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EXPORTING CENSORSHIP: The Chinese Communist Party Tries to Control Global Speech about China

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NSI LAW AND POLICY PAPER

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THIS NSI LAW AND POLICY PAPER:

1

SUMMARIZES the Chinese Communist Party's effort to export its system of censorship to control how the rest of the world speaks and thinks about China.

2

DETAILS how China has been using economic pressures and extraterritorial laws to suppress and punish unfavorable narratives about China around the world.

3

IDENTIFIES key elements of the Chinese Communist Party's campaign to subvert free speech abroad and censor narratives inconsistent with its ambition to build a new global order with China at the center.

4

PROPOSES actionable steps to raise awareness of and to counter the Chinese Communist Party's campaign to censor narratives that do not support China's geopolitical ambition.



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BACKGROUND

CHINA AIMS TO RESHAPE THE GLOBAL “OPERATING SYSTEM” AROUND ITSELF

- **Chinese geopolitical ambition.** The Chinese Communist Party (CCP) aims to establish China as the preeminent, rule- and norm-setting power in the international system, and to change the “operating system” of democratic, rule-of-law societies to forms more congenial to Chinese global dominance.¹
- **U.S. warnings.** U.S. officials have warned for some time that China aims “to shape a world consistent with [its] authoritarian model—gaining veto authority over other nations’ economic, diplomatic, and security decisions.”²
- **Global censorship as an enabler for global power.** China seeks to ensure and consolidate its “return” to a central role in the world – a role CCP leaders say China held until Western powers unjustly seized it from China during a “Century of Humiliation” beginning in the 1800s. The CCP feels it necessary to keep others from expressing or communicating unfavorable views of China and the “national rejuvenation” that the CCP has been pursuing in hopes of returning to that centrality.³

THE CCP AIMS TO CONTROL GLOBAL SPEECH ABOUT CHINA

- **Seeking to control global narratives.** CCP officials regard it as their responsibility to control other countries’ narratives about China as part of its efforts to ensure global acquiescence in China’s seizure of the central role in the international system that they believe to be its birthright.⁴
- **China’s “anaconda in the chandelier” censorship strategy.** The CCP’s censorship strategy is one that scholar Perry Link once likened to living under an “anaconda in the chandelier.”⁵ In such a system, it is “simultaneously very clear that the beast will drop on you if you offend it but notably unclear ... just what will give offense.” This naturally creates powerful incentives for prudential self-censorship.⁶ It incentivizes anybody living under the chandelier to err on the side of pro-CCP caution.



CHINA EXPORTS CENSORSHIP

- **Inducing self-censorship.** Domestic Chinese censorship works by inducing self-censorship. CCP guidelines are drafted in general and somewhat vague terms, rather than giving clear specifics, instead broadly signaling what cannot be said.⁷ The public knows to err on the side of caution, because Chinese authorities sometimes inflict draconian punishments on people who say too much.
- **Pressure tactics to control speech.** Controlling how other countries, and people and institutions in other countries, speak about China is a key objective for the CCP, and, as China's power has grown in the world, the CCP has turned increasingly to economic leverage and extraterritorial legal instruments to export Party censorship and suppress and punish unfavorable narratives about China and the CCP.
- **Exporting the “anaconda.”** Today, the CCP has been stepping up its efforts to place the rest of the world under the “anaconda in the chandelier.” It seeks to shape how China, the CCP, and Chinese policies are depicted and discussed, not just among Chinese citizens living abroad, but increasingly also in Western media, academic settings, and even legal proceedings.





