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Freedom of Speech through the Looking Glass: Reflections on the Governance of Political Discourse in China, the United States, and the European Union

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**FREEDOM OF SPEECH THROUGH THE LOOKING GLASS:
REFLECTIONS ON THE GOVERNANCE OF POLITICAL DISCOURSE IN CHINA, THE
UNITED STATES, AND THE EUROPEAN UNION**

by

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**SUBMITTED TO SCRIPPS COLLEGE IN PARTIAL FULFILLMENT
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Chapter 1:

Introduction

Free speech is a right that underpins all other rights in Western political thought. According to the American Civil Liberties Union, “Freedom of speech, of the press, of association, of assembly and petition -- this set of guarantees, protected by the First Amendment, comprises what we refer to as freedom of expression. The Supreme Court has written that this freedom is ‘the matrix, the indispensable condition of nearly every other form of freedom.’ Without it, other fundamental rights, like the right to vote, would wither and die” (“Free Speech”). Free speech is a matrix, the cohesion that holds all other laws and rights together, the proverbial glue of Western society. As an important hallmark of the Western political thought, freedom of speech is arguably one of the most important aspects of Western governance. Governance in political terminology can have a diversity of potential meanings. In the context of freedom of speech and governance, the definition provided Hyden best explains this relationship, as he defines governance as “the conscious management of regime structures, with a view to enhancing the public realm” (Hyden, 7). Part of managing regime structure and the public realm in governance is managing positive and negative rights. Positive rights are rights that a government is expected to provide for a population, such as access to safe food, shelter, and safety. Negative rights, like freedom of speech, are rights which governments are not supposed to infringe upon. Actively handling these rights, especially freedom of speech, is an important component of enhancing the public realm, especially in maintaining stability in a society.

Beyond the countries known as “the West,” governments also grapple with freedom of speech as a governance issue. In China, for example, the concept of freedom of speech is a

contentious issue. Few laws in China protect freedom of speech for civilians, and these few laws are frequently overlooked by Chinese government officials. In theory, the Chinese Constitution asserts that Chinese citizens have freedom of speech, can speak their minds freely, and are permitted to criticize the government. Under Chapter II: the Fundamental Rights and Duties of Citizens, Article 35 of the Chinese Constitution states that “Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration” (*Constitution of the People's Republic of China*). In practice, the Chinese propaganda regime and massive Internet surveillance system heavily restrict free speech. The West criticizes China for this hypocrisy frequently, often with some degree of moral superiority.

Freedom of speech is a politically complex subject for governance. When ruling a nation, governments seeking to maintain sovereignty risk a great deal by allowing citizens to dissent, to voice their opinions. Revolutions begin, coup d'états occur, and politicians lose their control of the government if dissent grows beyond the breaking point. However, silencing speech in some situations can create even more instability than allowing dissent to occur. Restricting freedom of speech risks the citizens fomenting dissent privately. This inherent struggle of when to allow speech and when to silence it is at the crux of governing freedom of speech. It may be surprising for some to hear that “freedom of speech” is governed. After all, in the West, free speech is conceptualized as the absence of government in our speech, the permission to say essentially what is on our minds, unfettered by government control. Yet, in Europe, America, and China, there are legacies of political theory which dictate how and why governments allow freedom of speech, under what situations speech is and is not permissible.

China, the United States, and the European Union share one fundamental governance concept on freedom of speech: all three control freedom of speech when the motivations for

restricting it protect the governments' long-term interests. In other words, freedom of speech does different governance work for different regimes. Contrary to our conventional notions of freedom of speech as simply an index for citizen liberties, where more freedom of speech equates to more power for citizens in the governance process, this thesis highlights the different ways in which freedom of speech is a political tool of power for governments, where freedom of expression enables government control of the population. There is a conception that the more freedom of speech a country has, the more free the people are; that is not the case. By taking three very different regime types with three different approaches to freedom of speech, it is possible to examine this complex relationship between freedom of speech and governance.

Readers in the West may contest the allegation that Western governments control freedom of speech. While the US and the EU do not implement the same governance model for controlling speech as the Chinese government does, these Western governments do control freedom of speech, albeit using different methods. The Chinese government controls freedom of speech by silencing dissent when the speech calls into question the legitimacy of the Chinese Communist Party's central initiatives relating to economic progress. The US and the EU have similar control tactics that are more complex than simply silencing dissent; after all, in the West, citizens will not tolerate such governance methods. Instead, the EU and US governments control freedom of speech by manipulating the discourse surrounding important government initiatives such that citizens can protest incessantly, but the legislation or initiative will still pass into law. The EU and the US share two common governance tactics for controlling the discourse, and thus controlling free speech. First, in the Internet age, governments use social media to both collect public opinion and to disseminate the government's discourse on a given issue. Second, if the government fails to convince the population of an initiative's merits, there are governance tactics,

like seeking judicial oversight or redrafting legislation to conceal the original initiative, which allow the government to achieve its original goal.

Freedom of speech is a right guaranteed by the US, the EU, and China; however, just because a right is guaranteed does not mean the government cannot manipulate the right to achieve its ends. Freedom of speech is commonly associated with the power of language; citizens speak in order to take control of those governing them, in order to assert their desires. In reality, freedom of speech is far more beneficial for governments, who can use this dissent to better control a population. In order to control the population, though, the governments must first control the dissenting speech, the discourse, surrounding an issue. In the case studies that follow, these three governments with very different regimes will manipulate discourses elicited in the name of free speech in order to advance the governments' plans, even when these plans went against the stated public interest and ignored the dissenting citizens. This thesis, in essence, examines how freedom of speech can become a tool of power for regimes.

The West: Freedom of Speech as Power for Regimes

There is a notion in Western political theory that free speech is a means for the people to monitor and protest against the government, hence the phraseology of "freedom of speech." Theorists like John Stuart Mill and John Locke were the first great proponents of individual freedoms. Locke's main contribution to the notion of freedom of speech was his development of the notion that individuals have rights. Locke established the individual as an actor in his *Second Treatise of Government*. From here, he builds his theory of the individual's right to "life, liberty, property, and the pursuit of happiness."

Building on Locke's notion of individual rights, Mill is one of the first major defendants of freedom of speech. He observes that allowing freedom of speech allows for the citizen to choose freely between ideas, to be more fully informed.

"I choose, by preference the cases which are least favourable to me – In which the argument against freedom of opinion, both on truth and that of utility, is considered the strongest. Let the opinions impugned be the belief of God and in a future state, or any of the commonly received doctrines of morality... But I must be permitted to observe that it is not the feeling sure of a doctrine (be it what it may) which I call an assumption of infallibility. It is the undertaking to decide that question for others, without allowing them to hear what can be said on the contrary side."

Mill argues that freedom of speech is a critical component to facilitate societal interactions and to have meaningful discussion, both underpinnings of liberal democracy and general civil society. Essentially, Mill argues that truth destroys falsity; therefore, all speech goes towards finding truth by reconciling the perspectives of multiple actors. As such, it is clearly to the benefit of society to have uninhibited speech, as this method will destroy false claims faster than a society with censorship that perpetuates false notions.

However, even Mill cannot accept unlimited free speech. Mill adds the first limitation to free speech in the same work that creates the concept. In *On Liberty*, Mill sets the standard of freedom of speech as anything that can and should be said, no matter how insulting or controversial, he says: "there ought to exist the fullest liberty of professing and discussing, as a matter of ethical conviction, any doctrine, however immoral it may be considered." The only time this sort of language can be hindered is if it violates what Mill terms "the harm principle", which is that "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others." In essence, according to

Mill and subsequent scholarship, this principle means physical harm is grounds for limiting free speech.

In 1985, Joel Feinberg added to the Millian notion of the harm principle with the offense principle. Feinberg argues that the harm principle does not provide enough protection for the behavior of others that could cause psychological harm to surrounding citizens. His contribution to help complete the harm principle, the offense principle, states that, “It is always a good reason in support of a proposed criminal prohibition that it would probably be an effective way of preventing serious offense (as opposed to injury or harm) to persons other than the actor, and that it is probably a necessary means to that end” (Feinberg). Feinberg takes the term “offense” to mean “the subjective element” that “consists in the experience of an unpleasant mental state (for example, shame, disgust, anxiety, embarrassment); the objective element consists in the existence of a wrongful cause of such a mental state” (“Law, Philosophy”). From these basics of freedom of speech, the harm and offense principles, Western liberal democracy has built what is known as “freedom of speech.” In essence, speech is only limited when it is harmful to others.

However, harmful can become problematic to define. The First Amendment of the United States Constitution reads “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” Not included in the wording of the First Amendment are the exceptions to the First Amendment, types of speech that qualify as harmful, which include hate speech, obscenity, pornography, and other forms of speech that could be deemed harmful to individuals.

The trouble with these limitations on free speech is that the government can take these limitations to restrict individuals from commenting on or protesting against the government. Several acts of Congress have made acting against the US government's interest illegal, despite the protections provided to citizens by the First Amendment. The Espionage Act of 1917 imposed a twenty year sentence on anyone who exhibited "insubordination, disloyalty, mutiny, or refusal of duty in the military or naval forces of the United States ("People & Events: Prelude to the Red Scare"). The Sedition Act of 1918 made "disloyal," "scurrilous" or "abusive" language against the government illegal ("People & Events: Prelude to the Red Scare"). None of these acts directly involved the safety of one individual; rather, the logic behind these laws is that the collective safety of the public was in jeopardy, which brings the relevant question: how far can the government take this claim towards public safety as a means of hindering free speech? And what does this issue tell us about why a government allows free speech at all?

China and Freedom of Speech

While Article 35 in the Chinese Constitution protects freedom of speech, the Chinese Communist Party does not have a strong legacy of enforcing this article. The Chinese government has a well-known reputation for acts preventing freedom of speech within its borders. The Mao era marked perhaps the height of suppression of freedom of speech in China. Starting with the Anti-Rightist Movement, Mao set the stage for massive oppression of free speech in China. The Anti-Rightist campaign was a reaction to Mao's initial Hundred Flower's Movement¹. In 1957, when the chairman started the campaign, it was meant to "solicit feedback from the public." However, there was such an out lash against the CCP that Mao felt the regime

¹ The Hundred Flowers' Movement was Mao Zedong's reaction to the outcry of intellectuals to his policies in the 1950s. Mao originally requested the opinions of intellectual society on his economic and political policies. The resulting outpouring of discontent led Mao to kill and silence thousands of dissenters in what is now called the Hundred Flowers' Movement.

was being called into question. Thus, he waited several weeks to “lure the snakes out,” to allow more intellectuals and dissidents to show their colors, and then “in early June he launched a systematic attack in the form of the Anti-Rightist campaign against those who has spoken out” (Joseph 75). Those labeled “rightists” were sent to the countryside to reform through labor.

Far more devastating on both the population of China and the survival of free speech was the Cultural Revolution. The Revolution officially occurred from mid-1966 to 1968, but the effect on the society was so devastating that this period is referred to as the “Cultural Revolution decade”, spanning from 1966 to 1976 (Joseph 83). The goal of the Cultural Revolution was to reinvigorate the revolutionary spirit of the youth of China, while also removing the “Four Olds” (*sì jiù 四旧*) from Chinese society: Old Customs, Old Culture, Old Habits, and Old Ideas. In essence, Mao inspired the Chinese youth to revolt against their teachers and parents, and to go in search of the Four Olds and destroy everything that appeared to embrace an old concept. These youth formed what became known as the Red Guard, and these motley troops of teenagers ransacked temples, burned houses of those with a bad class background, and assaulted and killed intellectuals, capitalists, foreigners, and anyone who did not firmly uphold the Mao ideology. The official “cleansing of class ranks” campaign occurred from 1968 to 1969, and combined with further suppressive killings from 1970-1972, killed in total roughly 1.5 million people (Joseph 88). During this period, free speech was “allowed,” if by allowed one means “you may espouse one and only one ideology, or die.” In essence, divergence of thought in any way, shape, or form became a death sentence. This period marked the height of oppression of freedom of speech in modern Chinese history.

After the end of the Cultural Revolution, the Party line was still the only opinion tolerated and deemed valid, and even higher-ups in the Chinese Communist Party had to abide by the

strict rules of obedience to the Mao ideology. Freedom of speech was not a concept in Maoist era China, and even after Mao died, deviation from the Party line was cause for imprisonment. Post-Mao, freedom of speech was expanded slightly, wherein it was no longer as punishable to speak one's political views, so long as they did not directly challenge Party doctrine.

However, perhaps the best known single act of oppression of freedom of speech by the government was the Tiananmen Square Massacre in 1989, where over a million protestors gathered in Tiananmen Square in Beijing to protest the government. This crackdown occurred under the regime governed by Deng Xiaoping. The protests began on April 15th, 1989 as a mass mourning over the death of former CPC General Secretary Hu Yaobang, who had been removed from government due to his support for political liberalization of the Chinese Communist Party (CCP). On the day of Hu's funeral, over 100,000 people had gathered at Tiananmen Square. What started as a mass mourning was transformed by students into a movement for further political liberalization and economic reform, pushing for a more aggressive transformation of economy and state. What started as 100,000 protestors turned into over a million people gathered in Tiananmen Square and expanding into surrounding streets. Other non-violent protests were also simultaneously occurring in major cities throughout China, including Shanghai and Wuhan. The primarily non-violent nature of the movement makes it a case of civil resistance. This public protest to demand for democracy (*minzhu* 民主) was not well-received by the Chinese government, who did not want to hear the grievances of this motley assortment of students, workers, and peasants. By the end of a month and a half of protest, the government dispatched the army to fire upon the protestors. Premier Li Peng, a hardline conservative, declared martial law on May 20th and executed it on June 4th, ordering the People's Liberation Army to remove the protestors from the square. The PLA, under the orders of Deng Xiaoping, fired upon the

crowds to force the protestors from Tiananmen Square. The exact number of civilian deaths is not known, and the majority of estimates range from several hundred to thousands. This act of violence led to China being shunned by the international community for almost three years.

Today, China's government is more permissive of freedom of speech, compared to this history of abuses. However, it still heavily restricts speech relating to government policy on issues that relate to the governments' key initiatives for the future. For example, criticisms of China's economic progress, questioning the legitimacy of the CCP's rule, and trying to incite rebellions have all been cause in the past for the Chinese government to censor speech. In essence, China chooses to silence freedom of speech when the content of the speech leads to citizens questioning the Chinese government's ability to rule. Regime stability, for the CCP, is a primary reason for silencing speech.

THEORIES OF GOVERNANCE AND FREEDOM OF SPEECH

A Marketplace of Ideas

In the West, the notion of governance most closely associated with freedom of speech is the "marketplace of ideas." This term was coined first by Justice Oliver Wendell Holmes in his 1919 dissent in *Abrams v. United States*, when he introduced it into Supreme Court doctrine. Holmes' argument was that society's ultimate good "is better reached by free trade in ideas - that the best test of truth is the power of the thought to get itself accepted in the competition of the market" (Hopkins 41). Grounded in the free speech theory of John Stuart Mill, this is the model of freedom of speech governance most commonly invoked in the United States, and it "is the model most called upon by the U.S. Supreme Court in the resolution of free-expression cases," where "justices have used the theory in the adjudication of virtually every area of First

Amendment law” (Hopkins 40). Essentially, the modern argument goes that the reason governments suffer the potential harms involved with letting citizens speak their mind is that these ideas can create a marketplace, both intellectual and economic, which will feed the nation.

In countries like China, this idea also holds traction. During the 1990s, when Deng Xiaoping was re-opening and revolutionizing the Chinese economy post-Tiananmen Square, the Internet was also being introduced into China. From the beginning, the Internet was seen as a potentially strong economic actor, although it wasn’t until the late ‘90s that it became clear exactly how lucrative the Internet could be when utilized. One of the reasons proposed for why China allows some degree of freedom of speech and access to the Internet is precisely because this modicum of freedom can provide large economic benefits. For example, Alibaba is currently one of China’s most successful business enterprises, and this company focuses the majority of its economic activities in the business-to-business sector online. The company had an initial public offering on the Hong Kong stock market for 1.5 billion dollars, making it one of China’s most successful IPOs (Einhorn). However, the marketplace of ideas model does not explain why governments allow for people to make statements against the central governmental authority, statements which have no potential to mobilize intellectual or market forces. Two other models, the safety valve and the surveillance method, give greater insight into the potential reasons the government allows citizens to protest the government’s actions that do not have direct links to economic activity.

The Safety Valve

The concept of the safety valve is central in how freedom of speech is conceived as a tool in governance. Thomas Emerson, professor at the Yale Law School and First Amendment

scholar, first coined the term “safety valve” in relation to free speech. He asserted that freedom of speech acted as important agent of regime stability by allowing citizens to air grievances in non-violent fashions. Also, this freedom of speech acted as an important feedback mechanism for the government, who can listen to the people’s complaints and respond to them through policy changes (Lipschultz 52). This notion of freedom of speech as a safety valve has implications for how the US, the EU, China, and other governments can view freedom of speech not as a just a right of citizens, but as a tool of governance.

This safety valve theory ties in with social contract theory, in that the safety valve model relies on the notion of mutual benefit, which states that citizens give up some autonomy in order to gain other rights. The three main theorists of social contract theory, John Locke, Thomas Hobbes, and Jean-Jacques Rousseau, all approach this theory through a different lens. John Locke asserts in his *Second Treatise of Government* that the people would live in peace in nature, but individuals choose to cede some of their power to the government so that they may be shielded from aggressors who might take their goods. Hobbes has a very different claim, that the humans are inherently born into chaos, and that people sacrifice certain freedoms to the government for some semblance of stability and thus the ability to sustain growth of a society. According to Hobbes, man in nature has claim to everything, including “one anothers body,” and so long as that is true, man can act in violence against other man, and “there can be no security to any man, (how strong or wise soever he be)” (Hobbes 107). Laying out this theory in his seminal work, *The Leviathan*, Hobbes asserts that the government and the people forge a social contract to maintain the protection of the people and the power of the government.

Rousseau further adds to this literature with his *Du Contract Social*, in which he asserts that man has a more familial relationship with society and has freedoms which cannot be ceded:

“To renounce one’s freedom is to renounce one’s quality as man, the rights of humanity, and even its duties...such a renunciation is incompatible with the nature of man.” (Rousseau 45).

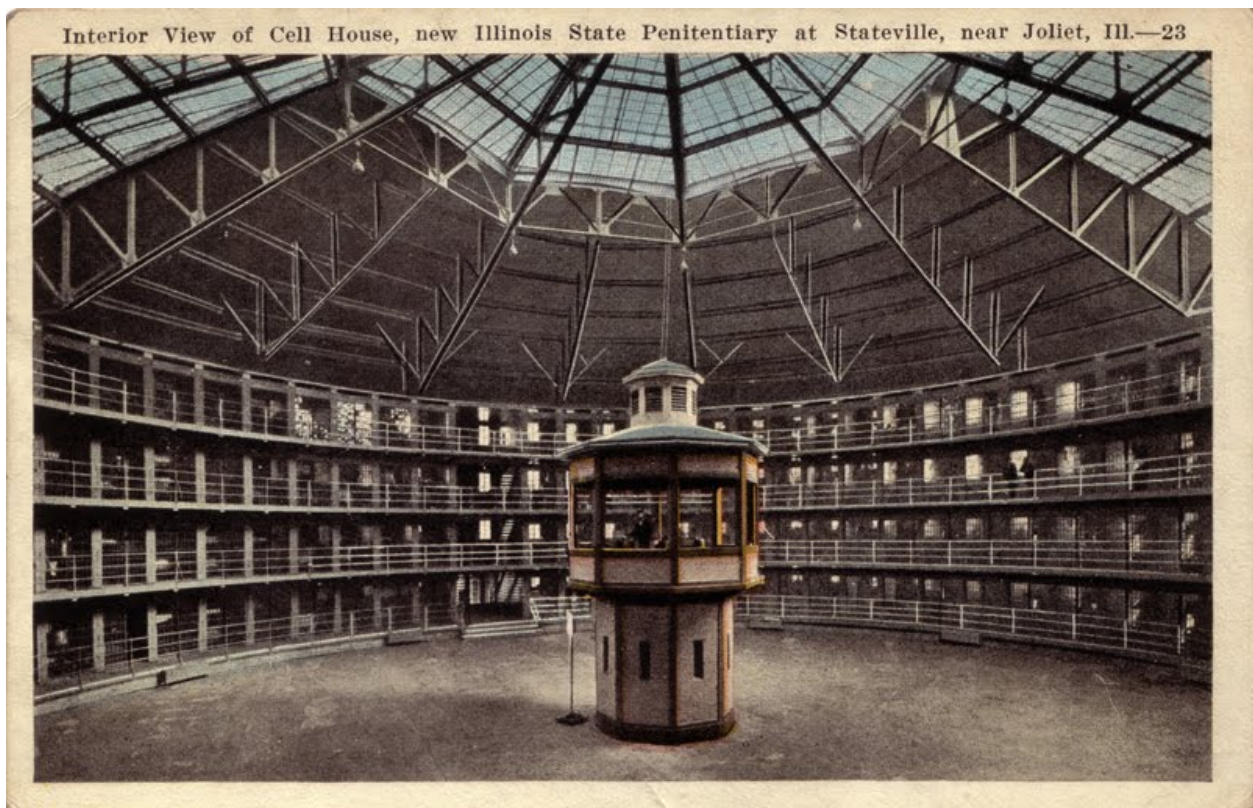
Rousseau notes that people enter into a “social pact,” wherein there is a “form of association that will defend and protect the person and goods of each association with the full common force, and by means of which each, uniting with all, nevertheless obey only himself and remain as free as before.” (Rousseau 49-50). Rousseau argues people band together to protect these sacred rights and freedoms, creating a collective, cohesive social contract in communal pursuit of defending rights. These three frameworks help create the notion of the social contract that describes the relationship between governments and their citizens whom they serve.

