

PART 2 – DIGITAL CONTENT POLICY AND THE NETWORKED INFORMATION ECONOMY

CHAPTER THREE

A LEGAL FRAMEWORK FOR THE DEVELOPMENT OF THE CONTENT INDUSTRY IN THE PEOPLE'S REPUBLIC OF CHINA

Fuping Gao

INTRODUCTION

Developing the digital content industry is ranked as a key part of the Chinese informationisation strategy and an important strategic measure necessary to build a creative nation. The distribution activities related to network cultural products can be grouped into two categories, with one category subject to private laws such as copyright or contract laws, and the other related to public or regulatory laws. Therefore the digital content industry requires two types of order: copyright order and regulatory order. However a favourable industry order is hard to achieve given the many challenges present. Both digital works and network communication challenge the copyright order. Network communication is also a new media and the convergence of networks challenges the regulatory order. This chapter highlights that the focus of the modern copyright regime is to seek a balance between the interests of the copyright owners and the public. A feasible copyright order should rationally assign rights and responsibilities among the stakeholders to construct a trade or market mechanism that is capable of inspiring creators whilst facilitating the distribution and consumption of digital content products. As for the regulatory order, innovations in regime and policies are required to cater for any new particulars of network media.

This chapter proposes three principles for regulating the digital content industry: 1) Separating the regulation of content from the network to

ensure the openness of networks and communication channels, specifically the openness of industry entrance. 2) Adopting a register-approval instead of a licence-based system for market entrance. 3) Abandoning or removing the application based preconditions for network content by setting up enforceable standards for content legality. These principles will change subject-orientated regulations on the digital content industry to behaviour-oriented regulations.

As the digital content industry is an integrated and inclusive industry, it is necessary to coordinate or merge the current framework of disparate government functions. The Chinese government may find this challenging, because the development of the digital content industry heavily depends on forces operating inside the industry itself. It is not only impractical but also impossible to solely rely on the government to control cyberspace and its social intermediaries - industry self-discipline should come into effect. A dual governance mode combining government regulation with industry self-regulation will have significant consequences for the digital content industry.

CONCEPTS AND THE ROLE OF THE DIGITAL CONTENT INDUSTRY

Digital Content Industry

The content industry takes information resources as an object of labour and provides cultural products and services. Some countries rephrase the content industry as the creative industry, cultural industry, copyright industry, or even entertainment industry because of its characteristics of creativeness and culture. The 'content' is a general description of the cultural products, wares or cultural services that the content industry provides. As content is actually made up of cultural products, the content industry can be classified as the cultural industry, with the cultural products being disseminated through the media. In a broad sense publishing, film, radio and television are the direct distributors of cultural products, and libraries, schools and research institutions are the indirect distributors.

In the past, the content industry was dispersed in the production, distribution and exchange of information, and through regulations with the multiple administrative sectors. Through the application of the information and communication technologies (ICTs), all categories of work can now be digitised. Along with the advance of network technologies, the Internet, cable networks and telecommunication networks are converging and ICTs are becoming a communication standard. The networks are not only an integrator of the content industry but are also a catalyst for an emerging industry - the 'digital content industry'.

The digital content industry is the digitised and networked content industry. The term 'digital' emphasises the digital technology measures that were adopted in a specific phase that occurred while the information content was being processed.

Digital Content Products

The notion of "digital content products" is at the core of the digital content industry, because all the activities in the digital content industry centre on digital products. While there is no international classification of digital content products, according to the practices in China digital products can be roughly classified as:

- (1) Digital audio and video, including CD/VCD/DVD, online music and digital TV;
- (2) Digital publishing and archiving, such as e-books, databases and digital advertising;
- (3) Digital learning, including development tools for learning content, developing services and educational products;
- (4) Digital games, for example television and personal computer games;
- (5) Computer animation, such as 2D/3D animation and FLASH; and

- (6) Digital application products, which include entertainment products and services, information services, system integration products and services.

The Chinese digital content industry mainly consists of the production, distribution and trade of those six classes of digital content products. The content industry consists of the traditional content industry which includes book publishing, newspapers and magazines and the digital content industry which is also known as the network cultural industry or network content industry.

