



**ARTICLE 19**

GLOBAL CAMPAIGN FOR FREE EXPRESSION

## The Mechanics of Censorship

a report on the regulations for print media of the  
People's Republic of China

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## SUMMARY OF RECOMMENDATIONS

### **Recommendations on the Regulations for the Administration of Newspaper Publishing and Regulations for the Administration of Periodical Publishing:**

The new regulations on print media which went into effect on 1 December 2005 are in many respects inconsistent with international law on freedom of expression. Our overarching Recommendation is that they are abolished in their entirety, and that any content restrictions contained in them are reviewed. To the extent that they serve a legitimate aim and are “necessary” in the sense of Article 19(3) of the International Covenant on Civil and Political Rights, which is the international standard on the protection of freedom of expression, they should be moved to legislation that applies to everyone, such as the civil code.

At the very minimum, the following changes should be made:

#### *On licensing and registration*

- All licensing requirements for the print media as well as for individual journalists should be abolished. Any system of registration for media outlets, to the extent that such a regime is deemed necessary, should ensure that the administering body has no discretion to refuse registration to applicants.
- Editors should not be required to undergo ‘occupational training’.
- The right to publish anonymously should be guaranteed.
- All financial disclosure rules that target print media organisations specifically should be abolished.
- The prohibitions on publishing in minority and foreign languages should be abolished.
- The unqualified ban on unauthorised foreign cooperation in publications should be abolished.
- Print media companies should not be required to submit copies of their publications to any regulatory body.
- All circulation and format restrictions on publications should be abolished.

#### *On restrictions:*

- All content restrictions should be amended to be more clearly defined, restricted in scope, and be a proportionate response to protect a legitimate aim specified in Article 19(3) of the international Covenant on Civil and Political Rights.
- All provisions requiring publications to adhere to any particular ideology or viewpoint should be eliminated.
- National security restrictions should be limited to restricting those statements which incite to imminent violence which threatens the country’s existence or territorial integrity, and are likely to in fact to lead to such violence.
- The definition of State secrets should be narrowed to ensure that it is limited to information whose disclosure would likely undermine national security. The catch-all provision in 8(7) of the Law on Guarding State Secrets should be deleted.
- Individuals should never be prosecuted for disclosing information which has not previously been marked as a State secret by a body legally empowered to do so.
- All restrictions for the purpose of protecting public order should be framed in clear language.

- Public order restrictions should be limited to expressions which are intended to incite unrest and are likely to in fact to lead imminently to such unrest. Expressions should not be prohibited if, on balance, they serve the public interest.
- Regulations regarding hate speech should be brought in line with Article 20 of the ICCPR by limiting their ambit to false statements made with the intent to incite discrimination, hostility or violence, and which are likely to imminently incite such discrimination, hostility, or violence.
- The prohibition on opposing the constitution should be eliminated.
- The prohibition on publishing false news should be eliminated.
- Publications should not be legally responsible for false claims made in advertising carried by them, provided they are not the author of the advertisement or the producer of the product or service advertised.
- The requirement for newspapers to be “objective and just” should be eliminated.
- The requirement for publications to meet “national and industrial standards” should be eliminated.
- The defamation provisions should be brought in line with international standards and best practice, as summarised in ARTICLE 19’s publication *Defining Defamation*.<sup>1</sup>
- In particular, public officials suing for defamation should be required to prove, to a high level of convincingness, that the statement in question was false, directed towards their person, and made with the knowledge that it was false or with reckless disregard for the truth.
- The offence of defamation against the State should be eliminated.
- The binding right of reply should be eliminated or amended to ensure that it respects the right to freedom of expression, for example along the lines suggested by the Council of Europe’s Committee of Ministers.
- Discretion should be eliminated in providing “reward(s)”. Either China should provide a non-revocable general subsidy to all publications, regardless of content, or eliminate the reward entirely.
- There should be no generalised duty for individuals to seek permission before speaking to a newspaper.
- Publications should not be required to disclose any reliance on material gathered from the internet or to disclose where and when this material was downloaded.

#### **Recommendations on China’s Commitment to International Law:**

- Having signalled its intention to eventually become a party to the International Covenant on Civil and Political Rights by signing it in 1998, China should take the next steps and ratify the Convention, joining the 160 nations that have already done so.
- China should also sign and eventually ratify the First Optional Protocol to the International Covenant on Civil and Political Rights.

<sup>1</sup> Available online at <http://www.article19.org/pdfs/standards/definingdefamation.pdf>.

## 1. INTRODUCTION

In 2005, China adopted two new sets of regulations for the publishing of newspapers and other periodicals. The Regulations on the Administration of Newspaper Publishing ('RANP') and the Regulations on the Administration of Periodical Publishing ('RAPP') came into force on 1 December 2005. The two regulations are very similar and lay down extensive rules on the licensing of publishers, journalists and editors; the content of what may be published; and on operational supervision of print media businesses by the State. The Regulations also provide hefty sanctions for deviating from these rules. The definitions of 'newspaper' and 'periodical' are broad and cover nearly any periodical print media.<sup>2</sup>

Alarming, already early in 2006 these regulations had been used to close at least three newspapers, according to a 13 April 2006 Xinhua report.<sup>3</sup> This is in addition to 79 newspapers and periodicals that the General Administration on Press and Publication (GAPP) banned in 2005,<sup>4</sup> the seizure of 169 million publications;<sup>5</sup> and the closure of 642 news bureaus, deferral of the registration of 176 others, and prosecution of 73 illegally-established news bureaus between January and September of 2004.<sup>6</sup> Additionally, an unknown number of journalists, editorialists, and others have been arrested and punished under China's media guidelines.<sup>7</sup>

China makes no secret of the fact that it sees the media as a tool of the State. A statement by Long Xinnim, head of GAPP, in the 6 April 2006 edition of the People's Daily, provides an insight into the thinking underlying the new regulations: "[n]ews and publishing work is an important component of the general work of the Party and the nation, and is an important domain of the Party's propaganda and ideology battle lines." Long further wrote, "[n]ewspaper and periodical propaganda and publications must firmly grasp the correct orientation of public opinion at all times. We must deepen reforms and establish an overall administration system characterised by leadership of the Party, administration by the government, self-discipline of industry, and legal operations of enterprises."<sup>8</sup> This line of reasoning is well-established in China. A 2005 Xinhua report explains:

In China, journalism constitutes one of the major parts of the Party's enterprises, the news media is the mouthpiece of the Party and the people, and must be under the leadership of the Party. In its thought, the news must take Marxism as its guide, must maintain a high degree of unanimity with the central Party with Comrade Hu Jintao as the Secretary; . . . in its organization it must insist on the Party's leadership of news work, ensure that leaders of news

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<sup>2</sup> RANP, Arts. 2, 67; RAPP, Art 2. Our analysis relies on English translations made available by the Ministry of Commerce of the People's Republic of China. ARTICLE 19 takes no responsibility for the accuracy of this translation or for comments based on mistaken or misleading translations.

<sup>3</sup> Xinhua, 13 April 2006. Available in English at [http://news.xinhuanet.com/english/2006-04/13/content\\_4421339.htm](http://news.xinhuanet.com/english/2006-04/13/content_4421339.htm). Xinhua is the official press agency of the government of the People's Republic of China.

<sup>4</sup> Congressional Executive Commission on China, "GAPP Shuts Down More Papers" <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=48784>

<sup>5</sup> As reported by the CECC, February 2006: <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=37661>.

<sup>6</sup> CECC, Annual Report, October 11, 2005, p 60. available online at: <http://www.cecc.gov/pages/annualRpt/annualRpt05/index.php?PHPSESSID=7ecb9a4d089ca35261799d7896bab664>

<sup>7</sup> For examples, see the CECC, 2005 Annual Report, note 6, and Human Rights In China, "In Custody: People Imprisoned in connection with Journalism or the Internet"

<sup>8</sup> People's Daily, 6 April 2006. Chinese available at <http://politics.people.com.cn/GB/1026/4274467.html>; English translation provided by the Congressional Executive Commission on China (CECC), available at <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=48236>.

organizations at all levels firmly grasp in their hands loyalty to Marxism, and loyalty to the Party and the people.<sup>9</sup>

This interpretation of the role of the media, and the outright denial of editorial independence, puts China at odds with international standards on the right to freedom of expression including the *International Covenant on Civil and Political Rights* (ICCPR).

To most people, none of this will come as news. It is well known that China has a poor human rights record, including on the right to freedom of expression. This Report does not seek to expose the violations as such; instead, it explores the mechanics of the Chinese censorship regime and indicates precisely how each of the components of that regime compares to international and comparative human rights law and practice. We focus particularly on the human rights requirements elaborated under the ICCPR, which China signed in October 1988 and has undertaken to ratify and implement.<sup>10</sup> We hope this Report will inform and contribute to ongoing international debate concerning the fulfilment of China's human rights obligations, such as the EU-China Human Rights Dialogue.<sup>11</sup>

Because of the similarities between the two sets of regulations, we review them together and refer to them simply as "the Regulations." This review is contained in the next Section. The first Appendix outlines the key standards on freedom of expression and media regulation under international and comparative human rights law; further appendixes provide the English translation of the text of the regulations.

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<sup>9</sup> "How to Tightly Control Public Opinion, Increase Abilities to Guide Public Opinion", Xinhua (Online), 14 December 04. From CECC 2005 Annual Report, October 11, 2005. p 56.

<sup>10</sup> UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976. China signed the ICCPR on 5 October 1998.

<sup>11</sup> See [http://ec.europa.eu/comm/external\\_relations/china/intro/political\\_dialogue.htm](http://ec.europa.eu/comm/external_relations/china/intro/political_dialogue.htm) for more information on this process.

## **2. ANALYSIS OF THE REGULATIONS**

The following paragraphs analyse the Regulations on the Administration of Newspaper Publishing ('RANP') and the Regulations on the Administration of Periodical Publishing ('RAPP') against the international standards on freedom of expression outlined in Appendix 1 to this Report. Because of the similarities between the two sets of regulations, we analyse them side by side, noting differences where they occur.

Both Regulations follow more or less the same approach: the first chapters lay down detailed rules on the establishment, internal organisation and closure of publications; while further chapters lay down detailed rules on the day-to-day business of publishing including various broadly-phrased prohibitions on the content of what may be published. The final chapters of each of the Regulations detail matters of supervision and establish rules for legal liability for breach of the Regulations.

Overall, the Regulations are highly restrictive of the print media, including imposing some very broadly-phrased prohibitions, for example, not to publish anything that contravenes "Mao Zedong thought". The Regulations also provide for the state authorities to intervene in a broad range of internal operational considerations of the publication, such as requiring publications to seek the approval for the circulation and format of the publication. The establishment of any publication is tightly controlled by the state authorities through a stringent licensing and registration system which imposes significant barriers to entry to the market, as well as substantial discretion in licensing and registration. The end result is a set of Regulations that has had the result of smothering any independent or 'free' publication.

Our analysis includes an introductory comment concerning the necessity and appropriateness, or otherwise, of so-called 'press laws' in general, and the compatibility of the regulatory approach taken by Regulations with international law on freedom of expression. In addressing the Regulations, we focus on the main control mechanism established by the Regulations, namely the registration and licensing systems. Furthermore, we also comment on the Regulations' multitude of content restrictions.

### **2.1. 'Press Laws' and Freedom of Expression**

It is our experience that most so-called 'press laws' have the result of hindering rather than promoting freedom of expression and the free circulation of information and ideas.<sup>12</sup> Experience in countries around the world has shown that statutory regulation of the print media is easily abused for political ends, to shield those in power from criticism or embarrassment, and hinders the ability of the press to make a positive contribution to the well-being of society. Content restrictions outlined in media-specific laws are generally far more properly allocated in laws of general application, and should apply to everyone, regardless of whether they are labelled 'journalist' or not. As a general rule, we believe that journalists and publications should not be subject to stricter regulation than the general public. We also seriously doubt the necessity of overarching administrative regulation often found in press laws, such as requiring all newspapers and magazines to be registered or even licensed. Unlike broadcast media, print media do not utilise a limited resource like the electromagnetic spectrum, and so do not require a specific regulatory framework to allocate this resource.

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<sup>12</sup> We use the term 'press law' as shorthand for a type of legislation that establishes detailed regulatory requirements on the print media and imposes a set of broadly phrased prohibitions. Such laws are commonly found in authoritarian regimes, or in countries that have recently become democratic.

The argument is sometimes made that strict statutory regulation of the print media is necessary to ensure quality and improve journalistic standards of professionalism and ethics. Experience shows, however, that this is not the case. Not only does statutory regulation not result in higher professional standards, it is often abused to stifle dissent and legitimate criticism. Some of the countries with the most vibrant and professional print media are those which have long had no specific laws on the press. It is widely recognised that for the print media, effective self-regulation is the best form of regulation.<sup>13</sup> A free and self-regulated media can make an important contribution to exposing corruption, educating the public about risks and opportunities, and providing information to officials to enable them to better govern the country.

Recognising these issues, the United Nations Special Rapporteur on Freedom of Expression together with his counterparts at the Organisation for Security and Cooperation in Europe and the Organisation of American States adopted a Joint Declaration on media regulation in 2003, which states:

- Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.
- Content restrictions are problematical. Media-specific laws should not duplicate content restrictions already provided for in law as this is unnecessary and may lead to abuse. Content rules for the print media that provide for quasi-criminal penalties, such as fines or suspension, are particularly problematical.<sup>14</sup>

China's record on media freedom clearly bears out the dangers of excessive regulation of the media.<sup>15</sup> In 2005, for example, stories on the death of the former premier of China, the election of the new pope, the anti-Japanese protests, and incidence of bird-flu were all censored.<sup>16</sup> This was despite the obvious lessons to be drawn from the SARS crisis in 2003, when the absence of a vigorous free press enabled health authorities to conceal the extent of the threat posed by the virus for several months, making it impossible for higher-level officials and citizens to take preventive measures and eventually leading to a serious public backlash against the authorities.<sup>17</sup> Prior to that even, the emergence of AIDS in China was met with initial official denial and belated recognition, by which time the problem had become harder to contain.<sup>18</sup>

For all these reasons, our main recommendation is that, ideally, both sets of Regulations should be abolished in their entirety. The provisions of the Regulations are neither necessary

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<sup>13</sup> For more detail on this, see ARTICLE 19's *Freedom and Accountability: Safeguarding Free Expression through Media Self-Regulation*, London: 2005, available at [www.article19.org/pdfs/publications/self-regulation-south-east-europe.pdf](http://www.article19.org/pdfs/publications/self-regulation-south-east-europe.pdf). Available in Chinese from <http://www.mediaresearch.cn>.

<sup>14</sup> Joint Statement adopted 18 December 2003. Available online at <http://www.cidh.org/Relatoria/showarticle.asp?artID=88&IID=1>

<sup>15</sup> See Report by the UN Special Rapporteur for Freedom of Opinion and Expression, *Civil and Political Rights, Including Questions of Freedom of Expression*, E/CN.4/2003/67/Add.1 (2003) and E/CN.4/2004/62/add.1 (2004); CECC Annual Report, U.S. Printing Office, Washington DC (2005); Annual International Report by Amnesty International (2006).

<sup>16</sup> Human Rights Watch, World Report, 2005. available at: <http://hrw.org/english/docs/2006/01/18/china12270.htm>.

<sup>17</sup> The New York Times, 'China Discovers Secrecy is Expensive', April 13, 2003.

<sup>18</sup> *Id.*



nor appropriate and seek to establish mechanisms of censorship to control the flow of information which reaches the public. The overall purpose of the Regulations is to ensure that only information which the State authorities approve of is published regardless of the public's right to know. There is no secret about this: Article 4 of the RANP establishes a central body, the Press and Publication Administration (PPA), to “be responsible for the supervision and administration of publishing activities nationwide, make and implement plans for the total number, structure and distribution of newspaper publishing units nationwide and establish and perfect supervision and management systems such as comprehensive quality assessment system for newspaper publication nationwide, annual newspaper check and examination system and newspaper publication withdrawal system.”<sup>19</sup> To establish this kind of control over the content of what is published in China is wholly incompatible with the right to freedom of expression.

It is important to realise that abolition of the Regulations would not place the press in a legal vacuum: most publishers will be incorporated businesses subject to general laws of taxation and corporations. The content of what is published is subject to the legal controls imposed through general laws which apply to all legal and natural persons, not just the media, such as appropriately formulated defamation or privacy provisions in the civil code and national security and hate speech provisions in the criminal code.

Recognising that the wholesale repeal of the Regulations may not be achievable in the immediate term, the following sections of this report analyse the content of the regulations in detail and make specific recommendations for improvement.

### **Recommendation:**

- Both Regulations should be repealed.

## **2.2. The Licensing Regime**

The main control mechanism established under the Regulations is the licensing regime for both publications and for individual journalists.

