networked Authoritarianism," 2017, 32–33.

⁵² Turkey's President Erdoğan and his family members also have sought the takedown of specific content on Google. Harvard University, Berkman Klein Center for Internet and Society, Lumen Database, accessed September 2, 2021. See also USDOS, *Turkey 2020 Human Rights Report*, March 2021, 37; Freedom House, "Freedom on the Net 2021: Turkey," accessed October 22, 2021.

⁵³ Harvard University, Berkman Klein Center for Internet and Society, Lumen Database, accessed September 2, 2021.

⁵⁴ Freedom House, "Freedom on the Net 2021: Indonesia," accessed July 7, 2021.

⁵⁵ Repnikova, written submission to the USITC, July 1, 2021, 1; USITC, hearing transcript, July 1, 2021, 18 (testimony of Nathalie Maréchal, Ranking Digital Rights); USITC, hearing transcript, July 1, 2021, 173 (testimony of Timothy Brightbill, Wiley Rein LLP).

⁵⁶ Brightbill, oral statement to the USITC, June 24, 2021, 3–4.

contrary information.⁵⁷ In key markets outside of China, U.S. internet companies often are on the front lines of foreign government demands to remove online content as many of the most prominent internet companies that host content are headquartered in the United States.⁵⁸ Some governments reportedly rely on a different approach: “jawboning” or pressuring companies to suppress content themselves or face more regulation and oversight.⁵⁹

What Governments Censor

Governments censor a wide variety of content. This content includes political, social, and national security-related topics as well as information on internet tools (such as virtual private networks) that can be used to circumvent censorship. For example, based on an empirical analysis conducted by researchers at Harvard University’s Berkman Klein Center for Internet & Society, 26 of 45 countries engaged in state-sponsored “filtering” of internet content through technical means in 2015–17 and before.⁶⁰ Based on the analysis, all of the key markets engaged in “pervasive” or “substantial” filtering of political content as well as other topics.⁶¹ Figure 2.1 illustrates results for the key markets and whether the analysis found the degree of filtering to be “pervasive,” “substantial,” or “selective” in each of these markets.

⁵⁷ One way in which Chinese citizens participate in censorship is by means of “distributed denial of attention.” At the government’s direction, they flood the online space with false information to distract from topics the government wants downplayed or to escalate nationalist sentiment. USITC, hearing transcript, July 1, 2021, 23–24 (testimony of Nathalie Maréchal, Ranking Digital Rights); USITC, hearing transcript, July 1, 2021, 39 (testimony of Maria Repnikova, Georgia State University); USDOS, *China 2020 Human Rights Report*, March 2021, 41.

⁵⁸ USITC, hearing transcript, July 1, 2021, 18 (testimony of Nathalie Maréchal, Ranking Digital Rights); Center for Democracy and Technology, written submission to the USITC, July 22, 2021, 3; see also chapter 4 describing U.S. firms’ participation in this sector in the key markets.

⁵⁹ For example, in 2016, following pressure and regulatory proposals by European governments, four U.S. companies (Facebook, Microsoft, Twitter, and YouTube) agreed to an EU Hate Speech Code of Conduct. Under this agreement, the companies pledged to “review the majority of valid notifications for removal of illegal hate speech in less than 24 hours and to remove or disable access to such content, if necessary.” EC, “The Code of Conduct,” June 30, 2016, 2; Keller, written submission to the USITC, June 24, 2021, 3–4; Cato Institute, written submission to the USITC, July 22, 2021, 2–3. While some countries may or may not consider restrictions on hate speech to constitute censorship, the international human rights law framework discussed in chapter 1 provides a basis for evaluating such measures.

⁶⁰ This analysis uses the terms blocked and filtered interchangeably to include completely preventing access to a website and restricting access to particular content on a site based on certain characteristics. Zittrain et al., “The Shifting Landscape of Global Internet Censorship,” 2017, 2–4.

⁶¹ To conduct the analysis, the authors developed global and country-specific testing lists and then used automated tools to determine whether particular topics or URLs on the lists were intentionally blocked or filtered at various vantage points within the network of each country. While the empirical analysis focuses on intentional, state-sponsored filtering of online content, it does not identify whether it was carried out directly by the government or enabled by internet intermediaries. Zittrain et al., “The Shifting Landscape of Global Internet Censorship,” June 2017, 2–3, 6; OpenNet Initiative, “Vietnam,” August 7, 2012. See also Niaki, et al., “ICLab,” 2020 (analyzing blocking techniques and types of content blocked in 60 countries in 2017 and 2018).

Figure 2.1 Degree of filtering by thematic area in key markets, 2015–17

1 = selective filtering; 2 = substantial filtering; 3 = pervasive filtering. Underlying data for this figure can be found in appendix E, [table E.1](#).

Country	Political content	Social content	Conflict/Security	Internet tools
China	3	2	3	3
Russia	2	3	3	2
Turkey	2	2	3	1
Vietnam	3	1	1	2
India	3	1	2	2
Indonesia	3	3	1	3

Source: Zittrain et al., “The Shifting Landscape of Global Internet Censorship,” 2017; OpenNet Initiative, “Vietnam,” August 7, 2012.

Note: “Selective” filtering is defined as either narrowly targeted filtering that blocks a small number of specific websites across a few categories or filtering that targets a single category or issue. “Substantial” is either a medium level of filtering carried out over a few categories or a low level of filtering carried out across many categories. “Pervasive” is defined as blocking that spans a number of categories while blocking access to a large portion of related content. Vietnam scores are based on 2011 findings.

The analyses found that all of the key markets engaged in pervasive filtering of content in one or more categories.⁶² China, India, Indonesia, and Vietnam engaged in pervasive filtering of political content. This content category included opposition to the ruling government, critical news or human rights reporting, and religious criticism and commentary. China, Russia, and Turkey engaged in pervasive filtering of content related to conflicts and national security. This category included information on conflicts with other countries, border disputes, internal violence, and separatist movements. China and Indonesia engaged in pervasive filtering of internet tools for avoiding government filtering and surveillance including encryption-related information. Indonesia and Russia engaged in pervasive filtering of social content including in such areas as pornography, gambling, alcohol and drugs, and lesbian, gay, bisexual, and transgender (LGBT) matters.⁶³ Given their pervasiveness in the key markets, particular government policies and practices on LGBT issues are highlighted in box 2.1.

Box 2.1 Censorship of Lesbian, Gay, Bisexual, and Transgender (LGBT) Content in Key Markets

Several key markets place restrictions on the production and distribution of LGBT content. These laws may affect U.S. firms directly (for example, when U.S. firms that provide platforms for such content are blocked or have their content removed) and contribute to negative social attitudes toward LGBT people in these markets and self-censorship. For example, Indonesia’s 2008 Bill on Pornography criminalizes depictions of LGBT content in the media and has been used to justify the removal of 73 LGBT-related apps in Google’s Play store.^a Similarly Russia’s Federal Law 135-FZ restricts minors’ access to LGBT-related content and has been used to block websites and remove posts on social media.^b Russia has also required U.S. films such as *Rocketman* and *Onward* to be edited to remove LGBT content before distribution in the country.^c Additionally, the Turkish government requested that the production of a Netflix original series (created by a Turkish screenwriter) be canceled because of the inclusion of a prominent gay character.^d Netflix subsequently changed the setting as well as production for the series

⁶² In addition to the key markets, Iran, Pakistan, Saudi Arabia, the United Arab Emirates, and Yemen also were identified as countries that engaged in pervasive filtering in multiple categories. Zittrain et al., “The Shifting Landscape of Global Internet Censorship,” June 2017, 7.

⁶³ Zittrain et al., “The Shifting Landscape of Global Internet Censorship,” June 2017, 8–10; OpenNet Initiative, “Vietnam,” August 7, 2012.

to Spain, though it is due to air in 190 countries including Turkey.^e China has censored online LGBT content since 2017, and may soon ban the depiction of same-sex relationships in video games.^f

^a Davies, “New Indonesian Web System Blocks,” February 19, 2018; Wong et al., “The State of Internet Censorship in Indonesia,” May 23, 2017; Listiorini and Davies, “Online Dating Apps Blocked,” April 18, 2017.

^b Government of Russia, Federal Law No. 135-FZ, June 29, 2013; HRW, “Online and On All Fronts,” July 18, 2017.

^c Roth, “Russia Cuts Rocketman Scenes,” May 31, 2019; Moscow Times, “Russia Censors Disney’s First Openly Gay Character,” February 29, 2020.

^d Vivarelli, “Netflix Cancels Production of Turkish Original,” July 21, 2020.

^e Lizarrage and Lombrana, “Banned Netflix Show Returns to Turkey,” August 25, 2021.

^f Longarino, “Precarious Progress,” December 15, 2020; China Netcasting Services Association, “Online Short Video Content,” January 9, 2019; Glauert, “Exclusive: China Throws Out Court Challenge,” October 26, 2018; Wakefield, “China to Ban Video Games,” October 2, 2021.

In recent years, internet platforms also have begun to compile and publish data on the range of reasons why governments request the takedown or removal of online content. Figure 2.2 provides a snapshot of Google’s characterization of these reasons. Across all markets, Russia was responsible for a majority of content takedown requests submitted to Google (61 percent). Together, the key markets were responsible for 75 percent of all requests to Google during 2016–20.⁶⁴ The top justifications for removal requests were national security (41 percent) and the depiction of goods and services subject to governmental regulation, such as drugs, alcohol, and gambling (21 percent). Because Russia was responsible for the majority of the takedown requests, figure 2.2 largely reflects Russia’s policy of restricting content related to national security, regulatory, and social issues. Other key markets provide a similar variety of reasons for requesting content removal; defamation, privacy and security, and national security are the most frequently cited among this group.⁶⁵ China’s content filtering policy is largely absent from the illustration because most Google products, such as YouTube and Web Search, are not accessible in China.⁶⁶

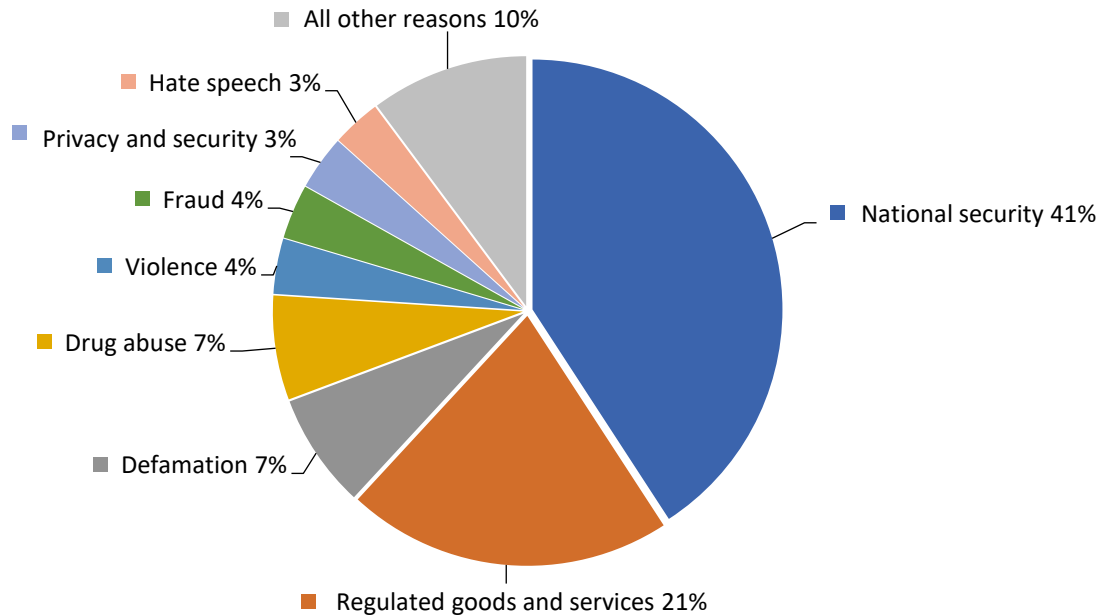
⁶⁴ Requests made by governments for copyright and trademark reasons are excluded from this analysis, as discussed in chapter 1. USITC calculation from Google, “Transparency Report: Government Requests to Remove Content,” accessed August 6, 2021.

⁶⁵ USITC calculation from Google, “Transparency Report: Government Requests to Remove Content,” accessed August 6, 2021.

⁶⁶ See chapter 3 for a discussion of Google in China.

Figure 2.2 Reasons for content removal requests to Google by key market governments from 2016–20, share of total

Underlying data for this figure can be found in appendix E, [table E.2](#).



Source: Google, “Transparency Report: Government Requests to Remove Content,” accessed August 5, 2021.

Note: Google data are based on requests from key market governments for content removal from Web Search, YouTube, and Blogger products. Requests may include multiple items. Staff excluded government requests made for copyright or trademark reasons.

How Censorship Is Operationalized

Government censorship-related policies and practices in the key markets may be generally grouped in two categories: those that directly target speech for suppression and those that may enable or facilitate the suppression of speech.⁶⁷ Government policies and practices that target the suppression of speech include laws and other measures that prohibit particular categories of speech, as well as the premarket censorship review of audiovisual and other creative works.⁶⁸ In the online environment, direct government censorship policies that shut down the internet, block entire websites or filter particular

⁶⁷ USITC, hearing transcript, July 1, 2021, 98 (testimony of Maria Repnikova) (“There are mechanisms that directly deal with regulation of freedom of expression” and there are “facilitating mechanisms that end up empowering, indirectly empowering censorship”); see also Center for Democracy and Technology, written submission to the USITC, July 22, 2021, 1 (digital censorship can involve direct or indirect state action that seeks to prevent or suppress communication through practices that are inconsistent with international human rights obligations).

⁶⁸ Human Rights Watch, written submission to the USITC on Censorship in India, Indonesia, and Vietnam, July 23, 2021, 1; USITC, hearing transcript, July 1, 2021, 10 (testimony of Suzanne Nossel, PEN America); MPA, written submission to the USITC, July 16, 2021, 3.

content on those sites, or that make it more difficult to access websites (throttling), also are prevalent in the key markets.⁶⁹

By contrast, censorship-enabling measures include laws or government actions that may enable or facilitate government suppression of speech. These may include, for example, internet intermediary rules, data localization or local presence requirements, and foreign investment and market access restrictions. However, whether such measures may be considered censorship enabling depends on context and the end to which such measures are used.⁷⁰ As detailed in chapters 3 and 4, in the key markets various measures work together to achieve government censorship goals. For example, internet intermediary rules in the key markets generally require internet companies to monitor, identify, and remove content falling within a government's broad definition of prohibited content. These rules also often include short deadlines for companies to identify and takedown such content or risk substantial penalties for noncompliance.⁷¹

Some key market laws also impose data localization or local presence requirements on internet companies. While data localization⁷² or local presence requirements⁷³ are not always related to censorship, in some markets and under certain circumstances such requirements can be used to facilitate censorship. For example, requirements to store data locally make it easier for governments to obtain data on users' activities and to censor content based on that data. Requirements for internet companies to maintain local personnel make it easier for governments to pressure company personnel to take down prohibited content or provide access to user data.⁷⁴ While officially aimed at addressing concerns about harmful online content,⁷⁵ these requirements, according to industry representatives,

⁶⁹ Aaronson, written testimony to the USITC, June 13, 2021; Maréchal, written testimony to the USITC, July 1, 2021, 4; Freedom House, "Freedom on the Net 2021: China," accessed October 22, 2021; Freedom House, "Freedom on the Net 2021: Vietnam," accessed October 22, 2021; Freedom House, "Freedom on the Net 2021: Russia," accessed October 22, 2021; Freedom House, "Freedom on the Net 2021: Turkey," accessed October 22, 2021; Freedom House, "Freedom on the Net 2021: Indonesia," accessed July 7, 2021; Freedom House, "Freedom on the Net 2021: India," accessed July 7, 2021.

⁷⁰ Box 1.1 in chapter 1 describes how international human rights frameworks have sought to distinguish between measures that are and are not censorship, or when censorship measures may represent legitimate exceptions to freedom of expression.

⁷¹ See, e.g., Government of Indonesia, Ministry of Communication and Information Technology, Regulation of the Minister of Communication and Information No. 5, November 16, 2020; Government of Vietnam, National Assembly, Cybersecurity Law, June 12, 2018; and Government of Turkey, Parliament, Law No. 7253, July 29, 2020.

⁷² Data localization refers to government requirements that control the storage and flow of data to keep it within a particular jurisdiction. This report focuses on data localization laws applicable to internet companies and does not address laws focused on firms in other sectors such as banking or health care. See Internet Society, "Internet Way of Networking Use Case," September 30, 2020 (describing different types of data localization measures).

⁷³ Local presence requirements mandate the localization of certain company personnel in the jurisdiction.

⁷⁴ See, e.g., Government of India, MeitY, Intermediary Guidelines and Digital Media Ethics Code Rules, February 25, 2021, ¶¶ 3,4 (requiring that certain social media companies have at least three employees in India, including a Chief Compliance Officer who could be subject to civil or criminal liability if the company fails to comply with content removal or data access requirements).

⁷⁵ For example, the goals of India's 2021 Intermediary Rules include increasing the accountability of social media platforms to prevent their misuse and abuse. Manchanda and Kumar, "India: The Information Technology," April 29, 2021.

nongovernmental organizations (NGOs), and other stakeholders, instead make firms and their employees more vulnerable to government intimidation and harassment.⁷⁶

Foreign investment and market access restrictions, such as a requirement that foreign companies have local joint venture partners, may also be used to enable censorship.⁷⁷ This is particularly the case in China where the participation of foreign companies in media, computer services, and entertainment-related industry sectors is prohibited or severely limited and where the Chinese government has a long history of tightly controlling the information available to its population including if, when, and how certain issues may be discussed.⁷⁸

Laws that Suppress Certain Categories of Speech

Many countries' laws and regulations prohibit manifestly illegal speech in the online and offline environments, including representations of child sexual abuse, and direct and credible threats of harm and incitement to violence.⁷⁹ Other countries' laws and regulations go further and restrict broad, and often undefined, categories of speech including extremism, blasphemy, defamation, disinformation, and other types of speech deemed offensive.⁸⁰ It is beyond the scope of this report to determine whether such laws may be appropriate or inappropriate under international human rights law or other legal frameworks, as noted in chapter 1. The focus instead is on identifying laws that suppress speech in the key markets.

Governments in all of the key markets use civil and criminal laws to suppress different categories of speech in the offline and online environments.⁸¹ These laws may particularly affect journalists and other

⁷⁶ Industry representative, interview by USITC staff, August 16, 2021; ITIF, written submission to the USITC, August 18, 2021, 19–20; Cato Institute, written submission to the USITC, July 22, 2021, 2; Center for Democracy and Technology, written submission to the USITC, July 22, 2021, 16–20; CCIA, written submission to the USITC, July 21, 2021, 14–15, 19; Brightbill, oral statement to the USITC, June 24, 2021, 4; Internet Association, written submission to the USITC, July 22, 2021, 11–13; Keller, written submission to the USITC, June 24, 2021, 7–8; Engine Advocacy, written submission to the USITC, July 22, 2021, 3.

⁷⁷ USITC, hearing transcript, July 1, 2021, 100, 109–110 (testimony of Aynne Kokas, University of Virginia); USITC, hearing transcript, July 1, 2021, 223–26, 247–48, 293–94 (testimony of Nigel Cory, ITIF).

⁷⁸ While FDI restrictions may be used to enable censorship, they can also be used as a tool of domestic industrial policy or for other reasons. Although determining the underlying motivation or motivations for restrictions can be challenging, the Chinese government's history of tight control of information and of domestic and foreign participation in the print, broadcast, and digital information sectors are well-established. See generally USDOS, *China 2020 Human Rights Report*, March 2021, 30–43 (describing how the government's focus on information control is reflected in policies and practices that limit the speech of domestic and foreign actors); Segal, "China's Vision for Cyber Sovereignty," 2020, 89–95 (describing China's view of the internet as a double-edged sword—essential to growth but threatening to regime legitimacy—and speech-limiting restrictions it has implemented to curb the threat).

⁷⁹ The international human rights law framework allows for such restrictions when they meet the conditions of legality, necessity, and legitimacy. United Nations, General Assembly, Human Rights Council, *Report of the Special Rapporteur*, April 2018, 6.

⁸⁰ United Nations, General Assembly, Human Rights Council, *Report of the Special Rapporteur*, April 2018, 6; Human Rights Watch, written submission to the USITC on Censorship in India, Indonesia, and Vietnam, July 23, 2021, 1; USITC, hearing transcript, July 1, 2021, 10 (testimony of Suzanne Nossel, PEN America).

⁸¹ Human Rights Watch, written submission to the USITC, July 23, 2021, 1; USITC, hearing transcript, July 1, 2021, 10 (testimony of Suzanne Nossel, PEN America).

media services. For example, the World Press Freedom Index ranks China 177th and Vietnam 175th of 180 countries based on a range of factors including the safety of journalists and quality of the legislative framework.⁸² Laws that suppress speech also reach other industry sectors. For example, China's cybersecurity law prohibits broad categories of speech and applies to a wide range of industries including public communication and information services, power, traffic, water resources, finance, public service, and e-government.⁸³

Laws and other measures in the key markets often place broad and ambiguous prohibitions on free expression. In Turkey, the penal code criminalizes defamation, the degrading of religious values, and insults to the state, the president, or other government officials, among other broad categories.⁸⁴ In the context of the COVID-19 pandemic, for example, under Turkey's penal code, those who were critical of the Turkish government risked criminal investigation, fines, charges, and imprisonment by prosecutors and in the courts.⁸⁵ In Russia, authorities can shut down any organization a court determines to be extremist, including media companies and websites.⁸⁶

India also has a broad array of laws related to hate speech, disaster management, communal harmony, religious feelings, national security, and sedition that limit speech. For example, the Indian Penal Code criminalizes speech that is conducive to public mischief, or creates or promotes enmity, hatred, or ill-will between classes on any grounds.⁸⁷ Similarly, the Indonesian criminal code prohibits insults against public officials, speech that causes enmity between religions, or expressions of hostility against one or more groups, among other topics.⁸⁸

In China and Vietnam, the government uses cybersecurity (and other) laws to restrict freedom of expression. In China, the cybersecurity law prohibits using networks to engage in activities endangering national security, national honor and national interests; subverting national sovereignty; breaking national unity; creating false information to disrupt the economic or social order; and contains other broad prohibitions.⁸⁹ For example, in 2018, the Chinese government found that Marriott International violated the law by listing Hong Kong, Macau, Taiwan, and Tibet as separate countries in a customer survey, and temporarily shut down the company's website.⁹⁰ In Vietnam, the cybersecurity law

⁸²The other key markets rank as follows: India: 142, Indonesia: 113, Russia: 150, and Turkey: 153 of 180 countries. RSF, "2021 World Press Freedom Index: Data of Press Freedom Ranking," September 2021. These rankings are reversed in chapter 1, table 1.1 such that 1 is the worst ranking and 180th the best.

⁸³ Government of China, State Council, Cybersecurity Law, November 7, 2016, arts. 12 and 31.

⁸⁴ Council of Europe, Commissioner for Human Rights, "Memorandum on Freedom of Expression and Media Freedom in Turkey," February 15, 2017.

⁸⁵ For example, in May 2020, the government announced that in the six weeks after the pandemic reached the country, authorities had examined 10,111 social media accounts containing "unfounded and provocative" information, identified 1,105 individuals, detained more than 500 persons connected to those accounts for questioning, and initiated nearly 600 criminal investigations. USDOS, *Turkey 2020 Human Rights Report*, March 2021, 29–35.

⁸⁶ USDOS, *Russia 2020 Human Rights Report*, March 2021, 23.

⁸⁷ Government of India, Indian Penal Code, October 6, 1860, most recently amended in 2018 in the Criminal Law (Amendment) Act, 2018, art. 505.

⁸⁸ Government of Indonesia, Penal Code, February 27, 1982 (amended by Law 27 of 1999), arts. 207, 156a, 157.

⁸⁹ Government of China, State Council, Cybersecurity Law, November 7, 2016, art.12.

⁹⁰ Thereafter, Marriott apologized for the mistake and condemned "separatists." AFP, "Chinese Probe into Marriott Hotels over Geography Gaffe in Customer Survey," January 11, 2018; Lee, "Hacking into China's Cybersecurity Law," Spring 2018, 92–93.

establishes “sabotaging the infrastructure of socialism,” “sowing divisions between religious and nonreligious people,” and “propagandizing against the state” as national security offenses. The law further restricts speech that criticizes government leaders or the party, questions policies on sensitive matters, or promotes political pluralism.⁹¹

Premarket Review

Certain categories of creative content—including films, television shows, books, and video games—may be subject to censorship review as a condition to market entry.⁹² In all of the key markets, and in most countries outside of the United States, this premarket review is done by government bodies.⁹³ Censorship requirements and procedures are set by each country and often vary widely based on cultural norms and sensitivities. Given this variation, content creators stress the importance of clear, transparent, consistent, and nondiscriminatory content review systems.⁹⁴

The Chinese government, in particular, reportedly uses broad and nontransparent censorship criteria to block U.S. access to the market, according to the Motion Picture Association (MPA) and other stakeholders.⁹⁵ For example, China’s Film Industry Promotion Law lists a series of broad prohibitions such as “harming national interests” or “disturbing social order.”⁹⁶ Not only is the meaning of these terms unclear, no single list covers all the prohibited topics. Many prohibitions are only communicated orally.⁹⁷ China’s censorship review process also works hand in hand with substantial limits on foreign firms’ access to and participation in the market.⁹⁸ Chinese regulators are able to determine not only if a movie can be released and with what content but also when and how it is released. The Chinese governments’ ability to make or break a film with unpredictable content review and extensive restrictions on market access reportedly results in substantial self-censorship by film studios.⁹⁹

With regard to books and journals, censorship review requirements in China have become more centralized and stringent in recent years, with less tolerance for variation at local levels, according to the

⁹¹ See, e.g., Government of Vietnam, National Assembly, Criminal Code, November 27, 2015, arts. 117 and 331; USDOS, *Vietnam 2020 Human Rights Report*, March 2021, 15–16; Human Rights Watch, written submission to the USITC on Censorship in India, Indonesia, and Vietnam, July 23, 2021, 11–12.

⁹² ITIF, written submission to the USITC, August 18, 2021, 40–41; MPA, written submission to the USITC, July 16, 2021, 3; AAP, written submission to the USITC, July 22, 2021, 3; CSI, written submission to the USITC, July 22, 2021, 1.

⁹³ Most countries grant the government the power to determine what movies may be shown and to whom. MPA, written submission to the USITC, July 16, 2021, 1. See chapters 3 and 4 for a discussion of censorship review systems in the key markets.

⁹⁴ MPA, written submission to the USITC, July 16, 2021, 3; Cory, “Censorship as a Non-Tariff Barrier to Trade,” June 30, 2020, 15; CSI, written submission to the USITC, July 22, 2021, 2.

⁹⁵ MPA, written submission to the USITC, July 16, 2021, 3; Cory, “Censorship as a Non-Tariff Barrier to Trade,” June 30, 2020, 15; CSI, written submission to the USITC, July 22, 2021, 2.

⁹⁶ Government of China, Film Industry Promotion Law, November 7, 2016.

⁹⁷ PEN America, *Made in Hollywood, Censored by Beijing*, August 5, 2020, 13–14.

⁹⁸ CSI, written submission to the USITC, July 22, 2021, 1; MPA, written submission to the USITC, July 16, 2021, 7; ITIF, written submission to the USITC, August 18, 2021, 40–41.

⁹⁹ PEN America, *Made in Hollywood, Censored by Beijing*, August 5, 2020, 15–16.

Association of American Publishers (AAP).¹⁰⁰ China's interlocking premarket review and market access limitations also are reported to be difficult to navigate for U.S. video game producers.¹⁰¹

Internet Shutdowns

An internet shutdown is a government's "intentional disruption of [i]nternet-based communications, rendering them inaccessible or effectively unavailable, for a specific population, location, or mode of access, often to exert control over the flow of information."¹⁰² The United Nations Human Rights Council generally considers internet shutdowns, regardless of the stated justification, to constitute a violation of Article 19 of the International Covenant on Civil and Political Rights (ICCPR).¹⁰³ According to Access Now, a five-year high of 33 countries issued orders to shut down the internet in 2019.¹⁰⁴

Internet shutdowns often target a specific region or population, sometimes shutting down the ability to communicate completely within a targeted area.¹⁰⁵ Throughout Asia in particular, shutdowns have become more targeted in geographic scope; while this may limit the economic impact, the targeted populations are often marginalized groups.¹⁰⁶ India shuts down the internet more than any country in the world with 121 shutdowns in 2019 and 109 shutdowns recorded in 2020.¹⁰⁷ Many shutdowns target protests, such as those following farmer protests in New Delhi against agricultural laws in 2020–21.¹⁰⁸ In January 2020, the Supreme Court of India ruled in a case involving the Jammu and Kashmir region that indefinite shutdowns are illegal. The Supreme Court further found that internet shutdowns must satisfy the proportionality test, which requires the pursuit of a legitimate aim, exploration of suitable alternatives, and that the shutdown constitutes the least restrictive means.¹⁰⁹ Similarly, in Indonesia, the Jakarta administrative court ruled that the government's repeated shutdowns of the internet in Papua and West Papua in 2019 were illegal.¹¹⁰

Russia and China have used internet shutdowns targeted to specific regions or events.¹¹¹ For example, shutdowns in the Xinjiang province of China have occurred sporadically since 2009, when the

¹⁰⁰ AAP, written submission to the USITC, July 22, 2021, 3.

¹⁰¹ ITIF, written submission to the USITC, August 18, 2021, 40–41; Krebs, "Increasing the Difficulty Level," 2017, 534–36.

¹⁰² Internet Society, *Policy Brief: Internet Shutdowns*, December 2019.

¹⁰³ La Rue, "Report of the Special Rapporteur," May 16, 2011, 21; Voule, "Ending Internet Shutdowns," June 15, 2021.

¹⁰⁴ Access Now, "Internet Shutdown Tracker," accessed August 11, 2021.

¹⁰⁵ Access Now, "Keep it on 2019: Targeted, Cut Off, and Left in the Dark," February 2020, 5; ITIF, written submission to the USITC, August 18, 2021, 13.

¹⁰⁶ Access Now, "Keep it on 2019: Targeted, Cut Off, and Left in the Dark," February 2020, 5.

¹⁰⁷ India also used shutdowns more than any other country from 2016 to 2018. Access Now, "Internet Shutdown Tracker," accessed August 11, 2021; see also Access Now, "Shattered Dreams and Lost Opportunities," March 2021, 4 (recording 109 internet shutdowns in India in 2020).

¹⁰⁸ Access Now, "Shattered Dreams and Lost Opportunities," March 2021, 27; Freedom House, "Freedom in the World 2021: India". See Chapter 4 for discussion of shutdowns in the Jammu and Kashmir region.

¹⁰⁹ *Bhasin v. Union of India*, Writ Petition (Civil) 1031/2019 (January 10, 2020), ¶ 152.

¹¹⁰ Manan, "Jakarta State Administrative Court Rules," June 4, 2020.

¹¹¹ As discussed in chapter 4, the Russian government has carried out multiple regional internet shutdowns and network blackouts to limit the dissemination of information about political protests.

government imposed a 10-month internet blackout.¹¹² More recently, in May 2019 (a month ahead of the 30th anniversary of the Tiananmen Square crackdown), China reportedly tested its ability to shut down the internet with “one button” in Guangdong, Shanghai, Chongqing, and other metropolitan areas.¹¹³ In March 2020, Wuhan and other parts of Hubei province were also subject to internet connectivity restrictions to limit information related to the COVID-19 pandemic.¹¹⁴

Internet Blocking, Filtering, and Throttling

Rather than using the blunt tool of a shutdown, governments in the key markets increasingly use internet blocking, filtering, and throttling to restrict access to content on the internet. Blocking usually refers to preventing access to specific websites, domains, internet protocol addresses, or services included on a blacklist,¹¹⁵ while filtering generally involves the use of technology that restricts access to web pages based on certain characteristics, such as key words or traffic patterns. However, often the terms blocking and filtering are used interchangeably.¹¹⁶ Internet throttling is the intentional slowdown of internet service, and may be employed to make the users’ experience with a website so difficult they are dissuaded from trying to access it and resort to approved websites instead.¹¹⁷

In the last several years, social media has become a more prominent target for censorship activities, including through blocking particular platforms or filtering specific content online. According to Freedom House, in 2020, 17 countries impeded social media through platform blocking and 35 countries used content-filtering tools to carry out censorship; these actors include all six of the key markets.¹¹⁸ Although virtual private networks (VPNs) have been used to bypass attempts to censor internet sites and platforms, crackdowns on VPNs—either through banning or blocking the VPN or by restricting access to app stores where people can download them—are on the rise and have made avoiding blocking and filtering more difficult.¹¹⁹

In China, the “Great Firewall” enables the government to maintain control over the country’s gateway to the global internet so that it can restrict connectivity, or access to content hosted on servers outside the country, as it deems fit.¹²⁰ The Great Firewall blocks many of the world’s top internet sites, reportedly affecting billions of dollars in business.¹²¹ Many U.S. and other foreign news outlets have been blocked

¹¹² The initial shutdown followed ethnic violence. Xinjiang has a large Uighur population. Freedom House, “Freedom on the Net 2021: China,” accessed October 22, 2021.

¹¹³ The “one button” is a simplified, government-operated kill switch. Shutdowns are often explained as national security precautions. Freedom House, “Freedom on the Net 2020: China,” accessed October 22, 2021.

¹¹⁴ Freedom House, “Freedom on the Net 2020: China,” accessed October 22, 2021.

¹¹⁵ Article 19, “Freedom of Expression Unfiltered,” December 2016, 7.

¹¹⁶ Article 19, “Freedom of Expression Unfiltered,” December 2016, 7.

Zittrain et al., “The Shifting Landscape of Global Internet Censorship,” June 2017, 2–3.

¹¹⁷ Woodhams, “The Rise of Internet Throttling: A Hidden Threat to Media Development,” May 20, 2020; USITC, hearing transcript, July 1, 2021, 238 (testimony of Daphne Keller, Stanford University); USITC, hearing transcript, July 1, 2021, 239 (testimony of Nigel Cory, ITIF).

¹¹⁸ Of the six key markets, Indonesia only used content filtering, while the other five used both platform blocking and content filtering. Freedom House, *Freedom on the Net 2020*, accessed October 22, 2021, 23.

¹¹⁹ Access Now, “Keep it On,” 2020.

¹²⁰ See chapter 3 for discussion of technical aspects of the Great Firewall.

¹²¹ Brightbill, oral statement to the USITC, June 24, 2021, 3; USTR, *2020 Report to Congress on China’s WTO Compliance*, January 2021, 58.

for years, including the *New York Times*, Reuters, the *Wall Street Journal*, and the *Washington Post*, as have most U.S. and international social media and messaging platforms and services.¹²² Even when not permanently blocked, the arbitrary implementation of blocking and the performance-degrading effects of throttling significantly impair the supply of many cross-border services.¹²³

In Indonesia, websites containing “negative content”—including pornography, content that violates other social norms, and political content—are regularly blocked by the government. Pornography is the most commonly blocked category, with more than 1 million websites blocked in 2020.¹²⁴ The government strengthened its blocking tools in January 2018 with the Ministry of Communication and Information Technology’s launch of “Cyber Drone 9,” a crawler system driven by artificial intelligence tools that proactively detect content violations (rather than just sites that have already been identified and placed on a list).¹²⁵ In India, political and social information has been blocked, filtered, or throttled repeatedly by the government or court orders; however, since such orders generally are not made public, the extent of the practice is not known.¹²⁶ In Vietnam, state-owned telecommunications companies took Facebook’s local servers offline in 2020, and significantly throttled services across Facebook, Instagram, and WhatsApp for Vietnamese users. Access was restored later when Facebook reportedly agreed to remove more “antistate” content.¹²⁷

In Russia, the government has taken steps to increase its control over the internet and its ability to implement internet shutdowns, blocking and filtering, and throttling.¹²⁸ For example, internet service providers and telecommunications companies must install equipment with deep packet inspection technology that provides the government greater access to the content of data shared online.¹²⁹ Despite adverse rulings from the European Court of Human Rights on its blocking practices, Russia also maintains a formal list of sites that service providers must block.¹³⁰ About 315,000 internet sites were blocked in 2019, according to Russian government sources, while unofficial data suggest that more than 4 million sites were blocked.¹³¹ In Turkey, the Commissioner for Human Rights of the Council of Europe found in 2011, and again in 2017, that the country’s legal framework governing internet blocking was inadequate, conferred extensive powers on an administrative body, and failed to provide sufficient

¹²² Cory, “Censorship as a Non-Tariff Barrier to Trade,” June 30, 2020, 7–10.

¹²³ USTR, *2020 Report to Congress on China’s WTO Compliance*, January 2021, 58; ITIF, written submission to the USITC, August 18, 2021, 16.

¹²⁴ Freedom House, “Freedom on the Net 2021: Indonesia,” accessed July 7, 2021.

¹²⁵ Freedom House, “Freedom on the Net 2021: Indonesia,” accessed July 7, 2021.

¹²⁶ Freedom House, “Freedom on the Net 2021: India,” accessed July 7, 2021.

¹²⁷ Freedom House, “Freedom on the Net 2021: Vietnam,” accessed October 22, 2021.

¹²⁸ Brightbill, oral statement to the USITC, June 24, 2021, 4–5; Keller, written submission to the USITC, June 24, 2021, 5.

¹²⁹ Brightbill, oral statement to the USITC, June 24, 2021, 4–5; Satariano and Mozur, “With Coercion and Black Boxes,” October 22, 2021.

¹³⁰ European Court of Human Rights, “Websites Blocked in Russia,” ECHR 183 (June 23, 2020); Keller, written submission to the USITC, June 24, 2021, 5.

¹³¹ Freedom House, “Freedom on the Net 2021: Russia,” accessed October 22, 2021.

safeguards against abuse.¹³² Yet, as of July 2020, 408,494 websites reportedly remained blocked in Turkey.¹³³

Internet Intermediary Rules

Internet intermediaries—companies that enable online communication by giving access to, hosting, transmitting, amplifying, indexing, linking to, and otherwise facilitating communication of user-generated content—are an important focal point for government efforts to restrict online expression.¹³⁴ Internet intermediaries particularly affected by government efforts include social media platforms, such as Facebook and Twitter, that enable users to exchange and post content online, and search engines, like those of Google and Microsoft, that make internet content accessible to users.¹³⁵

Countries take different (and evolving) approaches to when internet intermediaries may be held liable for user content. These approaches range from a strict liability model, where intermediaries generally are liable for all content they host, to a broad immunity from liability for intermediaries. Permutations in between differ based on the nature of the content, the type of activity at issue, and how promptly the intermediary is required to take down content.¹³⁶

A trend in the key markets (and elsewhere) has been a shift toward requiring intermediaries to proactively identify and remove content based on their own determinations of whether it is legal and without awaiting a government request to takedown particular content.¹³⁷ Some experts raise concerns with this trend to the extent it requires private companies to play the role of judge and jury over users' freedom of speech rights.¹³⁸ Moreover, while governments may have a range of reasons to require the takedown of online content, such as copyrights violations and credible threats of harm, based on testimony and submissions to the Commission, internet intermediary rules in the key markets have been used to facilitate censorship, as discussed in chapters 3 and 4.

Laws in the key markets impose substantial obligations on internet companies to find and remove vague categories of prohibited content, with China presenting perhaps the most extreme approach of using internet intermediary companies to carry out its censorship policies and practices. For example, under

¹³² Council of Europe, Commissioner for Human Rights, "Memorandum on Freedom of Expression and Media Freedom in Turkey," February 15, 2017, ¶¶ 100–111.

¹³³ Freedom House, "Freedom on the Net 2021: Turkey," accessed October 22, 2021; Cato Institute, written submission to the USITC, July 22, 2021, 2.

¹³⁴ Center for Democracy and Technology, written submission to the USITC, July 22, 2021, 2; Perset, *The Economic and Social Role of Internet Intermediaries*, April 2010.

¹³⁵ MacKinnon et al., "Fostering Freedom Online," January 2015, 24.

¹³⁶ Johnson and Castro, "How Other Countries Have Dealt with Intermediary Liability," February 22, 2021; Article 19, "Internet Intermediaries: Dilemma of Liability," 7; Center for Democracy and Technology, written submission to the USITC, July 22, 2021, 3; Keller, "Internet Platforms," 13.

¹³⁷ See generally chapters 3 and 4.

¹³⁸ According to a 2018 report by the UN Special Rapporteur on freedom of expression, governments should only restrict access or remove content pursuant to an independent and impartial judicial order to remain consistent with international human rights principles. However, this recommendation is often not followed in practice. UN, General Assembly, Human Rights Council, *Report of the Special Rapporteur*, April 6, 2018, 19; Center for Democracy and Technology, written submission to the USITC, July 22, 2021, 3–4; USITC, hearing transcript, July 1, 2021, 21 (testimony of Nathalie Maréchal, Ranking Digital Rights).

the Provisions on the Governance of the Online Information Content Ecosystem (Provisions), online content producers and platforms are obliged to prevent the publication of broad categories of information, such as gossip, and content that is vulgar, gory, horrifying, or sexually suggestive, among other taboos. In addition, they must affirmatively promote content reflecting President Xi's thoughts on socialism, the directives of the CCP, and content that showcases China's cultural and economic development. Disciplinary measures, and civil and criminal liability, may result if the Provisions are violated.¹³⁹

India and Indonesia (and other countries) have reportedly used a German statute as a template for internet intermediary requirements.¹⁴⁰ In India, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (the 2021 Intermediary Rules), require online services to remove content within 36 hours of receiving an order from a government agency, and within 24 hours in the case of sexually explicit material. Moreover, "significant social media intermediaries" (those with more than 5 million users) are required to develop and deploy technology-based measures, including automated tools to proactively identify information related to sexual abuse.¹⁴¹ Requirements for the immediate takedown of broad and vague categories of content are also included in Indonesia's Regulation of the Minister of Communication and Information No. 5 and Vietnam's Cybersecurity Law.¹⁴²

Data Localization and Local Presence Requirements

In addition to takedown requirements, governments in the key markets impose data localization and local presence requirements (usually in the same law) on internet intermediaries with substantial civil or criminal penalties for noncompliance. These requirements can be leveraged in conjunction with intermediary rules and other measures to facilitate censoring content, even though countries may also have other motives for these requirements. In countries where broad or ambiguous categories of speech are criminalized, the threat of liability for companies and their employees may be substantial. To

¹³⁹ Government of China, Cyberspace Administration, Governance of the Online Information Content Ecosystem, December 15, 2019, arts. 6, 10, and 18.

¹⁴⁰ Germany's Network Enforcement Act (NetzDG) (also known as the "Facebook Act") requires internet companies to take down "manifestly unlawful content" within 24 hours of a private complaint or be subject to fines of up to 50 million euros (approximately \$59 million) for noncompliance. Internet companies have developed automated content filters that rely on artificial intelligence and high-speed removal processes to comply with NetzDG, the EU Hate Speech Code of Conduct, and other measures that require the rapid identification and removal of prohibited content. See Government of Germany, Bundestag, Act to Improve Enforcement of the Law in Social Networks (NetzDG), September 1, 2017, section 3; Library of Congress, "Germany: Network Enforcement Act," 2021; Center for Democracy and Technology, written submission to the USITC, July 22, 2021, 5–8; Mchangama and Fiss, "The Digital Berlin Wall," November 2019, 17; Keller, "Who Do You Sue," January 29, 2019, 2.

¹⁴¹ Government of India, MeitY, Intermediary Guidelines and Digital Media Ethics Code Rules, February 25, 2021, ¶ 4; Human Rights Watch, written submission to the USITC on Censorship in India, Indonesia, and Vietnam, July 23, 2021, 5; Center for Democracy and Technology, written submission to the USITC, July 22, 2021, 4–5.

¹⁴² Government of Indonesia, Ministry of Communication and Information Technology, Regulation of the Minister of Communication and Information No. 5, November 16, 2020, art. 9; Government of Vietnam, National Assembly, Cybersecurity Law, June 12, 2018.

reduce such threats, companies reportedly may self-censor out of fear or deference to governmental authorities.¹⁴³

Data localization requirements are included in cybersecurity laws (and other legislation) in China and Vietnam that require companies to stop transmissions and delete broad categories of online content prohibited by law. For example, in China, the 2016 cybersecurity law criminalizes use of the internet to “overturn the socialist system” or “incite separatism” (among other prohibitions). It further requires operators of networks and critical information infrastructure to store personal information and other important user data in China so that it is readily available to the government. It also requires them to implement a real-name registration system for consumers using their systems and to share user information with authorities.¹⁴⁴ Similarly, Vietnam’s Law on Cybersecurity requires that companies providing services through telecommunication networks or the internet localize their users’ data in Vietnam and share it with the government upon request. The law further requires companies to supervise users’ posts and remove content prohibited by government ministries within 24 hours of receiving a request. Prohibited content is broadly defined to include propaganda against Vietnam and information that causes public disorder, embarrassment, or which violates economic management.¹⁴⁵

In India, the 2021 Intermediary Rules require “significant social media intermediaries” to maintain a local presence and to appoint local officers, who may be held personally liable in any proceedings relating to noncompliance with the rules.¹⁴⁶ With more personnel residing in India, employees of U.S. and other foreign firms are more vulnerable to intimidation, threats, and harassment.¹⁴⁷ For instance, in May 2021, the police came to Twitter’s offices after the company flagged a tweet by the spokesperson of the ruling party as “manipulated media.”¹⁴⁸ Similarly, Indonesia’s Regulation of the Minister of Communication and Information No. 5 combines expansive takedown requirements with the requirement to employ local contacts to receive government orders, and a mandate that firms provide local government access to their data for supervision purposes.¹⁴⁹

¹⁴³ Keller, written submission to the USITC, June 24, 2021, 6; Human Rights Watch, written submission to the USITC on censorship in India, Indonesia, and Vietnam, July 23, 2021, 1–2; see generally chapter 4.

¹⁴⁴ Government of China, State Council, Cybersecurity Law, November 7, 2016, arts. 12, 31, 37, and 24. The cybersecurity law reportedly set in motion requirements to not only place data in China but also related infrastructure such as servers and cloud services. In 2018, Apple and its state-owned entity partner began storing data for iCloud accounts in China as well as the accompanying cryptographic keys for accessing the data. Nellis and Cadell, “Apple Moves to Store iCloud Keys in China,” February 24, 2018; see chapter 3.

¹⁴⁵ Government of Vietnam, National Assembly, Cybersecurity Law, June 12, 2018, arts. 2, 8, 16, 18, 26; Nguyen, “Update: Vietnam’s New Cybersecurity Law,” November 15, 2018.

¹⁴⁶ Government of India, MeitY, 2021 Intermediary Rules, February 25, 2021, ¶ 4.

¹⁴⁷ Human Rights Watch, written submission to the USITC on Censorship in India, Indonesia, and Vietnam, July 23, 2021, 6; CCIA, written submission to the USITC, July 21, 2021, 13; Cato Institute, written submission to the USITC, July 22, 2021, 2.

¹⁴⁸ Human Rights Watch, written submission to the USITC on Censorship in India, Indonesia, and Vietnam, July 23, 2021, 4; CCIA, written submission to the USITC, July 21, 2021, 13; Cato Institute, written submission to the USITC, July 22, 2021, 2.

¹⁴⁹ Government of Indonesia, Ministry of Communication and Information Technology, Regulation of the Minister of Communication and Information No. 5, November 16, 2020, arts. 34 and 45; Human Rights Watch, written submission to the USITC on Censorship in India, Indonesia, and Vietnam, July 23, 2021, 10–11.

In Russia, foreign companies that fail to comply with localization requirements have had their services blocked, including internet protocol (IP) addresses associated with U.S. cloud providers.¹⁵⁰ Similarly, Turkish Law No. 5651, amended in July 2020 (Law No. 7523), requires social network providers with more than 1 million daily users to establish a representative office in Turkey, respond to individual complaints in 48 hours, and comply with court takedown requests in 24 hours.¹⁵¹ Some U.S. companies did not initially appoint local representatives in Turkey due, at least in part, to concerns about how the representatives would be treated if the government did not agree with content posted by users of their sites. The companies reportedly have been subjected to substantial fines, advertising bans, and government threats to slow down user access.¹⁵²

Foreign Investment and Market Access Restrictions

Several of the key markets, including China, Russia, and India, maintain foreign investment and market access restrictions in content and internet-related sectors that can assist in the governments' implementation of censorship policies and practices, though such restrictions may serve other purposes such as implementation of domestic industrial policy. These restrictions include prohibitions or severe limitations on foreign ownership, burdensome joint venture and licensing requirements, and market access limitations that impact trade and investment in key sectors affected by censorship including media, information, and audiovisual products.