KEY ISSUES AT STAKE



HOW CHINA USES PRESSURE TO EXPORT CENSORSHIP

- **A significant worldwide threat.** The CCP is working to export worldwide its “anaconda in the chandelier” model of censorship: it is signaling that it will punish and penalize those who do not toe the CCP’s line in speaking or thinking about China. This effort is pursued as part of a long-term campaign to place CCP authoritarianism in a dominant position in the international system. It is urgent for leaders and society at large in democratic countries to recognize the nature and extent of this threat.
- **Official complaints.** For some time, Chinese diplomats have made a practice of lodging official complaints and demanding that stories and points of view they dislike be removed from public fora in other countries, even in Western countries that protect freedom of speech. Examples are found of these complaints by China throughout the world:
 - As early as 2012, Chinese diplomats demanded that a small town in Oregon destroy a privately-painted wall mural supporting independence for Tibet and Taiwan.⁸
 - China has filed formal complaints with Australian officials over an alleged “lack of balance” in an academic yearbook discussing China.⁹
 - Chinese officials have complained repeatedly for decades about the content of Japanese history textbooks, which they demand be rewritten to CCP specifications.¹⁰
- **Economic and professional punishment.** It has become routine for Chinese officials to use economic pressure to coerce foreign entities into following CCP guidance about what may (and may not) be said about China.¹¹
 - Western academics studying China who might say or publish things the Party dislikes refrain from “engag[ing] with anything overly political relating to the Chinese State,” out of concern that China will deny visas and prevent them from doing research there.¹²
 - Celebrities such as John Cena and professional sports organizations including the NBA avoid saying disfavored things, or they issue public retractions out of fear that China will subject them to boycotts.¹³
 - Western media that publish stories embarrassing to the CCP are harassed or denied access to China.¹⁴
 - Western movies are edited to comply with CCP dictates, examples including the editing out of the Taiwanese and Japanese flags that make incidental appearances in Tom Cruise’s movie *Top Gun*;¹⁵ and evidence suggests businesses even fire employees for criticizing CCP policies,¹⁶ all out of fear of exclusion from the Chinese market.



- **Legal penalties.** In 2020, the Chinese National People’s Congress passed a new “Hong Kong National Security Law,” Article 38 of which imposes criminal punishment for political activity both within China and in other countries. Article 38 “effectively applies criminal penalties for vague political offenses to anyone, anywhere in the world, regardless of whether they have a substantial connection to Hong Kong.”¹⁷
 - Chinese officials have already made clear that they consider street protests outside the Chinese Embassy in London to be violations of the new Hong Kong law. Under its auspices, Hong Kong police have also issued an arrest warrant for Samuel Chu, a U.S. citizen living in the United States, for “collusion with a foreign government” — that is, with the United States of America.¹⁸
 - In 2021, a new regulation from China’s Ministry of Commerce also makes it unlawful for any company to comply with any sanctions put in place by the United States related to China. That is to say, Chinese law now prohibits companies from respecting U.S. laws such as those that bar companies from contributing to Chinese human rights violations in Xinjiang.¹⁹
- **Digital surveillance.** Recent reports detail how Chinese officials are extending their “internet dragnet to unmask and silence those who criticize the country on Twitter, Facebook and other international social media”²⁰ as the CCP “turn[s] a major part of its internal Internet data surveillance network outward, mining Western social media, including Facebook and Twitter” in order to “equip its government agencies, military and police with information on foreign targets.”²¹ There is also evidence that an additional purpose of China’s expanding worldwide Internet surveillance and data-mining is to stockpile data in anticipation of the day when advanced computing enables analysis of such data to unlock even more effective methods of social control.²²
- **Building a “global anaconda.”** The net effect of these efforts is to export the kind of “anaconda in the chandelier” environment that CCP censors have imposed within China itself. As one U.S. professor noted in analyzing recent changes in China’s extraterritorial laws, the point of these laws isn’t directly to control or punish all China-related speech everywhere but rather to use the threat of coercive pressures “to put the fear of God into all China critics the world over.”²³ The CCP, in other words, aims to learn how different societies react to different stimuli, including threats and rewards, so as to secure the Party’s position even more effectively in the future: it aims to make China’s “global anaconda” as efficient and effective as possible, everywhere.²⁴
 - So far, in response to the “rock” presented by China’s extraterritorialization of its censorship-promoting “anaconda in the chandelier,” the rest of the world presents merely a “soft place.”
 - Even democratic, rule-of-law countries that claim to prize freedom of speech and debate as a foundation of their political and legal systems are vulnerable to attack and manipulation by China under the People’s Liberation Army concept of the “three warfares”: psychological warfare, public opinion warfare, and legal warfare.²⁵
 - China’s threats cast a wide shadow and threaten real consequences; to date, any countervailing incentives to resist those threats have been meagre at best. More must be done to prevent China’s global campaign against free speech from succeeding.