The *Interim Provisions on the Administration of Internet Culture* published by the Ministry of Culture in 2003 (*Culture Provisions*) puts forward an Internet cultural industry which is virtually a counterpart of the digital content industry identified in this chapter. The second paragraph in the *Culture Provisions* defines the Internet cultural industry as: ‘The Internet cultural product means those cultural products that are produced, disseminated and circulated via the Internet. They mainly include: (1) network audio and video (for example VOD, DV) specialised for Internet dissemination, network games, network performance scripts or menus, network art works, network cartoons and animations; (2) traditional audio and video digitised products, games, performance scripts and art works. These digitised products are then duplicated and communicated through the Internet.’¹

Activities that involve providing these cultural products or services to the public through the Internet are considered to be network cultural activities according to the *Culture Provisions* or digital content activities according to this chapter. Network cultural activities mainly include: (1) creating, duplicating, importing, trading, leasing and playing Internet cultural products; (2) publishing cultural products on the Internet, or transferring them through the Internet to personal computers, telephones, mobiles, radio receivers, televisions, game players or other terminals for users to browse, read, watch, use or download. (3) exhibiting or completing activities for Internet cultural products. Persons

¹ See the *Interim Provisions on the Administration of Internet Culture*, which were examined and adopted at the ministerial affairs meeting of the Ministry of Culture on March 4, 2003, and came into force on July 1, 2003.

or entities providing Internet cultural activities are called *Internet information service providers*.

Digital Content Industry as a part of a National Informationisation Strategy

The digital content industry is related to the computer network, which first became popular in the 1990s. The term 'Informationisation' is used to represent the process of ICTs applying to the information society.

Informationisation means fully utilising ICTs in business, government or social activities.² The 'National Informationisation Development Strategies in the Year 2006-2020' (*Informationisation Strategies*) presents a systematic and scientific definition of Informationisation as: a historical progress that fully exploits ICTs, develops and utilises information resources to promote information communication and knowledge sharing, improves the growth quality of the economy and promotes an economic and social development transformation.³

A report from a trade and development meeting of the United Nations in September 2003⁴ emphasised that network-based ICTs will be the main driver for the productivity of a nation. Information society has been a key concept for modern society, because despite how a country develops, an information society is a sane target of development.

² According to Li Boxi, *New type of road to industrialisation* <<http://www.cas.ac.cn/html/Dir/2003/08/19/9471.htm>> at 15 January 2007, one typical definition of informationisation is that informationisation is a process of widely applying information technologies and electronic information devices in economic and social activities, effectively developing and utilising information resources to promote economical development and social advancement, and increasing the rate of information contribution to the Gross National Product. Informationisation includes information infrastructure, information technologies, information industry and information application and service.

³ On 3 November 2005, Premier Wen Jiabao convened the Fifth Session of the State Informationization Leading Group, discussing and approving in principle the *National Informationization Development Strategy 2006-2020*. For the Chinese version of the *Informationization Development Strategy*, see http://news.xinhuanet.com/newscenter/2006-05/08/content_4522878.htm.

⁴ See UN Conference on Trade and Development, '*Provisional Agenda and Annotations*' <http://www.unctad.org/en/docs/c3d57_en.pdf> at 14 November 2007.

Obviously informationisation is closely related to the information industry. The information industry generally includes all trades that engage in the research, development and application of information resources, or are involved in the collection, creation, process, communication, and storage and trade activities of information as a result of ICTs. The information industry is ranked as the fourth most important industry in developed countries.

In China the information industry was initially only associated with ICTs and the manufacture of related devices, for instance the information technology industry.⁵ However the extent of the information industry has been greatly expanded and now the *Informationisation Strategies* arranges the digital content industry within the realm of the information industry. Developing the digital content industry has become an important part of the Chinese informationisation strategies.

Digital content industry as a key strategy of a creative nation

A report from the Sixteenth National Congress of the Communist Party of China⁶ declares that informationisation is the inevitable choice in industrialising and modernising China. We should insist on a new industrialising road with informationisation being the driver for industrialisation and industrialisation being the accelerator for informationisation. This new industrialising road emphasises the innovation in science and technology and the role of informationisation in constructing a creative nation.