In order to publish a newspaper or periodical, a “publishing unit” must receive the approval of either the Press and Publication Administration (PPA), for newspapers, or the General Administration of Press and Publication (GAPP), for other print publications. Both bodies have a general mission that requires them to essentially plan and control the number and kind of publications available in China.<sup>20</sup> In order to obtain approval, a prospective publication must have a “sponsoring unit” recognised by the PPA or GAPP respectively,<sup>21</sup> a “well-defined scope of business,” legal representation by a Chinese resident, and possession of “registered capital of more than 300,000 Yuan” (approximately 40,000USD).<sup>22</sup> Anyone who publishes a paper in China without the approval of PPA or GAPP faces criminal sanctions of a possible fine of up to 10 times the “illicit income”, if the publication contains content prohibited in the laws or if it is published by a group that has not been approved by PPA or GAPP.<sup>23</sup>

<sup>19</sup> Article 5 of the Regulations for Administration of Periodical Publication establishes a similar body for publications other than newspapers.

<sup>20</sup> RANP, Arts. 2,4; RAPP, Art. 2, 5..

<sup>21</sup> RANP, Art. 8(III); RAPP, Art. 9(III).

<sup>22</sup> RANP, Arts. 8(IV), (V),(VIII); RAPP, Arts. 9(IV), (V)(VIII).

<sup>23</sup> RANP, Arts. 59, 60, 61; RAPP, Arts. 57, 58, 61.

Furthermore, Article 32 of RANP prohibits a newspaper from publishing a foreign language or a minority language edition unless it is specifically licensed to do so; while Article 29 of RAPP requires the approval of GAPP for any publication that involves the cooperation of foreigners.

### Analysis

While international law allows the licensing of broadcast media on the grounds that these media utilise the radio spectrum, which is a scarce public resource that must be used equitably and in the public interest, it does not allow a licensing regime for the print media. There is no pressing social or democratic need to require publications to seek approval by a State body before engaging in publication. On the contrary, licensing regimes such as the Chinese one actively work against the public interest in the free flow of information: the Regulations raise high barriers to entrance<sup>24</sup> and effectively place publication under State control, greatly limiting the number of publications available to the public.

There is substantial authority in international law for the position that any type of *licensing* requirement for the print media is incompatible with the right to freedom of expression.<sup>25</sup> A licence requirement may be distinguished from a technical registration requirement, which simply involves the provision of information about a publication to the authorities, who enjoy no discretion to refuse registration. Even the legitimacy of simple registration requirements is increasingly being questioned. For example, in a Joint Declaration issued in 2003, the special mandates on freedom of expression of the United Nations, the Organization of American States and the Organization for Security and Co-operation in Europe stated:

Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.<sup>26</sup>

Most democracies have abolished registration for the print media, let alone licensing rules, without suffering any negative consequences. The dangers to democracy and human rights inherent in licensing schemes are apparent: not only do they present a bureaucratic hurdle to be overcome, they also empower the body overseeing the scheme, in this case PPA or GAPP, the ability to deny or withdraw licences and prevent the emergence of a critical press. This is inimical to the very concept of freedom of expression. As the US Supreme Court has held:

The power of the licensor . . . is pernicious not merely by reason of the censure of particular comments but by reason of the threat to censure comments on matters of public concern. It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion.<sup>27</sup>

For these reasons, we believe that licensing requirements in the Regulations are unsustainable under international law and should be removed from the Regulations.

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<sup>24</sup> For example, the large capital requirements prohibit all but the wealthiest Chinese from publishing. According to the National Bureau of Statistics of China, the average yearly disposable household income of an urban resident was 8,472 Yuan (US \$1050) in 2003.

<sup>25</sup> See *Vladimir Petrovich Laptevich v. Belarus*, Communication No. 780/1997, U.N. Doc. CCPR/C/68/D/780/1997 (13 April 2000); see also Article 13(2) of the American Convention on Human Rights.

<sup>26</sup> See note 93.

<sup>27</sup> *Thornhill v. State of Alabama*, 310 US 88 at 97 (1940). [US Supreme Court]

There are also practical reasons for doing away with the licensing requirement. Apart from greatly reducing the workload of PPA and GAPP, this could also yield benefits for the quality of the print media in China. The reduced barriers to entry in the market would result in increased competition amongst publications, thereby pushing up standards of professionalism and quality. Abolishing the restrictions on use of non-standard Chinese languages and on foreign involvement would similarly enhance the free flow of information and ideas, and be to the public's benefit.

#### **Recommendation:**

- All licensing requirements for the print media should be abolished. Any system of registration should ensure that the administering body has no discretion to refuse registration to applicants and be limited to technical matters only.
- There should be no restrictions on the use of non-Chinese languages or on foreign involvement in the print media.

### **2.3. Constraints on Journalists: Individual Licensing and Qualifications**

The Regulations require that any employee engaged in news gathering must hold a press card issued by PPA or GAPP and adhere to the “Measures for the Management of Press Cards” formulated by PPA and GAPP respectively.<sup>28</sup> PPA and GAPP are given complete discretion in determining who is given a press card. Further, the regulations require employees to meet qualifications stipulated by the State, although what these qualifications are or where they may be found is not stated.<sup>29</sup> Finally, the responsibility for the publication’s adherence to the law is placed on the editor who must possess additional qualifications and take part in “occupational training” provided by PPA and GAPP.<sup>30</sup>

#### Analysis

We have two fundamental concerns with regard to the rules stated here: first, the requirement that all journalists should be licensed, and second, the requirement that journalists and editors have certain minimum qualifications.

Requiring journalists to obtain press cards, the issuing of which is subject to the discretion of a State body, in order to practise their profession constitutes a form of licensing of individual journalists. Like licensing requirements for publications, licensing requirements for individual journalists cannot be justified as necessary to protect a legitimate aim under Article 19(3) ICCPR, and therefore violate international law. An authoritative unanimous decision rendered by the Inter-American Court of Human Rights in 1985 sets out the reasoning behind this:

The argument that licensing is a way to guarantee society objective and truthful information by means of codes of professional responsibility and ethics, is based on considerations of general welfare. But, in truth, as has been shown, general welfare requires the greatest possible amount of information, and it is the full exercise of the right of expression that benefits this general welfare. In principle, it would be a contradiction to invoke a restriction to freedom of expression as a means of guaranteeing it. Such an approach would ignore the primary and fundamental character of that right, which belongs to each and every individual as well as the public at large. A system that controls the right of expression in the name of a supposed guarantee of the correctness and truthfulness of the information that society receives can be the

<sup>28</sup> RANP, Art. 41; RAPP, Art. 39.

<sup>29</sup> RANP, Arts. 8(VI), 11(IV), 56; RAPP, Arts. 9(VI), 12(IV), 54.

<sup>30</sup> RANP, Arts. 24, 57; RAPP, Arts. 24, 55.

source of great abuse and, ultimately, violates the right to information that this same society has.<sup>31</sup>

The Court also refused to draw an analogy with the medical and legal professions, rejecting the argument that journalism should be licensed because medical or legal professionals are:

[J]ournalism is the primary and principal manifestation of freedom of expression of thought. For that reason, because it is linked with freedom of expression, which is an inherent right of each individual, journalism cannot be equated to a profession that is merely granting a service to the public through the application of some knowledge or training ... The practice of journalism ... requires a person to engage in activities that define or embrace the freedom of expression which the Convention guarantees. This is not true of the practice of law or medicine, for example. Unlike journalism, the practice of law and medicine – that is to say, the things that lawyers or physicians do – is not an activity specifically guaranteed by the Convention.<sup>32</sup>

The Court concluded that any requirement for individual journalists to be licensed violated the right to freedom of expression.

The Joint Declaration of the UN, OAS and OSCE freedom of expression mandates referred to above further underlines the scepticism of international authorities towards licensing of individual journalists: “Individual journalists should not be required to be licensed or to register.”<sup>33</sup>

With regard to our second concern, we believe strongly that, like quality requirements on publications, qualification requirements for individual journalists are unnecessary. Such qualification requirements breach Article 19 of the ICCPR, which states clearly that the right of freedom of expression through any media belongs to *everyone*, not merely those who possess certain qualifications. In practice, publications are unlikely to hire journalists or editors who do not possess the necessary qualifications to satisfactorily do the job. We similarly question the need for mandatory ‘occupational training’ for editors.

#### **Recommendation:**

- All qualification and licensing requirements for journalists should be abolished.

## **2.4. Content Restrictions**

An important feature of both sets of Regulations is the extensive and vaguely formulated content restrictions they impose. The following paragraphs examine these restrictions in some detail.

At the outset, we would like to emphasise that there is no reason why print media regulations should contain any content restrictions at all. While limits on what may be published are acceptable under international law, and in some cases even mandated,<sup>34</sup> insofar as they comply with the three-part test described in the Appendix on International Standards, these are appropriately dealt with through laws of general application, such as the civil code and the criminal code. Content restrictions in media-specific laws tend to overlap with, duplicate or

<sup>31</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, note 45. para. 77.

<sup>32</sup> *Id.*, paras. 71-72.

<sup>33</sup> see note 93.

<sup>34</sup> Articles 17 and 20(2) of the ICCPR, for example, require that appropriate limits are placed on the exercise of freedom of expression to protect reputations and limit hate speech.

even contradict provisions in laws of general application. The result is usually a confusing patchwork of laws which leaves journalists in doubt about their legal position and sends them a chilling ‘double warning’.

Some of the content restrictions discussed below could, in principle, be justified if contained within laws of general application. Most, however, need to be amended to meet the strict three-part test. Some, however, bear no connection at all with a legitimate purpose and should simply be abolished. An overarching concern with most of the restrictions is that they are either vague or overly broad, or both, and we deal with that concern first.

#### *Vagueness and overbreadth*

International law requires that any restrictions on free expression are provided in clearly formulated laws; laws that are vague or 'overbroad' fail this requirement. A vague content restriction is any provision that does not give the citizen, court and administrator a clear indication of what kind of conduct or publications are prohibited.<sup>35</sup> There are several objections to vague restrictions. In the first place, it is a matter of legal clarity that the law should clearly tell journalists what they can publish, and what they cannot, so that they can write their reports accordingly. Second, vague content restrictions leave excessive discretion to both the executive and the judiciary to determine what is legal and what is not; this is a power that is properly exercised by the democratic legislature. Third, vaguely formulated restrictions promote self-censorship since journalists will tend to err on the side of extreme caution in deciding whether to publish a story or not. This harms the public's right to receive information on a variety of issues from a plurality of sources.

The doctrine of 'overbreadth' is closely related to the doctrine of vagueness. An overly broad provision prohibits more than is necessary to meet the purpose of the regulation, without necessarily being unclear. For example, a law which would prohibit any discussion of the constitution would not be unclear, but would certainly be overbroad, since it would prevent all sorts of perfectly legitimate debate, such as on the proper interpretation of the constitution and ways to improve it.

As we will elaborate in the following paragraphs, many provisions of the regulations are both vague and overly broad.

#### **2.4.1. General Ideological and Social Utility Requirements**

Article 3 of the Regulations explicitly requires print media to adhere to “Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory ... [to] follow correct guideline[s] of public opinion ... [and] give first priority to the social benefits, achieving combination of social benefits and economic returns.” RANP further requires “leaning close to the practice, the masses and the life, fostering a good atmosphere for building socialism with Chinese characteristics ...” and RAPP requires publications to “spread widely and gather scientific, technological and cultural knowledge that is good for promoting national quality, economic development and social improvement ...”

#### Analysis

It is possible that these provisions are intended as statements of principle rather than enforceable legal requirements. However, it is unclear whether later references to “these”<sup>36</sup> or

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<sup>35</sup> *Kolender v. Lawson*, 461 US 352, 357-358 (1983)

<sup>36</sup> Chapter V of RAPP and RANP.

“other”<sup>37</sup> regulations include Article 3 and thus warranting severe punishments for its violation.

The unclear legal nature of the two Articles 3 is in itself problematic, since it may encourage journalists to practise unnecessary self-censorship. Assuming the provisions are binding, their content is also impermissibly vague. The interaction of Articles 3 with other provisions in the Regulations also creates difficulties in defining those provisions’ interpretation and scope. For example, the prohibitions on “harming the honour or the interests of the nation”, “disturbing social order”, or “jeopardising social ethics”<sup>38</sup> do not provide a reasonable person with a clear idea of what kind of publications are prohibited. The duty to adhere to “Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory”,<sup>39</sup> even assuming that it is clear what is being prohibited, does not correspond with any of the legitimate aims listed in Article 19(3) for restricting freedom of expression.<sup>40</sup> International law does not allow for any one ideology to be placed above others; instead, it encourages the free flow of information and ideas in order to fulfil the public’s right to receive information from a wide variety of sources, and on different matters of interest. Free and frank criticism is an integral element of the right to freedom of expression.

#### **Recommendation:**

- All provisions requiring publications to adhere to any particular ideology or viewpoint should be removed.

#### **2.4.2. National Security and Public Order**

Article 25 of the Regulations prohibits the publication of any materials listed in a separate piece of legislation, the Regulations on Publication Administration (RPA), as well as those listed in any “other laws and regulations or provisions of the State”. Article 27 of the Regulations further requires adherence to “relative regulations”, which are not referenced, when publishing material on “important State policy, national and religion affairs, diplomacy, military and secrecy of the State.”<sup>41</sup>

The broad and open-ended formulation of Articles 25 and 27 means that tens or perhaps even hundreds of unlisted restrictions found in other laws or regulations are given effect through the Regulations. This in itself is problematic as it contravenes the principle, which we elaborate upon in Appendix 1 on international standards, that legal restrictions on freedom of expression must be clear and precise. It is outside the scope of this Memorandum to identify and analyse all of them; our comments will be limited to those restrictions found in the RPA.

Article 26 of the RPA forbids publishing various types of material, including in the area of national security:

No publication shall contain the following contents:

[Information] ...

(2) jeopardising the integrity of the nation's unity, sovereignty or territory;

(3) divulging State secrets, jeopardising national security or harming the honour or the interests of the nation;

<sup>37</sup> RANP, Art. 60; RAPP, Art. 58.

<sup>38</sup> RPA, Art 26 (3),(6),and (9). Article 26 is discussed in more detail in Section 3.4.8 of this Memorandum.

<sup>39</sup> Art. 3 of RAPP and RANP.

<sup>40</sup> See Article 19(3) ICCPR and Section **Error! Reference source not found.** of this Memorandum.

<sup>41</sup> Article 27 on RAPP references “important topic[s]” like “national safety, society stability and etc.”

Article 26 of the RPA also prohibits the publication of “rumours” that might “disturb social order or ... social stability.”

Article 8 of the Law of the People’s Republic of China on Guarding State Secrets defines a State Secret as follows:

- (1) secrets concerning major policy decisions on State affairs;
  - (2) secrets in the building of national defence and in the activities of the armed forces;
  - (3) secrets in diplomatic activities and in activities related to foreign countries as well as secrets to be maintained as commitments to foreign countries;
  - (4) secrets in national economic and social development;
  - (5) secrets concerning science and technology;
  - (6) secrets concerning activities for safeguarding State security and the investigation of criminal offences; and
  - (7) other matters that are classified as State secrets by the State secret-guarding department.
- Matters that do not conform with the provisions of Article 2 [State secrets shall be matters bearing on State security and national interests] of this Law shall not be State secrets. Secrets of political parties that conform with the provisions of Article 2 of this Law shall be State secrets.<sup>42</sup>

Spreading State secrets is a criminal offence carrying a possible life sentence.<sup>43</sup>

### Analysis

The content restrictions in the area of national security outlined above all fail the three-part test set out in Appendix 1 to this Report, on international standards on freedom of expression.

First, most of the restrictions do not meet the standard of being “provided by law” because they fail to state with sufficient clarity what material may not be printed. The most striking example of this is the ban on publications which risk “harming the honour or the interests of the nation”, a concept so vague as to be nearly devoid of meaning. Similarly, we are concerned that the terms “disturbing social order” and “disrupting social stability” are very elastic and could be applied to almost any situation in which a publication draws significant attention from the public. As such, they provide little, if any, guidance to a law-abiding journalist of which subjects may be safely discussed.

Second, while most of the restrictions described above bear a relationship to the protection of national security, which is recognised under Article 19(3) of the ICCPR as a legitimate ground for restricting freedom of expression, they do not appear to be carefully targeted to this end. According to Principle 2 of the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*,<sup>44</sup> national security can only be invoked to justify restrictions on freedom of expression whose “genuine purpose and demonstrable effect” is to safeguard “a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force.”

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<sup>42</sup> Enacted 5 September 1988, and enforced 1 May 1989. Available at: <http://www.cecc.gov/pages/newLaws/protectSecretsENG.php>

<sup>43</sup> Chinese Criminal Law, Article 111. Enacted 3 April, 1997.

<sup>44</sup> Johannesburg Principles on National Security, Freedom of Expression and Access to Information, adopted 1 October 1995. The Johannesburg Principles are a set of guidelines developed by a group of experts from around the world. They were endorsed by Mr. Abid Hussain, UN Special Rapporteur on Freedom of Opinion and Expression in his reports to the 1996, 1998, 1999, and 2001 sessions of the United Nations Commission on Human Rights, and referred to by the Commission in their annual resolutions on freedom of expression every year since 1996.