CHINA'S SANCTIONS IN ACTION: THREE EXAMPLES

- **Sanctions against U.S. officials.** On January 20, 2021, the PRC announced sanctions against 28 persons, named and unnamed, then or recently serving in the Trump Administration, including the then-Secretary of State and National Security Adviser, banning them – or their associates — from entering or doing business with China.²⁶ This declaration added to “the rapidly expanding list of Chinese sanctions against U.S. personnel and entities, including several U.S. lawmakers and NGOs” as China implements its “grand ambition to enforce its law outside its own borders.”²⁷ The aim is clearly to influence *future* actual or would-be U.S. officials. The CCP’s message: offend us and you’ll never be able to do business in China — nor will your business associates, law partners, or other colleagues.
- **Sanctions against Lithuania and Australia.** After Lithuania allowed Taiwan to open a representative office in its capital, Vilnius, under the title “Taiwan” — a facility that some described as a de facto embassy²⁸ — China responded by imposing a customs boycott against the Baltic country, immediately delisting Lithuania from the website of the Chinese Customs Ministry, and thus effectively prohibiting Chinese exporters from clearing any cargo for shipment to that country.²⁹ China also sanctioned a wide range of Australian goods and services in response to public statements by the government criticizing China for blocking investigations into the origins of the COVID-19 pandemic³⁰ and after Canberra had rejected a list of 14 political demands handed to it by Chinese officials.³¹ The message was clear here as well: even if you are a sovereign government freely elected and responsible to your people, question the CCP’s narrative of China and affront the Party’s sensibilities at your peril.
- **Sanctions against Western human rights lawyers.** After a group of British lawyers wrote about Chinese human rights abuses and genocide against Muslim Uighur populations in Xinjiang, the Chinese government imposed sanctions on prominent London attorneys — as well as five British Members of Parliament (MPs), two members of the House of Lords, an academic, and “several China-focused groups they lead.”³² In response, some high-profile lawyers quit, and removed website references to the legal opinion criticizing China.³³ Another message was thus sent, and apparently received: the legal profession had best think twice before expressing legal opinions or giving clients advice that would displease the Chinese Communist Party. So much for the rule of law.³⁴



ACTIONABLE RECOMMENDATIONS



1 IMPROVE SITUATIONAL AWARENESS AND FOSTER PUBLIC AWARENESS.

Western leaders, including those in government, academia, media, industry, and civil society, should do more to track and understand the myriad ways in which China exerts influence upon foreign media, academic, and political discourse, how it induces or coerces self-censorship abroad, and how such efforts are deeply corrosive to democratic debate and accountability, to academic freedom, and to the soundness and integrity of decision-making throughout society. Scholars, journalists, and government officials, including institutions such as the U.S.-China Economic and Security Review Commission (USCC), should investigate and publicize the pervasiveness of the problem and make countering it a key public policy objective. Heightening awareness of such threats is an essential first step to meeting them, and to preserving our rights and freedoms and the integrity of our institutions in the face of CCP bullying. Among various specific steps that could be taken in these regards might be:

- The U.S. State Department, led by the Under Secretaries for Public Diplomacy, Economic Growth, and Democracy and Human Rights should make combating CCP global censorship a key element of U.S. diplomacy, and should work with U.S. partners and allies to develop coordinated response plans pursuant to which they would work collectively to support and assist countries facing such Chinese bullying and censorship pressures.
- The State Department's Global Engagement Center (GEC) – pursuant to its mandate “[t]o direct, lead, synchronize, integrate, and coordinate efforts of the Federal Government to recognize, understand, expose, and counter foreign state and non-state propaganda and disinformation efforts aimed at undermining or influencing the policies, security, or stability of the United States, its allies, and partner nations”³⁵ – should track the CCP's global censorship campaign and maintain a publicly-accessible “Chinese Global Censorship Tracker” webpage and “dashboard”-type interface that would enable anyone in the world to follow the CCP's campaign and understand its scope and focus.
- Subsection (c)(2)(J) of the USCC's Charter³⁶ should be amended to require that the Commission's annual report to Congress include coverage of the nature and implications not merely of speech restrictions inside China but also Beijing's worldwide campaign to export censorship and skew global narratives in ways favorable to the CCP regime.
- The U.S. Department of Education should require American educational institutions accepting federal assistance to track reports of pressures against or harassment of students, faculty, researchers, or other persons on account of speech, scholarship, or other public positions disfavored by the CCP, and should withhold support from institutions that fail to protect their educational community from such coercion.

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- U.S. Government institutions that support scientific and other research – including the National Science Foundation and the Department of Energy’s Office of Science – should similarly take steps to protect the research community against Beijing’s censorship campaign by making it a condition of federal research funding that findings and conclusions not be amended or adjusted in any way in response to any complaints or pressures that do not relate specifically and exclusively to the strength and integrity of the objective scientific evidence and argument therein, and should bar any institutions found to have made such changes from receiving federal funds in the future.

2 IDENTIFY AND CHALLENGE.

Prominent individuals and institutions that have chosen to change their public views and actions in response to CCP pressures should be identified and challenged to explain themselves – to the public, to their trustees or shareholders, to their customers, to their students, and to their voters. Accountability is key: journalists and scholars can track and publicize those who kowtow in the face of CCP pressure, as well as those willing to stand up to it. By design, there is no easy way to identify quiet, preemptive self-censorship of the type China is encouraging, but the phenomenon should both be better and more widely understood, and societies that value freedom and rule of law should make sure that any in their midst who do choose to self-censor must do so, in effect, in public view.

