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**TONGUE-IN-CHEEK: HOW INTERNET DEFAMATION  
LAWS OF THE UNITED STATES & CHINA ARE SHAPING  
GLOBAL INTERNET SPEECH**

Nicole Hostettler\*

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I. Introduction

In the summer of 2007, a scandal broke out in the United States. Toys sold by American corporation Mattel were found to contain hazardous amounts of lead paint.<sup>1</sup> Mattel issued an enormous recall and blamed toy manufacturers in China for the lead paint found in the toys.<sup>2</sup> As the story unfolded, the Internet buzzed with newscasters, outraged bloggers, and concerned parents all talking about the dangers of the Chinese-made toys.<sup>3</sup> That fall, the Chinese province of Guangdong - where the toys had been manufactured - finally had enough.<sup>4</sup> The local government stated that it would back its domestic toy-makers if they decided to bring a lawsuit against Mattel.<sup>5</sup> The toymakers brought defamation suits on the basis that lead levels were not the reason for the recall and the Chinese corporations' reputations - referred to in China as face - had been destroyed in the international community through the Internet.<sup>6</sup>

In the United States, court decisions concerning Internet speech reflect American ideals of freedom of expression.<sup>7</sup> In China, however, the right to

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\* J.D. candidate 2009, Suffolk University Law School.

1. See Associated Press, *Mattel Issues New Massive China Toy Recall* (Aug. 14, 2007) MSNBC.com, archived at <http://www.webcitation.org/5au38y5fB>.

2. *Id.*

3. See generally Louis Story, *Lead Paint Prompts Mattel to Recall 967,000 Toys*, N.Y. TIMES, Aug. 2, 2007, archived at <http://www.webcitation.org/5au3fmkTh>; Posting of Tom Barlow to BloggingStocks, *An Expert's View of the Lead-in-toys Scandal* (Aug. 15, 2007), archived at <http://www.webcitation.org/5au3ygrz2>; More Mattel Toy Recalls, *moderndaydad.com*, archived at <http://www.webcitation.org/5au4AF9YQ>.

4. Liang Qiwen & Jiang Wei, *Guangdong Govt. May Help Toymakers Sue Mattel*, CHINA DAILY, Nov. 6, 2007, archived at <http://www.webcitation.org/5au4ITjls>.

5. *Id.*

6. See *id.*; see also Levine, *infra* note 66 for discussion of meaning of "face" in Chinese culture.

7. See, e.g., *Reno v. American Civil Liberties Union*, 521 U.S. 844, 885 (1997) (holding that the interest in encouraging freedom of expression outweighs possible benefit of censorship of the Internet and therefore certain provisions of the act violate the First Amendment); *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656 (2004) (holding that the Child Online Protection Act violates the First Amendment); *PSINet, Inc. v. Chapman*, 362 F.3d 227 (W.Va. 2004) (holding a West Virginia statute criminalizing certain online material

free speech has not been so culturally engrained or legally protected.<sup>8</sup> Chinese moral beliefs on the right to respect and dignity and ideas about how a government should be perceived by its people weigh heavily against the concept of the free flow of ideas.<sup>9</sup> Naturally, the laws governing the Internet speech in China and America reflect their respective cultural values. Unfortunately, the different cultures and laws of these two nations conflict. Now it is their destiny to collide on the Internet.

This Note examines and compares the laws governing Internet defamation in America and China. First, modern Internet usage is explored in order to understand why this issue is of increasing importance. Second, this Note examines the history and culture of each society in order to understand why these two nations developed so differently and why each is justified in its views. Third, this Note examines the laws as they currently stand in each nation. Finally, this Note explores how the two opposing viewpoints of two economic superpowers will shape Internet speech across the globe.

## II. Context

### A. Global Growth and Internet Usage

China is quickly emerging as a major player on the global stage.<sup>10</sup> On November 11, 2001, after years of debate and negotiations, China officially became a member of the World Trade Organization (“WTO”).<sup>11</sup> China has been industrializing to meet modern global standards and its economy continues to grow at a fast pace.<sup>12</sup> In 2006, China’s Gross Domestic Product (“GDP”) grew the fastest it has in eleven years.<sup>13</sup> Cheap labor has made China

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violative of First Amendment).

8. See Rana Mitter, *A Short History of Free Speech In China*, THE NEW INTERNATIONALIST, Oct. 7, 2008, archived at <http://www.webcitation.org/5edo26f62>.

9. *Id.*

10. See Li-Wen Lin, *Corporate Social Accountability Standards in the Global Supply Chain: Resistance, Reconsideration, and Resolution in China*, 15 CARDOZO J. INT’L & COMP. L. 321, 353 (2007) (discussing China’s role in the international trading community). Since its acceptance to the WTO, China has taken on a large role in trade and is powerful enough to have an effect on the global market. *Id.*

11. See CNN.com, *China Officially Joins WTO* (Nov. 11, 2001), archived at <http://www.webcitation.org/5au4V0SNs> (relating China’s fifteen-year-long negotiation before WTO entry was granted). Prior to joining the WTO, China was already a major trading nation, ranking seventh for highest trade among nations. *Id.* After joining the WTO, China’s access to trade was substantially increased and its power as a trading nation has continued to grow. *Id.*

12. See Economic Intelligence Unit Views Wire, *China’s Hunger for Energy*, THE ECONOMIST, Jul. 12, 2007, archived at <http://www.webcitation.org/5au4e0wrK>. (discussing China’s continued economic growth and industrialization). China’s huge population and sudden growth have made it one of the world’s largest energy consumers per capita. *Id.*

13. See Xue Hong, *Online Dispute Resolution for E-commerce in China: Present Practices and Future Developments*, 34 HONG KONG L.J. 377, 387 (2004) (discussing growth of Chinese GDP).

a favored destination for foreign direct investment (“FDI”).<sup>14</sup> As access to the Internet grows across the globe, it has become easier for small companies to expand, and reach out to markets, like China, that were once closed to them.<sup>15</sup>

The United States is one of the leading countries for Internet usage.<sup>16</sup> However, China has been rapidly catching up.<sup>17</sup> Since its introduction into mainstream China, Internet usage has grown steadily.<sup>18</sup> Between 1997 and 2000, Internet usage nearly doubled every six months.<sup>19</sup> At the start of 2004, China had seventy-eight million Internet users, which was 1,000 times more than the number of users just seven years earlier.<sup>20</sup> By 2006, the number of Internet users had grown 23.4% from the previous year.<sup>21</sup> As of June 2007, there were an estimated 167 million Internet users in China.<sup>22</sup> The United States has an estimated 221 million Internet users; China is second for global Internet population with plenty of room to expand considering only 10.5% of the current population has Internet access.<sup>23</sup>

### B. American Free Speech

Americans have long cherished freedom of speech as a fundamental right.<sup>24</sup> America is a nation born from revolution; bold speech and a free press were the sparks that began its fire.<sup>25</sup> As a result, when drafting the U.S. Constitution, the framers were eager to protect an individual’s right to express himself, even

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14. See Stephan W. Schill, *Tearing Down the Great Wall: The New Generation Investment Treaties of the People’s Republic of China*, 15 CARDOZO J. INT’L & COMP. L. 73, 79-81 (2007) (discussing reasons for the surge in foreign direct investment in China). China is one of the largest destinations for foreign direct investment because of cheap labor, tax incentives, and low trade barriers. *Id.*

15. *Id.* at 79 (noting China’s open-door policy toward foreign direct investment).

16. See generally Internet World Stats, United States of America Internet Usage and Broadband Usage Report, archived at <http://www.webcitation.org/5au4ziOGy> (showing statistics of percentage of Internet users within United States population compared globally from 2000 to 2006).

17. See China Internet Network Information Center, *Statistical Survey Report on the Internet Development in China* (20th ed. 2007), § 2-1 available at <http://www.webcitation.org/5b6OpdKEj> (showing statistics on Internet penetration rate in China from 2000 to 2007).

18. See *id.*

19. Hong, *supra* note 13, at 377 (discussing Chinese Internet usage statistics). See also China Internet Network Information Center, *supra* note 17 (noting China’s population size compared to Internet users).

20. Hong, *supra* note 13, at 377 (discussing Chinese Internet usage statistics).

21. See China Internet Network Information Center, *supra* note 17 (discussing large potential for growth in Chinese Internet population); CNN.com, *supra* note 11 (noting China has the world’s largest population).

22. Internet World Stats, *supra* note 16.

23. Internet World Stats, *supra* note 16; see also China Internet Network Information Center, *supra* note 17.

24. See Stephan M. Feldman, *Unenumerated Rights in Different Democratic Regimes*, 9 U. PA. J. CONST. L. 47, 93 (2006) (stating that freedom of speech is one of the original “preferred” rights).