Inherent in all of these theories is the presence of communication between the government and the people. Be it through elections, referendums, or the simple act of speaking, government needs to elicit the opinion of the people if it is to adapt to the needs of its citizens. Governments who fail to take their citizens’ evolving needs into account will be in violation of the social contract, and risk being overthrown. Hence, the safety valve has two purposes: to allow the citizens to vent frustration non-violently, and for the government to hear the grievances of the people.

However, this second benefit of the safety valve, allowing the government to understand the needs of the people, can be optimized through surveillance. Simply waiting for the people to accumulate frustration to the point of protesting is a game of chance. After all, if the government is not monitoring the people’s reactions to policy changes, the frustration of the people may not be sufficiently vented through the safety valve, and thus violence may still occur. Most governments thus employ a second method of interacting with their people to keep the social contract alive: surveillance.

The Surveillance Method

A long tradition of political theory has observed that states structure themselves to better watch their citizens. Political theory on government control states that governments create societies that foster communal actions by having strict rules and guidelines for behavior, enforced by government surveillance and interference in daily lives. John Bentham's *Panopticon* is perhaps one of the best examples of this model of governance. The panopticon is a building designed to allow an observer to watch everyone in an institution without the observed knowing they are being watched. His original design comprised a circular structure with an "inspection house" at its center, with the observed sitting in the perimeter of the building. Bentham originally conceived this sort of building as being useful in hospitals, schools, insane asylums and, most famously, prisons.



*Bentham's Panopticon, realized by a state penitentiary*²

Michel Foucault builds upon the panopticon model in his work *Discipline and Punish*, where he says this is not just a building design, but rather a societal structure and model for governance. Foucault argues that the panopticon is a metaphor for modern "disciplinary" societies, which have an intense need to use surveillance to control their populations by creating the societal framework such that people are rewarded for policing and self-regulating their own behavior, with no violent intervention needed by the state to enforce compliance. Foucault takes Bentham's physical structure and analyses how this design is also a social one. In essence, Foucault argues the panopticon has come to define government relations with societies, wherein the government observes and controls the civilian population, always watching but never overtly "seen" by the people, who merely feel the moral implications of the government's gaze but cannot place the government as the observer.

Foucault's *Discipline and Punish* begins with him describing the end of corporal punishment as the tried and true method of punishing, and how torture as punishment has moved from the public square into privacy, and from physical punishment to societal exclusion and mental torture. From here, he progresses to say that even as punishment has become a hidden part of the penal process, the effectiveness of punishment is still due to the punishment's inevitability (Foucault 11). Now, it is the conviction itself, rather than the violent punishment, which stigmatizes the offender (Foucault 16).

²http://3.bp.blogspot.com/_KDKHSAy2hEw/TlhXEdYDX3I/AAAAAAAAAY4/d5RKD97qbS8/s1600/large.panopticon.jpg

From here, Foucault further builds how societies create these social punishments within the framework of the Panopticon. Here, the society itself creates a system where the citizens can all watch each other, and everyone opts into this system willingly.

There is no risk, therefore, that the increase of power created by the panoptic machine may degenerate into tyranny; the disciplinary mechanism will be democratically controlled, since it will be constantly accessible ‘to the great tribunal committee of the world.’ This Panopticon, subtly arranged so that an observer may observe, at a glance, so many different individuals, also enables everyone to come and observe any of the observers.” (Foucault 207)

Thus, in a democratic system, as Foucault claims, people still elect to be within this system of conformity and constant surveillance, where every citizen watches the other, and the government watches everyone.

The question is why everyone would opt into such a social framework. For Foucault, the answer lies in economic efficiency, the utility of obeying, and the need for constant surveillance to make sure the society functions like a well-oiled machine.

“The Panopticon, on the other hand, has a role of amplification; although it arranges power, although it is intended to make it more economic and more effective, it does so not for power itself, nor for the immediate salvation of a threatened society: its aim is to strengthen the social forces- to increase production, to develop the economy, spread education, raise the level of public morality; to increase and multiply.” (p. 208)

Thus, Foucault creates the narrative of societies of surveillance. However, implicit in this analysis is the absence of true freedom of expression. As everyone is watching one another, each is ready to silence a dissenter. As Oscar J. Handy notes in his book *The Panoptic Sort*, Foucault creates the argument that panopticons are designed to normalize actors within a society, to create

and sustain conformity: “It is critical to note that the purpose of the modern prison and of other panoptic system that imitate its technology is not punishment, but transformation, rehabilitation, and correct training. The same may be said of the panoptic sort: It is not limited to identification, classification, and assessment, but includes the goal of normalizing behavior within categories” (Handy 24). He establishes three types of normalizing: surveillance, or hierarchical observation, normalizing judgment, or punishing nonconformity and promoting conformity, and examination of members. In essence, the panopticon does not allow for true free speech, or true dissent. One must always be in line with the system, or the system will realign the dissenter.

THE INTERNET AGE

In the 21st century, the Internet has created a new, online forum in which people express themselves, and has become the newest arena for freedom of speech to flourish. However, as the Internet has grown as an influential medium in the EU, the US and China, these governments have been forced to confront free speech issues on the Internet. Faced with social networks that allow for comments to travel continents in seconds, these governments have needed to adjust their governance model in accordance with this advancement in technology. More importantly, the Internet allows governments to implement the surveillance model more thoroughly than in prior eras, as people willingly post personal information to Facebook, Twitter, and other sites which the government can access easily. At the same time, however, these governments have been forced to confront dissent on the Internet as an influential factor in policy successes, as thousands of citizens can galvanize dissent in cyberspace to reject government policies. Thus, discourse control on the Internet has become an increasingly implemented governance tactic for moderating, monitoring and manipulating speech.

The US

Contemporary social critics frequently cite Foucault, asserting that technology has allowed the government to better implement panoptic structures to control society and diminish freedom of speech. Social media is perhaps the best panopticon yet. In the United States, social networking sites are doing the panoptic work for the government. Not only are websites like Facebook and Twitter omnipresent in society now, but they also allow citizens to opt into a system where the government can access every level of social interaction across time and social networks. Social media, used in conjunction with Google user search results and ISPs, allow the government to track civilians better than ever before. Now, in the post Patriot Act era, the government has increased abilities to watch the actions of the people.

The EU

The EU also has clauses protecting “freedom of expression,” which is quite expansive, spanning from human rights, democratization language, to Internet usage. In terms of Internet dissemination of information, the European Union’s “Resolution on the information society, the management of the Internet and democracy” establishes that it is the duty of Member States “to ensure that the new facilities are used to promote freedom of speech and information, exchanges between cultures, education and civic participation in public life, in particular in relation to EU enlargement or international contacts with countries whose peoples live under authoritarian and repressive regimes” (EUR-Lex). In other words, the EU prioritizes freedom of access to information, especially in relation to “repressive regimes.”

The EU also has the power to rule against some of the actions of member states. For example, in 2004, the EU Parliament ruled that the Italian government’s lack of a pluralistic

media was in violation of the freedom of expression espoused by the European Union. It also surveyed other EU nations to determine how pluralistic their media representation was, with varying results. Germany was found not in violation of the freedom of expression in regards to their wiretaps of journalists: “surveillance of telecommunications (i.e. tracing of journalists' phone calls) did not constitute a breach of constitutional liberties as provided for in articles of the Basic Law, which guarantee confidentiality of information” (EUR-Lex). While Germany’s surveillance taps were seen as a minor issue, Italy was cautioned that it needs to diversify its media sources: “MEPs invited the Italian Parliament to "accelerate its work on the reform of the audiovisual sector in accordance with the recommendations of the Italian constitutional court and the President of the Republic, taking account of the provisions in the Gasparri bill which are incompatible with Community law, as noted by those authorities". Parliament voiced concern that the situation in Italy could arise in other Member States if a media magnate chose to enter politics” (EUR-Lex). In essence, the EU does have the ability to judge the actions of its members in regards to freedom of speech.

China

The Chinese government maintains an extensive system of media control. Between the Propaganda Bureau that chooses how the media can portray certain events and the Fifty Cent Party, the cohort of web watchers that the government hires to police web forums searching for dissidents, the Chinese Communist Party has finely tuned its methods of controlling the Internet and the media. The Propaganda Bureau and other government agencies work together to pursue one key goal: ensuring that “netizens” of China, Chinese citizens who use the Internet, do not turn it into a medium of protest or a mechanism for rallying political power against the state.

Ashley Esarey, Columbia University researcher and PhD candidate, is quoted as saying in Asia

Online Times of July 22, 2004, that "all online media [chat rooms excepted] are required to use content provided by mainstream media. This content is subject to strict party monitoring. There is almost no content widely accessible in China that is not monitored by the Propaganda Department [of the communist party]," (Borton). The Propaganda Bureau determines the mainstream content, but web forums are not mainstream content, since their content is determined by citizens posting online. Therefore, forums are patrolled by anonymous government officials or by members of the Fifty Cent Party, who will remove posts from web forums, shut down forums entirely, and even go so far as to track down those who post incendiary comments. One famous instance of how far this censorship can go was that of a woman who called herself the "Stainless Steel Mouse" (Borton). The government tracked her online activity for weeks before finally arresting her on counts of sedition for writing blog posts criticizing the government. She was released after a year in prison, and has not returned to blogging since her detainment.

Given this tight control of free speech, it seems that China's Constitution, especially its freedom of speech clause, is pointless. Looking at the history would indicate that the Chinese do not value freedom of speech. Yet, if that is the case, why did Deng Xiaoping keep the free speech clause? Is it just a lip service to liberal Western notions of "good governance"? Or is there something about the history of China and free speech that this narrative misses? Could a government so bent on controlling its people see a utility in keeping free speech an option for its people?

The Chinese government needs this clause; it allows the Chinese government to better control its population. By allowing a modicum of free speech, by allowing blogs and web forums to exist, the Chinese government gives the illusion of the people fighting back against the

government, when in fact, these mediums are just ways for the government to better watch the people. This safety valve provides citizens with some ability to release their anger at the government on web forums, a far preferable method than inciting riots in the streets or other alternatives. However, allowing speech also has that secondary, surveillance benefit. The Propaganda Bureau and the Fifty Cent Party, by allowing people to speak their mind on issues, can see what the public opinion actually is before silencing it. By doing so, the government can respond to citizen criticisms in a more effective fashion than if the government was not privy to public opinion. In a system without elections for national office, the Chinese government needs this connection to the minds of the Chinese people to maintain regime stability.

THESIS

The central question of this thesis addresses how governments use freedom of speech and protest as a means of controlling a population and enhancing regime stability. As previously established, Western notions of freedom of speech emphasize the rights of the individual to speak, but have also established the grounds upon which a government can manipulate discourses developed from freedom of speech, thus using free speech as a governance tool. In the modern era, where the Internet allows for the government to monitor its citizens more closely than ever, these regimes permit freedom of speech as a way of trapping potential dissidents, co-opting their ideas when useful, and deflecting social tensions towards less threatening ends when necessary. When examining the models of Internet governance theory, the marketplace of ideas, the safety valve, and the surveillance model, the surveillance model is most influential in Internet governance and freedom of speech. The US, the EU, and China all use the surveillance model as a way of maintaining regime stability and promoting government initiatives. This thesis will examine how China, the EU, and the US, in specific scenarios, have used the Internet as a means

of observing civilian response to government oversight or government initiatives before turning this discourse resulting from free speech into a method of actively maintaining regime stability through controlling and manipulating citizen discourse.

METHODOLOGY

Discourse Analysis

In investigating my central question, I use discourse analysis as the predominant methodology. This approach lends itself to a deeper understanding of the power dynamics that underpin the operation of freedom of speech. Discourse analysis focuses on examining types of discourse to uncover hidden political agendas in conversations surrounding a variety of issues. By examining three main rhetorical methods of controlling discourse, manipulations, propagation tactics, and memes, I will investigate how governments controlled discourse.

A discourse in academia is broadly defined as the narrative of academic thought. When research papers are written, they are grounded in the context of the theorists who precede the paper's inception. For example, in a paper on discourse analysis, one must reference past political theorists who developed the field of discourse. The field of discourse analysis dates back to Aristotle, who laid the foundations of rhetoric through logos (logic), ethos (ethical appeal), and pathos (emotional appeals). Michel Foucault, creator of the Panopticon as a social construct, also first developed the field of discourse analysis in his works *The Archaeology of Knowledge*, *History of Sexuality, Vol. 1* and *Discipline and Punish*. In this thesis, pursuant to Foucault's post-modern definition of discourse, the case studies will examine power dynamics of discourse, unspoken actions that frame the discourse, different actors in the discourse, in addition to elements in the conversation of the discourse, specifically manipulation, propagation, and

memes, to prove that the surveillance model is becoming the predominant means of controlling free speech in China, the US, and the EU.

From *Archaeology of Knowledge*, Foucault gives the definitions for discourse. In short, there are two kinds of discourse that Foucault identifies; discourses in disciplines of study and in formulation of arguments, and discourse surrounding the form of how ideas are presented. This thesis will focus on the former, how discourses in the digital age are formed. Concerning this kind of discourse, Foucault explains that it is what is not said that is the most important in identifying a discourse: “all manifest discourse is secretly based on an ‘already-said’; and that this ‘already-said’ is not merely a phrase that has already been spoken, or a text that has already been written, but a ‘never-said’, an incorporeal discourse, a voice as silent as a breath, a writing that is merely the hollow of its own mark...the manifest discourse, therefore, is really no more than the repressive presence of what it does not say; and this ‘not-said’ is a hollow that undermines from within all that is said.” (Foucault, 1972: 25). Foucault here explains that what goes on behind the formulation of a discourse is never revealed directly in the discourse itself. For example, in the case of ACTA, the writers of ACTA would never say, “We are writing this agreement because copyrights are a framework to which our governments adhere; therefore, in order to maintain our governments’ legitimacy, we must pursue copyrights as a policy issue.” However, implicit in the ACTA agreement is this very concept; that such an obligation exists.

As Foucault states in *History of Sexuality*, discourses are not just the weapons of the government; it is also the means of resistance for the people:

Discourses are not once and for all subservient to power or raised up against it, any more than silences are. We must make allowance for the complex and unstable process whereby discourse can be both instrument and an effect of power,

but also hindrance, a stumbling block, a point of resistance and a starting point for an opposition strategy (Foucault, *History of Sexuality*, 100-101)

I investigate how power operates in free speech regulations to allow and silence speech in my case studies on China, the US and the EU. Civilians are often both the victims and utilizers of discourse. When using freedom of expression and speech, civilians can take control of the discourse, removing it from solely government control. Given the fickle nature of discourse, the government must be wary of citizens, corporations, and other outside actors taking control of the discourse and manipulating it against the government, hence the importance of regulating freedom of speech.

Looking at the politics behind the discourse, behind the words being uttered, is a critical part of this process. At times, the discourse will include what is not being said. As Foucault frames it, discourse is fluid in this manner, moving between what can concretely be framed as the conversation, and what occurs behind the scenes.

To be more precise, we must not imagine a world of discourse divided between accepted discourse and excluded discourse, or between the dominant discourse and the dominated one; but as a multiplicity of discursive elements that can come into play in various strategies. It is this distribution that we must reconstruct, with the things said and those concealed, the enunciations required and those forbidden, that it comprises; with the variants and different effects... (Foucault, *History of Sexuality*, 100)

As such, this thesis will be examining both words spoken and actions left outside of the conversation. The discourse analysis will include not just the rhetoric of the statements made, but also the context behind which the comments were discussed and actions taken that do not enter the discourse. For example, when the government acts behind closed doors, the consequences of said actions affects the discourse, even though words may not have been explicitly uttered.

Additionally, this thesis will examine the nature of the actors in the discourse. As Foucault notes, discourses are framed “according to who is speaking, his position of power, the institutional context in which he happens to be situated” (Foucault, *History of Sexuality*, 100). For this reason, this thesis will be examining issues from multiple perspectives in each case, looking through the eyes of not just the government and the people, but also the national and international media, and in the case of the US and EU cases, corporations for and against the acts and agreements in question. In this way, the case studies more fully examine the aspects of the discourse as framed by different players with different positions of power and different institutional contexts.

In discourse analysis, the concepts of manipulation, propagation and memes are keys to understanding the role a discourse has on the audience. As Paul Chilton notes in “Manipulation, memes and metaphors,” in discourse analysis, propagation refers to how effectively ideas are spread and in some cases also refers to propaganda, manipulation refers to how ideas are framed in a way that persuades an audience, and memes are discourses framed in such a way that a member of a society can easily identify the concept. As Chilton describes it, “Dawkin’s approach sometimes suggests memes are blind self-replicators, transmuted by random mutation as they go from mind to mind, he also sometimes emphasizes the idea of memetic ‘contagion’. The latter suggests some memes in some circumstances, given certain kinds of actors, are likely to ‘spread’ more than others” (Saussure and Chilton 16). These three concepts impact how ideas spread in a society and come to have political power.

Successfully utilizing manipulation, propagation, and memes is the key to controlling discourse. Various factors, such as societal standing, affect an individual’s ability to utilize these tools. As Chilton describes it, discourses are propagated with varying degrees of effectiveness.

Mainly, the “forceful spreading of ideas, ‘propagation’, depends largely on the ability of the propagator to control or dominate an intended receiver’s mind by controlling the channel of communication or depriving the receiver of the potential to verify.” (Saussure and Chilton 17) In other words, those who speak loudest in society, who are best able to disseminate their idea, while also preventing other voices or ideas from being heard, will be the most effective at propagation. Those occupying visible spaces in society, like politicians or other public figures, have a wider audience of potentially interested listeners who will be manipulated into believing and spreading an idea. Beyond the individual, groups can hold these societal positions of power as well. In the case of corporations like Google and Wikipedia, which hold a near-monopoly on the search engine and free encyclopedia market, their ubiquity means that their voice holds greater weight. Not only are they highly visible to the public, but they also have the ability to control discourse because they are the first source of information easily available to Internet readers. In the case of the Anti-Counterfeiting Trade Agreement, the power of the Internet-based corporations in propagation is particularly relevant.

In order to prove that governments allow freedom of speech in order to better control their population, this thesis will examine a few specific protest movements. First, I will examine the web forum interactions of netizens in China, and how their interactions directly influenced government policy, even without ever directly speaking with a government official. I will focus on forums with high volume of comments and visits; in other words, I will be paying attention to the blogs and forums which have the most visibility, and are therefore most likely to be monitored by the government. From here, I will look for a contentious issue which received a lot of blog attention, which then became a policy issue for the Chinese government. Then, based on this case study, I will discuss why Chinese leadership needed the modicum of free speech that it

allows, so that it has a means of controlling its population in the absence of democratic systems of feedback.

In the US and the EU, I will be focusing on the Stop Online Piracy Act and the Anti-Counterfeiting Trade Agreement, respectively, as case studies concerning freedom of speech where the government controlled discourse. These cases differ from the Chinese case in two important respects. First, the governments in neither case used overt censorship as a means of controlling the discourse; to do so would have been patently illegal in both legal systems. Secondly, the means by which the US and EU control the discourse is in actions taken behind the scenes; it is in the silence of the discourse, as opposed to the overt statements, that the control of the discourse comes to the light. In these cases, the governments rely heavily on the manipulations, propagation, and memes mentioned earlier in the discourse analysis section in order to control the spoken discourse. Behind the discourse, these governments use tabling of legislation and private negotiations as methods of moving the government agenda forward, without having to consult the public directly on how to proceed. In this manner, the governments have the ability to frame and reframe the discourse until it lands in their favor.