The Johannesburg Principles also recommend that expressions should be restricted only when they incite violence<sup>45</sup> and there is a direct and immediate connection between the expression and the likelihood or occurrence of violence.<sup>46</sup> Principle 6 of the *Johannesburg Principles* defines these requirements as follows:

[E]xpression may be punished as a threat to national security only if a government can demonstrate that:

- (a) the expression is intended to incite imminent violence;
- (b) it is likely to incite such violence; and
- (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

National courts have issued judgments along the same lines, holding that publications can be restricted for reasons of national security only when they are intended to produce a real and serious danger. The Indian Supreme Court, for example, has stated that in order for the State to regulate speech on the grounds of national security, “[t]he anticipated danger should not be remote, conjectural or far-fetched,” linking the necessary imminence to “a spark in a power keg.”<sup>47</sup> In a later case, the Court emphasised the importance of the requirement of intent. In *Ram Bahadur v. State of Bihar*,<sup>48</sup> an individual was prosecuted after calling for a “Gujarat type of agitation”. A protest in Gujarat against price increases had led to violence, eventually requiring the institution of emergency rule. The Court emphasised the need to not confuse “what happened in fact and what was intended to happen,” concluding that the various interpretations could be given to Bahadur’s statement, and a call to violence may not have been intended.<sup>49</sup>

The Indian Supreme Court’s line of reasoning parallels the US Supreme Court’s “clear and present danger” test. In the years following the First World War, the Court stated the test for legitimate public order restrictions as whether “the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the [legislature] has a right to prevent.”<sup>50</sup> The Court later refined this test in *Brandenburg v. Ohio*, stating that the State could regulate speech only “where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”<sup>51</sup> This test mirrors the test for restrictions in the interest of national security proposed by the Johannesburg Principles.

Another important aspect of the necessity test is that the public interest in imposing a restriction should always be balanced against the public interest in the free flow of information and ideas. There are situations in which a publication poses a real threat to public order, but prohibiting the publication poses an even greater threat. This could be the case, for example, with news concerning an infectious disease or an impending natural disaster.

Most of the national security and public order content restrictions in the Regulations fall short of these basic requirements. For example, Article 26(2) of the RPA prohibits divulging “State

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<sup>45</sup> See *Arslan v. Turkey*, 8 July 1999, Application No. 23462/94 (European Court of Human Rights).

<sup>46</sup> See *Keun-Tae Kim v. Republic of Korea*, 4 January 1999, Communication No. 574/1994, UN Doc. CCPR/C/64/D/574/1994, para. 12.4.

<sup>47</sup> *Rangarajan v. Jagjivan Ram and Others; Union of India and Ors v. Jagjivan Ram*, decided on 30 March 1989, [1990] LRC (Const.) 412, 427; [1989] (2) SCR 204, 226.

<sup>48</sup> [1975] AIR 223; [1975] SCR (2) 732.

<sup>49</sup> *Id.* at 738

<sup>50</sup> *Schenck v. United States*, 249 US 47 at 52 (1919)

<sup>51</sup> 395 US 444 at 447 (1969).



secrets”, a concept which according to the Law on Guarding State Secrets<sup>52</sup> includes, for example, information on “major policy decisions”, on the “building of national defence and ... the activities of the armed forces” and on “activities related to foreign countries”. The connection between these categories and the safeguarding of national security is a tangential, rather than a direct one, as required by the Johannesburg Principles. Even the “activities of the armed forces” are likely to include many aspects unrelated to responding to armed threats to the country’s existence or territorial integrity. As a result, discussion of many issues is excluded, even if such discussion would cause no harm or even make an important contribution to the well-being of society.

The catch-all provision in Article 8(7) of the Law on Guarding State Secrets, which prohibits dissemination of “other matters that are classified as State secrets”, is also highly concerning. This provision provides absolutely no forewarning to citizens about what this may encompass, and may well lead to the classification of information whose release poses no real danger to national security. While State agencies are required to make a determination as to what is and what is not to be classified as a State secret,<sup>53</sup> information is treated as a State secret until this determination is made<sup>54</sup> and there is no provision that limits prosecution until after an item has been classified. In fact, prosecutions can and do occur before such determinations are made. For example, Zheng Enchong, a lawyer who assisted poor individuals to oppose government destruction of their homes, was released in 2006 after serving a three year prison sentence for distributing State secrets to foreigners. His ‘crime’ had been to fax two documents to the US-based NGO Human Rights in China concerning workers protests. The documents were classified as confidential only after Zheng had sent them and had been arrested.<sup>55</sup> This case is not unique, and the Special Rapporteur on Freedom of Opinion and Expression has confirmed that China’s notion of “State secrets” is ill-defined and could encompass nearly any statement.<sup>56</sup>

The other content restrictions on national security also fail to satisfy the necessity requirement under the three-part test. For example, the ban on materials which “[jeopardise] the integrity of the nation’s unity, sovereignty or territory” could be applied in situations where there is only a very remote or theoretical risk of harm. While it may at first sight appear prudent to take a “better safe than sorry” approach to matters of national security, in practice these restraints on free expression often do more to damage social stability and hence the well-being of the nation than to improve it.

### **Recommendations:**

- All national security and public order restrictions should be limited to restricting those statements which incite to imminent violence or public unrest and are likely to in fact lead to such violence or unrest.
- All national security and public order restrictions should be framed in clear language.
- The definition of State secrets should be narrowed to ensure that it is limited to information whose disclosure would likely undermine national security. The catch-all provision in Article 8(7) of the Law on Guarding State Secrets, in particular, should be deleted.

<sup>52</sup> See note 63.

<sup>53</sup> Law of the People’s Republic of China on Guarding State Secrets, see note 92, Article 10.

<sup>54</sup> *Id.*, Article 11.

<sup>55</sup> China Land Rights Lawyer Released, BBC News, published: 2006/6/5, available:

<http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/asia-pacific/5048040.stm>

<sup>56</sup> 20 February 2003, E/CN.4/2003/67/Add.1, para. 121

- Individuals should never be prosecuted for disclosing information which has not previously been marked as a State secret by a body legally empowered to do so.
- Expressions should not be prohibited if, on balance, they serve the public interest.

### 2.4.3. Hate Speech

Article 26(4) of the RPA prohibits publications containing ‘hate speech’, which is defined as anything that “incites hatred against peoples, racism against peoples, or disrupts the solidarity of peoples”.

#### Analysis

International law recognises the legitimacy of restricting expression which constitutes hate speech. Article 20(2) of the ICCPR states:

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Consequently, the Chinese authorities are permitted to enact legislation prohibiting hate speech, and would in fact be required to do so upon eventual ratification of the ICCPR. At the same time, Article 20 is not a *carte blanche* permitting unlimited restriction of expression related to the status of different national, racial and religious groups in society. Laws enacted pursuant to Article 20 must still comply with the three-part test of Article 19(3).<sup>57</sup>

It is in this context that Article 26(4) of the RPA is problematic: like many of the other content restrictions, it is both excessively vague and overbroad. In particular, the prohibition on “disrupting the solidarity of peoples” provides little or no guidance on the type of material that is prohibited and could easily be abused to ban perfectly legitimate discussion, such as historical analysis of ethnic conflicts or debate about the government’s policy towards minorities.

The European Court of Human Rights, interpreting the right to freedom of expression in the European Convention on Human Rights, which is similar to the protection granted under the ICCPR, has stressed that such discussion is protected under international law. For example, in the case of *Ceylan v. Turkey*,<sup>58</sup> a writer identified a portion of the Turkish population as Kurds and described government hostility towards them. The government arrested and prosecuted the writer on the grounds that he “had incited the population to hatred and hostility by making distinctions based on ethnic or regional origin or social class.”<sup>59</sup> It obtained a conviction, which was however struck down by the European Court because,

...the article in question, despite its virulence, does not encourage the use of violence or armed resistance or insurrection. In the Court’s view, this is a factor which it is essential to take into consideration.<sup>60</sup>

We would also recommend that the terms “inciting hatred” and “racism” should be defined more sharply, along the lines of Article 20 of the ICCPR. A 2001 Joint Statement by the UN, OSCE and OAS special mandates on the right to freedom of expression sets out a number of further conditions which hate speech laws ought to respect:

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<sup>57</sup> See, for example, the decision of the Human Rights Committee in *Ross v. Canada*, 1 May 1996, Communication No. 736/1997, UN Doc. CCPR/C/70/D/736/1997, para 10.6.

<sup>58</sup> Application No. 23556/94 (8 July 1999)

<sup>59</sup> *Id.*, para. 11.

<sup>60</sup> *Id.*, para. 36

- no one should be penalised for statements which are true;
- no one should be penalised for the dissemination of hate speech unless it has been shown that they did so with the intention of inciting discrimination, hostility or violence;
- the right of journalists to decide how best to communicate information and ideas to the public should be respected, particularly when they are reporting on racism and intolerance;
- no one should be subject to prior censorship; and
- any imposition of sanctions by courts should be in strict conformity with the principle of proportionality.<sup>61</sup>

### **Recommendation:**

- Regulations regarding hate speech should be brought in line with Article 20 of the ICCPR by limiting their ambit to false statements made with the intent to incite discrimination, hostility or violence, and which are likely to imminently incite such discrimination, hostility or violence.

#### **2.4.4. *Opposing the Constitution***

Article 26(1) of the RPA prohibits the publication of any material that “opposes the basic principles confirmed in the Constitution.”

#### Analysis

Though most governments may hope that its citizens, including journalists, support the constitution, a strict legal requirement to do so violates international law. Furthermore, Article 26(1) is overly broad because it restricts not only calls to violent opposition, but also peaceful expressions of criticism which could contribute to a debate about progressive amendment of the constitution.

Many groups in a number of democratic societies peacefully oppose the provisions of a State’s constitution, on a wide range of grounds. One example is groups that strive for secession. Quebec separatists play a prominent role in Canadian politics, including having a number of seats in the local legislature. Also, the Scottish National Party, which seeks the withdrawal of Scotland from the Union with England, has been somewhat successful, creating a separate parliament. These discussions are a healthy part of any democracy and ultimately strengthen respect for the constitution precisely by scrutinising its continuing relevance and considering whether it needs to be amended to reflect societal developments. Accordingly, we recommend that all requirements that journalists, or anyone else, refrain from opposing the constitution should be removed.

### **Recommendation:**

- The prohibition on opposing the constitution should be eliminated.

#### **2.4.5. *False News***

Article 26 of both of the Regulations prohibits publishing “false” material that impacts the public interest. Article 26 of RANP goes further and requires newspapers to “not contain false contents inconsistent with the facts”, regardless of any impact on the public interest.

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<sup>61</sup> Joint Statement of the United Nations’ Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe’s Representative on Freedom of the Media and the Organization of American States’ Special Rapporteur on Freedom of Opinion and Expression of 27 February 2001, on Racism and the Media. This document can be downloaded at <http://tinyurl.com/alg7l>.

## Analysis

International law regards legally enforceable prohibitions on false news with extreme suspicion. The UN Human Rights Committee has condemned the use of so-called “false news provisions” in national laws, cautioning that they “unduly limit the exercise of freedom of opinion and expression.”<sup>62</sup> It has also held that “prosecution and punishment of journalists for the crime of publication of false news merely on the ground, without more, that the news was false [is a] clear violation of Article 19 of the Covenant.”<sup>63</sup> Mindful of the risks of false news laws, several domestic courts have ruled such provisions to be unconstitutional, including in Antigua and Barbuda, Canada, Uganda and Zimbabwe.<sup>64</sup>

The principal objection against false news provisions is that they make reporting unreasonably difficult and thus compromise the ability of journalists to continue to effectively inform the public. There are often multiple sides to any story, sides which a reporter cannot necessarily vouch for. News is also a fast-moving business, in which mistakes are from time to time made. Journalists are only human. Requiring a publication to bear the risk that any fact turns out to be false places an unreasonable burden on them, especially when important breaking news requires quick publication.

False news provisions are also open to abuse. It is a common practice for governments around the world to use false news laws to prosecute journalists who reveal embarrassing facts about those in power the truth of which is difficult to prove beyond doubt. The Inter-American Court of Human Rights has underscored this danger:

A system that controls the right of expression in the name of a supposed guarantee of the correctness and truthfulness of the information that society receives can be the source of great abuse and, ultimately, violates the right to information that this same society has.<sup>65</sup>

Further, regulations of this kind are simply unnecessary. A paper that regularly prints information that turns out to be false will lose readership. The real truth on a matter may also not be easy to determine. Readers should be left to inform themselves of all sides and make up their own mind in such cases. Rather than imposing a particular view of the facts, the State may seek to correct news it believes to be false by exercising its own freedom of expression and providing what it views as the correct version of events.

### **Recommendation:**

- The prohibition on publishing false news should be eliminated.

#### **2.4.6. False Advertisements**

Article 38 of RANP and Article 37 of RAPP prohibit newspapers and periodicals from publishing false advertisements, and place the duty on the publication to verify the truth of claims made in advertisements.

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<sup>62</sup> Annual General Assembly Report of the Human Rights Committee, UN Doc. A/50/40, 3 October 1995, para. 89

<sup>63</sup> Concluding Observations on Cameroon, 4 November 1999, CCPR/C/79/Add.116, para. 24.

<sup>64</sup> *Hector v. Attorney-General of Antigua and Barbuda*, [1990] 2 AC 312 (Judicial Committee of the Privy Council); *Regina v. Zündel*, [1992] 2 SCR 731 (Supreme Court of Canada) at 749; *Onyango-Obbo and Mwenda v. the Attorney General of Uganda*, Constitutional Appeal No. 2 of 2002 (February 11, 2004); *Chavunduka and Choto v. Minister of Home Affairs & Attorney General of Zimbabwe*, 22 May 2000, Judgment No. S.C. 36/2000 (Supreme Court of Zimbabwe).

<sup>65</sup> IACHR, OC-5-85, para. 30-31.

### Analysis

The UN Human Rights Committee has stated that the right to freedom of expression applies to all kinds of speech, including commercial expressions:

Article 19, paragraph 2, must be interpreted as encompassing every form of subjective ideas and opinions capable of transmission to others, which are compatible with article 20 of the Covenant, of news and information, of commercial expression and advertising, of works of art, etc.; it should not be confined to means of political, cultural or artistic expression.<sup>66</sup>

While restrictions on false advertising may be justifiable,<sup>67</sup> a publication should not bear the responsibility for making this determination.<sup>68</sup> Any liability for false or misleading advertising should clearly lie with the advertiser. A publisher will usually not be qualified to assess the veracity of any claims made in an advertisement. Because publications rely on advertisements for their revenue, this would require them to either take expensive measures to check every advertisement, or simply refuse those whose claims they cannot verify. As a result, the publication's revenue would be reduced, harming the quality of print media available to the public, and manufacturers of certain more complex products (medicines, electrical appliances) would have great difficulty finding a publication willing to carry their advertisements.

### **Recommendation:**

- Publications should not be legally liable for false claims made in advertising carried by them, provided they are neither the author of the advertisement nor the producer of the product or service advertised.

#### **2.4.7. *One-Sided Newspapers and Minimum Standards of Quality***

Article 26 of RANP requires that newspapers be “objective and just.” In a similar vein, both Regulations further require print media to meet “national and industrial standards” of quality and require that language “accord with relative provisions of the State.”<sup>69</sup> The government, through PPA and GAPP, is empowered to define what constitutes quality.<sup>70</sup>

### Analysis

Legally binding requirements of justness or objectivity in the print media are both vague and unnecessary. In a society where free media are permitted to flourish, publications representing a diverse range of voices are likely to emerge. Readers will thus be exposed to a number of publications representing varied viewpoints. A newspaper that supports one side in a political or socio-economic debate will be balanced out by other papers that represent an opposing stance.

A legally binding duty for a publication to meet a basic standard of quality is similarly unnecessary. Again, while it is certainly desirable that the print media reach a high level of quality, what constitutes ‘quality’ is best left to readers. Papers and periodicals that are trusted by the people will attract greater readership, and this will create a basic incentive for all publishers to produce high quality material.

<sup>66</sup> *Ballantyne, Davidson and McIntyre v. Canada*, note 19, para. 11.3.

<sup>67</sup> *Demuth v. Switzerland*, 5 November 2002, Application No. 38743/97, para. 42 (European Court of Human Rights).

<sup>68</sup> Such is the rule, for example, in the U.S., 15 U.S.C. §54(b) (2005), and the Philippines, The Consumer Act of the Philippines, Act No. 7394, Art. 124.

<sup>69</sup> RANP, Art. 29, RAPP, Art. 30.

<sup>70</sup> RANP, Art. 49; RAPP, Art. 47.

It is true that in a free country, there will also be demand for sensationalistic publications based on rumours or the exposure of prominent figures' private lives. While perhaps less desirable, achieving the benefits of a free press requires the toleration of some more doubtful publications. As James Madison, who framed the US Constitution's guarantee of freedom of expression, the First Amendment, remarked:

Some degree of abuse is inseparable from the proper use of everything, and in no instance is this more true than in that of the press. It ... is better to leave a few of its noxious branches to their luxuriant growth than, by pruning them away, to injure the vigour of those yielding the proper fruits.<sup>71</sup>

In short, a free media is likely to mature over time to become more objective and reach higher levels of quality, while State power to judge which material is just, objective or of sufficient quality is liable to be abused to prevent criticism of those in power. The provisions under discussion therefore fail to meet the necessity requirement under Article 19(3) of the ICCPR and should accordingly be removed.