25. See David A. Logan, *Tort Law and the Central Meaning of the First Amendment*, 51 U. PITT. L. REV. 493, 529 (1990) (discussing how free speech was instrumental in starting American Revolution). The importance of free speech was stressed by political activists such as Sam Adams and George Mason, and was proclaimed by the Continental Congress prior to the start of the revolution. *Id.* Ultimately, free speech was guaranteed in state constitutions adopted after the revolution. *Id.*

if it that expression was contrary to popular opinion.<sup>26</sup> This right to freedom of expression has become such an integral part of American culture that it can prevail over other rights such as equality, human dignity, and privacy.<sup>27</sup> As a consequence, defamation - a protection from injurious speech - will often yield to freedom of expression in American courts.<sup>28</sup>

### C. American Internet Defamation Law

As an American creation, it follows that the Internet embodies the American ideals of free speech.<sup>29</sup> At the Internet's inception, there were no specific laws to govern it - only principles.<sup>30</sup> As the Internet took a more central role in every day life, Congress needed to react.<sup>31</sup> In 1996, Congress enacted the Communications Decency Act ("CDA") to "promote the continued development of the [I]nternet" and interactive services, and to provide immunity to third party Internet service providers ("ISPs").<sup>32</sup> Congress chose to promote the use of the Internet as a tool for communication and discourse

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26. Compare Robert A. Sedler, *An Essay on Freedom of Speech: The United States Versus the Rest of the World*, 2006 MICH. ST. L. REV. 377, 384 (2006) (explaining how the First Amendment provides expansive protection to the right of free expression, which serves to ensure "robust debate on all public issues and the widest dissemination of all ideas"), with Lyombe Eko, *New Medium, Old Speech Regimes: The Historical and Ideological Foundations of French and American Regulation of biased-motivated speech and Symbolic Expression on the Internet*, 28 LOY. L.A. INT'L & COMP. L. REV. 69, 99-104 (2006) (providing a history of French freedom of speech). Although the French Declaration was based on the American Declaration of Independence and also born from a revolutionary war, French speech laws provide less freedom than their American counterparts. *Id.* at 99. The French right to freedom of speech is sometimes subordinated to rights of the society. *Id.* For example, after World War II, publications justifying war crimes were prohibited. *Id.* at 101.

27. See Sedler, *supra* note 26, at 383 (explaining the importance of protecting offensive speech). Controversial speech must be protected under the Constitution in order to preserve the overall right to free expression. *Id.* If the true nature of free expression is really to be protected, controversial speakers must be given the same protection as those who express the majority's opinion. *Id.* Controversial speakers must be able to freely express their opinions even if others feel injured by the controversial speech. *Id.*

28. See Logan, *supra* note 25, at 499-502 (providing history on British and American defamation law). Defamation law was originally enacted in England in response to negative views about the King and government, and included criminal penalties. *Id.* at 498. Political activists, such as Thomas Jefferson and James Madison, viewed criminal punishment for defamation as a threat to free speech. *Id.* at 500. As American law progressed, the balance between society's desire to permit and encourage free expression outgrew the desire to deter slander and libel. *Id.* at 499.

29. See Mary I. Bockover, *Confucian Values and the Internet: A Potential Conflict*, 30 J. CHINESE PHILOSOPHY 159, 165 (2003) archived at <http://www.webcitation.org/5b6Prj62k> (providing historical background of the Internet). The Internet was originally created in the United States for military purposes. *Id.* It eventually moved into universities, became a part of market capitalism, and ultimately was available for private use. *Id.* As its cultural heritage is American, the Internet "embodies" the American constitutional right to freedom of speech. *Id.*

30. See Michael L. Rustad & Thomas H. Koeing, *Rebooting Cybertort Law*, 80 WASH. L. REV. 335, 366-67 (2005) (providing history of tort law in cyberspace).

31. Communications Decency Act, 47 U.S.C. § 230(a) (1998) (showing Congressional findings concerning Internet usage).

32. See 47 U.S.C § 230(b)(1) (quoting Congress' policy for passing CDA).

which resulted in limited liability for defamation in order to achieve these goals.<sup>33</sup> Since the CDA's enactment, courts have interpreted it to immunize ISPs from tort liability arising from defamatory content posted online by third parties.<sup>34</sup>

Unlike traditional print publishers, ISPs are not liable even if they are on notice of the defamatory content.<sup>35</sup> Courts reason that such liability would place a huge burden on ISPs to determine whether or not each claim validly warns of defamatory content posted on the Internet.<sup>36</sup> Due to the nature and scope of the Internet, ISPs would need a veritable army simply to investigate each claim, and there could be no end to the amount of claims brought to the ISP's attention.<sup>37</sup> Furthermore, courts fear that placing such a burden on ISPs would create a "chilling effect" on Internet speech because ISPs are more likely to delete potentially defamatory content rather than suffer the expense of investigation, risk defamation liability, or face costly litigation.<sup>38</sup>

Lastly, courts have interpreted the definition of "publisher" in the CDA narrowly, providing ISPs with immunity for "editorial and self-regulating functions."<sup>39</sup> The CDA was enacted to override *Stratton-Oakmont, Inc. v. Prodigy Servs. Co.*, which held that an ISP who maintained editorial functions was a publisher and would be held to the strict liability standard normally applied to defamatory publishers.<sup>40</sup> The language of the CDA's policy states that it was enacted "to remove disincentives for the development and utilization of blocking and filtering technologies."<sup>41</sup> Courts reason that by providing broad immunity to ISPs, the American right to freedom of speech will be preserved on the Internet.<sup>42</sup>

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33. 47 U.S.C. § 230(b) (explaining Congress' desire to allow individual users to regulate Internet content rather than implement government controlled regulation).

34. See generally *Zeran v. Am. Online, Inc.*, 129 F.3d 327 (4th Cir. 1997); *Carafano v. Metrosplash*, 339 F.3d 1119 (9th Cir. 2003); *Ben Ezra, Weinstein, and Co. v. Am. Online, Inc.*, 206 F.3d 980 (10th Cir. 2000); *Doe v. Am. Online, Inc.*, 783 So. 2d 1010 (Fla. 2001); *Blumenthal v. Drudge*, 992 F. Supp. 44 (D.D.C. 1998).

35. See *Zeran*, 129 F.3d at 332-33 (reasoning notice insufficient to give ISP publisher status). Holding an ISP liable for defamatory content if it has notice would defeat the purposes of the CDA. *Id.*

36. See *Carafano*, 339 F.3d at 1123-24 (explaining that ISPs act as "intermediaries" for millions of users). The court further reasoned that ISPs only act as "intermediaries" for individuals desiring to create harmful messages. *Id.*

37. See *id.* at 1124 (reasoning that screening all allegedly defamatory content for validity would be impossible).

38. See *Zeran*, 129 F.3d at 333 (reasoning that notice triggering ISP liability would only encourage removal of Internet speech by ISPs). *Accord Blumenthal*, 992 F. Supp. at 52 (reasoning that the CDA creates different policy choices for ISPs than for traditional print publishers).

39. *Ben Ezra*, 206 F.3d at 986 (explaining that deleting material is not modifying for purposes of being considered a publisher under CDA).

40. *Stratton-Oakmont, Inc. v. Prodigy Servs. Co.*, No. 31063/94, 1995 WL 323710 (N.Y.S. May 24, 1995)

41. 47 U.S.C.A. § 230(b)(4) (quoting Congress' policy for implementing ISP liability within CDA).

42. *Zeran*, 129 F.3d at 327.

#### D. Chinese Dignity and Respect

Confucius once said, “Without feelings of respect, what is there to distinguish men from beasts?”<sup>43</sup> More than two thousand years later, this deeply-felt value for respect is still reflected in Chinese culture and social thought.<sup>44</sup> Based on the principles of Confucianism, Chinese culture teaches mutual respect, courtesy, and dignity as high moral goals.<sup>45</sup> As a result, legally, the right to personal dignity, respect, and reputation far outweigh the right to speak critically of others.<sup>46</sup>

Confucian values strive for balance, stability, and harmony in an individual’s life and his interactions with other members of society.<sup>47</sup> Rather than focusing on the individual, Confucianism focuses on society as a whole.<sup>48</sup> The individual is just one piece in a larger spectrum.<sup>49</sup> To achieve a state of harmony, the individual must find and maintain his place in the perfect balance of society.<sup>50</sup> If every individual understands his place in society and functions accordingly, disputes can be stopped before they begin.<sup>51</sup>

Accordingly, singular rights, like an individual’s freedom of expression, are secondary to the shared rights of society.<sup>52</sup> This sharing creates a harmony that

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43. BrainyQuote.Com, Confucius Quotations, *archived at* <http://www.webcitation.org/5au5fne4S>.

44. See JEFFERY RIEGEL, *Confucius*, in THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., Fall 2006), *archived at* <http://www.webcitation.org/5au5b75sO> (providing biographical information on Confucius and describing how his philosophy affected modern Chinese culture).

45. See Bockover, *supra* note 29, at 159 (explaining that Confucian values are the main ethical system in China).

46. See Elizabeth Spahn, *As Soft as Tofu: Consumer Product Defamation on the Chinese Internet*, 39 VAND. J. TRANSNAT’L L. 865, 879 (2006) (explaining how Chinese law and morals derive from Confucianism).

47. See Xue Hong, *Online Dispute Resolution for E-commerce in China: Present Practices and Future Developments*, 34 HONG KONG L.J. 377, 390 (2004) (discussing Confucianism as backbone of Chinese culture and social thought). Confucianism has formed a foundation for Chinese moral thoughts since ancient times. *Id.* It strives to promote peace, stability, cooperation, collaboration, and harmony through social hierarchy. *Id.* See also Clara Liang, *Red Light, Green Light: Has China Achieved Its Goals Through the 2000 Internet Regulations?*, 34 VAND. J. TRANSNAT’L L. 1417, 1425 (2001) (stating Confucianism “underpins” current Chinese culture).

48. See Liang, *supra* note 47, at 1425-26 (explaining social stability through cooperation theory in China). Every individual has a place in society. *Id.* at 1426. His or her cooperation allows the society to function together in harmony and achieve further social ends as a collaborative effort. *Id.*

49. See Bockover, *supra* note 29, at 161-64 (comparing theories stressing individual rights to Confucian theories). Chinese culture is not about the individual or an individual’s rights. *Id.* Achievement of humanity is only possible in relation to other members of the society. *Id.*

50. See Liang, *supra* note 47, at 1426; see also Spahn, *supra* note 46, at 879-80 (stressing high value of harmony traditionally in Asian cultures).