3 ENCOURAGE RESILIENCE.

Institutions should push back against the bullying tactics of China’s would-be global censors, and should spotlight and reward the moral courage involved in resisting such pressures. Universities should defend the intellectual freedom of their scholars and students, and refuse to enter into partnerships with those who attempt such censorship. Media organizations should defend freedom of their journalists and repay censorship pressures with hard-hitting investigative journalism about CCP global censorship. Businesses should make their resistance to CCP bullying a selling point in marketing and branding themselves as responsible members of society—just as they already do with social justice and environmental causes—and investors and customers should similarly reward those that do. Legal groups and civil society organizations should help those facing oppressive measures such as the new Hong Kong National Security Law. Voters should reward political leaders who stand up to such measures and assist those suffering the consequences of refusing to let the CCP dictate their views and speech. Among various specific steps that could be taken along these lines might be:

- The U.S. Department of Education should lead an initiative to encourage American institutions of higher education, research institutes, professional associations, and other such groups to agree to a “Joint Statement of Principles on Intellectual, Educational, and Scientific Integrity,” under which they would pledge to resist any efforts to restrict the exercise of free speech, scholarly writings, and scientific research on the basis of pressures or political complaints such as those from the CCP, and to provide transparency about funding from and relationships with institutions in China.



- Congress should consider the creation of a regime of liability protection and tortious recompense for U.S. citizens or companies suffering economic harm as a result of CCP-instigated pressures in retaliation for disfavored speech.
- The Department of Justice should establish mechanisms for (and funding of) legal assistance and support to those who face threats against them or family members as a result of the exercise of free speech disfavored by the CCP. Private sector law firms should also be encouraged to make legal representation for such persons an important part of their pro bono practice.
- Professional bodies, including the American Bar Association (ABA) and the bars of the various states, should consider amending ethics rules so as to dissuade professionals from refusing to represent or serve clients in response to CCP pressure.

4 REVIEW LEGACY STATUTES FOR POSSIBLE UPDATING.

To address foreign efforts to influence politics and public opinion in the United States, Congress passed laws years ago requiring disclosure by U.S. persons working in such capacities for foreign powers, the lead example being the Foreign Agents Registration Act (FARA). FARA was adopted in 1937 to put the “spotlight of pitiless publicity” on “pernicious propaganda” by foreign governments.³⁷ As we have seen, however, the challenge the democracies of the world face today goes beyond just active propaganda, to include the CCP’s efforts to induce passive, quiet self-censorship about China. Congress should thus explore the possibility of updating FARA – which was last overhauled in 1966 – to cover not just those who issue propaganda but also those who actively suppress the free speech of others on behalf of a foreign power.³⁸

5 DON’T LEAVE A VOID.

To the degree that censors in Beijing do manage to cow some entities in the democratic world into silence about CCP abuses and the nature and policies of the CCP regime, moreover, Western institutions should step into the breach by doing more to draw attention to what authorities in Beijing seek to suppress around the world. This should be the responsibility of all good journalists, but especially those non-profit organs that receive support from the U.S. Government, such as Radio Free Asia and Radio Free Europe/Radio Liberty – organs under the U.S. Agency for Global Media (USAGM) which, while enjoying considerable journalistic and editorial independence, are nonetheless also expected to get “guidance on foreign policy issues” from the U.S. Secretary of State and ensure that their broadcasting is “consistent with the broad foreign policy objectives of the United States.”³⁹ At the very least, the institutions that report to the USAGM should draw attention, in their own journalism, to speech that the Chinese Communist Party seeks to suppress around the world. China’s efforts to bully someone into not saying something anywhere in the world should make that “something” a subject of greater coverage and attention than before.

6**EXPLORE COUNTER-SANCTIONS AND COUNTER-COUNTER-SANCTIONS.**

Western governments, including the United States, are no strangers to using sanctions to achieve important public policy goals such as penalizing human rights abuses, blocking financial support to terrorist organizations, interdicting drug traffickers, and preventing the proliferation of weapons of mass destruction.⁴⁰ As China increasingly uses its own sanctions (as well as counter-sanctions in response to human rights pressures) in an effort to control political discourse around the world, Western leaders should recognize that censorship is now becoming one of China's most noteworthy exports – and they should identify that censorship itself as an activity potentially punishable by sanctions, including by adopting a framework that would allow the implementation of measures on a discretionary basis against those who knowingly facilitate or help enforce CCP dictates.