China provides the best example of the overlap between censorship and foreign investment and market access restrictions. According to witnesses before the Commission, China uses arbitrary, opaque, and discriminatory licensing and joint venture requirements, quotas on foreign content, and other limits on foreign investment and market participation to further its censorship goals.¹⁵³ For example, the country prohibits foreign companies from providing film and television production and distribution services, imposes quotas, and restricts the online supply of audiovisual content by requiring foreign companies to license their content to Chinese companies and navigate nontransparent content review requirements.¹⁵⁴ In the area of value-added telecommunications services, restrictions on foreign companies reportedly include opaque and arbitrary licensing procedures and foreign equity caps.¹⁵⁵ These substantial restrictions go hand in hand with a long history of strict control by the Chinese government over the information available to the population including if, when, and how sensitive issues may be discussed.¹⁵⁶

¹⁵⁰ Brightbill, oral statement to the USITC, June 24, 2021, 4.

¹⁵¹ Government of Turkey, Parliament, Law No. 7253, July 29, 2020 (amending Law No. 5651).

¹⁵² CCIA, written submission to the USITC, July 21, 2021, 19; Cato Institute, written submission to the USITC, July 22, 2021, 2; see chapter 4.

¹⁵³ USITC, hearing transcript, July 1, 2021, 100, 109–110 (testimony of Aynne Kokas, University of Virginia); USITC, hearing transcript, July 1, 2021, 223–226, 247–48, 293–94 (testimony of Nigel Cory, ITIF).

¹⁵⁴ USTR, 2021 National Trade Estimate, 127–28, March 2021: ITIF, written submission to the USITC, August 18, 2021, 42; MPA, written submission to USITC, July 16, 2021, 3.

¹⁵⁵ USTR, 2021 National Trade Estimate, March 2021, 126; USTR, “2015 Section 1377 Review,” 2015, 5–6, Cory, “Censorship as a Non-Tariff Barrier to Trade,” June 30, 2020, 7.

¹⁵⁶ See generally USDOS, *China 2020 Human Rights Report*, March 2021, 30–43 (describing how the government's focus on information control is reflected in policies and practices that limit the speech of domestic and foreign

Foreign investment and market access restrictions also reportedly support censorship in Russia and India. The Russian government reportedly uses ambiguously worded restrictions on foreign ownership, and other policies, to consolidate media ownership in government-controlled outlets where the state can dictate editorial policy.¹⁵⁷ Russia also reportedly uses its “foreign agents” law to silence dissent on independent media including Radio Free Europe/Radio Liberty, a private, nonprofit news organization funded by the U.S. government. Roskomnadzor has used the law as a basis for fining the organization and freezing its assets, reportedly in retaliation for publishing information critical of the government.¹⁵⁸ And in India in 2021, the government specified the level of ownership that foreign firms could have in digital news media as 26 percent and established additional local presence requirements for digital media companies. These changes led a number of U.S. firms with news operations to leave the market.¹⁵⁹

Evolution of Censorship-Related Policies and Practices

The evolution of censorship in recent years has been driven in large part by the growing importance of the internet as a vehicle for speech and commerce. Governments have responded to this shift with new policies and practices tailored to the online environment. For example, U.S. internet companies report ever-growing numbers of foreign government requests for the takedown of online content. Moreover, governments are using multiple levers—from data and personnel localization requirements to threats of retaliation—to pressure compliance with censorship policies. Technological developments, such as the use of artificial intelligence and automated tools that assist internet companies to identify and remove objectionable content on a large scale, also present substantial challenges. Further, there appears to be a censorship “ripple effect” as legislation developed in one country is duplicated and adopted in other countries.

Government Requests for the Removal of Content

Leading internet companies regularly issue “transparency reports” that tally requests from governments and private parties for the removal of content from their platforms, as well as actions they take pursuant to these requests.¹⁶⁰ These reports contain important information on these types of requests and how companies respond to them and allow for the examination of government censorship trends

actors); Segal, “China’s Vision for Cyber Sovereignty,” 2020, 89–95 (describing China’s view of the internet as a double-edged sword—essential to growth but threatening to regime legitimacy—and speech-limiting restrictions it has implemented to curb the threat).

¹⁵⁷ USDOS, *Russia 2020 Human Rights Report*, March 2021, 24–25.

¹⁵⁸ Under Russian law, the government labels individuals as “foreign agents,” if they work with foreign media or disseminate their content and receive funding from abroad. Government of Russia, Federal Law No. 426-FZ, December 2, 2019; USDOS, *Russia 2020 Human Rights Report*, March 2021, 25; U.S. Embassy in Georgia, “How Russia’s ‘Foreign Agents’ Law Silences Dissent,” August 10, 2021; Hartman, “U.S. Calls on the Kremlin,” April 22, 2021.

¹⁵⁹ *The Wire*, “HuffPost India,” November 25, 2020; Yahoo!, “Update on Yahoo India,” accessed September 21, 2021; see chapter 4.

¹⁶⁰ As of September 2021, 88 companies have released transparency reports. Access Now, “Transparency Reporting Index,” accessed October 4, 2021.

within companies over time. However, it is extremely difficult to compare the actions of different internet companies based on these reports because they do not follow a standard reporting approach.¹⁶¹ Moreover, although companies are providing more information today than in earlier years, experts continue to raise concerns about gaps and insufficient transparency in how companies handle content removal requests and report information.¹⁶²

Notwithstanding these concerns, transparency reports suggest the following broad trends. First, the number of content removal requests by key market governments to internet intermediaries is large and growing. Twitter received over four times as many content removal requests from key market governments in 2020 than in 2016.¹⁶³ Facebook removed over twice as much content pursuant to key market government requests in 2020 than in 2016.¹⁶⁴ Microsoft received almost five times as many key market government requests in 2020 as it did in 2016.¹⁶⁵ Although requests to Google from governments in key markets grew more slowly between 2016 and 2020 than for the other companies, the number of such requests from key markets to Google was 180 times as large in 2020 versus 2010 (see table 2.1).¹⁶⁶

Russia accounts for a large portion of the requests for the removal of content made to Google (as well as those to Microsoft and Twitter).¹⁶⁷ China made relatively few content removal requests during 2016–20 because access to the Chinese market is blocked or limited for most Google products (see chapter 3). Even so, the number of requests to Google from the Chinese government increased during the period. Vietnam and Indonesia used content removal requests more sparingly, relying more on other censorship tools (see chapter 4).

¹⁶¹ For example, Google reports on government requests to remove content; requests to delist content under European privacy law; removals under the Network Enforcement Law (NetzDG); content delistings due to copyright; and actions YouTube takes pursuant to community guidelines. Google, “Google Transparency Report,” accessed October 3, 2021; Keller and Leerssen, “Facts and Where to Find Them,” 2020, 15–16.

¹⁶² Ranking Digital Rights, “2020 Ranking Digital Rights Corporate Accountability Index,” 2021; Keller and Leerssen, “Facts and Where to Find Them,” 2020, 15–16.

¹⁶³ Twitter data include court orders and legal demands from government and nongovernment entities. USITC calculation using “removal requests” data from Twitter, “Twitter Transparency Center,” accessed August 5, 2021.

¹⁶⁴ Unlike the other companies, Facebook reports the number of content requests it approves rather than the number it receives; the data includes court orders as well as reports from government and nongovernment entities that content violates a local law. USITC calculation using “content restrictions based on local law” data from Facebook, “Transparency Center,” accessed August 5, 2021.

¹⁶⁵ USITC calculation using data from Microsoft, “Content Removal Requests Report,” accessed August 5, 2021. This report covers government requests for content removal.

¹⁶⁶ Google began compiling data on removal requests in mid-2009. USITC calculation using Google, “Transparency Report: Government Request to Remove Content,” accessed August 6, 2021.

¹⁶⁷ USITC calculations using Google, “Transparency Report: Government Request to Remove Content,” accessed August 6, 2021; Microsoft, “Content Removal Requests Report,” accessed August 5, 2021; and Twitter, “Twitter Transparency Center,” accessed August 5, 2021.

Table 2.1 Number of government requests to Google for content removals, by market and by period

Market	2016	2020
China	28	173
Russia	13,192	16,310
Turkey	1,768	1,380
Vietnam	1	304
India	510	1,746
Indonesia	22	66
All other markets	6,580	8,332
All markets	22,101	28,311

Source: Compiled by USITC from Google, “Transparency Report: Government Request to Remove Content,” accessed August 6, 2021.

Note: Requests to remove trademark or copyright infringing items have been excluded. Requests include content on all Google products such as Web Search, YouTube, and Google Images. Major government requestors from the rest of the world include South Korea, Brazil, and the United States.

Increasing Number of Tools to Implement Censorship in the Key Markets

Another trend in the evolution of censorship policies and practices is the increasing number of tools by which key market governments can exert pressure in the pursuit of censorship. One example is the rise of laws that combine rules on prohibited content with internet intermediary takedown requirements, data localization, and local presence mandates, such as those in the key markets discussed above.¹⁶⁸ Key market governments also have used the threat of investigations in other subject areas, and other types of economic coercion, to pressure U.S. companies to accept censorship demands.¹⁶⁹

Moreover, the advance of technology has not only provided more outlets for speech, but also created more technical levers to suppress speech.¹⁷⁰ For example, expanded surveillance and data gathering capabilities have reportedly increased governments’ ability to target and enforce censorship policies, either directly or through pressure on private actors.¹⁷¹ On the industry side, internet intermediaries are expanding their use of artificial intelligence and automated tools to proactively identify and remove objectionable content notwithstanding concerns about substantial errors and biases that accompany increased reliance on technology.¹⁷²

¹⁶⁸ Freedom House, “Turkey: Passage of Social Media Law,” July 30, 2020; Seck, “Updates to Draft Decree,” October 8, 2019.

¹⁶⁹ For example, China has invoked antitrust law and misleading advertising as grounds for breaking up tech firms or removing their content from app stores and has used economic coercion to obtain compliance with censorship mandates. Industry representative, interview by USITC staff, August 16, 2021; Wang, “China’s Big Tech Crackdown,” March 16, 2021; Carr and Liu, “The China Model,” July 27, 2021; CRS, “China’s Recent Trade Measures and Countermeasures,” September 20, 2021, 54.

¹⁷⁰ See Committee to Protect Journalists, “Introduction: The New Face of Censorship,” April 25, 2017.

¹⁷¹ Government authorities in at least 45 of the 70 countries covered by Freedom House’s annual “Freedom on the Net” report are believed to have access to sophisticated spyware or data extraction technology. Freedom House, “Freedom on the Net 2021: The Global Drive,” accessed October 25, 2021. See also Polyakova and Meserole, “Exporting Digital Authoritarianism,” August 2019; Tanczer et al., “Online Surveillance, Censorship, and Encryption,” October 2019, 7.

¹⁷² For example, Facebook and other internet intermediaries reportedly “train” their algorithms to detect hate speech through reliance on large quantities of existing online content and engineers with local language expertise.

Ripple Effects in the Regulation of Speech

As the use of digital technologies increases throughout the world, governments are crafting new ways to respond to and regulate the resulting speech. When countries craft these legislative and regulatory responses, other nations take notice and replicate or borrow from each other's laws and regulations. This ripple effect can result in wide-reaching impacts on the regulatory environment.¹⁷³ Moreover, while limits in technological capacity and the cost of replicating a regime can deter countries from fully emulating others, interested governments may look to technology transfer to overcome these obstacles.¹⁷⁴

Some experts point to China and Russia as two major exporters of their internet governance regimes and exemplars of this trend.¹⁷⁵ This influence can result from a number of factors, including geography and political or economic ties, and is also affected by technological capabilities.¹⁷⁶ China's model has reportedly gained traction in countries that participate in its "Digital Silk Road," an international development and technology-sharing program under the auspices of the Belt and Road Initiative. According to some experts, the program provides tools and technology for countries to develop national internet infrastructures that avoid committing to an open global internet but instead provide for substantial blocking, filtering, and throttling of content at the borders.¹⁷⁷ Russia also reportedly has exported aspects of its internet surveillance structure throughout Eurasia, Latin America, and the Middle East.¹⁷⁸ Another example of this ripple effect is the overlap between Vietnam's 2018 cybersecurity law and China's prior law.¹⁷⁹ Both identify prohibited content, require mandatory data localization, compliance with government takedown requests, and that service providers disclose user data to authorities even without a court order.¹⁸⁰

However, this approach does not work well for many foreign languages because local references can be culturally specific and hard for algorithms to understand. Automated tools reportedly have done a poor job at identifying hate speech in Arabic-speaking countries, among others. Scott, "Facebook Did Little to Moderate Posts," October 25, 2021. See also Keller, "Internet Platforms: Observations on Speech," 2018, 7, and Center for Democracy and Technology, written submission to the USITC, July 22, 2021, 8.

¹⁷³ USITC, hearing transcript, July 1, 2021, 166 (testimony of Nigel Cory, Information Technology and Innovation Foundation) (China as a model for Vietnam and others); Polyakova and Meserole, "Exporting Digital Authoritarianism," August 2019; industry representative, interview by USITC staff, August 16, 2021.

¹⁷⁴ USITC, hearing transcript, July 1, 2021, 47 (testimony of Maria Repnikova); NGO representative, interview by USITC staff, June 2, 2021.

¹⁷⁵ PEN America, "Splintered Speech," June 15, 2021; Polyakova and Meserole, "Exporting Digital Authoritarianism," August 2019; USITC, hearing transcript, July 1, 2021, 98 (testimony of Maria Repnikova).

¹⁷⁶ Sherman, "Vietnam's Internet Control," December 11, 2019.

¹⁷⁷ PEN America, "Splintered Speech," June 15, 2021; Polyakova and Meserole, "Exporting Digital Authoritarianism," August 2019; USITC, hearing transcript, July 1, 2021, 98 (testimony of Maria Repnikova).

¹⁷⁸ PEN America, "Splintered Speech," June 15, 2021; Polyakova and Meserole, "Exporting Digital Authoritarianism," August 2019.

¹⁷⁹ Government of Vietnam, National Assembly, Cybersecurity Law, June 12, 2018; Fullerton, "Vietnam Criticized for 'Totalitarian' Law," January 2, 2019; Sherman, Vietnam's Internet Control," December 11, 2019.

¹⁸⁰ PEN America, "Splintered Speech," June 15, 2021.

Europe also reportedly has provided momentum and templates for new laws addressing hate speech and violent content.¹⁸¹ For example, since the adoption of Germany's NetzDG law (which requires companies to take down broadly defined unlawful content within 24 hours or be subject to substantial fines for noncompliance), at least 13 countries have adopted or proposed similar legislation. Moreover, while NetzDG contains some safeguards and free speech protections, these are absent from the most restrictive follow-on legislation adopted by these countries. Most of the countries adopting the NetzDG model are ranked as "not free" or "partly free" by the Freedom House assessment of freedom on the internet.¹⁸²

Extraterritorial Censorship and Self-Censorship

Foreign governments' censorship policies and practices may be augmented by the extraterritorial application of censorship, and by the decisions of companies and individuals to censor themselves to avoid problems with the government. Extraterritoriality occurs when governments seek to suppress speech outside of their borders. In some cases, a law or policy will expressly state that its prohibition on certain content applies to companies or persons outside the jurisdiction.¹⁸³ A recent example would be the Hong Kong National Security Law, which criminalizes broad categories of offenses (including speech in favor of Hong Kong independence) and states that it applies regardless of where the crime is committed or who commits it.¹⁸⁴ The EU also has expanded its assertion of extraterritorial jurisdiction for its speech-related rulings, as have courts in India and Australia.¹⁸⁵

In other cases, which arise most notably in China, economic coercion is used to advance censorship goals even when the targeted speech is legal where it occurred and the domestic law or policy does not expressly apply outside the jurisdiction. A well-known example of economic coercion to advance censorship goals involves the general manager of the Houston Rockets National Basketball Association

¹⁸¹ Satariano, "Europe is Reining in Tech Giants," May 6, 2019; industry representative, interview by USITC staff, August 16, 2021.

¹⁸² Five of the countries that have adopted or proposed similar legislation to NetzDG are ranked "not free" by Freedom House (Russia, Vietnam, Belarus, Honduras, and Venezuela), five are ranked "partly free" (India, Kenya, Malaysia, Philippines, and Singapore), and only three are ranked "free" (Australia, France, and UK). Mchangama and Fiss, "The Digital Berlin Wall," November 2019, 17; Center for Democracy and Technology, written submission to the USITC, July 22, 2021, 5–8.

¹⁸³ USITC, *Foreign Censorship Survey*, Definitions, accessed October 3, 2021; Keller, written submission to the USITC, June 24, 2021, 4.

¹⁸⁴ HKSAR, "Promulgation of National Law 2020," June 30, 2020, arts 20–29, and 38; see also CRS, "China's National Security Law for Hong Kong," August 3, 2020, 21; USITC, hearing transcript, July 1, 2021, 33–34 (testimony of Aynne Kokas, University of Virginia).

¹⁸⁵ For example, *Glawischnig-Piesczek v Facebook Ireland* involved a Facebook post calling an Austrian politician a "lousy traitor" and "corrupt bumpkin." The Austrian courts found the post to be defamatory and Facebook disabled access to the content in Austria. Thereafter, the Austrian Supreme Court referred to the Court of Justice of the European Union (CJEU) the issue of whether Facebook could be required to remove identical or equivalent content in other locations (even though the content would be protected speech elsewhere). The CJEU found that Facebook could be compelled to build automated filters to identify and suppress future identical or equivalent statements in other jurisdictions. *Eva Glawischnig-Piesczek v. Facebook Ireland Limited*, Case C-18/18, October 3, 2019; see also Keller, written submission to the USITC, June 24, 2021, 5.

(NBA) team who tweeted images supportive of Hong Kong independence. The Chinese government responded by demanding the team “correct the error” and “eliminate the adverse impact.”¹⁸⁶ Thereafter, Chinese brands suspended cooperation with the team, China Central Television stopped the broadcast of NBA games for more than a year, and Tencent (which usually streams all NBA games) stopped streaming Houston Rockets games for nearly a year and a half.¹⁸⁷ Similarly, in 2019 in Turkey, the government blocked the matches and advertisements of an NBA player critical of the Turkish Government.¹⁸⁸

Another facet of censorship is self-censorship, which involves censoring or suppressing one’s own speech to avoid offending government censors and to facilitate market access.¹⁸⁹ Self-censorship is reportedly present in all of the key markets.¹⁹⁰ Witnesses at the Commission’s hearing also discussed the related concept of censoriousness. This is where a government creates an environment in which businesses and individuals anticipate censorship to the point of internalizing what topics and kinds of speech are forbidden and avoiding them so as not invoke censorship or other adverse reactions.¹⁹¹ Moreover, self-censorship can also occur extraterritorially; for example, movie studios reportedly have removed images from the master version of films, rather than just the China-specific version, that they believe may offend the Chinese government.¹⁹²

Countries in which speech is subject to high levels of surveillance, including arrests and harassment of journalists and writers and financial penalties for publishers, tend to have high levels of self-censorship.¹⁹³ In India, for example, some political leaders reportedly harass and intimidate media that publish content that is negative to the government, seek the firing of critical journalists, and impose pressure to obtain positive coverage.¹⁹⁴ In China, self-censorship is prevalent although not always to the levels that the government considers sufficient. For example, in 2021, the Chinese government reportedly punished Microsoft’s LinkedIn for insufficient self-censorship, though it is not clear what

¹⁸⁶ Xinhuanet, “Chinese Diplomat Condemns Houston Rockets,” October 7, 2019; CRS, “China’s Recent Trade Measures and Countermeasures,” September 20, 2021, 54.

¹⁸⁷ Simao and Horwitz, “NBA Stirs U.S. Hornet’s Nest,” Reuters, October 6, 2019; CRS, “China’s Recent Trade Measures and Countermeasures,” September 20, 2021, 54. More recently, in October 2021, Boston Celtics broadcasts were suspended on the Chinese platform, Tencent, following the posting of a pro-Tibetan independence video by a Boston Celtics player (Enes Kanter). Dou and Li, “China Wipes Boston Celtics from NBA Broadcasts,” October 21, 2021. See also chapter 3.

¹⁸⁸ Gall, “Enes Kanter is Playing,” May 15, 2019.

¹⁸⁹ USITC, *Foreign Censorship Survey*, “Definitions,” accessed October 3, 2021; USITC, hearing transcript, July 1, 2021, 13–14 (testimony of Suzanne Nossel, PEN America).

¹⁹⁰ Freedom House, “Freedom on the Net 2021: China,” accessed October 22, 2021; Freedom House, “Freedom on the Net 2021: Vietnam,” accessed October 22, 2021; Freedom House, “Freedom on the Net 2021: Russia,” accessed October 22, 2021; Freedom House, “Freedom on the Net 2021: Turkey,” accessed October 22, 2021; Freedom House, “Freedom on the Net 2021: Indonesia,” accessed July 7, 2021; Freedom House, “Freedom on the Net 2021: India,” accessed July 7, 2021.

¹⁹¹ USITC, hearing transcript, July 1, 2021, 9–15 (testimony of Suzanne Nossel, PEN America); see also Wong, “Microsoft Blocks Bing,” June 4, 2021. See chapter 3 for a more detailed illustration of this overlap.

¹⁹² PEN America, *Made in Hollywood, Censored by Beijing*, August 5, 2020, 24.

¹⁹³ Egypt provides an example of a country with heightened levels of self-censorship connected to increased government surveillance and intimidation. The Tahir Institute for Middle East Policy, written submission to the USITC, July 22, 2021, 2–3.

¹⁹⁴ Goel, Gettleman, and Khandelwal, “Under Modi,” April 2, 2020; Gowen, “In Modi’s India,” February 15, 2018; RSF, “A Delicate Handshake,” accessed July 20, 2021.

content got the company in trouble. China prohibited the company from signing-up new members and ordered the company to offer a “self-evaluation” report.¹⁹⁵ However, in many instances company decisions on what to say may not rise to the level of self-censorship but instead may be more accurately categorized as tailoring content to consumers’ preferences; distinguishing between the two can be challenging.

¹⁹⁵ Human Rights Watch, written submission to the USITC on censorship in China, July 23, 2021, 4; USITC, hearing transcript, July 1, 2021, 61 (testimony of Suzanne Nossel, PEN America).

Chapter 3

Censorship-Related Policies and Practices in China that Affect U.S. Businesses

Introduction

China's censorship system is the most extensive in the world.¹⁹⁶ A report in 2021 estimated the Chinese government's annual censorship spending at more than \$6.6 billion.¹⁹⁷ An earlier report in 2013 claimed that more than 2 million people monitor internet activity in China, including government and private sector employees.¹⁹⁸ It is unclear if subsequent increases in censorship policies and practices resulted in the hiring of more people to censor content, or if tools such as artificial intelligence enable more extensive censorship without employing more workers.

This chapter describes the various types of censorship that U.S. businesses experience in China, including how censorship policies and practices have evolved over the past five years, the role of governmental and nongovernmental actors in implementation and enforcement, and how this has affected specific U.S. firms. After the key findings, three cross-cutting sections follow. The first describes governmental and nongovernmental actors engaged in censorship. The second points to recent laws supporting censorship policies and practices, and the third discusses tools used on the internet to limit access to unauthorized information. The final section describes censorship policies and practices by industry, outlining which types of censorship policy or practice limit speech in that industry. Further discussion of the effects of these policies and practices will be included in the second report.

Summary of Key Findings

- Chinese censorship policies and practices increased significantly from 2016 to 2020, according to multiple sources, adding more rules restricting content and tighter enforcement of those rules.¹⁹⁹
- China passed four new laws or regulations that directly increased censorship across all sectors from 2016 to 2020: the Cybersecurity Law, the Provisions on the Governance of the Online

¹⁹⁶ Freedom House, "Freedom on the Net 2020: China," accessed October 22, 2021; Xu and Albert, "Media Censorship in China," February 17, 2017.

¹⁹⁷ The estimate included Central, Provincial, Municipal, and County spending by Public Security Bureaus, and Provincial, Municipal, and County spending by Cyberspace Affairs Commissions. It did not include expenditure by the Central Cyberspace Affairs Commission or Cyberspace Administration of China, which could be quite large. Fedasiuk, "Buying Silence," January 12, 2021.

¹⁹⁸ Xu and Albert, "Media Censorship in China," February 17, 2017.

¹⁹⁹ Daly et al., "Chinese Society," 2021; academic professional, interview by USITC Staff, June 4, 2021; USITC, hearing transcript, July 1, 2021, 9 (testimony of Suzanne Nossel, PEN America).

Information Content Ecosystem, the Hong Kong National Security Law, and the Data Security Law.²⁰⁰

- The Chinese government uses a wide range of tools to censor content and communications published online and in non-digital formats. These tools include localized shutdowns, monitoring systems and firewalls, blocking publications or websites, and filtering, throttling and blocking digital services. In addition, the government tightly regulates news media and gives direct guidance on which stories to cover or avoid. These tools are designed to censor and control information.²⁰¹
- Given the prevalence of government censorship, many businesses self-censor. However, it is rarely clear when a U.S. businesses decide to self-censor, as a firm may have multiple reasons to modify or produce (or not produce) a product, and businesses usually do not publicly state the motivations behind such decisions.²⁰²
- All books, films, television shows, and videogames are subject to premarket review by the government, and many creators carefully self-censor in order to avoid publication of content that state censors may consider offensive.²⁰³
- Mobile apps and app stores are also responsible for ensuring they offer no illegal content, as there are separate penalties for both producers of illegal content and the platforms they use.²⁰⁴
- Most foreign search engines and social media providers are blocked, and the few that are present in China are required to carefully moderate their own content.²⁰⁵

²⁰⁰ Government of China, Standing Committee, Hong Kong National Law, June 30, 2020; Government of China, State Council, Cybersecurity Law, November 7, 2016; Government of China, Data Security Law, June 10, 2021; Government of China, Cyberspace Administration, Governance of the Online Information Content Ecosystem, December 15, 2019.

²⁰¹ Other policy actions that support these goals include surveillance and publishing stories that fit the Chinese narrative. These stories are then often amplified by Chinese-controlled accounts on social media platforms. Zhong et al., “No ‘Negative’ News: How China Censored the Coronavirus,” December 19, 2020; USITC, hearing transcript, July 1, 2021, 69 (testimony of Maria Repnikova, Georgia State University); Xu and Albert, “Media Censorship in China,” February 17, 2017; Freedom House, “Freedom on the Net 2020: China,” accessed October 22, 2021.

²⁰² USITC, hearing transcript, July 1, 2021, 61 (testimony of Suzanne Nossel, PEN America); USITC, hearing transcript, July 1, 2021, 86–87 (testimony of Aynne Kokas, University of Virginia); Freedom House, “Freedom on the Net 2021: China,” accessed October 22, 2021; Government of China, NRTA, “Responsibilities of the General Administration,” July 30, 2018; Government of China, NPPA, “List of Administrative Examination and Approval Items of the State Press and Publication Administration,” February 8, 2018.

²⁰³ Kokas, written testimony to the USITC, July 1, 2021, 3; MPA, written submission to the USITC, July 16, 2021, 7, 9; Government of China, NRTA, “Provisions on the Function Configuration, Internal Organizations and Staffing of the State Administration of Radio and Television,” July 30, 2018; Practical Law, “National Radio and Television Administration” 2021; Bandurski, “When Reform Means Tighter Controls,” March 22, 2018.

²⁰⁴ Government of China, State Council, Cybersecurity Law, November 7, 2016; Maréchal, written submission to the USITC, June 24, 2021.

²⁰⁵ Leskin, “Here Are All the Major,” October 10, 2019; Greatfire, “Censorship of Alexa,” July 2021; Mozur and Goel, “To Reach China, LinkedIn Plays by Local Rules,” October 5, 2014; see also Cory, “Censorship as a Non-Tariff Barrier to Trade,” June 30, 2020, 11–12.

- Chinese censorship (and self-censorship) is also extraterritorial. For example, non-Chinese content developers reportedly avoid topics they believe would be offensive to Chinese censors, even for content not intended for the Chinese market, such as a movie that will not be released in China.²⁰⁶ Some individuals and businesses that did not self-censor have experienced Chinese reprisals for statements made outside of China, which Chinese censors viewed as contrary to Chinese policy.

Governmental and Nongovernmental Actors Involved in Chinese Censorship

Many Chinese government agencies play a role in Chinese censorship. Specific responsibilities and reporting structures have changed over time, in large part due to the Cybersecurity Law of the People's Republic of China (Cybersecurity Law) and a reorganization of government agencies in 2018.²⁰⁷ The reorganization in 2018 attempted to unify censorship under the State Council, which one expert described as more restrictive than when it was carried out by other national and provincial agencies.²⁰⁸ Prior to the reorganization many censorship policies and practices were handled by the State Administration of Press, Publication, Film, and Television; this agency was dissolved and its functions were divided between several agencies.²⁰⁹

Most censorship activities are now overseen by either the Cyberspace Administration of China (CAC) or the Chinese Communist Party's (CCP) Central Propaganda Department.²¹⁰ The CAC is a Chinese government agency that reports directly to the State Council. Reportedly, the CAC has gradually taken responsibility for censorship activities that were previously managed by other departments.²¹¹ For example, it is now the main internet regulator.²¹² The Central Propaganda Department oversees the National Press and Publication Administration (which regulates media and online publishing), the National Radio and Television Administration (mass media), the China Film Administration (films), and the Ministry of Culture and Tourism (online music and videogames).²¹³

Many companies (including U.S. companies) operating in China have their own internal censorship teams. These teams can be quite large, and work with artificial intelligence systems to ensure that their

²⁰⁶ USITC, hearing transcript, July 1, 2021, 65, 90–92 (testimony of Suzanne Nossel, PEN America); USITC, hearing transcript, July 1, 2021, 41, 69 (testimony of Maria Repnikova, Georgia State University).

²⁰⁷ Industry representative, interview by USITC Staff, June 4, 2021.

²⁰⁸ Industry representative, interview by USITC Staff, June 4, 2021.

²⁰⁹ Practical Law China, "Understanding the 2018 Government Institutional Reform," May 31, 2018 (subscription required).

²¹⁰ Both government and party organizations play a key role in Chinese censorship. The State Council, China's chief administrative agency, oversees many government agencies including the CAC. The Central Committee of the Chinese Communist Party oversees the Central Propaganda Department. U.S.-China Business Council, "Chinese Government," accessed December 1, 2021; Freedom House, "Freedom on the Net 2020: China," accessed October 22, 2021.

²¹¹ Fedasiuk, "Buying Silence," January 12, 2021.

²¹² Practical Law China, "Understanding the 2018 Government Institutional Reform," May 31, 2018 (subscription required).

²¹³ Freedom House, "Freedom on the Net 2020: China," accessed October 22, 2021; Xu and Albert, "Media Censorship in China," February 17, 2017.

sites do not host any material that may be contrary to Chinese laws, regulations, or unofficial requirements.²¹⁴ Some larger Chinese firms offer content moderation software that can filter out unwanted political content.²¹⁵ In many industries, internal censors in companies in China communicate with counterparts at the Central Propaganda Department over what material needs to be changed or removed.²¹⁶ Many individuals also use their own networks to communicate with fellow workers in the same field to learn what material is being censored or likely to be censored. They watch for signs of the types of stories that are removed from news websites and social media in order to identify topics that are not allowed.²¹⁷

Evolution of Censorship-Related Policies and Practices

China has long maintained one of the most pervasive and sophisticated regimes of censorship and information control in the world.²¹⁸ While the laws described in this section are consequential, censorship has often been indirect, sometimes without a direct connection to a specific law (such as the internet shutdowns in Wuhan and Xinjiang).²¹⁹ Censorship laws invoked by the government, such as the Cybersecurity Law, are considered by many to be intentionally vague to allow for maximum flexibility in enforcement.²²⁰

According to Commission research, hearing witnesses, and interviews with industry representatives and academics, the Chinese government has passed at least four laws or regulations since 2016 that have had or are anticipated to have a substantial effect on censorship across all industries (table 3.1). The first three (Cybersecurity Law, Provisions on the Governance of the Online Information Ecosystem, and Hong

²¹⁴ The material that is likely be censored is challenging to predict, and sometimes the decision to censor occurs after a story gains public attention. USITC, hearing transcript, July 1, 2021, 115–17 (testimony of Maria Repnikova, Georgia State University); USITC, hearing transcript, July 1, 2021, 66 (testimony of Aynne Kokas, University of Virginia); Lu, “Censored Word Lists ‘Proprietary Assets’ for Chinese Big Tech,” June 4, 2021.

²¹⁵ Major U.S. companies such as Facebook and Amazon also offer content moderation software but do not advertise the ability to filter for political information. Reportedly, no U.S. company has publicly confirmed that it has this capability. Li, “Made-in-China Censorship for Sale,” accessed July 19, 2021.

²¹⁶ USITC, hearing transcript, July 1, 2021, 72–73 (testimony of Suzanne Nossel, PEN America); industry representative, interview by USITC staff, June 24, 2021.

²¹⁷ Repnikova, *Media Politics in China: Improvising Power under Authoritarianism*, 2017, 87; industry representative, interview by USITC staff, June 16, 2021.

²¹⁸ Zittrain, et al., “The Shifting Landscape of Global Internet Censorship,” 2017, 8. Trends in internet censorship are briefly discussed below in the section on Chinese Censorship Tools on the Internet.

²¹⁹ Yuan and Sun, “Beijing Asked Didi to Change Mapping Function over Security Fears,” July 8, 2021; Freedom House, “Freedom on the Net 2020: China,” accessed October 22, 2021; industry representative, interview by USITC staff, June 24, 2021.

²²⁰ USITC, hearing transcript, July 1, 2021, 36 (testimony of Maria Repnikova, Georgia State University); PEN America, *Made in Hollywood, Censored by Beijing*, August 5, 2020, 11; industry representative, interview by USITC staff, June 21, 2021.

Kong National Security Law) make specific types of speech illegal.²²¹ The fourth, the Data Security Law of the People's Republic of China (Data Security Law) requires data localization for specific types of data (to be defined in later regulations), which some observers anticipate will have a censorious effect as internet users might be more cautious about what they say or do on the internet if they believe the government can legally access their data.²²²

Table 3.1 Recent Chinese laws and regulations related to censorship

Name of law or policy	Censorship effect	Entered into force
Cybersecurity Law	Creates Cyberspace Administration of China; makes clear that individuals or firms that post, host, and fail to censor illegal content are liable.	June 1, 2017
Provisions on the Governance of the Online Information Content Ecosystem	Defines illegal content, and establishes penalties for those that post, host, and fail to censor.	March 1, 2020
Hong Kong National Security Law	Allows indictment of those whose speech is deemed harmful to China regardless of location.	June 30, 2020
Data Security Law	Sets requirements for data localization, which observers anticipate will have a censorious effect.	September 1, 2021

Sources: Government of China, Standing Committee, Hong Kong National Law, June 30, 2020; Government of China, State Council, Cybersecurity Law, November 7, 2016; Government of China, Data Security Law, June 10, 2021; Government of China, Cyberspace Administration, Governance of the Online Information Content Ecosystem, December 15, 2019; Wang, Cao, and Xu, "China Introduces Data Security Law, Strong Legal Support for Development in Digital Age—Global Times," June 11, 2021; USITC, hearing transcript, July 1, 2021, 10 (testimony of Suzanne Nossel, PEN America).

Historically, Hong Kong has had a separate system that was significantly less restrictive than that of mainland China.²²³ However, in 2020, China passed the Hong Kong National Security Law, which criminalizes speech deemed harmful to China.²²⁴ Since then, censorship in Hong Kong appears to have increased significantly.²²⁵ For example, Disney+ reportedly removed an episode of *The Simpsons* from its catalog, likely because of scene at Tiananmen Square that refers to June 4, 1989, and a joke about former CCP Chair Mao Zedong.²²⁶

Chinese Censorship Tools on the Internet

Since many Chinese citizens increasingly looked to the internet for their news and communication needs, Chinese government censorship activities followed, accompanied by an extensive range of tools

²²¹ State Council, "Cybersecurity Law of the People's Republic of China—Office of the CPC Central Committee Cybersecurity and Information Technology," accessed August 2, 2021; USITC, hearing transcript, July 1, 2021, 10 (testimony of Suzanne Nossel, PEN America); Government of China, Standing Committee, Hong Kong National Law, June 30, 2020; Government of China, State Council, Cybersecurity Law, November 7, 2016; Government of China, Cyberspace Administration, Governance of the Online Information Content Ecosystem, December 15, 2019.

²²² Government of China, "Data Security Law of the People's Republic of China," June 10, 2021. The Cybersecurity Law also has data localization requirements, but they are for narrower (yet vague) "critical infrastructure" operators. Such localization requirements can have a "chilling effect" on speech. USITC, hearing transcript, July 1, 2021, 23 (testimony of Nathalie Maréchal, Ranking Digital Rights).

²²³ Maizland and Albert, "Hong Kong's Freedoms," February 17, 2021.

²²⁴ Government of China, Standing Committee, Hong Kong National Law, June 30, 2020.

²²⁵ Yu, "Online Tiananmen Museum Is Blocked," September 30, 2021; Rahman, "Hong Kong Passes Censorship Law," October 27, 2021.

²²⁶ Chan and Riordan, "Disney Omits 'Simpsons' Tiananmen Visit," November 29, 2021.

to prevent or at least reduce access to prohibited content. The telecommunications network-based surveillance system that blocks and filters websites and internet content originating from outside China is generally referred to as the “Great Firewall.”²²⁷

Internet Blocking, Filtering, and Throttling

Initially, the internet was reserved for academics and government officials and was not opened to the general public in China until 1995. In 1996, the Chinese government proclaimed that year the “Year of the Internet,” and internet clubs and cafes spread rapidly across the country.²²⁸ During the first few years, China’s domestic internet was relatively free and open, with domestic censorship activities largely confined to deleting social media and blog posts (and occasionally entire websites) but with internet service providers subject to a growing list of legal requirements. Indeed, Chinese citizens were typically allowed to discuss and debate (within reason) many and varied social and political topics—including censorship and the Chinese political system. The internet was also widely used to criticize local government officials and expose local government corruption.²²⁹

By the late 1990s, however, responding in part to sporadic criticism of the government, the Ministry of Public Security launched a legal framework and telecommunications network-based system designed to monitor the internet and restrict content, identify and locate individuals, and provide access to personal records.²³⁰ During this time the so-called “Great Firewall” (GFW) emerged.²³¹

Such surveillance, blocking, and filtering is accomplished by installing specialized equipment and software in the national telecommunications network and is mainly implemented by China’s three state-controlled telecommunications companies—China Mobile, China Telecom, and China Unicom.²³² By exercising control over China’s international internet gateways—routers that process incoming and outgoing internet traffic—these companies are also able to restrict access to foreign websites and other international internet traffic.²³³ The GFW is generally considered to be the most extensive and sophisticated internet surveillance and censorship system in the world and is considered a model for other countries seeking to establish a similar internet monitoring system.²³⁴

The GFW was initially focused on blocking access to external websites, mainly the websites of human rights organizations, select foreign newspapers, and select foreign broadcasters.²³⁵ When Xi Jinping became president in 2012, however, the Chinese government rolled out a much stricter censorship

²²⁷ *Economist*, “The Economist Explains: How Does China Censor the Internet?,” April 22, 2013; Fried, “How to Get Around the Great Firewall,” March 17, 2021.

²²⁸ *Economy*, “The Great Firewall of China,” June 29, 2018.

²²⁹ Wang, “The Great Firewall Is Changing a Generation,” September 1, 2020.

²³⁰ *Economy*, “The Great Firewall in China,” June 29, 2018; Wang, “The Great Firewall Is Changing a Generation,” September 2020.

²³¹ *Economy*, “The Great Firewall of China,” June 29, 2018; Fried, “How to Get Around the Great Firewall,” March 17, 2021.

²³² Freedom House, “Freedom on the Net 2020: China,” accessed October 22, 2021.

²³³ *Economist*, “The Economist Explains: How Does China Censor the Internet,” April 22, 2013; Fried, “How to Get Around the Great Firewall,” March 17, 2021.

²³⁴ Chan et al., “Free Speech vs. Maintaining Social Cohesion,” 2011; Freedom House, “Freedom on the Net 2020: China,” accessed October 22, 2021; Hoffman, “How the ‘Great Firewall of China Works,’” September 10, 2017.

²³⁵ *Economist*, “The Economist Explains: How Does China Censor the Internet,” April 22, 2013.

regime. These efforts were facilitated by surveillance technology improvements over the previous decade. Since then, the number of restricted foreign websites, images, and keywords has expanded and, within China, a growing number of articles and social media/blog posts have been filtered or deleted. Improvements in artificial intelligence technologies have also allowed the network to scan images for sensitive words and phrases.²³⁶

In general, the Chinese government censors content that is critical of government policy, party leaders, or sensitive events. Traditionally, U.S. companies doing business in China needed to avoid references to the “three Ts,” namely, Tibet, Taiwan, and Tiananmen.²³⁷ However, the list of redline topics that have been censored by the Chinese government has grown under President Xi Jinping to include discussion of the Uyghur minority population, criticism of the handling of COVID-19, the “Me Too” movement, vaccine scandals, government corruption, China-U.S. relations and many others.²³⁸ In addition to these “politically sensitive” topics, censors also focus on topics related to social norms.²³⁹

As of August 2021, about 170 of the top 1,000 global internet and social media websites were blocked in China. Such blocked sites include social media and messaging sites and platforms (e.g., Facebook, Instagram, WhatsApp, Twitter, Telegram, Pinterest, etc.), news sites (e.g., *New York Times*, *Washington Post*, BBC, *Guardian*, Bloomberg, *Wall Street Journal*, *Daily Mail*, *Deutsche Welle*, *Der Spiegel*, etc.), search engines (e.g., DuckDuckGo, Yahoo!, Google, etc.), blogging sites (e.g., Tumblr, World Press, Blogger, etc.), video-sharing sites (e.g., YouTube, Vimeo, Daily Motion, etc.), and e-commerce sites (e.g., Amazon, Macy’s, Uniqlo, Gap, etc.).²⁴⁰ The Commission will analyze the impact of these policies on U.S. companies in its second censorship report.

The GFW also likely affects internet speed within China.²⁴¹ In 2020, data transmission rates on China’s domestic telecommunications networks—while varying by region—were much slower than global averages. According to tests conducted by Cable.co.uk, for example, the mean download speed was 2.09 megabits per second (Mbps), placing China at a rank of 200 of 221 tested countries.²⁴²

²³⁶ Wang, “The Great Firewall Is Changing a Generation,” September 1, 2020.

²³⁷ For Tibet and Taiwan, the issue is discussion of independence from China, while Tiananmen refers to anti-government protest and subsequent government crackdown that occurred in Tiananmen Square in 1989. What is blocked shifts over time, and there is not an official list. USITC, hearing transcript, July 1, 2021, 9 (testimony of Suzanne Nossel, PEN America); Qin and Creswell, “China Is a Minefield,” October 8, 2019; Chew, “How It Works: Great Firewall of China,” May 1, 2018; Freedom House, “Freedom on the Net 2020: China,” accessed October 22, 2021; Bloomberg News, “China to Cleanse Online Content,” August 28, 2021.

²³⁸ USITC, hearing transcript, July 1, 2021, 9 (testimony of Suzanne Nossel, PEN America).

²³⁹ Academic professional, interview by USITC staff, July 7, 2021. Reportedly, some topics that were eventually censored by the Chinese government were reactions to public opinion, and not necessarily targeting political topics. One example is the “lying flat” movement. Young people in China are getting exhausted due to overwork and the “lying flat” movement calls for young professionals to be less career driven. This movement was quickly banned on China’s social media platforms after it attracted a large audience. It is likely that the Chinese government believed that this movement went against the national drive for development. Bandurski, “The ‘Lying Flat’ Movement,” July 8, 2021.

²⁴⁰ GreatFireChina, “Censorship of Alexa Top 1000 Domains in China,” accessed July 27, 2021.

²⁴¹ Gao, “China’s Great Firewall: A Serious Pain in the Neck,” June 21, 2018.

²⁴² The global average was 24.83 Mbps in 2020. Cable.co.uk, “Worldwide Broadband Speed League, 2020,” 2020.

How Does the “Great Firewall” Work?

As discussed above, Chinese telecommunications companies control the internet gateways that process incoming and outgoing international internet traffic. Using a combination of proxy servers and firewall equipment and software, these companies scan and evaluate this traffic and filter or block select internet content originating outside of China. Some of the most common methods are internet address and keyword blocking, uniform resource locator (URL) filtering, Domain Name System (DNS) poisoning, and virtual private network (VPN) blocking.

Internet Address and Keyword Blocking: Perhaps the most basic method of blocking and filtering, the Great Firewall compares domestic Chinese requests for foreign websites to a database of restricted websites and blocks access to those websites (like www.google.com, www.instagram.com, or www.twitter.com). Similarly, the Great Firewall compares keywords and search terms to a database of restricted terms, blocking those requests in the database.

URL Filtering: URL is the technical term for a website address. URL filtering techniques use firewall technologies to scan website addresses, blocking addresses that contain restricted keywords. The Great Firewall may allow top-level website addresses to pass through the firewall, but block select pages on that same website. For example, the firewall may allow access to the Council on Foreign Relations website (www.cfr.org) but block the page www.cfr.org/backgrounders/media-censorship-china. This is a narrower filtering than seen in internet address blocking.

DNS Poisoning: When an internet user types a website address into a browser (like Google’s Chrome browser or Microsoft’s Edge browser), the browser first contacts a specialized server, referred to as a DNS server, which houses website addresses and translates written text (for example www.brookings.edu) into a unique numeric address (193.158.1.38) that directs the user to the requested website. DNS poisoning techniques work by directing user requests for restricted websites to government-controlled DNS servers that deliver incorrect or corrupted numeric addresses, thereby denying access to the requested website and making it temporarily more difficult to access any other content on the internet.

Virtual Private Network (VPN) Blocking: A VPN is a third-party service that, in the case of China, routes encrypted internet traffic through a server outside the country. The encrypted nature of such traffic means that it cannot be read by external parties, rendering the blocking and filtering techniques listed above ineffective. Instead, the Great Firewall blocks VPN services by identifying internet traffic patterns characteristic of commonly used VPN protocols—including suspected port destinations—and disrupting those connections, preventing the VPN from connecting to a server outside of China (see box 3.1 for more on VPNs and other circumvention tools).²⁴³

²⁴³ A port is a virtual point at which internet connections start and end. Ports are software-based and associated with specific services. Ports, which are managed by a computer’s operating system, allow computers to differentiate between various types of services. For example, emails, webpages, and VPN services all utilize different ports. Cloudflare, “Ports in Networking,” accessed September 22, 2021.

Box 3.1 Using Virtual Private Networks to Circumvent Internet Restrictions

Over the past few years, the government of China has cracked down on VPN services. In July 2017, for example, Chinese authorities ordered its telecommunications services providers to block access to VPN services. At the same time, the government ordered Apple to remove all VPN apps from its App Store.^a As a result of this crackdown, it is currently very difficult for individuals to download and install VPN software for personal use on computers, phones, or other internet-connected devices in China.^b Moreover, as discussed above, improvements in surveillance technology over the past few years have increasingly enabled the Great Firewall to disrupt VPN services.

To operate a VPN in China, providers must register with the government and allow it to monitor and access the service. As such, universities, private companies—both domestic and foreign—and other enterprises continue to use authorized VPN services as a necessary aspect of conducting business.^c As discussed above, the Great Firewall also attempts to block unauthorized services. In August 2020, for example, the government deployed an update to the Great Firewall that blocks VPN connections based upon newer versions of certain protocols, although VPN traffic is reportedly able to pass through the GFW using older versions of the same protocols.^d As such, individual users can use older versions of VPN software already installed on internet-connected devices or use decentralized VPN services based upon block-chain technology, to access content from outside China.