President Hu Jintao presented a blueprint of the creative nation at the national 2003 conference on science and technology. Generally a creative nation ranks scientific and technological innovations as a fundamental development strategy, and maintains strong competitive advantages by greatly improving its innovation ability in both science and technology.

⁵ The information industry with respect to information technologies has four main categories of trade: manufacture, software, communication and IT services.

⁶ See *Resolution of the Sixteenth National Congress of the Communist Party of China on the Report of the Fifteenth Central Committee of the Communist Party of China*, Adopted by the Sixteenth National Congress of the Communist Party of China on 14 November 2002, <<http://www.cctb.net/wjig/wxb/wxbkycg/200310230011.htm>> at 14 November 2007.

Innovation is closely related to the abilities of information processing. In this area ICTs greatly accelerate the access, process, storage, distribution and sharing of information. Information is the source of innovation, especially considering that the activities of information distribution and information services, specifically the digital content industry, are directly related to innovation. Practices and experiences from other nations have revealed that the three key factors to promote innovation are the: digital content industry and its exploitation of information resources, information and communication networks and ICTs.

CHALLENGES OF LEGAL ORDER FOR THE DIGITAL CONTENT INDUSTRY

As networks are becoming the predominant media for digital content, industry order in some sense is the order of network media. There are two basic facets to the order of network media: firstly, copyright order, which is in the realm of private laws, determines the rules for network content dissemination; secondly regulatory order which regulates trade and parties' behaviours, mainly involves market entrance and content inspection.

Challenges of the Copyright Order

Digitised works and digital works

All works can be digitised. Multimedia works cover the whole spectrum of cultural products.

ICTs can be used not only to digitise works but also to create digital works directly. A piece of digital work may integrate text, audio and video into a kind of multimedia product, and it may also change an existing work in traditional expression format into a series of binary numbers with the help of computers. Digitised works differentiate from the original work in expression, storage and communication. Pure digitisation does not mean producing a derivative work but rather duplicating that work. For this reason digitisation becomes the exclusive right of the copyright owner.

Four basic characteristics of digital works (used as a collective term for both digital works and digitised works in the following text of this chapter) are that they are: (1) easy to duplicate exactly; (2) easy to modify or edit; (3) not self-displayed (an electronic system is required to display the content); and (4) easy to communicate through networks.

Network communication

In terms of the delivery method, communication of information on the Internet can be divided into:

- (1) Uploading works that did not previously reside in cyberspace to a network server (website or BBS) for other people to download or browse.
- (2) Copying works from one network server to another network server for other people to download or browse.
- (3) Uploading works that did not reside in cyberspace to a hard disk to communicate to other people by email.
- (4) Setting up links to works on other network servers.

The network communication of digital works cannot be separated from replication. This differentiates network communication from traditional media; where works communicated through mediums such as radio or television leave no imprint in the receivers. However digital works have to be temporarily or permanently replicated as soon as the information is cached, stored or accessed.

Network communication does not need physical duplicates, however the network communication audience may possess electronic or digital duplicates. The particulars of network communication rest with its two effects of carrier-based replication and distribution, even though it is a non-carrier communication.

Network communication makes it more convenient and efficient to disseminate and use digital products. However, it also incurs more risks of copyright infringement. Issues in network communication have raised challenges to traditional copyright rules.

The Copyright Law has established a new kind of right - the right of network communication⁷ to maintain the order of network communication. This right provides the copyright owner with an exclusive right to upload and use works on the Internet by himself or herself, or licence or prohibit others from doing the same. The right of network communication is a right that is independent from the right of replication and the right of distribution and it presents the copyright owner with the ability to control communication of works to the public via the Internet.

Network communication of digital works challenges the copyright law

To encourage the production of works, the copyright law provides authors with exclusive property rights in a specific time period, while various limitations and exceptions to the copyright are legally preserved for the benefit of public interests; these include the limitation period, fair use, compulsory licensing system and the exhaustion principle.