- The President should declare the CCP's global censorship campaign to present an “economic emergency” under the International Emergency Economic Powers Act (IEEPA),⁴¹ and should provide by Executive Order for the possibility of imposing sanctions on any non-U.S. person or entity that knowingly facilitates, supports, implements, or otherwise contributes to such censorship efforts. Under this framework, the Treasury Department's Office of Foreign Assets Control (OFAC) would be empowered to impose sanctions on such persons or entities, as well as potential “secondary” sanctions on those who engage with those subject to such U.S. sanctions.
- The Department of Commerce should track CCP global censorship campaigns and add to its national security export controls “Entity List” any foreign company found to have assisted or participated in CCP efforts to suppress disfavored speech outside China.
- The U.S. State Department should designate an official to coordinate with allies and partners on the most effective use of sanctions and counter-sanctions to blunt China's efforts to export CCP censorship.

7**MOBILIZE UNDERUTILIZED U.S. INSTITUTIONAL CAPABILITIES AGAINST CCP CENSORSHIP.**

Fighting CCP global censorship should be a priority for U.S. Government institutions in many arenas, including in the work of independent commissions such as the U.S. International Trade Commission (ITC),⁴² which—at the urging of a prominent Senator—has launched a Section 332 probe of censorship as a non-tariff barrier to trade.⁴³ Institutions such as the ITC should be staffed and resourced to understand and take appropriate regulatory action based upon how China's export of censorship may affect their regulatory, advisory, or adjudicative missions.



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ENDNOTES

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The views that Drs. Ford and Grant express herein are entirely their own and do not necessarily represent those of anyone else.

1 Christopher A. Ford, Assistant Secretary of State, Bureau of International Security and Nonproliferation, Testimony to the U.S.-China Economic and Security Review Commission (June 20, 2019), *available at* <https://2017-2021.state.gov/technology-and-power-in-chinas-geopolitical-ambitions/index.html>

2 *Summary of the National Defense Strategy of the United States of America* (Washington, D.C.: 2018), at 2, *available at* <https://dod.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf>.

3 This is in part simply the job of the CCP's modern propaganda apparatus, which is fixated upon preserving the Party's pretensions to benevolent virtue at home and principled moralism abroad despite all evidence to the contrary, but also likely has roots in the ancient Confucian idea of the "rectification of names." "Sino-centrism for the Information Age," *supra*.

4 See, e.g., Christopher A. Ford, "Sinocentrism for the Information Age: Comments on the 4th Xiangshan Forum," *New Paradigms Forum* website (January 13, 2013), *available at* <https://www.newparadigmsforum.com/p1498>; Christopher A. Ford, *China Looks at the West: Identity, Global Ambitions, and the Future of Sino-American Relations* (University Press of Kentucky, 2015), at 455-64.

5 Quoted by Evan Osnos, *Age of Ambition: Chasing Fortune, Truth, and Faith in the New China* (New York: Farrar, Strauss, & Giroux, 2014), at 127.

6 *China Looks at the West*, *supra*, at 24.

7 Indeed, it can apparently even be *dangerous* to know *precisely* what it is that CCP authorities wish to prohibit, as Chinese citizens have been detained for things such as "inciting subversion" merely because they revealed the contents of government propaganda directives about what can (or cannot) be said about sensitive topics. See, e.g., "Plus Ça Change," *The Economist* (September 8, 2012); Evan Osnos, *Age of Ambition: Chasing Fortune, Truth, and Faith in the New China* (New York: Farrar Straus & Giroux, 2014), at 31.

8 See, e.g., Chris Lehman, "Why Does China Want a Mural in Oregon Destroyed?" *NPR.com* (September 19, 2012), *available at* <https://www.npr.org/2012/09/19/161343395/why-does-china-want-a-mural-in-oregon-destroyed>.

9 Bennett Hall, "Mural draws fire from China," *Corvallis Gazette-Times*, (September 8, 2012), *available at* https://www.gazettetimes.com/news/local/mural-draws-fire-from-china/article_22529ace-f94a-11e1-bf2a-0019bb2963f4.html; John Garnaut, "China sees red over uni paper," *The Age* (January 4, 2013), *available at* <https://www.theage.com.au/national/china-sees-red-over-uni-paper-20130103-2c78j.html#ixzz2GxH6oy7f>.

10 See, e.g., "China demands Japan stop rewriting textbooks," *UPI* (August 6, 1982), *available at* <https://www.upi.com/Archives/1982/08/06/China-demands-Japan-stop-rewriting-textbooks/7445397454400/>; Hu Xiao & Song Wenwei, "Japanese textbook distorts history, stirs fury," *China Daily* (April 6, 2005), *available at* https://www.chinadaily.com.cn/english/doc/2005-04/06/content_431575.htm.