51. See Hong, *supra* note 47, at 390-91 (explaining Chinese cultural distaste for disputes). Traditionally, the prevention of conflicts before they arose was emphasized more than dealing with conflicts as they occurred in China. *Id.* at 391. Disputes upset society’s harmony and are to be “shunned.” *Id.* at 390. See also George O. White III, *Navigating the Cultural Malaise: Foreign Direct Investment Dispute Resolution in the People’s Republic of China*, 5 TRANSACTIONS: TENN. J. BUS. L. 55, 70 (2003) (discussing Chinese desire to settle disputes amicably, non-confrontationally, and to avoid losing face).

52. See Peter Lin, *Between Theory and Practice: The Possibility of a Right to Free Speech in the People’s Republic of China*, 4 J. CHINESE L. 257, 261 (1990) (stating that the Peoples Republic of China (“PRC”)

allows society to be productive as a whole.<sup>53</sup> When society is productive, theoretically a better quality of life can be achieved for all of society's members.<sup>54</sup> If society is concentrated on internal disputes, productivity and growth become stagnant, and all of society is hurt as a result.<sup>55</sup> Allowing individuals to air negative thoughts freely and confront other members of society can destroy the harmony and productivity of the society.<sup>56</sup>

However, this is not to imply that the idea of freedom of speech does not exist in Chinese law. The Constitution of the People's Republic of China ("PRC") provides specifically for freedom of speech.<sup>57</sup> However, because of the philosophical preference for individual dignity and the right to reputation, the rights to "speak out fully, air views freely" and "hold great debates" are naturally diminished.<sup>58</sup> In China, the rights of the speaker must be taken into consideration in conjunction with the rights of the listeners.<sup>59</sup> The right to free speech cannot be so strong that it destroys other rights in its path.<sup>60</sup>

### E. Chinese Defamation Law

In China, defamation law takes two forms: (1) defamation against a natural

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provides no review for the state intrusion on individual rights). The rights of the individual must concede to the greater rights of the state when necessary to provide a greater good to the whole of the society. *Id.*

53. See generally Bockover, *supra* note 29, at 161-64 (comparing American value of individualism to Chinese values of greater social welfare). In China, a person is valued as an essential part of society whereas in America, an individual is valued for his personal and political autonomy. *Id.*

54. See Liang, *supra* note 47, at 1425-26 (explaining how social hierarchy promotes stability).

55. See Bockover, *supra* note 29, at 160 (explaining why Confucian theories stress the need for harmony). Confucianism teaches that the essence of living a human life is to live in dignified harmony with others. *Id.*

56. See Hong, *supra* note 47, at 390 (noting that disputes "fundamentally disturb the social harmony" and should be avoided); but see Lin, *supra* note 52, at 274 (noting weak regulation of speech in America has not led to chaos). The PRC fears that without regulation of speech there will be social chaos. *Id.* at 273-74.

57. See Lin, *supra* note 52, at 258 (providing history of free speech in PRC Constitution). The PRC Constitution originally had provisions providing for a right to "speak out fully, air views freely, hold great debates, and write big character posters," but they were repealed in 1980. *Id.* The current PRC Constitution still provides for free speech. *Id.*

58. See White, *supra* note 51, at 58 (explaining cultural history and importance of social face). According to Confucianism, one's face is tied into one's reputation and personal dignity. *Id.* Respect and dignity are highly valued culturally. *Id.* Anything that threatens an individual's face, such as defamatory remarks, is viewed as extremely offensive antisocial behavior. *Id.*

59. See Melissa K. Bauman, *Defamation in Hong Kong and the People's Republic of China: Potential Perils of Two Standards of Free Speech*, 15 HASTINGS INT'L & COMP. L. REV. 671, 684 (1992) (quoting the constitution of the PRC, "the personal dignity of citizens of the People's Republic of China is inviolable").

60. See General Principles of the Civil Law, People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., April 12, 1986, effective Jan. 1, 1987) archived at <http://www.webcitation.org/5au63EmBU> (providing for right of representation). "Citizens and legal persons shall enjoy the right to reputation. The personality of citizens shall be protected by law, and the use of insults, libel or other means to damage the reputation of citizens or legal persons shall be prohibited." *Id.* See also H.L. Fu and Richard Cullen, *Defamation Law in the People's Republic of China*, 11 TRANSNAT'L LAW. 1, 8 (1998) (discussing how right to reputation is strong enough that defamation claims on behalf of the deceased may be brought by next of kin).

person or individual, and (2) defamation against a corporate entity.<sup>61</sup> While both are serious offenses, the nature of the victim changes the force of the law.<sup>62</sup> Corporations experience more difficulty recovering in defamation suits. This distinction recognizes that while an entity's name can sometimes be essential to the success of its business endeavors, the destruction of its reputation may not equally destroy business opportunities.<sup>63</sup> The individuals who began the corporation, the individuals who make that corporation function, and all the necessary tangibles to make that business run will still exist.<sup>64</sup> Although destruction of a corporations' name may be detrimental to its financial success, a business ultimately can be replaced or rebuilt.<sup>65</sup> The defamation of a natural person's reputation, however, can never be replaced.<sup>66</sup> For this reason, the right to freedom of expression is carefully balanced to not diminish another individual's right to a clean reputation.<sup>67</sup>

As a result, defamation of a natural person, as opposed to a corporate entity, has always been a serious offense in the People's Republic of China.<sup>68</sup> Establishing libel and slander results in serious criminal and civil penalties,

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61. See Spahn, *supra* note 46, at 889 (quoting Fu & Cullen, *infra* note 169). All cases prior to *Maxstation v. Wang Hong* had natural persons as the plaintiff. Life Times & PC World, Case No. 1438 (Beijing No. 1 Intern. People's Ct., 2000). The difference in treatment, the question of whether or not a corporate entity is able to feel injured akin to an individual, and the emphasis on falsity separate the two types of defamation claims. See Spahn, *supra* note 46, at 889.

62. See Spahn, *supra* note 46, at 889 (questioning whether or not a corporation has the capacity to feel injured by insults). The court in *Maxstation* stressed the falsity of statements as well as insulting words that defamed the corporate plaintiff. Life Times & PC World, Case No. 1438 (Beijing No. 1 Intern. People's Ct., 2000). These same offenses are what trigger defamation against a natural person. See Spahn, *supra* note 46, at 889.

63. See Standing Comm. Nat'l People's Cong., *supra* note 60 (stating that a corporation has a right to its name).

64. See Spahn, *supra* note 46, at 880 (citing and interpreting the 1993 Reply on Several Problems in Adjudicating Cases relating to the Right to Reputation, at § 8 (Sup. People's Ct., 1993)). A corporation will receive awards to compensate for damages caused by false commentary. *Id.*

65. *Id.* at 882 (discussing how a corporation can withstand some negative commentary).

66. See General Principles of Civil law of the People's Republic of China, *supra* note 60, at art. 120 (describing individual's right to have his reputation "rehabilitated" if it has been damaged and the ill effects removed). The choice of language implies the irreplaceable nature of an individual's reputation. *Id.* See also Jeffery F. Levine, *Meeting the Challenges of International Brand Expansion in Professional Sports: Intellectual Property Right Enforcement in China through Treaties, Chinese Law and Chinese Cultural Mechanisms*, 9 TEX. REV. ENT. & SPORTS L. 203, 218-29 (2007) (explaining significance of "mianzi" [loss of face] in Chinese culture). The term face roughly replaces what Americans think of as their name. *Id.* The term face or mianzi is preferred because it more accurately describes how one is viewed by others. *Id.* Some of the connotation is lost through translation. *Id.*

67. See General Principles of the Civil Law, *supra* note 60 (providing for right of representation); Hong Kong: Bill of Rights Ordinance, 30 I.L.M. 1310, 1317 (1991) (providing protection for freedom of opinion and an exception for right to reputation in China). Art. 16 § 3(a) provides an exception for "respect of the rights or reputations of others." *Id.* § 3(b) provides an exception for national security and public order. *Id.*

68. See Benjamin L. Liebman, *Innovation through Intimidation: An Empirical Account of Defamation Litigation in China*, (2006) 47 HARV. INT'L L.J. 33, 40 (citing 1987 General Principles of Civil Law as reasoning for allowing defamation claims). The General Principles explain individuals have a right to a reputation and a right to freedom from insult or slander. *Id.*



through fines and/or imprisonment.<sup>69</sup> Furthermore, unlike American defamation law, where truth is a defense, content targeting a natural person in China can be deemed defamatory even if it is found to be true.<sup>70</sup> The logic behind this rule is similar to the famous folktale of gossip and feathers.<sup>71</sup> The language, whether true or false, serves to destroy an individual's right to his reputation and the respect otherwise afforded by society.<sup>72</sup> Like the feathers in the folktale, words are deemed impossible to be completely taken back and the damage irreversible.<sup>73</sup> Truth will not serve as a defense because the plaintiff's social face was nevertheless injured, and it is impossible to completely reverse the damage.<sup>74</sup> For example, insults are always considered defamatory because they injure a natural person's feelings and harm his respectability within society.<sup>75</sup> If the defendant called the plaintiff a "shameless bastard," he will be subject to heavy fines for injuring the plaintiff's feelings and destroying his right to a clear reputation.<sup>76</sup>

On the other hand, defamatory commentary targeting a corporation can be successfully defended if the statements are found to be true.<sup>77</sup> A corporation

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69. See Bauman, *supra* note 59, at 686 (noting defamation violations can result in three years imprisonment or fines); Spahn, *supra* note 46, at 878 (citing examples of heavy fines such as 90,000-500,000 yuan imposed for defamation violations). See generally Chinese Yuan to United States Dollars to Hong Kong Yuan Conversions, archived at <http://www.webcitation.org/5edof6CcO> (providing that in January 2008, one United States dollar is roughly equivalent to 6.8 Chinese Yuan).