Digital technologies make the replication and communication of digital works easy and inexpensive, with unlimited reproductions available of duplicates that are identical to the digital work. Once the digital works are transferred to the network, each person has the potential to distribute or sell the digital works to possibly numerous clients. Technological measures are in place to protect copyright by preventing unauthorised access or replication of digital works, with copyright laws of other nations acknowledging the legal validity of these measures. The abuse of such technological measures will, however, result in the privatisation of public information and the excessive control on the private activities and choices of technology users, with their privacy, property and other rights attacked.

Providing as many possible channels through which to access digital works, while maintaining an adequate control over their replication, is a challenge to the *Copyright Law* in this digital age. In the digital content industry, the regulation of the right of network communication is of a

⁷ On 27 October 2001, the Standing Committee of the National People's Congress passed the decision to modify the copyright law. The *Copyright Law* art 12 (1) formally defines the 'right of communication on information networks' as the right to provide works by wire or wireless means in such a way that members of the public may access these works from a place and at a time individually chosen by them.

primary order. In this order there may be a long information communication chain (the length of which may vary) between the copyright owner and the final users or consumers. The roles of all the stakeholders involved in the chain, such as the author, distributor, communicator and the consumer may alter, overlap or even converge. These facts complicate the settlement of interests.

In 2006 China issued the *Regulations on the Protection of the Right of Communication through the Information Network* to accommodate the network situation. This Regulation tries to protect the reasonable interests of the author, distributor, communicator and the public. However the Regulation needs to fully understand the network communication process and the business models involved. In this area it remains possible to improve the Regulations on network communication.

Challenges to the order of industry or media regulation

The Internet acts as a medium of communication for digital works and through this the Internet raises a few special issues and new problems for media regulations.

Network medium

Media allows for the dissemination of information or culture, and in practice it is often considered as any means of mass communication.

For the convenience of discussion, information activities that occur on networks will be divided into two types: the communication type such as email service and online trade platform and the media type such as database services and audio and video downloading services. The information activities of the communication type target functional information that has no commercial value, whereas the information activities of the media type target product information that has commercial value. Networks function as traditional media when they are used to communicate product information and so they will be regulated as media only when they are communicating digital works or cultural products.

Any network service that engages in media type information activities belongs to the digital content industry. The Chinese content industry is

transforming from the political to the industry realm. This transformation has not yet been completely implemented, with the framework of policies and regulations adapted for the content industry still being established. The process of transformation is aggravated by the rapid emergence of network media because the existing rules and regulations of the media industry are challenged by the open and interactive nature of network media.

Characteristic of network media

Network media has its own distinction, which provides network media with both advantages and disadvantages.

(1) Openness and subject uncertainty. Anyone may become the host of media, for example every website is capable of communicating information to the public. Any website owner can be a media (person) if there is no qualification restriction imposed. The network media is not a traditional means of communication by regulated entities to the public; instead network media is socialised mass communication.

(2) Huge volume of multimedia information. Theoretically, network media has unlimited storage and communication capacity (although it has a limited communication bandwidth) and an unprecedented capability to search content. Network media can also accommodate any digitised information irrespective of what form the digitised information was originally in.

(3) Fast spread speed without a time limit. The spread speed of network media goes beyond any other media making it easy to broadcast live, play back and play on demand.

(4) Almost infinite extent of network dissemination. Cyberspace has no national boundaries and is only limited by the physical distribution of network access points or devices.

(5) Interaction. Network media is media of users and allows any user to be an active host. Because of this the Internet has changed how the right to speech is distributed.

Interaction and openness are the two essential characteristics of network media. These two characteristics turn network media into a media of users, or an audience communicating their own works and ideas to the

public, alongside those few media operators that communicate or provide content to the public. The user-generated communication mode has some disadvantages: when any person can freely publish or communicate news, ideas or personal works, this allows for information of low credibility or low quality to freely surge over our society.

Network challenges media regulations

In the current regime of media regulation, the media operators' qualification, communication behaviour and communication content are all under control or inspection. Such a regulatory regime cannot be directly applied to network media for various reasons:

- (1) How to ensure the authenticity and politics of network news? The regulation that operated for news with traditional media does not apply to network media.
- (2) How to censor the works of network media?
- (3) How to control network publishing? China has a harsh regime for traditional publishing which includes: an examination-approval system, obligations on administrative agencies and liability for compensation afterwards. In the network environment, publishing activities are greatly expanded on a longer spectrum (for example databases, e-journals, e-publishing, e-libraries). Whether all these activities can be regulated and how the regulations should be implemented are issues that should be studied further.