11 See, e.g., Sarah Cook, "Analysis: Through Hong Kong, Beijing Funnel Its Repression to the World," *Freedom House China Media Bulletin*, no. 146 (July 2020), *available at* <https://freedomhouse.org/report/china-media-bulletin/2020/beijings-extraterritorial-reach-hong-kong-national-security-law>.

12 See, e.g., Isaac Stone Fish, "The Other Political Correctness: Why are America's elite universities censoring themselves on China?" *The New Republic* (September 14, 2018) (quoting unnamed graduate student at a "top American university"), *available at* <https://newrepublic.com/article/150476/american-elite-universities-selfcensorship-china>; James A. Millward, "Being Blacklisted by China, and What Can Be Learned From It," *Medium.com* (December 28, 2017), *available at* <https://jimmillward.medium.com/being-blacklisted-by-china-and-what-can-be-learned-from-it-faf05eb8e1e2>.

13 See, e.g., Daniel Victor, "John Cena Apologizes to China for Calling Taiwan a Country," *New York Times* (May 25, 2021), *available at* <https://www.nytimes.com/2021/05/25/world/asia/john-cena-taiwan-apology.html>; Adam Withnall, "NBA in groveling apology after China suspends broadcasts of Houston Rockets games over Hong Kong 'freedom' Tweet," *The Independent* (October 7, 2019), *available at* <https://www.independent.co.uk/news/world/asia/houston-rockets-hong-kong-protests-china-nba-tencent-apology-twitter-a9146211.html>.

14 See, e.g., "China's Treatment of Foreign Journalists," roundtable before the Congressional-Executive Commission on China, 113th Congress, 1st Session (December 11, 2013), *available at* <https://www.govinfo.gov/content/pkg/CHRG-113hhrg86658/html/CHRG-113hhrg86658.htm>; PEN America, "Darkened Screen: Constraints on Foreign Journalists in China" (September 22, 2016), *available at* https://pen.org/sites/default/files/PEN_foreign_journalists_report_FINAL_online%5B1%5D.pdf.

15 See, e.g., James Griffiths, "The rise of the Chinese Communist Party-approved blockbuster," *CNN* (September 30, 2019), *available at* <https://www.cnn.com/style/article/china-movie-censorship-communist-party-intl-hnk/index.html>; Taylor Shortall, "Hollywood's Red Dawn: China's Restrictions on American Film," *Business, Entrepreneurship, & Tax Law Review*, vol. 2, no. 1 (2018), *available at* <https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=1032&context=betr>; Paul Bond, "Hollywood Has Long Played by China's Rules—Will a New Cold War Derail That?" *Newsweek* (July 20, 2020); *available at* <https://www.newsweek.com/hollywood-has-long-played-chinas-rules-will-new-cold-war-derail-that-1518947>; Paul Farhi, "Dalai Lama Film Threatens Disney Role in China," *Washington Post* (November 27, 1996), *available at* <https://www.washingtonpost.com/archive/lifestyle/1996/11/27/dalai-lama-film-threatens-disney-role-in-china/c820cc8f-a369-4865-ae8d-8e820aea37f7/>.

16 See, e.g., Michael Schumann, "Angering China Can Now Get You Fired," *The Atlantic* (August 27, 2019), *available at* <https://www.theatlantic.com/international/archive/2019/08/beijing-pressure-hong-kong-companies/596869/>; Shunsuke Tabeta, "Beijing slams 7-Eleven for labeling Taiwan a country on website," *Nikkei Asia* (January 7, 2022), *available at* <https://asia.nikkei.com/Business/Retail/Beijing-slams-7-Eleven-for-labeling-Taiwan-a-country-on-website>; Miao Yu, "Fired for Liking a Tweet on Tibet, U.S. Worker Feels China's Reach," *Voice of America* (March 31, 2018), *available at* <https://www.voanews.com/a/fired-for-liking-a-tweet-tibet-us-worker-feels-chinas-reach/4325196.html>; "U.S. Airlines are Editing Their Websites to Remove Taiwan's Name at China's Request," *Time* (July 25, 2018), *available at* <https://time.com/5348666/airlines-websites-taiwan-china/>; Alex J. Rouhandeh, "Amazon Removed Reviews of Xi Jinping's Book on Orders From Beijing: Report," *Newsweek* (December 17, 2021), *available at* <https://www.newsweek.com/amazon-removed-reviews-xi-jinpings-book-orders-beijing-report-1660795>.