70. Spahn, *supra* note 46, at 879-80 (citing 1993 Supreme People's Court [of China] Reply on Several Problems in Trying Cases relating to the Right to Reputation). Words can be defamatory in Chinese law even if true. *Id.*

71. See Lori Palatnik & Bob Burg, *Feathers in the Wind*, archived at <http://www.webcitation.org/5au6QU60v> (retelling folktale). The story is of a man who spreads rumors and eventually feels remorseful. *Id.* To teach him the full measure of his actions, a wise man tells him to drop feathers on the road on his way home. *Id.* The following day the wise man tells him to retrieve the feathers he dropped. *Id.* The man returns unsuccessful, and the wise man illuminates that, like the feathers, his words can never be fully retrieved. *Id.*

72. Spahn, *supra* note 46, at 879. Defamation suits have high damage awards in order to prevent derogatory language being used. *Id.* When such cases do arise, litigation of personal defamation claims hinge upon whether the alleged defamatory comments were injurious or insulting to the plaintiff. *Id.*

73. See generally Palatnik & Burg, *supra* note 71 (stating moral of folktale). The wise man tells the man his words are out in society "spreading hate" despite the man's remorse at his actions. *Id.*

74. See General Principles of Civil Law, *supra* note 60, at art. 120 (explaining that injury to face, personal name, or honor is infringement on right to reputation). Injury to any of these is taken seriously because they are viewed as irreplaceable. *Id.* A successful plaintiff may receive compensatory damages. *Id.*

75. Spahn, *supra* note 46, at 879-80 (citing the 1993 Reply).

76. See Spahn, *supra* note 46, at 879-80. The use of phrases such as "presumptuous," "mad dog," "monster," "hooligan," "Mickey Mouse," "rotten," or "human scum" will be considered defamatory because they are considered injurious. *Id.*

77. See Spahn, *supra* note 46, at 883 (relating Chinese appellate opinion that a corporation has a right to its reputation); See, e.g., Xinhua, *Reporter jailed for cardboard-stuffed bun hoax*, CHINA DAILY, Aug. 13, 2007, archived at <http://www.webcitation.org/5au6bc0v9>. Zi Beijia was a reporter who fabricated a story that a specific bun company was using cardboard to stuff its buns. *Id.* He was subsequently imprisoned and fined for his actions. *Id.* Chinese officials claim the attack on the bun company's reputation was the primary reason for Zi Beijia's punishment. *Id.*

must withstand derogatory commentary.<sup>78</sup> It is important that a corporation is honest with its customers and treats them with respect.<sup>79</sup> Consumers are expected to be able to determine for themselves which corporations they are willing to do business with.<sup>80</sup> As a result, corporations may only raise claims of defamation when they can allege that the content is false.<sup>81</sup> Partially true comments or exaggerations concerning a corporation permit speakers some leeway against defamation claims provided they have some factual basis.<sup>82</sup>

Traditionally, defamation has not been a widespread issue in China because the mainstream media is government-controlled and broadly censored.<sup>83</sup> The controlling party in China, the Communist Party of China (“CPC”), has controlled traditional media in order to achieve political stability.<sup>84</sup> The party’s rationale is that political stability ensures harmony within society, which allows for greater productivity, and increased general prosperity.<sup>85</sup> The views of a minority of individuals can threaten the stability and harmony of society as a whole.<sup>86</sup> If the population’s focus is directed towards political unrest, society is destabilized.<sup>87</sup> Productivity decreases, and with it, go opportunities for the advancement of the society.<sup>88</sup>

As a result, books, newspapers, and magazines are reviewed, and political

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78. See Spahn, *supra* note 46, at 882.

79. See Daniel J.H. Greenberg, *Discussing Corporate Misbehavior*, 70 BROOK. L. REV. 1213, 1231 (2005) (noting that honesty can be more important than long-term profits to a corporation).

80. *Id.* (discussing the positive effect of requiring corporations to withstand some defamation). Allowing some negative commentary that could be considered defamatory allows the market to be more transparent and serves the public interest of ensuring only quality corporations with quality products withstand market demands. *Id.*

81. See Spahn, *supra* note 46, at 880 (noting that historically in China, defamatory statements against a corporations must be materially false).

82. Spahn, *supra* note 46, at 880. Even when a comment against a corporation is not wholly or precisely true, provided there is some factual basis, a defamation claim will not stand. *Id.*

83. See S. David Cooper, *The Dot.Com(munist) Revolution: Will the Internet Bring Democracy to China?* 18 UCLA PAC. BASIN L.J. 98, 103 (2000) (relating regulations of information in China before Internet introduced). All information was previously filtered through the Ministry of Information in Beijing for inappropriate content. *Id.* This filtration system was specifically designed to protect state secrets. *Id.* at 102-3.

84. See Liang, *supra* note 47, at 1428; Lin, *supra* note 52, at 273 (discussing the right of the government to decide what actions are in the true interest of its people). The government, in order to be effective, needs to have the ability to protect the interests of the people it governs. *Id.* It is also necessary for the government to decide what the interests of its people are if it is to represent them effectively. *Id.*

85. Kristen Farrell, *Corporate Complicity in the Chinese Censorship Regime: When Freedom of Expression and Profitability Collide*, 11 No. 7 J. INTERNET L. 1, 11 (2008) (stressing the importance of preserving China’s cultural traditions and ethical structural norms).

86. See Kristina M. Reed, *From the Great Firewall of China to the Berlin Firewall: The Cost of Content Regulation on Internet Commerce*, 13 TRANSNAT’L LAW. 451, 459 (2000) (stating that “rights are only instruments for realizing state objectives”).

87. Farrell, *supra* note 85, at 11. Under the terms of the mandatory pledge of the Internet Society of China, companies must pledge to uphold “rich cultural traditions” of China by not jeopardizing state security or disrupting social stability. *Id.* The pledge is aimed at stopping the dissemination of politically sensitive material. *Id.*

88. See Farrell, *supra* note 85, at 11.

content criticizing the actions or moral beliefs of the government is censored.<sup>89</sup>

#### F. Chinese Internet Defamation Law

In accordance with its traditional defamation law, the Chinese government heavily regulates Internet speech.<sup>90</sup> All ISPs are controlled, regulated, and reviewed by government-controlled gateways.<sup>91</sup> Many websites that are freely accessible worldwide are not accessible to users in China.<sup>92</sup> Major Internet search engines are required to filter content that responds to certain keywords used in searches when conducted by Chinese users.<sup>93</sup> Individual Internet users themselves must register with the government so their usage can be tightly monitored.<sup>94</sup>

The Internet is treated in a similar manner to traditional media under the Chinese defamation legal regime.<sup>95</sup> Like books and other print media, individuals who utilize the Internet to create defamatory content can be sanctioned for their actions.<sup>96</sup> Defamers may be subject to heavy fines or imprisonment for violating Internet regulations.<sup>97</sup>

Similarly, ISPs, who serve as third party publishers of defamatory content, can also be held liable.<sup>98</sup> The Ministry of Public Security requires ISPs to

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89. See Reed, *supra* note 86, at 458-59 (explaining that materials threatening the status or image of government are censored); John H. Taylor, III, *The Internet in China: Embarking on the "Information Superhighway" with One Hand on the Wheel and the Other Hand on the Plug*, 15 DICK. J. INT'L L. 621, 630 (1997). The PRC reviews all informational media in China. *Id.*

90. See Nellie L. Viner, *The Global Online Freedom Act: Can U.S. Internet Companies Scale the Great Chinese Firewall at the Gates of the Chinese Century?*, 93 IOWA L. REV. 361, 373-74 (2007) (discussing how Internet access in China is the most highly regulated and censored of any country in the world.).

91. See Reed, *supra* note 86, at 462 (explaining that ISPs gain access to subscribers in China through the Ministry of Posts and Telecommunications).

92. See Viner, *supra* note 90, at 380 (discussing differences in search results between Google.com and Google.cn). A U.S. Google.com search for the phrase "Tiananmen massacre" displays 826,000 results whereas a Chinese Google.cn search for same produces 441 results. *Id.* See generally *The Great Firewall of China*, archived at <http://www.webcitation.org/5au6kRjV>. The website maintains an archive of all URLs that users of the site were not able to reach in China. *See id.*

93. Zhu Lijiang, *Chinese Practice in Public International Law*, 6 CHINESE J. INT'L L. 475, 482. Since 2006, Yahoo! has been required to filter keywords in searches conducted in China. *Id.*

94. Reed, *supra* note 86, at 462. Users must register their names, service provider, e-mail addresses, and list online groups they participate in with the local police. *Id.*

95. See Timothy L. Fort & Lui Junhai, Article, *Chinese Business and the Internet: the Infrastructure for Trust*, 35 VAND. J. TRANSNAT'L L. 1545, 1588 (discussing the rise of Internet defamation cases).