### **Recommendations:**

- The requirement for newspapers to be “objective and just” should be eliminated.
- The requirement for publications to meet “national and industrial standards” should be eliminated.

#### **2.4.8. Defamation**

Article 26 of the Regulations deals with defamation, defined as the situation where “lawful rights and interests of a citizen, a legal person or some other organisations are infringed upon due to the false and untruthful contents.” Defamation may lead to “civil liabilities according to law”; although the Regulations do not specify which laws are applicable or what damages or other redress is available to claimants.<sup>72</sup> Alternatively, a person whose reputation has been damaged by a publication may ask the publication in question “to make corrections or reply to the charge” in the next issue, and may bring a suit if the publication fails to comply. Under certain circumstances, an order to make corrections can also be issued by the PPA or GAPP, autonomous regions or municipalities. This will be the case where “the public benefits are infringed upon due to the false or untruthful contents of the report published in a newspaper”<sup>73</sup> or where “the content published in a periodical is not true, unfair or harms public interests.”<sup>74</sup>

Article 26(3) of the RPA prohibits defamation of the State, defined as “harming the honour or the interests of the nation”.

### Analysis

<sup>71</sup> Quoted in *Near v. Minnesota*, 283 US 697, 718 (1931).

<sup>72</sup> Presumably, defamation claims can be pursued according to the civil code or other regulations regarding civil liability. Discussion of these separate provisions is outside the scope of this Memorandum.

<sup>73</sup> RANP, Art. 26.

<sup>74</sup> RAPP, Art. 26. According to the MOFCOM translation of RAPP, Article 26 requires correction whenever material is “not true, unfair *or* harms public interests” (emphasis added) while the RANP prohibits material that is false *and* harms the public interest. While the small linguistic difference creates a rather large difference in legal application, according to the CECC, the Chinese version of RAPP includes the more restrained text of RANP. The difference is most likely the result of translation error.

All advanced legal systems have defamation laws and there is little dispute that these laws, when applied to the public at large and not solely targeted at the media, can serve a legitimate purpose. Indeed, the three-part test under international law recognises protecting “respect of the rights or reputations of others” as valid grounds for restricting freedom of expression.

However, there should not be one defamation law for the general public, and another for the media. This creates legal uncertainty and also sends a message to the media that they are being singled out for harsh treatment, which will have an illegitimate chilling effect on the right to freedom of expression. Our overall recommendation, therefore, is that the provisions on defamation should be removed from the Regulations, and, to the extent necessary, enacted in legislation of general application, such as the civil code. Such legislation should provide for appropriate defences, establish procedural matters such as the burden of proof, and provide guidelines for the level of damages that may be awarded.<sup>75</sup> It is possible that these matters are already dealt with in other legislation of the People’s Republic. A discussion of such other laws is beyond the scope of this Memorandum; we confine ourselves to briefly identifying here a number of key problems with Article 26 of the Regulations.

First, international law requires defamation laws to distinguish between public and private figures. Public figures, such as politicians, should tolerate a far greater extent of criticism of their functioning than can be expected of a private individual. The UN Human Rights Committee has, for example, stated that “robust and even harsh criticism of government figures is an essential part of democracy.”<sup>76</sup> Courts in the East Asian region have concurred in this point of view. The Constitutional Court of South Korea, for example, has held that public officials should receive less protection from defamation than private individuals. Holding that criminal defamation provisions must be interpreted narrowly when applied to public person’s public activities, the Court stressed the importance of free public commentary for democracies. The speed at which reports must be made and published in order to inform public opinion inevitably leads to mistakes. This interest must be balanced against individuals’ privacy and reputations, and weighs more heavily against public officials than private individuals. The Court stressed the importance of not punishing papers for these simple errors, and to only apply sanctions when a paper publishes knowingly false information or acts with reckless disregard as to the truth of its statements.<sup>77</sup>

The heightened basis required by the South Korean Constitutional Court echoes the US Supreme Court ruling in *New York Times v. Sullivan*. The Court held that “debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”<sup>78</sup> Applying this principle, the Court ruled that in defamation cases, public figures must meet a high threshold for their claim to be successful: they must show that the publication was made with “‘actual malice’ – that is, with knowledge that it was false or with reckless disregard of whether it was false or not.”<sup>79</sup> The speaker must be aware of the falsity or have serious doubts about the accuracy of his or her statements.<sup>80</sup> Additionally, the plaintiff must prove such

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<sup>75</sup> Key international standards on defamation are encapsulated in the ARTICLE 19 publication *Defining Defamation: Principles on Freedom of Expression and Protection of Reputations*, London, July 2000, available at <http://www.article19.org/pdfs/standards/definingdefamation.pdf>.

<sup>76</sup> Concluding Observations on Zambia, ICCPR, A/51/40 vol. I (1996) 29 at para. 201.

<sup>77</sup> *Letter of Condolence for Kim Il-sung case*, 24 June 1999, 11-1 KCCR 768, 97Hun-Ma265.

<sup>78</sup> 376 US 254, 270 (1964)

<sup>79</sup> *Id.* at 280.

<sup>80</sup> *St. Amant v. Thompson*, 390 US 727, 731 (1968).

malice with clear and convincing evidence, a higher standard than applies to normal defamation cases.

We accordingly recommend introducing a distinction between public officials and private persons in all pertinent defamation legislation. Public officials who bring a defamation claim should be required to show that the statement in question was factual in nature, that it was false, and that the falsehood was intended or the result of recklessness as to its truthfulness.

Second, the prohibition on “harming the honour ... of the State” found in Article 26(3) of the RPA is highly problematic. While Article 19(3) of the ICCPR permits laws designed to protect the rights and reputations of “others”, this does not extend to public bodies and entities such as the State, which, in fact, do not have a reputation in the ordinary sense of the word. The UN Human Rights Committee has therefore recommended that “[t]he criminal offence of ‘defamation against the State’ should be abolished”.<sup>81</sup> The UN Special Rapporteur on Freedom of Opinion and Expression added that:

Government bodies and public authorities should not be able to bring defamation suits; the only purpose of defamation, libel, slander and insult laws must be to protect reputations and not to prevent criticism of Government or even to maintain public order, for which specific incitement laws exist.<sup>82</sup>

Third, we have some concerns regarding the right of reply regime established under Article 26 of the Regulations. Any right of reply constitutes an interference with editorial freedom, and must therefore comply with the requirements of Article 19(3) ICCPR. This means that a reply should be available only in response to incorrect statements that have caused harm to reputation, and that the reply must be proportionate to the offending report. The reply itself should not be defamatory or introduce new issues, and should not impede on the rights of third parties.<sup>83</sup>

### **Recommendations:**

- The defamation provisions should be brought in line with international standards and best practice, as summarised in ARTICLE 19’s publication *Defining Defamation*.<sup>84</sup> Such law should render actionable only incorrect statements of truth that cause harm to reputation and additionally provide for the following:
  - Appropriate defences should include a defence of truth and of 'reasonable publication';
  - The burden of proof concerning statements of public interest must lie with the claimant;
  - Guidelines should be provided on damages; and
  - Public officials suing for defamation should be required to prove, to a high level of convincingness, that the statement in question was false, directed towards their person, and made with the knowledge that it was false or with reckless disregard for the truth.
- The provision on 'defamation of the State' must be abolished.

<sup>81</sup> Concluding Observations on Mexico, ICCPR, A/54/40 vol. I (1999) at para. 326.

<sup>82</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, E/CN.4/2000/63, 18 January 2000. para. 52.

<sup>83</sup> See, for example, the Council of Europe's recent Recommendation (2004)16 on the right of reply in the new media environment: [http://www.coe.int/t/cm/adoptedTexts\\_en.asp](http://www.coe.int/t/cm/adoptedTexts_en.asp).

<sup>84</sup> Available online at <http://www.article19.org/pdfs/standards/definingdefamation.pdf>



- The right of reply should be available only in response to incorrect allegations of fact that cause harm to reputation. They should be proportionate to the offending publication, not be defamatory and not introduce new matters.

## 2.5. Rewards for Adhering to Guidelines

Under the Regulations, PPA or GAPP may reward publications whose content meet with its approval.<sup>85</sup> We are concerned that constitutes a form of censorship through reward which contravenes the right to freedom of expression.

Several national courts of final appeal have warned of the dangers inherent in State 'rewards' for certain publications. The US Supreme Court, for example, ruled that conditioning governing benefits on an individual's promise that they did not seek to overthrow the government was unconstitutional.<sup>86</sup> The Court said that "[t]o deny an exemption to claimants who engage in certain forms of speech is in effect to penalise them for this speech."<sup>87</sup> In a later case, the Court reiterated, "if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalised and inhibited. This would allow the government to 'produce a result which it could not command directly.'"<sup>88</sup>

Indian courts have issued similar rulings. The High Court of Andhra Pradesh, for example, has held that the State must not discriminate unfairly against any particular newspaper in placing government advertisements. In a case brought by a publisher who claimed that he was the target of such discrimination, the Court ruled that, while the government could not be compelled to enter into an advertising contract with any newspaper, it was obliged to allocate its advertisements even-handedly:

The Government spends a considerable portion of the funds in its hands in paying for Government advertisements. The purpose of issuing advertisements is to educate the public about the activities of the Government, to promote its policies, and in cases where the Government or Government companies are carrying on business or trade to advertise its wares. It is not expected of the Government to exercise this power in order to favour one set of newspapers or to show its displeasure against another section of the press. It should not use the power over such large funds in its hands to muzzle the press or as a weapon to punish newspapers which criticize its policies and actions.<sup>89</sup>

The Argentinean Supreme Court recently issued a ruling to the same effect.<sup>90</sup>

These rulings, and the prohibition on using government advertising to reward 'friendly' publications and to 'punish' others, should be contrasted with regime on media subsidies in general, which are permissible (and in some instances even desirable – for example, to promote small or minority media outlets). However, such subsidies should be available to all, and be distributed on the basis of criteria that are clear, fair and do not discriminate on grounds of content.

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<sup>85</sup> RANP, Art. 6; RAPP, Art. 7.

<sup>86</sup> 357 US 513 (1958)

<sup>87</sup> *Id.* at 518.

<sup>88</sup> *Perry v. Sindermann*, 408 US 593, 597 (1972) (citation omitted).

<sup>89</sup> *Ushodaya Publications Pvt Ltd v. Government of Andhra Pradesh*, AIR [1981] AP 109, 117.

<sup>90</sup> See <http://www.legalbrief.co.za/article.php?story=20070911074925789>. The judgment may be found at <http://vlex.com/vid/29981007>.

## Recommendations:

- Discretion should be eliminated in providing “reward(s)”. Any media subsidies should be provided on the basis of clear, fair and non-discriminatory guidelines.

## 2.6. Sources of Information

In addition to the Regulations on Newspapers and Periodicals (RANP) prohibiting the publication of material related to State secrets, another piece of legislation, the Regulations on the Protection of Secrets in News Publishing,<sup>91</sup> also places restrictions on the sources of information. These Regulations require any individual who intends to provide information to a newspaper to first apply to their supervising unit for examination and approval, if the information relates to their own work or may relate to State secrets. The Regulations also strictly limit the ability of publications to use information found on the Internet, requiring that the publisher verifies that the site adheres to unspecified “relative provisions” and that they clearly indicate the website's address and the date on which the material reported on was downloaded.<sup>92</sup>

### Analysis

Restraints regarding sources can constitute as much interference with the right to free expression as restraints on publications.

The prohibition on providing information to a news source without management approval clearly amounts to a form of prior restraint, which is viewed with great suspicion under international law, and generally considered permissible only in exceptional circumstances. The UN Special Rapporteur on Freedom of Opinion and Expression has stated, for example, that “any system of prior restraint on freedom of expression carries with it a heavy presumption of invalidity under international human rights law.”<sup>93</sup> A generalised requirement for all citizens to obtain authorisation for the release of any information about their work with supervisors is plainly illegitimate. A requirement specifically applying to civil servants who deal with sensitive material would be more defensible; as noted, however, China’s definition of State secrets is vague and overly broad,<sup>94</sup> meaning that a supervising unit is given impermissibly wide discretion to prohibit a subordinate from speaking to the press on nearly any subject.

Second, the requirement that publications ensure that websites used by them adhere to unspecified laws is also unjustifiable, as is the strict legal requirement that they provide details on when and where the material was obtained. Freedom to research and ‘seek’ information is an integral part of the right to freedom of expression, as is made clear by the explicit mention of the right to “seek and receive” information in Article 19(2) of the ICCPR. A journalist owes no duty of accountability to the government for which sources he or she consults; instead, it is up to the public to judge whether an individual’s articles are well-researched and whether the author has offered sufficient information about the sources used.

## Recommendations:

- There should be no generalised duty for individuals to seek permission before

<sup>91</sup> Enacted 13 June, 1996.

<sup>92</sup> RANP, Art. 27; RAPP, Art. 28.

<sup>93</sup> *Report on the mission to the Republic of Korea of the Special Rapporteur on Freedom of Opinion and Expression*, UN Doc. E/CN.4/1996/39/Add.1, p. 8.

<sup>94</sup> See section 2.4.2.

- speaking, or providing information, to a newspaper.
- Publications should not be required to disclose any reliance on material gathered from the internet or to disclose where and when this material was downloaded.

## 2.7. Prohibition on Anonymity

The licensing requirements discussed above ensure that no newspaper or periodical can be published anonymously, and the requirements to list employees in the license application assure they too will not remain anonymous. Additionally, Article 28 of RANP requires that the name of the author must appear on any news report, while Article 31(iv) adds that the name of the editor-in-chief should appear on the paper.

### Analysis

Although most journalists and editors will likely wish to be associated with their work, freedom of expression also includes the right to publish one's work anonymously. The right to anonymity has been recognised as integral part of the right to freedom of expression by the Special Rapporteur on Freedom of Opinion and Expression: "as the *travaux préparatoires* of the International Covenant on Civil and Political Rights indicate, the anonymous publication of an opinion or of information is protected by Article 19 (2)."<sup>95</sup>

The right to publish anonymously is constitutionally recognised in many countries.<sup>96</sup> The US Supreme Court has explained the justification for the principle as follows:

Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind. Great works of literature have frequently been produced by authors writing under assumed names. Despite readers' curiosity and the public's interest in identifying the creator of a work of art, an author generally is free to decide whether or not to disclose her true identity. The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible. Whatever the motivation may be, at least in the field of literary endeavor, the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry. Accordingly, an author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.<sup>97</sup>

As the Court noted, anonymous writing has a long tradition in world literary history, utilised by such authors as Thomas Jefferson, Voltaire, Charles Dickens, and perhaps even Shakespeare. Anonymous publication has a history in China as well, an example of which is the well-known classical novel 'Journey to the West' which was written during the Ming Dynasty.

### **Recommendation:**

- The right to publish anonymously should be respected.

<sup>95</sup> Report of the Special Rapporteur, Question of the all Persons Subjected to any form of Detention or Imprisonment, E/CN.4/1995/32, 14 December 1994, para. 31

<sup>96</sup> Such as Sweden and the United States.

<sup>97</sup> *McIntyre v. Ohio*, 514 US 334, 341-342 (1995)

## 2.8. Miscellaneous restrictions and requirements

The Regulations impose several further restrictions and requirements: on disclosure of financial means, requiring copies of all publications to be deposited with PPA or GAPP, and imposing restrictions on circulation and the format of publications. We discuss these in turn.

### Financial disclosure

The Regulations require that publications disclose to the government the amount and source(s) of their funding.<sup>98</sup> This is in addition to the requirement of “registered capital of more than 30,000 Yuan” to operate a licensed publication, discussed above.

We are concerned that these provisions serve no other purpose than to assert the government’s pervasive authority over every aspect of the print media sector. These specific requirements for print media are unnecessary as publications will be subject to general taxation laws and likely subject to corporate law.

### Deposit

The Regulations require that free copies of all publications are sent to the National Library of China, the China Library of Editions, and to PPA or GAPP.<sup>99</sup>

We are concerned at the legitimacy of this wholesale deposit requirement. While a requirement for large-scale publications to deposit copies with the National Library or Library of Editions might be justified as a way of preserving national cultural heritage, there is no legitimate reason for the requirement to deposit copies with PPA or GAPP. The purpose of such a requirement can only be control-oriented, and thus is incompatible with the right to freedom of expression.