The Challenges of the convergence of networks to media regulation

The emerging broadband industry provides opportunities and incentives for the voice, data and video networks, or more specifically the telecommunication, Internet and CATV networks to converge. Broadband applications in areas including business, entertainment, and personal use are demanding more diversified multimedia content. The possible convergence of networks would be a convergence of business rather than technologies.

First, services from operators of traditional telecommunication networks have expanded from providing voice or data telecommunication to providing broadband Internet service and have further expanded with the provision of content services. With the advance in communication

technologies, the point-to-point telecommunication business model has evolved to a large-scale content communication model. Second, the business scope of broadcasting and television providers has expanded from video broadcasting to broadband data and voice services. The broadband information network and its technologies provide a fast, large-scale communication platform for voice, data, video and image together. Because there is no separate public internet in China and the computer network and telecommunication network are both under the administration of the Ministry of Information Industry, the convergence of the three networks essentially involves only the convergence of the telecommunication and CATV network.

As the Internet rapidly advances, there are at least three promising trends: (1) the convergence of user created content and professional content; (2) the convergence of global browsing through the network with global gaming through video; (3) the convergence of the Internet and television.

The convergence of network technologies and business models challenges the regulation regime for the Chinese digital content industry. In terms of the government regulatory body, the telecommunication trade and the radio and television trade are under the Administration of the Ministry of Information Industry (AMII) and the State Administration of Radio Film and Television (SARFT) respectively. With regard to the regulations, the economic regulation on communication and the network infrastructure is the key regulation for telecommunication, while the provision of healthy content and ideological issues has more emphasis for the radio and television administration. The separate administration regimes are frustrated by the convergence of networks and business, which require a coordinated or innovative regulation system. As a result network operators will be required to have innovative business models and content provisions to cater for the broadband applications.

POLICIES AND LAWS FOR DEVELOPING THE DIGITAL CONTENT INDUSTRY

Copyright law

The copyright order is the basic order of the digital content industry. How we apply copyright law to network communication in a way that balances the interests of the authors, the public and other subjects involved in network communication is an important legal issue in developing the network content industry.

Network content products can be categorised into copyrightable works and non-copyrightable information products. Non-copyrightable information agreements are a common occurrence in the network environment. These agreements are founded on the convenience of others obtaining information from the information collector, producer or creator. While these agreements are beneficial to Internet prosperity, they may have their legal validity challenged in certain cases, especially considering that contract laws and unfair competition laws affect the non-copyrightable information trade.

Copyrightable works, which are a dominant part of the network content industry, are subject to copyright laws. To promote the development of network media, copyright laws should be adapted to the network environment. The fundamental reasons for doing so are:

- (1) Protecting copyright will boost production for the network content industry;
- (2) To protect the interests of information collectors, for example database owners;
- (3) For the reasonable allotment of liabilities among publishers, communicators or distributors and media intermediaries (for example search engines); and
- (4) Establishing fundamental regulatory policies for network media to improve the authenticity, reliability and quality of information.

Regulations on digital content industry and market entrance

Separated regulations on content and converged networks

Under the traditional system, the administrative agencies responsible for the content industry and the cultural industry have been the Department of Culture, the State Administration of Radio, Film and Television and the General Administration of Press and Publication. These agencies are responsible for the administration of both media and content. Due to the integration of business and the convergence of networks, networks can carry and disseminate various types of content. However the communication methods can no longer differentiate between the different types of trade and so only the content or service will be diversified. This will cause conflicts between the administrative authorities if the original administrative agencies intend to control different content within the same network. For example, the Department of Culture in the *Culture Provisions* defines the domain it controls by network cultural activities or cultural products. As cultural products cover the audio and video programs of television or film, the jurisdiction of the Department of Culture conflicts with the jurisdiction of the State Administration of Radio, Film and Television.