96. See Reed, *supra* note 86, at 463 (providing laws and sanctions for ISPs and individual responsibilities on Internet). Sanctions include fines, jail time, and a loss of network access. *Id.* See also Fort & Junhai, *supra* note 95, at 1590. In determining damages, a court will consider factors such as damage to the victim's reputation, illegality of the statement, causation between the statement and harm to the reputation, and intent of the defendant. *Id.*

97. See Viner, *supra* note 90, at 363. For example, a journalist named Shi Tao was imprisoned for exposing state secrets. *Id.* Mr Tao sent an email to a foreign based website that contained text from a notice that the Chinese government had sent privately to his newspaper. *Id.*

98. See Spahn, *supra* note 46, at 1591. In *Max Computer Station, Inc. v. Wang Hong*, a consumer (Wang

monitor the content they provide to users for defamatory content.<sup>99</sup> ISPs are considered on notice of all the content they provide. Defamatory content must be removed once the ISP is notified of its existence. It may be found liable for the defamatory content even if the ISP itself has not added or edited the content in any way.<sup>100</sup> Merely quoting the defamatory statements of another is enough to give rise to liability for an ISP.<sup>101</sup> As a result, many ISPs will shut down chat groups that exchange potentially defamatory content as a preventative measure, rather than risk liability and damages.<sup>102</sup> The PRC believes that imposing these duties upon ISPs will significantly diminish the spread of illegal and harmful content over the Internet and the morals and stability of the society will therefore be preserved.<sup>103</sup>

In addition, the government also monitors websites for defamatory content against itself.<sup>104</sup> Defamation of the government is considered a threat to the stability of Chinese society and ensuring it is punished helps maintain social harmony and balance.<sup>105</sup> The primary government monitoring system, launched in 2000, is called the Golden Shield.<sup>106</sup> The program, which is currently in effect, is built upon Western security technologies and attempts to block any website that the government believes could be detrimental to the

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Hong) claimed a corporation's product was "as soft as tofu," which is a deeply insulting comparison in Chinese culture. *Id.* Two Internet magazines directly quoted Wang Hong's statements on their websites. *Id.* Both Wang Hong and the Internet magazines that published his statements were found liable for defamation. *Id.*

99. See Viner, *supra* note 90, at 374. In order to do business in China, ISPs take a voluntary pledge from the Chinese Internet Society promising to maintain "energetic efforts to carry forward the rich cultural tradition of the Chinese nation and the ethical norms of the socialist cultural civilization." *Id.*

100. See Viner, *supra* note 90, at 374.. An ISP is strictly liable for everything that appears on its site and is responsible for monitoring all content posted. *Id.* See also Fort & Junhai, *supra* note 95, at 1589 (citing Article 57 on regulations of Telecommunications effective in 2000). This "prohibits entities or individuals from procuring, copying, publishing, or distributing defamatory information using Telecommunication networks." *Id.*

101. See Spahn, *supra* note 46, at 877. In the Wang Hong case, neither ISP edited, added, or deleted Wang Hong's original statements but each nonetheless was still held liable for defamation. *Id.*

102. See Cooper, *supra* note 83, at 106-07.

103. See Lijiang, *supra* note 93, at 504 (quoting foreign ministry Spokesperson, Mr. Liu Jiancho on February 14, 2006).

"China also faces the same problem of how to tackle with online harmful and illegal contents...[China] is trying its best to contain the spread of those illegal, anti-social, and harmful contents to youngsters in particular. The purpose, described by Chinese officials as "rational and legal," is to protect the interest of the general public."

*Id.*

104. See Cooper, *supra* note 83, at 106-07. All websites are screened by secrecy officers for politically sensitive content. *Id.*

105. See Bockover *supra* note 29, at 160-61 (explaining harmony helps create social stability). See also Lijiang, *supra* note 93, at 482 (quoting Foreign Ministry Spokesperson, Mr. Liu Jiancho). "Wider coverage of internet has promoted China's economic development and facilitated people's work, study, and life." *Id.*

106. See Greg Walton, *China's Golden Shield: Corporations and the Development of Surveillance Technology in the People's Republic of China* (2001), archived at <http://www.webcitation.org/5au6xAXi4> (discussing PRC's security surveillance system). The ministry of public service created a nation-wide security and surveillance system in 2000 in order to increase police efficiency, filter out objectionable material, control public information, and suppress anti-government activity. *Id.*

harmony of society.<sup>107</sup>

### III. The Problem

#### A. The Law Suit from Guangdong

Considering the wide discord between the Internet cultures of America and China, it is no surprise these issues came to a head in the Mattel case.<sup>108</sup> Mattel recalled more than twenty-one million toys in 2007 on the basis that they contained lead paint and cited Chinese manufacturers as the source.<sup>109</sup> After the original recall, however, an investigation showed that eighty-five percent of the recall was not due to lead paint content, but from design flaws in the product.<sup>110</sup> Mattel attempted to smooth matters over in September of 2007 by formally apologizing to the Chinese corporations involved.<sup>111</sup> The damage, however, may already have been done.<sup>112</sup> In November, 2007, Guangdong - the province of China where the toy manufacturers are located - declared it would provide financial support to any local toymaker who intended to bring a defamation suit against Mattel in the United States.<sup>113</sup> Chinese official Chen Lipeng, director of Guangdong's Fair Trade Bureau, claimed the Chinese toymakers were insulted by the American corporation's claims and that their reputation was "stained."<sup>114</sup>

Despite their differences, Guangdong toy makers and Mattel are still in business today.<sup>115</sup> The U.S. government, Mattel, and their Chinese

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107. See Walton, *supra* note 106, at 4 (explaining technologies Golden Shield Project employs to achieve its purpose). The Golden Shield Project uses "Access Control, Anti-Hacker Intrusion, Communication Security, Computer Accessories & Software, Decryption & Encryption, E-commerce Security, Extranet & Intranet Security, Firewalls, Networking Communications, Network Security & Management, Operation Safety, Smartcard Security, System Security, Virus Detection, IT-related Services and Others" to regulate and control Internet usage in China. *Id.* Many of these technologies are purchased from western telecommunication companies. *Id.* These include U.S.-based companies Lucent and Cisco, European-based companies Nokia and Ericsson, and Canadian-based company Nortel Networks. *Id.*

108. See Associated Press, *supra* note 1.

109. See Associated Press, *supra* note 1.

110. See Qiwen & Wei, *supra* note 4.

111. See Qiwen & Wei *supra* note 4; Spahn, *supra* note 46, at 901 (discussing cultural implications of apologies). When it is acceptable to accept or reject an apology is rooted within Chinese culture and nationalist pride and differ greatly from Western understanding. *Id.*

112. See *Chinese Province Sues US Toy Company*, FOREIGNPOLICY.COM, Nov. 11, 2007, archived at <http://www.webcitation.org/5au72H1fL> (quoting Guangdong official that an apology insufficient to compensate for losses).

113. See Qiwen & Wei, *supra* note 4. The government of Guangdong declared it would provide legal assistance to any toy company in Guangdong that wished to file suit against Mattel. *Id.*

114. See Foreign Policy Passport, *supra* note 112 (quoting Chen Lipeng). "The incident has stained the reputation of Chinese toy manufacturers and made a large number of toy factories in Guangdong lose a great deal of money." *Id.*

115. See Bill Bregar, *Boosting Presence in China Key to Safety: Panelists Talk Safeguards in Wake of Toy Recalls*, PLASTICS NEWS, Mar. 24, 2008, 2008 WLNR 5809878 (discussing continued relationship of Mattel

counterparts reacted to the safety issue to satisfy both nations and preserve the business relationship. The American Consumer Product Safety Commission investigated Mattel and the American Toy Industry Association mandated testing for lead paint in toys.<sup>116</sup> Mattel hired nearly one hundred additional employees to oversee testing and production conditions in China, and its head of quality publicly affirmed the company's continued trust in Chinese toy manufacturers.<sup>117</sup> The Chinese Zhongshan Entry-Exit Inspection and Quarantine Bureau revoked the export licenses of forty factories and put fifty others under review while the State Administration for Quality Supervision and Inspection Quarantine conducted inspections of the toy companies.<sup>118</sup> The Chinese toy manufacturers hired more staff to meet the requirements of safety testing, and one factory owner invited American officials to tour his factory.<sup>119</sup> As a result, trade in toys between America and China is still flourishing with eighty percent of toys sold in America being made in China.<sup>120</sup>

In regards to potential defamation liability, it is important to examine which Internet media outlets reported the potential lawsuit. In China, Chinadaily.com, reported on the incident, but its story focused heavily on the losses the Chinese corporations suffered from a loss of reputation, rather than discussing the actual lead paint found in the toys.<sup>121</sup> Meanwhile, the only American Internet sources that reported on the issue were exclusive business websites, which require membership.<sup>122</sup> Major public U.S. news sources, like CNN.com, were silent on

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and China).

116. See Eric Lipton, *U.S. Retailers Admit Finding Even More Unsafe Toys*, INT'L HERALD TRIB., Sept. 20, 2007, 2007 WLNR 18430516 (reporting Mattel investigations).

117. Bregar *supra* note 115 (discussing Mattel's plan to create a presence in China). The plan aims to let Mattel have greater control over subcontracting. *Id.* Jim Walter, head of quality, claims the new employees serve to provide an American perspective while working directly with local Chinese employees who bring the Chinese perspective. *Id.*

118. See Zhao Ying and Che Xiaohui, *Making Safe Quality Toys is No Child's Play*, China Daily, Feb. 21, 2008, 2008 WLNR 3334330 (discussing Chinese efforts to enforce safety standards). The higher, more demanding standards imposed by the government have raised the prices of Chinese made toys significantly. *Id.* The price increase has driven some smaller companies out of business. *Id.* Furthermore, government inspections have weeded out smaller unreliable factories. This diverts all toy demand to larger, more reliable companies that can handle the inspections and their costs. *Id.* The China Toy Association supports this shift as guaranteeing better quality products from Chinese producers consistently. *Id.*

119. See Shu-Ching Jean Chen, *Choi's Toys*, FORBES, Jan. 28, 2008, 2008 WLNR 124 9321 (discussing toy manufacturer's commitment to safety toys). Francis Choi, a Guangdong toy factory owner, actually profited from the lead paint dispute. *Id.* Although both Choi and Zhang Shuhong, the owner who hanged himself, were both blamed for the lead paint, Choi's company continued to grow and flourish because he responded by ending the majority of his relationships with subcontractors and kept up with the new safety standards imposed by the government. *Id.* See also Ying and Xiaohui, *supra* note 118 (discussing increased safety standards).