Internet users can also circumvent the Great Firewall by downloading VPN software from premium services based outside China before entering the country. Services like ExpressVPN and NordVPN, for example, reportedly work in China. Nonetheless, such premium services must constantly engage in a technological cat-and-mouse game with the Great Firewall to connect to servers outside China. Some users also reportedly subscribe to multiple premium services—and engage in repeated connection attempts—because at any moment one or more premium services may be blocked by the Great Firewall.^e The Great Firewall also reportedly steps up VPN disruption activity in the runup to important dates or events such as significant anniversaries or major Communist Party gatherings.^f

A VPN-like technology known as “ShadowSocks” can also be used to evade the Great Firewall. ShadowSocks is similar to a VPN in that it encrypts users’ web traffic but differs in that it allows users to choose from different encryption methods and select from a variety of VPN ports in an attempt to deceive the firewall. As with VPN services, in recent years, the GFW has become increasingly sophisticated in detecting and disrupting ShadowSocks connections, although reportedly does so primarily around politically sensitive dates, events, and even some trade shows.^g

It is also possible for a determined individual to access content outside China by using the Tor network.^h The network operates by using a specialized Tor browser that routes encrypted internet traffic over a dedicated global network, a process that effectively conceals a user’s location and browsing activity. Although the Great Firewall blocks access to the Tor website (where users download the Tor browser and access information on how to use it) and attempts to disrupt traffic routing to Tor access points, tech-savvy individuals can utilize several techniques to connect to the Tor network from within China.ⁱ

^a Barbaschow, “VPNs Can Still Be Used in China,” April 5, 2018.

^b Harber-Lamond, “Are VPNs Banned in China and Can You Still Use Them,” September 2020.

^c Markuson, “What Is the Best VPN for China,” March 29, 2021; Freedom House, “Freedom on the Net 2020: China,” accessed October 22, 2021.

^d Cimpanu, “China Is Now Blocking All HTTPS Traffic That Uses TLS 1.3 and ESNI,” August 8, 2020.

^e Allen, “Are VPNs Legal in China?” December 18, 2020; Summers, “Do VPNs Still Work in China,” August 1, 2021; Summers, “Is It Legal to Use a VPN in China?” August 1, 2021.

^f Sentinal, “Breaking the Great Firewall of China,” May 31, 2018; Fried, “How to Get Around the Great Firewall of China,” March 17, 2021; Freedom House, “Freedom on the Net 2020: China,” accessed October 22, 2021; Horwitz, “China Steps Up VPN Blocks Ahead of Major Trade, Internet Shows,” October 30, 2018.

^g Fifield, “How China Detects and Blocks ShadowSocks,” October 2020; Horowitz, “Meet ShadowSocks,” September 2017; Wu and Lam, “The Evolution of China’s Great Firewall,” September 2017.

^h Tor is an acronym for “The Onion Router.”

ⁱ Tor Project website, <https://www.torproject.org>, accessed September 22, 2021; Porup, “What Is the Tor Browser?” October 15, 2019; Cross, “Using Tor in China,” October 4, 2019.

In addition to blocking websites and content coming from outside China, surveillance software and equipment installed within the domestic network is also monitoring internal internet activity. Most such activities entail scanning internal websites and social media platforms for sensitive information, with the network blocking or filtering restricted content. In some cases, the Chinese government has shut down the internet network in an entire city or region, typically in response to domestic unrest, dramatic events, or sensitive dates. In 2009, for example, Chinese authorities imposed a 10-month internet blackout in Xinjiang, a territory in northwest China, in response to ethnic violence. More recently, in March 2020, several districts in Wuhan and parts of Hubei province reported temporary internet blackouts, presumably related to the COVID-19 outbreak there.²⁴⁴

Although China’s domestic internet surveillance apparatus is very sophisticated, a human element is also employed to censor content, the so-called “cyber army.” According to one estimate, several million people are employed as “public opinion analysts” across government agencies, private companies, and news sites to monitor and censor internet content—with more than 100,000 people reportedly dedicated to manually deleting social media and blog posts. Similarly, internet commentators, dubbed the “50-cent party” for the per-post commission that they receive, attempt to influence the direction of online discussions by posting pro-government comments. Discussions that do not conform to approved guidelines are reported to government authorities. By law, private companies are required to actively monitor content on their platforms and remove prohibited material or, in some cases, shut down individual accounts.²⁴⁵ How companies in different industries monitor such material is discussed in greater detail later in this chapter.

Censorship-Related Policies and Practices by Sector

China is able to exert significant influence on U.S. companies because it is a major global market for digital goods and services that has grown rapidly over the past decade. From 2011 through 2020, the number of internet users in China increased by 92.7 percent, from 513 million to 989 million.²⁴⁶ By the end of 2020, approximately 70 percent of China’s population was online, with 98.6 percent of those users accessing the internet via a mobile phone, at least in part.²⁴⁷ As commerce has moved to digital channels, the range of goods and services provided via the internet has broadened. In some cases,

²⁴⁴ Freedom House, “Freedom on the Net 2020: China,” accessed October 22, 2021.

²⁴⁵ Economy, “The Great Firewall in China,” June 29, 2018.

²⁴⁶ Thomala, “Number of Internet Users in China,” July 16, 2021.

²⁴⁷ Thomala, “Penetration Rate of Internet Users in China,” February 9, 2021.

existing industries, such as film and television, have shifted to digital platforms (via streaming services). In other cases, entirely new types of services, like social media, have developed entirely online.²⁴⁸ In addition, China makes up a significant percentage of global sales in a wide range of industries from film to clothing to advertising. Due to China's influence, its censorship activities affect U.S. companies in a wide range of industries, as detailed in the following sections, including film, television, video and music streaming, video games, book publishing, news media and journalism, mobile apps and app stores, information providers, search engines, social media, and other industries.

Chinese censorship and self-censorship have an extraterritorial element that is distinct among key markets. The coercive mechanism in these cases varies significantly. For example, some firms self-censor their global products due to concern about the Hong Kong National Security Law's extraterritorial elements. Other firms worry that the competitiveness of their (often unrelated) products sold in China could suffer if they do not suppress speech that runs afoul of Chinese censors. At the Commission's hearing in July 2021, witnesses discussed extraterritorial self-censorship occurring in film, book publishing, and news media on a global scale.²⁴⁹

Moreover, the Chinese government maintains substantial investment restrictions or prohibitions across many of the key sectors affected by censorship. As detailed in the 2020 National Negative List, China prohibits foreign investment in the publication and editing of books, newspapers, journals, audiovisual products and electronic publications, and film and television production and distribution.²⁵⁰ Foreign companies operating in China often must comply with sector-specific joint venture, licensing, and other requirements.²⁵¹ The Commission's hearing witnesses indicated that such companies must contend both with reported uncertainty related to enforcement of these restrictions and increasing Chinese government integration within such companies.²⁵²

Media and Online Content

U.S. content and media firms (covering film, TV programing, gaming, subscription video streaming services, and other content including journalism, and print and online publications such as books) face a variety of often vague and nontransparent censorship rules and regulations that are unevenly enforced

²⁴⁸ These segments overlap, and therefore cannot be aggregated. Additional information on the size of specific segments of the Chinese market is presented throughout the rest of the chapter. For more information on the challenges associated with measuring the computer services sector, see chapter 4 of USITC, *Recent Trends in U.S. Services Trade: 2018 Annual Report*, 2018.

²⁴⁹ USITC, hearing transcript, July 1, 2021, 28–29 (testimony of Aynne Kokas, University of Virginia); USITC, hearing transcript, July 1, 2021, 12 (testimony of Suzanne Nossel, PEN America); USITC, hearing transcript, July 1, 2021, 69 (testimony of Maria Repnikova, Georgia State University).

²⁵⁰ Specific groupings where investment is prohibited includes: "Internet news service, Internet publishing service, Internet audio-visual program service, cyber culture operation (except for music) and Internet information dissemination service (except for contents opened up in China's WTO commitments)" and "editing, publishing and production of books, newspapers, periodicals, audio-visual products and electronic publications." See Zhou, "China's 2020 New Negative Lists," July 1, 2020. This national list may be updated in 2021.

²⁵¹ See USTR, "2020 Report to Congress," January 2021 (see "Services" section beginning on page 55).

²⁵² USITC, hearing transcript, July 1, 2021, 32, 64, 109 (Aynne Kokas, University of Virginia); USITC, hearing transcript, July 1, 2021, 75–76 (Suzanne Nossel, PEN America).

and have become more centralized and restrictive over the last five years.²⁵³ Censorship of content and media services is often politically motivated (e.g., to protect the CCP and government officials).²⁵⁴ Censorship is also used to protect some of China's largest and most globally competitive media and content companies.²⁵⁵ Moreover, because of the size and importance of the Chinese market, some U.S. firms that rely on access to the market self-censor, which some argue is normalizing coercive censorship as part of doing business in China.²⁵⁶ Self-censorship may occur inside or outside of China, as U.S. content and media firms are careful in third-country markets to avoid offending Chinese sensitivities out of concern that their operations in China could be negatively impacted.²⁵⁷

Market Characteristics

For entertainment services including film, TV, and gaming, China is a leading global market and expanding rapidly. China is a large export market for U.S. film studios that rely on China for profitability of big-budget films. China's movie and film industry was valued at \$9.3 billion in 2019 (prior to the COVID-19 pandemic), approaching the level of the U.S. market (\$11.4 billion).²⁵⁸ In 2020, China's box office revenues exceeded those of the United States and will likely continue to grow as more new movie theaters are built.²⁵⁹

U.S. films are the leading category of foreign films screened in China and in 2020 represented all five of the top-grossing foreign films.²⁶⁰ However, according to a source, the U.S. share of the market has been falling in recent years due to substantial market access restrictions including a quota on U.S. films and high-quality big-budget Chinese films taking an increasing market share.²⁶¹ China is also the second-largest TV programming market after the United States, but the U.S. share of the market is small owing to very restrictive market access rules including quotas for imported content.²⁶²

China's online video game sector is the world's second-largest after the United States with revenues of \$47.4 billion in 2020, compared to \$66.9 billion for the U.S. market.²⁶³ China is home to many of the world's largest gaming publishers (e.g., Tencent and NetEase) and has the largest number of gamers globally, estimated at 790 million. Mobile device games accounted for 76 percent of China's gaming

²⁵³ Subscription video streaming is covered in this section. This discussion does not cover user-produced and shared online streaming content such as YouTube.

²⁵⁴ Si, "Hollywood Executive Reveals How China's Politics," October 16, 2020.

²⁵⁵ Cory, "Censorship and U.S. Content Exports to China," June 29, 2020; Coca, "China's Digital Protectionism," February 25, 2019.

²⁵⁶ PEN America, *Made in Hollywood, Censored by Beijing*, August 5, 2020, 22.

²⁵⁷ Brzeski and Siegel, "Hong Kong's New Film Censorship," June 23, 2021.

²⁵⁸ COVID-19 substantially decreased theatrical revenues as theaters shut down. Further, many theatrical releases have been delayed, possibly skewing 2020 and 2021 numbers. MPA, *Theme Report 2019*, March 2020, 9, 13.

²⁵⁹ Brzeski and Siegel, "From Deal Frenzy to Decoupling," May 21, 2021; academic professional, interview by USITC staff, June 4, 2021.

²⁶⁰ In 2020, the top five foreign films by revenue were U.S. films. Thomala, "Film Industry in China," June 18, 2021.

²⁶¹ Academic professional, interview by USITC staff, June 4, 2021.

²⁶² For example, China has a 30 percent content requirement and restrictions on pay TV and primetime programming. MPA, written submission to the USITC, July 16, 2021; Broadband and TV News, "China's TV programming market," August 20, 2018.

²⁶³ Li, *Online Games in China*, June 2021; Cook, *Video Games in the U.S.* December 2020.

revenues in 2020.²⁶⁴ China's gaming sector was dominated by foreign games until fairly recently, but the U.S. share of China's gaming market declined in the past five years and is currently small. Since 2016, Chinese-produced games have dominated its domestic market. Chinese firms accounted for the top 10 mobile game firms by revenue in 2019, and no U.S. gaming firm had even 1 percent of China's mobile gaming market.²⁶⁵ China's gaming publishers account for three-quarters of domestic gaming revenues and are also expanding rapidly in the global market with exports growing faster than total revenue.²⁶⁶

U.S. firms have very small market shares of content and media services as well, including subscription-streamed video and music, print and broadcast journalism, and publishing in China. China's subscription streaming services market is large but still is less than half the size of the U.S. market in total revenues.²⁶⁷ The country's digital music market is growing but is much smaller.²⁶⁸ Although U.S. subscription streaming service firms are global leaders, because of Chinese government market access restrictions, their market share in China is insignificant. None of the four leading U.S. video streaming services—Netflix, Disney+, Amazon Prime, and Hulu—are operating in China. U.S. streaming companies that produce their own content are able to generate revenue only by licensing content to Chinese partners, and these revenues are relatively small.²⁶⁹ China's news media is also dominated by domestic providers, and U.S. print and broadcast journalism is severely restricted.²⁷⁰ Notably, China is a small market for book and online digital content sales by U.S. publishers, but the country is an important location for printing. For decades, China has been a key global center for print publishing. China has expertise in all forms of printing, including four-color printing (used for atlases, children's books, cooking books, etc.) and labor-intensive applications for specialty books.²⁷¹ This concentration in global printing capacity strengthens China's influence on global publishers.²⁷²

²⁶⁴ Li, *Online Games in China*, June 2021.

²⁶⁵ The United States is the second-largest exporter—after Japan—of games to China, with 198 games approved in 2019. ITA, *China Gaming Industry*, March 9, 2021; Thomala, "Market Share of Mobile Gaming Companies in China 2019," September 29, 2021.

²⁶⁶ Li, *Online Games in China*, June 2021; Conditt "Chinese Video-Game Censorship," August 2, 2019. In 2014, China lifted a ban on gaming consoles, which had been in effect since 2000. This opened the market to U.S. and foreign console gaming firms. Burkitt, "China to End Ban on Videogame Consoles," July 25, 2015.

²⁶⁷ In 2019, the U.S. market revenues made up 43 percent of global total, while China made up 17 percent. Statista, "Share of Total SVOD Revenue Worldwide in 2019, by Country," October 21, 2021. Subscription video-on-demand (SVOD) accounted for the overwhelming majority (about 90 percent) of the online streaming market in China in 2019 and 2020, while both pay per view or transactional video on demand (TVoD) and video downloads or electronic sell-through (EST) combined contributed about 10 percent of market revenues. Statista, "Digital Media Video on Demand, China," October 2021.

²⁶⁸ For music streaming, which accounts for over 90 percent of digital music revenues in China, U.S. market revenues were over \$10 billion in 2020 compared with less than \$2 billion in China. Statista Research Department, "Digital Music Revenue in the United States," May 11, 2011; Lindlahr, "Forecast of Digital Music Revenue by Segment in," June 29, 2021.

²⁶⁹ Karpal, "Netflix Has a China Strategy," May 10, 2019; industry representative, interview by USITC staff, June 24, 2021.

²⁷⁰ See the News Media and Journalism section below for more detail.

²⁷¹ Industry representative, interview by USITC staff, June 21, 2021.

²⁷² Nongovernmental organization representative, interview by USITC staff, June 9, 2021.

Censorship-Related Policies and Practices

Film and Television

China's film and television industries are regulated by the China Film Administration and National Radio and Television Administration (NRTA), respectively, which are controlled at the national level by the State Council and the Chinese Communist Party (CCP).²⁷³ For each industry, premarket review and approval is required before the creative work can be shown to a Chinese audience. Regulation of television, because it serves the widest group of citizens, is reportedly the most restrictive within media and online content, followed by film and then streaming.²⁷⁴ The reorganization in 2018 of oversight under the NRTA tightened content standards and coincided with much more severe penalties for rules violations.²⁷⁵ At the time of the NRTA's establishment, Chinese regulators moved the responsibility for film oversight to the Central Propaganda Department, through the China Film Administration, in order to strengthen and centralize oversight.²⁷⁶

Premarket Review

China's censorship policies and practices for foreign film and television programs have been characterized by foreign industry observers as arbitrary, opaque, and discriminatory.²⁷⁷ One industry representative commented that U.S. film and television producers are accustomed to navigating many censorship regimes in foreign markets, but that the process in China is the most burdensome and not iterative (i.e., no negotiation possible with censors).²⁷⁸ Unlike most foreign film markets, China lacks a formal movie rating system, such as U.S. ratings for general audiences (G), parental guidance suggested (PG), and restricted to those under age 17 (R).²⁷⁹ All films in China must be released for general audiences, thus films with particular sensitivities cannot be restricted to mature audiences and are therefore less likely to be approved.²⁸⁰ Censorship authorities either accept or reject content, often with no specific reasons provided to foreign film producers, which creates uncertainty.²⁸¹

²⁷³ The NRTA oversees films and television, while the CFA focuses on film. Kokas, written testimony to the USITC, July 1, 2021, 3; MPA, written submission to the USITC, July 16, 2021, 7, 9; Government of China, NRTA, "Provisions on the Function Configuration, Internal Organizations and Staffing," July 30, 2018; Thomson Reuters Practical Law, "National Radio and Television Administration," 2021; Bandurski, "When Reform Means Tighter Controls," March 22, 2018.

²⁷⁴ Academic professional, interview by USITC staff, June 4, 2021.

²⁷⁵ Bandurski, "When Reform Means Tighter Controls," March 22, 2018; academic professional, interview by USITC staff, June 4, 2021.

²⁷⁶ Brzeski and Siegel, "From Deal Frenzy to Decoupling," May 21, 2021; USITC, hearing transcript, July 1, 2021, 28 (testimony of Aynne Kokas, University of Virginia); MPA, written submission to the USITC, July 16, 2021, 7, 9.

²⁷⁷ USITC, hearing transcript, July 1, 2021, 164–65 (testimony of Nigel Cory, ITIF).

²⁷⁸ Industry representative, interview by USITC staff, June 4, 2021.

²⁷⁹ Shira, "Navigating Restrictions in China's Film Industry," December 17, 2015; 1; MPA, "Film Ratings," accessed October 29, 2021.

²⁸⁰ Academic professional, interview by USITC staff, June 4, 2021.

²⁸¹ Industry representative, interview by USITC staff, June 24, 2021; ChinaFilmInsider, "The CFI Guide to Film Production in China," November 16, 2016; PEN America, *Made in Hollywood, Censored by Beijing*, August 5, 2020, 22.

China's Film Industry Promotion Law provides an extensive list of prohibited content for theatrically released films.²⁸² However, there is reportedly a "profound lack of clarity" about the film content that will be allowed into the market.²⁸³ For example, films cannot portray China or Chinese culture in a negative light, and there should be "no depictions of religion or valorization of feudalism or superstition."²⁸⁴ Because of its vagueness, new prohibitions on a variety of topics can be introduced at any time.²⁸⁵ Delays in approval can be quite costly, as Chinese consumers may choose to view a pirated version if the official release in China is later than the global release.²⁸⁶

The onerous review process for U.S. content requires U.S. producers to submit scripts with Chinese translations for subtitles, which is time consuming and costly. Moreover, the review process that used to take one month prior to the establishment of the NRTA can now take two or three months in best-case scenarios.²⁸⁷ Television programs can be submitted to authorities only twice a year, and all episodes are required to be submitted at the same time instead of the normal industry practice of one episode per week.²⁸⁸ Moreover, China limits U.S. films shown in theaters to 34 per year, and it limits all foreign TV content to a quota of 30 percent of the market, specifying proscribed viewing times where foreign content cannot be shown.²⁸⁹ Such quotas can enable censorship as they increase pressure on filmmakers to conform to Chinese restrictions, otherwise a competing film may take the limited spot instead.

Some observers suggest that strong censorship of U.S. film and TV programming is also motivated by the Chinese government's financial interest in those sectors.²⁹⁰ U.S. firms face strong competition to attract audiences in China away from government-owned and funded domestic film producers.²⁹¹ Moreover, private-sector filmmakers in China that produce patriotic and nationalistic films favored by the government are offered financial benefits and prime release dates around national holidays, when movie-viewing demand is high, while U.S. and other foreign films receive much less favorable treatment.²⁹²

Self-Censorship

Because the market in China is so critical to the profitability of large-budget U.S. films, U.S. studios reportedly engage in self-censorship in order to access the lucrative and growing Chinese box office.²⁹³ According to the nongovernmental organization (NGO), PEN America, and other sources, the Chinese

²⁸² Government of China, Film Industry Promotion Law, November 7, 2016.

²⁸³ MPA, written submission to the USITC, July 16, 2021.

²⁸⁴ Academic professional, interview by USITC staff, June 4, 2021.

²⁸⁵ Academic professional, interview by USITC staff, June 4, 2021.

²⁸⁶ PEN America, *Made in Hollywood, Censored by Beijing*, August 5, 2020, 15.

²⁸⁷ Industry representative, interview by USITC staff, June 24, 2021.

²⁸⁸ Industry representative, interview by USITC staff, June 24, 2021.

²⁸⁹ MPA, written submission to the USITC, July 16, 2021. See Chapter 2 for a discussion of quotas in the Chinese film market.

²⁹⁰ Morrison, "Patriotic Blockbusters Mean Big Box Office for Chinese Filmmakers," February 22, 2021.

²⁹¹ China's largest film producer, China Film Group Corporation is a state-owned enterprise. Li, Online Games in China, June 2021; PEN America, *Made in Hollywood, Censored by Beijing*, August 5, 2020.

²⁹² Morrison, "Patriotic Blockbusters Mean Big Box Office for Chinese Filmmakers," February 22, 2021; MPA, written submission to the USITC, July 16, 2021, 7.

²⁹³ USITC, hearing transcript, July 1, 2021, 12 (testimony of Suzanne Nossel, PEN America).

government's extensive censorship and retaliation against its critics have led to routine self-censorship by U.S. film studios.²⁹⁴ While self-censorship is rarely announced, it is often evident when comparing a film to the source material. For example, in the *Top Gun* film sequel, the motorcycle jacket worn by Tom Cruise no longer has a Taiwan patch. In the film *Doctor Strange*, a character's origin was changed from Tibetan, as it was in the comic book version, to Celtic.²⁹⁵

One academic professional notes that Hollywood studios are willing to self-censor content to preserve market access, and they do so during idea development, and throughout the film production process, including in (1) pre-production; (2) mid-production, as the film is made; (3) post-production, after a film has been made; and (4) during film promotion.²⁹⁶ According to the academic professional, a company has a clear financial incentive to monitor a film early in the process to make sure that the film is not challenged by censors because post-production editing is very expensive.²⁹⁷

One NGO sums up the result of market pressures in China that cause U.S. filmmakers to self-censor because the Chinese market is so vital for the success of certain content industries, particularly the U.S. film industry:

Chinese censors no longer need to do much at all to ensure that highly sensitive plots or topics are avoided in the global film industry. The result is a kind of acquiescence, anticipatory and even subconscious censoriousness, whereby U.S. businesses and professionals have absorbed Chinese taboos as integral to their success.²⁹⁸

In response, a U.S. industry representative argues that the U.S. film industry advocates for free speech everywhere but has to follow local laws and requirements. The alternative would be no exposure in China to U.S. culture through U.S. films.²⁹⁹

Video Games

Foreign investment and participation in the Chinese online gaming sector is extremely limited. China considers video games a form of online publication and prohibits foreign participation.³⁰⁰ Foreign companies are not allowed to directly publish or operate online games within the country. They must license their games to a domestic company to sell them in China.³⁰¹

²⁹⁴ PEN America is a non-profit that works to ensure that people have the ability to express their views and access the views of others. USITC, hearing transcript, July 1, 2021, 12 (testimony of Suzanne Nossel, PEN America). Moreover, China has increased investment in the U.S. film industry in recent years, which has also contributed to self-censorship. Brzeski and Siegel, "From Deal Frenzy to Decoupling," May 21, 2021.

²⁹⁵ Brzeski and Siegel, "From Deal Frenzy to Decoupling," May 21, 2021.

²⁹⁶ USITC, hearing transcript, July 1, 2021, 29 (testimony of Aynne Kokas, University of Virginia).

²⁹⁷ USITC, hearing transcript, July 1, 2021, 53 (testimony of Aynne Kokas, University of Virginia).

²⁹⁸ USITC, hearing transcript, July 1, 2021, 11 (testimony of Suzanne Nossel, PEN America).

²⁹⁹ Industry representative, interview by USITC staff, June 4, 2021.

³⁰⁰ Government of China, NDRC, "Market Access Negative List (2020 Edition)," December 10, 2020; Pilarowski et al., "Legal Primer: Regulation of China's Digital Game Industry," January 6, 2021.

³⁰¹ Pilarowski et al., "Legal Primer: Regulation of China's Digital Game Industry," January 6, 2021.

Premarket Review

Videogame publishers regularly localize games by adding a local language option for text and dialogue, adding local servers, and ensuring content meets local rules, but reportedly Chinese requirements go much further.³⁰² China's censorship regime for online gaming is one of the strictest in the world, requiring premarket review for each game. Video games in China are regulated by the National Press and Publication Administration (NPPA), which is under the direct control of the central government and CCP.³⁰³ Although there are clear rules against copyright infringement and the sharing of state secrets, most of its guidelines are vague and open to wide interpretation. For example, according to one source, there is a ban on content (including games) that “endanger social morality or national cultural traditions” and content that “promotes cults and feudal superstitions.” This gives censors “almost unlimited power and flexibility” to censor gaming content.³⁰⁴ Chinese censors are also sensitive to any violence, realistic blood, gambling, and nudity.³⁰⁵ Similar to film and TV, there is no rating system for games in China, so all content is held to a single standard. According to one source, the censorship regime directive is “if something isn’t fit for one person, it isn’t fit for anyone.”³⁰⁶ Moreover, vague standards and interpretation make acceptable gaming content something of a “black box,” which several media industry representatives opine helps to protect and promote domestic game producers that are more experienced with the government censorship regime.³⁰⁷

In recent years, censorship of digital games in China has increased for all gaming publishers, both domestic and foreign. In 2018, the government halted the release of all new games and gave no official reason.³⁰⁸ When the ban was lifted the following year, gaming publishers became fearful that the government could ban games again at any time, leading publishers to exert more caution and control on game content developers.³⁰⁹ This encouraged major global Chinese game producers, such as Tencent, to be more proactive in monitoring their subsidiary publishers, including those in foreign markets.³¹⁰ While, the strictness of Chinese premarket review has led some other companies to choose not to license their games in China.³¹¹

³⁰² Holmes, “No Cults, No Politics, No Ghouls,” July 15, 2021.

³⁰³ Government of China, NPPA, “Approval for Publishing Domestic Online Game Works,” accessed September 29, 2021; Government of China, NPPA, “Approval for the Publication of Internet Game Works Authorized by Overseas Copyright Owners,” accessed September 29, 2021; NIKO, “Game Regulations in China,” February 2, 2020; Frater, “China Appoints Wang Xiaohui,” May 24, 2018.

³⁰⁴ Holmes, “No Cults, No Politics, No Ghouls,” July 15, 2021. For a detailed description of content standards for games, published by the China Audiovisual Publishing Association translated in English, see Kuhns, Todd, “Mobile Game Content Standard (2016 Edition),” May 24, 2016; USTR, *2021 National Trade Estimate*, March 2021; Government of China, State Council, “Regulation on the Administration of Publications,” February 6, 2016; Government of China, NPPA and MIIT, “Provisions on the Administration of Online Publishing Services,” February 4, 2016; Government of China, State Council, “Internet Information Services Administrative Measures,” issued by September 25, 2000, amended on January 8, 2011.

³⁰⁵ Holmes, “No Cults, No Politics, No Ghouls,” July 15, 2021.

³⁰⁶ Camilo, “An Insider’s Perspective on China’s New Age Ratings,” December 21, 2020.

³⁰⁷ Industry representative, interview by USITC staff, June 2, 2021; Holmes, “No Cults, No Politics, No Ghouls,” July 15, 2021.

³⁰⁸ NIKO, “Game Regulations in China,” February 2, 2020.

³⁰⁹ Holmes, “No Cults, No Politics, No Ghouls,” July 15, 2021.

³¹⁰ Fahey, “Gaming Will Be a Frontline in China’s Censorship Drive,” October 9, 2020.

³¹¹ Holmes, “No Cults, No Politics, No Ghouls,” July 15, 2021.

Self-Censorship

Game publishers are careful not to produce games in which censors might find potentially objectionable content, which would require expensive changes. Re-editing video games is often far more difficult than editing movies. A film is essentially a linear series of shots and scenes, while video games are “mazes of interwoven systems” that need to be edited throughout a game’s branching and interconnected storylines. Similarly, while feature film scripts may average 100 pages, complex game scripts can have thousands of pages with hundreds of different potential endings that can require editing. Editing games to address censors’ sensitivities can make a game less desirable in other markets.³¹² In addition, there has been at least one instance where a videogame publisher pulled the release of a videogame that featured artwork that mocked President Xi, even though the company had no plans to release the game in China.³¹³

Subscription Video Streaming and Music

U.S. video streaming subscription services are not currently operating in China, but rather supply content to Chinese streaming platforms, because of a variety of factors. They include: (1) strict market access restrictions, including a ban on direct foreign investment in video platforms and television; (2) premarket review; and (3) a limit on foreign content on Chinese video streaming platforms to 30 percent of programming.³¹⁴ Streaming is governed by the Cyberspace Administration of China.³¹⁵ While censorship is a particularly significant trade barrier for the industry because streaming services cannot directly supply the market and the content that they can provide is subject to a high degree of censorship in China, including certain film and television programming.³¹⁶

Self-Censorship

Because U.S. streaming services platforms do not operate directly in mainland China, but rather through licensing agreements, they have not felt the same degree of pressure as U.S. filmmakers to carefully produce content that does not raise objections from censors.³¹⁷ The U.S. video streaming services supplying content to local Chinese platforms are less affected by official censoring of individual film or TV productions than other U.S. content providers in China. U.S. film studios may have one or two big blockbuster movies a year that depend on the huge Chinese box office for profitability. In contrast, the

³¹² Holmes, “No Cults, No Politics, No Ghouls,” July 15, 2021.

³¹³ Holmes, “No Cults, No Politics, No Ghouls,” July 15, 2021.

³¹⁴ Brzeski, “Will China Open to Disney+?” April 29, 2019; Techseen, “Five Reason Why Netflix,” accessed June 31, 2021; Brzeski and Siegel, “From Deal Frenzy to Decoupling,” May 21, 2021; USTR, “2020 Report to Congress on China’s WTO Compliance,” January 2021.

³¹⁵ For example, the Cyberspace Administration published measures limiting advertisements during live streams in April 2021. Government of China, Cyberspace Administration of China, Online Live Marketing Management Measures (for Trial Implementation), April 23, 2021.

³¹⁶ Leading U.S. streaming services are not dependent on China for a number of reasons but have focused on developing other markets. Stankiewicz, “Netflix’s Reed Hastings,” September 9, 2020; industry representative, interview by USITC staff, July 8, 2021; USITC, hearing transcript, July 1, 2021, 164–65 (testimony of Nigel Cory, ITIF).

³¹⁷ Siegel and Brzeski, “Hong Kong’s New Film Censorship,” June 23, 2021.

business model for video streaming services relies on a library of content and does not depend on any one film or TV program.³¹⁸

However, there still appear to be instances of self-censorship among video streaming firms. Because U.S. video streaming firms derive small revenues in China through licensing content to domestic firms, the firms exercise some caution to avoid producing content on sensitive topics.³¹⁹ Self-censorship may have occurred when streaming production companies have avoided content that may be objectionable to Chinese censors, sometimes even for content destined for third-country markets. For example, when seeking to pitch a documentary project based on a book about the National Basketball Association and Hollywood's relationship with China, an Oscar-winning producer and Emmy-nominated writer reportedly could not even get a meeting with Netflix or HBO.³²⁰

As with video streaming services, U.S. music streaming services are not currently operating in China, which is dominated by domestic platforms; however, U.S. music content and musicians are subject to Chinese censorship. Forms of censorship include required screening and censoring of content by Chinese music streaming services; new restrictions placed on karaoke content; and many instances of bans on U.S. musicians and their content.³²¹

Publishing

Premarket Review

China's National Press and Publication Administration is the censoring authority for news, print, and internet publications, which includes books and periodicals.³²² U.S. publishers face comparable levels of censorship as have been placed on other content industries. This significant barrier to trade for the publishing industry includes censorship enabling practices that place tight government control of International Standard Book Numbers (unique numeric codes required for publication in China), with allocations only to government-controlled publishers.³²³ This restriction means that books by foreign authors can only be sold in China if published by a Chinese publisher, which severely limits distribution.³²⁴

Foreign-produced content is closely scrutinized and censored.³²⁵ There are also reported delays in the release of foreign digital content (including e-books and other online published content) as a result of

³¹⁸ Industry representative, interview by USITC staff, July 8, 2021.

³¹⁹ Brzeski and Siegel, "From Deal Frenzy to Decoupling," May 21, 2021; industry representative, interview by USITC staff, July 8, 2021.

³²⁰ Siegel and Brzeski, "Hong Kong's New Film Censorship," June 23, 2021.

³²¹ China's Ministry of Culture and Tourism released interim regulations that created a list of banned karaoke songs that violate China's "religious policies and spreads cults and superstitions; and advocates obscenity, gambling, violence and drug-related crimes or instigating crimes." Xinhua, "China to Blacklist Karaoke Tracks," August 10, 2021; Reuters, "Silence is Golden," November 9, 2015; Wright "Banned in China," December 6, 2017; Yan, "How Musicians Land on China's Blacklist," August 16, 2015.

³²² Government of China, NPPA, "Publication Management Regulations (2016 Amendment)," December 26, 2017.

³²³ *Economist*, "In China's Publishing Business," July 17, 2021.

³²⁴ *Economist*, "In China's Publishing Business," July 17, 2021.

³²⁵ *Economist*, "In China's Publishing Business," July 17, 2021; USITC, hearing transcript, July 1, 2021, 36 (testimony of Aynne Kokas, University of Virginia).

censorship practices.³²⁶ Starting in 2011, local authorities were responsible for censoring sensitive published content, which resulted in some variation of censorship by region. However, censorship has become increasingly centralized, removing even the limited flexibility provided by local decision-making.³²⁷ According to one industry representative, the broadly drafted regulatory provisions that affect publishing allow more or less stringent interpretations of rules by regulators, which in turn may depend on policy changes, creating uncertainty for U.S. publishers.³²⁸

Extraterritorial Censorship

According to industry representatives, the rapidly growing market for published content around the world and China's large share of production of printed materials for foreign markets has increased extraterritorial censorship by Chinese authorities. In the last two to three years, with the increasing centralization of premarket review of published content in China, such review has extended even to books printed in China that are destined exclusively for external markets.³²⁹ According to an NGO, extraterritorial censorship is growing for the publishing industry not only in China but in global markets.³³⁰ For example, publishers in Australia, England, and Germany are reportedly coming under direct pressure from Chinese authorities to self-censor and not publish certain titles, which one observer noted could result in the gradual global suppression of books critical of the Chinese government and CCP.³³¹ Books printed in China but not intended for the Chinese market face far more stringent review than they did even two or three years ago. Chinese censorship used to only focus on books that would be sold in China. Now, books that are not intended for the Chinese market are also reviewed. For example, if they have maps that include Taiwan and Hong Kong, they must also refer to "Mainland China" to suggest that those two are provinces, which fits with official Chinese policy. If a publisher fails to comply, a Chinese printer will not print the books.³³²

News Media and Journalism

The news media and journalism sector face heavy scrutiny by Chinese censors. China has censorship policies designed to strictly control the news and information that reach the domestic population. The government also controls the way independent and objective information reaches the outside world.³³³ The government tightly controls the Chinese news media with strict censorship imposed through its direct ownership of key outlets such as the *People's Daily*, Xinhua News Agency, and China Central Television.³³⁴ Oversight is conducted through the National Press and Publication Administration and the

³²⁶ The Economist, "In China's Publishing Business," July 17, 2021; USITC, hearing transcript, July 1, 2021, 36 (testimony of Aynne Kokas, University of Virginia).

³²⁷ AAP, written submission to the USITC, July 22, 2021.

³²⁸ Government of China, NPPA, "Publication Management Regulations (2016 Amendment)," December 26, 2017; industry representative, interview by USITC staff, June 21, 2021.

³²⁹ AAP, written submission to the USITC, July 22, 2021.

³³⁰ USITC, hearing transcript, July 1, 2021, 12 (testimony of Suzanne Nossel, PEN America).

³³¹ USITC, hearing transcript, July 1, 2021, 12 (testimony of Suzanne Nossel, PEN America).

³³² Industry representative, interview by USITC staff, June 21, 2021; AAP, written submission to the USITC, July 22, 2021.

³³³ Freedom House, "Freedom on the Net 2020: China," accessed October 22, 2021; Xu and Albert, "Media Censorship in China," February 17, 2017.

³³⁴ Committee to Protect Journalists, "One Country, One Censor," December 16, 2019; Xu and Albert, "Media Censorship in China," February 17, 2017.

National Radio and Television Administration (NRTA), with direction coordinated at the highest levels of the Central Propaganda Department and CCP.³³⁵ Media control is exercised through direct oversight that includes licensing restrictions, selective accreditation of journalists, and very harsh penalties for domestic and, increasingly, foreign news and media outlets that are critical of China's leaders and policies.³³⁶

Laws That Suppress Speech

As with other content and media sectors, censorship of journalism is based on opaque media regulations that allow authorities to suppress news stories that they claim expose vaguely and broadly defined "state secrets" that endanger political or economic interests.³³⁷ To keep domestic journalists and the news media in compliance, the CCP provides daily directives to Chinese media outlets and websites to steer coverage of news stories.³³⁸ Independent media in China is severely restricted. A regulation issued by the Cyberspace Administration of China (which regulates online activity) in 2017, requires that all online news service providers be managed by CCP-accredited editorial staff who are sanctioned by government information offices.³³⁹ As a result, there are no totally independent online sources for news and information based in China.

Foreign journalists increasingly face harsh and coercive censorship practices including harassment, surveillance, threats of lawsuits, and travel restrictions within the country, limiting their ability to gather information and report.³⁴⁰ Foreign journalists and news outlets are also increasingly subject to "national security investigations" which can result in not renewing journalists' visas, barring exit from the country, or expulsion.³⁴¹ In 2020, all foreign journalists from the *Wall Street Journal*, *Washington Post*, and *New York Times* were expelled from China.³⁴² According to PEN America, 2020 saw the largest expulsion of foreign journalists since the "Tiananmen massacre" in 1989, and only 39 U.S. journalists remain in China.³⁴³

China's news and information censorship appears to encourage self-censorship and to have extraterritorial elements. For example, the Chinese government reportedly threatened to retaliate against Bloomberg News, including directing state-owned firms not to use the firm's data services, for an article it published outside China on wealth accumulation by Chinese officials.³⁴⁴ This reportedly led Bloomberg News to not publish a follow-up investigative piece in order to protect the company's

³³⁵ Freedom House, "Freedom on the Net 2020: China," accessed October 22, 2021; NRTA, "Responsibilities of the General Administration," July 30, 2018; Government of China, NPPA, "List of Administrative Examination and Approval Items of the State Press and Publication Administration," February 8, 2018.

³³⁶ Xu and Albert, "Media Censorship in China," February 17, 2017.

³³⁷ Article 9 of the State Secrets Law. National People's Congress of China, Law of the PRC on Guarding State Secrets, amended April 30, 2010; Xu and Albert, "Media Censorship in China," February 17, 2017.

³³⁸ Freedom House, "Freedom on the Net 2020: China," accessed October 22, 2021.

³³⁹ Reuters, "China Tightens Rules on Online News, Network Providers," May 2, 2017; Government of China, Cybersecurity Administration, Provisions on the Administration of News Information Services, May 2, 2017.

³⁴⁰ USITC, hearing transcript, July 1, 2021, 15–16 (testimony of Suzanne Nossel, PEN America).

³⁴¹ Yang, "How China Censors Foreign Journalism," April 14, 2021.

³⁴² FCCC, *Annual Report 2020*, March 1, 2021.

³⁴³ USITC, hearing transcript, July 1, 2021, 12–13 (testimony of Suzanne Nossel, PEN America).

³⁴⁴ China reportedly lifted a ban on state-owned purchases of Bloomberg terminals in 2016. *South China Morning Post*, "China to Lift Ban on State-Owned Firms," September 6, 2016.

separate business, Bloomberg Terminals. The latter is a growing business in China, which provides business data and information used by financial institutions and investors.³⁴⁵ According to an academic professional, in contrast to punishment and retaliation against journalists that report unflattering stories, reporters who report favorable information receive beneficial treatment.³⁴⁶

Mobile Apps and App Stores

Mobile applications (apps) are a wide variety of software programs designed for mobile devices, ranging from social media, games, and other entertainment apps, to finance, health, and shopping apps. The two main global mobile device operating systems (OS) that apps run on are Google Android and Apple iOS, both originating in the United States. Globally, mobile app developers use platforms such as the Apple App Store and Google Play Store to disseminate their products to consumers. In the past five years, the Cybersecurity Law has been the primary policy change guiding China's censorship of apps. While Chinese consumers have access to mobile devices with Android's OS, the Google Play Store is unavailable in China.³⁴⁷ Apple, on the other hand, has created a China-specific version of its app store, allowing it to gain revenue from sales of iPhones and apps. In China, many of the top global mobile apps, such as Facebook and their offerings of Messenger, Instagram, and WhatsApp, are not authorized to appear in app stores.

Overview

The mobile app market consists of three layers of companies: OS providers, app stores, and mobile applications. Mobile device OS provide basic functionality and manage computing resources within devices such as phones and tablets, including memory, file storage, and network connections.³⁴⁸ Google Android and Apple iOS together represented more than 99 percent of the global smartphone and tablet OS market in 2020.³⁴⁹ Android and iOS have different business models that help explain their different roles in the Chinese market. Apple's iOS is proprietary technology and the only OS option for iPhones, which creates an entire ecosystem of Apple products for users.³⁵⁰ In contrast, the basic Android OS is open-source (free to use) and therefore this technology is available for any mobile device manufacturer to adapt to its device. Outside China, Google licenses a premium version of the Android OS to device manufacturers, including the Google Play Store and apps like Chrome and Google Maps. However, since Google is not active in China, Chinese mobile phone companies instead use the basic open-source version of Android, then build in features, services, and app stores tailored to the Chinese market.³⁵¹ Thus, even though Android made up almost 80 percent of the Chinese mobile OS market in 2020, this market share represents Chinese versions of Android, not Google's premium version.³⁵²

³⁴⁵ Folkenfilk, "Bloomberg News Killed Investigation," April 14, 2020.

³⁴⁶ Academic professional, interview by USITC staff, July 7, 2021.

³⁴⁷ For more discussion of why Google is not active in China see the Search Engine Section of Information Providers, Search Engines, and Social Media in this chapter.

³⁴⁸ Britannica, "Operating system (OS)," accessed June 29, 2021.

³⁴⁹ Statcounter, "Mobile and Tablet Operating System Market Share Worldwide," May 2021.

³⁵⁰ Fowler, "iTrapped: All the Things Apple Won't Let You Do With Your iPhone," May 27, 2021.

³⁵¹ See the Search Engines section later in this chapter for further discussion about why Google is not active in China. Byford, "How China Rips off the iPhone and Reinvents Android," October 17, 2018.

³⁵² Statcounter, "Mobile and Tablet Operating System Market Share China," May 2021, accessed June 29, 2021.

The second layer of companies operating in this market are app stores, which provide a gateway for mobile phone and tablet users to find and download new apps for their devices. Typically, app stores make money by taking a cut of download, subscription, and in-app purchase fees from app developers.³⁵³ As with operating systems, Apple's App Store is the only store authorized for use on iPhones, while many different stores can be used on Google phones and tablets. Within the market for Android devices in China, Google Play is banned, so consumers must use Android app stores developed by Chinese firms including Tencent's My App (accounting for 26 percent of Chinese Android market), Huawei's App Market (13 percent), and BBK's Oppo Software Store (13 percent).³⁵⁴

Finally, mobile applications are the last layer of the mobile app market. Apps use a variety of methods to generate revenue, such as in app advertising, and fees for downloads, subscriptions, and in-app purchasing. Games comprised 71 percent of total app revenues in 2020.³⁵⁵ Because some types of apps rely more heavily on advertising (Facebook) than direct consumer purchases (Candy Crush), when looking at the size of the app market, it is important to consider both number of downloads and total revenue, since apps that are free to use for consumers may be popular without generating revenue directly. As shown in table 3.2, China represents a substantial market for mobile apps, capturing 33 percent (\$48 billion) of 2020 global revenue of \$143 billion. While the U.S. share of total app revenue has remained fairly constant at around 20 percent for the whole period, the Chinese share of revenue peaked at 38 percent in 2018, as revenues in "other markets" increased more rapidly. While data on downloads are less comprehensive than revenue data, Chinese app publishers also capture a substantial share of the downloads from the top 100 app publishers. In 2020, U.S.-based app publishers accounted for approximately 37 percent of total downloads, down from 43 percent in 2016, while Chinese publishers accounted for 13 percent of total downloads in 2020, down from 19 percent in 2016.³⁵⁶

Table 3.2 App revenue, by market

In billions of dollars.

Market	2016	2017	2018	2019	2020
United States	12	15	20	25	32
China	16	30	38	43	48
All other markets	29	36	42	47	63
All markets	57	81	100	115	143

Sources: Iqbal, "App Revenue Data," May 13, 2021.

Note: App revenue includes "all revenue generation inside the two main app stores: iOS and Android. This includes advertising, in-app purchases, subscriptions and app purchases." Market share data are calculated as the share of total value.

Many of the top global apps are blocked or limited in China. In 2020, the top global non-game apps by download were TikTok, Facebook, WhatsApp (owned by Facebook), Zoom, and Instagram (also owned

³⁵³ Through 2020, both Apple and Google Play received 30 percent of revenue from app download fees, subscriptions, and in-app purchases. Beginning in 2021, both stores adopted a tiered revenue system, offering 15 percent of revenue for apps making less than \$1 million in revenue (Apple) or for the first \$1 million made on the Play store. Singh, "Google Play Drops Commissions," March 16, 2021.

³⁵⁴ Ou, "A Breakdown of China's Android Market," July 6, 2020.

³⁵⁵ Iqbal, "App Revenue Data," May 13, 2021.

³⁵⁶ AppMagic download statistics are provided as the minimum number of downloads per app publisher (for example, Google products have been downloaded at least 2 times). Market shares were calculated by adding these minimum values for Chinese and U.S. app publishers within the top 100 app publishers. AppMagic, "Top Publishers, Top Grossing, Worldwide, 2016–2020," accessed May 14, 2021.

by Facebook), all of which are free to download. Of these, only two are allowed in China (TikTok and Zoom). TikTok has a China-specific version of its app, and Zoom service in China is limited.³⁵⁷ Instead of Facebook products, WeChat is the dominant social media app in China, although WeChat includes additional services like payment services, games, ride-hailing (e.g., Uber in the U.S. market), and messaging services.³⁵⁸ The top mobile games by consumer spending, which indicate fee-based revenue generation, globally in 2020 were Tencent's Honor of Kings, followed by Pokémon Go (U.S./Japan), ROBLOX (U.S.), and Monster Strike (Japan). Of these top games, Pokémon Go is blocked in China, U.S. game ROBLOX recently was approved to enter the Chinese market via a partnership with Tencent, and Monster Strike left the Chinese market in 2020 for financial reasons.³⁵⁹

Censorship-Related Policies and Practices

As indicated above, Chinese censors use internet intermediary rules to encourage app stores to block many apps from their app stores. This section will describe key developments in censorship policies for apps. It will describe how they affect the Apple App Store, since all other major app stores in the market are operated by Chinese firms.³⁶⁰

Internet Intermediary Rules

Since 2016, the Cybersecurity law was enacted, it together with subsequent regulations have defined the responsibilities for regulating content of online platforms (such as app stores). First, the Cybersecurity Law states that people and organizations using network providers may not use the internet for activities that endanger national security, honor, interest, or unity; advocate terrorism or ethnic hatred; or disseminate violent, obscene, sexual, or false information, or information that infringes on the reputation and privacy of others.³⁶¹ Additionally, individuals and organizations cannot establish websites for fraud and criminal activity (Article 46 of the Cybersecurity Law), and network operators (like Apple) are required to stop transmissions and delete user content prohibited by Chinese law (Article 47). Violation of Article 46 has associated fines, while violation of Article 47 has penalties including fines, temporary suspension of operations, website shutdowns, and cancellation of business permits and licenses.³⁶² The liability for platforms outlined in this law creates an incentive for firms to "aggressively moderate content" with both human labor and artificial intelligence tools.³⁶³ In March 2020, a new set of regulations called Provisions on the Governance of the Online Information and Content Ecosystem came into force. They were issued by China's Central Cyberspace Affairs Commission governing content on online platforms, which outlines the types of content that are illegal to publish on

³⁵⁷ App Annie, "State of Mobile 2021," 2021; Iqbal, "TikTok Revenue and Usage Statistics (2021)," July 2, 2021. Zoom announced in August 2020 that it will no longer offer direct services to users in China, and Chinese users can join, but not host Zoom calls. Kharpal, "Zoom to Halt Direct Sales of Products to Users in China," August 3, 2020.