### Circulation and format restrictions

The Regulations require the approval of PPA or GAPP for various matters, including the circulation and format of publications.<sup>100</sup> A publication failing to request approval for changes faces hefty fines and closure.<sup>101</sup>

There is a broad range of legal authority indicating that the requirement to seek official approval for determining the format of a publication or its circulation is incompatible with the right to freedom of expression. The US Supreme Court recognised more than a century ago that “[l]iberty of circulating is as essential to the freedom of speech as liberty of publishing; indeed without the circulation the publication would be of little value.”<sup>102</sup> Similarly, the Indian Supreme Court struck down as contrary to freedom of expression various restraints fixing the maximum number of pages that could be published by a newspaper according to the price charged, and prescribing the number of supplements that could be issued. The Court held that the freedom of a newspaper to publish any number of pages and the freedom of circulation of newspapers is necessarily involved in freedom of speech and expression and hence is also constitutionally protected.<sup>103</sup>

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<sup>98</sup> RANP, Art. 11(V); RAPP, Art. 12(V).

<sup>99</sup> RANP, Art. 45; RAPP, Art. 43

<sup>100</sup> RANP, Arts.: (number, structure, and distribution) 4, (approval for changes in name, sponsoring units, scope of business, number of issues) 17, (size) 18, (suspension) 20, (size) 33, (‘special page’) 34, (extra issues) 35 & 36, (re-reading) 48; similar provisions under RAPP, Arts. 5, 17, 18, 19, 20, 21, 31, 32, 34, 60, 62

<sup>101</sup> RANP, Arts. 62, 63; RAPP, Arts. 60, 62

<sup>102</sup> *Ex parte Jackson*, 96 US 727, 733 (1877)

<sup>103</sup> *Sakal Papers Ltd v. Union of India*, [1962] AIR 305, [1962] SC (3) 842, 855

Clearly, a restriction on the format and circulation of publications amounts to a restriction on the right to freedom of expression. The restrictions must then be justified under the 3-part test of Article 19(3).

While the restrictions may meet the requirement of clarity, it is highly unlikely they could be justified under one of the provided legitimate aims. For example, the size of the font a paper uses is completely immaterial to the protection of the reputations of others, national security, public order, or public health or morals. The same goes for the various other minor requirements and prohibitions. We therefore recommend that all provisions that regulate the format and circulation of print publications should be eliminated.

**Recommendation:**

- All financial disclosure rules that target print media organisations specifically should be abolished.
- Print media companies should not be required to submit copies of their publications to any regulatory body.
- All circulation and format restrictions on publications should be abolished.

## **APPENDIX 1: INTERNATIONAL STANDARDS ON FREEDOM OF EXPRESSION**

### **1. The International Guarantee of Freedom of Expression**

Article 19 of the *Universal Declaration on Human Rights* (UDHR)<sup>104</sup> guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The UDHR, as a UN General Assembly resolution, is not directly binding on States. However, parts of the UDHR, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.<sup>105</sup>

In addition, China is a signatory to the *International Covenant on Civil and Political Rights* (ICCPR),<sup>106</sup> the foremost United Nations human rights treaty, which has been ratified by 160 States.<sup>107</sup> Although China is not yet a party to the ICCPR, the *Vienna Convention on the Law of Treaties* requires any State that has signed a treaty “to refrain from acts which would defeat the object and purpose” of the treaty.<sup>108</sup> Given that the object and purpose of the ICCPR is to protect human rights, this can be interpreted to mean that China should not introduce legislation that clearly violates the rights protected under the ICCPR, including freedom of expression. Additionally, the ICCPR has been incorporated into Hong Kong's legal system and applies in full there.<sup>109</sup>

The ICCPR is not merely a statement of principles, but reflects the common minimum standard of rights which all States Parties are legally required to respect, regardless of differences in history, culture or economic circumstances. Article 19 of the ICCPR guarantees the right to freedom of opinion and expression in the following terms:

1. Everyone shall have the right to freedom of opinion.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

This definition has a number of key aspects. Firstly, the right to freedom of expression encompasses the right to “seek, receive, and impart information,” guaranteeing the right to

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<sup>104</sup> UN General Assembly Resolution 217A(III), adopted 10 December 1948.

<sup>105</sup> See H. Hannum, 'The Status of the Universal Declaration of Human Rights in National and International Law', *Georgia Journal of International and Comparative Law* 1995-1996 25(1-2): 287-397. For judicial opinions on human rights guarantees in customary international law, see *Barcelona Traction, Light and Power Company Limited Case (Belgium v. Spain) (Second Phase)*, ICJ Rep. 1970 3 (International Court of Justice); *Namibia Opinion*, ICJ Rep. 1971 16, Separate Opinion, Judge Ammoun (International Court of Justice); *Filariga v. Pena-Irala*, 630 F. 2d 876 (2nd Cir. 1980) (US Circuit Court of Appeals).

<sup>106</sup> UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976. China signed the ICCPR on 5 October 1998.

<sup>107</sup> As of 20 July 2007.

<sup>108</sup> *Vienna Convention on the Law of Treaties*, Article 18, adopted 23 May 1969, in force 27 January 1980. United Nations, *Treaty Series*, vol. 1155, p. 331.

<sup>109</sup> Article 39, Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, Adopted 4 April 1990

speakers, listeners, readers and others who receive information and those actively seeking information.<sup>110</sup> It also protects “ideas of all kinds,” thus “encompassing every form of subjective ideas and opinions capable of transmission to others.”<sup>111</sup> The right exists “regardless of frontiers,” protecting trans-national communications.<sup>112</sup> Finally, the expression may be in any medium, whether verbal, electronic, or visual.

Compliance by States with their obligations under the ICCPR is overseen by an official UN body, the UN Human Rights Committee. Its comments and decisions are an important source of authority on how the right to freedom of expression should be understood.<sup>113</sup> Further guidance on the scope of the right can be gained from the African, Inter-American and European regional human rights instruments which guarantee the right to freedom of expression in very similar terms to the ICCPR, and from the statements of the courts and tribunals overseeing these treaties. While the decisions of these courts are not binding on China, they provide a rich source of authority on freedom of expression principles and will be referred to below.

The Chinese Constitution<sup>114</sup> does also protect the right to freedom of expression for citizens:

Article 35

Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.

Article 41

Citizens of the People's Republic of China have the right to criticise and make suggestions to any State organ or functionary. Citizens have the right to make to relevant State organs complaints and charges against, or exposures of, violation of the law or dereliction of duty by any State organ or functionary . . . . No one may suppress such complaints, charges and exposures, or retaliate against the citizens making them.

It should be noted that, insofar as the protection of Articles 35 and 41 is limited to ‘citizens’, it falls short of what is required by international law. As the UDHR and ICCPR make clear, human rights, including the right to freedom of expression, should be guaranteed to *everyone* on the territory and within the jurisdiction of the State,<sup>115</sup> including non-citizens. Resident aliens and refugees have an important stake in society and should not be discriminated against in terms of the right to express their opinions.

In any event, these rights are significantly undermined by various other provisions in the Constitution, including Article 51, which subjects the enjoyment and exercise of all rights to “the interests of the state, of society and of the collective”, and by Article 53, which requires all citizens to “abide by the constitution and the law, keep state secrets, protect ... public order and respect social ethics”.

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<sup>110</sup> *Gauthier v. Canada*, 5 May 1999, No. 633/1995, U.N. Doc CCPR/C/D/633/1995 (UN Human Rights Committee)

<sup>111</sup> *Ballantyne, Davidson and McIntyre v. Canada*, 1993, Nos. 359 and 385/1989, U.N. Doc. CCPR/C/47/D/359/1989 and 385/1989/Rev.1, §11.3 (UN Human Rights Committee)

<sup>112</sup> See *Autronic Ag v. Switzerland*, 22 May 1990, App. No. 12726/87 (European Court of Human Rights).

<sup>113</sup> A database of the jurisprudence of the UN Human Rights Committee is available online at <http://www.unhchr.ch/html/menu2/8/jurispr.htm>.

<sup>114</sup> Adopted 4 December 1984. Source: <http://en.chinacourt.org/public/detail.php?id=2697>.

<sup>115</sup> ICCPR, Article 2.

## 2. Freedom of Expression and the Media

Media freedom is an integral part of the right to freedom of expression. The vital role of a free press in democratic societies has been widely recognised by international and domestic courts and tribunals. The UN Human Rights Committee has stressed the paramount importance of a free media to the political process:

[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.<sup>116</sup>

Regional and domestic courts have echoed the importance of free media. The Supreme Court of India recognised free expression as “the most precious of all the freedoms”.<sup>117</sup> It went on to State:

The freedom of speech and expression of opinion is of paramount importance under a democratic Constitution which envisages changes in the composition of legislatures and governments and must be preserved.<sup>118</sup>

The European Court of Human Rights has consistently emphasised the “pre-eminent role of the press in a State governed by the rule of law.”<sup>119</sup> It further stated:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.<sup>120</sup>

The U.S. Supreme Court has also repeatedly stressed the importance of the press in a democratic society:

The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government. And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people.<sup>121</sup>

Statements such as these can be found in the jurisprudence of courts the world over, showing global acceptance of the importance of freedom of expression and a free media.

## 3. Restrictions on Freedom of Expression

Given the importance of freedom of expression and media freedom, any restrictions imposed on them must remain within strictly defined parameters. Article 19(3) of the ICCPR provides these parameters, as follows:

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<sup>116</sup> General Comment 25, para. 25, U.N. Doc. CCPR/C/21/Rev.1/Add.7, issued 12 July 1996.

<sup>117</sup> *Sakal Papers Ltd v. Union of India*, 1962 AIR 305, 1962 SCR (3) 842 at 866 (1962).

<sup>118</sup> *Id* at 866.

<sup>119</sup> *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.

<sup>120</sup> *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43.

<sup>121</sup> *New York Times v. U.S.*, 403 US 713 at 717 (1971).



The exercise of [freedom of expression] carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

This means that any restriction, to be lawful and legitimate under the ICCPR, must pass a strict three part test:

1. the restriction must be provided by law;
2. it must pursue one of the specified legitimate aims in 19(3)(a) or (b); and
3. it must be necessary for that aim.

The following paragraphs elaborate on the meaning of these requirements.

#### *a. Provided by Law*

The requirement that restrictions be “provided by law” means not only that there must be a piece of legislation accessible to the public and enacted by a competent body; the law must also be as clear and precise as reasonably possible, so that citizens know in advance exactly which expressions are prohibited. The European Court of Human Rights has elaborated:

[A] norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.<sup>122</sup>

Laws that grant authorities excessively broad discretionary powers to limit expression fail the requirement of “provided by law”. The UN Human Rights Committee has repeatedly expressed concern about excessive discretion in the context of media regulation.<sup>123</sup> National courts have expressed the same concern. The South Korean Constitutional Court found certain provisions of that country’s National Security Act which prohibited praising or encouraging anti-State action impermissibly vague and overbroad. The law could not provide a reasonable person with a clear idea of the proscribed behaviour, leading to a suppression of free expression without a clear causal connection with the protection of national security.<sup>124</sup> The Constitutional Court has also stressed the problem of vague prohibitions creating potential for abusive enforcement. “Ambiguity ... inevitably results in the regulation of communication that should not be regulated.”<sup>125</sup> Further, the Court discussed the risk of self-censorship:

[R]estrictions of freedom of expression by an unclear statutory provision would bring about the chilling effect on constitutionally protected expression, and cause malfunctioning of this freedom. When it is unclear what kind of expression is being prohibited by such legislation, it is

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<sup>122</sup> *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49 (European Court of Human Rights), cited with approval in *Leun Kwok Hung and Other s v. HKSAR*, 8 July 2005, FACCC2/2005, para. 27 (Court of Final Appeal of Hong Kong).

<sup>123</sup> See its Concluding Observations on Kyrgyzstan, 24 July 2000, UN Doc. CCPR/CO/69/KGZ, para. 21; and its Concluding Observations on Lesotho, 8 April 1999, UN Doc. CCPR/C/79/Add.106, para. 23.

<sup>124</sup> *Praising and Encouraging under National Security Act case*, 2 April 1990, 2 KCCR 49, 89Hun-Ka113. (although Act was upheld, it was limited to those activities posing a clear threat to national security, but see dissent of Justice Byun Jeong arguing that unconstitutionally vague provisions cannot be cured by narrow interpretation.)

<sup>125</sup> *Ban on Improper Communication on the Internet Case*, 27 June 2002, 14-1 KCCR 616, 99Hun-Ma480.

very likely that a person would abstain from expressing himself lest he should be punished for making such expression because he is not certain that what he is about to express is not subject to regulation.<sup>126</sup>

### ***b. Pursuing a Legitimate Aim***

Second, the interference must pursue a legitimate aim. The list of aims in Article 19(3) of the ICCPR is exclusive; no other aims are considered legitimate grounds for restricting freedom of expression.<sup>127</sup> Thus a restriction may only have the aim of protecting the rights or reputations of others, national security,<sup>128</sup> public order, or public health or morals.

To satisfy this second part of the test for restrictions on freedom of expression, it is not sufficient that the restriction in question has a merely incidental effect on the legitimate aim. The restriction must be primarily directed at that aim, as the Indian Supreme Court has noted in relation to that country's similar constitutional test for limitations on freedom of expression:

So long as the possibility [of a restriction] being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly unconstitutional and void.<sup>129</sup>

In assessing the legitimate aim, courts go beyond the general aim the law serves and look at its specific objectives. The Canadian Supreme Court has noted:

Justification ... requires more than the general goal of protection from harm common to all criminal legislation; it requires a specific purpose so pressing and substantial as to be capable of overriding the Charter's guarantees.<sup>130</sup>

In assessing whether a restriction on freedom of expression addresses a legitimate aim, regard must be had to not only to its purpose, but also to its effect:

[B]oth purpose and effect are relevant in determining constitutionality; either an unconstitutional purpose or an unconstitutional effect can invalidate legislation.<sup>131</sup>

### ***c. Necessary***

Finally, the restriction must be *necessary* to secure the legitimate aim. This part of the test presents a high threshold to be overcome by the State seeking to justify the restriction. The use of the word "necessary" in international law implies that, when deciding to restrict freedom of expression, the government must be faced with a situation of real need, not merely convenience. Interpreting the similar provision in the ECHR that protects freedom of expression, the European Court has held:

[W]hilst the adjective "necessary" ... is not synonymous with "indispensable", neither has it the flexibility of such expressions as "admissible", "ordinary", "useful", "reasonable" or "desirable".<sup>132</sup>

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<sup>126</sup> *Id.*

<sup>127</sup> *Leung Kwok Hung and Others v. HKSAR*, note 29, para. 35

<sup>128</sup> Restrictions for the purpose of national security are permissible only when there is a serious political or military threat. The UN Human Rights Committee has routinely criticised overly broad restrictions on the expression of opposition groups, politicians, or critical media, even when national security is offered as a justification. See., e.g. Application Nos. 458/1991, 518/1992, 574/1994, 628/1995, 780/1997, 921/2000. See section 2.4.2 below for further discussion.

<sup>129</sup> *Thappar v. State of Madras*, (1950) 1950 AIR 124, 1950 SCR 594 at 603.

<sup>130</sup> *R. v. Zundel*, (1992) 2 S.C.R. 731, p.733 (Supreme Court of Canada).

<sup>131</sup> *R. v. Big M Drug Mart Ltd.*, (1985) 1 SCR 295, p.331 (Supreme Court of Canada).

<sup>132</sup> *Sunday Times v. the United Kingdom*, note 29, para. 59.

The European Court has further elaborated that necessity involves an analysis of whether:

[There is a] “pressing social need” ... [, whether] the interference at issue was “proportionate to the legitimate aim pursued” and whether the reasons adduced...to justify it are “relevant and sufficient.”<sup>133</sup>

Although Article 19(3) of the ICCPR, unlike the corresponding provision in the ECHR,<sup>134</sup> does not expressly limit restrictions to those necessary “in a democratic society”, the UN Human Rights Committee routinely refers the role of freedom of expression in free and democratic societies in determining the meaning of necessity under the ICCPR.<sup>135</sup>

The word ‘necessary’ in Article 19(3) is understood to have a number of additional implications. First, the interference should be designed to impair “as little as possible” the right to freedom of expression.<sup>136</sup> The provision must be narrowly tailored to achieve the aim of the legislation without creating any unnecessary burden on free expression. It cannot restrict speech in a broad and untargeted way. In applying this criterion, courts have recognised that there may be practical limits on how finely honed and precise a legal measure may be. But subject only to such practical limits, restrictions must not be overbroad.

Second, closely related to the requirement of narrow tailoring is the requirement that the provision be the least restrictive means available. If there exists an alternative measure which would be less intrusive to the right to free expression but would nevertheless accomplish the same goal, the restriction is not necessary. If there are various options to achieve a State objective – say, the prevention of crime or disorder – then the one which least restricts the protected right must be selected.<sup>137</sup> Constitutional courts such as the US Supreme Court have commented on the important nature of this requirement:

[E]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.<sup>138</sup>

Third, there must be a proportionality between the effects of the measures taken on the right concerned and the objective of the measures.<sup>139</sup> The harm to freedom of expression must not outweigh the benefits in terms of the interest protected. For example, a restriction which provided limited protection to reputation but which seriously undermined freedom of expression would not pass muster.<sup>140</sup> Democratic societies depend on the free flow of information and ideas and it is only when the overall public interest is served by restricting that flow that such a restriction can be justified. This implies that the benefits of any restriction must outweigh the costs for it to be justified.