120. See Ying and Xiaohui, *supra* note 118 (showing that seventy to eighty percent of American toys are produced in China). Chinese toys continue to sell well in the European Union as well. *Id.* The European Union's Consumer Protection Commissioner recognizes the improvement and commitment of the Chinese government to maintaining safety standards. *Id.*

121. See generally Qiwen & Wei, *supra* note 4.

122. See Stratfor Forecasting, Inc., *China: Responding to U.S. Product Recalls (2007) available by*

the potential lawsuit.<sup>123</sup> The major news sources that did provide information concerning the potential lawsuit were British or other third party news sources.<sup>124</sup>

These differences are indicative of each nation's opinions about the issue. In America, the population may have felt that the suit was frivolous and only important from a business aspect.<sup>125</sup> There was truth to Mattel's statement because lead paint was found in the toys.<sup>126</sup> Thus, from the American point of view, there may be no point to a lawsuit because truth is an affirmative defense to defamation.<sup>127</sup> On the other hand, China's silence may reflect national pride and the government's desire not to risk further harm to the corporations' reputations in the eyes of domestic consumers.<sup>128</sup>

#### IV. Analysis and Suggestions

##### A. Cultural Understanding

The Mattel-Guangdong dispute demonstrates that it is now more important than ever for the two nations to understand the cultural contexts of each other's speech laws.<sup>129</sup> As the Internet continues to expand to new users, Eastern and Western ideals must meet.<sup>130</sup> With such radical differences between the two nations and an ever-growing global economy, the two nations must consider and respect one another's ideas as they are forced to communicate on a global

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membership only at <http://www.webcitation.org/5edox4ek4>.

123. See generally archive search for "Guangdong" and "toys," CNN.com, archived at <http://www.webcitation.org/5edp26gyO> (resulting in no hits for CNN report concerning the Guangdong law suit).

124. See BBC, *Chinese Province "May Sue" Mattel*, BBC.COM, Nov. 6, 2007, archived at <http://www.webcitation.org/5au7TmkQD>; see also See Jonathan Watts, *Chinese Toy Factory Boss Commits Suicide Over Lead Paint Scandal*, THE GUARDIAN, Aug. 13, 2007, archived at <http://www.webcitation.org/5au7Hbu6A> (discussing lead paint content in toys).

125. See Sedler, *supra* note 26, at 381 (discussing American's willingness to tolerate hurtful speech in order to protect free expression).

126. See Watts, *supra* note 124 (claiming lead paint was actually found in toys produced in Guangdong).

127. 50 AM. JUR. 2D LIBEL AND SLANDER § 249 (2007) (providing truth of an offensive statement is an absolute defense of defamation in American law).

128. See Spahn, *supra* note 46, at 902-03 (explaining that the Chinese government promotes nationalism by protecting corporations). National pride is deeply rooted in Chinese culture today. *Id.* The government continues to promote nationalism by protecting the national reputation of China's corporations. *Id.*

129. See DANIEL C.K. CHOW & THOMAS J. SCHOENBAUM, INTERNATIONAL BUSINESS TRANSACTIONS, 13 (Aspen Publishers 2005) (discussing issues of cultural differences in international business). There are significant cultural differences that are relevant today but were historically ignored when western society dominated international business. *Id.* A competent business lawyer in the modern world needs to be aware of these issues in order to effectively serve her clients.

130. See China Internet Information Network, *supra* note 17, § 3.1 (showing Internet growth is great but actual penetration is small). Internet usage is concentrated in big cities, but the majority of the population is located outside of large cities and thus lacks direct Internet access. *Id.* There is a lot of room for increased use in China and increased Chinese influence on the global Internet as it becomes more accessible to the huge population. *Id.*

stage.<sup>131</sup>

If America remains eager to do business with China, it cannot forget the cultural context from which Chinese speech, business practices, and laws follow.<sup>132</sup> Americans must remember that the preference of individualism over the right to reputation remains a foreign concept to the growing number of Chinese Internet users and based on purely American ideals.<sup>133</sup> These ideals, inherent in the Internet's culture, are only prevalent because it was an American creation.<sup>134</sup> These ideals are not shared throughout the world.<sup>135</sup> If international communication is to flourish, Chinese values and law cannot be forgotten or discarded simply because the Internet was founded on American principles.<sup>136</sup>

One way for American corporations to convey greater cultural understanding would be to rethink how they format their websites for Chinese users.<sup>137</sup>

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131. See WORLD TRADE ORGANIZATION, UNITED STATES TRADE PROFILES (Apr. 2008), archived at <http://www.webcitation.org/5bIktYMPw> (showing statistics to support China as the United States' biggest export destination in 2007). China ranks as the fifth largest recipient of U.S. exports and the third largest source of U.S. imports. *Id.*

132. See Bockover, *supra* note 29, at 168-70 (explaining why expecting China to accept and philosophically believe in American ideals is problematic). China cannot be expected to simply adopt American ideals after five thousand years of cultural heritage to the contrary. *Id.* Nor should this resistance necessarily be taken as backward, wrong, or a denial of fundamental freedoms to a people. *Id.* Chinese philosophy, although different from western philosophies, is a working and accepted part of that society. *Id.* But see Viner, *supra* note 90, at 365-66 (discussing potential human rights violations of Chinese Internet regulations). The right to freedom of expression is specifically provided for in the Universal Declaration for Human Rights. *Universal Declaration for Human Rights*, Art. 19 (1948), archived at <http://www.webcitation.org/5edpV96eX>.

133. See General Principles, *supra* note 60 (discussing right to free speech as less valued compared to right of representation in China).

134. See Bockover, *supra* note 29, at 164-67 (providing cultural history of the Internet). The Internet is based on American ideas of free speech because it was created in the United States. *Id.* These cultural ideals of free expression are now being exported globally through the Internet. *Id.* Americans should be sensitive to Chinese cultural issues that naturally clash with those ideals. *Id.* See also 47 U.S.C.A. § 230(a) (providing Congress' Internet findings). Congress' findings stress the growth of Internet access to American "individuals" rather than focusing on the general population's access as a whole. *Id.* This displays the American preference to focus and tailor laws to the needs of individuals rather than focusing on society's needs as a unit. *Id.* The opposite is true in China. See General Principles, *supra* note 60. (discussing purpose of civil law in China)

135. See Eko *supra* note 26, at 102 (discussing French Internet regulations). Because of its unique culture, France has developed its own Internet liability regime. *Id.* ISPs in France are responsible for collecting information from their users so that the government may enforce its laws on the Internet. *Id.* These ISPs, however, do not share the criminal or civil liabilities of their users. *Id.* Although France shares many of the cultural ideals of America, it still differs in its treatment of Internet defamation. *Id.*

136. See Lijiang *supra* note 93, at 482 (quoting Foreign Ministry Spokesperson Liu Jiancho: "Foreign companies will have to observe Chinese laws and regulations if they want to do business in China."); China Internet Information Network, *supra* note 17, § 3.1 (showing large growth in Internet users but small rate of penetration). See generally CNN.Com, *supra* note 11 (noting China has world's biggest population). French Finance Minister Laurent Fabius expressed that China may be essential to the global trading community. *Id.* Prior to China's accession to the WTO he expressed, "the WTO [can] not genuinely be called a 'world' organization without the world's most populous nation." *Id.*

137. See Viner, *supra* note 90, at 376-81 (showing how American Internet corporations comply with Chinese regulations). Yahoo!, Google, and Microsoft have reworked their technologies to comply with



Websites of major distributors, like Amazon.com, that allow user comments and feedback should filter user commentary or reformat their feedback design.<sup>138</sup> For example, a simple rating system could inform potential buyers what users typically enjoyed and what they found unsatisfactory without subjecting a corporation to potential defamation.<sup>139</sup> If users were allowed to check a number of stars that correlate to their satisfaction with a product, potential buyers could learn which products people generally enjoyed without the website publishing any direct commentary about the corporation or its products.<sup>140</sup> This compromise would allow for a culturally sensitive and productive business relationship to move forward.<sup>141</sup>

Similarly, China must be willing to understand American ideals and values.<sup>142</sup> If the Internet has a culture of American speech, China must be willing to make some concessions and learn to speak that language if it wishes to participate.<sup>143</sup> Simply imposing its preference for a right to reputation over pre-existing values of freedom of expression will only result in conflict.<sup>144</sup>

Rather than hurriedly closing the door to protect moral values, China should consider what it stands to lose by blocking such a large volume of Internet content. By censoring any website that potentially contains defamatory content, China weakens its links to the international business community. Many businesses today have opened their research and development teams internationally to collaborate and problem solve.<sup>145</sup> The Internet enables institutions of higher education to exchange ideas globally, and corporations

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Chinese Internet censorship regulations in order to do business in China. *Id.* See also Farrell, *supra* note 85, at 14 (discussing impossibility of one company changing Chinese regulations).

138. See generally JoyoAmazon.com, archived at <http://www.webcitation.org/5edpklwvO> (providing Chinese version of Amazon.com's website). The website provides a user ratings system with stars to show which products users enjoyed. *Id.* See generally Li Na, *Amazon's China War*, CHINA BUSINESS FEATURE, July 17, 2007, archived at <http://www.webcitation.org/5bIlloNPEF> (stating Joyo Amazon has highest growth among its global competitors).