As a minor facet of the methodology, I will also be taking inspiration from Guobin Yang's framework for handling web forum observation in order to analyze this data in the most methodologically sound manner. Guobin Yang uses what he terms the "Multi-interactionism" method, wherein he focuses on foreground internet activism in interaction with state power, cultures of contention, the market economy, civil society, and transnationalism. Political scholars like Guobin Yang and Elizabeth Perry frequently use this approach as a way of discerning symbols and meaning-making in a culture. By examining historical elements, contextual clues, and cultural issues, multi-interactionism gains a fuller understanding of the underlying

implications of discourse across cultures and regimes by using social media as a medium for research. Thus, I will be implementing the same methodology in analyzing web forums.

CHAPTERS

This thesis will cover these issues in three chapters. In the second chapter, I will focus on the Wenzhou train crash case study on Chinese free speech and the Internet, examining web forums and translating commentary, while simultaneously looking at government responses to these web forums. Chapter 3 will focus on the Stop Online Piracy Act in the United States as a piece of legislation that provoked a battle over the discourse of freedom of speech between the US government officials, corporations, and citizens. Chapter 4 will examine the Anti-Counterfeiting Trade Agreement in the EU, specifically how the EU is managing to successfully pursue such an unpopular issue with the public. Chapter 5, the conclusion, will tie together these case studies to show that, ultimately, freedom of speech is not as simple as a person just speaking their mind.

More importantly, freedom of speech is less about the rights of an individual, and more about what rights individuals are permitted to keep by their governments. After all, social contract theory states that a citizen signs away his rights to a government when he consents to being a citizen of a nation. Freedom of speech is one of the rights that a citizen may demand in order to validate his citizenship, but ultimately, the government may choose to revoke this right if it interferes with the government's prime directive: governmental stability. In the end, this thesis seeks to prove that there is more nuance to freedom of speech than the simple presence or absence of the right. Freedom of speech is a continuum, and freedom of speech is a tool, a tool used by individual citizens that can be turned against the citizens.

Chapter 2: China Case Study

Micro-blogging and Other Dangerous High-Speed Projects

Concerning issues of internet governance and freedom of speech, China's government is frequently referred to as an example of a government that relies on censorship to govern freedom of speech. China's current population, according to the World Bank, is 1.33 billion people, approximately a sixth of the total world population. According to the Chinese Internet Network Information Center, as of last year, there were 420 million Chinese "netizens" surfing the web, plus 277 million mobile phone users with access to the Internet, placing internet penetration at 31.8% of the Chinese population ("中国网民规模达 4.2 亿 手机上网用户 2.77 亿."). With nearly a third of Chinese citizens using the Internet as a main source of media, it has become a

tool for change, a fountain of knowledge, and most recently, a forum for social protest. The government of China, led by the Chinese Communist Party, has noticed this trend, and from the beginning it has actively shaped how the citizens of China participate in online discourse. By examining one case in particular, that of the Wenzhou train crash, it becomes clear that the Chinese government opts to use a panoptic, surveillance model of internet governance in order to control how citizens use freedom of speech. In turn, this model of governance shows that China's government uses freedom of speech as a tool of achieving its own initiatives, and that allowing some amount of free speech actually helps them convince their citizens better than if they completely silenced the entire discourse.

The Evolution of the Chinese Internet

According to Professor Guobin Yang of Columbia University, Chinese internet censorship underwent three phases of government policy evolution. In the first phase, from 1994 to 1999, the government focused on regulating network security, provided a framework for internet service provisions, and began structuring institutions for regulation. China's first major policy framework regarding internet regulation was the "Regulations Concerning the Safety and Protection of Computer Information Systems," which outlined principles for government control of the internet and vested power in the Ministry of Public Security as the governing body of the Internet (Yang 48). The second major policy document was the "Computer Information Network and Internet Security, Protection and Management Regulations," which made China's Internet service providers (ISPs) responsible for upholding the regulations set by the government. This document also detailed the nine types of information that were to be prohibited online,

including prohibiting the distribution of information which violates laws or the constitution, and spreading rumors or information which damages the credibility of the state (Yang 49). The second stage, from 2000 to 2002, expanded and refined Internet control, targeting both Internet content providers and individual consumers. BBSs (bulletin board services, also known as web forums) were required to follow a licensing procedure, and BBSs referencing forbidden words like “Falun Gong” or “June Fourth” were liable to be blocked by the government.

In the third stage, from 2003 to now, there has been, as Yang puts it, “the expansion of Internet regulation and control from government to governance to governmentality.” The distinction between these terms is that government comprises the formal institutions, rules, and practices of the state, while governance comprises both formal and informal actors. Governmentality denotes “the cultural and social context out of which modes of governance arise and by which they are sustained” (Yang 48-49). In essence, in the third phase, the Internet regulations become internalized on a cultural level. Instead of the government needing to constantly remind every citizen of the censorship rules, citizens began to internalize that certain topics would always be banned from web forums. For example, Tibet, the Falun Gong, and other topics are known to be taboo, and people simply won’t discuss them, unless they want to knowingly aggravate the government.

The Surveillance Model in China

Looking at Foucault’s panopticism as a model for governance, also known as the surveillance method, it becomes clear that China has reached a panoptic state, in that China uses the Propaganda Bureau and other surveillance-focused bureaus to allow the Chinese government to actively observe every Chinese citizen on the internet without the citizen knowing when they

are being watched. Foucault, who first established the framework of the panoptic state, asserts the basic premise that knowledge is power, and that the government derives all power over its citizens by controlling information and narratives of knowledge. From this basic premise, Foucault notes that a panoptic state has two goals: first, isolate those who are “the deviant, the diseased, or the dissenters” (Gandy 10) and second, to normalize the rest of the society by establishing solid “norms” of thought which the people must follow (Gandy 11). In a perfectly functioning surveillance model state, the government will first censor materials as a way of marking those who are deviants, those who are not to be emulated, and to remove ideas that are considered undesirable from the government. Second, the people, seeking to avoid punishment, will internalize notions of what can and cannot be said. In other words, people began to exhibit self-censoring behavior as a result of internalizing the government’s narrative of knowledge.

China displays many of the classic elements of a panoptic state as understood in Foucauldian terms. As Yang demonstrates, the final stage of freedom of speech control in China is that the government has managed to make the people internalize this control mechanism, creating a society of citizens that engage in self-censoring, which is then reinforced by active government censorship that leaves only the opinions of which the government approves. The Chinese authorities allows a temporary window in time for freedom for citizens to speak on the internet, so that the government can determine which opinions and narratives it wishes to endorse as “normal”. Before censoring begins, the government watches what comments are posted. In this case study, we will see that the government did not start censoring content until well after they knew about the train crash controversy. Then, the government develops their response and begins censoring all opinions deemed dangerous to this new central narrative. The surveillance method is characterized by a situation where the government can see everything that

is posted, and has the ability to control all that is posted. As a result, the government can safely allow some level of “freedom of speech” for a time, in order to see what people believe. Then, the government can respond to these points of view, or remove them from the public sphere, with little worry that the speech will create instability in the society that could uproot the government.

In short, the surveillance model is “a flexible engine. It can be used to decide what sorts of facts constitute information, to determine what sorts of information ought to be privileged and which do not matter, to gather that information, to empower people or entities to gather information, to act on the information gathered” (Backer 4). The Chinese government is in the privileged position to use this model; to decide what is factual and what is fictitious, to rewrite narratives, to stop others from speaking or allow others to speak when they see fit.

The Chinese government has various tools available to it in order to maintain its control over Internet discourse. Three of its main tools are the blocking of posting specific words on blogs, denial of service for specific websites, and the Fifty Cent Party. The first tool allows the Chinese government to silence specific issues before anything can even be posted. The government’s special project, “The Golden Shield,” the government Internet policing force, issues lists of censored terms to web service providers and specific websites, like blogging platforms (Liang and Lu 106). These platforms and ISPs are forced to comply or the government will shut the website down for defying a government order. The second tool, DNS, denial of service, stops citizens from even accessing certain pages by cutting off the computer’s ability to connect with the webpage. This tool is how the Chinese government prevents Facebook, Twitter, and several other Western sites from being accessed within China’s borders (Fallows). The final tool is one of idea generation. The Fifty Cent Party is not actually a party in any real sense; it is not a wing of the government, nor is it part of the party machinery in any formalized fashion.

The term describes the hordes of workers the government employs to isolate blog posts for censorship. The corps members of this group are supposed to be reimbursed 50 mao for their work, hence the name Fifty Cent Party. In addition, these censors will also post positive messages about the government as a way of counteracting negative postings online. Through these three tools, the government has excellent abilities to both monitor and censor Internet speech activity. By examining one case study, that of the Wenzhou train crash on July 23rd, 2011, it becomes clear that China is opting to use this type of governance. Indeed, the Wenzhou train crash becomes a chance to investigate the Chinese government's management of media reports and their response to the train crash as a case study to elucidate China's surveillance model of free speech.

The Wenzhou Train Crash

On July 23rd, 2011, it is commonly accepted throughout the world that a 16-car working train D3115 was hit from the rear by Beijing – Fuzhou train D301, a high-speed railway train, on a viaduct platform in Wenzhou, Zhejiang Province, China ("First Fatal Crash on Chinese High Speed Line"). This crash resulted in a significant number of injuries and deaths; the exact number of those dead varies based on different government and media accounts. It is also widely known that the Chinese government has placed great import in recent years on the growth of China's high-speed railways. The Chinese government has decided to spend 113 billion dollars a year "on railway infrastructure and rolling stock in the next four years, all funded under an ambitious build-out initiated by the 2004-2020 mid and long-term railway development plan by China's Ministry of Railways" (Fischer). This is part of a larger, 293 billion dollar plan to lay down 16,000 kilometers of "dedicated high-speed rail lines connecting all of China's major cities

by 2020”, which would create a total of 120,000 kilometers of rail in China, making it the largest rail expansion in the history of the world (Fischer).

Due to the money involved in this project, and the avid desire for the government to expand the railway system, the Wenzhou train crash was immediately a crisis for the Chinese government. This crash has the potential to call into question the safety of the Chinese railway development project, and has broader implications for China’s rapid modernization. These future development projects are foundational to the CCP’s claim to legitimate governance, which is partially based on its ability to deliver strong economic results.

The government took an active role in how this event was portrayed in the media because this crash had the potential to affect the Chinese people’s perception of the government’s legitimacy. As a result, the facts surrounding this case have been written and rewritten, constructed and reconstructed, countless times, through the censorship of the Chinese government. By examining what the Chinese government chose to censor, this case study will show that the Chinese Communist Party follows a panoptic model of governance. First, the government allowed commentary to continue on the issue only if it followed the party’s desired timeline of the truth, thus granting “freedom of speech” in a highly limited sense. Second, and more importantly, it is significant that the government did not shut down Sina Weibo or any microblogging sites over this issue. It allowed for dissenting comments to be published, even though it could put in a BBS direct censoring of the words “Wenzhou train crash,” and all commentary would be silenced. Instead, the government has allowed for comments to be posted for a time before taking them down. For example, in Figure 4, the comment, “Taking a fast train is meant to be safe and fast; who would have thought that now it is only fast?” would normally be seen as a direct criticism of the government; however, it was allowed to pass through the

censors. By allowing the government to read these opinions, it can prepare the proper response to this crash which will appease the Chinese people.

In order to best construct the discourse surrounding the Wenzhou train crash, I have reconstructed four timelines. In each timeline, elements of the discourse reveal how the government frames the discourse to control the portrayal of the train crash. In each timeline, there are also elements of bias, based on the institutions and the actors, as was referenced in the methodology section of Chapter 1. The first, the international media timeline of the events, is an account of what the world at large thinks is the most accurate series of the events that occurred. The international media here is separate from the Chinese media, in that writers from the New York Times and the BBC News are not held accountable for their articles by the Chinese government or even their own governments for that matter; writers for Xinhua do have to heed the government's warnings, or they could potentially lose their jobs or be imprisoned. Thus, the international media timeline is more thorough by virtue of being less pliant to a specific government's motives. The strength of this timeline is that it has the most cohesive factual structuring of events, free of censorship, so that a full delineation of the events can be described. There is a slight bit of bias in the international media, as the international media takes a negative stance on what it perceives to be Chinese government censorship, thereby skewing public opinion on the government's actions.

The second narrative is that of the Chinese government, following its responses and public statements. It is necessary to see how the Chinese government frames the crash through its statements to the media, as well as its own publications. The bias here is something this case study seeks to understand: what is the government's position, and how is it based in the surveillance model. Clearly, the government wants the national, China-based media portraying

the events in a manner that is positive towards the government, but there are more nuances here that will be unpacked later.

The third narrative examined is that of the Chinese media, which has been picked apart by Chinese government censors; however, the Chinese media does have its own voice separate from the government. The benefit of examining this timeline is that the missing data speaks volumes. The Chinese-language publications have either been redacted from the original versions, or report the “cut and dry” government-issued statements. The bare-bones writing of the remaining articles on the crash from the Chinese press displays for the Chinese public how the Chinese government wants the people to discuss this issue. The timeline here seeks to capture what can be found of the original content, combined with the governmentally influenced reporting and the redacted versions. The bias here is that the Chinese news media reporting is heavily limited on what it can say by the Chinese government, so the Chinese news media story is not as fully fleshed out as its international media counterpart.

Finally, the fourth timeline focuses on the Chinese Twitter-esque microblogging site, Sina Weibo (新浪微博). It was on this very website that details concerning the crash first leaked onto the internet. Subsequent censoring by the government has removed a number of tweets on the crash; however, the international media has preserved some of the original content, and some less controversial tweets remain on the site today. The strength of this content is that it allows for insight into the minds of the Chinese people, who are allowed to speak their mind on the issue, at least until the censors intervene. In this way, it allows for us to see what the government is responding to. The bias here is that the people, by the nature of being merely observers of the events, cannot be credentialed or considered experts in the field of high-speed railway crashes,

nor are they privy to all the details of this case. Instead, what they give us is the public mindset which the Chinese government is trying to mold.

Comparing Timelines

(See Figures 1-4 for reconstructed timelines)

In every version of this timeline, the events unfold in this pattern: on July 23, 2011, at approximately 8:23pm, the trains collided. Immediately after the accident, the Chinese government issued a report that the first train was stalled due to a lightning strike and that the second train collided with the first one due to a malfunction. Starting on July 26th, international news agencies start to question the validity of the government's story. Experts start testifying that if a lightning strike has indeed stopped the train, that the other train on the track would not have been able to move either. On July 28th, the government acknowledges that there was a flaw in the train design, although the intricacies of what precisely failed are not revealed to the public. To this day, the exact failure remains unknown across all four timelines. In response, the government suspends the production of new high-speed rails, and the State Council issues a mandate that all safety systems of high-speed rails must be examined. In all four timelines, the issue of accountability becomes tantamount, and the government has not overlooked this issue.

Between the events, the China's government framed the discourse through information gathered from citizens posting on Sina Weibo, a microblog, using the surveillance model. Looking for details about the Wenzhou train crash from the Chinese government's websites currently is like trying to find the needle in the haystack. For example, China's Ministry of Railways website (<http://www.china-mor.gov.cn/>) has absolutely no news reports about the Wenzhou train crash, despite being the ministry directly responsible for the railway oversight

and upkeep in China. If anyone is to be blamed for the train crash, it is this ministry, and yet there are no reports developed on the cause of the crash to be found on the Ministry's page. All that is present is a report issued on October 14, 2011, announcing that the Zhengzhou Railway Bureau is drawing up plans to improve their "opening and operation of high-speed rail equipment quality inspection and supervision and management measures" ("郑州局出台高铁开通前设备检查管理办法"). The government reports that the international and Chinese news agencies cite were only oral statements or brief written ones. The world is still waiting for the formalized reports to be issued by the government. As the Sina Weibo bloggers complain, the government has been promising that they would deliver this report, and yet, over four months after the crash, nothing was published (See Figure 4). However, just because nothing has been published formally does not mean the government has been inactive in this case. On the contrary, by allowing the microbloggers to continue blogging, the Chinese government has given themselves a window into the minds of the populace, allowing them to find the most contentious issues amongst the people, allowing for a future report to address these key issues. The government utilized social media sites like Sina Weibo to extricate this information from the public.

First, the government made use of the Sina Weibo outbursts to see how to respond to and manage the crisis. Early microbloggers posted complaints about the need for the government to "take responsibility," the dangers of high speed travel, and worries about the reliability of these new high-speed lines. Thus, the concepts of safety and accountability were memes invoked by the people as a response to this crisis, and these memes, or commonly held values in a society or group of people, carried the discourse. These blog posts were quickly deleted, and now only exist in English translated forms on international news reports (See Figure 4). Afterward, the

government began issuing demands for better safety protocols, firing government workers, and Wen Jiabao began commenting on how the government will improve safety (See Figures 1, 2, 3, and 4). Thus, these memes were the focus of the government reaction. However, there is a reason the government didn't stop all blogging about the Wenzhou crash. If the government wanted, it could have issued an order to all BBSs and micro-blogging platforms to not allow any postings containing the terms "Wenzhou crash." They did not do so. I suggest that a very likely reason is so that the government could directly observe the concerns posted by its citizens. After finding these core issues, they then had the ability to go back and delete all evidence that the postings ever occurred.

Indeed, looking at the complaints of the micro-bloggers and the subsequent government response to the crash, it is clear that the CCP was directly tailoring the content of the reports and their actions to confront issues the bloggers raised. The government immediately fired three officials, so as to show that the government was taking responsibility for its actions. Then, in response to claims about the dangers of the trains, the government mandated that all the rail line safety systems be re-evaluated. Even after the government fired these government officials, the micro-bloggers continued to protest, but the issues were now focused on reporting what exactly happened during the crash, and the attention turned away more from the government holding its workers accountable. In addition, as previously mentioned, the government then suspended the addition of new train lines (See Figure 3). The ongoing investigation, which will produced the much-anticipated report as to what exactly failed on July 23rd, is another means for the government to show the people that they can take responsibility for their actions, that they are deeply vested in the safety and reliability of these lines, and that they are taking steps to make sure that this incident is never repeated. It is telling that the very posts that were deleted by

censors (See Figure 4) contained the very accusations against the government that the CCP then chose to respond to directly (See Figure 3).

This sort of behavior, the observing of the people, responding, and then removing the argument from the internet, is precisely the sort of behavior that describes surveillance governance. The discourse was altered by addressing concerns related to the memes of safety and accountability. The focus on these particular issues show the government was implementing the surveillance method and also allowed the government to regain control of the discourse from the people. Initially, the government had no control over how the information was leaked. However, instead of immediately issuing orders to restrict bloggers, the government waited for a day or two to see what the main concerns were. Then, after taking note of the aired grievances, the government promptly began censoring micro-blogs and news reports that were considered controversial. Concomitant with the beginning of the micro-blog censorship, the government also issued the directive to the media, restricting what it could publish; here, the discourse is taken into the “never-seen” realm, where the government has greater power to silence versions of the discourse of events. The orders were as follows: “1. Release death toll only according to figures from authorities. 2. Do not report on a frequent basis. 3. More touching stories are to be reported instead, i.e. blood donation, free taxi services, etc. 4. Do not investigate the causes of the accident; use information released from authorities as standard. 5. Do not reflect or comment” (See Figure 2). The international media heavily critiqued China for issuing this sort of gag order on the media. However, this sort of directive is very common for the Chinese government and the Chinese media, as was observed by China Digital Times (See Figure 2).

Now, it is highly relevant that the government chose to restrict the general print and TV media immediately, but not micro-bloggers. Micro-bloggers, representing the netizens of China,

present the primary audience of the discourse that the Chinese government must frame, and they are the ones who must be manipulated successfully by the discourse. The Chinese media, on the other hand, has two roles: it is either means for the government to give its narrative, its side of the story, its version of the discourse, or, the media has an independent voice, and independent frame on the discourse. In either case, the media isn't the central issue; the micro-bloggers and netizens are. In terms of propagation power, the media has a louder voice than a single, anonymous blogger; thus, in terms of discourse analysis, the media has more power to alter the discourse on the Wenzhou train crash in ways the government would dislike. In short, the government can use a micro-blogger's opinion, take note of its message, and delete it, and in all likelihood, its absence from the internet will go unmarked. Thousands of tweets about the crash were censored, and the international media only preserved a scant few, hence there are only four examples in Figure 4. The Chinese news media, on the other hand, is disseminated, cited by other news sources, and leaves an impression on the discourse that is much harder to erase. Finally, and perhaps most importantly, the CCP ultimately controls CCTV, Xinhua, and most major news media sources. Typically, when the government needs to speak, it can count on these media sources to say what the government wants, how it wants it to be stated. For this reason, the Chinese government immediately cracked down on the national media agencies, shaping its dialogue. The news media later began to pull away from the strictures of the government directives, but still, the news reports from the Chinese media shy away from the aggressive language of the international news media. The Western media is not afraid of directly confronting the Chinese government for failure. Indeed it took the Chinese media until August 4th to even publish that there had been flaws in the train design (the international news media starting making claims to such flaws starting as early as July 26th).