³⁵⁸ Kharpal, "Everything You Need to Know about WeChat," February 3, 2019.

³⁵⁹ Chiu, "Nintendo Files Chinese Trademarks for Pokémon Go," August 2020; Roblox, "New Programs Available: 'Roblox China,'" February 3, 2021; Ahmad, "Monster Strike," December 19, 2019.

³⁶⁰ Private Chinese internet companies, like Tencent, Baidu, and Alibaba monitor content as part of their licensing agreements to operate in China. Brightbill, written submission to the USITC, June 24, 2021.

³⁶¹ Government of China, State Council, Cybersecurity Law, November 7, 2016.

³⁶² Government of China, State Council, Cybersecurity Law, November 7, 2016.

³⁶³ Maréchal, written submission to the USITC, June 24, 2021, 5.

online platforms and the content that should be prevented and discouraged on platforms.³⁶⁴ In addition to these laws governing content overall, mobile game operators face additional content restrictions and licensing requirements specific to the video game market.³⁶⁵

Apple and other app store platforms are the primary means for app developers to disseminate content to the Chinese market. The requirement to comply with Chinese government requests to take down content is an important mechanism for censorship.³⁶⁶ According to Apple's transparency reports, the app store removed 1,251 apps in China for violating either Chinese law or its own terms of service between July 2018 and June 2020.³⁶⁷ Independent analysis of the Chinese Apple app store and the global store suggests that since 2017, about 55,000 apps that are available globally are not available in the Chinese version of the Apple app store. While some of this discrepancy is due to additional licensing requirements for games in China, some of these exclusions may also represent proactive removal of other companies' content on the part of Apple or individual app developers.³⁶⁸ Apple's app store has 1.96 million apps available for download globally.³⁶⁹

For app developers, the likelihood of being blocked in China varies by the type of app; smaller companies, new apps, and apps that do not include user-generated content may be less likely to be

³⁶⁴ For more information on the scope of this regulation, see chapter 2. Based on unofficial translations, illegal content includes: violating principles of the constitution, jeopardizing national security, divulging state secrets, undermining national unity, damaging the state's reputation, defaming national heroes and martyrs, advocating or instigating terrorism, inciting ethnic hatred, undermining religious policies, promoting superstitions, and spreading rumors to disrupt economic and social order, as well as obscenity, pornography, gambling, violence, murder, terror, and infringing on the reputation of others. Discouraged content includes exaggerated titles, hype about scandals, inappropriate comments on tragedies, sexually suggestive content, blood and horror content, inciting regional discrimination, vulgar content, and content inducing bad habits in minors. Government of China, Cyberspace Administration, Governance of the Online Information Content Ecosystem, December 15, 2019, Articles 6 and 7.

³⁶⁵ For more information, see the previous section in this chapter on the video game market. While Apple has requested game developers to submit their games for approval in order to operate in the Chinese market when adding their games to the Chinese version of the Apple App store, this requirement was not enforced before August 2020. Pilarowski, et al., "Regulation of China's Digital Game Industry," January 6, 2021.

³⁶⁶ PEN America, written testimony to the USITC, June 24, 2021.

³⁶⁷ Some prominent examples of app removals include the *New York Times* in 2017 and Quartz in 2019. Additionally, some of Apple's own services, like iTunes, are not available on the Chinese version of its app store. Apple, "Transparency Report: China Mainland," 2021; Haas, "Apple Removes New York Times App in China," January 4, 2017; Ivanova, "Apple Pulls Quartz News App," October 10, 2019; Cory, written submission to the USITC, August 18, 2021.

³⁶⁸ In particular, the *New York Times* finds that 600 news apps have been deleted from the Chinese version of the App store, while Apple reports removing only 70 news apps in response to Chinese government requests. Additionally, following a change in policy, Apple reportedly removed 26,000 games from its app store that did not have official approval to operate in the Chinese market. Nicas et al., "Censorship, Surveillance and Profits," May 17, 2021; Pilarowski et al., "Regulation of China's Digital Game Industry," January 6, 2021.

³⁶⁹ Buildfire, "Mobile App Download and Usage Statistics," 2021.

targeted for removal.³⁷⁰ However, the risk of apps being blocked means that when expanding internationally, small U.S. firms may choose not to make their apps available on Chinese app stores.³⁷¹

Information Providers, Search Engines, and Social Media

U.S. social media and search engine providers are largely prevented from operating in China, while information services providers appear to participate to a greater degree. Since 2016, censorship and censorship-enabling policies and practices have expanded. China's censorship regime entails high costs of compliance for the few U.S. companies that provide services in the market. It may also represent a barrier to entry and substantial foregone revenue for companies that do not operate there. The impact of these policies and practices on U.S. companies will be explored and quantified to the extent practicable in the Commission's second foreign censorship report.

Overview

Social Media

Social media platforms take various forms and include social networks as well as “blogs, forums, business networks, photo-sharing platforms, social gaming, microblogs, [and] chat apps.”³⁷² China represents a large share of the social media industry, which has grown rapidly over the past five years. Globally, social media users totaled 4.2 billion in 2021, an increase of 50 percent since 2017.³⁷³ China had the most social media users globally, making up about one-quarter or about one billion active users in 2021 (up 46.1 percent from 2017),³⁷⁴ followed by India, Indonesia, the United States, and Brazil.³⁷⁵

³⁷⁰ For example, the discussion app Clubhouse was briefly available in China following its April 2020 release, and a VPN service was available in the Chinese version of the Apple App store in early 2020 despite being unauthorized by the Chinese government. Industry representative, interview by USITC staff, June 4, 2021; industry representative, interview by USITC staff July 7, 2021; Yuan, “The Great Firewall Cracked,” February 9, 2021; Chang et al., “Crisis Is a Gateway to Censored Information,” October 2, 2020.

³⁷¹ Engine Advocacy, written submission to the USITC, July 22, 2021.

³⁷² Statista database, “Social Media—Statistics and Facts,” February 25, 2021. All or a subset of these various forms may be captured by social media statistics.

³⁷³ Kemp, “Digital 2021: Global Overview Report,” January 27, 2021, 80. Similar estimates are published by Statista on social network use with forecast of 3.8 billion users in 2021. Thomala, “Number of Social Network Users in,” August 16, 2021.

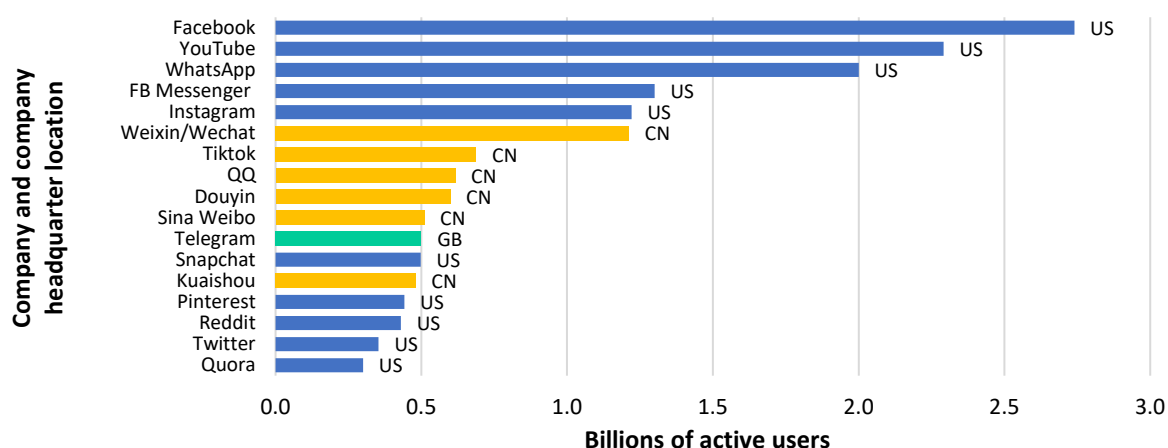
³⁷⁴ Thomala, “Number of Social Network Users in China,” August 16, 2021. Data for 2021 is forecast. Estimates published by Dataportal show January 2021 active social media users at 930.8 million. Kemp, “Digital 2021: China,” February 9, 2021, 39.

³⁷⁵ The country ranking is based on 2020. Thomala, “Number of Social Network Users in Selected Countries,” July 2021.

The major global social media platforms are U.S. companies, which are prevented from operating and not active in China.³⁷⁶ The top five include Facebook and platforms part of the Facebook group—WhatsApp, FB Messenger, and Instagram—as well as YouTube, part of Alphabet’s Google.³⁷⁷ In 2021, these top five platforms accounted for 59 percent of all active social media users (figure 3.1).³⁷⁸ According to this metric, in 2021, U.S. firms’ global market share was 71.5 percent and Chinese firms’ global market share was 25.4 percent. In the same year, only 2 of the 16 leading social media platforms operating in China were U.S. companies (LinkedIn and Skype).³⁷⁹ Measured by social media advertising revenue in China during 2020, four Chinese companies accounted for 85 percent of the market (WeChat, Tencent QQ, Qzone, and Sina Weibo), U.S. firm LinkedIn comprised 5 percent, and other companies collectively represented 10 percent of the market.³⁸⁰

Figure 3.1 Global active users of top global social media platforms and their headquarters country, 2021

In billions of active users. Country acronyms use ISO standards and represent the headquarter location of each company: US = the United States; CN = China; GB = the United Kingdom. Underlying data for this figure can be found in appendix E, [table E.3](#).



Sources: Kemp, “Digital 2021: Global Overview Report,” January 27, 2021, 93.

Notes: Data are updated as of January 2021 and represent monthly active users. Source data indicate platforms FB Messenger, Reddit, and Quora “have not published updated user numbers in the past 12 months, so figures will be less reliable” and “Figure for Douyin uses the reported daily active user figure, so monthly active user figures is likely higher.” Telegram, the only major non-U.S. and non-Chinese platform, was formed by the founders of VK, the Russian platform, and is currently headquartered in the United Kingdom. Headquarter information from Bloomberg, “Telegram Messenger LLP,” accessed September 16, 2021.

³⁷⁶ Despite not operating in the market, companies may generate advertising revenue from clients based in China, as both Facebook and Google maintain an advertising presence in China. This revenue would not be included with the China revenue in the data discussed in this paragraph because the China revenue includes social media companies with social media sites in China. Cory, “Censorship as a Non-Tariff Barrier to Trade,” June 30, 2020, 8, 10, 11. For more information on Facebook, see Mozur and Qiqing, “How Facebook’s Tiny China Sales Floor,” February 7, 2019.

³⁷⁷ As announced in October 2021, Meta has become the parent company of Facebook. Facebook and Meta’s other products, such as Instagram and WhatsApp, are typically referred to separately when applicable in this chapter. See Meta, “Introducing Meta,” October 28, 2021.

³⁷⁸ Global market share is based on each company’s global active users as a share of total companies’ active users. Data on social media users “may not represent unique individuals.” Kemp, “Digital 2021: Global Overview Report,” January 27, 2021, 83.

³⁷⁹ Kemp, “Digital 2021: China,” February 9, 2021, 42. Data is updated as of January 2021 and represents “percentage of internet users aged 16 to 64 that has used each platform in the past month.”

³⁸⁰ Statista database, *Digital Advertising Report 2021 - Social Media Advertising*, August 2021, 12.

Search Engines

The global search engine industry has grown substantially in recent years, with revenue having increased by over 100 percent since 2016.³⁸¹ Worldwide, search engine providers are dominated by U.S. companies, most notably Google with 92.2 percent global market share in 2021 (table 3.3). However, as with social media, U.S. providers do not represent a substantial share of the Chinese market for search engines because they are largely prevented from operating in China. In 2021, Chinese firms represented 95.1 percent of the Chinese market overall, with Baidu alone making up 74.3 percent and Sogou accounting for an additional 17.5 percent.³⁸² The U.S. market share in China's search industry is reported as 4.7 percent, with Bing making up 2.5 percent and Google with 2.2 percent. Bing, which follows Chinese domestic filtering requirements, has reportedly "enjoyed a niche market for English-language searches."³⁸³

After participating in the Chinese market for several years, Google and all of its services have been blocked in China since 2014. In 2006, Google began operating a localized version of its search engine in China but struggled with Chinese government content restrictions and other censorship requirements.³⁸⁴ In January 2010, Google announced that it had discovered a cyberattack originating within China that resulted in theft of Google's intellectual property and targeted other companies as well as Gmail accounts of Chinese human rights activists.³⁸⁵ After the attack, Google announced it would discontinue the China-hosted version of its search engine, Google China (google.cn), which had filtered results; instead, the company would direct Chinese traffic to the Hong Kong version of its search engine.³⁸⁶ This led the Chinese government to block Google, and eventually—by 2014—virtually all Google services were blocked in China.³⁸⁷ Google continues to have some limited participation in China through its advertising presence (selling advertising to Chinese companies for foreign consumers), and may be accessible to consumers accessing Google services (including search) via VPN.³⁸⁸ Beginning

³⁸¹ StatCounter, "Search Engine Market Share Worldwide 2016–2021," accessed July 5, 2021; Johnson, "Annual Revenue of Google," February 8, 2021; and USITC calculations. Google revenue and global market share were used to estimate worldwide revenue from all search providers, calculated at \$196.2 billion in 2020. A related metric, search advertising—or "the placement of ads on search result pages above or next to organic search results"—was estimated at \$124.1 billion in 2018 and forecast at \$135.9 billion in 2019; Guttman, "Search Advertising Spending Worldwide," April 7, 2020.

³⁸² Search engines operating in China had a combined revenue forecast at about \$20.5 billion in 2020, representing approximately 11.5 percent of the global market in terms of revenue for the same year; this group registered 43 percent revenue growth from 2017 to 2021. Thomala, "Search Engine Revenue in China 2015–2023," September 15, 2021. Currency converted from yuan to dollars using July 2020 exchange rate provided in Statista publication; 2020 and 2021 are forecast. There were 770 million search engine users in China in December 2020. Statista database, "Search Engines in China," 2020, 4.

³⁸³ Mozur, "Microsoft's Bing Briefly Blocked 'Tank Man'," June 5, 2021.

³⁸⁴ Sheehan, "How Google Took on China," December 19, 2008.

³⁸⁵ Google, "A New Approach to China," January 12, 2010.

³⁸⁶ Google, "A New Approach to China: an update," March 22, 2010. Also see Waddell, "Why Google Quit China," January 19, 2016.

³⁸⁷ Sheehan, "How Google Took On China," December 19, 2008.

³⁸⁸ In 2017, Google announced the opening of a small research center in Beijing focused on AI tech; the company later announced it was disbanded in 2019. Li, "Opening the Google AI China Center: Update," accessed January 27, 2022; Cory, "Censorship as a Non-Tariff Barrier to Trade," June 30, 2020, 9–10; Sheehan, "How Google Took On China," December 19, 2008. Also see Waddell, "Why Google Quit China," January 19, 2016.

in 2017, however, the Chinese government announced enforcement measures against the use of VPNs (see Great Firewall section for more information).³⁸⁹

Table 3.3 Market shares for search engine providers globally and within China in 2021, by company
In percentages, ** = rounds to zero.

Company	Headquarters	Global	China
Google	United States	92.2	2.2
Bing	United States	2.5	2.5
Yahoo!	United States	1.5	**
Baidu	China	1.3	74.3
YANDEX	Russia	0.7	**
Sogou	China	0.3	17.5
Haosou	China	**	2.0
All other companies	Various	1.5	1.6
All companies	Various	100.0	100.0

Source: GlobalStats Statcounter, “Search Engine Market Share Worldwide,” accessed October 4, 2021; GlobalStats Statcounter, “Search Engine Market Share China,” accessed October 4, 2021.

Notes: Market shares may not sum exactly to 100 percent due to rounding.

Information Providers

Information providers often operate as subscription-based providers of data, research, analysis, news, or other offerings. These companies are difficult to unify into a single category for the purpose of estimating market size or share. Examples of U.S. information services providers active in the Chinese market include Bloomberg LP, LexisNexis, and S&P Global. More specifically, Bloomberg LP operates Bloomberg Terminals in China, where offerings include financial information, industry analysis, and professional networking.³⁹⁰ LexisNexis in China provides a legal database of laws, regulations, articles, and analysis to subscribers.³⁹¹ Finally, S&P Global provides credit ratings in the Chinese domestic bond market.³⁹²

Censorship-Related Policies and Practices

As indicated above, most U.S. social media and search engine providers are restricted from providing services in the Chinese market. Additionally, as described above, over the past 5–10 years, government control over the internet in China has increased, affecting the small number of such U.S. companies operating in the market. Provisions are often comprehensively directed at both service providers (e.g., platforms) and users (e.g., individuals). Regulations have proliferated and built on existing frameworks to vaguely define prohibited content, foster self-regulation by companies and users, and incorporate liability for unlawful behavior.³⁹³ These policies and practices are categorized into separate groupings

³⁸⁹ USITC, hearing transcript, July 1, 2021, 35 (testimony of Maria Repnikova, Georgia State University); PEN America, *Forbidden Feeds*, March 13, 2018, 22–23.

³⁹⁰ Bloomberg, “The Terminal—Bloomberg Professional Services,” accessed July 5, 2021; PEN America, *Darkened Screen*, September 22, 2016, 13.

³⁹¹ Lexis-Nexis, “Lexis China,” accessed July 5, 2021.

³⁹² S&P Global Ratings, “S&P Global China Ratings,” accessed July 5, 2021.

³⁹³ USITC, hearing transcript, July 1, 2021, 35–36 (testimony of Maria Repnikova, Georgia State University). For a background on pre-existing measures affecting social media, see PEN America, *Forbidden Feeds*, March 13, 2018, 15–19.

liability for unlawful behavior.³⁹³ These policies and practices are categorized into separate groupings below, although each may encompass more than one type of law or requirement (for example the Cybersecurity Law contains internet intermediary rules and data localization requirements). These policies and practices include both censorship policies (laws that suppress certain categories of speech, self-censorship, extraterritorial censorship), and censorship-enabling policies (foreign investment and market access restrictions, local presence and data localization requirements).

Foreign Investment and Market Access Restrictions

Most U.S. social media and search engine companies are prevented from operating in China. For example, Facebook and Twitter were blocked in 2009, Google shut down its search engine in 2010 (and many of its services were blocked), Instagram was blocked in 2014, DuckDuckGo was blocked in 2014, and Pinterest was blocked in 2017.³⁹⁴ Notable exceptions are LinkedIn and Bing. In addition to restrictions on market access, foreign investment is restricted in certain sectors, as mentioned above.

Social media and search engine providers operating in China have been required to commit to undertaking censorship activities. Such activities include removing content or access, and acquiring a Chinese partner, which often entails censorship-enabling activities such as storing data on local servers.³⁹⁵ For example, in China, LinkedIn has followed content restriction requirements and has partnered with local Chinese firms. Under the rules of the joint venture, LinkedIn is required to store data locally.³⁹⁶ On October 14, 2021, LinkedIn announced it would discontinue its current operations in China and offer a new app focused on job applications without social networking capabilities, citing a “significantly more challenging operating environment and greater compliance requirements in China.”³⁹⁷ In addition to the censorship of user accounts, these challenges reportedly include new requirements for local data storage (both discussed below).³⁹⁸

Laws that Suppress Certain Categories of Speech and Internet Intermediary Rules

Under the Cybersecurity Law, websites and content may be restricted on broad grounds, and companies are obligated to stop or prevent the spread of prohibited information.³⁹⁹ Specifically, Article 12 of the Cybersecurity Law prohibits using the internet to engage in activities including, for example,

³⁹³ USITC, hearing transcript, July 1, 2021, 35–36 (testimony of Maria Repnikova, Georgia State University). For a background on pre-existing measures affecting social media, see PEN America, *Forbidden Feeds*, March 13, 2018, 15–19.

³⁹⁴ Leskin, “Here Are All the Major,” October 10, 2019; Greatfire, “Censorship of Alexa,” July 2021.

³⁹⁵ For discussion on defining censorship, see chapter 1 and USITC, hearing transcript, July 1, 2021, 49 (testimony of Susan Aaronson, George Washington University); USITC, hearing transcript, July 1, 2021, 49–50 (testimony of Suzanne Nossel, PEN America); USITC, hearing transcript, July 1, 2021, 50–51 (testimony of Nathalie Maréchal, Ranking Digital Rights).

³⁹⁶ Mozur and Goel, “To Reach China, LinkedIn Plays by Local Rules,” October 5, 2014; see also Cory, “Censorship as a Non-Tariff Barrier to Trade,” June 30, 2020, 11–12.

³⁹⁷ Shroff, “China,” October 14, 2021.

³⁹⁸ See Weise and Mozur, “LinkedIn to Shut Down Service in China,” October 14, 2021.

³⁹⁹ Government of China, State Council, Cybersecurity Law, November 7, 2016; OECD, “Digital Services Trade Restrictiveness Index Simulator,” accessed July 7, 2021. See “Other barriers affecting traded in digitally enabled services” for interpretation of Article 47.

“endangering national interests.”⁴⁰⁰ Similarly, Article 47 requires companies (“network operators”) to halt the dissemination of prohibited information. Violations may lead to fines, suspension of operations, and revocation of permits and licenses.⁴⁰¹

Several regulations issued in 2017 by the CAC include a wide range of additional provisions aimed at controlling social media content. Provisions on Administration of Internet News Information Service 2017 broadly define and regulate the provision of internet news information services, through channels including websites, blogs, and instant messaging, and limit publication of original news to the State.⁴⁰² These regulations reportedly “function as a de facto prohibition against citizens using social media outlets to report on or provide analysis of political developments, natural disasters, or any other current event the government might deem sensitive.”⁴⁰³ Additionally, the Provisions on the Administration of Internet Group Information Services make group chat service providers and users responsible for complying with regulations against posting prohibited content and requires companies to store chat records and establish a credit-rating system for users (see box 3.2 for more information on related regulations establishing “credit systems”).⁴⁰⁴

Box 3.2 Credit Systems and Legal Name Requirements Also Limit Speech

Certain government policies may not directly affect social media content but instead may enable censorship of social media, search, or information services providers or users. For example, China’s 2017 Administrative Provisions on Internet Forum Community Services and the Management of Internet Post Comments Services require companies to create a “credit system” for users posting in online comment threads. In order to continue using the services, users must comply with relevant regulations. The provisions establish similar credit assessments for services providers and it has been reported that platforms are assessed by local Cyberspace Affairs Commission officials quarterly.^a Each provider begins with a set of points that are then either deducted (for insufficient monitoring of posts or comments) or added (“for standout performances”).^b In order to avoid punishment these providers must end each assessment with a score showing that they sufficiently monitored posts. These provisions also require internet service providers to verify user identities and that users are registered using their legal names.^c Such policies and other requirements like the proof of identity enable authorities to track users and render “anonymous speech impossible.”^d

^a Government of China, Cyberspace Administration, Internet Forum Community Services and Internet Post Comments, August 25, 2017, Article 9. For more information, see Norton Rose Fulbright, “China Issues New Regulations,” September 2017, which states “that businesses operating websites, mobile apps and other online platforms in China would fall within such scope of

⁴⁰⁰ Government of China, State Council, Cybersecurity Law, November 7, 2016; PEN America, *Forbidden Feeds*, March 13, 2018, 12 (stating that this requirement was already present in other domestic laws).

⁴⁰¹ Articles 66 and 68 refer to violations for Article 37 (on data localization, discussed below) and Article 47 (discussed above). Government of China, State Council, Cybersecurity Law, November 7, 2016.

⁴⁰² Government of China, Cyberspace Administration, Administration of Internet News Information Service 2017, May 2, 2017, Articles 2, 5, 8, 13, 17, and 18. See also Lexology, “China Tightens Control on Internet News and Content,” September 4, 2017. Although private investment is permitted in some categories of internet news services as defined in the regulations, foreign investment is generally restricted.

⁴⁰³ PEN America, *Forbidden Feeds*, March 13, 2018, 19.

⁴⁰⁴ Government of China, Cyberspace Administration, Administration of Internet Group Information Services, September 7, 2017, Articles 7, 10, 13, 14. See also PEN America, *Forbidden Feeds*, March 13, 2018, 20, which indicates that these regulations make “group chat initiators responsible and potentially criminally liable for messages in the group chat containing unlawful content.”

application and be regulated by the Provisions.” See also PEN America, *Forbidden Feeds*, March 13, 2018, 19–21, for additional information on the relevant regulations and effects of the social credit system.

^b Zhong, Mozur, Kao, and Krolik, “No ‘Negative’ News,” December 19, 2020.

^c Government of China, Cyberspace Administration, Internet Forum Community Services and Internet Post Comments, August 25, 2017, Article 5; Norton Rose Fulbright, “China Issues New Regulations,” September 2017.

^d USITC, hearing transcript, July 1, 2021, 23 (testimony of Nathalie Maréchal, Ranking Digital Rights).

The 2019 Provisions on the Governance of the Online Information Content Ecosystem—discussed in more detail in chapter 2 of this report—establish both civil and criminal liability for “consuming, producing, or hosting information which impacts China’s national security broadly defined.”⁴⁰⁵ The Hong Kong National Security Law institutes liability for and applies to Chinese national security violations outside Hong Kong and by non-Hong Kong residents.⁴⁰⁶

U.S. social media companies operating in China often contend with restrictions on providing their services and are held liable for the content on their platforms. For example, Bing has reported temporary restrictions over censorship issues with the Chinese government; in January 2019, it was inaccessible in China without explanation.⁴⁰⁷ Similarly, in 2021, LinkedIn’s ability to add new users was suspended for 30 days by the Cyberspace Affairs Commission. The company was required to undergo a self-evaluation for failure to adequately self-censor content during the politically sensitive National People’s Congress session in March 2021.⁴⁰⁸ This punishment may have contributed to LinkedIn’s discontinuation of its localized offerings in China and its shift to a more limited focus on job applications.⁴⁰⁹

Local Presence and Data Localization Requirements

Data collection and related surveillance of data has also increased, enabled by laws requiring companies to store data locally.⁴¹⁰ Article 37 of the Cybersecurity Law dictates that companies (“critical information infrastructure operators”) in China must store certain data domestically.⁴¹¹ The Data Security Law, which went into effect September 2021, reinforces such data localization requirements and includes an extraterritorial component. Certain data (generated or collected) from China and processed outside the country will be regulated and some data will be subject to export control (this is discussed in more detail

⁴⁰⁵ Government of China, Cyberspace Administration, Governance of the Online Information Content Ecosystem, December 15, 2019. (See Article 6 on information prohibitions and Chapter VII on legal liability).

⁴⁰⁶ Article 38 provides for the extraterritorial application of the law. Additionally, a recent clarification of the law indicated that it “applies explicitly to the media context, but it also applies within a tech context.” USITC, hearing transcript, July 1, 2021, 66–67 (testimony of Aynne Kokas, University of Virginia); Chief Executive HKSAR, “Promulgation of National Law 2020,” June 30, 2020; CRS, China’s National Security Law for Hong Kong, August 3, 2020.

⁴⁰⁷ Dixon and Pierson, “Bing Comes Back Online in China,” January 23, 2019.

⁴⁰⁸ Mozur, Zhong, and Lohr, “China Punishes Microsoft’s LinkedIn Over Lax Censorship,” March 18, 2021.

⁴⁰⁹ Shroff, “China,” October 14, 2021. Also see Weise and Mozur, “LinkedIn to Shut Down Service in China,” October 14, 2021.

⁴¹⁰ USITC, hearing transcript, July 1, 2021, 38–39 (testimony of Maria Repnikova, Georgia State University).

⁴¹¹ Government of China, State Council, Cybersecurity Law, November 7, 2016. Articles 66 and 68 refer to violations for Article 37 (on data localization).

in the other industries section).⁴¹² Some interpretations of the Data Security Law indicate that the law may apply to Hong Kong and Macau.⁴¹³

Self-Censorship and Extraterritorial Censorship

For U.S. information services providers operating in China, there is little reported information on how censorship practices affect them. There are indications that, like other sectors, the content they publish is subject to review by the authorities and they engage in self-censorship to remain compliant with vaguely defined regulations. For example, in 2017, LexisNexis pulled two product offerings from the Chinese market after the company was asked to remove certain content from its database.⁴¹⁴ In the absence of formal dictates from the Chinese government, and given unclear rules, an industry representative indicated that U.S. information service providers self-censor by tailoring information to Chinese clients. For example, as mentioned earlier, a publisher would label Mainland China, Taiwan, and Hong Kong on maps without reference to “countries.” They would also be transparent about data sources (to make clear public information was used, and not leaked confidential data) and have a non-Chinese writer when covering potentially controversial topics.⁴¹⁵

As mentioned earlier, the range of topics that are censored has expanded. U.S. companies operating in China track trending topics as well as censorship incidents of other companies. In response to increased enforcement, firms tend to operate cautiously and self-censor their content to avoid a potential offense.⁴¹⁶ For example, a U.S. industry representative indicated that information services providers in China gauge sensitivity of topics they should avoid by “paying attention” to articles and content removed from WeChat.⁴¹⁷

There are increasing numbers of examples of censorship of content and information control beyond China’s borders. For example, in June 2021, web search results for “Tiananmen Tank Man” on Bing outside China returned no hits.⁴¹⁸ This absence led some to believe that Bing had filtered such image and video results, which some claimed exemplified the way that companies respond to pressure and work proactively to avoid criticism by the Chinese government and its censorship practices.⁴¹⁹ Microsoft, the owner of Bing, reported that the filtered content was due to “accidental human error.”⁴²⁰ Other recent reports indicate LinkedIn removed posts by users outside China, and blocked or deleted some

⁴¹² Government of China, Data Security Law, June 10, 2021. See also ReedSmith, “China Passes New Data Security Law,” June 16, 2021; USITC, hearing transcript, July 1, 2021, 23 (testimony of Nathalie Maréchal, Ranking Digital Rights); USITC, hearing transcript, July 1, 2021, 38 (testimony of Maria Repnikova, Georgia State University); USITC, hearing transcript, July 1, 2021, 66–67 (testimony of Aynne Kokas, University of Virginia).

⁴¹³ JD Supra, “China’s Draft Data Security Law,” May 10, 2021, see discussion of Article 2.

⁴¹⁴ Reuters, “LexisNexis Withdrew Two Products from Chinese Market,” August 22, 2017.

⁴¹⁵ Industry representative, interview by USITC Staff, June 16, 2021. For more information on the arrest of an IHS Markit employee for espionage, see Areddy, “China’s Culture of Secrecy Brands Research as Spying,” December 1, 2010.

⁴¹⁶ USITC, hearing transcript, July 1, 2021, 46–47 (testimony of Maria Repnikova, Georgia State University).

⁴¹⁷ Industry representative, interview by USITC Staff, June 16, 2021.

⁴¹⁸ Mozur, “Microsoft’s Bing Briefly Blocked ‘Tank Man’,” June 5, 2021.

⁴¹⁹ USITC, hearing transcript, July 1, 2021, 37 (testimony of Maria Repnikova, Georgia State University).

⁴²⁰ USITC, hearing transcript, July 1, 2021, 37 (testimony of Maria Repnikova, Georgia State University); Mozur, “Microsoft’s Bing Briefly Blocked ‘Tank Man’,” June 5, 2021.

user profiles from the China version of LinkedIn.⁴²¹ Similar incidents prompted fears “that LinkedIn may be moving to censor content critical of China from its platform globally, and not just for users in China.”⁴²² Pressure for censoring profiles of U.S. journalists on its Chinese platform appears directly related to LinkedIn’s decision to shut down its’ current operations in China.⁴²³

Notably, the Chinese government appears to be extending its enforcement of social media posting rules outside its borders to users of Chinese apps and to providers blocked in China. For example, research shows WeChat users outside mainland China are subject to surveillance, encouraging extraterritorial self-censorship of Chinese social media providers.⁴²⁴ Similarly, in July 2019, a Chinese student at the University of Minnesota was arrested in China and sentenced to six months in prison for comments he posted on Twitter while in the United States.⁴²⁵ These examples point to the Chinese government’s increasing attempts to exert control over social media platforms blocked in China.⁴²⁶ There are additional examples of surveillance of Chinese citizens while abroad (and at times foreign citizens of Chinese descent) and pressure to remove their social media posts that appear and occur outside China’s borders.⁴²⁷

Finally, as discussed earlier in this chapter, some consider the inevitability that China’s model of internet censorship is or will be “exported” abroad to other countries.⁴²⁸ Chinese tech companies have developed effective tools for complying with Chinese online platform content moderation, which other countries can access.⁴²⁹ By contrast, others indicate that the Chinese paradigm, unique in its sophistication, would be difficult to replicate.⁴³⁰

Other Industries

Chinese censorship-related policies and practices affect U.S. businesses in many industries, including sports and entertainment, apparel and footwear, hotel and accommodation, and other manufacturing and services industries. This section describes how Chinese censorship-related policies and practices over the past five years have affected U.S. firms in these industries and provides selected examples.

⁴²¹ Lin, “Scholars on LinkedIn Are Being Blocked in China ‘Without Telling Them Why,’” June 25, 2021.

⁴²² Gallagher, “Microsoft’s LinkedIn Accused by Noted China Critic of Censorship,” May 11, 2021.

⁴²³ Whalen, “Microsoft Will Shut down LinkedIn Service in China after Facing Criticism for Censoring Posts,” October 14, 2021.

⁴²⁴ Moynihan, and Patel, “Restrictions on Online Freedom of Expression in China,” March 2021, 4; Kenyon, “WeChat Surveillance Explained,” May 7, 2020; Knockel et al., “We Chat, They Watch,” May 7, 2020.

⁴²⁵ Allen-Ebrahimian, “University of Minnesota Student Jailed,” January 23, 2020.

⁴²⁶ Mozur, “Twitter Users in China Face Detention and Threats in New Beijing Crackdown,” January 10, 2019; Mozur, “China Presses Its Internet Censorship Efforts Across the Globe,” March 2, 2018.

⁴²⁷ Chiu, “A Chinese student in Canada had two followers on Twitter,” September 18, 2021.

⁴²⁸ Yuan, “A Generation Grows Up in China Without Google, Facebook or Twitter,” August 6, 2018; USITC, hearing transcript, July 1, 2021 166–67, 254, (testimony of Nigel Cory, ITIF); USITC, hearing transcript, July 1, 2021, 267–68 (testimony of Tim Brightbill, Wiley Rein).

⁴²⁹ Li, Shan, “Made-in-China Censorship for Sale,” March 6, 2020; USITC, hearing transcript, July 1, 2021, 256 (testimony of Tim Brightbill, Wiley Rein).

⁴³⁰ USITC, hearing transcript, July 1, 2021, 82–83, 88–89 (testimony of Maria Repnikova, Georgia State University).

Extraterritorial Censorship and Self-Censorship

As discussed above, U.S. businesses, or their employees, who speak out about Chinese issues or post content on their websites and social media accounts that are deemed “politically sensitive” by the Chinese government, can face repercussions in China. These repercussions can include revenue losses or market access challenges in the massive Chinese market. Consumer-facing firms are particularly vulnerable to this type of pressure, given how much political messaging influences Chinese consumer behavior.⁴³¹ At the same time, the fast growing Chinese consumer market is becoming increasingly lucrative for many U.S. companies.⁴³² Chinese authorities who control market access have leverage to silence criticism, even of statements made outside of China, because of the size of the Chinese market and the cost of establishing a presence and consumer base there.⁴³³

Universities

Over the past decade, the Chinese government has attempted, with some success, to censor classroom discussion and academic research at colleges and universities in the United States. Indeed, some U.S. academics who teach or research topics considered divisive by the Chinese government are experiencing growing pressure directly or indirectly from Chinese authorities to limit or eliminate discussion of certain topics. Such topics to avoid include the status of Taiwan and Tibet, events at Tiananmen, and political dissent in Hong Kong and Xinjiang province.⁴³⁴ At the most basic level, such attempts at censorship take the form of leveraging financial resources and/or access to Chinese scholars, academic research, and China-based facilities. In 2011, for example, 13 U.S. professors who wrote a book on the separatist movement in Xinjiang revealed that they had been refused entry visas to China.⁴³⁵ In 2015, a professor at George Washington University published an article in the *Wall Street Journal* that was critical of the CCP. Following publication, the Chinese government blocked the professor’s access to Chinese scholars, analysts, and officials.⁴³⁶ More recently, in 2017, the Chinese government froze funding for Chinese students and scholars studying at the University of California San Diego (UCSD) following a commencement speech given at UCSD by the Dalai Lama.⁴³⁷ In 2017, executive training programs run through the University of Maryland’s “Maryland-China Initiative” were suspended following a Chinese student’s pro-democracy commencement speech.⁴³⁸ In a 2018 survey of U.S. scholars that covered China issues, some respondents reported that electronic files in Chinese university

⁴³¹ O’Connell, “Silencing the Crowd,” March 29, 2021.

⁴³² According to a report released by the Chinese Academy of Social Sciences, in 2019, the total retail sales of consumer goods in China reached 41.2 trillion yuan (about \$6.3 trillion), making China the world’s largest consumer market in physical goods. China’s services sector expanded rapidly from 43.4 percent of China’s GDP in 2009 to 53.9 percent in 2019. People’s Daily Online, “China Emerges as the World’s Largest Consumer Market in Physical Goods,” December 22, 2020; Koty, “Leading Trends in China’s Services Sector After COVID Disruption,” October 8, 2020; Zhang, “China to Overtake U.S. as Largest Retail Market,” June 24, 2020; Kharas and Fengler, “Which Will Be the Top 30 Consumer Markets,” August 31, 2021.

⁴³³ O’Connell, “Silencing the Crowd,” March 29, 2021, 9–10.

⁴³⁴ Maxwell, “How China Mastered the Art of Academic Censorship,” August 2019; Fish, “The Other Political Correctness,” September 4, 2018.

⁴³⁵ Vise, “U.S. Scholars Say Their Book on China Led to Travel Ban,” August 20, 2011.

⁴³⁶ Maxwell, “How China Mastered the Art of Academic Censorship,” August 2019.

⁴³⁷ Maxwell, “How China Mastered the Art of Academic Censorship,” August 2019.

⁴³⁸ Lloyd-Damnjanovic, “PRC Political Influence and Interference Activities,” 2018, 62.

and other research-center archives in China often became “unavailable” (without explanation) to scholars whose research focused on sensitive topics. These same respondents also reported, on the other hand, that direct threats and/or detainment of U.S. scholars by Chinese authorities were relatively rare.⁴³⁹

In the United States, the Chinese government has long used Chinese diplomats stationed at embassies and consular offices to exert pressure on U.S. professors, students, staff, and administrators. Specifically, Chinese diplomats have reportedly threatened the cancellation of cooperative initiatives between U.S. and Chinese educational institutions, registered disapproval of campus speakers and events, and offered financial rewards (or threatened negative consequences) to influence U.S. faculty whose research covered sensitive topics. A 2018 report on Chinese interference in U.S. education activities reports that university administrators and student groups in many different parts of the country from 2007 to 2016 have received letters from embassy or consulate officials criticizing the hosting of events related to Taiwan, Tibet, and Xinjiang.⁴⁴⁰ Sometimes a single communication is sent with no follow-up, but in 2009, an official from the New York consulate contacted a professor at the City University of New York and attempted to dissuade him from working on a documentary about a 2008 earthquake in Sichuan province. According to the professor, the official offered him a bribe to withdraw from the project and, when he refused, stated that the Chinese government would actively work to stop the project.⁴⁴¹

Anecdotal evidence suggests that efforts by the Chinese government to censor discussion of sensitive topics on U.S. campuses sometimes succeeds. Indeed, there is a growing concern among professors, students, administrators, and alumni about the increasing prevalence of self-censorship on U.S. campuses. Since self-censorship is typically subtle, it is difficult to detect. Nonetheless, some students and professors at U.S. universities admit, at least privately, that they have been self-censoring in both their speech and academic research or publications, due to concerns about being refused entry visas or academic exchange opportunities in China. For example, in a 2018 survey of 500 U.S. academics covering Chinese issues, 68 percent noted that self-censorship was a problem in the field, although the respondents suggested that such censorship was justified to protect Chinese sources, if not for career advancement.⁴⁴² Self-censorship is also visible when universities cancel events due to concerns about how such events would be perceived by the Chinese government. In 2009, for example, North Carolina State University cancelled a visit from the Dalai Lama, with the university’s provost stating that North Carolina was a major trading partner of China.⁴⁴³

In an attempt to protect (mainly) Chinese students from repercussions from Chinese authorities—in both the United States and China—for attending classes that contain sensitive material, some universities are adding “warning labels” to classes, as well as allowing students to skip classroom discussions. During the 2020–21 academic year, for example, a professor of Chinese politics at Princeton University warned students that parts of his classroom presentation could be considered sensitive by the Chinese government; the professor also implemented a blind grading system so that written

⁴³⁹ Greitens and Truex, “Repressive Experiences among China Scholars,” September 23, 2018.

⁴⁴⁰ Lloyd-Damnjanovic, “PRC Political Influence and Interference Activities,” 2018, 52.

⁴⁴¹ Lloyd-Damnjanovic, “PRC Political Influence and Interference Activities,” 2018, 58.

⁴⁴² Greitens and Truex, “Repressive Experiences Among Chinese Scholars,” August 1, 2018, 3.

⁴⁴³ Fish, “The Other Political Correctness,” September 4, 2018.

assignments and tests could not be associated with individual students. During this same academic year, a professor of political science at the University of Pennsylvania announced that he intended to warn students prior to enrollment that his classes contained sensitive information, and a professor at the Harvard Business School offered the opportunity to his students to opt out of class participation — including American students—if they were worried about open discussion of sensitive topics related to China.⁴⁴⁴

Sports and Entertainment Industry

The temporary suspension in China of broadcasting and sponsorships for two National Basketball Association (NBA) franchises, the Houston Rockets and the Philadelphia 76ers are examples of extraterritorial censorship pressure. In October 2019, Daryl Morey, the general manager of the Houston Rockets posted a tweet in support of pro-democracy protestors in Hong Kong.⁴⁴⁵ The tweet sparked a backlash in China. Tencent—a media partner of the NBA in China with a five-year streaming deal reportedly worth \$1.5 billion—stopped streaming Rockets games.⁴⁴⁶ At the same time, China’s state broadcaster stopped televising NBA games. Moreover, Shanghai Pudong Development Bank, the team’s sponsor in China, suspended marketing related to the team.⁴⁴⁷ Although Morey deleted the tweet and resigned in October 2020 from the Rockets, Tencent did not restart streaming Rockets’ games until January 2021.⁴⁴⁸ NBA television broadcasts returned to China in October 2020. The consequences of Morey’s tweet followed him to his next job. When Morey became the general manager of the Philadelphia 76ers, the 76ers were blacklisted by Tencent and the company stopped streaming 76ers games in December 2020.⁴⁴⁹ The combined revenue loss from cancelled sponsorships and streaming as a result of the fallout over Morey’s tweet appears to have been significant.⁴⁵⁰ Few, if any, NBA players or coaches have been willing to comment on this issue, possibly out of concern that they could face similar consequences.⁴⁵¹

Apparel and Footwear Industry

Multinational apparel companies have a large market share in China, and Chinese consumption represents a major share of profits in this industry, making many foreign apparel firms sensitive to censorship pressure from the Chinese government, even on statements made outside China.⁴⁵² Such sensitivity likely increased in 2021, after Nike and Adidas expressed concerns about allegations that forced labor has been used to produce cotton in Xinjiang. *The People’s Daily*, an official newspaper and mouthpiece of the Chinese Communist Party, published an editorial in March 2021 naming the two

⁴⁴⁴ Craymer, “China’s National-Security Law Reaches into Harvard, Princeton Classrooms,” August 19, 2020.

⁴⁴⁵ Roth, “For NBA’s Quandary over China,” October 8, 2019.

⁴⁴⁶ Roth, “For NBA’s Quandary over China,” October 8, 2019.

⁴⁴⁷ Neuman, “Houston Rockets GM Apologizes,” October 7, 2019; Togoh, “Hong Kong Protest Tweet,” *Forbes*, October 7, 2019.

⁴⁴⁸ McGregor, “Daryl Morey Ostracized the NBA in Mainland China,” October 16, 2020; McGregor, “Why a Chinese Broadcaster,” January 12, 2021; Roth, “For NBA’s Quandary over China,” October 8, 2019.

⁴⁴⁹ McGregor, “Why a Chinese Broadcaster Is Blacklisting a New NBA Team,” January 12, 2021.

⁴⁵⁰ McGregor, “Why a Chinese Broadcaster Is Blacklisting a New NBA Team,” January 12, 2021.

⁴⁵¹ Lee, “Chris Paul Keeps Comments on China Brief,” October 22, 2019; Owens, “Stephen Curry Becomes Latest NBA Thought Leader,” October 9, 2019; O’Connell, “Silencing the Crowd,” March 29, 2021, 16.

⁴⁵² O’Connell, “Silencing the Crowd,” 9.

companies along with other members of the Better Cotton Initiative (BCI) and calling for broad boycotts of the brands.⁴⁵³ In response, sales of Adidas and Nike on China's largest e-commerce platform, Alibaba's Tmall, declined significantly in April 2021.⁴⁵⁴

U.S. companies have self-censored or apologized to avoid similar backlash in other circumstances. For instance, in 2019, during its annual shoe-design competition, Vans, a U.S. manufacturer of skateboarding shoes and related apparel, reportedly removed a submission from its website that described both a flower symbol of Hong Kong and protesters wearing gas masks, goggles and hard hats.⁴⁵⁵ In 2018, Gap Inc., a U.S. clothing retailer, apologized after a photo was posted online of a T-shirt sold in Canada featuring a map of China omitting Taiwan, as well as China's South China Sea and "Southern Tibet" territorial claims.⁴⁵⁶

Hotel and Accommodation Industry

U.S. multinational corporations in the hotel and accommodation industry have also experienced extraterritorial censorship by the Chinese government. The Chinese government shut down Marriott's website in China in January 2018 over an online customer survey which listed Tibet, Taiwan, Hong Kong, and Macau as separate countries. Marriott quickly apologized and condemned "separatists" in China.⁴⁵⁷ The company also fired a social media manager for "liking" a tweet praising Marriott for calling Tibet a country.⁴⁵⁸ China's Cyberspace Administration said the company had "seriously violated national laws and hurt the feelings of the Chinese people." Echoing the Chinese government's response, some Chinese travelers canceled their reservations.⁴⁵⁹ A related example is that in 2019, the Stockholm Sheraton (owned by Marriott) cancelled its celebration of Taiwan's Double Ten national holiday, following pressure from the Chinese embassy. The celebration was moved to a local museum instead.⁴⁶⁰

Other Industries

There are also examples of U.S. firms operating in other manufacturing and services industries self-censoring or experiencing China's extraterritorial censorship. In August 2019, the global "Big 4" accounting firms, namely, Deloitte, EY, KPMG, and PwC, distanced themselves from a newspaper advertisement in which people claiming to be their employees demonstrated support for protesters in Hong Kong. In particular, PwC noted that it firmly opposed "any action and statement that challenge national sovereignty."⁴⁶¹ In April 2018, the Civil Aviation Administration of China sent letters to major U.S. airlines, including United Airlines, Delta, and American Airlines, threatening to label them as "dishonest" under China's "social credit" system if they did not make changes on their websites to

⁴⁵³ Westcott and He, "H&M and Nike Are Facing a Boycott," March 26, 2021.

⁴⁵⁴ King, "Adidas and Nike See Chinese Sales Plummet," May 7, 2021.

⁴⁵⁵ Holman, "Vans Is Latest U.S. Company Caught Up," October 7, 2019.

⁴⁵⁶ Denyer, "Gap Apologizes to China over Map on T-Shirt," May 15, 2018.