17 Cook, *supra*. As one New York-based human rights lawyer has observed, the new law "literally applies to every single person on the planet." Allen-Ebrahimian,

supra (quoting Wang Minyao).

18 Samuel Chu, "Why is China Coming After Americans Like Me in the U.S.?" *New York Times* (August 10, 2020), available at <https://www.nytimes.com/2020/08/10/opinion/china-hong-kong-arrest.html>; see also "China's Ambition of Extraterritorial Jurisdiction and the American Response," *Columbia Journal of Transnational Law* (March 4, 2021) (discussing Chu case), available at <https://www.jtl.columbia.edu/bulletin-blog/chinas-ambition-of-extraterritorial-jurisdiction-and-the-american-response>. (Notably, this article had to be written anonymously, by a "staff member" of the journal, for the author apparently feared retribution.) See also Thomas D. Grant, "Rescission of the Autonomy of Hong Kong," forthcoming (2022) in *Chinese (Taiwan) Yearbook of International Law and Affairs*.

19 People's Republic of China, Ministry of Commerce, "MOFCOM Order No. 1 of 2021 on Rules Counteracting Unjustified Extra-Territorial Application of Foreign Legislation and Other Measures" (2021), available at <http://english.mofcom.gov.cn/article/policyrelease/announcement/202101/20210103029708.shtml>; see generally Amy Qin, "China's New Rules Could Hit U.S. Firms and Send a Message to Biden," *New York Times* (January 9, 2021), available at <https://www.nytimes.com/2021/01/09/business/china-rules-trump-biden-sanctions.html>.

20 Muiy Xiao & Paul Mozur, "A Digital Manhunt: How Chinese Police Track Critics on Twitter and Facebook," *New York Times*, (December 31, 2021), available at <https://www.nytimes.com/2021/12/31/business/china-internet-police-twitter.html>.

21 Cate Cadell, "China harvests masses of data on Western targets, documents show," *Washington Post* (January 2, 2021), available at https://www.washingtonpost.com/national-security/china-harvests-masses-of-data-on-western-targets-documents-show/2021/12/31/3981ce9c-538e-11ec-8927-c396fa861a71_story.html.

22 See Anna Mitchell & Larry Diamond, "China's Surveillance State Should Scare Everyone," *The Atlantic* (February 2, 2018), available at <https://www.theatlantic.com/international/archive/2018/02/china-surveillance/552203/>.

23 Bethany Allen-Ebrahimian, "With new security law, China outlaws global activism," *Axios* (July 7, 2020) (quoting George Washington University professor Donald Clarke), available at <https://www.axios.com/china-hong-kong-law-global-activism-ff1ea6d1-0589-4a71-a462-eda5bea3f78f.html>.

24 See, e.g., Camille Boullenois, "China's Data Strategy: Creating a state-led market," (October 6, 2021) ("various [PRC] government agencies ... are pushing for increasing data collection on the population so that they can better oversee and control citizens' and companies' behaviour"), available at <https://www.iss.europa.eu/content/chinas-data-strategy>; see also Dahlia Peterson, "How China harnesses data fusion to make sense of surveillance data," *Brookings Tech Stream* (September 23, 2021), available at <https://www.brookings.edu/techstream/how-china-harnesses-data-fusion-to-make-sense-of-surveillance-data/>.

25 See, e.g., U.S. Department of Defense, *Military and Security Developments Involving the People's Republic of China 2021: Annual Report to Congress* (Washington, D.C.: DoD, 2021), at 65, available at <https://media.defense.gov/2021/Nov/03/2002885874/-1/-1/0/2021-CMPR-FINAL.PDF>; see also Dean Cheng, *Cyber Dragon: Inside China's Information Warfare and Cyber Operations* (Santa Barbara, California: Praeger, 2017), at 40-42 & 45 (explaining "three warfares (*san zhan*)" concept in Chinese military writings).

26 People's Republic of China, *Foreign Ministry Spokesperson Announces Sanctions on Pompeo and Others*, press release (January 20, 2021), available at https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1847554.shtml.

27 "China's Ambition of Extraterritorial Jurisdiction," *supra*. x`

28 See, e.g., "China condemns s opening of Taiwan office in Lithuania as 'egregious act'. De facto embassy opening in Vilnius defies pressure from Beijing," *The Guardian* (Nov. 18, 2021), available at <https://www.theguardian.com/world/2021/nov/19/china-condemns-opening-of-taiwan-office-in-lithuania-as-egregious-act>

29 See, e.g., Michael Smith & Hans van Leeuwen, "Lithuania shows the world China's 'nuclear option' on trade," *Financial Review* (December 9, 2021), available at <https://www.afr.com/world/asia/lithuania-shows-the-world-china-s-nuclear-option-on-trade-20211208-p59g0n>.