The surveillance model is also echoed in two elements of the Chinese government's reaction: the separation of dissenting opinions through censorship and declaration of words to be left unspoken, and the turning of the memes in the government's favor, which the civilians then assimilate into their discourse. In this example, the Chinese government has succeeded in both areas. First, the government watched to see what the main complaints were. They then responded to those complaints concerning accountability. Second, dissenters, or those whose discussions on microblogs questioned the Chinese railway projects or Chinese modernity, had their comments removed, as reflected in the data charts. Other microbloggers, aware that these blog posts were being removed (See Figure 4), know that if they comment in ways that the government finds offensive that they too will be censored, or perhaps even punished directly by the Chinese government. As such, people follow only the narratives that the government has established as "safe". These discourses focus on how the government still hasn't published the reports they promised about what went wrong on the railways on July 23rd. When the government does publish a report, which will likely address blogger concerns, this report will then go on to shape the future discourse. In this way, the government has a high amount of the control of the discussion, from here on out. Thus, in three steps, the government first watched, then separated dissenting opinions, and then created the norm for the netizens to use for their self-regulating, normalizing behavior.

Overall, the Wenzhou train crash reveals that the Chinese government actively allowed people to speak about the Wenzhou train crash, despite how badly it reflects on the Chinese government, because their voices are useful to feed China's surveillance model of Internet governance. This crash is still reverberating throughout Internet forums in China. In a country where most citizens use high-speed rail as a means of transit, the safety of this means of

transportation is paramount. Yet, people still continue to use the railways, and no one has moved to unseat the government for not providing sufficiently safe public transit. In other words, the Chinese government has preserved its mandate to rule, has created the image that it is still upholding its social contract. Thus, not only is China using the surveillance model, it is using it and will continue to use it effectively as a means of framing public discourse and shaping historical and political narratives. More broadly, this study shows how an authoritarian regime, instead of simply silencing dissent, appropriated the discourse of citizens to further its personal agenda and reinforce regime stability, instead of allowing the speech to confound government goals as dissenters had intended.

Chapter 3: US Case Study

How the Internet Stopped the Stop Online Piracy Act: US Case Study

At the heart of regime stability is economic progress. The Wenzhou train crash proved that economic progress is a central narrative, a meme, upon which much of government discourse is built. It is clear why this meme is common between governments; from a thriving economy comes jobs, and from jobs come the basic necessities for survival. On first blush, when looking at the Stop Online Piracy Act (SOPA), introduced to the US Congress by Representative Lamar Smith of Texas on October 26, 2011, and the Anti-Counterfeiting Trade Agreement (ACTA) in the United States and the European Union, it would seem that these legislations and agreements merely concern copyright abuse. However, at the heart of these conflicts are losses of jobs due to pirating information, on the one hand, and freedom of speech, on the other. Both sides of the SOPA and ACTA debates are concerned with issues at the heart of regime stability,

specifically economic progress and the rule of law, and the EU and US must control the discourse surrounding copyright infringement through manipulation, propagation, and memes, as defined by discourse theory, in order to achieve their long-term goals of intellectual property protection. These cases are both examples of how these two regime types, a democratic republic and a supranational authority, utilize citizens' freedom of speech to forward government initiatives, instead of just responding to citizen demands. These cases illustrate that freedom of speech does not always empower the citizen over the government, but that sometimes the reverse effect occurs.

A BRIEF HISTORY OF THE INTERNET IN THE WEST

When considering the role of the United States government in the Internet, it is critical to remember that without the US government, the Internet would not exist in its current form. Tracing the Internet back to its origins, the Internet began humbly, with academics publishing papers in the early 1960s on "Information Flow in Large Communication Nets" (Kleinrock) and slowly developing the network components necessary for the leap to Internet technology. While the components for creating the Internet slowly came into academia, the pressures of the Cold War on the United States created a necessity for a system of communication that could withstand nuclear holocaust. The newly-created Defense Advanced Research Projects Agency (ARPA), developed in 1958 by the US government in response to Russia's Sputnik launch and display of superior technological advancement (Kleinrock), was determined to create such a network.

In pursuit of this goal, US government contacted engineers and scientists working on data network theory such as Paul Baran, researcher at the RAND Corporation, and Leonard Kleinrock, professor at UCLA, to design this new system. ARPA then provided funding for these researchers to develop the ARPANET, “a government-supported data network” (Kleinrock). In 1969, ARPANET was first put to the test, with the first node of ARPANET installed at UCLA and the seventh node at the RAND Institute in Santa Monica (Kleinrock). In 1983, ARPANET divided into MILNET, the military component of the network, and the second version of ARPANET, which consisted of non-military-related data networks. In 1989, the ARPANET title was updated to more accurately reflect this versatile new network. The moniker given was "the Internet," and the name stuck.

Currently, the Internet has become an immensely influential force in American society and indeed the world. According to Pew Research, “fully 95% of all teens ages 12-17 are now online and 80% of those online teens are users of social media sites.” Essentially, nearly every teenager in America is being raised with the Internet as a primary media source (Lenhart). The rich also have increasing access to the Internet; “95% of those in households earning over \$75,000 use the internet and cell phones” (Jansen). Of the overall American population, as of 2008, Nielsen reports that “Overall, 80.6% of homes in Nielsen’s National People Meter panel have a computer (either desktop or laptop) in their homes as of mid-November, 2008.” Of those with personal computers, 91.6% have “some sort of internet connection” ("An Overview of Home Internet Access in the U.S."). This data suggests that the Internet has become a very important medium of receiving and exchanging information in American households. Especially among the American youth, the Internet is becoming a predominant means of communication, information dissemination and collection.

Americans using the internet are not passively receiving information; the Internet is becoming the community of the 21st century. According to Nielsen, “today nearly 4 in 5 active Internet users visit social networks and blogs,” and “Americans spend more time on Facebook than they do on any other U.S. website” (“State of the Media: Social Media Report”). Social networking sites are designed for sharing personal information, beliefs, and social commentary with others in the network. As Nielsen affirms, of these adults using social networking sites, they are “26% more likely to give their opinion on politics and current events” compared to their peers who did not use social networking sites. In other words, social networking in the Internet age is correlated with increasing awareness and promotion of political discourses.

The EU and the US must grapple with dissent in public discourse in this new medium, just as the Chinese government must. While the Chinese government chooses particular modes of censorship, the US and the EU implement different methods of social and political coercion to achieve their ends. In this chapter, the focus will be on the US’s method of controlling freedom of speech through managing the discourse on the Stop Online Piracy Act (SOPA) with manipulations, and on the US’s government’s ability to manufacture consent through drafting and redrafting of legislation.

In the United States, out of many possible cases, this thesis writer chose to study SOPA because it shows how citizens and US corporations galvanized around the issue of online piracy, creating a cohesive alternative narrative to the US government’s discourse. Citizens in the 21st century have become used to a high degree of freedom in the Internet sphere. As technology has developed further and more content becomes available online, finding illegally uploaded movies and music online is just a click or two away. Used to this ease of access, citizens fought back when the government prioritized changing this unsustainable content-stealing culture that has

developed, a culture that deprives movie production studios of profit and threatens the strength of the movie industry. US law dictates that this infringement is illegal, and while citizens have become adjusted to illegal online downloads, the government is now seeking to change that culture. However, SOPA became much more than a simple debate on online piracy; the discourse became intertwined with the future of US governance of freedom of speech on the internet, and on the basis of fearing censorship, the US citizens convinced the US House of Representatives to remove the act from debate. The puzzle is that the act is in the process of being redrafted. This case examines how and why the government decided to ignore citizen complaints and continued to pursue its agenda through discourse manipulation.

First, it is important to understand the governments' representatives' motives behind the SOPA project. The government representatives made SOPA a priority because of the growing pressure from private corporations to strengthen US copyright protections online. In the Internet age, upholding this system is an entirely different process than before the digital era. In the era of newsprint and vinyl, trying to copy books and music or other forms of creative content under copyright protect was an involved process; one had to duplicate thousands of hard copies, requiring a major time investment and money expenditure. With computers and digital files, the same process of copying information occurs in seconds, with a simple click of a mouse. With the advent of the Internet came this ability to share information and content that is under copyright, and suddenly those copyrights became harder to protect and enforce. The Stop Online Piracy Act was as an attempt to maintain control over infringement of intellectual property (IP) rights.

The SOPA case allows for a deeper exploration of how the US government and its representatives manage discourse on the Internet. Twitter became a fighting ground for winning public opinion on SOPA, and as such, Congressmen and Congresswomen in the US House of

Representatives took to Twitter to voice their opinions on the bill. Twitter allowed the government to see exactly what aspects of SOPA concerned citizens, and many representatives attempted to address these concerns. Ultimately, the representatives in favor of SOPA lost support for the bill, both in the House and in the public eye.

The key question is why did SOPA fail to pass in the House? There have been multiple reasons given, in the media and over Twitter, for why SOPA failed. One reason commonly cited is that SOPA itself was not a well-worded piece of legislation. The bill was intentionally unclear in certain areas, including Section 103, which called for any websites “enabling or facilitating” copyright infringement to be shut down. Taken to the extreme, this section could be interpreted to mean that even if only one person on Facebook, for example, posts a link to a site with copyright-infringed content, all of Facebook would be liable to be shut down. The ambiguity in the text led to loss of support from most Internet-based companies, especially those functioning in the realm of social media, as their Internet sites were left vulnerable and the companies feared profit losses if the law passed. There is a solid case to be made that the bill was simply poorly worded.

However, on a more theoretical level, this case study shows through discourse analysis that the reason the act failed was because Internet companies had the upper hand on propagation. Propagation, the ability to spread a discourse to the maximum amount of people quickly, was the key element of discourse in the case of SOPA. The companies and representatives in favor of SOPA had excellent tools of manipulation and meme implementation; however, the Internet-based firms had a wider audience, one they called upon to stop SOPA through manipulation and memes of their own. The distinguishing factor was that the Internet sites’ manipulations and memes in the discourse were heard by more people.

This case study will focus on four discourses in the SOPA debate, those of the US government representatives for and against SOPA, media corporations with vested interests in seeing SOPA come to fruition, internet corporations with vested interests opposing SOPA, and the voice of the American public on the Internet as seen through web comments on Twitter, and online newspapers publishing articles on SOPA. In order to reconstruct the discourse, this case will first review the text of SOPA as it was proposed. Second, the Internet and old media companies' response to SOPA will show how the corporate world reframed the discourse, examining the visual rhetoric from both sides the day before SOPA was debated in the House of Representatives. Third, the citizen responses from Twitter show how the American public engaged with the discourse, primarily perpetuating the manipulations and memes of either side of the discourse. Finally, the US public officials' Twitter posts show how the government watched the public reaction to SOPA and then decided to withdraw their support for the bill as protests continued.

THE TEXT OF THE STOP ONLINE PIRACY ACT

The text of the Stop Online Piracy Act clearly delineates the desire for Congress to actively intervene in stopping online piracy, and is not inherently designed to hinder freedom of speech. The second section of the bill actually explicitly states this principle: "Nothing in this Act shall be construed to impose a prior restraint on free speech or the press protected under the 1st amendment to the Constitution" ("Stop Online Piracy Act" 2). Prior restraint is a legal term, and prior restraint is illegal in the United States and under English Common Law. In essence, outlawing prior restraint prohibits governments from banning expression of ideas prior to their publication ("Prior Restraint"). The Chinese government's censorship lists are examples of prior restraint. Clearly, the US government did not employ rhetoric supporting infringement on

freedom of speech in SOPA, because it would be illegal. Thus, most of the later allegations on the act's "intentions" to destroy freedom of speech are not founded in any part of the actual act.

However, there are sections of the act that have fueled the SOPA controversy, particularly Section 103. This section defines those who have infringed upon copyrights. The wording leaves some ambiguity.

(1) DEDICATED TO THEFT OF U.S. PROPERTY.—An “Internet site is dedicated to theft of U.S. property” if— (A) it is an Internet site, or a portion thereof, that is a U.S.-directed site and is used by users within the United States; and (B) either— (i) the U.S.-directed site is primarily designed or operated for the purpose of, has only limited purpose or use other than, or is marketed by its operator or another acting in concert with that operator for use in, offering goods or services in a manner that engages in, enables, or facilitates... (“Stop Online Piracy Act 25)

The section goes on to describe, essentially, foreign sites that steal copyrighted information. The key part of the definition that has Internet companies panicking is “facilitates.” This definition is very loose, allowing for courts to accuse a wide array of Internet sites of copyright infringement. The government’s rhetoric started the discourse, setting the tone of foreign sites versus US enterprises, in an act that seeks to protect copyrights while upholding free speech.

THE CORPORATE PERSPECTIVE ON SOPA

First came the government’s initial manipulation of the discourse through drafting SOPA; then the discourse underwent manipulations from the arguments between old and new media. To

exemplify this debate, the PBS *NewsHour* of Jan. 17, 2012, brought in corporate representations of both Internet and old media corporations. On the Internet side of the debate, there was Ben Huh, CEO of Cheezburger, a very popular website that displays comedic content of funny cats, videos of people making mistakes, the sort of site that benefits from visitors procrastinating on more important tasks. On the old media corporation side was Rick Cotton of NBCUniversal, executive vice president and general counsel. As the NBCUniversal corporate page helpfully notes, he “supervises the NBCUniversal Law Department, which provides legal advice to all NBCUniversal business units for their ongoing operations and for new strategic plans and acquisitions” (“NBCUniversal-Rick Cotton”). These two corporate chiefs represent the Internet and “old media” sides of the SOPA debate, respectively, and their responses to each other follow old and new media’s respective discourses on SOPA very closely.

Ben Huh’s responses followed the pre-scripted discourse of the Internet corporations perfectly. He told PBS that he is opposed to SOPA because the legislation will “curb first amendment rights on the internet and prohibit growth of American jobs in the US sector” (“A World Without Wikipedia”). These are the two major areas of manipulation that the Internet corporations employed in the SOPA debate: free speech and jobs. On the free speech point, Huh duly observes that there is a Fair Use clause involved in the law surrounding copyrighted material. According to Cornell University’s Legal Information Institute the Fair Use limitation on copyright protections reads as follows: “the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright” (17 USC. Sec. 107). Mr. Huh feels that SOPA violates the Fair Use clause, as websites who mock copyrighted

material (his site is an example of such websites) could be unfairly persecuted for violating copyrighted material. Moreover, he feels the lobbyists Motion Picture Association of America (MPAA) and Recording Industry Association of America (RIAA) are specifically abusing the fair use of copyrighted material, as they are well known proponents of the legislation. Ben Huh summarizes the Internet company perspective as follows: “We are in support of bills that curb piracy and counterfeiting if it does not infringe on our first amendment rights, does not lower our standing in the international community by preventing people from using censorship tools, as well as protecting American jobs” (“A World Without Wikipedia”). The irony here, of course, is that his statement aligns directly with what SOPA wants to achieve, according to the act itself.

On the other side of the debate stands Rick Cotton. NBCUniversal supports SOPA because “what is at stake are the jobs of millions of Americans.” His claims are that the entertainment industry is “under assault,” that these foreign sites are “trafficking in stolen content,” and that the bill is about foreign websites, not about fair use. He notes that only court orders with “full due process” will allow sites to be shut down, and that there is “no lack of clarity” in how bill is written. Overall, Cotton’s main theme is that “protecting the internet requires that it be under the rule of law” (“A World Without Wikipedia”).

Here, the memes and manipulations of both sides of the corporate argumentation become clear. On the anti-SOPA side, Internet corporations use underlying concerns about censorship and loss of freedom of speech as an important meme, using rhetoric that manipulates the listener into fearing these subconscious issues. On the pro-SOPA side, old media is focusing on memes like “job loss” and “foreign invasion by international illegal content sharers” and “competition”. On the anti-SOPA side, words like “infringe,” “censorship,” and invoking “first amendment rights” evoke the desired memes, whereas the pro-SOPA side employs language like

“trafficking,” “rule of law,” and “under assault” to manipulate the listener into remembering memes like nationalism and government control.

From this rhetorical basis comes the majority of the discourse surrounding SOPA on the public opinion level. As Khan Academy, a website that offers free academic tutorials, explained it in a Youtube video for the public, they also largely object to Section 103 of SOPA, specifically the “enables or facilitates” portion. They note that user boards create issues for Facebook, Youtube, CNN.com, anyone with a message board that could link to illegal sites outside the US. Moreover, this section makes any action to “avoid confirming” piracy illegal, thus making any obfuscation of company actions illegal; in other words, this section would remove all privacy of company actions on the internet (“SOPA and PIPA”). Khan Academy is a non-profit, and while it does have stakes in the Internet corporation side of the issue, it is also generally non-partisan on these types of issues.

Both liberals and conservatives began to have misgivings about SOPA. The National Review writer Nathaniel Botwinick, known for his conservative bent, agreed with the Khan Academy in his November 30, 2011 article. He observes that “‘facilitation’” is the dangerous word in the targeting criteria. Facebook, Tumblr, and dozens of other popular websites could be accused of ‘facilitating’ the spread of pirated material if one of their members happens to post a copyrighted movie or song” (Botwinick). He also notes that the repercussions on the Internet companies would be severe: “Under SOPA, Internet service providers would be required to block access to websites the DOJ deems guilty of such activity.” Botwinick also notes that “the driving industry behind SOPA is the Motion Picture Association of America (MPAA).” The MPAA, being one of the behemoths of old media, obviously has stakes against copyright infringement. Michael O’Leary, vice president of the MPAA, has been quoted by Botwinick as saying that “millions of

Americans associated with the production of movies in America would lose their jobs” if current copyright infringement issues continue. Overall, Botwinick concludes that the MPAA has created impetus behind a flawed bill that should not pass.

These actors created the verbal discourse surrounding SOPA in the months preceding the US House of Representatives’ debate on the act. In the rhetorical battle for discourse control, there was not necessarily a clear winner. It was in the battle for visual rhetoric and in protest that the Internet corporations gained an upper hand. The day before the House debates, Internet corporations staged a united “black-out protest” of their websites, meaning that users could not access some content on the webpages of participating companies, or that the websites posted anti-SOPA messages for the entire day before the debates began. It was this protest, performed using visual and verbal rhetoric, which swayed the discourse against SOPA.

THE SOPA BLACKOUT: CORPORATIONS’ VISUAL RHETORIC IN THE SOPA DISCOURSE

One way in which the corporations against SOPA dominated the discourse debate successfully was through superior visual rhetoric. On January 18, 2012, the day that SOPA was to be debated in the House of Representatives, some of the largest and most successful Internet firms performed a “blackout” of their content. Some websites, like Wikipedia, blocked their content such that users could not access any parts of the site. Others, like Google, implemented a splash page that forced users, before accessing the website’s contents, to see a “Stop SOPA/PIPA” message, encouraging the user to speak out against the legislation.