⁴⁵⁷ Haas, "Marriott Apologises to China," January 12, 2018; Marriott International, "Statement from Arne Sorenson, President and CEO, Marriott International, Inc.," January 11, 2018.

⁴⁵⁸ Roth, "For NBA's Quandary over China, Stand with Human Rights," October 8, 2019.

⁴⁵⁹ Haas, "Marriott Apologises to China over Tibet and Taiwan Error," January 12, 2018.

⁴⁶⁰ Strong, "China Forces Taiwan National Day Reception out of Stockholm Sheraton," October 5, 2019.

⁴⁶¹ Toh, "'Big 4' Accounting Firms Are on the Defensive," August 19, 2019.

declare Hong Kong, Taiwan, and Macau as part of China.⁴⁶² In 2019, Tiffany & Co., a U.S. jewelry retailer, removed a photo from its tweets of a woman covering one eye, which many Chinese netizens considered to evoke the image of a woman who had been shot in one eye during the Hong Kong protests.⁴⁶³ In 2021, Kodak deleted a post from its Instagram feed featuring photos from Xinjiang and making references to the Chinese government's crackdown on the Uyghurs after criticism from Chinese social media.⁴⁶⁴

⁴⁶² Roth, "For NBA's Quandary over China" October 8, 2019; The Civil Aviation Administration of China, "Notice on Changing the Contents," April 25, 2018.

⁴⁶³ Qin and Creswell, "China Is a Minefield," October 8, 2019.

⁴⁶⁴ Collman, "Kodak Deletes Instagram Post by Photographer," July 22, 2021.

Chapter 4

Censorship-Related Policies and Practices in Other Key Markets that Affect U.S. Businesses

Introduction

The five markets presented in this chapter (Russia, Turkey, Vietnam, India, and Indonesia)⁴⁶⁵ use a variety of policies and practices to operationalize censorship and suppress certain types of speech, including laws and regulations that target speech, and actions in the form of internet shutdowns, and internet blocking and throttling.⁴⁶⁶ These policies and practices, coupled with internet intermediary rules and data localization and local presence requirements, significantly inhibit U.S. trade and investment in these key markets. Such policies and practices have evolved to become more restrictive in all key markets from 2016 to 2020.⁴⁶⁷

Many of these markets have introduced new practices, policies, and/or amendments to existing policies that increased censorship in sectors such as social media, streaming video, online content, and internet search. In most cases, governments in these markets also require the cooperation of other nongovernmental actors such as firms (both state-owned and private) to help implement these policies, with enabling policies playing a role in compelling firms to comply with censorship. In addition, policies often contain vague definitions of prohibited speech, giving broad discretion to enforcers, and may be accompanied by heavy fines and short compliance times, which contribute to uncertainty about speech and lead to self-censorship. Unlike China, almost all policies in these five markets are focused on domestic speech rather than speech occurring abroad. As such, the censorship described in this chapter is not typically extraterritorial in nature.⁴⁶⁸

Overview of Market Conditions and Censorship Policies and Practices

As discussed in chapter 1, these markets were selected because of their wide-ranging and impactful censorship policies and practices. These countries were also chosen for their potential as export markets and investment destinations for U.S. firms due to the size of their markets. Censorship restrictions in

⁴⁶⁵ See chapter 1 for a discussion of market selection. These markets are presented in this order based on their degree of policy restrictiveness and likely relevance for U.S. businesses' trade and investment.

⁴⁶⁶ Chapter 2 of this report contains a more detailed discussion of these censorship categories.

⁴⁶⁷ While this chapter primarily focuses on policies from 2016 to 2020, recent developments in 2021 are also described where applicable. Older policies, enacted before 2016, are also noted when they are relevant to the evolution of the current policy environment.

⁴⁶⁸ Part 1 of this report does not attempt to estimate the effects of any of these policies on U.S. firms, in terms of costs or other quantitative factors. The costs of policies and their implementation will be discussed in part 2.

Russia were mentioned as the most problematic for U.S. firms after China,⁴⁶⁹ while Turkey was noted as having a large increase in censorship restrictions from 2016 to 2020.⁴⁷⁰ Vietnam was stated to have followed the Chinese censorship model most closely.⁴⁷¹ India ranks as less restrictive on some indices but has a worsening censorship environment despite being a large market for U.S. firms.⁴⁷² Finally, Indonesia has recently enacted new policies that increase censorship and create difficulties for U.S. firms to enter the market.⁴⁷³

These five markets are significant for U.S. trade and investment, although U.S. firm participation varies widely (table 4.1). All five markets are classified by the International Monetary Fund as emerging markets (based on GDP per capita, economic growth, and other factors).⁴⁷⁴ These markets also feature large and growing populations of internet users (most notably India, where 41 percent of the population of 1.4 billion have access to the internet), and they generally rank in the top third in the United Nations Conference on Trade and Development (UNCTAD) index of technology and innovation.⁴⁷⁵ U.S. services exports in sectors potentially affected by censorship (illustrated here as the sum of U.S. exports of audiovisual services and information services) totaled over \$100 million in three of these markets (Russia, India, and Turkey) in 2020.⁴⁷⁶ Unlike in China, U.S. firms are market leaders in social media, internet search, and video streaming in all these markets, although they face strong competition from domestic firms in Russia.

According to a range of indices, the key markets identified in this report experience levels of censorship that are significantly more restrictive than markets in North America and Europe. However, there is also wide variation in censorship activities and intensity across the key markets. For example, Vietnam ranks as the most restrictive of the five markets on both the Freedom House index of internet freedom and the Reporters Without Borders (RSF) index of press freedom, while Turkey ranks as the most restrictive

⁴⁶⁹ USITC, hearing transcript, July 1, 2021, 103 (testimony Maria Repnikova, Georgia State University); USITC, hearing transcript, July 1, 2021, 174 (testimony of Tim Brightbill, Georgetown University Law Center).

⁴⁷⁰ Industry representative, interview by USITC staff, August 16, 2021; USITC, hearing transcript, July 1, 2021, 170–171 (testimony of Rachael Stelly, Computer and Communications Industry Association); USITC, hearing transcript, July 1, 2021, 254–55 (testimony of Nigel Cory, ITIF).

⁴⁷¹ Industry representative, interview by USITC staff, August 11, 2021; Sherman, *Vietnam’s Internet Control: Following in China’s Footsteps?* December 11, 2019.

⁴⁷² USITC, hearing transcript, July 1, 2021 (testimony of Nigel Cory, ITIF); USITC, hearing transcript, July 1, 2021, 254–56 (testimony of Daphne Keller, Stanford Cyber Policy Center); HRW, written submission to the USITC, July 23, 2021.

⁴⁷³ USITC, hearing transcript, July 1, 2021, 252 (testimony of Nigel Cory, ITIF); USITC, hearing transcript, July 1, 2021, 253 (testimony of Rachael Stelly, Computer and Communications Industry Association); AmCham Indonesia, written submission to the USITC, July 23, 2021.

⁴⁷⁴ Vietnam is sometimes classified as frontier market rather than an emerging market (such as by S&P). IMF, “World Economic Outlook,” 2019, table A; S&P, “S&P Dow Jones Indices’ 2020 Country Classification,” August 19, 2020.

⁴⁷⁵ ITU, “Percentage of Individuals Using the Internet,” accessed August 23, 2021; UNCTAD, *Technology and Innovation Report 2021*, 2021, 137–140.

⁴⁷⁶ USDOC, BEA, “Table 2.2. U.S. Trade in Services, by Type of Service and by Country or Affiliation,” July 2, 2021.

on the broader World Justice Project's (WJP) index of freedom of expression.⁴⁷⁷ India and Indonesia are typically scored as less restrictive on these indices compared to other key markets.

Table 4.1 Market size and freedom of speech indicators, 2020 and 2021 (latest year available)

Country	GDP per capita, 2020 (\$ current)	Population, 2020 (million)	Internet users as a share of population, 2021 (%)	U.S. exports audiovisual services and information services, 2020 (million \$)	UNCTAD 2021 Readiness for Frontier Technologies Index	Freedom House 2021 country ranking, Limits on Content score	RSF 2021 World Press Freedom Index country ranking	WJP 2021 Freedom of Expression country ranking
Russia	10,127	144	85.0	130	0.75	9	31	19
Turkey	8,538	84	77.7	85	0.55	9	28	6
Vietnam	2,786	97	70.3	18	0.49	3	6	27
India	1,901	1,380	41.0	109	0.62	30	39	65
Indonesia	3,870	274	53.7	28	0.40	23	62	97

Sources: World Bank, "GDP per capita (current US\$)," DataBank: World Development Indicators database, accessed August 26, 2021; World Bank, "Population, Total," DataBank: World Development Indicators database, accessed August 26, 2021; Freedom House, "Freedom on the Net 2021: Countries," accessed October 22, 2021; Reporters Without Borders (RSF), "2021 World Press Freedom Index," accessed October 19, 2021; World Justice Project (WJP), "WJP Rule of Law Index: Current and Historical Data," accessed October 3, 2021; ITU, "Percentage of Individuals Using the Internet," accessed August 23, 2021; UNCTAD, *Technology and Innovation Report 2021*, 2021, 137–140; USDOC, BEA, "Table 2.2. U.S. Trade in Services, by Type of Service and by Country or Affiliation," July 2, 2021.

Notes: Data on internet users for India are from 2019. U.S. export totals exclude data suppressed to avoid the disclosure of data of individual companies. "Audiovisual services, total" are comprised of audiovisual production services, rights to use audiovisual products (movies and television programming, and books and sound recordings), and audiovisual originals (movies and television programming, and books and sound recordings). "Information services" are comprised of news agency services, and database and other information services. UNCTAD Readiness for Frontier Technologies Index (published in UNCTAD's *Technology and Innovation Report 2021*) assesses countries' ability to use, adopt, and adapt 11 frontier digital technologies, such as artificial intelligence and internet-of-things technologies. The index provides results for 158 countries, with the United States, Switzerland, and the United Kingdom receiving the highest scores on a scale of 0 to 1; a lower score indicates a low level of readiness and a higher score indicates a high level of readiness. "Freedom House 2021 country ranking, Limits on Content score" is a USITC estimate where (1 = least free) out of 70 countries. "RSF 2021 World Press Freedom Index country ranking" is based on the Reporters Without Borders (RSF) World Press Freedom Index, modified by the USITC: the index ranks the degree of freedom available to journalists in 180 countries. Country ranking worst = 1. "WJP 2021 Freedom of Expression country ranking" is the World Justice Project "Factor 4.4: freedom of opinion and expression is guaranteed" ranking out of 139 countries, modified by the USITC: low number ranking indicates fewer legal guarantees for freedom of expression. Country ranking worst = 1.

For the five markets described in this chapter, the most common types of censorship-related policies and practices are internet intermediary rules, internet shutdowns, and internet blocking, filtering, and throttling, although other types of policies are also present in these markets.⁴⁷⁸ However, while markets may use similar types of policies, these policies are used to different extents in various markets. For example, Russia has been cited as a particularly dangerous country for journalists,⁴⁷⁹ and leads other

⁴⁷⁷ Freedom House, "Freedom on the Net 2021: Countries," accessed October 22, 2021; RSF, "2021 World Press Freedom Index; Countries and Regions," accessed October 19, 2021; WJP, "WJP Rule of Law Index: Current and Historical Data," accessed October 3, 2021.

⁴⁷⁸ The censorship policies and practices used by these markets can be classified into several categories, as described in detail in chapter 2. These categories include direct policies and practices that target certain categories of speech; premarket review of content; internet shutdowns; internet blocking, filtering, and throttling; and internet intermediary rules as well as enabling policies and practices such as data localization and local presence requirements; and foreign investment and market access restrictions.

⁴⁷⁹ USITC, hearing transcript, July 1, 2021, 158 (testimony of Marina Repnikova, Georgia State University).

markets by a wide margin in the number of content removal requests sent to Google.⁴⁸⁰ At the same time, India is the global leader in internet shutdowns (mostly at the local or municipal level) and also had the largest share of requests for removal of data from Facebook.⁴⁸¹

Russia

Russia's legislative efforts to censor media and the internet date from the country's 2012 "Blacklist Law" (Federal Law 139-FZ), an amendment to its 2006 internet regulations and data protection law (Federal Law 149-FZ), which created a blacklist of internet sites that contained prohibited speech.⁴⁸² Censorship efforts have increased in the past five years with the passage of a significant number of laws. As the Russian government continues to expand its internet censorship activities, its rankings on internet and press freedom have remained among the worst on multiple indices. In 2021, the RSF press freedom index placed Russia as the 31st most restrictive market in the world.⁴⁸³ Russia was also scored as the 9th most restrictive market in terms of limits on content by Freedom House in its *Freedom on the Net 2021* report, and was categorized as "not free."⁴⁸⁴ Russian enforcement of censorship-enabling laws affects many firms, some of which are U.S.-headquartered (particularly Google,⁴⁸⁵ Facebook,⁴⁸⁶ Twitter, and LinkedIn). U.S. firms have received a large number of content removal requests from the Russian government (authorized through internet intermediary rules), have been affected by internet shutdowns and internet blocking and throttling, and have had different experiences with compliance and noncompliance with censorship-enabling policies.⁴⁸⁷ The Russian government is also working to expand the domestic use of technologies from Russian-headquartered competitors to U.S. firms such as Yandex (for internet search) and VKontakte (social media and communications), which are closely tied to the government and easier to censor.⁴⁸⁸

⁴⁸⁰ Google does not currently provide internet search services in China but does provide internet search services in all other key markets. For more information about the history of Google's operations in China, see chapter 3. Google, Transparency Reports, accessed August 11, 2021.

⁴⁸¹ Access Now, "Internet Shutdown Tracker," accessed September 27, 2019, and August 4, 2021; Facebook, Facebook Transparency Center, accessed August 5, 2021.

⁴⁸² Government of Russia, Federal Law No. 149-FZ, July 27, 2006; Government of Russia, Federal Law No. 139-FZ, July 28, 2012.

⁴⁸³ RSF, "Russia: Stifling Atmosphere for Independent Journalists," accessed August 12, 2021; Statista Research Department, "Press Freedom Index in Russia from 2013 to 2021," May 25, 2021.

⁴⁸⁴ Johnson, "Degree of Internet Freedom in Selected Countries According to the Freedom House Index," February 10, 2021; Freedom House, "Freedom on the Net 2021: Countries," accessed October 22, 2021.

⁴⁸⁵ Alphabet is the parent company for Google, which also owns YouTube. In this chapter, Alphabet's products such as the search engine Google or video hosting site YouTube are referred to separately when applicable.

⁴⁸⁶ As announced in October 2021, Meta has become the parent company of Facebook. Facebook and Meta's other products, such as Instagram and WhatsApp, are typically referred to separately when applicable in this chapter. See Meta, "Introducing Meta," October 28, 2021.

⁴⁸⁷ See chapter 2 for more information about content removal requests by country.

⁴⁸⁸ Yandex is a Russian-headquartered, Dutch-domiciled multinational firm. Troianovski, "China Censors the Internet: So Why Doesn't Russia?" February 21, 2021; Meduza, "Search Engine Yandex Caves to Russia's Federal Censor," August 30, 2018.

Summary of Key Findings

- Since 2012, the Russian government has increasingly passed laws amending its internet regulation legislation (Federal Law 149-FZ) to ban certain types of speech and instituted certain censorship-enabling measures such as mandating data localization and encryption backdoors, and restricting foreign ownership of media.
- Roskomnadzor (the Federal Service for Supervision of Communications, Information Technology and Mass Media) is the primary governmental actor enforcing censorship policies.
- U.S. firms operating in the social media, internet search, video services, and mobile applications sectors have experienced multiple enforcement actions against them under the amendments to Federal Law 149-FZ and have noted significant compliance burdens. Unlike other markets in this chapter, U.S. firms also face competition from the country's domestic firms in these sectors.

Sectors Affected by Censorship

Russia is a large market for both U.S. and Russian digital firms due to its increasing number of internet users. With approximately 124.0 million internet users in 2021 (a 20.3 percent increase since 2016), Russia has the eighth-largest online population in the world.⁴⁸⁹ While still lower than other large markets, the number of active social media users in Russia increased from 48.0 percent (68.5 million) of the population in 2016 to 68.0 percent (99.0 million) in 2021.⁴⁹⁰

U.S. firms compete against Russian domestic firms in several digital sectors that are affected by censorship, including social media, video services, internet search, and mobile applications. In 2020, the top five most-used social media platforms in Russia by penetration rate were split between three U.S. firms—YouTube (85.4 percent), WhatsApp (75.8 percent), and Instagram (61.2 percent)—and two Russian firms Vkontakte (VK, 78.0 percent) and Odnoklassniki (OK, 47.1 percent).⁴⁹¹ Russian firms constitute the bulk of popular digital video services, with Netflix being the only U.S. firm among the top five in 2021.⁴⁹² The internet search market is also very competitive, with Google (53.6 percent) and Russia's Yandex (44.4 percent) competing against each other for market share.⁴⁹³ The top five mobile apps by monthly active users were split among firms from three countries: WhatsApp and Instagram

⁴⁸⁹ Within Russia, the internet penetration rate stands at 85 percent in 2021, showing stable growth from 72 percent in 2016. Kemp, "Digital 2016: Russian Federation," January 29, 2016; Kemp, "Digital 2021: The Russia Federation," February 11, 2021; Johnson, "Countries with the Highest Number of Internet Users," July 19, 2021.

⁴⁹⁰ In 2021, the regions of Western Europe (Austria, Belgium, France, Germany, Liechtenstein, Luxembourg, Monaco, Netherlands, and Switzerland) and Northern Europe (Denmark, Estonia, Finland, Iceland, Ireland, Latvia, Lithuania, Norway, Sweden, and United Kingdom) had 79 percent of internet users on social media and the region of Northern America (Canada and United States) had 74 percent. Kemp, *Digital 2016: Russian Federation*, January 29, 2016; Kemp, *Digital 2021: The Russia Federation*, February 11, 2021.

⁴⁹¹ Market penetration measures the percentage of the population aged 16–64 using a certain product. Many users will have multiple social media accounts, so the market penetrations of different services are not cumulative. Kemp, *Digital 2021: The Russia Federation*, February 11, 2021.

⁴⁹² The top five platforms were IVI (34.3 percent), Kinopoisk (20.8 percent), Okko (11 percent), Netflix (9.1 percent) and Wink (6.7 percent). Elagina, "Most Popular Online Video Services," March 24, 2021.

⁴⁹³ Statcounter, "Search Engine Market Share Russian Federation," accessed August 4, 2021.

(United States), Sberbank Online and VK (Russia), and Viber (Japan).⁴⁹⁴ However, Russian firms lead when mobile apps are ranked by consumer expenditure. In 2020, the top five mobile apps by consumer expenditure were all Russian: VK, Boom: Music Player, IVI (a video streaming service), Yandex Music, and OK.⁴⁹⁵

Censorship-Related Policies and Practices

The internet in Russia was reportedly relatively free of censorship before 2012, after which the Russian government enacted numerous laws to increasingly restrict content as well as access to content. In 2012, the “Blacklist Law” (Federal Law 139-FZ) amended articles of Federal Law 149-FZ from 2006, prohibiting certain content and giving Roskomnadzor the power to ban certain websites that contain prohibited information.⁴⁹⁶ Russia’s censorship-related policies and practices have evolved since 2012 and include more recent laws establishing censorship-enabling measures such as data localization requirements, foreign ownership requirements, restrictions on encryption, and prohibitions against the dissemination of “fake news,” among others (table 4.2).⁴⁹⁷

Table 4.2 Selected censorship-related amendments to Russia’s 2006 Federal Law 149-FZ

Date passed	Amendment to 149-FZ	Description
July 28, 2012	Federal Law 139-FZ	Established a database of websites that contain restricted speech, known as the “Blacklist Law.”
December 28, 2013	Federal Law 398-FZ	Bans speech advocating for mass riots, extremist activities, and participation in illegal public gatherings.
July 21, 2014	Federal Law 242-FZ	Established data localization requirements.
July 6, 2016	Federal Law 374-FZ	“Yarovaya Amendments” established additional data localization requirements and mandates encryption backdoors.
January 5, 2017	Federal Law 87-FZ	Established restrictions on foreign ownership of media companies.
April 23, 2018	Federal Law 102-FZ	Restricts speech that discredits the reputation of a person or firm.
March 18, 2019	Federal Law 28-FZ	Bans speech that disrespects the state or officials.
March 18, 2019	Federal Law 31-FZ	Bans false information that is a detriment to citizen health, property, society, or public order (known as the “fake news” law).
May 1, 2019	Federal Law 90-FZ	Established a new Domain Name System (DNS) in Russia and requires internet service providers (ISPs) to install equipment for content filtering.
December 2, 2019	Federal Law 426-FZ	Requires media companies classified as “foreign agents” to indicate this on every publication; foreign agents have restricted access to government officials or organizations.

Source: Compiled by USITC.

⁴⁹⁴ Kemp, *Digital 2021: The Russia Federation*, February 11, 2021.

⁴⁹⁵ Kemp, *Digital 2021: The Russia Federation*, February 11, 2021.

⁴⁹⁶ Federal Law 149-FZ is the overarching law that regulates internet use and data protection in Russia. World Intermediary Liability Map, Federal Law No. 139-FZ. (“Blacklist law”), July 28, 2012; Government of Russia, Federal Law 139-FZ, July 28, 2012; Government of Russia, Federal Law No. 149-FZ, July 27, 2006.

⁴⁹⁷ Federal Law 135-FZ, unrelated to Federal Law 149-FZ, additionally restricts the content of LGBT-related content. For more information on censorship of LGBT content, see box 2.1 in chapter 2. Government of Russia, Federal Law No. 135-FZ, June 29, 2013; HRW, “Online and On All Fronts,” July 18, 2017.

Laws That Suppress Certain Categories of Speech

Following the 2012 Blacklist Law that allowed Roskomnadzor to create and maintain a database of websites that contain restricted speech, Russia enacted several laws that suppress certain categories of speech. Passed in 2013, Federal Law 398-FZ bans information advocating for mass riots, extremist activities, and participation in mass public activities.⁴⁹⁸ Russia's Presidential Human Rights Council noted concern for the potentially selective enforcement of this broad law as well as its restrictive nature.⁴⁹⁹ Federal Law 102-FZ, passed in 2018, allows the government to block websites that discredit the reputation or honor of a Russian citizen or business.⁵⁰⁰ The following year, Russian president Vladimir Putin signed two laws establishing additional types of speech and information to be censored. Federal Law 28-FZ restricts speech that disrespects the Russian government and its officials.⁵⁰¹ Signed on the same day, Federal Law 31-FZ, known as the "fake news" law, broadly defines the speech and information that could be censored by the Russian government for containing misinformation.⁵⁰² In March 2021, Roskomnadzor threatened to shut down Twitter's ability to operate in Russia due to Twitter's decision not to remove thousands of posts the authority viewed to contain these restricted categories of speech.⁵⁰³ These laws form a legal basis for Roskomnadzor to enforce censorship policies and practices in the categories below.

Internet Shutdowns

In November 2019, Federal Law 90-FZ increased the Russian government's authority to control access to the internet, furthering Russia's ability to censor content.⁵⁰⁴ The law expanded Russia's control over the internet by creating a nationalized Domain Name System (DNS) separate from the world wide web that would strengthen Russia's ability to restrict access to the world wide web by routing internet traffic through Russian-controlled exchange points rather than foreign points that are harder to control.⁵⁰⁵

Russia has used government orders to initiate multiple regional internet shutdowns in the form of network blackouts, due to political protests, that have impacted U.S. firms. The first time the Russian

⁴⁹⁸ Government of Russia, Federal Law No. 398-FZ, December 28, 2013.

⁴⁹⁹ HRW, "Online and On All Fronts," July 18, 2017.

⁵⁰⁰ World Intermediary Liability Map, "Federal Law No. 102-FZ of 23.04.2018" April 23, 2018; Government of Russia, Federal Law No. 102-FZ, April 23, 2018.

⁵⁰¹ Government of Russia, Federal Law No. 28-FZ, March 18, 2019.

⁵⁰² Government of Russia, Federal Law No. 31-FZ, March 18, 2019; Library of Congress, "Russia: Russian President Signs Anti-fake News Laws," April 11, 2019; Internet Association, written submission to the U.S. Trade Representative, October 9, 2020, 90; ITIC, written submission to the U.S. Trade Representative, October 9, 2020, 46.

⁵⁰³ Weir, "First Step: Threaten to Ban Twitter," March 2021.

⁵⁰⁴ CFR, "The Putin Regime Will Never Tire," February 22, 2021; Government of Russia, Federal Law No. 90-FZ, May 1, 2019; Internet Association, written submission to the U.S. Trade Representative, October 9, 2020, 90; Information Technology Industry Council, written submission to the U.S. Trade Representative, October 9, 2020, 46.

⁵⁰⁵ Government of Russia, Federal Law No. 90-FZ, April 16, 2019, art. 2(4); Internet Association, written submission to the U.S. Trade Representative, October 9, 2020, 90; ITIC, written submission to the U.S. Trade Representative, October 9, 2020, 46; HRW, "Russia: Growing Internet Isolation, Control, Censorship," June 18, 2020; BBC, "Russia Internet: Law Introducing New Controls," November 1, 2019; Internet Governance Project, "Federal Law dated 01-05-2019 No. 90-FZ," May 1, 2019.

government implemented regional network blackouts was for 13 days in October 2018—it ordered mobile operators to cut most access to mobile data services in the Ingushetia region in response to political protests.⁵⁰⁶ During the second incident, in August 2019, the government jammed mobile internet services during opposition protests in Moscow, with the disruption lasting only a few hours but covering a large area of the Russian capital.⁵⁰⁷ Social media platforms such as Facebook and Twitter were affected as all users in those areas could not access their platforms.⁵⁰⁸

Internet Blocking and Throttling

The laws discussed in the sections above also allow the Russian government to block, filter, and throttle individual websites and services.⁵⁰⁹ Roskomnadzor has blocked websites for having prohibited material, including “extremist content.” However, such content encompasses various vague topics (e.g., LGBT content directed toward children), and can be used as justification by authorities to block sites or administer pressure to restrict content in a wide variety of areas.⁵¹⁰ In 2020 alone, one report estimated 272,500 individual cases of website blocking or banning by the Russian government.⁵¹¹ When blocking websites, Roskomnadzor usually sends a notification directly or through the internet service provider notifying the website’s administrators to remove the prohibited content within three days or face repercussions. When content is considered “extremist,” however, sites may be blocked without prior notice, as Federal Law 90-FZ allows such content to be blocked as quickly as possible.⁵¹² This legislation grants Roskomnadzor the ability to censor certain banned content directly (instead of relying on systems that go through an intermediary, such as notice and takedown) by requiring internet service providers (ISPs) to install equipment allowing the government to directly censor content using deep packet inspection.⁵¹³

Firms that fail to block illegal content on websites can face several possible repercussions. The website could be added to Roskomnadzor’s “out-load” list (a special database of prohibited websites, which network operators are supposed to download twice a day and block the pages included), experience

⁵⁰⁶ Roache, “How Russia Is Stepping Up,” April 1, 2021; Kolomychenko, “Russia Stifled Mobile Network,” November 16, 2018.

⁵⁰⁷ Roache, “How Russia Is Stepping Up,” April 1, 2021; *Moscow Times*, “Authorities Jammed Moscow’s Mobile Internet,” August 7, 2019.

⁵⁰⁸ Kolomychenko, “Russia Stifled Mobile Network,” November 16, 2018.

⁵⁰⁹ As discussed in chapter 2, bandwidth throttling is the intentional slowing or speeding of an internet service by an internet service provider (ISP).

⁵¹⁰ Some of the sensitive topics that fall under extremist content are political, economic, and social topics such as poor governance, corruption, the conflict in Ukraine, the annexation of Crimea, human rights violations, religion, the LGBT community, etc. Freedom House, “Freedom on the Net 2020: Russia,” accessed August 10, 2021; Turovsky, “This Is How Russian Internet Censorship Works,” August 13, 2015.

⁵¹¹ Statista Research Department, “Internet Freedom Violations in Russia 2020,” May 5, 2021; Agora International Human Rights Group, “Internet Freedom 2020: The Second Wave of Repressions,” March 2021.

⁵¹² Turovsky, “This Is How Russian Internet Censorship Works,” August 13, 2015.

⁵¹³ Deep packet inspection allows the examination of the full contents of data that pass through a certain point on the internet. HRW, “Russia: Growing Internet Isolation, Control, Censorship,” June 18, 2020; BBC, “Russia Internet: Law Introducing New Controls,” November 1, 2019; Georgia Tech, “Federal Law FZ-90 Summary,” accessed August 12, 2021; CFR, “The Putin Regime Will Never Tire,” February 22, 2021; Chickowski, “What is Deep Packet Inspection?” October 2, 2020.

throttling (slowing of their connection), or face fines.⁵¹⁴ Roskomnadzor blocked Twitter in March 2021 for failing to remove censored content.⁵¹⁵ In May 2021, Roskomnadzor fined Google \$79,000 (6 million rubles) and Facebook \$341,000 (26 million rubles) for failing to remove censored content. Google was also threatened with throttling if it failed to comply with removal notices within 24 hours.⁵¹⁶

U.S. firms' access to the Russian market was also adversely affected when third-party firms were impacted under Federal Law 374-FZ (discussed in more detail below). Telegram, a UK-based social media platform popular in Russia, was blocked by Roskomnadzor from 2018 to 2020 due to the company's refusal to share its encryption keys. Telegram, which used web-hosting services provided by Google and Amazon Web Services, utilized a process known as "IP hopping" in which the services changes IP addresses quickly to avoid the block. This resulted in 15 million internet protocol (IP) addresses hosted by Google and Amazon Web Services being blocked in Russia, many of which were used by services other than Telegram (including banks and Gmail, Google's email service).⁵¹⁷ Customers were reportedly still able to access Telegram through virtual private networks (VPNs) after the block, although Roskomnadzor threatened to remove Telegram from app stores and servers.⁵¹⁸ After two years of unsuccessful attempts to block Telegram, the firm was allowed to resume full operations after it agreed to help the government identify and remove extremist content.⁵¹⁹

Internet Intermediary Rules

Russia has legislation that potentially enables censorship of a multitude of actors on the internet. In 2014, Federal Law 97-FZ, known as the "Bloggers Law," required blogs with more than 3,000 daily users to register with Roskomnadzor and held the bloggers liable if their content broke censorship laws.⁵²⁰ This law was partially replaced and supplemented by Federal Law 276-FZ, which prohibits all websites from allowing access to restricted content.⁵²¹ Federal Law 276-FZ also introduced measures making VPNs liable and subject to blocking if censored content is available on their networks.⁵²² In 2021, Russia blocked six VPNs operating in Russia, including three U.S.-based VPN firms (KeepSolid VPN Unlimited,

⁵¹⁴ Turovsky, "This Is How Russian Internet Censorship Works," August 13, 2015.

⁵¹⁵ Goodin, "Russia's Twitter Throttling May Give Censors Never-Before-Seen Capabilities," April 6, 2021; Shead, "Russia Says It Is Slowing Down Twitter to Protect Citizens," March 10, 2021.

⁵¹⁶ Freedom House, "Freedom on the Net 2021: Russia," accessed October 22, 2021.

⁵¹⁷ Lunden, "Russia's Telegram Ban," April 18, 2019; Griffin and Carroll, "Telegram: Russia Lifts Ban," June 18, 2020.

⁵¹⁸ VPNs route encrypted internet traffic through a server outside the country and are often used to view censored content or access blocked services. See chapter 3 for a discussion of VPN use and restrictions in China.

⁵¹⁹ Lunden, "Russia's Telegram Ban that Knocked out 15M," April 18, 2019; Griffin and Carroll, "Telegram: Russia Lifts Ban," June 18, 2020.

⁵²⁰ Coalition of Services Industries, written submission to the U.S. Trade Representative, October 9, 2020, 93; World Intermediary Liability Map, "Federal Law No. 97-FZ (Bloggers Law)," May 5, 2014; Government of Russia, Federal Law No. 97-FZ, May 5, 2014.

⁵²¹ Library of Congress, "Russia: New Legislation Restricts Anonymity of Internet Users," September 5, 2017; Government of Russia, Federal Law No. 276-FZ, July 29, 2017, arts. 1(3), 2.

⁵²² Library of Congress, "Russia: New Legislation Restricts Anonymity of Internet Users," September 5, 2017; Government of Russia, Federal Law No. 276-FZ, July 29, 2017, art. 1(3).

Speedify VPN, and IPVanish VPN).⁵²³ Similarly, Federal Law 208-FZ makes “news aggregators” possibly liable for the information they make available, despite not creating the content themselves.⁵²⁴

U.S. firms have received increasing requests from the Russian government to remove content. According to Google, the Russian government has made 86,529 removal requests from 2016 to 2020.⁵²⁵ In Google’s 2021 transparency report, the firm noted that in November 2017, Federal Law 276-FZ (discussed in more detail below) expanded the government’s scope for requesting uniform resource locators (URLs) containing material banned in Russia to be taken down.⁵²⁶ Between 2018 and 2020, Google received 1,421 requests to remove 1.6 million URLs just in response to Federal Law 276-FZ.⁵²⁷ Requests to restrict access to information continued in 2021 when U.S. firms Apple and Google limited access to a voting application in Russia and removed YouTube videos under threat from Russian authorities.⁵²⁸

Data Localization and Local Presence Requirements

Russia has enacted several laws that may enable censorship by requiring data localization, including storing metadata of communications in Russia, for internet-related companies operating in Russia. Once a firm stores data in Russia, authorities such as Roskomnadzor have easier access to that data (as firms must comply with Russian court orders to provide access to that data). Similarly, by requiring a physical presence (such as a local office or representatives) in Russia, the government can more easily compel firms to comply with its censorship policies. Noncompliance with data localization and local presence requirements can lead to fines, website blockages, or bans.⁵²⁹ The processing of personal data of Russian citizens must occur within Russia, according to the 2014 Federal Law 242-FZ.⁵³⁰ While Roskomnadzor currently allows for the mirroring of data to satisfy data storage requirements, several U.S. associations have expressed concern that the strict language of the law could be used to pressure companies to further localize data in Russia, leading to additional censorship concerns in the future.⁵³¹ Such data localization requirements are estimated to affect nearly 2.5 million companies in Russia, including U.S. firms.⁵³² Google moved some of its servers to Russia to comply with Federal Law 242-FZ in 2015.⁵³³

⁵²³ Turner, “Russia Blocks Six VPNs for ‘Violating Legislation’,” September 6, 2021.

⁵²⁴ This applies to news aggregators with Russian content, advertising, and over 1 million daily visits. Wijermars, “Russia’s Law ‘On News Aggregators’,” February 15, 2021; Government of Russia, Federal Law No. 208-FZ, June 23, 2016.

⁵²⁵ Google, “Google Transparency Report,” accessed August 4, 2021.

⁵²⁶ Google, “Google Transparency Report,” accessed August 4, 2021.

⁵²⁷ Google, “Google Transparency Report,” accessed August 4, 2021.

⁵²⁸ Hartog, “Putin’s United Russia Wins Vote,” September 20, 2021.

⁵²⁹ Sivetc, “Controlling Free Expression ‘by Infrastructure’ in the Russian Internet,” April 7, 2021; USITC hearing transcript, July 1, 2021, 176–177 (testimony of Tim Brightbill, Georgetown University Law Center).

⁵³⁰ World Intermediary Liability Map, “Federal Law No. 242-FZ,” July 21, 2014; Government of Russia, Federal Law No. 242-FZ, July 21, 2014, art. 2(1).

⁵³¹ Information Technology Industry Council, written submission to the U.S. Trade Representative, October 9, 2020, 46; Coalition of Services Industries, written submission to the U.S. Trade Representative, October 9, 2020, 92.

⁵³² Sivetc, “Controlling Free Expression ‘by Infrastructure’ in the Russian Internet,” April 7, 2021.

⁵³³ Razumovskaya, “Google Moves Some Servers to Russian Data Centers,” April 10, 2015; Government of Russia, Federal Law No. 242-FZ, July 21, 2014, art. 2(1).

The data localization requirements in Federal Law 242-FZ are part of a package of laws that, taken together, may encourage self-censorship and make it easier for the Russian government to compel firms to comply with censorship laws. For example, Russia’s 2016 Federal Law 374-FZ (also known as the “Yarovaya Amendments”) requires internet communication providers to store the content of communications for six months and the metadata and user data for one year.⁵³⁴ The law also requires telecommunication operators to store metadata for three years.⁵³⁵ Additionally, if the data are encrypted, the encryption key must be provided to the Federal Security Service (FSB).⁵³⁶ According to one nongovernmental organization (NGO), data localization requirements “facilitate mass censorship and blanket surveillance, introduce nontransparent content-blocking procedures and endanger the security and confidentiality of people’s communications online.”⁵³⁷ Other U.S. industry representatives have expressed concern that the Yarovaya Amendments, in combination with data localization, will further increase Russia’s ability to control and censor data.⁵³⁸ Saving the metadata and providing the FSB with the encryption key could reportedly give the Russian government the ability to identify individuals who post information online, which could contribute to self-censorship due to fear of arrests or harassments by Russian authorities.⁵³⁹ U.S. industry representatives have also stated that data localization in Russia has facilitated the blocking and throttling of U.S. digital services such as Twitter.⁵⁴⁰

U.S. firms have been blocked and fined for not meeting data localization requirements. LinkedIn has been completely blocked from the Russian market since 2016 for not complying with local data storage laws.⁵⁴¹ At that time the firm was blocked, LinkedIn had around 6 million Russian users. While LinkedIn tried to negotiate reentry into the market a year later, they were unsuccessful.⁵⁴² Facebook and Twitter, while not blocked, have been fined for failing to comply with Federal Law 374-FZ.⁵⁴³ Both companies were fined nearly \$63,000 (4 million rubles) in February 2020, the highest fines the Russian government had ever levied for violations related to online activity.⁵⁴⁴ Roskomnadzor has stated that it will levy even higher fines if the companies continue to not comply.⁵⁴⁵ Additionally, in July 2021, Federal Law 236-FZ was enacted, establishing local presence requirements for foreign internet companies with more than 500,000 daily Russian users. Beginning on January 1, 2022, foreign internet companies subject to this law will need to establish a branch, representative office, or legal entity in Russia. Failure to establish a

⁵³⁴ Government of Russia, Federal Law No. 374-FZ, July 6, 2016, art. 15(1).

⁵³⁵ Government of Russia, Federal Law No. 374-FZ, July 6, 2016, art. 13(2).

⁵³⁶ World Intermediary Liability Map, “Federal Law #374-FZ,” July 7, 2016; Government of Russia, Federal Law No. 374-FZ, June 24, 2016, art. 15(3).

⁵³⁷ HRW, “Russia: Growing Internet Isolation, Control, Censorship,” June 18, 2020.

⁵³⁸ ITIC, written submission to the U.S. Trade Representative, October 9, 2020, 46; Internet Association, written submission to the U.S. Trade Representative, October 9, 2020, 89; CSI, written submission to the U.S. Trade Representative, October 9, 2020, 93.

⁵³⁹ HRW, “Online and On All Fronts,” 2017.

⁵⁴⁰ USITC, hearing transcript, July 1, 2021, 176-177 (testimony of Tim Brightbill, Georgetown University Law Center); USITC, hearing transcript, July 1, 2021, 240 (testimony of Nigel Cory, ITIF).

⁵⁴¹ The service was reportedly still accessible in Russia through VPNs. BBC, “LinkedIn Blocked by Russian Authorities,” November 17, 2016.

⁵⁴² O’Driscoll, “List of Websites and Apps Blocked in Russia,” November 7, 2020.

⁵⁴³ AP, “Twitter, Facebook Fined,” February 13, 2020.

⁵⁴⁴ AP, “Twitter, Facebook Fined,” February 13, 2020.

⁵⁴⁵ In September 2021, a Russian court fined Facebook \$287,850 (21 million rubles), and Twitter \$68,100 (5 million rubles) for failing to remove illegal content. AP, “Twitter, Facebook Fined,” February 13, 2020; Reuters, “Russia Fines Facebook, Twitter,” September 14, 2021.

local presence could ultimately result in Roskomnadzor restricting access to the internet website or service.⁵⁴⁶

Foreign Direct Investment and Market Access Restrictions

Russia has potentially censorship-enabling laws that limit foreign ownership and require self-identification of media companies that receive foreign financial investment. Passed in 2017, Federal Law 87-FZ established the rules and regulations that restrict foreign ownership of media companies in Russia.⁵⁴⁷ In 2019, Russia's constitutional court upheld the legality of the 20 percent limitation on foreign ownership of media companies in Russia.⁵⁴⁸ Also in 2019, Russia passed Federal Law 426-FZ, requiring media companies, among others, that receive any foreign financial input to register as "foreign agents."⁵⁴⁹ Media companies designated as "foreign agents" must mark every publication, including internet articles, with a notice that they were produced by a "foreign agent."⁵⁵⁰ Additionally, Roskomnadzor can restrict access to the content of media companies that are designated as "foreign agents" and do not post the notice. Firms or organizations designated as foreign agents are subject to additional financial oversight and regulations,⁵⁵¹ and one source noted that they had difficulty gaining access to government officials or organizations.⁵⁵² In 2021, Radio Free Europe/Radio Liberty (a private, nonprofit news organization funded by the U.S. government) was the subject of 520 cases against it for violations of the "foreign agents" law with fines totaling \$2.3 million (177 million rubles).⁵⁵³ Radio Free Europe/Radio Liberty's offices were searched and bank accounts in Russia were frozen the same year as a result of the unpaid fines, although the service continues to operate in Russia.⁵⁵⁴

⁵⁴⁶ Government of Russia, Federal Law No. 236-FZ, July 1, 2021; PwC, "Law on Landing for Foreign Internet Entities," September 2021.

⁵⁴⁷ Naumov, "Major Russian Legislation Changes for 2017," December 2017; Government of Russia, Federal Law No. 87-FZ, May 1, 2017.

⁵⁴⁸ Naumov, "Major Russian Legislation Changes for 2017," December 2017; *Moscow Times*, "Restricting Foreign Ownership of Media Is Legal," January 17, 2019.

⁵⁴⁹ World Intermediary Liability Map, "Federal Law No. 426-FZ," December 2, 2019; Government of Russia, Federal Law No. 426-FZ, December 2, 2019.

⁵⁵⁰ Under Russian law, the government labels individuals as "foreign agents," if they work with foreign media or disseminate their content and receive funding from abroad. Government of Russia, Federal Law No. 426-FZ, December 2, 2019; USDOS, DRL, *Russia 2020 Human Rights Report*, March 2021, 25; U.S. Embassy in Georgia, "How Russia's 'Foreign Agents' Law Silences Dissent," August 10, 2021; Hartman, "U.S. Calls on the Kremlin," April 22, 2021.

⁵⁵¹ Library of Congress, "Russian Federation: Restrictions on Media with Foreign Funding Imposed," May 14, 2021; Government of Russia, Federal Law No. 426-FZ, December 2, 2019; USDOS, DRL, *Russia 2020 Human Rights Report*, March 2021, 25; U.S. Embassy in Georgia, "How Russia's 'Foreign Agents' Law Silences Dissent," August 10, 2021; Hartman, "U.S. Calls on the Kremlin," April 22, 2021.

⁵⁵² Lyons and Rice-Oxley, "Harassed and Shunned, the Russians Labelled Foreign Agents," April 26, 2015.

⁵⁵³ According to one source, Radio Free Europe/Radio Liberty had the largest audience in Russia of any foreign media organization. Lawler, "Radio Free Europe Fights to Continue Operations in Russia," May 21, 2021.

⁵⁵⁴ RFE/RL's Russian Service, "RFE/RL's Russian Bank Accounts Frozen," May 14, 2021; Lawler, "Radio Free Europe Fights to Continue Operations in Russia," May 21, 2021.

Turkey

Turkey has extensive censorship-related policies and practices, including strict social media oversight, throttling, internet intermediary rules, extensive takedown requirements, local presence requirements, and short compliance times to address illegal content. Between 2014 and 2018, Turkey blocked 245,825 websites and domains, and, in 2019, online censorship substantially increased with the blocking of over 408,000 websites and domains.⁵⁵⁵ Several indices of internet and press freedom, as well as an industry representative, agree that Turkey became more restrictive between 2016 and 2020.⁵⁵⁶ The policies affecting operations of U.S. firms are considered to be vague, and they regulate platforms including social media platforms, blogs, news outlets, and video/streaming services.⁵⁵⁷

Summary of Key Findings

- Turkey has increased its use of censorship-related policies and practices over the past five years, characterized by substantial use of internet intermediary rules, website shutdowns, and arrests of journalists and activists.
- Regulation of online content in Turkey is largely governed by the 2007 Law on Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publication (Law No. 5651), which has been amended several times to expand its scope, specify penalties, and add further layers of regulatory compliance requirements.
- Law 5651 is principally administered by the Information and Communication Technologies Authority (ICTA), the Directorate of Telecommunication and Communication (TIB), and the National Intelligence Agency.
- U.S. firms operating in Turkey in the social media, streaming video, and broadcast media sectors have cited significant economic impacts due to Turkey's censorship policies and practices. In addition to notice-and-takedown requests from the government, U.S. firms have indicated that they have experienced censorship-enabling measures such as data localization and local representative requirements, as well as short turnaround times to address unlawful content, and significant fines for noncompliance.

Sectors Affected by Censorship

Turkey is a large market with a significant online population and a significant U.S. firm presence. Turkey has a population of 85.3 million and, in 2021, 77.7 percent of the population used the internet⁵⁵⁸ and

⁵⁵⁵ USDOS, DRL, *Turkey 2019 Human Rights Report*, 2019; Edwards, "What websites and online services are blocked in Turkey," October 13, 2020.

⁵⁵⁶ Industry representative, interview by USITC staff, August 16, 2021; Freedom House, "Freedom on the Net 2020: Countries," accessed September 21, 2021; RSF, "2021 World Press Freedom Index; Countries and Regions," accessed October 19, 2021.

⁵⁵⁷ OSCE, "Report of the OSCE Representative on Freedom of the Media on Turkey and Internet Censorship," January 11, 2010, 6.

⁵⁵⁸ World Bank, "Individuals Using the Internet (% of Population)—Turkey," 2019.

70.8 percent used social media.⁵⁵⁹ According to one study, Google makes up a majority of Turkey's internet search market at 76.7 percent of searches in 2021, followed by Russian firm Yandex at 18.7 percent and Yahoo at 2.4 percent.⁵⁶⁰ U.S. social media platforms frequently have a large number of users in Turkey, with YouTube leading at 62.2 million users in 2021, followed by Instagram (58.9 million users), Facebook (52.0 million users), Twitter (47.7 million users), Pinterest (24.9 million users), LinkedIn (24.7 million users), and Snapchat (20.7 million users).⁵⁶¹ Other studies estimate lower rates of U.S. social media platform use in Turkey. One report indicates that in 2021, 58.4 percent of Turkish social media users had a Facebook account and 15.6 percent had a Twitter account.⁵⁶²

In Turkey, broadcast media outlets that are reportedly "government friendly" are the most popular. However, U.S.-based Fox TV News and CNN Turk are among the top six most-viewed television news sources in Turkey along with state-owned broadcaster TRT News, and outlets reported to be government-friendly such as ATV News, Kanal D News, and NTV.⁵⁶³

Censorship-Related Policies and Practices

Social media platforms, news outlets, and video/streaming platforms are principally governed by Turkey's "Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publication" (Law No. 5651), enacted in 2007 and amended in 2013, 2016, and 2020. Law No. 5651 is administered by the Information and Communications Technologies Authority (ICTA).⁵⁶⁴ The law covers a wide variety of service providers, including social media, video streaming, and news sites, and its scope and application have expanded multiple times. Industry representatives indicated the expansion of the law has contributed to a large increase in censorship practices in Turkey over the past five years, and Turkey's scores on both Freedom House's internet freedom index and RSF's press freedom index declined between 2016 and 2020.⁵⁶⁵

⁵⁵⁹ Kemp, *Digital 2021: Turkey*, February 11, 2021.

⁵⁶⁰ Statcounter, "Search Engine Market Share in Turkey," June 2021.

⁵⁶¹ Individual users may maintain accounts in multiple social media platforms, so these figures should not be viewed as a cumulative estimate of overall users. Kemp, "Digital 2021: Turkey," February 11, 2021.