30 See, e.g., Stephen Dziedzic, "Chinese official declares Beijing has targeted Australian goods as economic punishment," *ABC News* (July 7, 2021), available at <https://www.abc.net.au/news/2021-07-07/australia-china-trade-tensions-official-economic-punishment/100273964>; "China hits Australian industries with economic sanctions amid souring ties," *Business Standard* (July 9, 2021), available at https://www.business-standard.com/article/international/china-hits-australian-industries-with-economic-sanctions-amid-souring-ties-121070900082_1.html.

31 See, e.g., Jonathan Kearsley, Eryk Bagshaw, & Anthony Galloway, "'If you make China the enemy, China will be the enemy': Beijing's fresh threat to Australia," *Sydney Morning Herald* (November 18, 2020), available at <https://www.smh.com.au/world/asia/if-you-make-china-the-enemy-china-will-be-the-enemy-beijing-s-fresh-threat-to-australia-20201118-p56fq5.html>.

32 See, e.g., China Bans Essex Court Chambers, Human Rights Lawyers over Xinjiang Accusations," *Law.com* (March 26, 2021), available at <https://www.law.com/international-edition/2021/03/26/china-bans-essex-court-chambers-human-rights-lawyers-over-xinjiang-accusations/?slreturn=20220003150334>.

33 See, e.g., Primrose Riordan & Jane Croft, "UK chambers removes Xinjiang genocide opinion reference after China sanctions," *Financial Times* (March 28, 2021), available at <https://www.ft.com/content/dc74a008-3cc5-44b8-966f-085773ba0674>.

34 See Dr. Thomas D. Grant & the Hon. F. Scott Kieff, *China's sanctions and Rule of Law: How to respond when China targets lawyers*, forthcoming in 55(1) *THE INTERNATIONAL LAWYER* 101 (FEB. 2022).

35 See U.S. Department of State, "Global Engagement Center" (undated), available at <https://www.state.gov/bureaus-offices/under-secretary-for-public-diplomacy-and-public-affairs/global-engagement-center/>.

36 Charter of the U.S.-China Economic and Security Review Commission (as amended by Public Law No. 113-291 (December 19, 2014)), at § (c)(2)(J) ("specifying that USCC annual report should include coverage of "[t]he implications of restrictions on speech and access to information in the People's Republic of China for its relations with the United States in economic and security policy, as well as any potential impact of media control by the People's Republic of China on United States economic interests"), available at <https://www.uscc.gov/charter>.

37 House of Representatives, 75th Congress, 1st Sess., Report 1381, "Foreign Propaganda," July 28, 1937, available at https://www.cplindrysdale.com/files/24384_h_rep_no_75-1381_1937.pdf#page=2.

38 As it presently exists, FARA could conceivably already be interpreted to cover such activity, such as if one deemed taking action to encourage self-censorship by someone else to be "engag[ing] ... in political activities" on behalf of a foreign entity – which is one of the categories of activity that can make someone an "agent of a foreign principal" within the meaning of the Act. See 22 U.S.C. § 611(c)(1)(i). Such reach, however, is at the very least unclear, and FARA does not appear traditionally to be interpreted thus. (The other categories of activity are acting as a public relations consultant, handling money or other items of value for a foreign entity, or representing it before the U.S. Government. *Id.* at § 611(c)(1)(ii)-(iv).)

39 22 U.S.C. §§ 6209b (guidance) & 6202(a)(1) (objectives); see generally, e.g., U.S. Congressional Research Service, "U.S. Agency for Global Media: Background, Governance, and Issues for Congress," CRS Report R46968 (November 17, 2021), at 9-12, available at <https://crsreports.congress.gov/product/pdf/R/R46968>.

40 Regarding an example recently litigated in Europe, see Dr. Thomas D. Grant & the Hon. F. Scott Kieff, 3 *Safe Passages To Avoid Sanctions Double Binds*, *Law360* (Feb. 9, 2022).

41 50 U.S.C. §§ 1701 *et seq.*

42 For a summary of the history of the ITC in matters of national security, see the Hon. F. Scott Kieff & Dr. Thomas D. Grant, "Countering Russia's Aggression: a Role for the ITC," *Law360* (March 18, 2022).

43 See "ITC Launches Section 332 probe of censorship as a non-tariff barrier," *World Trade Online* (January 27, 2021), available at <https://insidetrade.com/trade/itc-launches-section-332-probe-censorship-non-tariff-barrier>.



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