Establishing a regulatory regime for advanced information and network technologies is critical for the smooth convergence of the three networks listed in the 'Eleventh Five-Year Plan for National Economy and Social Development'.⁸ In order for the three networks to smoothly converge it is necessary to create a regulation regime suitable for advanced information and network technologies, in terms of the regulation target and content, the regulatory agency and the policy and implementation measures. Zhou Hongren, an expert with the national informationisation consulting committee, proposed three constructive suggestions:⁹

- (1) Adopt a 'generalised telecommunication' policy to set up a common regulatory system for all telecommunication signals,

⁸ See the Outline of the *11th-Five-Year Plan for National Economic & Social Development of PRC* <http://ghs.ndrc.gov.cn/15ghgy/t20060529_70793.htm> at 12 November 2007.

⁹ See Zhou Hongren, *On the Promotion of Digital Convergence*

<<http://digi.it.sohu.com/20061224/n247228150.shtml>> at 12 November 2007.

like the Federal Communication Committee (FCC) of America and OFCOM in the United Kingdom, in order to replace the original classification of telecommunication networks on the basis of physical attributes or business attributes.

- (2) Adopt an open market policy to ensure the telecommunication and CATV market are open to each other. Examples of this are the *Telecommunications Act* of America and the strategies of the European Union in the 'Road to Information Society' and the 'Directive on a Common Regulatory Framework for Electronic Communications Networks and Services'.
- (3) Adopt separate regulations for carriers and content policy to improve the efficiency and validity of the administration.

These policies appear to agree with the development trends of network media. Separating the network (carrier) regulation and the content regulation may have future significance. The convergence of networks and business will result in the convergence of trades and traditional trade-based regulations may not adapt to the advanced technologies, or the evolving markets and the requirements necessary for efficient administration. A possible solution in China may be a new independent regulations regime. The CATV and telecommunication networks could have a common regulatory framework of communication, with content regulation still being administered by the State Administration of Radio, Film and Television, the General Administration of Press and Publication and the Department of Culture. A common, independent communication regulation system will benefit the construction of network infrastructure and the economic efficiency of the networks.

Regulations on the market subjects

As an open network the Internet forms a virtual space of self-organisation in a sociological sense, which contradicts the traditional subject-oriented media regulation system. Media subjects are rigidly approved under the traditional media regulatory framework. For example a publishing company before it can commence operating, is strictly examined before it is approved. A specific administrative agency will then be in charge of the publishing activities of the company. Both the administrative licensing system and the charge system operate together to implement strict administration on media subjects, so it is

possible to regulate the few media subjects using the strict market entrance system.

However such a regulatory philosophy will damage the self-organisation and openness of the network media and as a result its development. It has been widely recognised that regulations on network media demand innovation to meet its requirements. In the report 'Digital Tornado: The Internet and Telecommunication Policy' issued by the FCC in March 1997,¹⁰ two opinions were given after a comparative analysis between network media and traditional media: (1) Government policies should avoid unnecessary regulations; and (2) Traditional media regulations would not fully complement network media.

One question to be considered is who is qualified to engage in traditional media activities through the use of websites? Is a strict entrance system still practical? The *Culture Provisions* imposes different regulations on commercial Internet cultural activities and non-commercial activities. A commercial Internet cultural entity (information service provider) has to obtain two subject licences – the 'Value-added telecommunication business licence' and the 'Network culture business licence' from the Telecommunication Administrative Agency and the Culture Administrative Agency respectively – before it can commence operations. A non-commercial Internet cultural entity only needs to be entered into a record maintained by a provincial cultural administrative agency. The implementation effects of such policies are not yet clearly understood. In an instinctive sense, such a strict market entrance system may not be applicable. An approval mechanism may be a more effective means of entering the digital content industry. Any entity that satisfies certain qualifications may enter the market, after which they will be subject to the 'win-lose' rule of the market mechanism.

Another question is whether all or certain network cultural activities should be authorised or licensed if all entities (of some qualification) are allowed to enter the market? One way to maintain the market order in such a situation is to clearly stipulate the activities the subjects cannot

¹⁰ Office of Plans and Policy (OPP), *Working Paper Series 29: Digital Tornado: The Internet and Telecommunications Policy* (1997)

<http://www.fcc.gov/Bureaus/OPP/working_papers/oppwp29pdf.html> at 14 November 2007.

broadcast. Such activity - or behaviour-oriented regulations – will be difficult for administrative agencies to manage because they are used to subject-oriented regulations.