⁵⁶² Tankovska, "Facebook Users in Turkey," May 10, 2021; Tankovska, "Leading Countries Based on Number of Twitter Users," February 9, 2021.

⁵⁶³ Television is the most popular form of media, particularly news media, among Turkish citizens. The leading television news sources in Turkey include the state broadcaster Turkish Radio and Television (TRT) and private broadcasters including Turkey-based Star TV, Turkey-based Show TV, Turkey-based Kanal D, Turkey-based ATV, U.S.-based Fox, Turkey-based NTV, and U.S.-based CNN Turk. For the press, Turkey-based pro-government daily outlets include *Hurriyet*, *Milliyet*, and *Sabah*, and other press outlets include nationalist and secularist daily *Sozcu*, nationalist-leaning daily *Cumhuriyet*, and English language outlet *Daily Sabah*. BBC, "Turkey Profile—Media," June 8, 2021; Servent Yanatma, "Digital News Report: Turkey," May 20, 2018.

⁵⁶⁴ Government of Turkey, Parliament, Law No. 5651, May 4, 2007.

⁵⁶⁵ Freedom House, "Freedom on the Net 2021: Countries," accessed October 22, 2021; Reporters Without Borders, 2021 World Press Freedom Index, accessed September 24, 2021; industry representative, interview by USITC staff, August 16, 2021.

Internet Blocking, Filtering, and Throttling

In the past five years, Turkey has enacted laws that allow the government to block websites, remove content, and restrict the operations of foreign media companies with noteworthy impacts on U.S. firms. Law No. 5651 enables the Turkish ICTA to order internet service providers to remove or block online content in circumstances relating to online crime, threats to public order and security, personal privacy rights, or other pressing and immediate dangers to the Turkish state.⁵⁶⁶ Additional amendments have also expanded oversight of these takedown requests, further complicating compliance challenges.⁵⁶⁷ Additionally, qualified social media providers must report data on blocking and removal requests made by private persons, as well as compliance data for blocking and removal orders from the government every six months.⁵⁶⁸

Turkey blocks a large amount of online content; in 2019, Turkey blocked online access to at least 408,000 sites, 40,000 tweets, 10,000 YouTube videos, and 6,200 Facebook shares (including more than 130 social media and news sites) according to policy rights activist Sevket Uyanik of Istanbul University.⁵⁶⁹ On April 29, 2017, Turkey blocked Wikipedia because the company refused to remove content criticizing the Turkish government, as requested under Law No. 5651 (the block was later struck down in 2019 by Turkey's Constitutional Court and was lifted in January 2020).⁵⁷⁰ In 2020, Netflix complied with a takedown request for an episode of *Designated Survivor* in the Turkish market that depicted President Recep Tayyip Erdoğan in a negative light, and kept the French film *Cuties* off its Turkish platform due to its perceived sexual content.⁵⁷¹ Additionally, Netflix dropped production plans for a Turkish drama, *If Only*, after authorities demanded the removal of a gay character from the script.⁵⁷² The show was subsequently filmed in Spain with Spanish characters and was made available on Turkish Netflix.⁵⁷³ Finally, Fox TV's primetime news show was given a three-day suspension and fined 3 percent of their local advertising revenue for critical reporting of the government's handling of the COVID-19 pandemic.⁵⁷⁴

⁵⁶⁶ Government of Turkey, Parliament, Law No. 5651, May 4, 2007, arts. 8, 8/A, 9, 9/A (as amended by Law No. 7253).

⁵⁶⁷ One amendment to Law no. 5651 declared that internet blocking orders issued by the Information and Communication Technologies Authority (ICTA) would have to be immediately carried out without judicial oversight, and that ICTA could block a website or webpage brought to its attention through a complaint by a Turkish legal entity or government official (also without judicial oversight). Additionally, the ICTA is exempt from any investigation, unless the investigation is approved by the prime minister. Library of Congress, "Turkey: Parliament Passes Law," August 6, 2020; Government of Turkey, Parliament, Law No. 7253, July 29, 2020, art. 4 (amending Law No. 5651, art. 8).

⁵⁶⁸ Library of Congress, "Turkey: Parliament Passes Law Imposing New Obligations," August 6, 2020.

⁵⁶⁹ Edwards, "What Websites and Online Services Are Blocked in Turkey," October 13, 2020.

⁵⁷⁰ *New York Times*, "Turkey Restores Wikipedia After More than 2-Year Ban," January 15, 2020; *Application of Wikimedia Foundation, Inc. and Others*, Constitutional Court (Turkey), January 15, 2020.

⁵⁷¹ President Erdoğan and his family members have also filed takedown requests on Google. Harvard University, Berkman Klein Center for Internet and Society, Lumen Database, accessed September 2, 2021. See also HRW, "Turkey: Events of 2020," accessed on June 4, 2021.

⁵⁷² Sharpe, "Netflix Turkey Cancels New Series with Gay Character," July 22, 2020.

⁵⁷³ Lizarraga and Lombrana, "Banned Netflix Show Returns to Turkey, With Spanish Characters," August 25, 2021.

⁵⁷⁴ HRW, "Turkey: Events of 2020," accessed June 4, 2021.

Data Localization and Local Presence Requirements

The 2020 amendments to Turkey’s Law No. 5651 contain multiple additional provisions that may enable censorship. Law No. 5651 was amended on July 31, 2020 by Law No. 7253 to include local presence or representation requirements for relevant U.S. and other foreign social media, news, and media firms, as well as data reporting, data localization requirements, and a requirement to respond to content removal petitions within 48 hours.⁵⁷⁵ The amendment also outlines the fines and penalties for noncompliance (table 4.3). Social media providers above that are accessed more than 1 million times a day (which are primarily U.S. firms) are required to appoint local representatives of Turkish nationality. These local representatives are tasked with responding within 48 hours to takedown requests for content violating privacy or personal rights.⁵⁷⁶ In 2020, direct penalties for noncompliance with Law No. 5651 were added; if a firm operating a social media platform that is accessed more than 1 million times a day does not appoint a local representative, the company is subject to monetary and other economic penalties, and may be subject to throttling.⁵⁷⁷

Table 4.3 Turkish Law No. 5651 time frames for compliance and penalties for noncompliance

Time frame for compliance	Penalty for noncompliance
Local representative to be appointed within 30 days of Law No. 5651 going into effect on October 1, 2020.	10 million Turkish lira (\$1.2 million) fine.
Local representative to be appointed within 60 days of Law No. 5651 going into effect on October 1, 2020.	Tripling of the first fine: 30 million Turkish lira (\$3.6 million) fine.
Local representation to be appointed after the second fine.	Ban on advertising to all Turkish citizens.
Local representative to be appointed within three months after the second fine.	Bandwidth is reduced by 50 percent—eventually by 90 percent.

Source: Compiled by USITC.

Note: Fines amounts are specified in Law 5651, and differ slightly from those actually levied on firms. Conversion from Turkish lira to U.S. dollars based on exchange rates October 16, 2021.

U.S. social media firms have faced fines and advertising blocks for noncompliance in appointing a local representative. Facebook, YouTube (owned by Alphabet), Twitter, LinkedIn, Pinterest, Periscope (owned by Twitter), and Instagram (owned by Facebook) were fined \$1.2 million (10 million lira) each for failing to appoint a Turkish representative by November 2, 2020.⁵⁷⁸ These firms were then fined a second time on December 11, 2020, at \$3.8 million (30 million lira) each, for failing to appoint a Turkish representative.⁵⁷⁹ On January 19, 2021, Twitter, Pinterest, and Periscope faced an advertising ban to Turkish citizens for failing to appoint local representation.⁵⁸⁰ To avoid throttling, YouTube, Facebook,

⁵⁷⁵ Law No. 5651 was amended on July 31, 2020 under Government of Turkey, Parliament, Law No. 7253, July 29, 2020.

⁵⁷⁶ Government of Turkey, Parliament, Law No. 5651, May 4, 2007, additional art 4(3) (as amended by Law No. 7253, art. 6).

⁵⁷⁷ Kozok, “Biggest Social Media Companies Are Fined by Turkey Under New Law,” November 4, 2020.

⁵⁷⁸ Kozok, “Biggest Social Media Companies Are Fined by Turkey Under New Law,” November 4, 2020.

⁵⁷⁹ The fluctuating exchange rate between the U.S. dollar and Turkish lira can lead to differences in the currency conversions for fines. Evin, “Turkey Slaps Social Media Platforms \$3.8M Fines,” December 11, 2020.

⁵⁸⁰ Fraser, “Turkey Slaps Advertising Ban on Twitter, Pinterest,” January 19, 2021.

Twitter, Pinterest, and Periscope have all subsequently agreed to appoint local representatives.⁵⁸¹ The reluctance to appoint a local representative could be related to the requirement that the representative must be a Turkish citizen. One industry expert noted that a Turkish national is at a higher risk of prosecution and fines than a foreign national appointed in Turkey would be for refusing to remove flagged content.⁵⁸²

Extraterritorial Censorship and Self-Censorship

After Law No. 5651 was amended in 2013, a 2014 law (Law No. 6532)⁵⁸³ added a requirement that may enable censorship by mandating that public and private entities provide—without a court order—Turkey’s National Intelligence Agency with any requested data, documents, or information related to crimes, state secrets, national security, and espionage.⁵⁸⁴ The nongovernmental organization (NGO) Freedom House has noted that this law has the potential to contribute to self-censorship, and to place economic and compliance burdens on U.S. firms. Law No. 6532 reportedly would encourage individuals to not publicly discuss sensitive topics out of concern that they could run afoul of the law (particularly given the broad scope of what could constitute “national security,” “state secrets,” or “crimes”).⁵⁸⁵ The law also increases sentences for whistleblowers (who often uncover government malfeasance) and sets prison sentences at three to nine years for journalists and editors who publish or broadcast leaked government documents or information.⁵⁸⁶

Although Turkey has accepted the compulsory jurisdiction of the European Convention on Human Rights (ECHR),⁵⁸⁷ there appear to be instances where it has not complied with ECHR court rulings addressing the detention of activists for protected speech.⁵⁸⁸ Some practices in Turkey encourage self-censorship, both within the country and extraterritorially. For example, human rights officials and journalists have been detained for social media posts, news articles, and blog posts criticizing the actions of President Erdoğan, his government, and the ruling Justice and Development Party (AKP). As of October 2021, 93 journalists were reported to be arrested and pending trial for crimes such as publishing content critical of the government.⁵⁸⁹ In 2018, 65 percent of Turkish citizens reported the fear of being jailed for posting political views or opinions on the internet.⁵⁹⁰ Additionally, Turkey arrested 410 individuals in Turkey in

⁵⁸¹ Ergöçün, “Pinterest Agrees to Hire Local Representative in Turkey,” April 9, 2021; Bilginsoy, “Facebook Bows to Turkish Demand to Name Local Representative,” January 18, 2021; Reuters, “YouTube Says to Appoint Turkey Representative in Line with New Law,” December 16, 2020.

⁵⁸² Yuksel, “Turkey’s Government Wants Silicon Valley to Do Its Dirty Work,” December 9, 2020.

⁵⁸³ Government of Turkey, Parliament, Law No. 6532, April 17, 2014 (amending Law No. 2937).

⁵⁸⁴ Freedom House, “Freedom on the Net 2020: Turkey,” accessed October 22, 2021; Government of Turkey, Parliament, Law No. 6532, April 17, 2014, art. 4 (amending Law No. 2937, art. 16/A).

⁵⁸⁵ The law itself does not contain definitions of these terms; the U.S. Department of State has noted that prosecutors have used a “broad definition” of national security to file charge against activists and government critics under other laws. Freedom House, “Freedom on the Net 2021: Turkey,” accessed October 22, 2021; USDOS, DRL, *Turkey 2020 Human Rights Report*, 2021.

⁵⁸⁶ HRW, “Turkey: Spy Agency Law Opens Door to Abuse,” April 29, 2014; Government of Turkey, Parliament, Law No. 6532, April 17, 2014, art. 4 (amending Law No. 2937, art. 16/A).

⁵⁸⁷ European Convention on Human Rights (ECHR), November 4, 1950.

⁵⁸⁸ HRW, “Turkey Flouts European Court Judgments,” June 4, 2021.

⁵⁸⁹ Stockholm Center for Freedom, “Jailed and Wanted Journalists in Turkey- Updated List,” October 5, 2021.

⁵⁹⁰ Yanatma, *Digital News Report 2018: Turkey*, 2018.

March 2020 for using social media to criticize the government's handling of the COVID-19 pandemic.⁵⁹¹ Independent journalists in Turkey have been jailed for spreading what the government considers to be misinformation about COVID-19.⁵⁹² Finally, as mentioned in chapter 2, in 2019 Turkey blocked the TV broadcast of some NBA games on a widely-viewed sports channel after a player criticized the country's president.⁵⁹³ This attempt to create penalties for criticism of the government that occurs outside Turkey was perhaps unsuccessful, as the player (Enes Kanter) has continued criticism of both the Turkish and Chinese governments, although one article noted that his playing time (and by extension, TV appearances) had been significantly reduced in 2021.⁵⁹⁴

Vietnam

Vietnam maintains one of the most restrictive environments for online content and has used throttling and other coercive means to compel compliance from U.S. firms to censor content. The country ranks as the second most restrictive of any key market on Freedom House's internet freedom index in 2021 (with a status of "not free").⁵⁹⁵ At the same time, Vietnam is a growing market for U.S. firms in social media, streaming, and internet search services with over 70 percent of Vietnam's residents using some form of online platform. However, Vietnam's strict control over the internet, as well as new regulations like the 2019 Law of Cybersecurity and recent amendments to existing laws, give the government broad authority to censor.

Summary of Key Findings

- The Vietnamese government, specifically the Ministry of Information and Communication (led by the Communist Party of Vietnam), has strengthened its ability to censor speech in recent years through the amendment of older laws and the enactment of new laws that give the government broader authority.
- The two most significant policies that regulate speech on the internet are the Law of the Press 1989 (Press Law), amended in 2016 to add additional restrictions, and the Law on Cybersecurity 2018 (LCS), which allows the government to physically monitor speech online.
- U.S. firms in social media, internet search, and streaming that have a large presence in Vietnam are heavily affected by censorship and censorship-enabling policies that target internet intermediary rules and allow the throttling and blocking of websites.

⁵⁹¹ Reuters, "Turkey Rounds Up Hundreds for Social Media Posts about Coronavirus," March 25, 2020.

⁵⁹² Amnesty International, "Turkey: COVID-19 Pandemic Increases Climate of Fear for Journalists," May 1, 2020.

⁵⁹³ Turkish prosecutors also indicted the player for violating the country's law which prohibits insulting the president. Reportedly, the games could still be watched online, although without Turkish language commentary. Gall, "Enes Kanter is Playing," May 15, 2019.

⁵⁹⁴ Amico, "Enes Kanter Suggests He's Not Playing Because of His Anti-China Takes," November 17, 2021.

⁵⁹⁵ China is the most restrictive key market in the index. Freedom House, "Freedom on the Net 2021: Vietnam," accessed October 22, 2021.

Sectors Affected by Censorship

Vietnam has a large number of social media users. Between 2020 and 2021, the number of social media users in Vietnam rose 11 percent, from 65 million to 72 million users.⁵⁹⁶ With a population of 97.3 million, over 70 percent of Vietnam's population uses social media websites.⁵⁹⁷ Vietnam's users also spend the second-highest amount of time on social media and the internet of countries in Asia.⁵⁹⁸

U.S. firms are significant participants in Vietnam's digital economy. The two most-visited websites in the country, YouTube and Facebook, have 92.0 and 91.7 percent, respectively, of the country's internet users visiting monthly.⁵⁹⁹ In 2018, Facebook earned almost \$1 billion in advertising revenue in Vietnam alone, which provides nearly one-third of the firm's entire revenue from Southeast Asia.⁶⁰⁰ Similarly, Vietnam was one of the five largest YouTube markets in the world in 2019.⁶⁰¹ From Vietnam alone, Google reportedly earned \$475 million from YouTube advertisement revenue in 2018,⁶⁰² while between 2018 and 2019, 97 percent of YouTube advertisements in that country were viewed by users.⁶⁰³

Censorship-Related Policies and Practices

In recent years, the government of Vietnam (controlled by the Vietnamese Communist Party) has implemented new and amended existing policies and practices that restrict speech and regulate the dissemination of information. The restrictions in these policies have most notably affected U.S. firms in social media, internet search, and streaming platforms.⁶⁰⁴ The government is not as sophisticated as China in its efforts to censor content, as it does not have a single internet gateway that allows the operation of a system akin to China's "Great Firewall."⁶⁰⁵ However, Vietnam reportedly has sought to emulate China by implementing a China-like model to restrict speech, public information, and cross-border data transfer. These restrictions limit citizens' and firms' ability to access and distribute content that the government sees as critical or harmful to the ruling party.⁶⁰⁶ The Ministry of Information and

⁵⁹⁶ Kemp, *Digital 2021: Vietnam*, February 11, 2021; Nguyen, "Vietnam's Most Popular Social Media Channels," August 12, 2020.

⁵⁹⁷ Nguyen, "Vietnam's Most Popular Social Media Channels," August 12, 2020.

⁵⁹⁸ The Philippines ranks number one in Asia for the highest amount of time on social media and internet. VNExpress, "Vietnamese Spend More Time on Internet, Social Media," February 6, 2021.

⁵⁹⁹ Kemp, *Digital 2021: Vietnam*, February 11, 2021.

⁶⁰⁰ Ratcliffe, "Facebook and YouTube Accused of Complicity in Vietnam Repression," November 30, 2020.

⁶⁰¹ Anh, "Vietnam Among YouTube's Top Five Global Markets," April 16, 2019.

⁶⁰² Ratcliffe, "Facebook and YouTube Accused of Complicity in Vietnam Repression," November 30, 2020.

⁶⁰³ A display ad or video ad is considered viewable if at least 50 percent is visible on screen for a period of time ranging from 1 second for a display ad to 2 seconds for a video ad. More "viewable" advertisements are more valuable to advertisers and platforms. Vietnam has the highest viewability of any market in the Asia-Pacific region. Nguyen, "Vietnam's Most Popular Social Media Channels," August 12, 2020.

⁶⁰⁴ Coldewey, "Facebook Agrees to Restrict Anti-Government Content," April 21, 2020; Pearson, "Exclusive: Facebook Agreed to Censor Posts," April 21, 2020; Seck and Dang, "Vietnam: Ministry of Information and Communications," May 25, 2020; Google, "Government Requests to Remove Content – Google Transparency Report," accessed June 15, 2021.

⁶⁰⁵ See chapter 3 more information on the Great Firewall. Industry representative, interview by USITC staff, August 11, 2021; Sherman, *Vietnam's Internet Control: Following in China's Footsteps?* December 11, 2019.

⁶⁰⁶ Industry representative, interview by USITC staff, August 11, 2021; Sherman, *Vietnam's Internet Control: Following in China's Footsteps?* December 11, 2019.

Communication is the primary censorship body in the country, however the Ministry of Public Security is also involved in censoring the internet (focusing on political content).⁶⁰⁷

Laws That Suppress Certain Categories of Speech

In 2016, the government updated its 1989 Law of the Press reportedly to further “the right to freedom of the press; citizens’ right to freedom of speech on press; press organizations and activities; rights and duties of agencies, organizations and individuals involving in press activities; and State management on press.”⁶⁰⁸ However, the Press Law’s broad and ambiguous language gives the Vietnamese government levers to influence what type of information is suitable for the public. For example, the law broadly prohibits publishing and broadcasting of information “that incites war against the independence, sovereignty, and territorial integrity of the Socialist Republic of Vietnam.”⁶⁰⁹ Additionally, the law broadly prohibits individuals or firms from “distorting history; negating revolutionary achievements; offending the nation and national heroes” and also forms the basis for more recent laws.⁶¹⁰ For example, the Management, Provision and Use of Radio and Television Services Decree (referred to as Decree 06), which covers over-the-top (OTT) services such as streaming video, states that foreign firms must comply with regulations on information content management under the Press Law.⁶¹¹ Vietnam also maintains restrictions on theatrical film releases; in particular the country requires films to be submitted to a censorship board before receiving permission and screening.⁶¹²

Internet Intermediary Rules

The 2018 Law on Cybersecurity (LCS) provides the government wide powers to regulate information that it considers a threat to national security.⁶¹³ The law states that the government has the authority to assess, check, and monitor network security.⁶¹⁴ Additionally, it allows the government to physically monitor online content and outlines content takedown requirements for internet intermediaries. Online services providers must remove prohibited content within 24 hours of receiving a government request, block the user who posted that content from accessing the platform or service, and turn over user information to the government upon request.⁶¹⁵

⁶⁰⁷ In addition, a part of the Vietnamese army known as “Force 47” also plays a role in targeting online government critics. Seck and Dang, “Vietnam: Ministry of Information and Communications,” May 25, 2020; Freedom House, “Freedom on the Net 2021: Vietnam,” accessed October 22, 2021; Pearson, “How Vietnam’s ‘Influencer’ Army Wages Information Warfare,” July 9, 2021; Luong, “Opinion: Vietnam’s Internet Is in trouble,” February 19, 2018.

⁶⁰⁸ Ministry of Information and Communication, “NA Approves Amended Press Law,” June 4, 2016.

⁶⁰⁹ Government of Vietnam, National Assembly, Press Law, April 5, 2016. Chapter 1, article 9.3.

⁶¹⁰ Government of Vietnam, National Assembly, Press Law, April 5, 2016. Chapter 1, article 9.4.

⁶¹¹ OTT services include media services provided over the internet such as streaming video, audio, games, messaging, and voice calling. Government of Vietnam, Decree on Management, Provision and Use of Radio and Television Services, January 18, 2016. Chapter 2, section 1, article 7.4.

⁶¹² Vietnam also maintains limits on foreign investment on film production. MPA, written submission to the USITC, July 16, 2021; Government of Vietnam, National Assembly, Law on Investment, November 26, 2014.

⁶¹³ The cybersecurity law was adopted on June 12, 2018, but took effect on January 1, 2019. Government of Vietnam, National Assembly, Cybersecurity Law, June 12, 2018.

⁶¹⁴ Government of Vietnam, National Assembly, Cybersecurity Law, June 12, 2018, article 5.1(A)-(D).

⁶¹⁵ Government of Vietnam, National Assembly, Cybersecurity Law, June 12, 2018; Nguyen, et al., “Update: Vietnam’s New Cybersecurity Law,” November 15, 2018.

Foreign social media firms are also subject to censorship in Vietnam. On April 15, 2018, the Ministry of Information and Communication enacted Decree 27, which amended Decree 72, to include requirements on cross-border provision of public information and new licensing requirements for establishing websites.⁶¹⁶ The decree requires firms such as social media and streaming platforms to have a pre-approval mechanism for filtering content and blocking content presented as journalistic products, meaning users cannot post content on social media from a news organization. Instead, users are allowed to post only content that is “cultural, entertainment, advertising, scientific, technology and educational.”⁶¹⁷ Decree 72 also requires websites or other intermediaries to have a mechanism for removing illegal content within three hours of a government request.⁶¹⁸ One industry representative stated that three hours is not sufficient to process and evaluate takedown requests and that this requirement would present a significant barrier to doing business in Vietnam.⁶¹⁹

Recently the LCS was used to restrict access to Facebook in Vietnam after Facebook did not comply with internet intermediary rules. In 2020, the government accused Facebook of violating the LCS by allowing users to post anti-government content and asked Facebook to remove the content and user from its platform. Facebook initially refused requests from the government, but access to its local servers was blocked, and internet traffic was throttled for seven weeks by the state-owned telecommunications provider until the platform agreed to the removal request.⁶²⁰ Two state-owned ISPs, Viettel (which controls 50 percent of the mobile internet market and 37 percent of the fixed-line broadband market) and Vietnam Posts and Telecommunications Group (which controls 41 percent of the fixed line broadband market), appear to have been involved in the blocking.⁶²¹ One news outlet, citing sources at Facebook, stated that Facebook normally resists such requests, but having local servers in the country led it to ultimately comply with the request.⁶²² Normal access to Facebook was subsequently restored, and the platform removed 834 user posts in the first six months of 2020, which increased to over 2,200 in the second half of the year.⁶²³ However, in November 2020, Vietnam again threatened to block

⁶¹⁶ These policies build on Vietnam’s earlier internet regulations, beginning with Decree 97 in 2008 which extended the Press law to cover blogs. Additional policies enacted prior to 2013 are described in Freedom House, “Freedom on the Net 2021: Vietnam,” accessed October 22, 2021. Government of Vietnam, Decree 27, March 1, 2018; Government of Vietnam, Ministry of Information and Communications, Decree 72, September 1, 2013; Tran, “Vietnam: New Draft Decree amending,” July 7, 2021.

⁶¹⁷ Additionally, the licensing requirements included aggregated news websites, social networks, application distribution stores, and online games. Seck and Dang, “Vietnam: Ministry of Information and Communications,” May 25, 2020.

⁶¹⁸ Government of Vietnam, Ministry of Information and Communications, Decree 72, September 1, 2013.

⁶¹⁹ ITIC, written submission to the U.S. Trade Representative, October 29, 2020.

⁶²⁰ Coldewey, “Facebook Agrees to Restrict Anti-government Content,” April 21, 2020; Pearson, “Exclusive: Facebook Agreed to Censor Posts,” April 21, 2020.

⁶²¹ Pearson, “Exclusive: Facebook agreed to censor posts,” April 21, 2020; Nguyen, “Market Share of Terrestrial Mobile-Cellular Service,” December 2019; Nguyen, “Market Share of Terrestrial Fixed Wired Broadband,” May 5, 2021.

⁶²² According to the firm’s own transparency report it only removed content in 2.4 percent of government requests from 2016–20. Pearson, “Exclusive: Facebook Agreed to Censor Posts,” April 21, 2020; USITC calculations based on Facebook, “Transparency Center,” accessed August 5, 2021.

⁶²³ In advance of a key Vietnamese government meeting in January 2021, one source reported that Facebook “significantly increased censorship of ‘anti-state’ posts” and that this increase was related to Vietnam’s earlier blocking of Facebook. Dwosin, Newmeyer, and Mahtani, “The Case Against Mark Zuckerberg,” October 25, 2021; Ratcliffe, “Facebook and YouTube Accused of Complicity,” November 30, 2020.

Facebook in the country if it did not remove political content from its site upon request.⁶²⁴ This was not the first time Facebook’s services have been shut down in Vietnam in recent years; access to both Facebook and Instagram was blocked during protests in Ho Chi Minh City in 2016.⁶²⁵

Data Localization and Local Presence Requirements

The LCS includes data localization and local presence requirements for foreign entities to operate in the country. The LCS requires online firms to store personal and other important data locally.⁶²⁶ Through its data-localization requirements, the law grants the government the authority to regulate access to data that it considers threatening to cybersecurity.⁶²⁷ Under the law, the government has the authority to inspect computer systems to improve cybersecurity and to criminalize information it considers propaganda against Vietnam.⁶²⁸ Additionally, the LCS requires all foreign service providers to open local offices in Vietnam (upon meeting certain criteria).⁶²⁹

Decree 27 also imposes local presence requirements for social media firms. Specifically, the decree requires a social network “to have one person, who is a Vietnamese citizen and has experience in journalism management or has a university degree in journalism, in charge of content management.”⁶³⁰ The decree also requires social networks with more than 1 million users in Vietnam to register for a Social Network License and social networks with less than 1 million users in Vietnam to notify the Ministry of Information and Communication.⁶³¹ The addition of a licensing requirement could enable the government to revoke the licenses of platforms that host prohibited information if they do not comply with the government’s takedown requests.⁶³²

India

The Indian government has a broad range of laws that it can use to censor all forms of communication, media, and entertainment. Since 2016, the central government has issued new rules for internet

⁶²⁴ Coldewey, “Facebook Agrees to Restrict Anti-Government Content,” April 21, 2020.

⁶²⁵ Vietnam’s recent blocking of Facebook was more successful than previous attempts. In 2009–10, the government’s efforts to block Facebook were circumvented by many residents who changed their DNS settings in order to continue to access the site. More recent blocking has targeted ISPs, and these blocks are generally harder to evade. Perez, “Facebook Blocked in Vietnam,” May 17, 2016; Clark, “Facebook in Vietnam: Why the block doesn’t work,” October 4, 2010.

⁶²⁶ Government of Vietnam, National Assembly, Cybersecurity Law, June 12, 2018.

⁶²⁷ Government of Vietnam, National Assembly, Cybersecurity Law, June 12, 2018.

⁶²⁸ Sherman, *Vietnam’s Internet Control: Following in China’s Footsteps?* December 11, 2019.

⁶²⁹ The criteria include failure to cooperate with local authorities and breaches of law that occur on platforms. Nguyen, et al., “Update: Vietnam’s New Cybersecurity Law,” November 15, 2018.

⁶³⁰ Government of Vietnam, Decree 27, March 1, 2018; Seck and Dang, “Vietnam: Ministry of Information and Communications,” May 25, 2020.

⁶³¹ Government of Vietnam, Decree 27, March 1, 2018; Seck and Dang, “Vietnam: Ministry of Information and Communications,” May 25, 2020.

⁶³² Article 7 of Decree 27 states that a license may be revoked as a penalty for hosting prohibited content as defined in the decree. Government of Vietnam, Decree 27, March 1, 2018.

shutdowns and social media, as well as rules limiting foreign ownership of digital media.⁶³³ Using these and other policies, the central government increased its use of internet shutdowns and takedown requests during 2016–20.⁶³⁴ While India has a long history of censorship, NGO data and indices of press and internet freedom reported further declines during 2016–20, reflecting worsening restrictions on these freedoms in India.⁶³⁵ U.S. companies are affected by most forms of censorship in India and are increasingly impacted by the rising censorship of social media and video streaming.

Summary of Key Findings

- India has a large media and entertainment market. Censorship-related policies and practices affect U.S. firms in almost all market segments, including films (for theatrical release), social media, and video streaming.
- The Indian government has a broad range of laws that can be used to censor content, some of which predate India's independence in 1947. There is no single government entity that enforces censorship-related policies and practices in India. Key actors range from the central government (e.g., the Ministry of Electronics and Information Technology) to local police departments.
- Three significant changes made between 2016 and mid-2021 were new rules related to internet intermediaries, internet shutdowns, and foreign investment limits in digital media.
- U.S. firms appear to be increasingly impacted by censorship-related policies and practices in India, reflecting the rising use of services provided by U.S. firms such as social media and video streaming.

Sectors Affected by Censorship

India's media and entertainment market (as measured by industry revenues) totaled \$19.5 billion, according to Ernst & Young (EY) and the Federation of Indian Chambers of Commerce and Industry (FICCI). The four largest market segments in terms of total revenue during 2016–20 were television,

⁶³³ Government of India, Department of Telecommunications, Temporary Suspension of Telecom Services Rules, August 8, 2017; Government of India, Ministry of Electronics and Information Technology, Intermediary Guidelines and Digital Media Ethics Code Rules, February 25, 2021; Government of India, Ministry of Commerce and Industry, Clarification on FDI Policy, October 16, 2020; Government of India, Ministry of Commerce and Industry, Review of FDI Policy on Various Sectors, September 18, 2019; Government of India, Ministry of Commerce and Industry, Consolidated FDI Policy, October 15, 2020, 37.

⁶³⁴ Access Now, "Internet Shutdown Tracker," accessed September 27, 2019 and August 4, 2021; SFLC.IN, "About Us," accessed July 19, 2021; SFLC.IN, "Internet Shutdowns," accessed July 19, 2021; Twitter, "India—Twitter Transparency Center," accessed June 15, 2021; Google, "Government Requests to Remove Content," accessed June 15, 2021.

⁶³⁵ RSF, "2021 World Press Freedom Index; Countries and Regions," accessed October 19, 2021; Freedom House, *Freedom on the Net 2016*, November 2016; Freedom House, "Freedom on the Net 2021: India," accessed July 7, 2021; RSF, "World Press Freedom Index 2016," accessed July 7, 2021; Seshu, *Behind Bars*, accessed July 19, 2021, 8; SFLC.IN, "Internet Shutdowns," accessed July 19, 2021.

digital media, print, and “filmed entertainment.”⁶³⁶ Of these market segments, television is the largest, with the market valued at \$9.2 billion in 2020 (though this was down from \$11.2 billion in 2019 due to the COVID-19 pandemic).⁶³⁷ India’s digital media market was one of the fastest growing market segments during 2016–20, growing from \$1.4 billion to \$3.2 billion.⁶³⁸ The number of paid video subscribers in India increased from 11 million in 2019 to 29 million in 2020, while the number of subscriptions grew from 21 million in 2019 to 53 million in 2020.⁶³⁹ Print media generated \$2.6 billion in revenue in 2020, down from \$4.2 billion in 2019.⁶⁴⁰ Filmed entertainment was the fourth-largest segment of the market in 2019, with \$2.7 billion in revenue, though this segment experienced one of the sharpest declines in 2020, with revenue falling to \$1.0 billion.⁶⁴¹ In addition to these four market segments, there is also a large book publishing market in India, with one estimate valuing the market at \$3.9 billion in 2015.⁶⁴²

U.S. firms are active in most segments of the traditional media market in India. In the TV segment, for example, U.S. multinationals such as Discovery, Disney, and ViacomCBS have ownership in satellite TV stations serving the Indian market.⁶⁴³ Large book publishers such as HarperCollins, McGraw Hill,

⁶³⁶ The media and entertainment market was down from its peak of \$25.9 billion in 2019. Filmed entertainment, while the fourth-largest market segment in 2019, fell to fifth-largest in 2020 due to the pandemic. Radio is a small segment of the market by value and will not be discussed in this section. However, it has widespread reach with 385 FM radio channels, as of June 2020, and 316 community radio stations, as of August 2021. Only All India Radio is legally permitted to develop news stories and content. EY and FICCI, *A Billion Screens*, March 2019, 10, 108; EY and FICCI, *Playing By New Rules*, March 2021, 10, 66; EY and FICCI, *Re-Imagining India’s Media Entertainment Sector*, March 2018, 11, 105; EY and FICCI, *The Era of Consumer A.R.T.*, March 2020, 10, 96; Government of India, Ministry of Information and Broadcasting, “City Wise Details,” June 10, 2020; Government of India, Ministry of Information and Broadcasting, “Number of Operational,” February 8, 2021; BBC, “India Profile - Media,” April 29, 2019.

⁶³⁷ India had 900 private permitted satellite TV stations as of February 2021, of which 388 were news channels. EY and FICCI, *Playing by New Rules*, March 2021, 10–11; Government of India, Ministry of Information and Broadcasting, “List of Permitted,” February 28, 2021.

⁶³⁸ Digital advertising accounted for \$2.6 billion in 2020 and subscription services for \$0.6 billion in 2020. The number of broadband subscribers in India increased from 140 million in January 2016 to 778 million in March 2021. Mobile device users accounted for 97 percent of broadband subscriptions in March 2021. A majority of Indian broadband subscribers used social media as of January 2021. EY and FICCI, *Playing by New Rules*, March 2021, 10, 66; Government of India, Telecom Regulatory Authority of India, “Highlights of Telecom Subscription Data as on 31st January 2016,” March 23, 2016, 12; Government of India, Telecom Regulatory Authority of India, “Highlights of Telecom Subscription Data as on 31st March 2021,” June 28, 2021, 12; Kemp, *Digital 2021: India*, February 11, 2021.

⁶³⁹ There are other companies that report slightly different estimates for video subscriptions, but the upward trend is consistent across all sources. The EY data are reported here for consistency with data presented elsewhere in this section. EY and FICCI, *Playing by New Rules*, March 2021, 79.

⁶⁴⁰ The large size of the print market reflects the more than 17,000 newspapers in India and more than 100,000 periodicals. Government of India, “Press in India Highlights,” accessed June 10, 2021; EY and FICCI, *Playing By New Rules*, March 2021, 10.

⁶⁴¹ EY and FICCI, *Playing by New Rules*, March 2021, 10.

⁶⁴² Government of India, “Press in India Highlights,” accessed June 10, 2021; EY and FICCI, *Playing by New Rules*, March 2021, 10; Mallya, “Nielsen Values,” October 21, 2015.

⁶⁴³ Government of India, Ministry of Information and Broadcasting, “List of Permitted,” February 28, 2021; Viacom18, “Viacom18 Media Pvt. Ltd.,” accessed July 12, 2021.

Scholastic, and Wiley are also active in India.⁶⁴⁴ Finally, U.S. firms have a significant presence in the film market in India; box office revenue from Hollywood films increased from \$166 million in 2016 to \$227 million in 2019, accounting for 15 percent of box office revenue in India in 2019.⁶⁴⁵

U.S. firms have a large presence in online services as well and are among the leading providers of social media and video streaming services in India. According to Indian government statistics reported in February 2021, WhatsApp had 530 million users in India, YouTube had 448 million users, Facebook had 410 million users, and Instagram had 210 million users. There is significant variation in estimates of the number of Twitter users in India, with government statistics reporting 17.5 million users but another source putting it at 68 million in April 2021.⁶⁴⁶ There are at least 10 U.S. firms with video streaming services in India, though a small number of companies accounted for most subscriptions. Disney and Netflix were the largest firms by revenue, accounting for a combined 78 percent of the streaming subscription revenue in India. By number of subscribers, Disney was the largest firm (41 percent of subscriptions), followed by Indian firm Eros Digital's streaming service (24 percent), Amazon (9 percent), and Netflix (7 percent).⁶⁴⁷

Censorship-Related Policies and Practices

The government in India, ranging from the central government to local police departments, censors the media and entertainment industries in India in two ways.⁶⁴⁸ First, the relevant government authority can use references to the various laws and regulations discussed below to, for example, provide notices to remove content, shut or slow down internet access, file criminal charges, block the release of a documentary, or prevent a television station from broadcasting.⁶⁴⁹ Second, the government reportedly

⁶⁴⁴ HarperCollins Publishers India, "About Us," accessed July 12, 2021; McGraw Hill India, "About Us," accessed July 12, 2021; Scholastic, "Scholastic: Children Book Publishing," accessed July 12, 2021; Facebook, "Wiley India - Home," accessed July 12, 2021.

⁶⁴⁵ Ormax Media, *Box Office*, 2020, 6, 22.

⁶⁴⁶ Rai, "Facebook, Netflix Face Scrutiny," February 25, 2021; Government of India, Ministry of Electronics and Information Technology, "Notification dated, the 25th February," February 25, 2021; Mishra, "Koo's Valuation," May 26, 2021.

⁶⁴⁷ There are significant differences in prices for video streaming services, which contributes to the significant variation in market share by revenue and number of subscribers. *Indiantelevision.com*, "Disney+ Hotstar," April 1, 2021; Farooqui, "Disney+ Hotstar," May 7, 2021; Khan, "Best Video Streaming Services," February 19, 2018.

⁶⁴⁸ This section does not cover proposed legislation in India that has not yet been passed at the time this report was prepared.

⁶⁴⁹ PTI, "Govt Suspends," March 6, 2020; Goel, Gettleman, and Khandelwal, "Under Modi," April 2, 2020; PTI, "India's Online Censorship," April 27, 2021; BBC, "India Covid," April 26, 2021; Purnell, "India Accused of Censorship," April 26, 2021; *Indian Express*, "Blanket Ban on BBC," March 5, 2015; Singh, "Kerala HC," June 25, 2019; Chakraborty, "India's Leading," December 1, 2020; Wallen, "Media Breaks Rank," April 28, 2021; Panda, "India Bans Al Jazeera," April 25, 2015; Sinha, "India Farmers' Protests," February 1, 2021; Hsu, "How India," January 27, 2020; Nazmi, "Why India," December 19, 2019; Biswas, "Why Journalists," February 4, 2021; *Economist*, "India's Government," February 4, 2021; HRW, written submission to the USITC, July 23, 2021; *Indian Express*, "Restoration of Internet Services," February 5, 2021.

censors the media and entertainment industry through a variety of informal mechanisms based on harassment and intimidation.⁶⁵⁰

Individuals in India do have recourse to the courts and have won some notable court victories, but these have had little impact on the government's ability to censor content given the large number of laws that the government can use to achieve its goals. The last five years, for example, have seen a deterioration in India's rankings on the RSF World Press Freedom Index and the Freedom House's internet freedom ranking, as well as an increase in the number of journalists harassed for their work.⁶⁵¹ The number of websites and user accounts blocked in India has also significantly increased, and internet shutdowns are becoming more common.⁶⁵²

Laws That Suppress Certain Categories of Speech

India has a broad array of laws related to sedition, criminal procedures, criminal defamation, hate speech, communal harmony, religious feelings, epidemics and disaster management, national security, and other issues that contain provisions limiting speech.⁶⁵³ This section does not cover all of these laws but provides examples and discusses their impact on speech and on U.S. firms. The Indian Penal Code, 1860, for example, contains a number of restrictions on speech, such as speech that excites disaffection toward the government, incites any group, causes public fear or alarm, creates enmity between groups, or causes disharmony among groups.⁶⁵⁴ Another example is the Disaster Management Act, 2005, which has a number of limitations on speech, such as punishments for false claims or false warnings.⁶⁵⁵ The

⁶⁵⁰ Goel, Gettleman, and Khandelwal, "Under Modi," April 2, 2020; Gowen, "In Modi's India," February 15, 2018; RSF, "A Delicate Handshake," accessed July 20, 2021; Chakraborty, "India's Leading," December 1, 2020; Wallen, "Media Breaks Rank," April 28, 2021; Sagar, "Speaking Positivity to Power: Hours Before Lockdown," March 31, 2020; Gopalakrishnan, "Indian Journalists," April 27, 2018; Joshua, "Tax Raid," October 11, 2018; Shih and Masih, "Top Indian Newspaper," July 22, 2021.

⁶⁵¹ The Free Speech Collective documented the number of journalists in India who were "arrested, detained, interrogated or served show cause notices for their professional work." According to their research, the number averaged less than five per year during 2010–16. However, the number started to significantly increase thereafter, with 16 in 2017, 25 in 2018, 23 in 2019, and 67 in 2020. RSF, "2021 World Press Freedom Index; Countries and Regions," accessed October 19, 2021; RSF, "World Press Freedom Index 2016," accessed July 7, 2021; Freedom House, *Freedom on the Net 2016*, November 2016, 15; Freedom House, "Freedom on the Net 2021: India," accessed July 7, 2021; Seshu, *Behind Bars*, accessed July 19, 2021, 2, 8.

⁶⁵² Access Now, "Internet Shutdown Tracker," accessed September 27, 2019 and August 4, 2021; SFLC.IN, "About Us," accessed July 19, 2021; SFLC.IN, "Internet Shutdowns," accessed July 19, 2021; Barik, "Govt Blocked," February 4, 2021; Johari, "Jio and Hathway Blocking," March 11, 2019.

⁶⁵³ India's constitution guarantees "freedom of speech and expression," but provides for reasonable restrictions "in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence." The constitution guarantees a number of other freedoms (e.g., to assemble peaceably), as well as establishing limitations on them. Government of India, "Constitution of India," December 9, 2020; HRW, *Stifling Dissent*, May 2016, 12–13; Chandran, *The Writer, the Reader, and the State*, 2017, 44–52; *Hindustan Times*, "Police Crack Down," April 30, 2020; *Indian Express*, "Blanket Ban on BBC," March 5, 2015; PTI, "Govt Suspends," March 6, 2020; *Economist*, "India's Government," February 6, 2021; SFLC.IN, "Free Speech," June 15, 2021; PTI, "HC Quashes," April 18, 2019; USDOS, DRL, *India 2020 Human Rights Report*, 2021, 20; Bharti, "Censorship is Plunging," June 1, 2021.

⁶⁵⁴ Government of India, Indian Penal Code, October 6, 1860 (most recently amended in 2018 in The Criminal Law (Amendment) Act, 2018), art. 505.

⁶⁵⁵ Government of India, Disaster Management Act, December 23, 2005.

Jammu and Kashmir Reorganisation Act, 2019, effectively provides the central government with more direct control of this region including the ability to appoint an administrator; policies and practices implemented under the appointed Lieutenant Governor resulted in a significant reduction in freedom of speech in the region, including new restrictions on press freedom.⁶⁵⁶

These laws, and others, have been used extensively in India to target speech and have had a significant impact on U.S. firms operating in India. In June 2021, for example, two Twitter executives in India were threatened with arrest under the Indian Penal Code and Information Technology Act (discussed below) after the company posted a map in which Ladakh and Jammu and Kashmir were not shown as part of India.⁶⁵⁷ The central government, local governments, and the police have also used the Indian Penal Code, Disaster Management Act, and other laws on speech to censor criticism of the government in regard to the COVID-19 response and to censor individuals reporting on aspects of the response on social media, such as the shortage of oxygen for treating COVID-19 patients.⁶⁵⁸

Premarket Review

The main form of premarket review in India is the requirement that a film must be certified before it can be shown in theaters. The Cinematograph Act requires that a film must be submitted to the Board of Film Certification, which can approve it for public exhibition, approve it for exhibition that is limited to certain groups, require changes to the film, or refuse to approve it.⁶⁵⁹ The Board must ensure compliance with wide-ranging standards on antisocial activities, cruelty, violence, drinking and drugs, vulgarity, the depiction of women, racial, or religious groups, and the sovereignty and integrity of India, among other topics.⁶⁶⁰ This review has a significant impact on Hollywood films intended for release in theaters, which need to be approved by the Board of Film Certification. Media reports indicate that, in some instances, so many edits are required that they affect the content of the movie and, therefore, its box office success. In other instances, films are withdrawn or not submitted to the Board due to concerns about the number of cuts that will need to be made to the movie.⁶⁶¹

⁶⁵⁶ The Act split the existing State of Jammu and Kashmir into two Union territories. Two districts (Kargil and Leh) were split into the Union territory of Ladakh, while the remaining districts were designated as the Union territory of Jammu and Kashmir. Jammu and Kashmir had a population of 13.6 million in 2020 and Ladakh's population was 0.3 million. As a result of the downgrade in the region's status from a State to a Union territory, the president of India was empowered to appoint the administrator of the region. Government of India, Ministry of Law and Justice, Jammu and Kashmir Reorganisation Act, 2019, August 9, 2019; Government of India, Constitution of India, December 9, 2020; USDOS, DRL, *India 2020 Human Rights Report*, 2021, 22; Government of India, Unique Identification Authority of India, "State/UT wise Aadhaar Saturation," accessed October 1, 2021.

⁶⁵⁷ Police filed cases against the two executives, but they were ultimately not arrested after a court stayed the arrest. ET Bureau, "Two Twitter Executives Booked," June 30, 2021; Kalra and Phartiyal, "Twitter Loses Immunity over User-generated Content in India," July 6, 2021.

⁶⁵⁸ Ara, "UP Police Lodge," May 6, 2021; Internet Freedom Foundation, "Indore Administration," May 10, 2021; Mahapatra, "Don't Book People," May 1, 2021.

⁶⁵⁹ Government of India, The Cinematograph Act, 1952, March 21, 1952.

⁶⁶⁰ Government of India, Ministry of Information and Broadcasting, Central Board of Film Certification, "Guidelines," accessed October 6, 2021.

⁶⁶¹ News18, "Hollywood in India," July 23, 2019; Pathak, "Fearful of Cuts," April 6, 2015.