Figure 1: Wired SOPA Blackout Page Screenshot (Scalera)

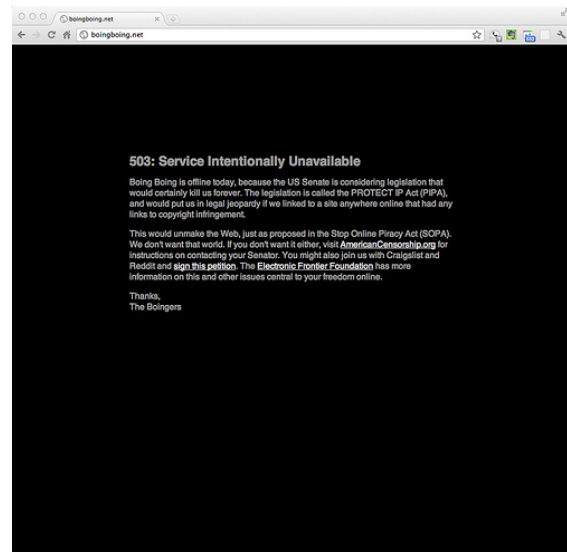


Figure 3: BoingBoing.com SOPA Blackout Page Screenshot (Scalera)

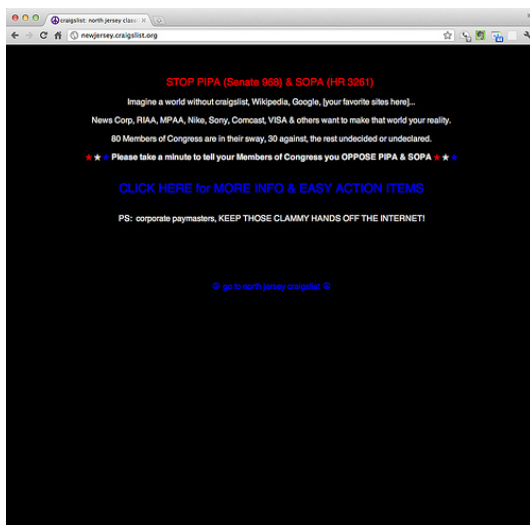


Figure 2: Craigslist SOPA Blackout Page Screenshot (Scalera)

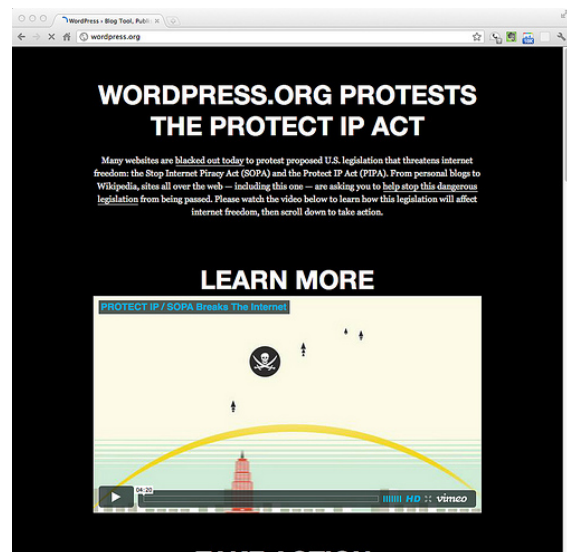


Figure 4: WordPress SOPA Blackout Page Screenshot (Scalera)

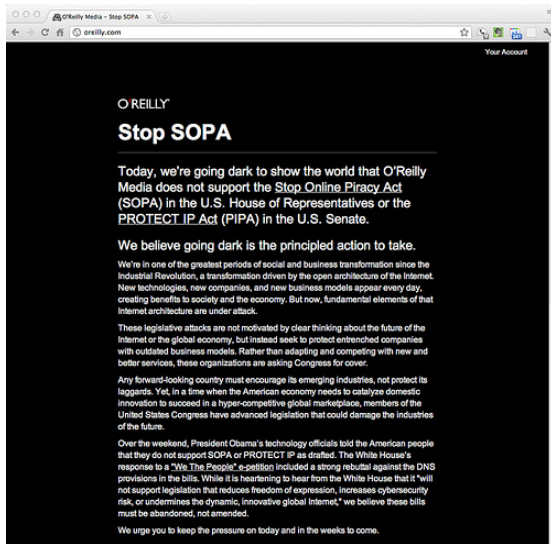


Figure 5: O'Reilly Media SOPA Blackout Page Screenshot (Scalera)



Figure 7: Mozilla Firefox SOPA Blackout Page Screenshot (Scalera)



Figure 6: Wikipedia SOPA Blackout Page Screenshot (Scalera)

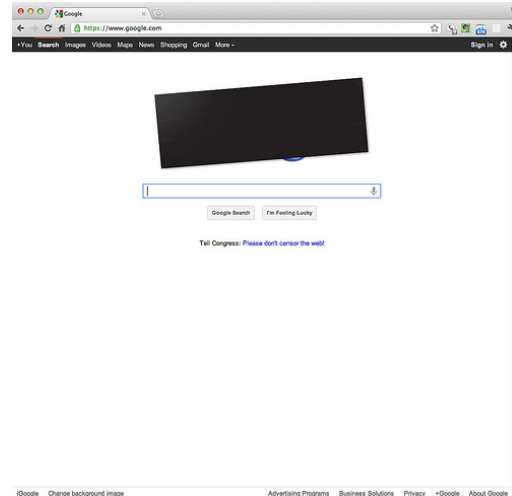


Figure 8: Google Search Page & Logo SOPA Blackout Page Screenshot (Scalera)



Figure 9: Reddit SOPA Blackout Page

Screenshot (Scalera)

The above images represent a selection of nine of the blackout page visuals from nine of the Internet's highest volume sites. The visual rhetoric is clearly designed to be similar. Every single one uses a black and white color scheme, designed to represent the "blackout," while also setting the serious tone necessary to impress the severity of the situation on the audience. Seven of the nine use all-black pages to completely block all visual access to content and use white text describing next actions for users. The other two black out sentences (See Figure 1) or the website title (See Figure 8). Two of the nine offer links to clips that are anti-SOPA/PIPA, and every single one offers to help the user contact a government representative. The Google blackout site is the least specific about further steps for the user; however, by simply clicking on the blacked out Google logo, the user was brought to a search results page containing search results for anti-SOPA/PIPA sites. From the visual rhetoric present, it is apparent that the Internet companies' manipulation had three intended effects: to remove content for a day, to show the user what "a world under SOPA" would look like both visually and through the absence of content, all to create the desire to oppose SOPA. All of this is from the visuals.

Of course, the corporations in favor of SOPA also implemented visual rhetoric to convince the American public to support SOPA and to counteract the Internet company blackouts. MSNBC aired a pro-SOPA commercial during the Chris Matthews show on January 18, 2012, the same day Congress started debating SOPA, and the same day as the Internet blackouts. This thirty second commercial had the following transcript:

American ideas, they shine through a thousand new products, software, and movies, creating millions of new jobs. But now American creativity and innovation are under attack. Everyday foreign criminals use illegal websites to steal American products, steal our ideas, and put Americans out of work. It's time

for a new idea. Tell Congress to Stop Online Piracy. (“MSNBC CreativeAmerica.org SOPA Ad Original.”)

This commercial visually presented a light bulb against a black background, which when lit, glowed with the American flag. As the discussion of foreign criminals began, the lightbulb exploded, and the flag vanished, to signify the death of American ideas and jobs. The visual rhetoric here is not unlike those of the blackout pages; the color scheme is dark, and the wording is designed to mirror the loss of the lightbulb, a meme of knowledge and ideas, and the American flag, a meme for nationalism. This ad is meant to stimulate feelings of nationalism and play upon fears of unemployment in a difficult economic climate.

THE CITIZEN RESPONSE TO SOPA

The American citizen is not a passive recipient of discourse. Recall Foucault’s statement in *History of Sexuality, Vol. 1*, that “discourses are not once and for all subservient to power or raised up against it, any more than silences are...discourse can be both an instrument and an effect of power, but also a hindrance...a starting point for an opposing strategy” (Foucault, *History of Sexuality, Vol. 1*, 101). Just as the Internet and old media corporations created an opposition strategy to the SOPA legislation, the American people began to side with one side or the other based on personal motivations.

In the course of SOPA, Twitter became the propagation platform for civilian discourse. From November 16, 2011 to April 8th, 2012, Twitter micro-bloggers posted approximately 139,194 tweets with the hash tag #SOPA, indicating that they were commenting on the SOPA debate ("Archive on #SOPA"). Of these posts, 64.52% were original tweets (posts) on the SOPA issue, while 35.48% were retweets (reposts) on the topic. The majority of these reposts were to spread petitions against SOPA, using Twitter to propagate the anti-SOPA perspective of the

discourse. A sampling of the Twitter postings elucidates the evolution of the discourse throughout the SOPA blackout protests, and how these protests impacted public opinion. When examining citizen Twitter posts for propagation, manipulation, and memes, it becomes clear that the citizens had some faculty in implementing propagation and manipulations, but had no unified message or intentional memes behind their discourse. As such, they were less effective in establishing one, solid discourse, and instead created an amalgamation of dissenting voices against SOPA.

Figure 10: Citizen Twitter Posts

Date	Name	Comment Text	Number of Retweets	Number of Favorites	Link to Webpage	Side of Discourse
Jan. 17, 2012	Pour Me Coffee ³	If you are staying up to see Wikipedia go black, your mother and I are very worried about you.	50+	12	No	Non-specific
January 17, 2012	Gokhan Karatay ⁴	I really do hope #SOPA and #PIPA bills aren't passed through the senate. Legislation against piracy is needed, but that really isn't the way	1	0	No	Anti-SOPA
January 17, 2012	Cory Doctorow ⁵	MPAA says #SOPA blackout is "an abuse of market power," what about having non-skippable fake FBI warnings & biased PSAs before every DVD?	50+	50+	No	Anti-SOPA
January 18,	Eben Rawluk ⁶	#SOPA "To promote prosperity, creativity,	0	0	No	Anti-SOPA

³ <https://twitter.com/#!/pouremecoffee/status/159480004999258112>

⁴ <https://twitter.com/#!/GokhanKaratay/statuses/159541790867853313>

⁵ <https://twitter.com/#!/doctorow/statuses/159508829531410432>

⁶ https://twitter.com/#!/Eben_Rawluk/statuses/159690573987581952

2012		entrepreneurship, and innovation by combating the theft of U.S. property" Hmmmm...				
January 18, 2012	Jess Drew ⁷	#sopa props to @Wikipedia @wired @craigslist @google - #nicejob	1	1	No	Anti-SOPA
January 18, 2012	Kevin V. ⁸	If #SOPA is passed, our internet will become like China's internet. Websites will be deleted/blocked in favor of the Governments benefit.	3	0	No	Anti-SOPA
January 18, 2012	Sorin Stefan ⁹	Maybe #sopa guys had good intentions, it's just that they dont know how Internetz works, like most suits these days	0	0	No	Anti-SOPA
Feb. 6, 2012	Wendy Seltzer ¹⁰	NYT's Bill Keller misses point of #SOPA / #PIPA opposition: Don't reshape Internet infrastructure for (c) enforcement http://www.nytimes.com/2012/02/06/opinion/steal-this-column.html?_r=1&hpw=&pagewanted=all	5	2	Yes	Anti-SOPA
Feb. 16, 2012	Andrea ¹¹	@Linkara19 BREAKING: #SOPA is back. Now [unofficially] called the "Cyber Security Terrorism Act" (CSTA, Cista). Will include kill switch.	50+	2	No	Anti-SOPA
April 7, 2012	Joe Trippi ¹²	Ouch. Day after Chris Dodd says he's	18	3	Yes	Pro-SOPA

⁷ <https://twitter.com/#!/jessdrew/statuses/159676643496038401>

⁸ <https://twitter.com/#!/Kevinho360/status/159790056276623360>

⁹ <https://twitter.com/#!/sorinstefan/statuses/159631660650987520>

¹⁰ <https://twitter.com/#!/wseltzer/statuses/166528018540527617>

¹¹ <https://twitter.com/#!/Nahima20/statuses/170285621187842048>

¹² <https://twitter.com/#!/JoeTrippi/status/188661996688916480>

"confidant" of #SOPA
revival, MPAA's fmr tech
policy chief comes out
against it.
http://news.cnet.com/8301-31921_3-57410674-281/mpaas-former-tech-policy-chief-turns-sopa-foe/

Propagation

Citizens using Twitter, by definition, have audiences to whom they are speaking, and thus they are propagating a message. Given that citizens have varying backgrounds and political beliefs, this set of tweets does not necessarily represent a cohesive discourse against the government. For example, Andrea's post on the "return of SOPA" is against SOPA inherently, as are the majority of the civilian posts online. However, Pour Me Coffee's comment on SOPA, retweeted by the MPAA, is more neutral in tone. Given that these individuals have varying audience sizes, some receive more propagation of their message than others. Cory Doctorow's comment on SOPA, "MPAA says #SOPA blackout is "an abuse of market power," what about having non-skippable fake FBI warnings & biased PSAs before every DVD?" has the most retweets and favorites of any comment, but Doctorow is also a professional blogger, giving him a readership and more experience posting tweets than most other citizens in the figure above. This disunity of the discourse, with different citizens spreading different messages, and the disparity between which tweets have the largest audience, means that there is not an even propagation of a unified discourse in the population. However, the majority of tweets examined give SOPA a negative manipulation, meaning that, taken as a whole, the citizens' discourse on

SOPA is inherently negative, although the reasons for disliking the act vary from free speech issues to dislike of the MPAA and major media corporations.

Manipulation

The exaggeration of claims is the most frequent manipulation of the citizens. Allegations of “biased PSAs,” “suits” who do not understand the Internet, and excitement over the success of the blackouts are all rhetorical ways of manipulating the SOPA discourse away from the government narrative. The government representatives who drafted SOPA designed it to protect private industry. The “biased PSAS” comment attacks the private industry’s legitimacy in asking for SOPA to be passed, hitting at the heart of the government discourse. Moreover, the allegations that the government does not understand the Internet seeks to return power to the citizens, who are implied to understand the Internet better than the government. The support of the blackouts supports the Internet media’s narrative over that of the government’s, thus altering the discourse by emphasizing one discourse over another. The issue, however, with exaggeration as a manipulation tactic is that it is easily turned by the government. Since the civilian population is not thinking collectively about more profound ways of confounding the government discourse, the government in this respect has the upper hand, as it has the ability to speak with one voice and have one cohesive manipulation strategy. Simply siding with one discourse over another, or taking different stabs at the government from different angles, is not sufficient for the people to commandeer the discourse from the government’s control.

Memes

There are no cohesive memes mentioned by the people. Instead, what the tweets reflect are haphazard criticisms that skim the surface, rarely getting to the memetic level. This absence of memes also gives government officials the upper hand.

Looking at the Twitter posts of public figures, two facts become clear. First, as the citizen and corporate voices began to win the discourse, representatives who were in favor of the legislation originally changed sides after the blackouts. Second, the government had to clearly distinct discourses on SOPA, one side in favor, one side against, and these discourse had a more cohesive message than the citizen discourse.

Figure 11: Public Official Twitter Posts

Date	Name and Position	Comment Text	Number of Retweets	Number of Favorites	Link to Webpage	Side of Discourse
Jan. 13, 2012	Lamar Smith, Representative for Texas ¹³	Read my release here on my decision to remove DNS blocking from SOPA.	50+	16	Yes-Link now removed	Pro-SOPA
Jan. 18, 2012	Nancy Pelosi, Minority Leader of the United States House of Representatives ¹⁴	Your #SOPA tweets are important to help Congress strike a better balance between protecting intellectual property & internet freedom.	50+	23	No	Non-specific
Jan. 18, 2012	Niki Tsongas, Representative for Massachusetts ¹⁵	I oppose #SOPA. It is written too broadly and could have an adverse affect [sic] on free speech and internet innovation.	36	9	No	Anti-SOPA
Jan. 18, 2012	Ron Paul, Representative for Texas ¹⁶	The internet must remain free! Proud to see so many taking a stand	50+	50+	No	Anti-SOPA

¹³ <https://twitter.com/#!/LamarSmithTX21/status/157945420453134336>

¹⁴ <https://twitter.com/#!/NancyPelosi/statuses/159788474713640961>

¹⁵ <https://twitter.com/#!/nikiinthehouse/statuses/159685653293043713>

¹⁶ <https://twitter.com/#!/RonPaul/status/159747334174019584>

2		today. Oppose #SOPA and #PIPA! #tcot #tlot #GOP2012				
Jan. 19, 2012	Dennis Ross, Representative for California ¹⁷	One thing missed in yesterday's SOPA debate was that Cognress [sic] (without my support) put our nation another \$1.2 trillion in debt.	4	0	No	Pro-SOPA
Jan. 23, 2012	Dennis Ross, Representative for California ¹⁸	For those who want to know, I have, as of about 5 minutes ago, officially removed my name from #SOPA. Had to wait till we were in session.	12	2	No	Anti-SOPA
Feb. 6, 2012	Ron Wyden, US Senator for Oregon ¹⁹	#PIPA, #SOPA protests showed the public deserves a seat at the table & Congress needs a truly open process	19	0	No	Non-specific
Dec. 9, 2012	Elton Gallegly, Representative for California ²⁰	To stop foreign counterfeiters and protect consumers, I support the Stop Online Piracy Act http://tinyurl.com/c5nwap5	3	1	Yes	Pro-SOPA

Propagation

In general, the government representatives receive more retweets than the civilians. The significance of the “retweet” is that a Twitter tweet that is retweeted is now posted on another person’s account, meaning that comment receives a wider audience than if it was just on the poster’s Twitter feed. Thus, the government officials, having larger audiences due to their public roles and social status, not only have wider audiences privy to their Twitter feeds, they also get more audience members propagating their message for them. In this fashion, the government

¹⁷ <https://twitter.com/#!/RepDennisRoss/status/160030548755095553>

¹⁸ <https://twitter.com/#!/RepDennisRoss/status/161602679167135744>

¹⁹ <https://twitter.com/#!/RonWyden/statuses/166616305250742272>

²⁰ <https://twitter.com/#!/eltongallegly24/status/145270827745673217>

officials are able to spread their discourse faster and more quickly than civilians, giving the government an edge in controlling the discourse surrounding SOPA.

Manipulation

The government officials do not have a consistent stance on SOPA, either. A large reason for the diversity of opinion has to do with the negative stances taken by citizens and Internet corporations against SOPA. In this sense, the Internet corporations and the citizens managed to redirect the discourse enough to gain support of those who formerly dissented. The key manipulations of those still in favor of the legislation was claims to economic protection for citizens, with tweets like “To stop foreign counterfeiters and protect consumers” and noting the amount of profits lost due to copyright infringement. However, the responses by those in favor of SOPA never touched on the freedom of speech issue brought up by the Internet corporations. This could be one reason why SOPA failed, was the government’s inability to adapt the discourse to reframe citizen and corporate concerns.

Memes

Economic issues became the main meme of the government discourse in favor of SOPA while those against took up the Internet corporation meme of freedom. Those in favor focused on the economic arguments for SOPA, citing profit losses for citizens. The trouble with this meme, however, was that it wasn’t very persuasive. It focused on profits of corporations, while not addressing the key concerns of the opposition. In the meantime, representatives against SOPA focused on aligning with the Internet corporations; thus their memes reflect this choice. From Ron Paul’s statement that “the internet must remain free” to Tsongas “It is written too broadly and could have an adverse affect [sic] on free speech and internet innovation,” these statements

focus on the freedom of speech issue over economic values, aligning themselves with the Internet side.

These representatives were wise to align with the Internet corporations. After the blackout, during which an estimated 115,000 websites and 14 million users participated, the US public opinion had spoken through Facebook and Twitter commentary, boycotting of the internet and signing of petitions on We the People, the White House petition Internet forum²¹. The US House of Representatives pulled SOPA from the floor after the online protests, and the Internet companies and citizens against SOPA declared victory.

THE GOVERNMENT RESPONSE TO SOPA'S FAILURE

SOPA did not pass into law. However, the act is not yet dead. The government has the ability to redraft legislation and re-submit it for voting. Indeed, as one tweet noted from civilian Andrea, the new Cyber Intelligence Sharing and Protection Act (CISPA) legislation has overtones similar to SOPA. The distinction, however, is that CISPA is framed as an anti-terrorism bill. Since CISPA seeks to target foreign governments and actors attacking Internet sites, the Internet corporations are in favor of the legislation, making the political alignment different than before. Moreover, there are clauses of CISPA that relate also to protecting IP infringement. Essentially, CISPA pleases both Internet and old media corporations. Given that Internet corporations were the true winners of the SOPA blackout, not the citizens, it is likely that next time around, the government will succeed in passing the legislation.

²¹ Petition available for public reference at <http://www.whitehouse.gov/blog/2012/01/14/obama-administration-responds-we-people-petitions-sopa-and-online-piracy>

Internationally as well, the US government's work is not done with copyright infringement online. ACTA, the Anti-Counterfeiting Trade Agreement, is still alive, and it is moving forward internationally, with the US included. Chapter 4 will delve into this case in greater detail.

Chapter 4: EU Case Study

Disagreement on the Anti-Counterfeiting Trade Agreement

In January 2012, 22 European Union nations signed the Anti-Counterfeiting Trade Agreement, a plurilateral agreement between the United States, Australia, Canada, Japan, Morocco, New Zealand, Singapore, and South Korea. Immediately after signing the treaty, over one hundred protests broke out throughout EU member nations. In the weeks that followed, the very representatives who signed the document would reject ACTA's ability to uphold freedom of speech, and even the rapporteur responsible for reviewing ACTA on behalf of the Commission, member of the European Parliament Kader Arif, quit his position as reviewer based on the agreement's deleterious effects on free expression in Europe. Yet, ACTA continued through the EU government policy process, moving in April to judicial review by the European Court of Justice. The question is, in light of the massive amount of public dissent and outcries against the agreement, why has ACTA continued to pass government checks, coming closer and closer to being integrated into European law? Why has freedom of speech of the people failed to change anything in how the EU governments treat act? This case study shows that the EU government has used discourse manipulation and governance tactics with ACTA to continue pursuing their agenda, despite dissent from the people.

Internet Governance in the EU

The European Union's history with the Internet is not as long as the US's legacy, but Europe was also an early adopter to the Internet. The EU's stance on internet governance was established in large part at the World Summit on Information Society (WSIS), held as a series of meetings from 2003 to 2005, in which the EU and fellow nations set out the principles for the Internet's architecture and operation and for internet governance ("Internet governance" 2009). The WSIS observed that the Internet's architecture is built largely on the private sector and

government support on private sector initiatives. “The private sector has been in the forefront since the Internet began. It provides the investment, expertise and entrepreneurial initiative which foster innovation. The private sector operates most of the international backbone infrastructure, the national cable networks, and provides services that facilitate and manage traffic.” From this basic premise comes the EU’s support for corporations seeking to engage in business online. The EU sees the role of governments in Internet development as it being “important that governments play a more active role in its development process.” After WSIS, the EU set forth the following principles for how it plans to govern the Internet:

1. The core architecture should be respected;
2. The private sector should retain a leading role;
3. There should be multi-stakeholder participation;
4. Governments should participate more actively;
5. Inclusion should be a basic principle.