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<sup>133</sup> *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, EHRR 407, paras. 39-40.

<sup>134</sup> See also Articles 14(1), 21, and 22(2) of the ICCPR.

<sup>135</sup> See, e.g., Nos. 422-424/1990, § 7.4; 628/1995, §10.3; 633/1995, §§ 13.4-13.5.

<sup>136</sup> *R. v. Big M Drug Mart Ltd.*, note 38, p.352 (Supreme Court of Canada).

<sup>137</sup> See the judgment of the Inter-American Court of Human Rights in *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, November 13, 1985, Advisory Opinion OC-5/85, Int-Am. Ct. H.R. (Ser. A) No. 5, para. 46.

<sup>138</sup> *Shelton v. Tucker*, 364 US 479 at 488 (1960).

<sup>139</sup> *HKSAR v. Ng Kung Siu*, 15 December 1999, FACC4/1999, para. 60 (Court of Final Appeals, Hong Kong); *R. v. Oakes*, (1986) 1 SCR 103, pp.138-139 (Supreme Court of Canada).

<sup>140</sup> See, for example, *Open Door Counselling and Dublin Woman Well Centre and Others v. Ireland*, 29 October 1992, Application No. 1423/88 and 142335/88 (European Court of Human Rights), para. 73.

For example, the Constitutional Court of South Korea struck down provisions prohibiting a candidate from expressing an endorsement by a political party on the grounds that the severity of the restriction on free expression was disproportionate to the purpose of securing a decentralisation of power and regional autonomy:

[T]he provision on review here conspicuously lacks a balance between the conflicting legal interests, as there is no reasonable proportionate relations between the benefit of the public interest resulting from the prohibition of the political party endorsement or recommendation and the loss therefore.<sup>141</sup>

In order to ensure that the laws comply with international law as embodied in Article 19(3) of the ICCPR, any restrictions contained must be evaluated under the three-part test set out above. If a restriction is insufficiently clear, does not address a recognised legitimate aim or is not strictly necessary for such aim, it should be amended or removed.

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<sup>141</sup> *Prohibition of Statements of Party Affiliation of Candidates for Election to a Local Council*, 30 January 2003, 15-1 KCCR 7, 2001Hun-Ka4.

## APPENDIX 2: REGULATIONS FOR ADMINISTRATION OF NEWSPAPER PUBLICATION (RANP)

Source:

<http://english.mofcom.gov.cn/aarticle/policyrelease/domesticpolicy/200511/20051100893912.html>

*Promulgated through Decree No. 32 of the General Administration of Press and Publication of the People's Republic of China, September 30, 2005, to take effect December 1, 2005*

### Chapter I General Provision

#### Article 1

These Regulations are formulated in accordance with the “Regulations on Publication Administration” promulgated by the State Council and related laws and regulations for the purpose of developing and promoting our country’s newspaper cause, standardizing and strengthening newspaper publication.

#### Article 2

These Regulations shall apply to the newspaper publishing activities conducted in the territory of the People's Republic of China.

Newspapers shall be published by publishing units established according to law. To publish newspapers, a publishing unit must get approval of the Press and Publication Administration, national unified publication number and newspaper publication license.

The “newspaper” used in these regulations refers to any loose-leaf publication with fixed name, number of issues and format size and with news and current events survey as the main content that is continuously published at least one issue a week.

The “newspaper publishing unit” used in these regulations refers to any newspaper office established in accordance with relative provisions of the State as approved by the Press and Publication Administration. Where a legal person publishes a newspaper without setting up a newspaper office the editorial department established by the legal person for the newspaper shall be deemed to be a publishing unit.

#### Article 3

Newspaper publication must adhere to Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory and the important thought of “three representatives”, follow correct guideline of public opinions and publication orientation and persist in the principle of giving first priority to the social benefits, achieving combination of social benefits and economic returns, leaning close to the practice, the masses and the life, fostering a good atmosphere for building socialism with Chinese characteristics and enriching the cultural life of the broad masses of the people.

#### Article 4

The Press and Publication Administration shall be responsible for the supervision and administration of publishing activities nationwide, make and implement plans for the total number, structure and distribution of newspaper publishing units nationwide and establish and perfect supervision and management systems such as comprehensive quality assessment

system for newspaper publication nationwide, annual newspaper check and examination system and newspaper publication withdrawal system.

The local press and publication administration departments at different level shall be responsible for the supervision and administration of newspaper publishing activities within their own administrative areas.

#### Article 5

Newspaper publishing units shall be responsible for the publishing activities including editing and publication.

Lawful publication activities of newspaper publishing units shall be protected by law. No organization or individual shall illegally interfere with, prevent or disrupt the publishing of newspapers.

#### Article 6

The Press and Publications Administration shall reward the units and individuals who have made contribution to the development and flourishing of the newspaper cause of the country.

#### Article 7

The social organization of the newspaper publishing industry shall carry out self-regulation in conformity with the articles of association and under the guidance of press and publication administration department.

### **Chapter II Establishment of Newspapers and Newspaper Publishing Units**

#### Article 8

For establishment, a publishing unit shall meet the following conditions:

- (I) possessing a name different with that of any other existing newspaper
- (II) possessing a name and the articles of association of the publishing unit;
- (III) possessing a sponsoring unit which is recognized by the Press and Publication administration of the State Council, and the competent agency at the higher level;
- (IV) possessing a well-defined scope of business;
- (V) possessing a registered capital of more than 300,000 yuan;
- (VI) possessing an organizational structure which meets the needs of its scope of business and editorial and publishing professionals conforming to qualifications stipulated by the State;
- (VII) possessing a fixed premise located in the same administrative area of the sponsor;
- (VIII) possessing legal representative or major responsible person who must be a Chinese citizen permanently residing in Chinese territory; and
- (IX) other requirements prescribed by the laws and administrative regulations.

In addition to the conditions listed in the preceding paragraphs, the approval of the establishment of a publishing unit shall also accord with the plan of the State for the total number, structure and distribution of newspaper publishing units.

#### Article 9

For a central department located in Beijing to establish newspaper or newspaper publishing unit, the sponsoring unit shall apply to the Press and Publication Administration for approval after getting approval from the host unit.

For the Chinese People's Liberation Army and the Chinese People's Armed Police Forces to establish a newspaper and a publishing unit, the sponsoring unit shall make an application to the Press and Publication Bureau of the Propaganda Department under the General Political Department; the said bureau shall upon examination and consent, submit it to the Press and Publication Administration under the State Council for examination and approval.

For other department to establish a newspaper and publishing unit, after approved by its host unit, the sponsoring unit shall make an application to press and publication administration department the province, autonomous region or municipality where it is located; the said publication administration department shall, upon examination and consent, submit it to the Press and Publication Administration under the State Council for examination and approval.

For two or more than two units to establish a newspaper, there must be a major sponsoring unit that shall make application.

The major sponsoring unit of a newspaper shall be a subordinate unit of its host unit; the publishing unit of a newspaper shall be located at the same area of the major sponsoring unit.

#### Article 11

For establishment of a newspaper and a newspaper publishing unit, the sponsoring unit shall make an application with the following materials:

- (I) a "Form of Application for Newspaper Publication";
- (II) certificates about the qualification and competence of the sponsoring unit and host unit;
- (III) the resume, identification documents and professional qualification certificates of the proposed legal representative or major responsible person of the newspaper publishing unit;
- (IV) qualification certificates of editorial and publishing professionals
- (V) relative certificate documents about the sources and amount of the fund used for newspaper publishing
- (VI) the articles of association of the publishing unit;
- (VII) certificate of premise used;
- (VIII) feasibility study report on newspaper publishing.

#### Article 12

The Press and Publication Administration under the State Council shall make a decision of approval or disapproval within 90 days from the date of receipt of the application for the establishment of a newspaper and publishing unit, and press and publication administration department of the province, autonomous region or municipality shall inform the sponsoring unit of the decision in written form; reasons shall be given where a decision of disapproval is made.

#### Article 13

The sponsoring unit establishing a newspaper shall go through the formalities of registration within 60 days from the date of receipt of the information on the approval decision of the Press and Publication Administration.

- (I) The sponsoring unit shall take the approval documents to press and publication administration department of the province, autonomous region or municipality where it is located to obtain a "Registration Form of Newspaper Publication" and fill it. After examined and signed by the host unit, the form shall be submitted to press and publication administration department of the province, autonomous region or municipality where it is located

(II) The “Registration Form of Newspaper Publication” shall have five copies. Each of them shall be held by the publishing unit, sponsoring unit, host unit and press and publication administration department of the province, autonomous region or municipality where it is located; the last copy shall be submitted by press and publication administration department of the province, autonomous region or municipality within 15 day to the Press and Publication Administration under the State Council for record.

(III) After examining the “Registration Form of Newspaper Publication” as correct, press and publication administration department of the province, autonomous region or municipality shall issue “Newspaper Publishing License” to the sponsoring unit within 10 days and list the newspaper into the national unified publication number.

(IV) The sponsoring unit thus shall apply to the administrative department for industry and commerce for a business license on the basis of “Registration Form of Newspaper Publication”.

#### Article 14

The sponsoring unit of a newspaper shall go through the formalities of registration within 60 days from the date of receipt of the approval document from the Press and Publication Administration; otherwise, the approval document will be invalid, and the registration department would refuse its registration and the sponsoring unit shall return the approval documents back to the Press and Publication Administration.

Where a newspaper publishing unit has not published any newspaper within 90 days from the date of registration, the Press and Publication Administration shall revoke the “Newspaper Publishing License” and the original publication administration department shall cancel the registration.

Where the situation listed in the preceding paragraph is due to force majeure or for other justified reasons, the publishing unit may apply to press and publication administration department for an extension of the said time limit.

#### Article 15

A newspaper office shall satisfy the requisite conditions of a legal person, obtain the qualifications of a legal person through verification and registration, and undertake civil liabilities independently with all its legal person property.

The editorial department does not have the qualifications of a legal person, and its civil liabilities shall therefore be undertaken by its sponsoring unit.

#### Article 16

Where a publishing unit changes its name, carries out merger or separation, changes its capital structure or publishes a new newspaper it shall go through the procedures of examination, approval and registration in accordance with the provisions of Articles 9 to Article 13 of these Regulations.

#### Article 17

Where a newspaper changes its name, sponsoring unit or competent agency at the higher level, number of issues or scope of business, it shall go through the procedures of examination, approval and registration in accordance with the provisions of Articles 9 to Article 13 of these Regulations.



Where a newspaper changes its number of issues, the Press and Publication Administration can entrust press and publication administration department of the province, autonomous region and municipality to make examination and approval.

The scope of business used in these regulations includes the aim and the language used.

#### Article 18

Where a newspaper changes its size, its publishing unit shall, upon examination and content of its sponsoring unit, apply for approval of the change to press and publication administration department of the province, autonomous region or municipality where it is located

#### Article 19

Where a newspaper publishing unit changes its address, the legal representative or major responsible person or the printing unit, it unit shall, upon examination and content of its sponsoring unit, be registers with press and publication administration department of the province, autonomous region or municipality where it is located within 15 days.

#### Article 20

Where a newspaper suspends for more than 20 successive days, the publishing unit shall go through the suspension formalities with press and publication administration department of the province, autonomous region or municipality where it is located and explain the reason and period of the suspension.

The suspension period of a newspaper should not exceed 180 days. If there is no normal publication for more than 180 days the Press and Publication Administration shall revoke its “Newspaper Publishing License”, and press and publication administration department of the province, autonomous region and municipality shall cancel the registration.

#### Article 21

Where a newspaper publishing unit terminates its publishing activities, it shall, upon examination and content of its sponsoring unit, go through registration of cancellation at press and publication administration department of the province, autonomous region or municipality where it is located, which shall make a report to the Press and Publication Administration under the State Council for the record.

#### Article 22

The publishing unit established with the same name of the newspaper cancelled shall be cancelled at the same time and shall go through registration of cancellation at the administrative department for industry and commerce where the original registration was conducted

The cancelled newspaper and its publishing unit should no longer conduct publishing and business activities with the same name.

#### Article 23

For central newspaper publishing units to establish a newspaper group, the approval should be given by the Press and Publication Administration; for local central newspaper publishing units to establish a newspaper group, application be submitted to press and publication administration department of the province, autonomous region and municipality where they are located and upon examination and content reported to the Press and Publication

Administration for approval.

### **Chapter III Publishing of Newspapers**

#### Article 24

Newspaper publishing shall adopt a system of editor's responsibility to ensure that the contents of the newspapers conform to the provisions of the State laws and regulations.

#### Article 25

No newspaper shall contain the contents which are prohibited by the “Regulations on Publication Administration” and other laws and regulations or by the State.

#### Article 26

Newspaper must adhere to the principle of real, overall, objective and just and should not contain false contents inconsistent with the facts.

Where the lawful rights and interests of a citizen, a legal person or some other organizations are infringed upon due to the false and untruthful contents of a newspaper, its publishing unit shall make public corrections, eliminate the effects, and bear civil liabilities according to law.

Where the lawful rights and interests of a citizen, a legal person or some other organizations are infringed upon due to the false or untruthful contents of the report published in a newspaper, the party concerned shall have the right to require to make corrections or make a reply, and the relevant publishing unit shall publish the corrections or reply in its newspaper; in case of refusal to make publication, the party concerned may bring a suit in a people's court.

The corrections or reply to the false and untruthful contents of the report shall be published in the latest issue of the newspaper after the mistakes are found and on the same position where they are found.

Where the public benefits are infringed upon due to the false or untruthful contents of the report published in a newspaper, the Press and Publication Administration or the press and publication administration department of the province, autonomous region and municipality can instructed the publishing unit to make corrections.

#### Article 27

Any newspaper shall abide by relative regulations when carries or reprinted the contents with relation to the important State policy, national and religion affairs, diplomacy, military and secrecy of the State.

For any newspaper to reprint and abstract contents from the Internet, the contents must be verified according to relative provisions; the website where the contents are unloaded and the date when they are loaded must be marked in obvious position.

#### Article 28

For newspaper to carry news report, the real name of the author must be clearly indicated.

#### Article 29

The quality of newspaper publishing shall meet the national and industrial standards; the language the newspaper uses shall accord with relative provisions of the State.

#### Article 30

The newspaper publishing shall accord with the registered items in the “Newspaper Publication License”; change of the registered items shall be applied for approval or go through recording formalities.

#### Article 31

Each issue of the newspaper shall be marked with following edition records on a fixed position when published:

- (I) Name of the newspaper;
- (II) Names of the publishing unit, sponsoring unit and host unit;
- (III) Consecutive national unified publication number;
- (IV) Name of the editor-in-chief (director general);
- (V) Publication date, general issue number, pages, and series;
- (VI) Address, telephone and zip code of the publishing unit;
- (VII) Price of the newspaper (extra shall be marked with “free to read”);
- (VIII) Name and address of the printing unit;
- (IX) Number of advertising business license;
- (X) Other marks with relation to public benefits or industrial standards as stipulated by the state.

#### Article 32

One consecutive national unified publication number only can be used by one newspaper and cannot be use for the publication of different newspapers.

For the publication of a newspaper in different editions (languages) such as local edition, minority nationality language edition and foreign language edition, the application formalities shall be gone through as for creating a new newspaper.

#### Article 33

One newspaper cannot be published with different sizes.

All the pages of a newspaper shall be issued as a whole and cannot be issued respectively.

#### Article 34

The special page or special issue of a newspaper shall accord with the aim and business scope of the newspaper; the headline characters of the special page or special issue shall not be larger than the name of the newspaper.

#### Article 35

In addition to normal issues, extra issue can be published. Application formalities for extra issues shall be gone as changing the number of issues.

The contents of extra issue shall accord with the business scope of the newspaper; the size, language, range of distribution and number of copies shall accord with the main newspaper; the extra newspaper shall be issued along with the main newspaper.

#### Article 36

Newspaper publishing unit can issue extra for important events; the extra issue shall be market with “Extra” on the head and cannot be published for more than 3 consecutive days.

The publishing unit that issues extra shall register with the press and publication administrative department of the province, autonomous region and municipality where it is located and submit all the sample copies of the extra newspapers within 15 days after publishing.

#### Article 37

A publishing unit should not sell, lease or transfer its name and the edition number, name and edition layout of its newspaper; and should not lend, transfer, lease and sell the “Newspaper Publication License”.

#### Article 38

For publishing advertisement, the characters of “Advertisement” shall be market on the distinct position of the newspaper; advertisement should not be published in the form of news.

For newspaper to cover advertisement, relative certificates should be checked according to laws and administrative regulations; the contents of the advertisement shall be verified; pernicious, false and illegal advertisement identified should not be published.

Advertisement business of a newspaper shall be limited to advertisement service and advertisement agency within the authorized legal scope and should not be involved in the news gathering, editing and other publishing activities of the newspaper.

#### Article 39

A newspaper publishing unit should not cover any payable news in the newspaper.  
A newspaper publishing unit and its staff should not use news coverage to seek irregular profits for themselves, and should not ask for and accept any property or other benefit from the covered or the interested person.