139. See JoyoAmazon.com, *supra* note, 138.

140. See JoyoAmazon.com, *supra* note 138.

141. Compare Viner, *supra* note 90, at 379-80 (discussing Google's compromises in China such as comprising its mission statement to provide information and "do no evil," by subjecting its services to censoring), with Farrell, *infra* note 149 and accompanying text (discussing proposed domestic industry code of conduct). Google argues that the benefit of providing even limited information to Chinese Internet users outweighs the negatives of having to censor some of that information. *Id.* Google successfully compromises by telling Chinese users what information is being filtered. *Id.* This has allowed Google to engage in successful business ventures in China. *Id.*

142. CHOW & SCHOENBAUM, *supra* note 129, at 12 (discussing how ignoring cultural issues may destroy business transactions).

143. See Walton, *supra* note 106 (discussing PRC's recognition of paradox between desiring information Internet provides and protecting citizens from harmful content).

144. Bockover, *supra* note 29, at 171 (discussing potential for conflict if cultural differences between America and China are not mutually respected).

145. See DON TAPSCOTT & ANTHONY D. WILLIAMS, WIKINOMICS 98-99 (Penguin Group 2006) (explaining ideaogoras). Ideaogoras are websites dedicated to connecting businesses and individuals for the purposes of open research and development on specific business problems and projects. *Id.*

and private freelance individuals to come together to form successful partnerships.<sup>146</sup> With the loss of the Internet as a transnational communication tool, both nations can lose the potential for cross cooperation and industry collaboration.<sup>147</sup> China's strict Internet regulation stifles education, creativity, knowledge exchange and profits.<sup>148</sup>

### B. We Will Not Concede

Compromise aside, some scholars and political groups fear that cultural understanding can be taken too far, resulting in concessions to human rights violations.<sup>149</sup> Groups such as Human Rights Watch ("HRW") chided Google in 2006 when it conceded its mission statement to provide information worldwide by agreeing with Chinese authorities to censor searches conducted by Chinese users.<sup>150</sup> Although Google argued it was better to provide censored information to Chinese users than no information at all, HRW insisted Google was motivated by financial gains.<sup>151</sup>

However, regardless of Google's actual motivation or reasoning, if the company - and other companies within that industry - feel the concession is so grossly immoral, they have an opportunity to band together.<sup>152</sup> Scholars have suggested that industries can agree to a code of conduct that would limit concessions a company may make overseas and seek the backing of their respective national governments.<sup>153</sup> If this code is enforced domestically, companies will not have to make concessions in order to gain an edge over their local competitors.<sup>154</sup> Furthermore, if powerful industries band together in

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146. *See id.*

147. *See id.* at 122-23. If a corporation is to stay competitive, it must collaborate in order to create value in the increasingly global economy. *Id.*

148. *See id.* at 162 (providing examples of what collaboration and international communication can accomplish). Large collaboration projects like the Human Genome Project would not be possible without international Internet access. *Id.*

149. *See* Farrell, *supra* note 85, at 17 (stating complicity with Chinese censorship regimes runs "afoul" of right to freedom of expression); James Heskett, *The China Dilemma for U.S. Firms: Comply, Resist, or Leave?*, Harvard Business School Working Knowledge, (Mar. 6, 2006) *archived at* <http://www.webcitation.org/5au7yrG9g> (discussing corporate views on complicity). Complying with authorities allows corporations to gain their trust and eventually suggest alterations as they work together. *Id.* *See generally* Universal Declaration of Human Rights, *supra* note 132 (recognizing fundamental right to freedom of expression).

150. *See* Viner, *supra* note 90, at 379-80 (comparing search results on Google.cn to Google.com). A search on Chinese Google.cn produces only 441 results for the term "Tiananmen Square." The same search conducted in the United States on Google.com produces 826,000. *Id.*

151. Viner, *supra* note 90, at 379-80.

152. *See* Farrell, *supra* note 85, at 18-19 (proposing an industry code of conduct).

153. *See* Farrell, *supra* note 85, at 18-19; Miriam D. D'jaen, *Breaching the Great Firewall of China: Congress Overreaches in Attacking Chinese Internet Censorship*, 31 SEATTLE U.L.REV. 327, 347-48 (2008) (advocating industry-wide code of conduct).

154. *See* Farrell, *supra* note 85, at 19 (noting that domestic government regulations stop companies from sacrificing values for financial gain).

this way, the PRC may be forced to concede some of its Internet regulations in order to entertain increased numbers of foreign businesses.<sup>155</sup>

A mandatory code of conduct, however, could create some negative fall-out. If the code is enforced in only one nation, similar industries in other nations that have no such code may take advantage of the opportunity by conceding to Chinese law.<sup>156</sup> These foreign corporations would have a competitive edge over corporations that must adhere to a code. Furthermore, if the code is too restrictive, it may obstruct business opportunities. If not restrictive enough, Chinese officials may reject it on the basis that it is attempting to change their domestic policies.<sup>157</sup> Therefore, industries and governments must step lightly if they choose this path.

Another attempt to avoid strict compliance with Chinese Internet censorship is the Global Online Freedom Act ("GOFA").<sup>158</sup> In 2006, after Google, Microsoft and Yahoo! admitted to censoring information, the GOFA was proposed to promote the "freedom of electronic information abroad" and "to deter any United States business from cooperating with officials of Internet-restricting countries in effecting the political censorship of online content."<sup>159</sup> Although its first draft was never voted on, it was reintroduced in 2007. The act is intended to allow American businesses to be competitive in China while maintaining a stance against censorship.<sup>160</sup> However, it dangerously attempts to export American ideals of free expression by enforcing them with heavy fines.<sup>161</sup>

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155. Farrell, *supra* note 85, at 19 (claiming that pressure from a united front within the industry could force China to alter their regulations).

156. See Farrell, *supra* note 85, at 14 (reasoning that the opportunities not taken by one company are taken by another). When Cisco explained why it provides censoring technology to China, it reasoned the same technology is available by other domestic companies and dozens of European and Canadian companies. *Id.* If Cisco did not sell to China, another company could easily take the market. *Id.* See also D'jaen, *supra* note 153, at 348 (noting code of conduct's effectiveness requires world-wide cooperation).

157. See Farrell, *supra* note 85, at 13 (discussing pressure China put on businesses to comply with domestic law). Doing business in China can yield a large financial gain so businesses were willing to concede their values by complying. *Id.* But see D'jaen, *supra* note 153, at 350 (arguing that governments require the cooperation of private industries in order to assert control of the Internet). In 1999, technology companies united against the Chinese government to promote the use of cryptography to keep corporate communications confidential. *Id.*

158. See Farrell, *supra* note 85, at 15.

159. Global Online Freedom Act 2006, H.R. RES. NO. 4780, § 104(a)-(b), 109th Cong. (2006).

160. See D'jaen, *supra* note 153, at 383 (discussing positive aspects of Global Online Freedom Act ("GOFA")). U.S. businesses can successfully avoid human rights violations by adhering to the minimum standards for online freedom of the GOFA. *Id.* Furthermore, the GOFA also recognizes the importance of doing business in China. *Id.*

161. See D'jaen, *supra* note 153, at 383 (discussing negative aspects of the GOFA). Violations of the GOFA can result in five years imprisonment or fines up to \$2,000,000. *Id.* The GOFA claims it is U.S. policy to use all appropriate instruments to uphold the right to freedom of expression to all individuals. *Id.* Such legislation wrongly imposes the American cultural preference for freedom of expression over the right to representation on the PRC. *Id.*

### C. Compare Notes and Move Forward

The United States and China should strengthen cultural understanding by compromising to keep business relationships growing.<sup>162</sup> Recently, both America and China have taken some tentative steps towards this.<sup>163</sup> Chinese companies are demonstrating an increased amenability to U.S. jurisdiction over disputes with American companies.<sup>164</sup> American corporations will be more likely to work with Chinese corporations that are willing to utilize the American legal system to resolve disputes because it saves them from having to pour resources into litigating on Chinese soil.<sup>165</sup>

In addition, American businesses are beginning to take steps to meet Chinese business preferences half-way by being more willing to arbitrate disputes.<sup>166</sup> While American corporations favor adjudication to resolve their disputes, Chinese corporations typically favor mediation.<sup>167</sup> Arbitration caters to both nations' needs by allowing each side to have autonomy in picking the arbitrators, thus avoiding any potential bias in domestic courts.<sup>168</sup> Although a Chinese corporation may be more willing today to work within the American legal models, a Chinese corporation is more likely to respond positively when its cultural heritage is understood and respected.<sup>169</sup> Ultimately, a Chinese corporation will be more likely to form future business relationships with

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162. See Viner, *supra* note 90, at 379 (quoting Google CEO Eric Schmidt: "I think it's arrogant for us to walk into a country where we are just beginning to operate and tell that country how to operate.")

163. See Jingzhou Tao, *Updates From East Asia for Business Lawyers*, 38 INT'L LAW. 609, 611 (2004) (discussing the advantages of using large international law firms in litigation in China). Many smaller American law firms have relations with domestic Chinese law firms in order to more effectively deal with legal issues in China. *Id.*

164. See generally BBC, *supra* note 124 (stating that the suit against Mattel will be filed in a US court).

165. See Tao, *supra* note 163 and accompanying text.

166. See Viner, *supra* note 90, at 376-80 (discussing how Yahoo!, Microsoft and Google catered to Chinese laws and moral standards to do business in China). Large multinational corporations are so eager enough to get a share of the Chinese market that they have given up the some of the corporation's own value systems in order to comply with Chinese law. *Id.* For example, Google's mission to provide information to all people is at least partially compromised by being subject to filtration. *Id.* at 379-80. Google, however, considered this a worthwhile sacrifice because all of its competitors were already in China and the company did not desire to fall behind. *Id.*

167. See Tao, *supra* note 163, at 623-24 (noting Asian cultures prefer mediation). Many Western nations like England and Australia still prefer adjudication for dispute settlement. *Id.* at 624.