The EU concludes with the following notes: “Internet governance is an absolute priority in terms of public policy. The EU has a leading role to play since it includes nearly 19 % of the world’s Internet users.” These guidelines, designed to be flexible in nature so as to apply to a wide range of issues and to grow with the Internet as it develops, set the precedent for many of the EU’s actions regarding the Internet.

EU Governance and the Social Contract

In Chapter 1, it was established that freedom of speech is a desirable right for governments to allow because it enhances a government’s ability to communicate and receive comments from the people. This communication acts to strengthen the social contract that acts as

an underpinning to the legitimacy of a government. The social contract, this mutual benefit between powers given by the citizen to the government in exchange for the government representing the people, is at the heart of freedom of speech for this reason. Of course, there is the presumption here that the government is actually representing citizen interests.

The European Union is an experiment in politics, in that it is a form of government never before seen, and there are no other governments quite like it in structure. It contains elements of a federalist system, with its European Parliament and Court of Justice, and has checks and balances between these branches. However, the European Commission has the monopoly on origination of legislation, unlike the typical federalist system where the Parliament would have this power. More importantly, the EU does not supplant the pre-existing governments of its member nations, but its rulings and policies do impact these national governments. Since the states maintain their sovereignty under the EU, the system cannot truly be called federalist. The EU has been called an international organization similar to the United Nations. Yet, the EU's ability to legislate the member states' policies shows that member states have ceded some aspects of sovereignty to the EU. Other international organizations do not have this power over their member nations. The EU, for this reason that it is part-federalist, part-international organization, is often referred to as a supranational authority.

Since the EU has a unique governmental structure, it also has a complicated social contract with citizens of the member states. Citizens have power in the EU government process; they elect members to the European Parliament, and by electing their national government officials, they also elect members of the Council of Ministers who act as a type of executive branch. These elected national government officials also appoint the European Commission, giving citizens indirect representation over the Commission as well. The citizens can also impact

legislative issues through interest groups who can lobby in the system, not unlike the US Congress system. The graphic below helps demonstrate the various avenues this social contract is practiced in the form of representative governance.

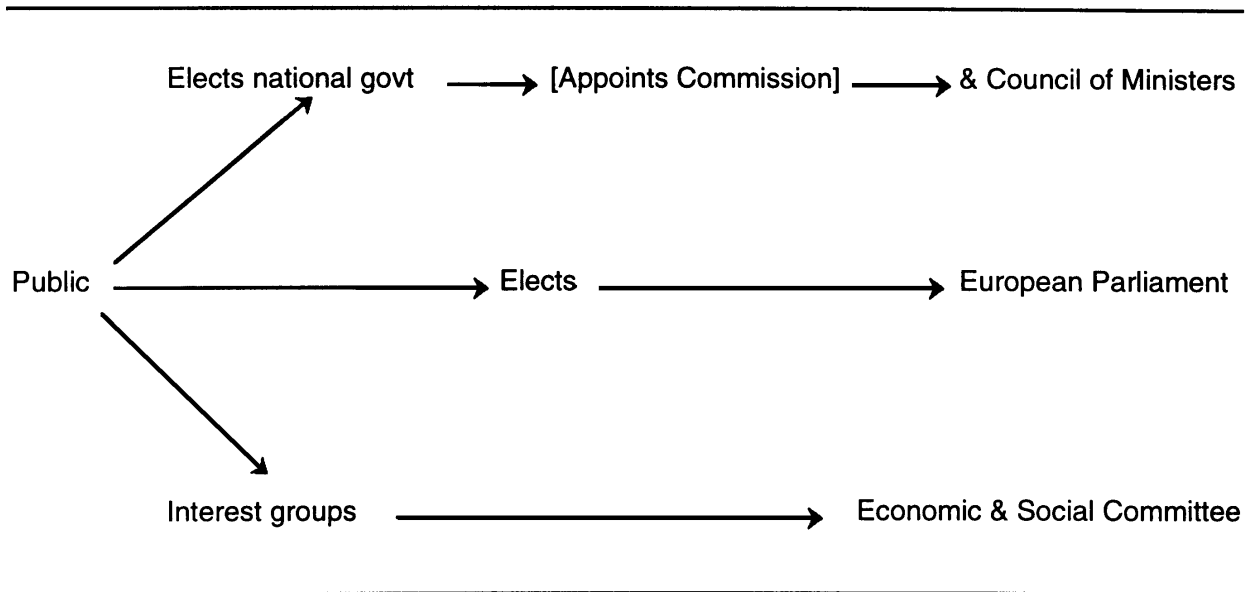


Figure 1: Channels of public accountability in the European Union (Norris 274)

The EU has a system for representing the people, and ways for the people to use freedom of speech to influence their government; thus, one would theorize that the social contract would be strong in the EU. Unfortunately, many articles have been published stating the opposite, saying that a sort of “democratic deficit” exists in the EU today. The democratic deficit theory effectively notes that there is a breakdown of democratic representation in the EU. Part of the breakdown involves “permissive consent,” wherein there is enough tacit support for EU initiatives that the EU officials assume consent, or assume they can manufacture it, thereby bypassing much of the representation process (Norris 274). As Norris explains, “the problem of

the ‘democratic deficit’ is whether these direct and indirect channels are effective in connecting the preferences of citizens to the outcome of EU decision-making. During the early years of the Community the technocratic and diplomatic elite determined the direction of European development, much as they controlled bodies such as NATO, with the tacit approval of a permissive consensus among mass publics. The idea of a ‘permissive consensus’ implies general support within public opinion, with passive approval which is widespread if shallowly rooted, and which may allow future government action” (Norris 274). This legacy of representation paved the way to a sort of government apathy on public opinion, wherein a past of good representation has led to a current system where the voices of the people cannot impact the governance model clearly and effectively. As a result, there have been declining voter turnout rates for members of the European Parliament, as the people feel that their votes do not really matter, as the system seems to make decisions without consulting the public (Malkopoulou 2).

The implications of the democratic deficit and low voter turnout is that the EU governments can afford to focus less on the words of the people in the short-term, because the people have less ability to immediately punish the government for not representing their needs as demonstrated through free speech. To the average EU voter, it is unclear who the people would penalize for passing ACTA; the Council of Ministers appoints the Commission, so should the people vote their president or prime minister out of office? Or, should the citizens punish the European Parliament members who approved the Council of Ministers’ delegation to the Commission? Or, should the citizens blame the European Parliament for passing ACTA, as it will eventually have to if ACTA is to become part of European law. As Pippa Norris notes, “The lack of transparency about ‘who said what’ in negotiations behind the closed doors of the Council of Ministers, and the complexity of relating policy outputs to outcomes, makes it

extremely difficult for the public to evaluate the actions of their government within Europe” (Norris 273). This lack of clarity of who should “be punished” for ignoring the speech of the people means the government members are less afraid that their actions will directly lead to their loss of power. Suddenly, the social contract, and the power of an individual’s speech, starts to erode.

In this case, the EU does manipulate discourse to convince the people of Europe that ACTA is in their long-term best interest. However, behind this discourse manipulation, the government also realizes that if the people do not support ACTA, the democratic deficit creates a safety zone for the government to pass ACTA without fear or public recourse. In essence, the people can speak freely, but their words will not translate into government response, thus removing much of the power of free speech in the first place.

ACTA: THE INTERNATIONAL WAR ON PIRACY

Perhaps the most salient issue in the EU regarding internet governance is the crisis in copyright and intellectual property rights infringement. Internationally, copyright infringement on the Internet is posing issues to most governments, since governments in countries with developed patenting and copyright laws are bound by law to defend those patents and copyrights. Of course, even more critical than the issue of the rule of law is the economic need to obtain more value added from international trade. Online, it is easy for one user to share music, books, or other copyrighted material without paying the businesses that developed said content. This form of piracy is robbing a substantial amount of revenue from artists and distributors worldwide. Due to the nature of copyright infringement, it is difficult to ascertain precisely how much money is lost from Internet file-sharing; after all, the issue is so rampant, and notoriously

difficult to track ("Anti-counterfeiting trade agreement," 2012). However, organizations like the Motion Picture Association of America (MPAA), the Recording Industry Association of America (RIAA), and countless distributors and creators of content in Europe are no longer willing to tolerate the loss of profits from piracy. From this frustration and this new frontier of intellectual property law, the Anti-Counterfeiting Trade Agreement (ACTA) came into being.

This paper will be examining copyright infringement in the EU as a critical aspect of internet governance and internet policy for the EU in the 21st century. However, in order to win this battle, the EU must reframe the current discourse surrounding ACTA. At present, ACTA is seen as a threat to the status quo in the Internet world, where copyrights are still poorly enforced. In order to placate a population that fears for its freedom of speech, the EU will need to change the tone of the discourse surrounding this agreement if it is to successfully implement ACTA. This paper will examine, through discourse analysis, how the discourse surrounding ACTA has evolved, and will then show how the EU is taking steps to alter the discourse in the EU government's favor.

The ACTA case study will focus, through the lens of discourse analysis, on the discourse as seen from five perspectives; the ACTA agreement itself, the opinions of the EU government, European news media perspectives, the public, as represented by the hacker group Anonymous, and international news reporting. Discourse analysis, focusing on manipulations, propagation and memes, will reveal that the EU government initially lost the battle to control the discourse on ACTA by failing to appropriate proper propagation techniques; however, through the use of memes and manipulation, the EU will manage to regain public favor.

A Brief Overview of the Anti-Counterfeiting Trade Agreement

The most recent intervention on intellectual property rights (IPR) infringement in the European Union is the Anti-Counterfeiting Trade Agreement (ACTA). ACTA is frequently compared to the US bill, the Stop Online Piracy Act (SOPA), but these two documents have some substantial differences in both scope and content. While it is true that SOPA and ACTA both focus on IPR infringement online, and while both the EU and the US are signatories of ACTA, the similarities stop there. SOPA was a bill in the US Congress, designed to be legally binding only in the United States. ACTA, meanwhile, is an agreement signed in 2007 by the United States, Australia, Canada, Japan, Morocco, New Zealand, Singapore, and South Korea, with the European Union, Mexico, and Switzerland committing to signing the agreement “as soon as practicable” (Galperin, 2011). On February 11, 2012, the EU formally signed ACTA, and pending review by the European Parliament, ACTA will become an agreement to which the EU member states are legally bound.

In order to properly analyze the discourse on ACTA, it is imperative to establish what the ACTA agreement’s text actually says that ACTA will do. Chapter I: Initial Provisions and General Definitions describes ACTA’s scope as well as its relationship to past agreements, like the TRIPS agreement. The first chapter notes that past obligations from prior agreements stand and ACTA will apply only to intellectual property rights existing in the signing countries at the time of signature. Individual nations can choose to impose stronger or harsher measures than ACTA demands but cannot opt to ignore aspects of ACTA that are part of the treaty.

Chapter II: Legal Framework For Enforcement of Intellectual Property Rights is comprised of five sections. Section 1: General Obligations (Article 6: General Obligations with Respect to Enforcement) sets out the various obligations and requirements to implement ACTA into law in various countries, and to create a fair procedure for following through on ACTA’s

provisions. Section 2: Civil Enforcement focuses on the rights holders of IPR, saying that “Each Party shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right as specified in this Section” and that judges have the ability “to issue an order against a party to desist from an infringement” (“Anti-counterfeiting trade agreement,” 2009). Article 9 states that “In determining the amount of damages for infringement of intellectual property rights, a Party’s judicial authorities shall have the authority to consider, *inter alia*, any legitimate measure of value the right holder submits, which may include lost profits, the value of the infringed goods or services measured by the market price, or the suggested retail price.” Article 10 specifies that the rights holder may ask to have pirated copyright goods and counterfeit trademark goods destroyed. Section 3: Border Measures essentially puts in place a system for checking computer files moving between EU and international borders at airports.

Section 4: Criminal Enforcement focuses on the criminal nature of copyright infringements in criminal cases, as opposed to civil. Article 23: Criminal Offenses sets forth the basic principle that “willful trademark counterfeiting or copyright or related rights piracy on a commercial scale” is punishable under criminal law. Article 24: Penalties states that the criminal system should “include imprisonment as well as monetary fines” as punishments for IPR infringement. Section 5: Enforcement of Intellectual Property Rights in the Digital Environment puts forth methods for IPR protection in the digital world as opposed to the physical. In this section, the ACTA writers include the statement that digital networks must be managed by the signers of ACTA in a way that “preserves fundamental principles such as freedom of expression, fair process, and privacy”. This line is clearly meant to assuage the fears of oppression of freedom of speech.

Chapter III: Enforcement Practices focuses on how ACTA will concretely be enforced by the signing countries. This chapter encourages joint actions by the member states, and encourages the collection of statistical data to limit infringement. Article 29: Management of Risk at Border allows for information from border checks on computers to be shared, saying that “Information, including but not limited to information that assists in identifying and targeting suspicious shipments, may be shared between parties for the purposes of border enforcement. Should an importing party seize infringing goods, it may supply such information to assist an exporting party in pursuing infringers”. Chapter IV: International Cooperation focuses on information sharing and creating technical assistance mechanisms for the ACTA agreement.

Chapter V: Institutional Arrangements creates the ACTA committee to enforce the ACTA initiatives. In Article 36, the ACTA committee is charged with reviewing “the implementation and operation of this Agreement” and deciding “in accordance with paragraph 2 of Article 43 (Accession), upon the terms of accession to this Agreement of any Member of the WTO.” All ACTA committee decisions are done by consensus. Chapter VI: Final Provisions includes some final notes on formalities for the treaty, but have no important policy implications.

In short, ACTA is designed to create an international focus on piracy of copyrighted content, and demand that Internet Service Providers (ISPs) and Internet companies avoid piracy, with strict repercussions.

ACTA Discourse in Five Perspectives

In order to trace how the EU government has attempted to shape the discourse surrounding ACTA, this case study will examine five perspectives: the EU government representatives in favor of ACTA, the EU government representatives against it, the citizens’

opinion, the EU media's perspective, and the international media perspective. In examining these perspectives, data such as government publications, news articles, and Twitter posts will be considered for their rhetorical implementation of manipulations, memes, and their propagation value as determined by the size of the audience observing the commentary. In selection Twitter data, only EU citizens with original Twitter posts were considered for examination. No retweets, or responses to other Twitter posts, were examined, and no individuals outside the EU were considered.

Looking first at the government perspective, through examining public announcements, it is clear that the government for ACTA wished to emphasize protection of freedom of speech in its rhetoric from the very beginning. According to European Commissioner Karel De Gucht, the commissioner focusing on EU trade and the EU representative most closely associated with ACTA's signing, ACTA was designed to protect freedom of speech, not infringe upon it. De Gucht stated on January 1, 2012, that "ACTA does not contain any provisions mandating the monitoring of the internet by private companies," thereby undermining the opposition's manipulation on the discourse of freedom of speech. He also notes that "For instance, it complies with the 2009 Telecom Framework Directive which guarantees the protection of the universality of the internet in accordance with the fundamental rights and freedoms of natural persons, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and general principles of EU law and now by the European Union's Charter of Fundamental Rights" ("Anti-counterfeiting trade agreement," 2012). By invoking past legal frameworks, and therefore invoking the discourse of freedom of speech in law that is considered "appropriate" by the EU citizens, de Gucht is grounding ACTA in the discourse of appropriate legal steps taken to protect copyrights. Despite this rhetorical attempt to steer the discourse in

favor of ACTA, de Gucht was unsuccessful. Despite having been signed by 22 EU nations, ACTA has a substantial discourse surrounding it that does not support the agreement. Currently, ACTA has been received poorly by the public, several government representatives, and Internet-based corporations.

The EU media has been active in propagating a more negative discourse surrounding ACTA, being quick to manipulate the discourse surrounding the votes in favor of ACTA. One *Economist* article from February 11th uses this paragraph to describe the mood surrounding ACTA in the EU's government:

No sooner was the Anti-Counterfeiting Trade Agreement (ACTA) signed than Kader Arif, the European Union's chief negotiator, called it a "masquerade" and resigned. Slovenia's envoy, who signed the deal at a powwow in Japan, called her own behaviour an act of "civic carelessness". Romania's prime minister (now resigned) admitted he couldn't say why his country had signed it. In Poland, where lawmakers protested by wearing Guy Fawkes masks associated with the Anonymous hacker-activist collective, the prime minister said he would suspend ratification. The Czech Republic and Slovakia (which has not signed it) later did the same. ("ACTA up," 2012)

This ACTA response set forth by the *Economist*, one of the most-read news publications in the world, is founded upon the delegates' inherent dislike for ACTA. This is an alteration on the ACTA discourse first established by de Gucht and the drafters of ACTA. The original creators of ACTA preach that this was an agreement that will benefit all nations and support copyrights worldwide. Here, the news media within the EU is selling a different story. The first manipulation occurs; the *Economist* article's language indicates that since the delegates don't support ACTA, the citizens should call this agreement into question. By portraying the reluctance of the delegates, instead of just the fact that the agreement was signed, the *Economist* article changes the perspective of the agreement. The discourse on ACTA goes from the

agreement being a step in the right direction for copyrights, to being an act of “civic carelessness.”

The Economist was not wrong about there being dissent in the government concerning ACTA; not only delegates, but also the Data Protection Supervisor who is charged with evaluating privacy online, does not support ACTA in its current form. As the European Data Protection Supervisor Mr. Peter Hustinx, charged with “protecting personal data and privacy and promoting good practice in the EU institutions and bodies,” (“European Data Protection Supervisor,” 2012) noted in his official stance on ACTA in July of 2010 that this agreement has the ability to impact freedom of speech profoundly:

Such practices are highly invasive in the individuals’ private sphere. They entail the generalised monitoring of Internet users’ activities, including perfectly lawful ones. They affect millions of law-abiding Internet users, including many children and adolescents. They are carried out by private parties, not by law enforcement authorities. Moreover, nowadays, the Internet plays a central role in almost all aspects of modern life, thus, the effects of disconnecting Internet access may be enormous, cutting individuals off from work, culture, eGovernment applications, etc.” (“Opinion of the,” 2010)

Thus the discourse receives another manipulation: the individual responsible for evaluating this agreement fears that it has dangerous implications for surveillance of civilians. The propagation of this statement is quite large, given that this document is freely accessible on the Internet. However, it is not as publicly broadcasted as the *Economist* piece or the ACTA agreement. Also, the memes that this discourse manipulation calls into question are those surrounding freedom of speech and privacy, both quite sacred to EU citizens. The EU Data Protection Supervisor created the report with the intention of fairly evaluating ACTA; however, his evaluation does impact the discourse, in this case, further questioning the effect ACTA could have on privacy and free speech in the EU.

Public opinion in Europe has not been in favor of the legislation. The hacker group, Anonymous, created a video on YouTube, implementing visual and verbal rhetoric to persuade the public to oppose ACTA (Anonymous, 2012). They use an analogy where, under ACTA, if you learned a recipe in a cooking class, but then shared it with your wife, then you would be liable to be held accountable for pirating copyrighted material. Anonymous notes that this system would require ISPs to constantly check content, or their whole sites could be shut down. Under this system, according to Anonymous, “the internet as we know it is on the brink of destruction.” Anonymous takes its example to the extreme, proposing that lawsuits will not help content creators, because “parts of sentences can be protected” under copyright. Anonymous calls out the “content mafia,” namely the RIAA and MPAA, who are restricting freedom of speech for the sake of their “obsolete business model.” In the end, Anonymous calls ACTA a massive piece of corporate lobbying, and calls on the people of Europe and the world to “Stop the Kraken.”