#### Article 40

The editorial and publishing operations of a newspaper must be divided with the business operation.

The editorial and publishing department and its staff should not get involved in the business activities with relation to the newspaper distribution and advertisement; the business department and its staff should not get involved in the covering and editing works.

#### Article 41

The editorial and publishing persons of a newspaper publishing unit who conduct news gathering activities must hold press card verified and issued by the Press and Publication Administration under the State Council and follow relative provisions of the “Measures for Management of Press Card” formulated by the Press and Publication Administration.

#### Article 42

Based on the demands of news gathering, a newspaper publishing unit can establish press stations in accordance with the “Measures for Management of Press Card” formulated by the

Press and Publication Administration to conduct press activities.

Article 43

Newspaper publishing unit should not conduct business activities through illicit competition or with illicit form, and should not apportion distribution of newspapers by taking advantages of its power.

Article 44

Newspaper publishing units shall submit statistics data to the press and publication administration department according to the statistics laws and regulations of the State.

Newspaper publishing units shall cooperate with the publication distribution data investigation body certified by the State to conduct investigation on the distribution number of newspapers and provide real data on newspaper distribution.

Article 45

Newspaper publishing units shall send free sample copies to the National Library of China, China Library of Editions, the Press and Publication Administration under the State Council and the press and publication administration departments of the provinces, autonomous regions and municipalities they are located.

**Chapter IV Supervision and Management**

Article 46

The supervision and management of newspaper publishing activities shall be conducted under territorial principle.

The press and publication administration departments of the provinces, autonomous regions and municipalities shall be responsible for the supervision and administration of newspaper publishing activities within their own administrative areas accordance to law, including registration, annual inspection, quality assessment and administrative penalty.

Other local press and publication administration departments shall be responsible for the supervision and administration of newspaper publishing units and their newspaper publishing activities within their own administrative areas.

Article 47

Newspaper publication management shall carry out newspaper re-reading system, quality assessment system, annual inspection system and press staff competency management system.

Newspaper publishing units shall submit written report on newspaper publishing activities to the press and publication administration departments according to the provision of the Press and Publication Administration under the State Council.

Article 48

The Press and Publication Administration under the State Council shall be responsible for the re-reading of national newspapers. Local press and publication administration departments at different level shall be responsible for the re-reading of the newspapers published in their own administrative areas. The press and publication administration departments at lower level shall submit report on re-reading to the press and publication administration departments at

higher level.

The host units shall re-read the newspapers under their control and submit re-reading reports to the press and publication administration departments where they are located regularly.

Newspaper publishing units shall establish newspaper reading and assessment system and prepare reading and assessment report regularly. The press and publication administration departments can read and inspect the reading and assessment reports of the publishing units at any time based on the requirements for management.

#### Article 49

The Press and Publication Administration under the State Council shall formulate the comprehensive assessment system for newspaper publishing quality to conduct overall assessment on the publishing quality.

In case the results of the quality comprehensive assessment on a newspaper shows that the quality of the newspaper fails to reach the defined standard or cannot maintain normal publishing activities, the Press and Publication Administration under the State Council shall revoke its “Newspaper Publishing License” and the registration with the press and publication administration department of the province, autonomous region and municipality it is located shall be cancelled.

#### Article 50

The press and publication administration departments of the provinces, autonomous regions and municipalities shall conduct annual verification and examination to the newspaper publishing units located in their administrative areas. The contents of annual verification and examination shall include newspaper publishing unit and the registered items of the newspapers they published, publishing quality, situation of the observance of disciplines and law, management of press cards and press stations etc.

#### Article 51

Annual verification and examination shall be conducted according to the following procedure:

(I) A newspaper publishing units shall submit annual self-examination report and fill in the unified “Newspaper Publishing Annual Examination Format” printed by the Press and Publication Administration under the State Council; after verified and sealed by the sponsoring and host units, the self-examination report, along with 30 sample copies consecutively published before the date of examination, to the press and publication administration department of the province, autonomous region and municipality where it is located.

(II) The press and publication administration department of the province, autonomous region and municipality shall conduct verification and examination of the self-examination report, the “Newspaper Publishing Annual Examination Format” and other data and materials submitted by the publishing unit.

(III) If a publishing passes the examination as meeting the defined standard, the press and publication administration department of the province, autonomous region and municipality shall stamp the annual examination seal on the “Newspaper Publishing Annual Examination Format”. Once the Format stamped, the publishing unit shall go on its newspaper publishing activities.

(IV) The press and publication administration department of the province, autonomous region and municipality shall submit an annual examination report to the Press and Publication

Administration under the State Council within 30 days after completing the newspaper publishing annual examination.

#### Article 52

Under one of the following circumstances, the annual examination shall be deferred:

- (I) in the process of rectifying and reform within a prescribed time limit of stopping publishing;
- (II) being found of unlawful practice constituting penalty;
- (III) with host and sponsoring units' failure to implement their responsibility for management leading confusion in management of the newspaper publishing;
- (IV) on suspicion of other illegal acts ought to be further verified.

The deferring period of the annual examination shall be decided by the press and publication administration department of the province, autonomous region and municipality and be submitted to the Press and Publication Administration under the State Council for record. After the deferring period, the annual examination shall be recovered in accordance with Article 50 and Article 51 of these Regulations.

#### Article 53

Under one of the following circumstances, the annual examination should not be passed:

- (I) violating law but refusing to rectify after being investigated and prosecuted or without obvious results of rectification;
- (II) failure to meet the standard defined for publishing quality for long time;
- (III) in insolvency because of worsening operation;
- (IV) already unable to meet the conditions prescribed in Article 8 of these Regulations.

Failing to pass the annual examination, the publishing unit's "Newspaper Publishing License" shall be revoked by the Press and Publication Administration under the State Council and the registration shall be cancelled by the press and publication administration department of the province, autonomous region and municipality where it is located.

Failing to pass the annual examination, the newspaper publishing unit shall stop publishing newspaper starting from the next years.

#### Article 54

After being stamped with the annual examination seal, the "Newspaper Publishing License" can be used continuously. For relative departments to go through formalities of newspaper publishing, printing and distribution, the "Newspaper Publishing License" without annual examination seal cannot be used.

Where any newspaper publishing unit does not participate annual examination and still refuse to participate under ask, the Press and Publication Administration under the State Council shall revoke its "Newspaper Publishing License", and the press and publication administration department of the province, autonomous region and municipality where it is located shall cancel its registration.

#### Article 55

Organs in charge of the examination can publicize the results of the annual examination to the society.

#### Article 56

Professionals involved in newspaper publishing shall meet the occupational requirements for press publication prescribed by the State.

#### Article 57

The director general and editor-in-chief of a newspaper publishing unit shall meet the occupational requirements prescribed by the State.

The director general and editor-in-chief of a newspaper publishing unit shall take part in the occupational training organized by the press and publication administration department.

The new director general and editor-in-chief of a newspaper publishing shall accept occupational training and pass the examination before take their positions.

### **Chapter V Legal Liabilities**

Any newspaper publishing unit that violates these Regulations shall be imposed on following administrative countermeasures by the press and publication administration department based on the actual situation:

- (I) circulating notice of warning;
- (II) circulating notice of criticism ;
- (III) order to make public self-criticism;
- (IV) order to rectify;
- (V) order to stop publishing and distributing the newspaper;
- (VI) order to retract the newspapers;
- (VII) order the sponsoring and host units to supervise the publishing unit's rectification.

The notice of warning shall take the unified form stipulated by the Press and Publication Administration under the State Council and be sent to the law-breaking newspaper publishing unit by the Press and Publication Administration under the State Council or the press and publication administration department of the province, autonomous region and municipality where it is located, with a copy sent to the sponsoring and host units of the newspaper publishing unit.

The administration measures prescribed in this article can be used in combination.

#### Article 59

Without approval, any unauthorized establishment or any activity to engage in the unauthorized publication, or to forge or counterfeit the name of a publishing unit, or of a newspaper to publish newspaper, shall be punished in accordance with Article 55 of "the Regulations on Administration of Publication".

#### Article 60

Publishing newspapers which contain the contents prohibited by "the Regulations on Administration of Publication", other laws and regulations or provisions of the State shall be punished in accordance with Article 55 of "the Regulations on Administration of Publication".

#### Article 61



Newspaper publishing unit that breaks Article 37 of these regulations shall be punished in accordance with Article 60 of “the Regulations on Administration of Publication”.

Newspaper publishing unit that permit or acquiesce in advertisement operators to engage in the publishing activities including covering and editing shall be punished in accordance with the preceding item.

#### Article 62

A newspaper publishing unit that commits one of the following acts shall be punished in accordance with Article 61 of “the Regulations on Administration of Publication”.

(I) A newspaper publishing unit fails to follow these regulations to go through the formalities of examination and approval of change of its name, merger or separation, change of its capital structure, publishing new newspapers;

(II) A newspaper fails to follow these regulation to go through the formalities of examination and approval of changes at its name, sponsoring unit, host unit, number of issues, scope of business and size;

#### Article 63

Where any newspaper publishing unit commits one of the following acts, the Press and Publication Administration under the State Council or the press and publication department of the province, autonomous region and municipality shall give a warning and impose a fine of no more than RMB 30,000 yuan:

(I) failing to follow Article 19 of these regulations to report for record the changes of address, or legal representative or major responsible person, or printing unit;

(II) failing to follow Article 20 of these regulations to report for record the suspension of publishing;

(III) covering false or inaccurate reports harming public interests and refusing to implement the rectifying order of the press and publication administration department;

(IV) failing to carry the real name of the author when cover report on the newspaper;

(V) covering or abstracting relative articles against Article 27 of these regulations;

(VI) failing to carry editorial record of the newspaper according to Article 31 of these regulations;

(VII) publishing several editions of newspapers with a single number against Article 32 of these regulations;

(VIII) publishing different editions of newspapers or distributing some pages respectively against Article 33 of these regulations;

(IX) violating the provisions of these regulations on publishing special page, special issue, additional issue or extra;

(X) failing to mark the word “advertisement” on the distinct position when covering advertisement or covering advertisement in news form;

(XI) covering payable news or violating other provisions of Article 39 of these regulations;

(XII) conducting business activities through illicit competition or imposing distribution with power against Article 43 of these regulations.

#### Article 64

Any news gathering persons of a newspaper publishing unit that violates related provisions on Press Card shall be punished in accordance with the “Measures for Administration of Press Cards” formulated by the Press and Publication Administration under the State Council.

#### Article 65

Any newspaper publishing unit that violates related provisions on press stations shall be punished in accordance with the provisions of the “Measures for Administration of Newspaper Press Stations”;

Article 66

Any administrative punishment on a newspaper publishing unit shall be noticed to the sponsoring and host units of the newspaper and can be announced to the public through media.

Where administrative punishment is imposed on a newspaper publishing unit, the press and publication administration department shall recommend its sponsoring unit or host unit to give administrative sanction to the direct and major responsible persons or dismiss them.

**Chapter VI Supplementary Provisions**

Article 67

These regulations also apply to other individual-paged publications possessing national unified consecutive publication number with non-news stories as the major contents or with publishing period over one week.

Article 68

The Provisional Regulations for Administration of Newspaper Publication promulgated by Press and Publication Administration under the State Council shall be repealed simultaneously when these regulations come into effective. Other prior provisions on the administration of newspaper publication activities stipulated by the press and publication administration department that may have conflict with these regulations shall subject to these regulations.

Article 69

These Regulations shall be effective on December 1, 2005.

## APPENDIX 3: REGULATIONS FOR ADMINISTRATION OF PERIODICAL PUBLICATION (RAPP)

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*Promulgated through Decree No. 31 of the General Administration of Press and Publication of the People's Republic of China, Sep 31, 2005, to take effect 1 December 2005*

### Chapter I General Provision

#### Article 1

These Regulations are formulated in accordance with the “Regulations on Publication Administration” promulgated by the State Council and related laws and regulations for the purpose of developing and promoting our country’s periodical cause, standardizing periodical publication activities and strengthening the administration of periodical publication.

#### Article 2

These Regulations shall apply to periodical publishing activities conducted in the territory of the People's Republic of China.

Periodicals shall be published by publishing units established in accordance with laws. To publish periodicals, a publishing unit must get approval of the General Administration of Press and Publication, and have national unified publication serial number and periodical publication license.

The “periodical” used in these regulations, also called magazine, refers to serial book form publication that have fixed name, numbered in sequence with volume, periodical, or year, season, month, and published according to a certain cycle period.

The “periodical publishing unit” used in these regulations refers to any periodical office established in accordance with relative provisions of the State, and approved by the General Administration of Press and Publication. Where a legal person publishes a periodical without setting up a periodical office, the editorial department established by the legal person shall be deemed to be a publishing unit.

#### Article 3

Periodical publication must adhere to Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory and the important thought of “three representatives”, follow correct guideline of public opinions and publication orientation and persist in the principle of giving first priority to the social benefits, achieving combination of social benefits and economic returns, spread widely and gather scientific, technological and cultural knowledge that is good for promoting national quality, economic development and social improvement, and developing Chinese national splendid cultural, promoting the exchange of international cultural and enrich masses’ spiritual and cultural life.

#### Article 4

Periodical is issued by public or inside.

Inside published periodicals can only be published in an appointed range, must not be published or displayed openly in the society.

#### Article 5

The General Administration of Press and Publication is responsible for the supervision and administration of periodical publication activities nationwide, make and implement plans for the total number, structure and distribution of periodical publication nationwide and establish and perfect supervision and management rules such as comprehensive quality assessment rules for periodical publication, annual periodical check and examination rules and periodical publication withdrawal mechanism rules.

Local administrations of press and publication at different levels are responsible for the supervision and administration of periodical publication activities within their own administrative areas.

#### Article 6

Periodical publication units are responsible for the publishing activities including editing and publication.

Lawful publication activities of periodical publishing units shall be protected by law. No organization or individual shall illegally interfere with, prevent or disrupt the publishing of periodicals.

#### Article 7

The General Administration of Press and Publications shall reward the units and individuals who have made outstanding contribution to the development and flourishing of the periodical cause of the country.

#### Article 8

The social organization of the periodical publishing industry shall carry out self-regulation management in accordance with the regulations under the guidance of the General Administration of Press and Publication department.

### **Chapter II Establishment of Periodicals and Periodical Publishing Units**

#### Article 9

For establishing periodicals or periodical publishing unit, following requirements should be met:

- (I) possessing a name different from the names of other existing periodical
- (II) possessing a name and regulations of periodical publishing unit;
- (III) possessing an administration or sponsor which is recognized by the General Administration of Press and Publication ;
- (IV) possessing a definite scope of periodical publication business;
- (V) possessing a registered capital of more than 300,000 yuan;
- (VI) possessing an organizational structure which meets the needs of periodical publication activities and editorial professionals having the qualifications stipulated by the State;
- (VII) possessing a fixed premise located in the same administrative area of the sponsor;
- (VIII) possessing legal representative or major responsible person who must be a Chinese

citizen permanently residing in Chinese territory; and  
(IX) other requirements prescribed by the laws and administrative regulations.

In addition to the requirements listed in the preceding paragraphs, must accord with the overall plan of the State for the total number, structure and distribution of periodicals and periodical publishing units.

#### Article 10

For a central department located in Beijing to establish periodical or periodical publishing unit, the sponsor shall apply to the General Administration of Press and Publication for approval after getting the approval of the sponsor.

If the Chinese People's Liberation Army and the Chinese People's Armed Police Forces establish a periodical and periodical publishing unit, they shall submit the application to the General Administration of Press and Publication for approval after the verification and approval of Bureau of Press Publication of the Propaganda Department under the General Political Department

For other department to establish a periodical and publishing unit, after approved by the administration department, the sponsor shall make an application to the press publication administrations department of the province, autonomous region or municipality directly under the Central Government where it is located; the said publication administration department shall, upon examination and approval, submit it to the General Administration of Press and Publication for examination and approval.

#### Article 11

For two or more units to establish a periodical together, a major sponsor must be chosen for making the application.

The major sponsor of a periodical shall be a subordinate unit of its competent department; the periodical publishing unit shall be located at the same area where the major sponsor is.

#### Article 12

For establishment of a periodical and a periodical publishing unit, the sponsor of periodical publication unit shall make an application with the following materials:

- (I) " Application Form for Periodical Publication" filled according to the requirements;
- (II) certificates for qualifications of the competent department and the sponsor;
- (III) the resume, identification documents and professional qualification certificates of the proposed legal representative or major responsible person of the periodical publishing unit;
- (IV) certificates for qualifications of editorial and publishing professionals
- (V) related certificate about the sources and amount of the fund used for periodical;
- (VI) the regulations of periodical publishing unit;
- (VII) certificate of premise used;
- (VIII) feasibility study report on periodical publication.

#### Article 13

The General Administration of Press and Publication shall make a decision of approval or disapproval within 90 days at the receipt of the application for the establishment of a periodical or periodical publishing unit, and inform the sponsor directly, or through the press publication administrations of the province, autonomous region or municipality, the decision

in written form; reasons shall be given where a decision of disapproval is made.