Internet Shutdowns

The two main laws that the government can use to shut down the internet in India are the Code of Criminal Procedure, 1973, and the Indian Telegraph Act, 1885.⁶⁶² In August 2017, the Indian government published the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, under the Indian Telegraph Act, 1885. These rules established the central and state government officials, and their authority to delegate officials not specifically enumerated in the rules, authorized to implement an internet shutdown and the procedures that need to be followed.⁶⁶³ Internet shutdowns continue to be issued under both the Code of Criminal Procedure and the Indian Telegraph Act, though the Supreme Court ruled in 2021, on a case regarding the shutdowns in Jammu and Kashmir, that indefinite shutdowns were illegal and the central government needed to follow additional procedures. The Supreme Court did not, however, lift the internet restrictions in Jammu and Kashmir.⁶⁶⁴

The number of internet shutdowns in India has increased, with significantly more shutdowns in 2020 than in 2016, as discussed earlier in this report.⁶⁶⁵ These shutdowns are typically regional in nature, with a majority of shutdowns during 2016–20 affecting Jammu and Kashmir.⁶⁶⁶ The longest interruption was in Jammu and Kashmir, where the government cut all internet services just before passage of the Jammu and Kashmir Reorganisation Act in August 2019. While the government gradually restored certain services and slower 2G access, full 4G access was not restored until February 2020.⁶⁶⁷ Internet shutdowns in India limit access to services provided by U.S. firms as well as Indian firms. For example, Facebook reported 90 shutdowns that affected access to their service for a total of almost 17 months (combining lengths for all regions) in 2020.⁶⁶⁸ The impact of the shutdowns on access to Facebook services is reflected in reports of significant numbers of WhatsApp user accounts expiring due to a period of inactivity.⁶⁶⁹

⁶⁶² The Supreme Court of India ruled in 2020 that Section 69A of the Information Technology Act and the Information Technology (Procedures and Safeguards for Blocking for Access of Information by Public) Rules, 2009, could be used only to shut down specific sites and not for internet shutdowns. The Supreme Court indicated the following in *Bhasin v. Union of India*: “The aim of the section is not to restrict/block the internet as a whole, but only to block access to particular websites on the internet. Recourse cannot, therefore, be made by the Government to restrict the internet generally under this section.” *Bhasin v. Union of India*, Writ Petition (Civil) 1031/2019 (January 10, 2020), 68; Bhardwaj et al., “Rising Internet Shutdowns in India,” 2020, 126, 129–30.

⁶⁶³ Government of India, Department of Telecommunications, Temporary Suspension of Telecom Services Rules, August 8, 2017; *Indian Express*, “Government Frames,” August 29, 2017; Mehrotra, “Suspension of the Internet,” January 17, 2020; *Hindustan Times*, “India’s Record,” December 11, 2019.

⁶⁶⁴ Bhardwaj et al., “Rising Internet Shutdowns in India,” 2020, 133–34; Columbia University, Global Freedom of Expression, “*Bhasin v. Union of India*,” accessed September 28, 2020.

⁶⁶⁵ Access Now, “Internet Shutdown Tracker,” accessed September 27, 2019 and August 4, 2021; SFLC.IN, “About Us,” accessed July 19, 2021; SFLC.IN, “Internet Shutdowns,” accessed July 19, 2021.

⁶⁶⁶ Access Now, “Internet Shutdown Tracker,” accessed September 27, 2019 and August 4, 2021; SFLC.IN, “Internet Shutdowns,” accessed July 19, 2021.

⁶⁶⁷ *Indian Express*, “Restoration of Internet Services,” February 5, 2021; AP, “India Restores 4G,” February 6, 2021.

⁶⁶⁸ This is the sum of the length of time of each shutdown, which may occur simultaneously in different regions, and therefore the sum is longer than a year. Facebook, “Internet Disruptions: India,” accessed July 19, 2021.

⁶⁶⁹ Dixit, “Kashmiris Are Disappearing,” December 4, 2019.

Internet Blocking, and Filtering

The Indian government is increasingly using its authority to block access to websites and user accounts. The central government has the authority to block access to specific websites under section 69A of the Information Technology Act, 2000 and the Information Technology (Procedures and Safeguards for Blocking for Access of Information by Public) Rules, 2009.⁶⁷⁰ The government's use of section 69A has increased significantly in recent years, with the number of "websites/webpages/accounts" blocked by the Ministry of Electronics and Information Technology under Section 69A increasing from 2,799 in 2018 to 9,849 in 2020.⁶⁷¹ Section 69A has been used to block access to U.S. firm websites and user accounts on U.S. social media platforms.⁶⁷² The Indian Cyber Crime Coordination Center, Ministry of Home Affairs reported that the Ministry of Electronics and Information Technology also blocked more than 200 Chinese apps (e.g., TikTok, WeChat, and UC Browser) in 2020 under section 69A. In their November 2020 order banning 48 of these apps, the Ministry stated that it was blocking the "apps for engaging in activities which are prejudicial to sovereignty and integrity of India, defence of India, security of state and public order."⁶⁷³

Internet Intermediary Rules

The Information Technology Act, 2000, provides the central government with the authority to block access to any information on the internet.⁶⁷⁴ The law provides that the government may do so if "it is necessary or expedient so to do, in the interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above."⁶⁷⁵ The law states that intermediaries are not liable for third-party information as long as the firm provides due diligence and observes any other government guidelines.⁶⁷⁶

In February 2021, the Indian government updated its rules under this act and published the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (under the Information Technology Act, 2000).⁶⁷⁷ Part II of the rules provides for "due diligence by intermediaries" and a "grievance redressal mechanism," with additional requirements for social media intermediaries with

⁶⁷⁰ *Bhasin v. Union of India*, Writ Petition (Civil) 1031/2019 (January 10, 2020), 68; Bhardwaj et al., "Rising Internet Shutdowns in India," 2020, 129–30; Government of India, The Information Technology Act, 2000, June 9, 2000; Government of India, "Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009.

⁶⁷¹ The number of URLs blocked increased from 964 in 2016 to 2,388 in 2018. Barik, "Govt Blocked More Than 16,000 Websites," February 4, 2021; Johari, "Jio and Hathway Blocking," March 11, 2019.

⁶⁷² Twitter Safety, "Updates on Our Response," February 10, 2021; Mehrotra, "Govt Notice to Twitter on Restored Accounts," February 4, 2021; Grover and Sarkar, "Content Takedown and Users' Rights," February 20, 2020.

⁶⁷³ Government of India, Ministry of Electronics and Information Technology, "Government of India Blocks," November 24, 2020; Phartiyal, "India Retains Ban," January 25, 2021.

⁶⁷⁴ Government of India, The Information Technology Act, 2000, June 9, 2000, 27.

⁶⁷⁵ Government of India, The Information Technology Act, 2000, June 9, 2000, 27.

⁶⁷⁶ Government of India, The Information Technology Act, 2000, June 9, 2000, 30.

⁶⁷⁷ These rules superseded the Information Technology (Intermediary Guidelines), 2011. Government of India, Ministry of Electronics and Information Technology, Intermediary Guidelines and Digital Media Ethics Code Rules, February 25, 2021.

more than 5 million users.⁶⁷⁸ Among the rules are that social intermediaries must: remove content within 36 hours upon receipt of a government notification that content is prohibited by law; maintain records of removed content for 180 days; respond to lawful requests for information within 72 hours; and address user complaints within either 24 hours or 15 days, depending on the type of content. The rules establish local presence requirements (discussed below), require firms to publish monthly compliance reports, identify the first originator of content upon a lawful request, use automated tools to identify certain types of illegal content, and enable users to voluntarily verify their accounts.⁶⁷⁹ Part III also establishes a “code of ethics and procedure and safeguards in relation to digital media.”⁶⁸⁰ Several lawsuits have challenged the constitutionality of the new rules, the outcomes of which are not yet known.⁶⁸¹

Some U.S. intermediaries indicated that they had experienced an increase in requests for content removal under the Information Technology Act and the general laws governing speech discussed above. These requests, however, appear to be primarily directed toward certain firms, such as Twitter and Google. The number of takedown requests that these firms received during 2016–20 significantly increased, as discussed in chapter 2. Other firms do not appear to have received significantly more requests from the government—Facebook’s content removals were relatively flat other than a temporary increase in government requests in the second half of 2018, for example.⁶⁸² The government has categorized many of the requests related to COVID-19 as misinformation, but independent media have reported that many of them are to takedown information critical of the government.⁶⁸³

The new Information Technology Rules have also raised a number of concerns for other U.S. firms. Facebook, for example, filed a lawsuit challenging the constitutionality of a provision that requires the “identification of the first originator of the information.” The firm alleges that the rules as applied to its WhatsApp service “would break end-to-end encryption and fundamentally undermine people’s right to

⁶⁷⁸ Social media intermediaries include platforms such as Facebook and Twitter. Government of India, Ministry of Electronics and Information Technology, Intermediary Guidelines and Digital Media Ethics Code Rules, February 25, 2021, 21–26.

⁶⁷⁹ Government of India, Ministry of Electronics and Information Technology “Government Notifies,” February 25, 2021, 26.

⁶⁸⁰ Digital media includes video streaming platforms such as Disney+ and Netflix. Government of India, Ministry of Electronics and Information Technology, Intermediary Guidelines and Digital Media Ethics Code Rules, February 25, 2021.

⁶⁸¹ Narula, “Digital Intermediary Guidelines Evoke,” July 6, 2021.

⁶⁸² Some other companies, such as Microsoft (including LinkedIn), Verizon Media, and Pinterest received a relatively small number of requests. Twitter, “Twitter Transparency Center—India,” accessed June 15, 2021; Google, “Government Requests to Remove Content,” accessed June 15, 2021; Facebook, “Transparency Center,” accessed July 13, 2021; Keller, written submission to the USITC, July 23, 2021; Singh, “Twitter Blocks,” February 10, 2021; BBC, “India Covid,” April 26, 2021; Apple, “Government Information Requests,” accessed July 13, 2021; LinkedIn, “Government Requests Report,” accessed July 13, 2021; Pinterest, “Transparency Report,” accessed July 13, 2021; Verizon Media, “Transparency Report,” accessed July 13, 2021; Microsoft, “Content Removal Request Report,” accessed July 13, 2021; USITC, hearing transcript, July 1, 2021, 171 (testimony of Rachael Stelly, CCIA); USITC, hearing transcript, July 1, 2021, 255 (testimony of Daphne Keller, Stanford Cyber Policy Center).

⁶⁸³ Farzan, “Amid ‘Heartbreaking’ Coronavirus Surge,” April 26, 2021; Verma, “Government Says Ordered Takedown,” April 26, 2021.

privacy.”⁶⁸⁴ Facebook also noted that to do so would “impose additional obligations on Petitioner to build new mechanisms and processes which would require a significant investment of time and money.”⁶⁸⁵ Freedom House notes that “the expanded obligations imposed on social media platforms, coupled with the in-country representative requirements (discussed in the next section) and the risk of criminal liability, will curb companies’ willingness to push back against state censorship requests that do not meet international human rights standards.”⁶⁸⁶

Local Presence Requirements

Some of the new rules in India may enable censorship through the establishment of local presence requirements for social media and digital media firms. The new Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 require large (or “significant”) social media intermediaries to appoint a chief compliance officer (who is held legally liable if the company fails to discharge its duties), a contact person for coordination with law enforcement, and a grievance officer, all of whom must reside in India. These firms must also have a physical address in India, identify the first originator of content upon a lawful request, use automated tools to identify certain types of illegal content, and enable users to voluntarily verify their accounts.⁶⁸⁷ A firm that has a local office in India can give the government more leverage to compel that firm to comply with censorship. For example, in May 2021, after Twitter flagged some content posted by BJP leaders as manipulated media, the local police sent a notice to Twitter requesting more information on their decision to flag the content. The police did not receive a reply and went to Twitter’s local offices to follow up.⁶⁸⁸ The Indian government also added new conditions for digital media firms in India in October 2020, including requiring (1) a majority of the board of directors to be Indian citizens; (2) the chief executive officer to be an Indian citizen; (3) and certain foreign personnel to obtain security clearances.⁶⁸⁹ According to the non-profit research group Engine Advocacy, the new Information Technology Rules are likely to prevent smaller companies from entering the Indian market due to the costs of opening a local office and ensuring compliance with local laws.⁶⁹⁰

Foreign Direct Investment and Market Access Restrictions

India also maintains potentially censorship-enabling policies involving foreign direct investment restrictions. In 2019, India specified that foreign firms could own up to 26 percent of digital news media companies, leading some U.S. firms with wholly owned subsidiaries to exit the market. While this ownership threshold is in line with that of print media, it is below the 49 percent level set for television news channels. In October 2020, the government clarified the definition of digital media and established additional conditions requiring a local presence, as discussed above. Some concerns have been raised by

⁶⁸⁴ The Press Trust of India (PTI), in July 2021, also filed a writ petition with the High Court of Delhi at New Delhi challenging the constitutionality of the rules for digital news. BBC, “WhatsApp,” May 26, 2021; PTI, Writ Petition, (High Court of Delhi at New Delhi July 2021).

⁶⁸⁵ Facebook, Writ Petition, High Court of Delhi, May 25, 2021, 86.

⁶⁸⁶ Freedom House, *Freedom on the Net 2021*, accessed October 25, 2021, 13.

⁶⁸⁷ Government of India, Ministry of Electronics and Information Technology, Intermediary Guidelines and Digital Media Ethics Code Rules, February 25, 2021, 23–25.

⁶⁸⁸ Sinha, “Police at Twitter’s Door,” May 25, 2021.

⁶⁸⁹ Government of India, Ministry of Commerce and Industry, Clarification on FDI Policy, October 16, 2020.

⁶⁹⁰ Engine Advocacy, written submission to the USITC, July 22, 2021, 3.

media outlets about the potential use of these new rules to censor digital media, but some of the print media in India—which is subject to the FDI limits—have supported the regulations as a way of leveling the playing field.⁶⁹¹ These new rules have subsequently led a number of U.S. firms to close news operations in India, such as HuffPost India and Yahoo, which shut down their content sites in India in 2021.⁶⁹²

Self-Censorship

There are a variety of informal mechanisms based on harassment and intimidation that are also reportedly used by the government to restrict speech. For example, government advertising spending is a significant source of revenue for some TV stations, and the government may choose to reduce or eliminate spending at certain TV stations that are critical of the government or key politicians. Further, it is reported that the government may pressure other advertisers to reduce spending in media that are critical of the government.⁶⁹³ Political leaders also reportedly harass and intimidate media that provide content that is negative toward the government, provide pressure for journalists to quit or be fired, and provide pressure for positive media coverage.⁶⁹⁴ Tax audits and financial investigations are also a mechanism that reportedly may be used to harass journalists and news organizations.⁶⁹⁵ Other informal methods may include restricting visas for foreign journalists.⁶⁹⁶

In addition to actions by the government, nongovernmental groups and organizations also encourage self-censorship in India, directly attacking, harassing, and intimidating filmmakers, journalists, and writers, as well as pressuring the government to censor content.⁶⁹⁷ Freedom House states that “Hindu nationalist campaigns aimed at discouraging forms of expression deemed ‘antinational’ have

⁶⁹¹ Government of India, Ministry of Commerce and Industry, Clarification on FDI Policy, October 16, 2020; Government of India, Ministry of Commerce and Industry, Review of FDI Policy on Various Sectors, September 18, 2019; Deep, “Govt Publishes,” October 17, 2020; Government of India, Ministry of Commerce and Industry, Consolidated FDI Policy, October 15, 2020, 37; Patel, “Pulling the Plug,” December 29, 2020; *Economic Times*, “Domestic Media Welcomes,” September 1, 2019.

⁶⁹² Both firms tied their closures specifically to the new FDI regulations. BuzzFeed, the parent company of HuffPost, stated that “It would be impossible for BuzzFeed, who bought HuffPost, to operate in India given the new FDI regulations.” Yahoo stated that “effective August 26, 2021, we have ceased publication of content in India and have shut down Yahoo’s content operations in the country. The content offerings closed include Yahoo News, Yahoo Cricket, Finance, Entertainment and MAKERS India. We did not come to this decision lightly. However, Yahoo India has been impacted by changes to regulatory laws in India that now limit the foreign ownership of media companies that operate and publish digital content in India.” *Wire*, “HuffPost India,” November 25, 2020; Yahoo!, “Update on Yahoo India,” accessed September 21, 2021.

⁶⁹³ Goel, Gettleman, and Khandelwal, “Under Modi,” April 2, 2020; Gowen, “In Modi’s India,” February 15, 2018; RSF, “A Delicate Handshake,” accessed July 20, 2021.

⁶⁹⁴ Goel, Gettleman, and Khandelwal, “Under Modi,” April 2, 2020; Chakraborty, “India’s Leading,” December 1, 2020; Wallen, “Media Breaks Rank,” April 28, 2021; Sagar, “Speaking Positivity to Power: Hours Before Lockdown,” March 31, 2020; Gowen, “In Modi’s India,” February 15, 2018; Gopalakrishnan, “Indian Journalists,” April 27, 2018.

⁶⁹⁵ Goel, Gettleman, and Khandelwal, “Under Modi,” April 2, 2020; Chakraborty, “India’s Leading,” December 1, 2020; Joshua, “Tax Raid,” October 11, 2018; Shih and Masih, “Top Indian Newspaper,” July 22, 2021.

⁶⁹⁶ Panda, “India Bans Al Jazeera,” April 25, 2015; Goel, Gettleman, and Khandelwal, “Under Modi,” April 2, 2020.

⁶⁹⁷ Chakraborty, “India’s Leading,” December 1, 2020; Goel, Gettleman, and Khandelwal, “Under Modi,” April 2, 2020; Biswas, “Why Journalists,” February 4, 2021.

exacerbated self-censorship.”⁶⁹⁸ Reporters Without Borders states that “the coordinated hate campaigns waged on social networks against journalists who dare to speak or write about subjects that annoy Hindutva followers are terrifying and include calls for the journalists concerned to be murdered. The campaigns are particularly violent when the targets are women.”⁶⁹⁹ India was one of the deadliest countries for journalists in 2020, with four journalists killed.⁷⁰⁰

These informal mechanisms promoting self-censorship, whether by the government or nongovernmental groups, impact U.S. firms in India. For example, journalists for U.S. news organizations (including those working for firms like CNN with a local presence in India) and U.S. freelance journalists have experienced harassment while working in India.⁷⁰¹ After writing a story on the second wave of the COVID-19 pandemic for *Time* magazine and discussing the story on international media, journalist Rana Ayyub reports that it “resulted in a vindictive backlash accusing me of defaming India on a global scale.”⁷⁰² This included criticism by a Bharatiya Janata Party (BJP) supporter on television, which was followed by “social media attacks” and criticism of her fundraising work.⁷⁰³ Additionally, after a local TV news channel was critical of the government, one NGO reported that the Ministry of Information and Broadcasting and the BJP pressured the channel to fire the journalists. After the firing, a BJP leader told the Indian parliament he was going to “teach ABP News a lesson.”⁷⁰⁴

U.S. firms also preemptively self-censor certain content in India. For example, certain video streaming services reportedly censor certain content before releasing it in India. In addition, they have withheld all or parts of certain shows in India because of perceived sensitivities to criticism within the government.⁷⁰⁵ For example, Hotstar (owned by Disney) reportedly did not make an episode of John Oliver’s show *Last Week Tonight* available in India since its main story was critical of Prime Minister Modi.⁷⁰⁶

⁶⁹⁸ These Hindu nationalist groups have been allegedly linked to the ruling Bharatiya Janata Party (BJP) by NGOs and others. For example, Reporters Without Borders (RSF) noted that since the BJP came to power in 2019, “pressure has increased on the media to toe the Hindu nationalist government’s line” and this has led to coordinated campaigns of harassment and attacks against journalists. Freedom House, “Freedom on the Net 2021: India,” accessed July 7, 2021; RSF, “India: Modi Tightens,” accessed August 16, 2021; Gopalakrishnan, “Indian Journalists Say They Intimidated, Ostracized if They Criticize Modi and the BJP,” April 26, 2018.

⁶⁹⁹ RSF, “India: Modi Tightens,” accessed August 16, 2021.

⁷⁰⁰ RSF, *Round-up 2020*, 2020, 6.

⁷⁰¹ Ayyub, “The Indian Government,” June 29, 2021; Seshu, *Behind Bars*, 20–21, accessed July 19, 2021; RSF, “Indian Reporters,” March 3, 2020.

⁷⁰² Ayyub, “The Indian Government,” June 29, 2021.

⁷⁰³ Ayyub, “The Indian Government,” June 29, 2021.

⁷⁰⁴ RSF, “India: RSF Calls for Ban on Hindu Nationalist Group Threatening Journalists,” August 22, 2018.

⁷⁰⁵ Deep, “Deepa Mehta ‘Disappointed,’” January 7, 2021; Deep, “Netflix Releases,” May 18, 2017; Kalra and Jamkhandikar, “Netflix and Amazon Face,” October 17, 2019; Mishra, “Streaming Platforms,” March 26, 2021; Sarkar, “Is Netflix Coming Under Knife of Censorship in India?” November 15, 2018; Deep, “Streaming Services Censor,” July 7, 2017; Ghoshal, “India’s Plans,” November 16, 2018; *Economic Times*, “John Oliver Slams,” March 10, 2020.

⁷⁰⁶ *The Economic Times*, “John Oliver Slams,” March 10, 2020.

Indonesia

While freedom of speech is enshrined in Indonesia's constitution, the country has a range of policies and practices that suppress certain types of speech and has fallen on rankings of internet freedom and freedom of expression from 2016 to 2021.⁷⁰⁷ As internet and social media use in Indonesia has grown, Indonesian censorship-related policies and practices have evolved in an attempt to control what types of content are accessible online. These new laws and regulations often contain vaguely worded definitions of illegal content alongside short compliance times and large fines for noncompliance. Indonesia's Ministry of Communication and Information (MCIT) is the key governmental actor for implementing censorship-related policies and practices in the country, while other state-owned enterprises such as telecoms firms also play a role.

Summary of Key Findings

- Indonesia represents a large market for U.S. firms, particularly in social media and streaming video, which are heavily affected by censorship-related policies and practices.
- Recent policy developments in Indonesia (such as Ministerial Regulation 5) have expanded on previous laws (such as Law 11 of 2008) to broaden censorship in the country.
- U.S. firms are affected by censorship-related policies and practices such as internet intermediary rules, internet/website blocking, and criminal laws that suppress certain categories of speech.
- Compliance with these censorship-related policies often requires extensive negotiations both with governmental actors (such as the MCIT) and nongovernmental actors (such as state-owned telecommunications providers).

Sectors Affected by Censorship

Indonesia is a large and growing market for digital services, and U.S. firms are key suppliers of services affected by censorship in the Indonesian market. The country has the fourth-largest number of internet users in the world (201.4 million in 2021), although it has a lower internet penetration rate (around 70 percent) than in other large markets, and most users rely on mobile connections rather than broadband internet.⁷⁰⁸ A large portion of internet users are also on social media; one source estimates that Indonesia had 193 million social media users in 2021, with the majority under age 34.⁷⁰⁹ Both internet and social media use are also growing; the number of internet users in Indonesia increased 52 percent

⁷⁰⁷ Freedom House, "Freedom on the Net 2021: Indonesia," accessed July 7, 2021; Freedom House, "Freedom on the Net 2016: Indonesia," accessed October 22, 2021; WJP, "WJP Rule of Law Index: Current and Historical Data," accessed October 3, 2021.

⁷⁰⁸ Degenhard, "Forecast of the Number of Internet Users in Indonesia," January 2021; Statista Research Department, "Internet Penetration in Southeast Asia," March 29, 2021; Degenhard, "Forecast of the number of mobile internet users in Indonesia," January 2021; Alsop, "Number of Fixed Broadband Subscriptions in Indonesia," January 2021.

⁷⁰⁹ Degenhard, "Forecast of the Number of Social Media Users in Indonesia," May 2021; Nurhayati-Wolff, "Breakdown of Social Media," January 2021.

from 2016 to 2021, while the number of social media users rose 55 percent from 2017 (the earliest year for which data are available) to 2021.⁷¹⁰

U.S. firms are key suppliers of social media, messaging, and streaming video services. In 2020, YouTube had a market penetration rate in Indonesia of 94 percent, followed by WhatsApp (88 percent), Instagram (86 percent), Facebook (86 percent), and Twitter (64 percent).⁷¹¹ In the same year, Google had a 98 percent share of the Indonesian internet search market.⁷¹² In these areas, U.S. firms primarily compete with each other for market share rather than with Indonesian or other foreign firms. Total revenue in the broader over-the-top (OTT) market (which includes social media, messaging services, streaming video, and gaming) in Indonesia was estimated to be \$360 million in 2019, and projected to grow at a compound annual growth rate of 33 percent from 2020 to 2027.⁷¹³ One report estimated that total advertising revenue for the OTT market in Indonesia was around \$830 million (based on Indonesian tax data), with Google and Facebook accounting for around 70 percent of revenue generated.⁷¹⁴ Netflix had around 850,000 subscribers in Indonesia in early 2021, while Disney (in partnership with Disney's Indian subsidiary Hotstar) had 2.5 million subscribers, and other Southeast Asian streaming platforms Viu and Vidio had 1.5 million and 1.1 million subscribers, respectively.⁷¹⁵

Censorship Policies and Practices

Freedom of expression is guaranteed in the Indonesian Constitution,⁷¹⁶ as well as in Law No. 39 of 1999, which reaffirmed the country's UN commitments on human rights and freedom of expression.⁷¹⁷

⁷¹⁰ Degenhard, "Forecast of the Number of Internet Users in Indonesia," January 2021; Degenhard, "Forecast of the Number of Social Media Users in Indonesia," May 2021.

⁷¹¹ Market penetration measures the percentage of the population aged 16–64 using a certain product. Many users will have multiple social media accounts, so the market penetrations of different services are not cumulative. Nurhayati-Wolff, "Penetration of Leading Social Networks in Indonesia," February 2021.

⁷¹² Statcounter, "Search Engine Market Share Indonesia," May 2021.

⁷¹³ Allied Market Research, "Indonesia Over the Top (OTT) Market," February 2021.

⁷¹⁴ Google, however, has pointed to a joint study by the company and Singapore state investor Temasek that estimated the size of Indonesia's digital advertising market at \$300 million for 2015. User growth in Indonesia, along with that of India and the Philippines, were cited as key sources of growth in Facebook's 2020 annual report, although the report also notes that the firm derives less revenue per user from countries in the Asia-Pacific region than in the United States or Canada. Setiaji and Danubrata, "Indonesia Has Reached Tax Deal with Google," June 13, 2017; Facebook, "10k Annual Report," 2020, 54, 56.

⁷¹⁵ Brzeski, "Disney+ Hotstar Take Subscriber Lead," January 19, 2021.

⁷¹⁶ Article 28 of the Indonesia Constitution states, "Freedom of association and assembly, of verbal and written expression and the like, shall be prescribed by law." Flevin, Government of Indonesia, U RI No. 28/1999, May 19, 1999.

⁷¹⁷ Article 25 of Law 39 of 1999 states, "Every citizen has the right to express his opinion in public . . ." UNHCR, *State Gazette of Indonesia*, Law No. 39 of 1999, published September 23, 1999.

However, Indonesia has become more restrictive from 2016 to 2021 according to both Freedom House’s internet freedom index and an index by the World Justice Project for freedom of expression.⁷¹⁸ Indonesia has also recently introduced new censorship-related regulations, which build upon older laws to create a more restrictive environment of censorship in the country (table 4.4). The country’s censorship-related policies and practices can be categorized into four main types: laws that suppress certain categories of speech, internet/website blocking, internet intermediary rules, and data localization and local presence requirements. These four types of censorship-related policies and practices are described in more detail in the sections below.

Table 4.4 Indonesian laws and regulations that restrict speech or may enable the restriction of speech

Date	Law/Regulation	Description
2020	Ministerial Regulation 5 (MR 5)	Uses broad and vague language to prohibit content; requires intermediaries to remove prohibited content within 24 hours, or 4 hours for certain types of content; requires digital firms to register and provide government direct access to their systems, data, and information about users.
2019	Government Regulation 71 (GR 71)	Builds on GR 82, clarifying data localization requirements and allows for blocking of websites and services which contain prohibited content.
2016	Circular Letter No. 3	Regulation of the MCIT, with Law 11 of 2008 as its legal basis. Restricts content on over-the-top (OTT) services and requires them to apply content filtering.
2012	Government Regulation 82 (GR 82)	Firms that store and process certain data must store data inside Indonesia; requires digital firms to register.
2008	Law 11 of 2008 (the “ITE” law) as amended by Law No. 19 of 2016	Uses broad and vague language to restrict the distribution of certain content; requires internet intermediaries to avoid hosting prohibited content.
2002	Law No. 32 of 2002 as amended by Law No. 11 of 2020 (Broadcasting Law)	Before 2021, online streaming video was subject to the Broadcasting Law, which required firms to conduct internal censorship of content to avoid broadcasting violence or obscenity (from 2021 onward, streaming video is regulated under Law 11 of 2008).
1999	Articles 156a, 157, 207, 310, 311, 315 of the Indonesian Penal Code as amended by Law 27 of 1999	Established criminal penalties for blasphemy, expressing hostility against groups, defamation, and insulting public officials.

Sources: Compiled by USITC.

The Indonesian MCIT is the key governmental actor that implements censorship, although other governmental actors such as the country’s film censorship board and local police are also involved. In addition, state-owned telecommunications firm PT Telekomunikasi (Telkom) is involved in blocking and filtering websites and content, while compliance with government rules by private actors such as social media firms is also required to implement censorship.

⁷¹⁸ Indonesia overall scored 48 out of 100 in 2020 on Freedom House’s *Freedom on the Net* report, down from 56 in 2016 (where a higher score equals more freedom). Its score for limits on content also declined from 21 out of 35 in 2016 to 18 in 2020. Similarly, on the World Justice Project’s index for freedom of opinion and expression, Indonesia scored 0.74 out of 1 in 2016, but declined to 0.68 in 2020 (where a higher score equals more freedom). Freedom House, “Freedom on the Net 2021: Indonesia,” accessed July 7, 2021; Freedom House, “Freedom on the Net 2016: Indonesia,” accessed October 22, 2021; WJP, “WJP Rule of Law Index: Current and Historical Data,” accessed October 3, 2021.

Laws That Suppress Certain Categories of Speech

Law 11 of 2008 as amended by Law 19 of 2016, commonly referred to in English as the “ITE” (electronic information and transactions) law, is the primary censorship policy in Indonesia, while MR 5 is the newest censorship regulation, which came into force in November 2020.⁷¹⁹ The ITE law contains broad language that prohibits electronic distribution of information related to defamation, extortion, and threats; “false or misleading information;” “information aimed at inflicting hatred or dissention;” or the undefined “contents against propriety.”⁷²⁰ Similarly, MR 5 prohibits content which causes anxiety for society and disturbs public order based on the government’s assessment (these categories are not further explained or defined in the regulation).⁷²¹ Both policies make the same types of speech illegal for individuals as well as internet intermediaries. The ITE has been used to make several arrests and prosecutions of individuals, which furthers the climate of self-censorship. The ITE law was invoked 119 times in 2020 in cases involving speech, according to human rights organization Amnesty International.⁷²² Another source noted that arrests for spreading political “hoaxes” or misleading information under the ITE increased from 2018 to 2019, including for content that criticized the country’s president Joko Widodo.⁷²³ MR 5 is relatively new, and one industry representative stated that as of August 2021 the enforcement of MR 5 had yet to be fully implemented.⁷²⁴

Other parts of the Indonesian criminal code also criminalize certain types of speech, such as prohibiting insults against public officials or speech that offends religious sensibilities, with varying penalties including fines and imprisonment.⁷²⁵ These policies reportedly have been used to arrest and detain

⁷¹⁹ Government of Indonesia, Ministry of Communication and Information Technology, Regulation of the Minister of Communication and Information No. 5, November 16, 2020; Rodriguez, “Indonesia’s Proposed Online Intermediary Regulation May Be,” February 16, 2021.

⁷²⁰ The ITE law was subsequently amended by Law 19 of 2016 which modified some definitions and penalties, as well as authorized the government to block access to content which violates laws. Government of Indonesia, Law No. 11 of 2008, April 21, 2008, articles 27–29; Government of Indonesia, Law No. 19 of 2016, November 25, 2016; Rodriguez, “Indonesia’s Proposed Online Intermediary Regulation May Be,” February 16, 2021; Mann, “Attempts to Revise Draconian ITE Law Stumble,” April 1, 2021; Molina, “Indonesian Electronic Information and Transactions Law Amended,” December 2016; Pardede, Wiyoso, Harimahesa, and Dharmawan, “Indonesia: Indonesia Regulates Foreign Private Electronic Systems,” January 17, 2021.

⁷²¹ Government of Indonesia, Ministry of Communication and Information Technology, Regulation of the Minister of Communication and Information No. 5, November 16, 2020; Baker McKenzie, “Indonesia: Indonesia Regulates Foreign Private Electronic System Operators,” December 11, 2020.

⁷²² In the past five years, the law has reportedly been invoked twice as many times compared to the previous five years. Maulia, “Jokowi orders cyberlaw review,” March 4, 2021; Amnesty International, “2020/2021 Report,” 188; industry representative, interview by USITC staff, June 29, 2021.

⁷²³ For example, one person was sentenced to seven months in prison for posting a (possibly edited) video of the president’s running mate dressed as Santa Claus. Tapsell, “Indonesia’s Policing of Hoax News Increasingly Politicised,” September 20, 2021; Purba, “Ma’ruf Amin Hoax Video Editor in Santa Claus Costume,” May 21, 2019.

⁷²⁴ Industry representative, interview by USITC staff, August 16, 2021.

⁷²⁵ Article 207 penalizes insulting public officials, regardless of whether the insulting statement is true, while Articles 310–311 also use similarly broad language when prohibiting defamation against private individuals, which, according to Human Rights Watch, leaves these laws open to abuse which unnecessarily restricts speech. Government of Indonesia, Directorate General of Law and Legislation, Ministry of Justice, Penal Code as amended by Law 27 of 1999, May 19, 1999, articles 156a, 207, 310, 311, 315; HRW, written submission to USITC, July 23, 2021, 8.

political activists who posted information critical of the government online,⁷²⁶ which can then lead to self-censorship. For example, one source reported it is now not uncommon for Twitter users to finish tweets critical of the government with a tongue-in-cheek disclaimer to avoid offending censors.⁷²⁷ Article 156a of Indonesia's penal code establishes punishments for blasphemy,⁷²⁸ and the country ranked higher than average on an index of the severity of such laws according to one study.⁷²⁹ Amnesty International has documented the increasing use of blasphemy and treason laws to bring charges against political activists who posted information critical of the government online.⁷³⁰ Finally, the U.S. State Department has noted multiple instances of detention, violence, and harassment by government officials directed against journalists and activists as a result of their speech.⁷³¹

Internet Blocking, Filtering, and Throttling

Several policies including MR 5, the ITE, and Law No. 32 of 2002 as amended by Law No. 11 of 2020 (known as the Broadcasting Law)⁷³² allow the Indonesian government to compel telecommunications firms to block websites and services in the country due to their content. The ITE, through its amendment by Law 19 of 2016, and MR 5 also include website blocking as a penalty for noncompliance with internet intermediary rules (as described in the next section).⁷³³ Prior to 2021, streaming video providers were regulated by the Broadcasting Law.⁷³⁴ Article 26 of the Broadcasting Law requires providers to “conduct internal censorship on all contents to be broadcast...,” while article 36 states that broadcast content “shall not contain elements of violence, obscenity...”⁷³⁵ However, a 2021 Constitutional Court ruling reaffirmed that OTT services including streaming video services are subject to the ITE law and its amendments and not subject to the country's Broadcasting Law.⁷³⁶

⁷²⁶ HRW, written submission to USITC, July 23, 2021, 8; Amnesty International, “Indonesia: End Wave of Digital Attacks,” June 16, 2020.

⁷²⁷ Mann, “Attempts to Revise Draconian ITE Law Stumble,” April 1, 2021.

⁷²⁸ This punishes any person who deliberately “gives expression to feelings or commits an act, which principally have the character of being at enmity with, abusing or staining a religion, adhered to in Indonesia...” Government of Indonesia, Directorate General of Law and Legislation, Ministry of Justice, Penal Code as amended by Law 27 of 1999, May 19, 1999, article 156a.

⁷²⁹ Fiss and Kestenbaum, “Respecting Rights? Measuring the World's Blasphemy Laws,” 2016.

⁷³⁰ Amnesty International, “Report 2020/21 The State of the World's Human Rights,” April 7, 2021, 188–89.

⁷³¹ USDOS, DRL, *Indonesia 2020 Human Rights Report*, 2021.

⁷³² Government of Indonesia, Indonesian Broadcasting Commission, Law No. 32 of 2002, December 28, 2002; Government of Indonesia, Law No. 11 of 2020, November 2, 2020; MPA, written submission to the USITC, July 23, 2021, 11.

⁷³³ Government of Indonesia, Ministry of Communication and Information Technology, Regulation of the Minister of Communication and Information No. 5, November 16, 2020, Article 7; Government of Indonesia, Law No. 19 of 2016, November 25, 2016, Article 40.

⁷³⁴ One industry association noted the Indonesian Parliament's desire to extend the broadcasting law to cover streaming video. Government of Indonesia, Indonesian Broadcasting Commission, Law No. 32 of 2002, December 28, 2002; MPA, written submission to the USITC, July 23, 2021, 11.

⁷³⁵ Government of Indonesia, Indonesian Broadcasting Commission, Law No. 32 of 2002, December 28, 2002.

⁷³⁶ Indonesia also maintains restrictions on content in theatrical film releases. In particular, the country's Film Censorship Board must review all films before they can be screened in the country. Kadir, Pardede, Wiyoso, and Harimahesa, “Indonesia: Constitutional Court Confirms OTT,” February 15, 2021; Husein and Sirie, “Constitutional Court's Decision Defines,” February 2, 2021; MPA, written submission to the USITC, July 16, 2021.

These above-mentioned laws, combined with the Indonesian government's influence on and partnerships with domestic telecommunications firms and ISPs, allow the government to routinely block websites that it claims violate its standards. According to the Indonesian government's own statistics, the country blocked over 1 million websites in 2020 (the majority of which are classified by the government as pornography), using "Cyber Drone 9" (an automated system operated by state-owned internet service provider Telkom).⁷³⁷ Another study found that during a different time period Telkom blocked 9.1 percent of a sample of websites (161 websites of 1,765 sites tested) including news media, and LGBT content.⁷³⁸ Indonesia's 2008 Bill on Pornography,⁷³⁹ which criminalizes depictions of LGBT content in the media, has also been used to permanently block 73 LGBT-related apps in Google's Play store, including U.S.-headquartered Grindr (for more information on censorship of LGBT content, see box 2.1 in chapter 2).⁷⁴⁰ In addition, Indonesia has also engaged in throttling and wholesale blocking of social media platforms such as Facebook, WhatsApp, and Instagram in response to political unrest in Jakarta in May 2019,⁷⁴¹ as well as short-duration internet shutdowns in response to protests in five recorded instances in 2018–19 (authorized under the ITE).⁷⁴² However, in a different context, the Jakarta administrative court ruled that the government's repeated shutdowns of the internet during independence protests in Papua and West Papua provinces in 2019 were illegal and the ITE Law could not be used to shut off all internet access, but only to block access to "unlawful content."⁷⁴³

Noncompliance with Indonesia's censorship policies can lead to websites and services being blocked; but compliance with these policies can require extensive interaction with the government agencies and state-owned enterprises, as the case of Netflix illustrates. Indonesia's state-owned ISP Telkom blocked

⁷³⁷ Pratiwi and Aptika, "MiChat Account Takedown and Latest," March 25, 2021; Freedom House, "Freedom on the Net 2021: Indonesia," accessed July 7, 2021; Davies and Silviana, "New Indonesian Web System Blocks," February 19, 2018; Tisnadibrata, "Indonesia Introduces New Internet Censorship System," January 3, 2018.

⁷³⁸ This includes 15 LGBT sites, 4 media sharing sites (including Vimeo, Tumblr, and Imgur), and 5 news media sites (including Reddit). Entire websites were blocked for hosting a small amount of objectionable content. Several websites were also blocked despite no longer being in operation, suggesting a lower level of sophistication compared to markets such as China. Wong et al., *The State of Internet Censorship in Indonesia*, May 23, 2017; Griffin, "Tumblr Blocked in Indonesia," March 6, 2018; Lukman, "Amid Online Porn Crackdown," May 14, 2014.

⁷³⁹ Government of Indonesia, Law No. 44 of 2008, November 26, 2008.

⁷⁴⁰ Davies and Silviana, "New Indonesian Web System Blocks," February 19, 2018; Wong et al., "The State of Internet Censorship in Indonesia," May 23, 2017; Listiorini and Davies, "Online Dating Apps Blocked," April 18, 2017.

⁷⁴¹ Internet Association, written submission to the U.S. Trade Representative, October 9, 2020; Krapiva, Micek, and Taye, "Indonesians Seek Justice After Internet Shutdown," May 13, 2020.

⁷⁴² Access Now, "Internet Shutdown Tracker," accessed September 27, 2019 and August 4, 2021; HRW, written submission to the USITC, July 23, 2021, 9. Some shutdowns were regional in scope, while others were national. In some instances, most of the shutdowns targeted mobile internet connections rather than broadband connections.

⁷⁴³ At the time of the block, Telkom was also attempting to form a partnership with a Singapore-based video streaming service (Hooq), although Hooq ultimately shut down its services in Indonesia in 2020. Telkom's blocking of Netflix was the subject of an investigation by the KPPU (Indonesia's Business Competition Supervisory Commission) for discriminatory monopolistic practices, although Telkom was ultimately absolved of any wrongdoing as it was found that users could still access Netflix through other internet providers. *Jakarta Post*, "Telkom to Bring Netflix Rival to Indonesia," March 28, 2016; *Jakarta Post*, "Streaming Service HOOQ to Shut Down," April 28, 2020; Mulia, "Netflix's Complicated Relationship with Indonesia," February 21, 2020; Reuters, "Indonesia's Telkom Group Unblocks Netflix," July 7, 2020; KPPU, "ICC Decided That PT. Telkom and PT. Telkomsel," July 13, 2021; Freedom House, "Freedom on the Net 2021: Indonesia," accessed July 7, 2021; Manan, "Jakarta State Administrative Court Rules," June 4, 2020.

Netflix from operating on its network (as well as the networks of its subsidiaries) from 2016, when the firm attempted to enter the market, until 2020.⁷⁴⁴ As Telkom has a 50 percent share of the Indonesian internet market, Netflix lost access to half of its potential subscribers in the country for four years.⁷⁴⁵ Reportedly, the reason for the block was a decision by Indonesia's film censorship board, under the Broadcasting Law, that Netflix distributed content deemed violent or sexual, although the motivations were disputed.⁷⁴⁶ Netflix engaged in four years of negotiations with Telkom and was ultimately allowed to resume providing services on their network in 2020.⁷⁴⁷ However, Netflix had to agree to refrain from airing "prohibited content that includes child pornography and terrorism" (types of content prohibited by the Broadcasting Law, the ITE law, and other policies) and to respond to customer complaints about content within 24 hours.⁷⁴⁸ At the same time, it entered into a \$1 million partnership with the Indonesian Ministry of Education and Culture to create a skills development program for the domestic film industry and allowed the state-owned TV network to air some Netflix-owned documentaries.⁷⁴⁹

Since its re-entry into the market, Netflix has continued to receive complaints from the Indonesian Broadcasting Commission about hosting inappropriate content but has not been subsequently blocked.⁷⁵⁰ More recent U.S. entrants into this market such as Disney have seemingly learned from Netflix's experience and have not faced similar difficulties operating. Disney (with its subsidiary Hotstar) recently surpassed Netflix in terms of the number of subscribers in the country.⁷⁵¹

Internet Intermediary Rules

Both MR 5 and the ITE law contain internet intermediary rules and may be used to may enable censorship in the country. MR 5 uses broad and vague language to require that "private electronic systems operators" (which includes internet intermediaries that host user-generated content such as

⁷⁴⁴ Telkom is listed on the New York stock exchange, but the Indonesian government owns a majority of shares and its 2020 financial statement describes it as "a state-owned limited liability corporation." Telkom, Financial Statement (Audited) FY 2020, 2021, 5.

⁷⁴⁵ Indonesia has fewer movie screens per person than other large markets, so streaming video is a key distribution channel despite slower internet speeds than more developed countries. MPA, written submission to the USITC, July 23, 2021, 10.

⁷⁴⁶ At the time, the law was unclear about whether streaming video should be treated the same as film or broadcasting with regard to censorship. Netflix was allowed to operate on other ISPs in Indonesia, but Telkom is the largest single ISP in the country. MPA, written submission to the USITC, July 23, 2021, 11; Reuters, "Indonesia's Telkom Group Unblocks Netflix," July 7, 2020; industry representative, interview by USITC staff, July 23, 2021; USITC, hearing transcript, July 1, 2021, 252 (testimony of Nigel Cory, ITIF); industry representative, interview by USITC staff, July 8, 2021.

⁷⁴⁷ Mulia, "Netflix's Complicated Relationship with Indonesia," February 21, 2020; Reuters, "Indonesia's Telkom Group Unblocks Netflix," July 7, 2020.

⁷⁴⁸ Eloksari, "Explainer: How Netflix Went from Foe to Friend," August 9, 2021; Information Technology and Innovation Foundation, written submission to the USITC, August 28, 2021, 50.

⁷⁴⁹ Mulia, "Netflix's Complicated Relationship with Indonesia," February 21, 2020; Reuters, "Indonesia's Telkom Group Unblocks Netflix," July 7, 2020.

⁷⁵⁰ Ong, "Netflix Indonesia Called Out for 'inappropriate content' Again," March 3, 2021.

⁷⁵¹ The success of Disney is attributable to several factors, and reports have not mentioned issues with censorship in Indonesia. It is notable, however, that Disney entered the market in partnership with Telkomsel, a large Indonesian mobile services provider and subsidiary of Telkom. Brzeski, "Disney+ Hotstar Take Subscriber Lead," January 19, 2021; Frater, "Disney Innovates in Indonesia," September 4, 2020.

social media)⁷⁵² remove “manifestly illegal” content within 24 hours of receiving a warning, or within four hours for specific content related to terrorism, child pornography, or content causing “unsettling situations for the public and disturbing public order.”⁷⁵³ If an operator does not comply, they will be issued a warning, followed by fines; if content is still not removed or fines are unpaid, the government can order the ISP to block access to the site.⁷⁵⁴ The ITE, as noted above, uses similarly vague language to describe prohibited content and the law’s definitions are written in such a way as to cover private chat messages as well as publicly available social media posts.⁷⁵⁵ If an operator does not comply, it will be issued a warning, followed by fines; if content is still not removed or fines are unpaid, the government can order the ISP to block access to the site.⁷⁵⁶ In addition, Circular Letter No. 3 of 2016 clarifies that the content restrictions from the ITE apply to OTT services and requires OTT service providers to filter prohibited content.⁷⁵⁷ Penalties for noncompliance with the ITE law include a fine of 750 million rupiah (about \$52,000), while MR 5 allows these fines to be multiplied up to three times if content is not removed.⁷⁵⁸ However, one industry representative noted that the enforcement of MR 5 had yet to be fully implemented and the ITE law still formed the basis for content removal requests.⁷⁵⁹

As described above, Indonesia’s internet intermediary rules contained in MR 5 have among the shortest takedown periods (four hours for certain types of content) of any market discussed in this report.⁷⁶⁰ The

⁷⁵² One source stated that the internet intermediary rules in MR 5 do not apply to cloud service providers supplying infrastructure as a service. Rodriguez, “Indonesia’s Proposed Online Intermediary Regulation May Be,” February 16, 2021.

⁷⁵³ Government of Indonesia, Ministry of Communication and Information Technology, Regulation of the Minister of Communication and Information No. 5, November 16, 2020, Article 12; AmCham Indonesia, written submission to the USITC, July 23, 2021, 1.

⁷⁵⁴ Government of Indonesia, Ministry of Communication and Information Technology, Regulation of the Minister of Communication and Information No. 5, November 16, 2020; industry representative, interview by USITC staff, August 16, 2021.

⁷⁵⁵ The inclusion of private messages makes this law broader than the Indonesian penal code, in which defamation must occur in public. Government of Indonesia, Law No. 11 of 2008, April 21, 2008, articles 27–29; Mann, “Attempts to Revise Draconian ITE Law Stumble,” April 1, 2021; Government of Indonesia, Directorate General of Law and Legislation, Ministry of Justice, Penal Code as amended by Law 27 of 1999, May 19, 1999, article 315.

⁷⁵⁶ Fines are calculated according to a formula based on the amount of time such content remains on the site. Law 11 of 2008 specified fines for violations, while Law 19 of 2016 added website blocking (“termination of access”) as a penalty. Government of Indonesia, Ministry of Communication and Information Technology, Regulation of the Minister of Communication and Information No. 5, November 16, 2020; industry representative, interview by USITC staff, August 16, 2021.

⁷⁵⁷ Government of Indonesia, Ministry of Communications and Informatics, Circular Letter No. 3, March 31, 2016; Makarim and Taira, “The Government of Indonesia Has Finally Regulated,” accessed August 27, 2021; Innis and Alimsardjono, “Indonesia - Ministry of Communications and Informatics issues OTT Circular Letter,” April 25, 2016.