International news media sources have not been much kinder to ACTA. Russia Today on March 3, 2012, showed that the ACTA response has been overwhelmingly negative. Focused on the shutdown of pirated content site RnBXclusive.com by the Serious Organized Crime Agency (SOCA), this news piece highlights some of the surveillance and disciplining methods used by Britain in the name of ACTA (Russia Today, 2012). When SOCA shut down RnBXclusive.com, a website that provided illegally uploaded music for downloading, it did not just removed the site; it left a message as a warning, saying “If you have downloaded music using this website you may have committed a criminal offence which carries a maximum penalty of up to 10 years imprisonment and an unlimited fine under UK law.” As Russia Today notes “ten year offenses” are of a serious ilk, for crimes such as “rape, manslaughter, not usually for downloading music illegally”. What makes this case truly intriguing is that SOCA is typically involved with larger

acts of organized crime and has not been typically associated with copyright infringement. As Andrew Pierson of the Howard League for Penal Reform notes “If this is what they are labeling serious organized crime...what happened to the Mob, the Mafia? Drug Dealing? As far as I think the public are concerned, that crime is still happening on our streets.” SOCA’s explanation for the behavior states that the organization on a whole “targets organized criminal enterprises profiting from the exploitation of the UK public and legitimate businesses. Much of the music offered for download by the rnbexclusive.com website was illegally obtained from artists, leading the industry to attribute losses of approximately 15 million pounds per year to the site’s activity.” In other words, according to the Guardian of February 17th, SOCA has announced, through both its actions and through public statements, that it has moved into a new arena of organized crime; that of copyright infringement online (Halliday, 2012). UK citizens are concerned about this new direction. As Loz Kaye of the Pirate Party stated in an interview with Russia Today, this change in SOCA’s mission means that UK citizens “can be monitored and tracked.” On a more personal note, he added, “I’m afraid we are going to see this kind of abuse on an industrial scale if ACTA comes to pass.” Perhaps most interestingly, SOCA took down the original threat. By way of explanation, Russia Today stated that “Internet campaigners say the message was meant to frighten, and in reality severe penalties couldn’t be applied to casual downloaders.” In a tactic that is straight out of Foucault’s *Discipline and Punish*, the government gave the appearance of set a punishment, a ten year prison sentence, which was meant to encourage self-regulation by the public. The furor that resulted showed that the punishment was questioned by the people; however, the concern this move generated showed that the government succeeded in sending a warning to the public.

The EU citizens on Twitter have closely followed the developments of ACTA. Looking at the figure below, a sampling of ten Twitter posts shows the progression of ACTA through the EU governance system, and the citizens' perspective on the discourse. These posts were selected for originality of content (no retweets from other users were selected), relevance to the topic area, and only EU citizens were included in the sample group. These twitter posts reflect, through manipulations, propagation, and memes, a largely negative sentiment surrounding ACTA.

Figure 2: Citizen Twitter Posts Concerning the Anti-Counterfeiting Trade Agreement

Date	Name	Comment Text	Number of Retweets	Number of Favorites	Link to Web-page	Side of Discourse
Jan. 26, 2012	Laurent Bauvens ²²	<p>#ACTA #MustRead "Un calendrier accéléré pour faire passer l'accord avant que l'opinion publique ne soit alertée."</p> <p>http://www.numerama.com/magazine/21424-acta-demissionnaire-kader-arif-denonce-une-mascarade.html</p> <p>-Link reports that MEP Kader Arif resigned from ACTA rapporteur position</p> <p>Translation: ACTA # # MustRead "An accelerated schedule for passing the agreement before the public is alerted."</p>	0	0	Yes	Anti-ACTA
Jan 31, 2012	Michael Clausen ²³	<p>Stop Internet #Censorship! Sign the urgent global petition @Avaaz urging the EU Parliament to reject #ACTA:</p> <p>https://secure.avaaz.org/en/e</p>	0	0	Yes	Anti-ACTA

²² <https://twitter.com/#!/bauvens/statuses/162581255563657216>

²³ <https://twitter.com/#!/michaelclausen/status/164337834130550785>

		u save the internet spread/?wjRxIcb -links to petition against ACTA				
Feb 2, 2012	Louis Papaemmanuel ²⁴	Citizens from all over the world are signing the Stop #ACTA #petition, 1 signatory every 2 secs - next goal: 2 Million	0	0	Yes	Anti-ACTA
Feb. 22, 2012	Chris Abela ²⁵	Individuals in favour of #ACTA, should be free to adopt it, others should be free to opt out.	0	0	No	Anti-ACTA
Mar. 23, 2012	Balthasar Glättli ²⁶	@francoiseleste @thonixx @CarloSommaruga das anonymous video ist nicht up2date und schadet der seriösen #acta Kritik eher, weil übertrieben. Translation: @ @ francoiseleste thonixx @ anonymous CarloSommaruga the video is not serious and detrimental to the up2date # acta criticism because it is exaggerated.	0	0	No	Non-specific
Mar. 26, 2012	Joan Roussouliere ²⁷	Debat sur #ACTA a Sciences Po commence avec commission europeenne, parti pirate finlandais, @laquadrature et PPE. Translation: Debate on ACTA # begins with Sciences Po European commission, Finnish Pirate Party, and laquadrature @ EPP.	1	0	No	Non-specific
Mar. 27, 2012	Oliver Grimm ²⁸	#ACTA Ausschuss für Internationalen Handel im #Europaparlament stimmt dagegen, den ACTA-Text dem Gerichtshof der EU vorzulegen.	0	0	No	Non-Specific, slightly Anti-ACTA

²⁴ https://twitter.com/#!/louis_gov2u/status/165053994367070208

²⁵ <https://twitter.com/#!/AbelaChris/status/172258795748200448>

²⁶ <https://twitter.com/#!/bglaettli/status/183247653478481921>

²⁷ <https://twitter.com/#!/jaralive/statuses/184330807488421889>

²⁸ <https://twitter.com/#!/grimmse/status/184631657280704513>

		Translation: # ACTA Committee on International Trade in the # European Parliament votes against the ACTA text submitted to the Court of the EU.				
April 2, 2012	Ahmed Shihab-Eldin ²⁹	#ACTA (Anti-Counterfeiting Trade Agreement) - the worldwide #SOPA could be passed within 10 weeks - read all about it. http://www.akascope.com/2012/04/02/acta-passed-10-weeks-action-late/	3	1	Yes	Rhetorically non-specific, implied Anti-ACTA
April 4, 2012	Felix Treguer ³⁰	#ACTA RT @EDRi_org: 40 days for the European Commission to come up with 22 words http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/354&format=HTML&aged=0&language=EN&guiLanguage=en -link to European Commission decision to refer ACTA to Court of Justice -“22 words” refers to this question for the Court: "Is the Anti-Counterfeiting Trade Agreement (ACTA) compatible with the European Treaties, in particular with the Charter of Fundamental Rights of the European Union?"	1	0	Yes	Anti-SOPA
April 5, 2012	Frédéric Couchet ³¹	RT @laquadrature EU Commission Shamelessly Persists In Trying to Delay ACTA Vote https://www.laquadrature.net/node/5615	1	0	Yes	Anti-ACTA

²⁹ <https://twitter.com/#!/ASE/status/186868600932532224>

³⁰ <https://twitter.com/#!/FelixTreguer/statuses/187573454768320513>

³¹ <https://twitter.com/#!/fcouchet/status/187836702616846336>

The Twitter posts show little diversity in perspective surrounding ACTA; most posts are either against ACTA, or are merely stating facts surrounding the development of the agreement as it passed through the Commission to the European Parliament to the Court of Justice, where it is being considered at the time this chapter is being written.

Propagation:

Notably, the posts receiving more retweets were originally posted in the latter part of March and in early April, when the agreement was contentiously offered to the EU Court of Justice for consideration instead of being voted down in the European Parliament. Three of the Twitter posts were for petitions to stop ACTA; interestingly, none were retweeted, meaning no one in the Twitter community wanted to spread the word about the petitions. Retweeting is a very literal example of propagation; the more retweets a post has, the more people spread the tweet throughout the Twitter community, and the wider an audience the tweet has. The fact that these petitions did not receive retweets mean that there were less audience members privy to that side of the discourse.

Manipulation:

The best example of manipulation by a citizen in a tweet was by Frédéric Couchet, who misrepresented the decision to take ACTA to the Court of Justice. His claim is that the “EU Commission Shamelessly Persists In Trying to Delay ACTA Vote,” and cites an article that claims the Commission pursued the Court of Justice even after one subcommittee in the European Parliament voted against ACTA going to the Court of Justice. If the government explanation is valid, then this claim is a manipulation. The government’s explanation, as cited in an article in Tayebot’s tweet (See Figure 3), is that this subcommittee voted to not have ACTA

go to the Court of Justice because it would be redundant, since the Commission already planned to send the agreement to the Court for consideration. This explanation obviously differs drastically from the discourse given by Mr. Couchet. Mr. Couchet and the article he cites are not wrong, per se; rather, they manipulate the facts to make it sound as though the government is delaying the vote. Thus, this is a significant manipulation of the discourse.

Memes:

These Twitter posts by citizens, while engaging with ACTA as it progresses, do not engage as much with the memes behind it. One person tweeted to “Stop Internet #Censorship,” which hails back to a common meme in the ACTA discourse, that of freedom of speech infringement and the sacredness of uninhibited speech. Aside from that comment, most posts merely noted updates on ACTA’s progress, or asked other Twitter members to sign petitions against ACTA without specifying memetic reasons for rejecting the agreement. This absence of memes in the citizen Twitter discourse differs significantly from the government discourse, which relies heavily on such memetic rhetorical devices to gain public support.

The EU government officials have been very vocal on Twitter concerning ACTA, as social media became the discourse battleground for winning public opinion. Below is a data sample of eight Twitter postings by government officials in the EU. Through discourse propagation, manipulation, and memes, the EU officials portray a positive picture of ACTA’s potential influence on the EU’s economic prosperity. While some remain more neutral, none outright challenge the validity of ACTA as an agreement.

Figure 3: Public Official Twitter Posts

Date	Name	Comment Text	Number of Retweets	Number of Favorites	Link to Web page	Side of Discourse
Jan. 30, 2012	Neelie Kroes, Vice President of the European Commission ³²	#ACTA is not #SOPA, ACTA does not change EU law. but EU law on copyright can certainly be improved!	27	0	No	Pro-ACTA
Feb. 23, 2012	John Clancy, Spokesperson for EU Trade Commissioner Karel De Gucht ³³	Commissioner De Gucht on #ACTA: "This is not 1984; this is 2012. ACTA is not 'Big Brother'. It's about solving our today's economic problems"	1	1	No	Pro-ACTA
Feb. 29, 2012	Daniel Caspary, Member of European Parliament ³⁴	ab jetzt Debatte zu #ACTA mit Kommissar de Gucht im #EP-Außenhandelsausschuss #INTA #EP Translation: Starting now, # ACTA debate with Commissioner de Gucht in the # EP Foreign Trade Committee INTA # # EP	0	0	No	Non-specific
Mar. 1, 2012	European Parliament Twitter ³⁵	#ACTA workshop at #EP, citizens speak now, live -link to live debates, now dead link	4	1	Yes	Non-Specific
Mar. 5, 2012	John Clancy, Spokesperson for EU Trade Commissioner Karel De Gucht ³⁶	Don't believe the hype, read the actual #ACTA text yourselves http://register.consilium.europa.eu/pdf/en/11/st12/st12196.en11.pdf and in all #EULanguages -Links to the Council of the European Commission's version of the ACTA	8	3	Yes	Pro-ACTA
Mar. 7,	Daniel Caspary,	freue mich auf die Diskussion über #ACTA mit @netzpolitik,	2	0	No	Non-specific

³² <https://twitter.com/#!/NeelieKroesEU/statuses/163984611813236739>

³³ <https://twitter.com/#!/EUJohnClancy/status/174907741532471297>

³⁴ <https://twitter.com/#!/caspary/status/174907906540584960>

³⁵ https://twitter.com/#!/Europarl_EN/statuses/175245442689409024

³⁶ <https://twitter.com/#!/EUJohnClancy/status/176693371534966785>

2012	Member of European Parliament ³⁷	@petertauber und @tj_tweets um 1600 im Bundestag. #EP Translation: I look forward to discussing with @ # ACTA network policy, and @ @ peter deaf tj_tweets at 1600 in the Bundestag. # EP				
Mar. 27, 2012	Greens in the EP, Twitter account for Green Party of Parliament ³⁸	#ACTA ratification process continues as normal so far. Watch the debate in the lead EP trade committee http://bit.ly/H6ScWq #ACTA -link to live debates, now dead link	2	0	Yes	Pro-ACTA
Mar. 28, 2012	"Tayebot"; Digital Media Co-ordinator at European Parliament. ³⁹	#ACTA: reasons for committee vote against referral to Court of Justice http://www.europarl.europa.eu/news/en/pressroom/content/20120327IPR41978/html/ACTA-reasons-for-committee-vote-against-referral-to-Court-of-Justice	0	0	Yes	Non-specific

Propagation:

The government tweets received over double the number of retweets of the civilians. This propagation difference is not surprising; as noted in Chapter 1, the more power an individual has, the better they are able to propagate their message. While power is one explanation for the increased propagation, another reason is that these officials are the sole purveyors of what is occurring behind closed doors in European Parliament and EU Commission meetings. While citizens largely represent their personal opinions on ACTA in their Twitter posts, the EU government officials provide updates on ACTA, with some manipulation and memetic devices

³⁷ <https://twitter.com/#!/caspary/status/177373106783002624>

³⁸ <https://twitter.com/#!/GreensEP/statuses/184545278123184128>

³⁹ <https://twitter.com/#!/Tayebot/status/184932363707490304>

woven into the factual reporting. For this reason, more people on Twitter are likely to repost the government tweets, since these tweets offer valuable information not available elsewhere.

Manipulation:

The majority of these Twitter posts focus on the pro-ACTA or non-specified sides of the debate. The non-specified tweets did not have significant discourse-related manipulation; they typically noted what was occurring as ACTA moved through the EU governance process. The observation that debates occurred or that negotiations happened is not a manipulation, as these events did occur. However, the pro-ACTA side of the discourse had some manipulations present in their rhetoric. Neelie Kroes's observation that "ACTA is not SOPA" was a manipulation designed to distance ACTA from the failing SOPA legislation that, as of January 30th, was predicted to not pass in the House of Representatives. At that point, the SOPA blackouts had already swayed public opinion on SOPA, and the blackouts reached the attention of an international audience. By disassociating SOPA and ACTA, Kroes's rhetoric manipulated the discourse on ACTA to further remove it from SOPA's negative press.

Memes:

John Clancy's tweet most directly references the meme of freedom of speech. His comment that "ACTA is not 'Big Brother'" refers to George Orwell's *1984*, a work of literature known for a government that limits all personal freedoms, and is known for its surveillance of the population's every move. George Orwell's government, in fact, is an excellent literary example of the panoptic state and a surveillance model taken to an extreme. By invoking the language of "Big Brother," Clancy touches upon this meme, the subconscious reference to this classic work of European literature. By noting this meme and then drawing attention instead to

“today’s economic problems” redirects the public’s attention from one meme to another, from freedom of speech to economic issues.

Conclusions on the European Union Government’s Next Moves

Through all of this negative press, ACTA was still signed by 22 European Union nations, and still made it to the Court of Justice for further judicial consideration. How did this uprising of public opinion fail to stop ACTA at any of these points in time? After all, the governments of the EU cannot ignore their people indefinitely. In large part, the governments are acting in terms of the long-term interest of their people vis a vis the economy. With the economic instability in Europe, the governments are looking for some area of economic activity that can be improved. Copyrights are one such arena. Moreover, ACTA is still moving forward because the EU has not given up on persuading the public that it is the right move for copyrights online.

First, the EU is firing back with its own web campaign. With actions consisting largely of responses from the EU Commissioner for trade during countless interviews, the EU’s representatives are fighting back with their own reframing of the discourse. In a response to the criticisms launched against ACTA, de Gucht responded after February 22, 2012, to the accusations of outside parties. He notes that “ACTA will not censor the internet. It will not mandate monitoring of individuals e-mails or blogs. It will not subcontract the functions of the police to private internet service providers. It will not restrict the sale of legal generic medicines.

It will not mandate the inspection of laptops or MP3 players by customs officials” (de Gucht, 2012). By going down the list of some of the more serious allegations against the agreement, de Gucht is directly counteracting the many manipulations on the ACTA discourse, reversing some of the negative effects by naming the issues directly, and by saying turning “not said” rhetoric into “said” rhetoric. He also invokes a manipulation of his own, observing that he, personally, is “a lawyer by training, a liberal democrat by conviction and a lifelong advocate of human rights and individual liberties.” By associating himself with liberal ideology and individual liberties, he calls upon memes in the collective psyche that negate the criticism of ACTA, which he supports. He also lists his past contributions to acts that are associated with free speech, once again calling upon memes that are associated with those opposed to ACTA: “As a fairly young MEP, I was one of those contributing to the Spinelli Report, drafting the first tentative catalogue of human rights which in 1989 formed the basis of the European Parliament's Declaration of Fundamental Rights and Freedoms. This is the predecessor of the EU's fundamental rights charter which has become binding law with the Treaty of Lisbon.” By performing these acts of invoking memes and manipulations, de Gucht counteracts some of the discourse manipulation done by the media and citizens of the EU.

The main issue with ACTA is that the citizens of the EU clearly do not support it, yet the agreement is proceeding through the EU governance process. True, moving the agreement to the Court of Justice can be claimed to be a defensive move on the part of the EU Commission at de Gucht's request, a political maneuver to both give the discourse time to cool and to gain the legitimate backing of the Courts that ACTA is in the spirit of EU freedom of speech laws. Yet, paradoxically, the real threat to freedom of speech is not from ACTA itself; it is from the EU government that continues to ignore the voices of dissent and to reframe the discourse, depriving

the people of the ability to alter the government's plans. In this manner, it is clear that the EU saw the dissenters through protests, or through Twitter. After watching in a surveillance model of discourse collection, the government then addressed the biggest memetic concerns, those pertaining to freedom of speech, through discourse manipulations in government publications and government Twitter posts, as well as by seeking the Court's opinion. In essence, the government manipulated the discourse such that ACTA still exists as a potential EU plurilateral agreement, ignoring the words spoken in the name of free expression by thousands of European citizens.

Chapter 5: Conclusion

Regime Types and Internet Governance

Freedom of speech, as these cases have shown, is not as simple a concept as the West commonly portrays. In America, the term is thrown around carelessly, spoken in a single breath, given barely a second thought. In China, the concept of freedom of speech carries an entirely different meaning due to disparate political history. In the European Union, the citizens of the EU take for granted that they possess complete control over their freedom of speech. This thesis shows that freedom of speech is more complex than we perceive it to be. Freedom of speech is used in common conversation as a construct, another meme in the discourse of power, as we saw in Chapters 3 and 4. More importantly, though, freedom of speech as a governance issue is ultimately in the hands of the government to control, to allow or not allow. It is in the best interest of the government to control speech as much as they can, and it is in the interest of the people to persuade the government to give them as much leeway for speech as possible. However, just because the government allows the people to speak, it does not mean that the people's speech is entirely "free" from governmental framing on the discourse. In this way, freedom of speech is not entirely "free."

The Wenzhou train crash and the SOPA/PIPA and ACTA cases, on the surface, do not seem to share many commonalities. Aside from happening within a year of each other, each example took place in very different political and economic climates under a totalitarian regime, a republic, and a supranational authority. Looking from a bird's-eye view, these cases seem dissimilar. However, when considering the root issue, that of how governments seek to control freedom of speech through the Internet, these three issues suddenly become deeply

interconnected. At the heart of all three lie governments seeking to gain political control of microblogging platforms, pursuing control of discourse in a world where discourses are as mercurial as the Internet medium through which they are disseminated. From these cases, the manner in which the Chinese and Western governments are interacting with the Internet is determined largely by three factors: positive and negative rights, the type of regime the government represents, and the need to maintain governmental oversight of discourse.

Underlying all of these issues is that the Chinese government prefers to emphasize positive rights, while the Western governments prefer to emphasize negative rights. Positive rights are defined as what a government can provide its citizens. Food, shelter, and healthcare are all examples of positive right. China has a long legacy of prioritizing these kinds of rights. From Liu Shaoqi to Mao Zedong, great Chinese political leaders for thousands of years have felt that the ability to provide for ones citizens is central to governance. On the other hand, negative rights have not enjoyed the same consideration under Chinese governments. Negative rights are loosely defined as those rights which the government is prohibited from infringing upon. Freedom of speech is such a negative right, as governments here are prohibited from stopping citizens from speaking their mind. Freedom of religion and assembly, freedom from unwarranted searches and seizures, these are all negative rights. Looking at the Legalism era in Chinese history, continuing through the Maoist crackdowns on political dissent, negative rights have not been considered an important aspect of governance. Even in the modern day, the Chinese government under Hu Jintao further notes in international conferences and academic and political papers that China is focused first on positive rights and secondarily, if at all, on negative rights. The implications of this emphasis on positive over negative rights are that the Chinese government can infringe on freedom of speech, and then explain to its citizens that the

government is doing so in order to provide superior positive rights. The perfect example of this dynamic is the Chinese government explanation of its Internet censorship as a function of its need to deliver improved economic performance and to stop rioting and violence throughout the nation.

In the West, both positive and negative rights are considered central to a person's human rights; however, negative rights are heavily emphasized in the West, especially in comparison with China. Positive rights are doubtlessly valued in Western culture; the Geneva Convention and centuries of political theorists have established that fact. Negative rights are also highly valued; the EU treaties and the US Declaration of Independence, Bill of Rights, and Constitution are all built on the principles of negative and positive rights being integral in the governance process. As standards of living increase in Western nations, positive rights have been fulfilled to greater levels of citizen satisfaction; thus, the attention in governance has shifted to focus more on negative rights. Today, negative rights in the West are considered central to the Western governance process.