168. See Bryan Yuan Fu Yang & Diane Chen Dai, *Tipping the Scale to Bring a Balanced Approach: Evidence Disclosure in Chinese International Arbitration*, 17 PAC. RIM. L. & POL'Y. J. 41, at 42 (2008). Arbitration is especially tantalizing to American litigators because it avoids the Chinese courts where only Mandarin is spoken, the need for Chinese counsel, and any foreign bias or governmental corruption. *Id.*

169. See Yang & Dai, *supra* note 168, at 42 (discussing Chinese cultural preferences for dispute resolution). Historically, the Chinese look to their ancestors to help resolve disputes rather than the government. *Id.* The family was preferred to outside assistance because family members had a more vested interest and family affairs could remain private. *Id.* Likewise, businesses today prefer mediation rather than judicial adjudication in order to save themselves from public scrutiny. *Id.* Foreigners prefer arbitration methods when disputes arise in China because even if Chinese law will apply, the foreigner still has some autonomy in choosing the arbitrator. See Yang & Dai, *supra* note 168, at 42.

corporations that are willing to protect that corporation's perceived dignity both internally and to its customers.<sup>170</sup> As a result, more business disputes between America and China are resolved by arbitration rather than adjudication.<sup>171</sup>

In addition, the two nations can continue to work together by learning from one another's opposing Internet speech models. As each now have been in place for at least a decade, the two models can be examined for what works and what does not.<sup>172</sup> The American CDA, for instance, is ripe for redrafting.<sup>173</sup> The Internet of today was not in Congress' wildest dreams or darkest nightmares when the CDA was originally drafted in 1996.<sup>174</sup> Perhaps America can take a cue from China and expose ISPs to a greater level of liability for their content.<sup>175</sup> Some measure of ISP liability is not as impossible to implement as it was once believed and may not have the complete "chilling effect" Congress once feared.<sup>176</sup>

Furthermore, it is necessary for China to embrace some global ideas of free expression.<sup>177</sup> Concession to some international norms is nothing new for China, which has become a member of the World Trade Organization ("WTO") and has signed on to various trade agreements.<sup>178</sup> Although China has done its

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170. *See id.*

171. *See* Yang & Dai, *supra* note 168, at 43 (noting that arbitration is the most used dispute resolution system in China). China's International Arbitration Institution hears more arbitrations than any other International Arbitration center worldwide. *Id.* This occurs despite the continued cultural preference for mediation. *Id.* *See also* Tao, *supra* note 163, at 612 (stating that between 2002 and 2003, four percent more disputes were resolved through arbitration than other dispute resolution mechanisms).

172. *See* 47 U.S.C.A. § 230 (showing CDA became effective in 1998); Spahn, *supra* note 46, at 879 (explaining the 1993 *Reply on Several Problems in Trying Cases Relating to the Right to Reputation*, which laid out guidelines on civil defamation in China). The Reply is not compulsory but has been heavily relied upon in Chinese courts. *Id.* at 895.

173. *See generally* Ternisha Miles, *Barrett v. Rosenthal: Oh, What a Tangled Web We Weave—No Liability for Web Defamation*, 29 N.C. CENT. L.J. 267 (2007) (discussing current issues U.S. courts have with CDA immunity).

174. *See id.* (providing background on struggle with defamation on Internet in American courts).

175. *See id.* (relating scholarly beliefs that the current CDA allows harsh results for victims of Internet defamation).

176. *See* Zeran, *supra* note 34, at 333 (discussing that the burden of liability on ISPs would lead to removal of Internet speech by ISPs); Online Policy Group, Research: Rating System Analysis, *archived at* <http://www.webcitation.org/5au8FZy60> (providing information on the Platform for Internet Content Selection ("PICS")). PICS is a new Internet content rating system that tags certain content to help ISPs filter out objectionable material. *See id.* It is not clear whether the system is fair, or unfairly discriminates between content. *See id.*

177. *See generally* Ayuan Yuan, *China's Entry into the WTO: Impact of China's Regulatory Regime of Foreign Direct Investment*, 35 INT'L. LAW 195, 196 (2001) (discussing the 1999 U.S.-China bilateral trade agreement). In order to enter into this agreement, China recognized it needed to make concessions. *Id.* Some areas China conceded in included banking, insurance, telecommunications and securities. *Id.* at 197-98. Both the United States and China gained economic benefits from their concessions and willingness to work together. *Id.* at 195. The Chinese foreign ministry spokesperson spoke positively about the agreement, despite the fact that China made major concessions in government control over foreign direct investment. *Id.*

178. *See* PETER VAN DEN BOSSCHE, *THE LAW AND POLICY OF THE WORLD TRADE ORGANIZATION*, 110-14 (Cambridge University Press 2005) (discussing issues of China's WTO accession). In order to become a member, a nation must negotiate with all current WTO members and must agree to adhere to all WTO

best to maintain its traditional strict governmental control over foreign investors and industries, China has acknowledged it must concede some of its tightly held values if it desires to be a global market player.<sup>179</sup> Concession on Internet regulation should likewise be recognized as necessary for progress and growth.<sup>180</sup>

If China wants its domestic industries to access new technology and stay competitive with foreign multinational corporations, it needs to loosen up its regulation and control.<sup>181</sup> With the ubiquitousness of the Internet, the PRC's tight regulations on public information are no longer realistic.<sup>182</sup> Perhaps the PRC can learn from the American model of allowing defamation to go almost unchecked on the Internet.<sup>183</sup> Although America's approach has led to open discourse on the Internet, it has not lead to political instability.<sup>184</sup> China should be willing to trust that unleashing some freer modes of expression will not necessarily create chaos but can lead to more constructive discourse and learning.<sup>185</sup>

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agreements. *Id.* at 110. In WTO accession, the majority of the bargaining power lies with the current WTO members. *Id.* Agreements such as members being subject to WTO dispute resolution are compulsory, and new members may not bargain over them. *Id.* By contrast, in bilateral agreements both negotiating members have the same amount of negotiating power. *Id.* at 111. China's accession was one of the most difficult accessions. *Id.* at 113. China had originally been a member to the General Agreement on Tariffs and Trade ("GATT") in 1947, but it left just two years later. *Id.* In order to become a WTO member, China was forced to liberalize its regulation of foreign direct investment. *Id.* at 114. China, however, was able to reserve some rights for trade in products such as tobacco. *Id.* See generally Wesley A. Cann, Jr., *Creating Standards and Accountability for the use of the WTO Security Exception: Reducing the Role of Power-based Relations and Establishing a New Balance Between Sovereignty and Multilateralism*, 26 YALE J. INT'L L. 413, 421-22 (2001) (discussing the importance of sovereignty and how the WTO forces states to give up some control). A nation-state's sovereign rights are recognized by customary international law and have been codified by opinions of the International Court of Justice. *Id.* at 421. It states, "every State possesses a fundamental right to choose and implement its own political, economic and social systems." *Id.* By agreeing to the dispute settlement system of the WTO, however, a nation must relinquish some of those sovereign rights by agreeing to adhere to an outside body of law. *Id.* at 436-37.

179. See Yuan, *supra* note 177, at 198 (discussing China's continued regulations of foreign direct investment); Farrell, *supra* note 85, at 1 (discussing China's regulation of Internet). Internet companies wishing to do business in China generally must comply with China's regulations. *Id.*

180. See Tapscott & Williams, *supra* note 145 (discussing international collaboration on Internet).

181. See Walton, *supra* note 106 (discussing China's information paradox). In order for China's economy to grow, the PRC must allow more access to information technologies. *Id.* However, in order for the PRC to maintain stability and control they must regulate the Internet's content. *Id.*

182. See Walton, *supra* note 106 (explaining that China can no longer hope to filter out all objectionable material before it reaches Chinese networks).

183. See generally Miles, *supra* note 173 (discussing broad immunity to ISPs and its subsequent backlash). Although the CDA has granted broad immunity to ISPs, this immunity has not unleashed complete chaos. *Id.*

184. See *Carafano v. Metroplash*, 339 F.3d 1119 (9th Cir. 2003) (discussing Congressional policy choice not to deter harmful speech by imposing tort liability on ISPs).

185. See China Internet Network Information Center, *supra* note 17, § IV(5). The majority of Chinese Internet users reported average satisfaction with the trustworthiness of information on the Internet. *Id.* Only 5.7% trusted the Internet completely, and fake information ranked fifth in items users detested the most about the Internet. *Id.* § II(B)(10).

## V. Conclusion

Like it or not, the Internet is now a global force shaping cross-cultural communications. Furthermore, the Internet is an American creation that embodies the American ideal of freedom of speech over other values. These ideals are not permanent forces. They can - and will - be changed, shaped, and maybe even disregarded as each nation adds its own morals, norms, and culture to the conversation.

As online discourse expands, so too will the potential for cultural conflicts. As the Internet swells with new users, the world grows smaller every day. Regardless of which side of the firewall they stand on, lawmakers, politicians, businesspeople, and private citizens must be conscious of the cultural context driving the actions of other nations. Only with tolerance and open minds can we grow and flourish as a global community.