⁷⁵⁸ The ITE law also allows for imprisonment of up to six years for online defamation or spreading misleading information, and up to 12 years for online threats. As discussed above, if prohibited content remains available or fines are unpaid the service can be blocked. Fines converted from Indonesian rupiah to U.S. dollars on June 22, 2021. Government of Indonesia, Law No. 11 of 2008, April 21, 2008, Articles 27–29, 40, 45; Rodriguez, “Indonesia’s Proposed Online Intermediary Regulation May Be,” February 16, 2021; Mann, “Attempts to Revise Draconian ITE Law Stumble,” April 1, 2021; Molina, et al., *Indonesian Electronic Information and Transactions Law Amended*, December 2016; HRW, written submission to USITC, July 23, 2021, 8.

⁷⁵⁹ Industry representative, interview by USITC staff, August 16, 2021.

⁷⁶⁰ Only Vietnam has a shorter compliance time of three hours for certain content. Indonesia had the smallest share of Google takedown requests of any key market in this report. See table 1.1 in chapter 1 for a comparison of takedown notices by market.

Indonesian government has issued an increasing number of takedown requests to various services in recent years, although the number of takedown notices that have been issued is smaller than those in other markets. For example, in 2020 Facebook removed content in 772 instances based on government requests (excluding copyright requests), up from only 1 such instance in 2016.⁷⁶¹ However, the number of requests were far fewer than in India, where Facebook removed content based on 28,991 requests over the same period. The Indonesian government has also reportedly begun using copyright requests to remove content critical of the government. For example, in Google's 2021 transparency report, Google stated that the firm "received a request through our copyright complaints submission process from an Indonesian Consul General who requested that we remove six YouTube videos. [Google] did not remove the videos, which appeared to be critical of the Consulate."⁷⁶²

Processing and adjudicating these requests represent a compliance burden for firms and could lead to increased self-censorship. According to one regional expert, there are often unwritten rules for compliance. Broad and expansive language in laws that restrict speech makes it difficult for U.S. firms to identify where "red lines" are for compliance and what the consequences might be for pushing back against removing content.⁷⁶³ In one report, Facebook stated that it has increased the number of content moderators who have local language expertise and it has added policy personnel, as well as developing hate speech detection technology in the Bahasa Indonesia language.⁷⁶⁴ One NGO noted that the timeframes for removing content under MR 5 were "unrealistic" and do not give firms adequate time to review content and make informed decisions about whether it violates the law, which leads to compliance with overly broad or vague requests.⁷⁶⁵ Another industry representative stated that Indonesia did not have firm size thresholds for applying internet intermediary rules, unlike other markets, which meant that small firms were subject to the same regulations as large firms despite smaller firms' more limited resources.⁷⁶⁶ Due to Indonesia's stiff penalties and short compliance times, firms (especially smaller ones) could potentially remove legitimate speech as they are incentivized to remove content first and ask questions later (or potentially never).⁷⁶⁷ The lack of clear language in MR 5 regarding prohibited content may also make it more difficult for firms to oppose future removal requests.⁷⁶⁸

Data Localization and Local Presence Requirements

Indonesia's censorship policies are interrelated with censorship-enabling policies (in some cases contained within the same laws) that could facilitate the restriction of speech by providing leverage to the government to compel firms to comply with censorship directives. MR 5 requires digital services providers to register with the government, provide direct access to their systems and data for

⁷⁶¹ Google, "Transparency Report," accessed August 6, 2021; Facebook, "Transparency Center," accessed August 5, 2021; Twitter, "Twitter Transparency Center," accessed August 5, 2021.

⁷⁶² Google, "Government Requests to Remove Content," accessed August 5, 2021.

⁷⁶³ Industry representative, interview by USITC staff, June 29, 2021.

⁷⁶⁴ Barrett, *Who Moderates the Social Media Giants?* June 2020, 21.

⁷⁶⁵ HRW, written submission to the USITC, July 23, 2021, 11.

⁷⁶⁶ Industry representative, interview by USITC staff, August 4, 2021.

⁷⁶⁷ AmCham Indonesia, written submission to the USITC, July 23, 2021, 1; industry representative, interview by USITC staff, August 4, 2021.

⁷⁶⁸ AmCham Indonesia, written submission to the USITC, July 23, 2021, 1.

“supervision” and law enforcement purposes,⁷⁶⁹ appoint a local representative to handle content access and removal requests, and provide information about users who upload information or documents to these platforms.⁷⁷⁰ These obligations extend to firms that store data outside of Indonesia as long as the data relate to Indonesian residents or firms, and failure to comply could result in a warning or revocation of a firm’s registration.⁷⁷¹ In addition, Circular No. 3 clarifies that foreign OTT firms providing services in Indonesia must have a permanent establishment in the country.⁷⁷² These requirements in MR 5 evolved from provisions in GR 82 and GR 71, which also mandate the local storage of data (data localization) for firms that store and process data related to government entities.⁷⁷³ As with MR 5, firms violating GR 71 are subject to warning letters, fines, and ultimately suspension of activities and blocking of services for noncompliance.⁷⁷⁴ Recently, the U.S. social media app Clubhouse was reportedly threatened with blocking in 2021 if it did not register with the government as required by MR 5.⁷⁷⁵

Local presence requirements and mandatory data localization can act as tools to implement censorship in Indonesia. One NGO stated that requirements to have employees based in Indonesia can make firms more susceptible to government pressure to comply with requests to take down legitimate content.⁷⁷⁶ An NGO representative also noted that data localization laws in Indonesia could be used to compel firms to comply with censorship requests, allow the Indonesian government to access user data for censorship purposes, or allow the government to require firms to remove data and make it inaccessible in the country.⁷⁷⁷ In addition, the Center for Democracy and Technology noted more generally that data

⁷⁶⁹ Government of Indonesia, Ministry of Communication and Information Technology, Regulation of the Minister of Communication and Information No. 5, November 16, 2020, Article 21.

⁷⁷⁰ Government of Indonesia, Ministry of Communication and Information Technology, Regulation of the Minister of Communication and Information No. 5, November 16, 2020, Article 11, 15, 25; Rodriguez, “Indonesia’s Proposed Online Intermediary Regulation May Be the Most Repressive Yet,” February 16, 2021; *Economist*, “Indonesia adds another weapon to its speech-suppressing arsenal,” June 5, 2021.

⁷⁷¹ Government of Indonesia, Ministry of Communication and Information Technology, Regulation of the Minister of Communication and Information No. 5, November 16, 2020, Articles 4, 34, 45; HRW, written submission to the USITC, July 23, 2021, 11.

⁷⁷² According to the one industry association, such local presence requirements can also create unintentional tax consequences for firms. CSI, written submission to the U.S. Trade Representative, October 9, 2020, 56; Government of Indonesia, Ministry of Communications and Informatics, Circular Letter No. 3, March 31, 2016, Article 5.3.

⁷⁷³ Electronic systems operators are permitted to store and process data outside of Indonesia as long as the data do not relate to public bodies such as the government. Data localization requirements introduced under GR 82 were subsequently clarified under GR 71 and MR 5, but firms are still required to provide the government access to data upon request. Government of Indonesia, Ministry of Communication and Information Technology, Regulation of the Minister of Communication and Information No. 5, November 16, 2020, Article 34; Government of Indonesia, Ministry of Communication and Information Technology, Regulation No. 71 of 2019, October 4, 2019, Articles 20–21; Government of Indonesia, Ministry of Communication and Information Technology, Regulation No. 82 of 2012, October 12, 2012, Article 17; Pardede, “Indonesia: Indonesia Regulates Foreign Private Electronic System Operators,” December 11, 2020; Pardede, “Indonesia: New Regulation on Electronic Systems and Transactions,” November 7, 2019.

⁷⁷⁴ Government of Indonesia, Ministry of Communication and Information Technology, Regulation No. 71 of 2019, October 4; Pardede, “Indonesia: New Regulation on Electronic Systems and Transactions,” November 7, 2019.

⁷⁷⁵ VOI, “Clubhouse Must Be Registered in Indonesia,” February 18, 2021.

⁷⁷⁶ HRW, written submission to the USITC, July 23, 2021, 11.

⁷⁷⁷ NGO representative, interview by USITC staff, June 29, 2021.

localization laws can be used by governments to exercise greater control over the internet, including for censorship.⁷⁷⁸

⁷⁷⁸ Center for Democracy and Technology, written submission to the USITC, July 23, 2021, 16–17.

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Appendix A

Request Letters

DOCKET NUMBER

3521

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SECRETARY
INT'L TRADE
COMMISSION

CHUCK GRASSLEY, IOWA, CHAIRMAN

MIKE CRAPO, IDAHO	RON WYDEN, OREGON
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JOHN THUNE, SOUTH DAKOTA	THOMAS R. CARPER, DELAWARE
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BILL CASSIDY, LOUISIANA	MARK R. WARNER, VIRGINIA
JAMES LANKFORD, OKLAHOMA	SHELDON WHITEHOUSE, RHODE ISLAND
STEVE DAINES, MONTANA	MAGGIE HASSAN, NEW HAMPSHIRE
TODD YOUNG, INDIANA	CATHERINE CORTEZ MASTO, NEVADA
BEN SASSE, NEBRASKA	

KOLAN DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL
JOSHUA SHEINKMAN, DEMOCRATIC STAFF DIRECTOR



COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

January 4, 2021

RECEIVED 4:45 P.M.
JANUARY 4, 2021
OFFICE OF THE
SECRETARY
U.S. INT'L TRADE
COMMISSION

The Honorable Jason E. Kearns
Chairman
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Dear Chairman Kearns:

Censorship is the prohibition or suppression of speech or other forms of communication. Foreign governments use many tools to carry out censorship, including technological measures that restrict digital trade. These tools, and the policies that enable them, allow authorities in foreign markets to limit speech by controlling the flow of information and services.

On June 30, 2020, the Senate Finance Committee's Trade Subcommittee held a hearing on "Censorship as a Non-tariff Barrier." During the course of this hearing, Members of the Finance Committee learned more about how foreign government censorship adversely impacts U.S. businesses and citizens. Of particular concern, it appears foreign governments in some cases try to apply their censorship practices extraterritorially. This effort undermines U.S. businesses – and more importantly, U.S. values.

The Members of this Committee rightly want to know more so they can better act on this important issue. Therefore, I am writing today to request that the Commission conduct an investigation, and prepare a report, informed by a survey of businesses in the United States, under section 332(g) of the Tariff Act of 1930. The report should provide detailed information on this important matter, including the following:

1. Identification and descriptions of various foreign censorship practices, in particular any examples that U.S. businesses consider to impede trade or investment in key foreign markets. The description should include to the extent practicable:
 - a. the evolution of censorship policies and practices over the past 5 years in key foreign markets;

- b. any elements that entail extraterritorial censorship; and
 - c. the roles of governmental and non-governmental actors in implementation and enforcement of the practices.
- 2. To the extent practicable, including through the use of survey data, an analysis of the trade and economic effects of such policies and practices on affected businesses in the United States and their global operations. The analysis should include to the extent practicable, quantitative and qualitative impacts of the identified policies, including by reference, where identifiable, to:
 - a. impact on employment;
 - b. direct costs (e.g., compliance and entry costs);
 - c. foregone revenue and sales;
 - d. self-censorship; and
 - e. other effects the Commission considers relevant for the Committee to know.

I request the Commission deliver its report no later than 18 months from the date of this letter. As the Committee intends to make the report available to the public in its entirety, the report should not include any confidential business information.

Sincerely,



Charles E. Grassley
Chairman
Committee on Finance

RON WYDEN, OREGON, CHAIRMAN
DEBBIE STABENOW, MICHIGAN
MARIA CANTWELL, WASHINGTON
ROBERT MENENDEZ, NEW JERSEY
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JOHN BARRASSO, WYOMING
JOSHUA SHEINKMAN, STAFF DIRECTOR
GREGG RICHARD, REPUBLICAN STAFF DIRECTOR

United States Senate

COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

April 7, 2021

The Honorable Jason E. Kearns
Chair
U.S. International Trade Commission
500 E Street, SW
Washington, D.C. 20436

Dear Chair Kearns:

I am writing today in regard to the investigation requested by former Committee Chairman Grassley regarding “Censorship as a Non-tariff Barrier” on January 4, 2021. I agree with Senator Grassley that censorship and the impact of censorship on the flow of information and services is a critical issue for the digital economy.

For this reason, I support the request for an investigation and survey pursuant to Section 332(g) of the Tariff Act of 1930 regarding foreign censorship and its impact on trade and investment. However, recognizing the pressing concerns regarding this issue, highlighted by the Senate Finance Committee’s Trade Subcommittee hearing titled “Censorship as a Non-tariff Barrier,” I request that the Commission divide its report into two volumes.

The first volume should include detailed information on the following:

1. Identification and descriptions of various foreign censorship practices, in particular any examples that U.S. businesses consider to impede trade or investment in key foreign markets. The description should include to the extent practicable:
 - a. the evolution of censorship policies and practices over the past 5 years in key foreign markets;
 - b. any elements that entail extraterritorial censorship; and
 - c. the roles of governmental and non-governmental actors in implementation and enforcement of the practices.

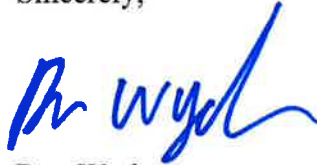
And the second volume should provide:

2. To the extent practicable, including through the use of survey data, an analysis of the trade and economic effects of such policies and practices on affected businesses in the United States and their global operations. The analysis should include to the extent practicable, quantitative and qualitative impacts of the identified policies, including by reference, where identifiable, to:
 - a. impact on employment;

- b. direct costs (e.g., compliance and entry costs);
- c. foregone revenue and sales;
- d. self-censorship; and
- e. other effects the Commission consider relevant for the Committee to know.

Recognizing that the design and execution of a survey requires additional time, I request the first volume of the Commission's investigation be delivered by December 30, 2021, and the second volume, with results of the Commission's survey and any additional information, provided by July 5, 2022.

Sincerely,



Ron Wyden
Chairman
Senate Finance Committee

Appendix B

Federal Register Notices

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–657 and 731–TA–1537 (Final)]

Chassis From China; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations; Correction

AGENCY: United States International Trade Commission.

ACTION: Correction of notice.

Correction is made to the March 24, 2021 deadline for filing posthearing briefs statements, the April 8, 2021 date of record closing, and the April 12, 2021 deadline for filing final comments, in the *Written Submissions* section of the notice which was published on January 14, 2021 (86 FR 3193). The correct deadline dates are as follows: Filing posthearing briefs and statements is March 23, 2021; the record closing is April 7, 2021; and deadline for final comments is April 9, 2021.

By order of the Commission.

Issued: January 14, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–01318 Filed 1–28–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1213]

Certain Light-Emitting Diode Products, Fixtures, and Components Thereof; Notice of Commission Decision Not to Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 13) of the presiding administrative law judge (“ALJ”) granting complainant’s motion to amend the complaint and notice of investigation (“NOI”) in the above-captioned investigation to add dependent claim 11 of U.S. Patent No. 8,403,531 (“the ‘531 patent”) and withdraw claims 17, 21, and 24 of the same patent.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International

Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone 202–205–1810.

SUPPLEMENTARY INFORMATION: On August 17, 2020, the Commission instituted this investigation based on a complaint filed by Ideal Industries Lighting LLC d/b/a Cree Lighting (“Cree”) of Durham, North Carolina. 85 FR 50047–48 (Aug. 17, 2020). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain light-emitting diode products, fixtures, and components thereof by reason of infringement of certain claims of the ‘531 patent and U.S. Patent Nos. 8,596,819; 8,777,449; 9,261,270; and 9,476,570. *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation named RAB Lighting Inc. of Northvale, New Jersey (“RAB”) as the sole respondent. *Id.* The Office of Unfair Import Investigations is not participating in the investigation. *Id.*

On December 23, 2020, Cree filed a motion for leave to amend the complaint and notice of investigation (“NOI”) to add dependent claim 11 of the ‘531 patent, and withdraw claims 17, 21, and 24 of the same patent. RAB opposed the motion.

The ALJ issued the subject ID (Order No. 13) on January 8, 2021, granting Cree’s motion for leave to amend the complaint and NOI. The ID finds that the prejudice to RAB is minimal and that the public interest weighs in favor of granting the motion to amend under Commission Rule 210.14(b)(1) because it is in the public interest to adjudicate all relevant claims as efficiently as possible, *i.e.*, in a single investigation. No petitions for review of the subject ID were filed.

The Commission has determined not to review the ID.

The Commission vote for this determination took place on January 26, 2021.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission’s Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: January 26, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–01982 Filed 1–28–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–585]

Foreign Censorship: Trade and Economic Effects on U.S. Businesses

AGENCY: United States International Trade Commission.

ACTION: Notice of Investigation and Scheduling of a public hearing.

SUMMARY: Following receipt on January 4, 2021, of a request from the U.S. Senate Committee on Finance (Committee), the U.S. International Trade Commission (Commission) instituted Investigation No. 332–585, *Foreign Censorship: Trade and Economic Effects on U.S. Businesses*.

DATES:

August 24, 2021: Deadline for filing requests to appear at the public hearing.

September 2, 2021: Deadline for filing prehearing briefs and statements.

September 7, 2021: Deadline for filing electronic copies of oral hearing statements.

September 14, 2021: Public hearing.

September 21, 2021: Deadline for filing posthearing briefs and statements.

October 1, 2021: Deadline for filing all other written submissions.

July 5, 2022: Transmittal of Commission report to the Committee.

ADDRESSES: All Commission offices, including the Commission’s hearing rooms, are located in the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be submitted electronically and addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Project Leader Ricky Ubee (202–205–3493 or ravinder.ubee@usitc.gov), Deputy Project Leader Shova KC (202–205–2234 or shova.KC@usitc.gov), or

Deputy Project Leader Isaac Wohl (202–205–3356 or isaac.wohl@usitc.gov) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or william.gearhart@usitc.gov). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or margaret.olaughlin@usitc.gov). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its website (<https://www.usitc.gov>). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: The Committee requested the investigation and report pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). As requested by the Committee, the Commission will deliver the requested report no later than 18 months from the date of the letter (that is, by July 5, 2022), and in view of the fact the Committee intends to make the report available to the public in its entirety, the Commission will not include any confidential business information in its report.

In its letter the Committee defined censorship as “the prohibition or suppression of speech or other forms of communication,” and stated that foreign governments use many tools to carry out censorship, including technological measures that restrict digital trade. The Committee said that these tools, and the policies that enable them, allow authorities in foreign markets to limit speech by controlling the flow of information and services.

More specifically, the Committee asked that the Commission conduct an investigation and prepare a report, informed by a survey of businesses in the United States, that provides detailed information, including the following:

1. Identification and descriptions of various foreign censorship practices, in particular any examples that U.S. businesses consider to impede trade or investment in key foreign markets. The description should include to the extent practicable:

- a. The evolution of censorship policies and practices over the past 5 years in key foreign markets;
- b. any elements that entail extraterritorial censorship; and

c. the roles of governmental and non-governmental actors in implementation and enforcement of the practices.

2. To the extent practicable, including through the use of survey data, an analysis of the trade and economic effects of such policies and practices on affected businesses in the United States and their global operations. The analysis should include to the extent practicable, quantitative and qualitative impacts of the identified policies, including by reference, where identifiable, to:

- a. Impact on employment;
- b. direct costs (e.g., compliance and entry costs);
- c. foregone revenue and sales;
- d. self-censorship; and
- e. other effects the Commission considers relevant for the Committee to know.

Public Hearing: A public hearing in connection with this investigation will be held either in the Commission's main hearing room in its building at 500 E Street SW, Washington, DC, or via an online videoconferencing platform, beginning at 9:30 a.m. on September 14, 2021. More information will follow closer to the time of the hearing about whether the hearing will be held in person or by videoconference. Information about how to participate in or view the hearing will be posted on the Commission's website at (https://usitc.gov/research_and_analysis/what_we_are_working_on.htm). Once on that web page, scroll down to the entry for Investigation No. 332–585, *Foreign Censorship: Trade and Economic Effects on U.S. Businesses*, and click on the link to “Hearing Instructions.” Interested parties should check the Commission's website periodically for updates.

Requests to appear at the public hearing should be filed with the Secretary no later than 5:15 p.m., August 24, 2021, in accordance with the requirements in the “Written Submissions” section below. All prehearing briefs and statements should be filed not later than 5:15 p.m., September 2, 2021. To facilitate the hearing, including the preparation of an accurate written transcript of the hearing, oral testimony to be presented at the hearing must be submitted to the Commission electronically no later than noon, September 7, 2021. All posthearing briefs and statements should be filed not later than 5:15 p.m., September 21, 2021. Posthearing briefs and statements should address matters raised at the hearing. For a description of the different types of written briefs and statements, see the “Definitions” section below.

In the event that, as of the close of business on August 24, 2021, no

witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant should contact the Office of the Secretary at 202–205–2000 after August 24, 2021, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., October 1, 2021. All written submissions must conform to the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8), as temporarily amended by 85 FR 15798 (March 19, 2020). Under that rule waiver, the Office of the Secretary will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802), or consult the Commission's Handbook on Filing Procedures.

Definitions of Types of Documents That May Be Filed; Requirements: In addition to requests to appear at the hearing, this notice provides for the possible filing of four types of documents: Prehearing briefs, oral hearing statements, posthearing briefs, and other written submissions.

(1) *Prehearing briefs* refers to written materials relevant to the investigation and submitted in advance of the hearing, and includes written views on matters that are the subject of the investigation, supporting materials, and any other written materials that you consider will help the Commission in understanding your views. You should file a prehearing brief particularly if you plan to testify at the hearing on behalf of an industry group, company, or other organization, and wish to provide detailed views or information that will support or supplement your testimony.

(2) *Oral hearing statements (testimony)* refers to the actual oral statement that you intend to present at the public hearing. *Do not* include any confidential business information in that statement. If you plan to testify, you must file a copy of your oral statement by the date specified in this notice. This statement will allow Commissioners to understand your position in advance of

the hearing and will also assist the court reporter in preparing an accurate transcript of the hearing (e.g., names spelled correctly).

(3) *Posthearing briefs* refers to submissions filed after the hearing by persons who appeared at the hearing. Such briefs: (a) Should be limited to matters that arose during the hearing, (b) should respond to any Commissioner and staff questions addressed to you at the hearing, (c) should clarify, amplify, or correct any statements you made at the hearing, and (d) may, at your option, address or rebut statements made by other participants in the hearing.

(4) *Other written submissions* refer to any other written submissions that interested persons wish to make, regardless of whether they appeared at the hearing, and may include new information or updates of information previously provided.

There is no standard format that briefs or other written submissions must follow. However, each such document must identify on its cover (1) the type of document filed (i.e., prehearing brief, oral statement of (name), posthearing brief, or written submission), (2) the name of the person or organization filing it, and (3) whether it contains confidential business information (CBI). If it contains CBI, it must comply with the marking and other requirements set out below in this notice relating to CBI. Submitters of written documents (other than oral hearing statements) are encouraged to include a short summary of their position or interest at the beginning of the document, and a table of contents when the document addresses multiple issues.

Confidential Business Information: Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

As requested by the Committee on Finance, the Commission will not include any confidential business information in its report. However, all information, including confidential business information, submitted in this investigation may be disclosed to and used: (i) By the Commission, its

employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel for cybersecurity purposes. The Commission will not otherwise disclose any confidential business information in a way that would reveal the operations of the firm supplying the information.

Summaries of Written Submissions: Persons wishing to have a summary of their position included in the report should include a summary with their written submission on or before October 1, 2021 and should mark the summary as having been provided for that purpose. The summary should be clearly marked as "summary for inclusion in the report" at the top of the page. The summary may not exceed 500 words, should be in MS Word format or a format that can be easily converted to MS Word, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. The Commission will list the name of the organization furnishing the summary and will include a link to the Commission's Electronic Document Information System (EDIS) where the written submission can be found.

By order of the Commission.

Issued: January 26, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021-01965 Filed 1-28-21; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-647 and 731-TA-1517-1520 (Final)]

Passenger Vehicle and Light Truck Tires From Korea, Taiwan, Thailand, and Vietnam; Scheduling of the Final Phase of Countervailing Duty and Anti-Dumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701-TA-647 and 731-TA-1517-1520 (Final) pursuant to the Tariff Act of

1930 ("the Act") to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of passenger vehicle and light truck tires from Korea, Taiwan, Thailand, and Vietnam, provided for in subheadings 4011.10.10, 4011.10.50, 4011.20.10, and 4011.20.50 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce ("Commerce") to be sold at less-than-fair-value and subsidized by the government of Vietnam.

DATES: January 6, 2021.

FOR FURTHER INFORMATION CONTACT:

Keysha Martinez ((202) 205-2136), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as "passenger vehicle and light truck tires. Passenger vehicle and light truck tires are new pneumatic tires, of rubber, with a passenger vehicle or light truck size designation. Tires covered by this investigation may be tube-type, tubeless, radial, or non-radial, and they may be intended for sale to original equipment manufacturers or the replacement market.

Subject tires have, at the time of importation, the symbol "DOT" on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have the following prefixes or suffix in their tire size designation, which also appears on the sidewall of the tire:

Prefix designations:

P—Identifies a tire intended primarily for service on passenger cars.

LT—Identifies a tire intended primarily for service on light trucks.

Suffix letter designations:

LT—Identifies light truck tires for service on trucks, buses, trailers, and multipurpose

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–585]

Foreign Censorship Part 1: Policies and Practices Affecting U.S. Businesses and Investigation No. 332–586: Foreign Censorship Part 2: Trade and Economic Effects on U.S. Businesses

AGENCY: United States International Trade Commission.

ACTION: Change in title, scope, and schedule of Investigation No. 332–585 and institution of Investigation No. 332–586 to address trade and economic effects of foreign censorship on U.S. businesses.

SUMMARY: Following receipt of a letter from the U.S. Senate Committee on Finance (Committee) on April 8, 2021, under section 332(g) of the Tariff Act of 1930, the Commission has changed the title, scope, and schedule, including the hearing date, for Investigation No. 332–585, with the investigation to be retitled *Foreign Censorship Part 1: Policies and Practices Affecting U.S. Businesses*. The Commission has also instituted a second Investigation in response to the letter, Investigation No. 332–586, *Foreign Censorship Part 2: Trade and Economic Effects on U.S. Businesses*. The public hearing has been rescheduled to July 1, 2021 and will be in conjunction with both investigations. The hearing will be conducted via an online videoconferencing platform. Dates relating to written submissions have been adjusted accordingly.

DATES:

June 17, 2021: Deadline for filing requests to appear at the public hearing.

June 18, 2021: Deadline for filing prehearing briefs and statements.

June 24, 2021: Deadline for filing electronic copies of oral hearing statements.

July 1, 2021: Public hearing.

July 12, 2021: Deadline for filing posthearing briefs and statements.

July 22, 2021: Deadline for filing all other written submissions for Investigation No. 332–585.

December 30, 2021: Transmittal of Commission's Part 1 report to the Committee.

January 14, 2022: Deadline for filing all other written submissions for Investigation No. 332–586.

July 5, 2022: Transmittal of Commission's Part 2 report to the Committee.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the U.S.

International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be submitted electronically and addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT:

Project Leader Isaac Wohl (202–205–3356 or isaac.wohl@usitc.gov), or Deputy Project Leader Jean Yuan (202–205–2383 or wen.yuan@usitc.gov) for information specific to Investigation No. 332–585. Project Leader Ricky Ubee (202–205–3493 or ravinder.ubee@usitc.gov), Deputy Project Leader Shova KC (202–205–2234 or shova.kc@usitc.gov), or Deputy Project Leader George Serletis (202–205–3315 or george.serletis@usitc.gov) for information specific to Investigation No. 332–586. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or william.gearhart@usitc.gov). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or margaret.olaughlin@usitc.gov). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its website (<https://www.usitc.gov>).

SUPPLEMENTARY INFORMATION: The Committee's new letter received on April 8, 2021 modified its earlier letter of January 4, 2021 in three principal ways: (1) It calls for two reports instead of one, with the first report to focus on policies and practices affecting U.S. businesses, and a second to focus on trade and economic effects on U.S. businesses, based in part on a Commission survey; (2) it defines the scope of the investigations by indicating which elements of the original request letter should be addressed in the first and second reports, respectively; and (3) it provides a new delivery date for the first report (December 30, 2021) and sets a later delivery date for the second report (July 5, 2022). As in the January 4, 2021, letter, the Committee requested the investigations and reports pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). The Commission published the initial notice of Investigation No. 332–585 in the **Federal Register** of January 29, 2021 (86 FR 7559).

As in the original letter, the Committee defined censorship as “the

prohibition or suppression of speech or other forms of communication,” and stated that foreign governments use many tools to carry out censorship, including technological measures that restrict digital trade. The Committee said that these tools, and the policies that enable them, allow authorities in foreign markets to limit speech by controlling the flow of information and services.

In response to the Committee's letter received on April 8, 2021, the Commission has changed the title of the report in Investigation No. 332–585, to *Foreign Censorship Part 1: Policies and Practices Affecting U.S. Businesses*, and it has changed the delivery date for this first report to December 30, 2021. The first report will contain detailed information on the following:

1. Identification and descriptions of various foreign censorship practices, in particular any examples that U.S. businesses consider to impede trade or investment in key foreign markets. The description should include to the extent practicable:

- a. The evolution of censorship policies and practices over the past 5 years in key foreign markets;
- b. any elements that entail extraterritorial censorship; and
- c. the roles of governmental and non-governmental actors in implementation and enforcement of the practices.

In response to the request for the second report, the Commission has instituted Investigation No. 332–586, *Foreign Censorship Part 2: Trade and Economic Effects on U.S. Businesses*. The Commission will deliver the second report by July 5, 2022. The second report will provide:

2. To the extent practicable, including through the use of survey data, an analysis of the trade and economic effects of such policies and practices on affected businesses in the United States and their global operations. The analysis should include to the extent practicable, quantitative and qualitative impacts of the identified policies, including by reference, where identifiable, to:

- a. Impact on employment;
- b. direct costs (e.g., compliance and entry costs);
- c. foregone revenue and sales;
- d. self-censorship; and
- e. other effects the Commission considers relevant for the Committee to know.

In view of the fact the Committee intends to make these reports available to the public in their entirety, the Commission will not include any confidential business information in its reports.

Public Hearing: A public hearing in connection with both investigations will be held via an online videoconferencing platform, beginning at 9:30 a.m. on July 1, 2021. This hearing replaces the previously announced hearing in connection with Investigation No. 332–585, scheduled for September 14, 2021. Information about how to participate in or view the hearing will be posted on the Commission’s website at (https://usitc.gov/research_and_analysis/what_we_are_working_on.htm). Once on that web page, scroll down to either entry for Investigation No. 332–585, *Foreign Censorship Part 1: Policies and Practices Affecting U.S. Businesses* or Investigation No. 332–586, *Foreign Censorship Part 2: Trade and Economic Effects on U.S. Businesses* and click on the link to “Hearing Instructions.” Interested parties should check the Commission’s website periodically for updates.

Requests to appear at the public hearing should be filed electronically with the Secretary no later than 5:15 p.m., June 17, 2021, in accordance with the requirements in the “Written Submissions” section below. All prehearing briefs and statements should be filed electronically not later than 5:15 p.m., June 18, 2021. To facilitate the hearing, including the preparation of an accurate written transcript of the hearing, oral testimony to be presented at the hearing must be submitted to the Commission electronically no later than noon, June 24, 2021. All posthearing briefs and statements should be filed electronically not later than 5:15 p.m., July 12, 2021. Posthearing briefs and statements should address matters raised at the hearing. For a description of the different types of written briefs and statements, see the “Definitions” section below.

In the event that, as of the close of business on June 17, 2021, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant should contact the Office of the Secretary at 202–205–2000 after June 17, 2021, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file, electronically, written submissions concerning these investigations. All written submissions should be addressed to the Secretary. Written submissions specific to Investigation No. 332–585, *Foreign Censorship Part 1: Policies and Practices Affecting U.S. Businesses*, should be received not later than 5:15 p.m., July 22, 2021. Written

submissions specific to Investigation No. 332–586, *Foreign Censorship Part 2: Trade and Economic Effects on U.S. Businesses*, should be received not later than 5:15 p.m., January 14, 2022. All written submissions must conform to the provisions of section 201.8 of the Commission’s *Rules of Practice and Procedure* (19 CFR 201.8), as temporarily amended by 85 FR 15798 (March 19, 2020). Under that rule waiver, the Office of the Secretary will accept only electronic filings at this time. Filings must be made through the Commission’s Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802), or consult the Commission’s *Handbook on Filing Procedures*.

Definitions of Types of Documents That May Be Filed; Requirements: In addition to requests to appear at the hearing, this notice provides for the possible filing of four types of documents: Prehearing briefs, oral hearing statements, posthearing briefs, and other written submissions.

(1) *Prehearing briefs* refers to written materials relevant to the investigation and submitted in advance of the hearing, and includes written views on matters that are the subject of the investigation, supporting materials, and any other written materials that you consider will help the Commission in understanding your views. You should file a prehearing brief particularly if you plan to testify at the hearing on behalf of an industry group, company, or other organization, and wish to provide detailed views or information that will support or supplement your testimony.

(2) *Oral hearing statements (testimony)* refers to the actual oral statement that you intend to present at the public hearing. *Do not* include any confidential business information in that statement. If you plan to testify, you must file a copy of your oral statement by the date specified in this notice. This statement will allow Commissioners to understand your position in advance of the hearing and will also assist the court reporter in preparing an accurate transcript of the hearing (e.g., names spelled correctly).

(3) *Posthearing briefs* refers to submissions filed after the hearing by persons who appeared at the hearing. Such briefs: (a) Should be limited to matters that arose during the hearing, (b) should respond to any Commissioner and staff questions addressed to you at

the hearing, (c) should clarify, amplify, or correct any statements you made at the hearing, and (d) may, at your option, address or rebut statements made by other participants in the hearing.

(4) *Other written submissions* refers to any other written submissions that interested persons wish to make, regardless of whether they appeared at the hearing, and may include new information or updates of information previously provided.

There is no standard format that briefs or other written submissions must follow. However, each such document must identify on its cover (1) the investigation number and title and the type of document filed (i.e., prehearing brief, oral statement of (name), posthearing brief, or written submission), (2) the name of the person or organization filing it, and (3) whether it contains confidential business information (CBI). If it contains CBI, it must comply with the marking and other requirements set out below in this notice relating to CBI. Submitters of written documents (other than oral hearing statements) are encouraged to include a short summary of their position or interest at the beginning of the document, and a table of contents when the document addresses multiple issues.

Confidential Business Information: Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission’s *Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the “confidential” or “non-confidential” version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

As requested by the Committee on Finance, the Commission will not include any confidential business information in its report. However, all information, including confidential business information, submitted in this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government

employees and contract personnel for cybersecurity purposes. The Commission will not otherwise disclose any confidential business information in a way that would reveal the operations of the firm supplying the information.

Summaries of Written Submissions: Persons wishing to have a summary of their position included in the first report should include a summary with their written submission on or before July 22, 2021 and should mark the summary as having been provided for that purpose. The summary should be clearly marked as “summary for inclusion in the part 1 report” at the top of the page. Persons wishing to have a summary of their position included in the second report should include a summary with their written submission on or before January 14, 2022 and should mark the summary as having been provided for that purpose. The summary should be clearly marked as “summary for inclusion in the part 2 report” at the top of the page.

The summary may not exceed 500 words, should be in MS Word format or a format that can be easily converted to MS Word, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. The Commission will list the name of the organization furnishing the summary and will include a link to the Commission’s Electronic Document Information System (EDIS) where the written submission can be found.

By order of the Commission.

Issued: May 6, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–09991 Filed 5–11–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Electrolyte Containing Beverages and Labeling and Packaging Thereof*, DN 3547; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant’s filing pursuant to the

Commission’s Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission’s Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission’s Rules of Practice and Procedure filed on behalf of CAB Enterprises, Inc. and Sueros y Bebidas Rehidratantes S.A. de C.V. on May 6, 2021. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electrolyte containing beverages and labeling and packaging thereof. The complainant names as respondents: Flexicompuestos S.A. de C.V. of Mexico; Grupo Comercial Lux del Norte S.A. de C.V. of Mexico; Carbonera Los Asadores S.A. de C.V. of Mexico; Caribe Agencia Express, S.A. de C.V. of Mexico; Comercializadora Degu S.A. de C.V. of Mexico; Comercial Treviño de Reynosa, S.A. de C.V. of Mexico; H & F Tech International S.A. de C.V. of Mexico; MPC Foods S.A. de C.V. of Mexico; Myrna Guadalupe Perez Martinez of Mexico; Leticia Angélica Saenz Fernandez of Mexico; Yoselen Susana Martinez Tirado of Mexico; Distribuidora Mercatto S.A. de C.V. of Mexico; Comercializadora Embers S.A. de C.V. of Mexico; and Manuel Bautista Nogales of Mexico. The complainant requests that the Commission issue a general exclusion order, cease and desist orders, and impose a bond upon respondent alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant’s licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer

Appendix C

Calendar of Hearing Witnesses

CALENDAR OF PUBLIC HEARING

Those listed below appeared in the United States International Trade Commission's hearing via videoconference:

Subjects: Foreign Censorship Part 1: Policies and Practices Affecting U.S. Businesses

Foreign Censorship Part 2: Trade and Economic Effects on U.S. Businesses

Inv. Nos.: 332-585 and 332-586, respectively

Date and Time: July 1, 2021 - 9:30 a.m.

PANEL 1

ORGANIZATION AND WITNESS:

PEN America
Washington, DC

Suzanne Nossel, CEO

Ranking Digital Rights
Washington, DC

Dr. Nathalie Maréchal, Senior Policy and Partnerships Manager

University of Virginia
Charlottesville, VA

Dr. Aynne Kokas, Associate Professor of Media Studies,
University of Virginia, Senior Faculty Fellow,
Miller Center Wilson China Fellow

Georgia State University
Atlanta, Georgia

Dr. Maria Repnikova, Assistant Professor of Global Communication,
Wilson Fellow 2020-21

George Washington University
Digital Trade and Data Governance Hub
Washington, DC

Dr. Susan Aaronson, Founder and Director

PANEL 2

ORGANIZATION AND WITNESS:

The Information Technology and Innovation Foundation
Washington, DC

Nigel Cory, Associate Director, Trade Policy

Computer & Communications Industry Association
Washington, DC

Rachael Stelly, Policy Counsel

Wiley Rein LLP
Georgetown University Law Center
Washington, DC

Timothy C. Brightbill, Partner, Wiley Rein LLP; and
Adjunct Professor, Georgetown University Law Center

Stanford University
Cyber Policy Center
Stanford, CA

Daphne Keller, Director, Program on Platform Regulation

-END-

Appendix D

Summary of Views of Interested Parties

Summary of Views of Interested Parties

Interested parties had the opportunity to file written submissions to the Commission in the course of this investigation and to provide summaries of the positions expressed in the submissions for inclusion in this report. This appendix contains these written summaries, provided that they meet certain requirements set out in the notice of investigation. The Commission has not edited these summaries. This appendix also contains the names of other interested parties who filed written submissions during this investigation but did not provide written summaries. A copy of each written submission is available in the Commission's Electronic Docket Information System (EDIS), <https://www.edis.usitc.gov>. In addition, the Commission also held a public virtual hearing in connection with this investigation on July 1, 2021. The full text of the transcript of the Commission's hearing is also available on EDIS.

American Chamber of Commerce Vietnam

No written summary. Please see EDIS for full submission.

Association of American Publishers

No written summary. Please see EDIS for full submission.

Timothy C. Brightbill

No written summary. Please see EDIS for full submission.

Cato Institute Submission

No written summary. Please see EDIS for full submission.

Center for Democracy and Technology

No written summary. Please see EDIS for full submission.

Coalition of Services Industries

No written summary. Please see EDIS for full submission.

Computer and Communications Industry Association

No written summary. Please see EDIS for full submission.

Engine Advocacy

No written summary. Please see EDIS for full submission.

Human Rights Watch

No written summary. Please see EDIS for full submission.

Indonesia Chamber of Commerce

No written summary. Please see EDIS for full submission.

Internet Association

No written summary. Please see EDIS for full submission.

Information Technology and Innovation Foundation

No written summary. Please see EDIS for full submission.

Daphne Keller

No written summary. Please see EDIS for full submission.

Nathalie Maréchal

No written summary. Please see EDIS for full submission.

Motion Picture Association

No written summary. Please see EDIS for full submission.

PEN America

A growing number of governments are adopting novel and expanded means of control over speech and access to information, both within and beyond their borders. In particular, the Chinese Communist Party (CCP) has in recent years strengthened its use of censorship domestically and around the world. While much of the CCP's censorship on the mainland has strict redlines, the extent and consequences of censorship and censorious influence beyond China's borders are far more opaque and impact a wide range of American industries.

In Hollywood, U.S. filmmakers face dilemmas as they compete for access to Chinese audiences, where the content and accessibility of foreign movies are sharply limited. Self-censorship or even collaboration with the CCP have become business as usual at some Hollywood Studios. PEN America's report, *Made in Hollywood, Censored in Beijing*, explores this topic in more detail.

In publishing, foreign authors face the choice between complying with China's censorship practices or having some or all of their work excluded from the Chinese market, as PEN America researched in *Censorship and Conscience: Foreign Authors and the Challenge of Chinese Censorship*. Publishers in Australia, England, and

Germany have already come under direct pressure by the CCP; others may engage in self-censorship to avoid similar pressure.

Foreign journalists within China are subject to harassment as well as restricted access to the country. PEN America's report, *Darkened Screen: Constraints on Foreign Journalists in China*, details China's mechanisms for curtailing access for foreign journalists and how U.S. outlets may pull punches to protect Chinese corporate interests.

China's influence on U.S. higher education has implications for scientific research, technological advancement, and the ability of scholars to help the rest of global society make sense of China. Active monitoring of Chinese students by the CCP may mean that universities reliant on Chinese students for revenue consider what they and their faculty say and publish. However, amid a climate of rising anti-Asian animus, probing the ramifications of these ties can feed suspicions and prejudices against students themselves, which can also impair the free flow of speech and thought.

Most American social media platforms are blocked from operating in China; the few that remain regularly make concessions to the CCP. As economic pressures to engage with China increase, Google and Apple continuously reevaluate their relationships with the CCP. Google has previously discussed plans to provide filtered news and search apps within China, and Apple has made alarming decisions to compromise data privacy and app services. PEN America addressed this topic in *Forbidden Feeds: Government Controls on Social Media in China*.

One of the greatest challenges that censorship and censoriousness pose is their penchant for invisibility. Particularly when the targets of censorship are heavily incentivized to accede to it, distortions of our public discourse, suppressed ideas, and the reification of falsehoods can go unspoken. The USITC and United States government should further explore the ways that censorship and censorious influence are shaping American business and the world and make their findings public.

Recording Industry of America

No written summary. Please see EDIS for full submission.

Maria Repnikova

Political censorship in non-democratic, non-Western markets like China should be understood as any restriction placed on freedom of expression originating from a government entity, including pre-emptive measures, such as legal regulations, directives, and content filtering, as well as post-facto content deletion, criticism, and punishment. In addition to direct censorship measures, we should also account for indirect information practices that can facilitate censorship, including surveillance, propaganda, and cyber nationalism. All these measures work in tandem to restrict and complicate the operations of US companies.

In China, information restrictions (direct and indirect) have expanded in recent years. As for direct censorship, numerous new regulations have been passed to enhance control over the Internet, including VPN crackdowns (2017) and new provisions targeting content producers, platforms, and users (2019). Alongside with legal measures, there has been an intensification in content filtering and censorship directives targeted at digital users, as well as at Chinese and foreign media outlets and platforms. Some of these are pre-emptive, and some are post-facto.

While Chinese censorship is often understood as a rigid and top-down apparatus it is highly adaptive to public opinion trends on social media, and is implemented by many actors, including Internet companies and editors. Topics that are widely discussed on social media are more likely to get censored regardless of their actual

sensitivity (Repnikova 2017). This makes censorship especially unpredictable for foreign and Chinese entities alike.

In addition to censorship, surveillance in the form of extensive data collection has significantly expanded. Some of these measures like the recent Data Security Law (2021) that requires approval before exporting sensitive data, directly implicate foreign companies. Online propaganda has also increased, along with more nationalistic expressions online. These expressions can arise spontaneously or as part of a larger propaganda campaign. They can target US companies if they are seen as threatening China's sovereignty.

Other than presenting direct market entry barriers for those US companies refusing to comply, censorship results in costs associated with self-regulation. These include expenses for monitoring social media activity, costs of state-approved VPN services, local data storage centers, and public relations campaigns to manage nationalistic outbreaks. There are also indirect global reputational costs to obliging a non-democratic regime.

Chinese censorship can also affect US companies' operations outside of China's borders, as the Chinese government increasingly promotes cyber sovereignty norms (or the idea of government regulation of the Internet) and as Chinese tech companies compete for contracts in the Global South.

In thinking about censorship in non-Western, non-democratic markets like China, it is pertinent to categorize it into direct and indirect measures, as well as to account for global dimensions of

Chinese information governance. While the US government is limited in shaping information environment within China, there is more space to engage globally. This requires rethinking the Internet freedom agenda, as well as encouraging more US tech companies' competition in emerging markets like Africa.

Tahrir Institute

No written summary. Please see EDIS for full submission.

Appendix E

Data Tables for Figures

Table E.1 Degree of filtering by thematic area and country, 2015–17

1 = selective filtering; 2 = substantial filtering; 3 = pervasive filtering. This table corresponds to [figures ES.1](#) and [2.1](#).

Country	Political content	Social content	Conflict/Security	Internet tools
China	3	2	3	3
Russia	2	3	3	2
Turkey	2	2	3	1
Vietnam	3	1	1	2
India	3	1	2	2
Indonesia	3	3	1	3

Source: Zittrain et al., “The Shifting Landscape of Global Internet Censorship,” 2017; OpenNet Initiative, “Vietnam,” August 7, 2012.

Note: “Selective” filtering is defined as either narrowly targeted filtering that blocks a small number of specific websites across a few categories or filtering that targets a single category or issue. “Substantial” is either a medium level of filtering carried out over a few categories or a low level of filtering carried out across many categories. “Pervasive” is defined as blocking that spans a number of categories while blocking access to a large portion of related content. Vietnam scores are based on 2011 findings.

Table E.2 Reasons for content removal requests to Google by key market governments from 2016–20, share of total

This table corresponds to [figure 2.2](#).

Reason	Share
National security	40.8
Regulated goods and services	21.1
Defamation	7.4
Drug abuse	6.7
Violence	3.6
Fraud	3.5
Privacy and security	3.5
Hate speech	3.2
All other reasons	10.2

Source: Google, “Transparency Report: Government Requests to Remove Content,” accessed August 5, 2021.

Note: Google data are based on requests from government for content removal from Search, YouTube, and Blogger products. Requests may include multiple items. Staff excluded government requests made for copyright or trademark reasons. Google tracks requests made under European privacy law and NetzDG separately; these data are not included here.

Table E.3 Global active users of top global social media platforms and their headquarters country, 2021
In billions of active users. This table corresponds to [figure 3.1](#).

Company	Headquarters	Global active users (billions)
Facebook	United States	2.7
YouTube	United States	2.3
WhatsApp	United States	2.0
FB Messenger	United States	1.3
Instagram	United States	1.2
Weixin/WeChat	China	1.2
TikTok	China	0.7
QQ	China	0.6
Douyin	China	0.6
Sina Weibo	China	0.5
Telegram	Great Britain	0.5
Snapchat	United States	0.5
Kuaishou	China	0.5
Pinterest	United States	0.4
Reddit	United States	0.4
Twitter	United States	0.4
Quora	United States	0.3

Sources: Kemp, “Digital 2021: Global Overview Report,” January 27, 2021, 93.

Notes: Data are updated as of January 2021 and represents monthly active users. Source data indicates platforms FB Messenger, Reddit, and Quora “have not published updated user numbers in the past 12 months, so figures will be less reliable” and “Figure for Douyin uses the reported daily active user figure, so monthly active user figures is likely higher.” Telegram (the only major non-U.S. and non-Chinese platform) was formed by the founders of VK, the Russian platform, and is currently headquartered in the United Kingdom (headquarter information from Bloomberg, “Telegram Messenger LLP,” accessed September 16, 2021).