The government's theoretical relationship with positive and negative rights impacts its practical relationship with censorship, and thus changes how it governs the Internet. As these case studies have shown, the Chinese government does not try to hide its censorship, while the US and the EU clearly take steps to call their control of speech anything else but censorship. More importantly, all their manipulations on the discourse focus on actively monitoring the discourse, but they do not have the option of silencing internet conversations through censorship unless the safety of the nation can be claimed to be involved. This difference clearly goes back to these countries' relationships with negative rights. The Chinese government does not claim to make negative rights a priority; thus, when confronted with examples of Chinese government

censorship, the government's reply is often framed in terms of the positive rights being gained by censorship, with more safety and a better quality of life being maintained through the regime's control. In the West, censorship has a negative connotation; the EU and the US government cannot simply admit they censor certain material without recourse from its citizens. Typically, as can be seen from the Freedom of Information Act's exceptions, the US government frames censorship as occurring only when citizens' lives are in danger ("US Department of State Information Access Guide"). This, too, is an example of the government using positive rights to explain a violation of negative rights; however, the scope of excuses the US government can make using positive rights is narrower than China, because the US government claims to highly value negative rights. As major proponents of freedom of speech around the world, the EU and the US governments lose face when they are accused of censorship.

Let's take a step back from the rhetoric surrounding censorship and recognize that the EU, the US, and China all engage in active shaping of discourses online. Sometimes, even the EU and US government "censor" citizen speech if it is perceived as compromising the safety of the nation. Complete freedom of access to all information is not an attainable goal in any government; if such a society did exist, that government would have no military secrets, no ability to operate with any degree of secrecy. Given that complete information disclosure is not the goal, the rational understanding of access to information in the US is that the following categories of information must remain secret, while all else is disclosed:

- 1) Classified information for national defense or foreign policy;
- 2) Internal personnel rules and practices;
- 3) Information that is exempt under other laws;

- 4) Trade secrets and confidential business information;
- 5) Inter-agency or intra-agency memoranda or letters that are protected by legal privileges;
- 6) Personnel and medical files;
- 7) Law enforcement records or information;
- 8) Information concerning bank supervision; and
- 9) Geological and geophysical information. ("US Department of State Information Access Guide")

At the World Summit on the Information Society (WSIS) in 2003 and 2005, both the EU and the US affirmed the Declaration of Principles presented. One of the key portions of that document is the section which reads as follows:

We reaffirm, as an essential foundation of the Information Society, and as outlined in Article 19 of the Universal Declaration of Human Rights, that everyone has the right to freedom of opinion and expression; that this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Communication is a fundamental social process, a basic human need and the foundation of all social organization. It is central to the Information Society. Everyone, everywhere should have the opportunity to participate and no one should be excluded from the benefits the Information Society offers.

Thus, both the EU and the US have affirmed the desire to maximize availability to information. However, both the EU and the US have engaged in censorship that infringes on these rights. For examples of this behavior, see Chapter 3. Thus, the existence of censorship is clearly present.

In the cases of the Wenzhou train crash, SOPA, and ACTA, all three look like examples of where the governments failed to control the public, at least on the surface. However, in all three cases, the government was the victor. Sure, the public has not forgotten the conflict. However, the government in all three cases was allowed to pursue its agenda, albeit through another avenue of policymaking. In the case of the Wenzhou train crash, fast-speed trains are still successfully operating in China because the government was able to convince its citizens that safety protocols were initiated post-crash to remedy the situation. To date, no actual changes to the high-speed system have been publicly announced, but there are promises that such changes are in the works. Whether that is true or not, only time will tell. The rhetorical effect, however, has been that the government has placated the media, both national and international, and the netizens of China.

In the case of SOPA, the legislation never passed. However, the US government is still actively pursuing alternatives to SOPA, through CISPA and ACTA. Relative to SOPA, ACTA is receiving little to no media attention in the US a mere two months after SOPA was pulled from Congress. The American public has been publishing fewer and fewer Twitter and Facebook posts relating to ACTA, despite the overlapping issues at stake. In the EU, ACTA is still being actively protested by the people. However, the EU has been able to pursue actions under the premises of ACTA (see the RnBXclusive.com case in Chapter 4), and ACTA avoided being struck down by the European Parliament when de Gucht moved it to the Court of Justice for a ruling. Moreover, as Foucault notes, just because the people are complaining does not mean the people are in control. Foucault's examples of the confession society outlined in *History of Sexuality* makes the converse argument: the more we talk about an issue, the more we freely offer our concerns, the more information we give the government. The White House petition website, We the People,

gives the White House exactly this kind of information, with no need for the government to respond through any direct action (See Chapter 3).

Moreover, these case studies have also shown that governments use freedom of speech more in terms of surveillance than they do as a safety valve. The common misconception about the Chinese government's censorship is that it just silences all dissent of any kind, and only let out a tiny bit of dissent as a "safety valve" of sorts. If that was true, what would be expected in the case of the Wenzhou train crash is that the government would automatically cut off all discourse on the Wenzhou train crash, allowing some discontented posts to leak through, and then to remove all evidence of these posts as time progresses. Moreover, the government would not necessarily respond to these complaints in any concrete fashion. Instead, what was observed in the case of the Wenzhou train crash was that the government allowed for a discourse to develop on the train crash, then removed certain kinds of extremely inflammatory posts. Most importantly, the government's ministers responded directly to safety concerns and the desire for accountability by creating an investigation team to look into the crash and by firing those in management positions surrounding the accident. What this response indicates was that the government was actively watching the comments of the people, through the Fifty Cent Party and the bureaus designed to watch forum and microblog participation. From this surveillance, the government was able to construct a response that was sensitive to citizen concerns, allowing the government to take control of the situation.

In the case of SOPA and ACTA, the Western governments have formally tied themselves to the surveillance model, allowing and encouraging all citizen comments but watching the discourse with intense scrutiny. This allowance for freedom of speech also encourages citizens to give the US and EU governments every opinion they have concerning SOPA and ACTA. As

such, the US Congress was able to deduce quickly that SOPA would cost congressmen and women their re-election if they voted to pass it. Thus, since the bill lost support it was removed from the floor. The White House government, through We the People, was also able to endorse its argument for preventing copyright infringement, and in the meantime, it continues to endorse ACTA.

In the EU, the people are similarly perturbed by ACTA's potential impact on freedom of speech. The governments of the EU have thus far been able to dismiss fears of this sort by saying that ACTA will be going up for discussion at the next WTO meeting, thus there will be a democratic discussion of its principles before it goes into effect. The decision to move ACTA to the Court of Justice was another method of regaining public support before the publically elected members of the European Parliament could vote against it. While the EU claims that ACTA is not currently impacting EU governance, the fact remains that copyright crackdowns have already begun, as seen in the case of RnBxclusive.com which adhered to ACTA's principles. This sort of rhetorical duality is possible because the EU and the US's surveillance of public opinion through the Internet allows for subtle manipulations of the discourse, such that the governments can walk the tightrope between upsetting the citizens of the US and upsetting the corporate lobby in support of SOPA and ACTA.

The implications of this thesis is that the Internet has become the newest medium through which governments must control discourse, and thus freedom of speech, in order to have effective governance in every other facet of the government. Across regime type and geographic location, this principle of control of discourse aptly describes government relations with the Internet. It's not so simple as censorship and free speech; governments have to control discourses, what is and is not said, in order to maintain power. This basic theoretical model was used by

Foucault in the 1960s, before the advent of the Internet. After the Internet's creation, Foucault's panopticon from *Discipline and Punish* explains this surveillance model of governance in society just as well as it did before the Internet's inception. Now, however, the governments of the world are able to use the Internet to penetrate deeper into the daily lives and opinions of their citizens. Moreover, as Foucault describes in *History of Sexuality*, the confessional culture created by governments in the 1800s surrounding sex can aptly describe how these government elicit commentary from its citizens, in order to respond to claims of poor governance with appropriate government measures. These political theories from past eras stand true today.

Freedom of speech in the modern era is not “under attack,” however. Rather, freedom of speech is now and has always been allowed under proviso. This thesis builds on a premise forgotten by the West: freedom of speech is an ideal, but not completely attainable. Governments will have secrets and will control discourse by virtue of their power, and do so in the pursuit of societal and political stability. To have complete freedom of speech would be achievable only under political conditions of anarchy. Successful governance relies on balancing the need for secrecy and control with the need to allow citizens to achieve self-determination. In every country, even China, governance seeks to strike this balance. In the age of the Internet, this is still the goal for governance. The only change is the speed at which this governance must occur and the mechanisms developed to manage this balance. It is in the rapidly firing synapses of this new global network that the future of governance lies, and the speeches and discourse of the future will be shaped in this new realm of cyberspace.

Works Cited

"郑州局出台高铁开通前设备检查管理办法." *人民铁道报*. 15 Oct. 2011. Web. 5 Dec. 2011.

<http://www.china-mor.gov.cn/xwzx/xwfb/201110/t20111015_26091.html>.

"中国网民规模达4.2亿 手机上网用户2.77亿." *新浪科技*. 新浪网, 15 July 2010. Web. 01 Dec.

2011. <<http://tech.sina.com.cn/i/2010-07-15/13354431976.shtml>>.

17 USC. Sec. 107. 2012. Web. 4 Apr 2012. <http://www.law.cornell.edu/uscode/text/17/107>

"A World Without Wikipedia: For SOPA, Websites Threaten a Midnight Blackout." *PBS NewsHour*.

PBS. 17 Jan. 2012. Web. <http://www.youtube.com/watch?v=1lMBcIfI688&feature=related>

"ACTA in UK: 10 years in jail for a download?" Russia Today. Youtube. 3 March 2012. Web.

"ACTA up." *The Economist*. The Economist Newspaper, 11 Feb. 2012. Web. 04 Apr. 2012.

<<http://www.economist.com/node/21547235>>.

"Anti-Counterfeiting Trade Agreement." *Foreign Affairs and International Trade Canada*. 15

Apr. 2011. Web. 04 Apr. 2012. <http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/acta-crc_apr15-2011_eng.pdf>.

"Archive on #SOPA." The Archivist. Mix Online, 6 Nov. 2011. Web. 18 Apr. 2012.

<<http://archivist.visitmix.com/43171014/3?isNew=False>>.

Backer, Larry Catá. "Global Panopticism: States, Corporations, and the Governance Effects of Monitoring Regimes." *Indiana Journal of Global Legal Studies* 15.1 (2008): 101-48. Print.

Borton, James. "Asia Times Online." Asia Times Online. Asia Times Online, 22 July 2004. Web. 18 Apr. 2012. <<http://www.atimes.com/atimes/China/FG22Ad04.html>>.

Botwinick, Nathaniel. "Congress Censors the Internet." National Review Online. National Review, 30 Nov. 2011. Web. 3 Apr. 2012. <<http://www.nationalreview.com/articles/284350/congress-censors-internet-nathaniel-botwinick>>.

Chilton, Paul, and Louis Saussure. *Google Books*. John Benjamin Publishing Company, 2005. Web. 18 Apr. 2012. <<http://books.google.com/>>.

Constitution of the People's Republic of China. People's Daily Online. Web. 04 Apr. 2012. <<http://english.people.com.cn/constitution/constitution.html>>.

De Gucht, Karel. "Anti-counterfeiting Trade Agreement (ACTA) List of Answers by the European Commission to Written Questions by the European Parliament." *European Commission on Trade*. European Union, 1 Jan. 2012. Web. 4 Apr. 2012. <http://trade.ec.europa.eu/doclib/docs/2012/february/tradoc_149102.pdf>.

De Gucht, Karel. "Think before You Tear into ACTA." *European Commission on Trade*.

European Union, Feb. 2012. Web. 4 Apr. 2012.

<http://trade.ec.europa.eu/doclib/docs/2012/march/tradoc_149181.pdf>.

"The European Data Protection Supervisor." *The EDPS*. European Union, 1 Mar. 2012. Web. 18

Apr. 2012. <<http://www.edps.europa.eu/EDPSWEB/edps/EDPS?lang=en>>.

Einhorn, Bruce. "How China's Alibaba Is Surviving and Thriving." *Businessweek*. Bloomberg

Businessweek, 9 Apr. 2009. Web. 11 Apr. 2012.

<http://www.businessweek.com/magazine/content/09_16/b4127059272628.htm>.

"EUR-Lex: Freedom of Speech." *EUR-Lex — Access to European Union Law — Choose Your*

Language. Web. 09 Dec. 2011. <[http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51998IP0582:EN:NOT)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51998IP0582:EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51998IP0582:EN:NOT)>.

Fallows, James. "'The Connection Has Been Reset' - Magazine - The Atlantic." *The Atlantic —*

News and Analysis on Politics, Business, Culture, Technology, National, International,

and Life — TheAtlantic.com. Mar. 2008. Web. 9 Dec. 2011.

<<http://www.theatlantic.com/magazine/archive/2008/03/-ldquo-the-connection-has-been-reset-rdquo/6650/>>.

"First Fatal Crash on Chinese High Speed Line." *Railway Gazette.com*. 25 July 2011. Web. 02 Dec. 2011. <<http://www.railwaygazette.com/nc/news/single-view/view/first-fatal-crash-on-chinese-high-speed-line.html>>.

Fischer, Elisabeth. "China's High-Speed Rail Revolution." *Railway Technology*. Net Resources International, 21 July 2011. Web. 5 Dec. 2011. <<http://www.railway-technology.com/features/feature124824/>>.

"Free Speech - Recent Court Cases, Issues and Articles." *American Civil Liberties Union*. Web. 09 Dec. 2011. <<http://www.aclu.org/free-speech>>.

Foucault, Michel, Alan Sheridan. *The Archaeology of Knowledge*. New York: Pantheon, 1972. Print.

Foucault, Michel. *Discipline and Punish: the Birth of the Prison*. Harmondsworth: Penguin, 1982. Print.

Foucault, Michel. *History of Sexuality, Vol. 1: The Will of Knowledge*. London: Penguin, 1998. Print.

Galperin, Eva. "ACTA Signed by 8 of 11 Countries - Now What?" *Electronic Frontier Foundation*. 10 Oct. 2011. Web. 2 Apr. 2012. <<https://www.eff.org/deeplinks/2011/10/acta-signed-8-members-are-we-doomed-yet>>.

Gandy, Oscar Jr. *The Panoptic Sort: a Political Economy of Personal Information*. Boulder: Westview, 1993. Print.

Gross, Ralph, and Alessandro Acquisti. "Information Revelation and Privacy in Online Social Networks." Carnegie Mellon University. Web. 09 Dec. 2011.
<<http://delivery.acm.org/10.1145/1110000/1102214/p71-gross.pdf?ip=134.173.196.127>>.

Halliday, Josh. "Publishers Make Bid to Close Filesharing Sites." *The Guardian*. Guardian News and Media, 16 Feb. 2012. Web. 04 Apr. 2012.
<<http://www.guardian.co.uk/technology/2012/feb/16/publishers-bid-close-filesharing-sites>>.

Hobbes, Thomas, and A. D. Lindsay. *Leviathan*. London: J.M. Dent & Sons, 1950. Print.

Hopkins, W. Wat. "The Supreme Court Defines the Marketplace of Ideas." *Journalism & Mass Communication Quarterly* 73.1 (1996): 40-52. Web. 03 Dec. 2011.
<<http://www.comm.umd.edu/faculty/tpg/HopkinsWeekSeven.pdf>>.

Hyden, Goran. *Governance and the Study of Politics*. Governance and Politics in Africa, pp. 1-26. Boulder, CO: 1992

Jansen, Jim. "Use of the Internet in Higher-Income Households." Pew Charitable Trusts. 24 Nov. 2010. Web. 08 Apr. 2012. <http://www.pewtrusts.org/our_work_report_detail.aspx?id=62196>.

"Internet Governance: The next Steps." *Europa.eu*. European Union, 29 Sept. 2009. Web. 18 Apr. 2012.

<http://europa.eu/legislation_summaries/information_society/internet/si0012_en.htm>.

Joseph, William A. *Politics in China*. Oxford: Oxford UP, 2010. Print. \

"Law, Philosophy Of [Internet Encyclopedia of Philosophy]." *Internet Encyclopedia of Philosophy*. Web. 09 Dec. 2011. <<http://www.iep.utm.edu/law-phil/>>.

Lenhart, Amanda, Mary Madden, Aaron Smith, Kristen Purcell, Kathryn Zickuhr, and Lee Rainie. "Teens, Kindness and Cruelty on Social Network Sites." [Http://www.pewtrusts.org/](http://www.pewtrusts.org/). Pew Charitable Trusts, 9 Nov. 2011. Web. 12 Jan. 2012.
<http://www.pewtrusts.org/our_work_report_detail.aspx?id=85899366261&category=52>.

Leonard, Klienrock. "Personal History/Biography: The Birth of the Internet." Personal History. University of California, Los Angeles, 7 June 2007. Web. 08 Apr. 2012.
<http://www.lk.cs.ucla.edu/personal_history.html>.

Liang, Bin, and Hong Lu. "Internet Development, Censorship, and Cyber Crimes in China." *Journal of Contemporary Criminal Justice*. Feb. 2010. Web. 10 Dec. 2011.
<<http://ccj.sagepub.com/content/26/1/103.short?rss=1>>.

Lipschultz, Jeremy Harris. "Broadcast and Internet Indecency ... - Jeremy Harris Lipschultz."

Google Books. Web. 09 Dec. 2011.

<<http://books.google.com/books?id=wMkiWzEaWv0C>>.

"NBCUniversal-Rick Cotton." NBCUniversal Corporate. NBCUniversal. Web. 08 Apr. 2012.

<<http://www.nbcuni.com/corporate/management/senior-corporate-executives/nbc-universal/richard-cotton>>.

Mill, John Stuart. *On Liberty*. Ed. Michael Mathias. New York: Pearson Longman, 2007. Print.

"MSNBC CreativeAmerica.org SOPA Ad Original." MSNBC [Commercial]. *MSNBC*. 19 Jan 2012. Web.

<http://www.youtube.com/watch?v=N9Cq6KNlugc>

"An Overview of Home Internet Access in the U.S." Nielsen Wire. The Nielsen Company, Dec. 2008.

Web. 12 Jan. 2012. <<http://blog.nielsen.com/nielsenwire/wp-content/uploads/2009/03/overview-of-home-internet-access-in-the-us-jan-6.pdf>>.

Norris, Pippa. "Representation and the Democratic Deficit." *European Journal of Political Research* 32.2 (1997): 273-82. Print.

"Opinion of the European Data Protection Supervisor on the Current Negotiations by the

European Union of an Anti-Counterfeiting Trade Agreement (ACTA)." *Website for the European Data Protection Supervisor*. European Union, 5 June 2010. Web. 23 Mar. 2012.

<http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2010/10-02-22_ACTA_EN.pdf>.

"People & Events: Prelude to the Red Scare: The Espionage and Sedition Acts." PBS. PBS, 3

Nov. 2004. Web. 4 Apr. 2012.

<http://www.pbs.org/wgbh/amex/goldman/peopleevents/e_redscare.html>.

"Prior Restraint." TheFreeDictionary.com. Web. 08 Apr. 2012. <[http://legal-](http://legal-dictionary.thefreedictionary.com/Prior%20Restraint%20)

[dictionary.thefreedictionary.com/Prior%20Restraint%20](http://legal-dictionary.thefreedictionary.com/Prior%20Restraint%20)>.

Rousseau, Jean-Jacques. *The Social Contract and Other Later Political Writings*. Ed. Victor

Gourevitch. New York: Cambridge UP, 1997. Print.

SOPA Blackout Screenshots Including Google, Reddit, Wikipedia

"SOPA and PIPA." KhanAcademy.org. Youtube. 18 Jan. 2012. Web.

"State of the Media: Social Media Report." Nielsen.com. NM Incite, Fall 2011. Web. 14 Jan. 2012.

<http://cn.nielsen.com/documents/Nielsen-Social-Media-Report_FINAL_090911.pdf>.

Stop Online Piracy Act, H.R. 3261, 112 Cong., US House of Representatives Committee on the Judiciary

1-77 (2011). Print.

"US Department of State Information Access Guide." US Department of State Website. Office of

Information Programs and Services. Web. 4 Apr. 2012.

<<http://www.state.gov/documents/organization/128321.pdf>>.

What Is ACTA. Youtube. Anonymous, 25 Jan. 2012. Web. 23 Mar. 2012.

<<http://www.youtube.com/watch?v=FOOhccwY74Y>>.

Yang, Guobin. *The Power of the Internet in China: Citizen Activism Online*. New York: Columbia UP, 2009. Print.