Implementation issues of regulations on network media

All cultural products can be distributed through networks and this may create confusion in the traditional order of cultural dissemination with the existing regulations on cultural industry. With broadband becoming more popular and networks converging, network media is becoming a media of text, video and audio. Establishing a new order for the network cultural industry is becoming a critical legal issue in developing the content industry and promoting innovation. Key problems in this area include how to commence regulating network content, regulating the network communication of digital products and regulating network media.

Regulations on network content

As previously noted, the network is a mass media of interaction and openness, because of this it is necessary for a country to adequately control the dissemination of speech and news through mass media, to regulate the social order.

The network is content neutral, but it helps to widely distribute and quickly disseminate information of positive value or negative value (for example pornography or slander). Constructing a healthy and positive cultural network environment is required for the development of the network content industry. A positive and flourishing network culture implies that there is an advocated network civilisation, enforced network morals and behaviour criteria, thriving network cultural production and practices, self-consciousness and awareness of damaging content and a move away from network abuse.

It is necessary to correctly conduct relations between freedom of speech and regulating the network. Pervasive, interactive and open networks have an unprecedented potential for sharing and publishing the speech and ideas of individuals, and this allows networks to become self-media. However because the network is prone to abuse, regulations on network content and speech are inevitable and necessary. These regulations should have regard to freedom of information and the independence,

pluralism and diversification of media. Administrators should be wary of stifling freedom of network speech with content regulations that are too strict. A more effective approach might require people to self-regulate their own network information activities.

To achieve these objectives legislation should prohibit and punish activities that involve distributing information which is damaging national safety, youth health and social ethics. However it is also necessary to enhance the education of network morals and behaviour criteria in order to avoid the abusive use of ICTs. Any website that provides an information service is still subject to the *Regulation on Internet Information Service of the People's Republic of China* which was released by the State Council in 2000.¹¹

President Hu Jintao put forward five proposals for enhancing the construction and administration of the network culture. One proposal is to build an Internet information distribution order through the self-discipline of the industry, synchronised legal regulations and social surveillance.

As the network content industry in China has started to grow, the regulations on content should be oriented to foster the market and facilitate the development of the industry.

Regulations on network communication

When traditional cultural products are digitised and communicated through the network, are the original regulations on the cultural products still applicable? Here network videos and audios are taken as examples.

Currently, there are two departmental regulations related to network videos and audios:

- (1) The *Management Measures for Transmitting A/V Programs over the Internet and Other Information Networks* was released in July 2004 by the State Administration of Radio, Film and Television. This regulation, which covers all kinds of communication methods over digital networks, states that qualified entities should obtain

¹¹ See Internet Information Services Management Regulations <<http://www.usembassy-china.org.cn/sandt/netreg2000.html>> at 14 January 2008.

a licence from the administrative agency before commencing any A/V program business through the information networks.

- (2) *Some Opinions on the Development and Administration of Network Music* was issued by the Ministry of Culture in November 2006. Key points in this regulation are the strict licensing system for market entrance and strengthening content censoring. The underlying reasons for such a strict regulation system include the low quality of network music products, serious copying infringement and piracy.

Some important problems arising from the current practices used to regulate the network content industry include:

- (1) The division of responsibilities in the administration of network culture. Digital cultural products tend to have the same appearance, which may confuse and blur the domains of the culture, news and publication, or radio, film and television administrative bureaus.
- (2) The feasibility of administrative measures for network culture. Digital products are infinitely reproductive, rapidly updated, numerous and diversified. They can be distributed through different alternative communication channels, they have a large number of subjects and their subject roles are commutable and changeable. These factors challenge the feasibility of a specific regulatory measure.

CONCLUSION

In summary, the rise of network communication culture and creativity (as this chapter highlights) demands a re-assessment of the current copyright law and regulatory structure covering the dissemination of digital content in order to promote the potential of digital innovation.