#### Article 14

The periodical sponsor shall go through the registration formalities within 60 days at the receipt of the approval decision of the General Administration of Press and Publication.

(I) The sponsor shall go to the Press and Publication department of the province, autonomous region or municipality where it is located by the approval documents to obtain a “Registration Form of Periodical Publication” and fill it in five same form. After examined and signed by the competent department, the form shall be submitted to the press and publication administrations of the province, autonomous region or municipality directly under the Central Government where it is located. And the said administrations shall submit the Periodical Publication Form to the General Administration of Press and Publication for record with 15 days.

(II) For the periodicals published openly, international standard serial number shall be obtained from ISSN China Center, and bar code from Bar Code Center of the General Administration of Press and Publication. .

(III) After examining the “Registration Form of Periodical Publication” as correct, the press and publication administration of the province, autonomous region or municipality directly under the Central Government shall issue “Periodical Publication License” to the sponsor within 10 days

(IV) The sponsor thus shall go through registration formalities in industrial and commercial administrations by Periodical Publication License and obtain business license in accordance with law.

Registration Form of Periodical Publication is kept separately by periodical publication unit, the sponsor, the competent department and the press and publication administration of the province, autonomous region and municipality directly under the Central Government.

#### Article 15

If the sponsor of a periodical publication do not go through the registration formalities within 60 days at receipt of the approval document issued by the General Administration of Press and Publication; the approval document will be invalid automatically, and the registration department would refuse its registration and the sponsor shall return the approval documents back to the General Administration of Press and Publication.

Where a periodical publishing unit does not published any periodical within 90 days from the date of registration, the “Periodical Publication License” is revoked by the General Administration of Press and Publication and the cancellation is registered by the original press publication administration where the registration is made.

Where the circumstances listed in the preceding paragraph is due to force majeure or for other justified reasons, the periodical publishing unit may apply to the original press publication administration where the registration is made for extension..

#### Article 16

A periodical office shall satisfy the requisite conditions of a legal person, obtain the qualifications of a legal person through verification and registration, and undertake civil liabilities independently with all its legal person property.

The periodical editorial department does not have the qualifications of a legal person, and its civil liabilities shall therefore be undertaken by its sponsor.

#### Article 17

Where a periodical publishing unit changes its name, carries out merger or separation, changes its capital structure or publishes a new periodical it shall go through the procedures of examination, approval and registration in accordance with the provisions of Article 10 to Article 14 of these Regulations.

#### Article 18

Where a periodical changes its name, sponsor, competent department, registration area, business range or number of issues, it shall go through the procedures of examination, approval and registration in accordance with the provisions of Articles 10 to Article 14 of these Regulations.

Where a periodical changes its number of issues, the General Administration of Press and Publication can entrust the press publication administration of the province, autonomous region and municipality directly under the Central Government to make examination and approval.

The scope of periodical business in terms of these regulations includes the aim and the language used.

#### Article 19

Where a periodical changes its size, or its legal representative or major responsible person change its address within the same registration area, its publishing unit shall, upon the examination and approval of its sponsor, register for record within 15 days to press and publication administration of the province, autonomous region or municipality where it is located

#### Article 20

Where a periodical publishing unit suspends publication, it shall go to press publication administration of the province, autonomous region or municipality for record and give reasons and term limit.

A periodical publishing unit suspends publication must not exceed one year. If any periodical publishing unit suspends publication for more than one year, its Periodical Publication License shall be cancelled by General Administration of Press and Publication, and its registration shall be nullified by the press and publication administration of the province, autonomous region or municipality directly under the Central Government where it is located.

#### Article 21

Where a periodical publishing unit terminates its publishing activities, upon the examination and approval of its competent department, its sponsor shall go through cancellation formalities at the press and publication administration of the province, autonomous region or municipality directly under the Central Government where it is located, and the said administration shall make a report to the General Administration of Press and Publication for the record.

#### Article 22

For periodical cancellation registration, the periodical publishing unit established with the same name of the periodical cancelled shall be cancelled at the same time and shall go through registration of cancellation at the industrial and commercial administration where the original registration was conducted

The cancelled periodical and its publishing unit must not conduct publishing and business activities with the same name any longer.

#### Article 23

For central periodical publishing units to establish a periodical group, the approval should be given by the General Administration of Press and Publication; for local periodical publishing units to establish a periodical group, application be submitted to the press and publication administration of the province, autonomous region and municipality directly under the Central Government where they are located, and upon the examination and approval, reported to the General Administration of Press and Publication for approval.

### **Chapter III Publishing of Periodicals**

#### Article 24

Periodical publication shall adopt the rules editor's responsibility to ensure that the contents of the periodicals conform to the provisions of the national laws and regulations.

#### Article 25

No periodical shall contain the content which is prohibited by the “Regulations on Publication Administration” and other laws and regulations or by the State.

#### Article 26

Where the lawful rights and interests of a citizen, a legal person or some other organizations are infringed upon due to the false and untruthful contents of a periodical, its publishing unit shall make public corrections, eliminate the effects, and bear civil liabilities according to law.

Where the lawful rights and interests of a citizen, a legal person or some other organizations are infringed upon due to the false and untruthful contents of a periodical, the person concerned has the right to ask the periodical publishing unit to make corrections or reply to the charge. Periodical publishing unit shall publish it in the latest periodical, and if it refuses to make the publication the person concerned may bring a lawsuit to the People’s Court.

Where the content published in a periodical is not true, unfair or harms public interests, the General Administration of Press and Publication or press and publication administration of the province, autonomous region and municipality directly under the Central Government can instruct it to make corrections.

#### Article 27

The periodical shall go through record formalities in accordance with record management rules for important topic while carrying the content of important topic relating to national safety, society stability and etc.

#### Article 28



The periodicals published openly must not reprint or extract the content from the restricted publications.

For any periodical to reprint and abstract contents from the Internet, the contents must be verified according to relative provisions; the website address where the contents are unloaded and the date when they are loaded must be marked in obvious position.

#### Article 29

Any periodical publishing unit launches a cooperative publication project with publishing organs abroad shall be approved by the General Administration of Press and Publication. The concrete measures will be stipulated later.

#### Article 30

The quality of periodical publication shall meet the national and industrial standards; the language the periodical uses shall accord with relative provisions of the State.

#### Article 31

The periodical shall carry following imprint on the back cover or copyright page: the name of the periodical, competent administration, the sponsor, publishing unit, printing unit, distributing unit, publication date, name of editor-in-chief ( chief compiler ) , range of distribution, price, uniform serial publication number in the State, number of advertisement business license and etc.

The periodical that obtains international standard serial number shall also print the said number.

#### Article 32

The periodical shall carry its name, the sequential number of year, month, issue, volume and etc., and total number of issues must not replace the number of year, month and issue.

Other word marks on the front cover must not be clearer and larger than the name of the periodical.

The foreign name of the periodical shall be translated directly from Chinese name. The Chinese name must be printed on the front cover of the periodicals in foreign language and languages of national minorities together with the names in foreign or minority languages.

#### Article 33

One uniform national serial number can only be used for one periodical accordingly, must not be used for different edition of periodicals.

Publishing different edition of periodicals shall be deemed to create a new periodical and need to go through examination and approval formalities.

#### Article 34

In addition to common issue, periodical publishing unit can publish supplement. Two supplements can be published for one periodical every year.

Periodical publishing unit should make clear in the application report about article catalogue, impression, price, publication time and printing unit. With the examination and approval of its competent administration, the application shall be reported by its sponsor for examination and

approval to the press and publication administrations of the province, autonomous region or municipality directly under the Central Government. For the approval, one time supplemental issue license shall be issued.

The content of the supplemental must accord with business range of the periodical. The format and distribution range must be as the same as the periodical. Besides the issue record listed in Article 31 of these regulations, the supplement shall also set up and print the number of supplement license and print the name of the periodical and “supplement” on the front cover.

#### Article 35

The one-volume edition of the periodical shall be bound in original publication order. No one can lay out the content of the periodical separately. The word “one-volume edition” should be marked in a conspicuous position on the front cover.

If any periodical is given administrative punishment by press and publication administration for any illegal content, relative articles of this periodical must not be brought into one-volume edition.

The periodical that the registration is cancelled must not be made into one-volume edition.

#### Article 36

A periodical publishing unit must not sell, lease or transfer its name and the edition number, name and edition layout of its periodical; and must not lend, transfer, lease and sell the “Periodical Publication License”.

#### Article 37

While using its periodical to develop its advertisement business, the periodical publishing unit must abide by the provisions of laws relating to advertisement, check related certificates and verify the content in accordance with laws before publishing an advertisement must not carry harmful, false or illegal advertisement.

Advertisement dealer for periodical can only conduct advertisement service, advertisement agency within the authorized legal scope, must not be involved in periodical news covering, editing and other publication activities.

#### Article 38

The periodical covering business must be strictly divided from the business operation. It is prohibited to seek irregular profits in the form of threatening to make report, asking the reported person to make advertisement, provide support, and enter board of directors and other activities that harm the interests of the reported person.

Any payable news must not be carried in the periodical.

#### Article 39

Reporters and editors of periodical publication unit must hold journalist certificate issued united by General Administration of Press and Publication and abide by relative provisions of Measures on Management of Journalist certificate issued by General Administration of Press and Publication when they are engaged in news covering activities.

Article 40

A periodical publishing unit involving in news report and editing establishes press stations should be examined, approved and managed according to the “Measures on Management of Reporter Station of Newspaper House” formulated by the General Administration of Press and Publication.

Article 41

Periodical publishing unit should not conduct business activities through illicit competition or with illicit form, and should not apportion distribution of periodicals by taking advantages of its power.

Article 42

Periodical publishing units shall submit statistics data to the General Administration of Press and Publication in accordance with the statistics laws and regulations of the State.

Periodical publishing units shall cooperate with the publication distribution data investigation body certified by the State to conduct investigation on periodical distribution data and provide real periodical distribution data.

Article 43

Periodical publishing units shall send three sample periodicals separately to the General Administration of Press and Publication, China Library of Editions, National Library of China and the press and publication administrations of the provinces, autonomous regions and municipalities directly under the Central Government where they are located within 30 days after every periodical is published.

**Chapter IV Supervision and Management**

Article 44

The supervision and management of periodical publication activities shall be conducted under territorial principle.

The press and publication administrations of the provinces, autonomous regions and municipalities shall be responsible for the supervision and administration of periodical publishing activities within their own administrative areas in accordance with law, including registration, annual inspection, quality assessment and administrative penalty.

Article 45

Periodical publication management shall carry out periodical re-reading rules, quality assessment rules, annual inspection rules and management rules on periodical publishing staffs.

Periodical publishing units shall submit written report on periodical publishing activities to press and publication administrations according to the provisions of the General Administration of Press and Publication.

Article 46

The General Administration of Press and Publication is responsible for the re-reading of national periodicals. Local press and publication administration at different level are responsible for the re-reading of the periodicals published in their own administrative areas. The press and publication administrations at lower level shall submit report on re-reading to

the press and publication administrations at higher level.

The competent administration shall re-read the periodicals under their control and submit re-reading reports to the press and publication administrations where they are located regularly. Periodical publishing units shall formulate periodical reading and assessment rules and prepare reading and assessment report regularly. The press and publication administrations can read and inspect the reading and assessment reports of the publishing units at any time according to the requirements of the management.

#### Article 47

The General Administration of Press and Publication formulates the comprehensive assessment system for periodical publication quality to conduct overall assessment on the publishing quality.

In case the results of the quality comprehensive assessment on a periodical shows that the quality of the periodical fails to reach the defined standard or cannot maintain normal publishing activities, the General Administration of Press and Publication shall revoke its “Periodical Publication License” and the registration with the press and publication administration of the province, autonomous region and municipality directly under the Central Government where it is located shall be cancelled.

#### Article 48

The press and publication administrations of the provinces, autonomous regions and municipalities directly under the Central Government shall conduct annual verification and examination to the periodical publishing units located in their administrative areas.

The contents of annual verification and examination shall include periodical publishing unit and the registered items of the periodicals they published, publishing quality, situation of the observance of disciplines and law and etc.

#### Article 49

Annual verification and examination shall be conducted according to the following procedure:

(I) A periodical publishing units shall submit annual self-examination report and fill in the “Annual Examination Form for Registered Periodical Items” printed united by the General Administration of Press and Publication; after verified and sealed by the sponsor and competent administration, the self-examination report and the form, along with the samples published this year to the press and publication administration of the province, autonomous region and municipality directly under the Central Government.

(II) Press and publication administrations of the province, autonomous region and municipality directly under the Central Government shall conduct verification and examination of the self-examination report, the “Annual Examination Form for Registered Periodical Items” and samples of the periodical publishing unit.

(III) If a publishing passes the examination as meeting the defined standard, the press and publication administrations of the province, autonomous region and municipality directly under the Central Government shall stamp the annual examination seal on the “Periodical Publication License”. Once the License is stamped, the publishing unit passes the annual examination and shall go on its periodical publishing activities.

(IV) Press and publication administrations of the province, autonomous region and municipality directly under the Central Government shall submit an annual examination report to the General Administration of Press and Publication within 30 days after completing

the periodical publishing annual examination.

Article 50

Under one of the following circumstances, the annual examination shall be deferred:

- (I) in the process of rectifying and reform within a prescribed time limit of stopping publishing;
- (II) being found of unlawful practice constituting penalty;
- (III) the competent administrations and sponsors fail to implement their responsibility for management and it leads confusion in management of the periodical publication;
- (IV) on suspicion of other illegal acts ought to be further investigated.

The deferring period of the annual examination shall be decided by the press and publication administrations of the province, autonomous region and municipality directly under the Central Government and be submitted to the General Administration of Press and Publication for record. After the deferring period, the annual examination shall be recovered in accordance with Article 48 and 49 of these Regulations.

Article 51

Under one of the following circumstances, the annual examination should not be passed:

- (I) violating law but refusing to rectify after being investigated and prosecuted or without obvious results of rectification;
- (II) failure to meet the standard defined for periodical publication quality for long time;
- (III) in insolvency because of worsening operation;
- (IV) already unable to meet the conditions prescribed in Article 9 of these Regulations.

Failing to pass the annual examination, the publishing unit's "Periodical Publication License" shall be revoked by the General Administration of Press and Publication and cancelled by the press and publication administration of the province, autonomous region and municipality directly under the Central Government where it is located.

Failing to pass the annual examination, the periodical publishing unit shall stop publishing periodical as of the next year.

Article 52

The "Periodical Publication License" can not be used continuously until being stamped with the annual examination seal. For relative departments to go through formalities of periodical publishing, printing and distribution, the "Periodical Publication License" without annual examination seal cannot be used.

Where any periodical publishing unit does not participate annual examination and still refuse to participate after being asked to, the General Administration of Press and Publication shall revoke its "Periodical Publication License", and the press and publication administration of the province, autonomous region and municipality directly under the Central Government where it is located shall cancel its registration.

Article 53

Organs in charge of the examination can publicize the results of the annual examination to the society.

Article 54

Professionals involved in periodical publication shall meet the occupational requirements for press publication prescribed by the State.

#### Article 55

The director general and editor-in-chief of a periodical publishing unit shall meet the occupational requirements prescribed by the State.

The director general and editor-in-chief of a periodical publishing unit shall take part in the occupational training organized by the press and publication administrations.

The new director general and editor-in-chief of a periodical publishing unit shall accept occupational training and pass the examination before taking their positions.

### **Chapter V Legal Liabilities**

#### Article 56

Any periodical publishing unit that violates these Regulations shall be imposed on following administrative countermeasures by the press and publication administrations on the actual situation:

- (I) circulating notice of warning;
- (II) circulating notice of criticism ;
- (III) order to make public self-criticism;
- (IV) order to rectify;
- (V) order to stop publishing and distributing the periodical;
- (VI) order to retract the periodicals;
- (VII) order the sponsor and competent administration to supervise the publishing unit's rectification.

The notice of warning shall take the unified form stipulated by the General Administration of Press and Publication or be sent to the law-breaking periodical publishing unit by the General Administration of Press and Publication and the press and publication administration of the province, autonomous region and municipality directly under the Central Government where it is located, with a copy sent to the sponsor and the competent administration of the periodical publishing unit.

The administration measures prescribed in this article can be used in combination.

#### Article 57

Without approval, whoever establishes any periodical publication unit or is engaged in publication business by him, or publish periodicals by forging or counterfeiting the name of a publishing unit shall be punished in accordance with Article 55 of "the Regulations on Administration of Publication".

Any periodical publishing unit that publishes supplements, or carry out cooperation project with publication organs abroad without permission should be punished in accordance with proceeding section.

#### Article 58

Publishing periodicals which contain the contents prohibited by "the Regulations on Administration of Publication", other laws and regulations or provisions of the State shall be punished in accordance with Article 56 of "the Regulations on Administration of Publication".

#### Article 59

Periodical publishing unit that breaks Article 36 of these regulations shall be punished in accordance with Article 60 of “the Regulations on Administration of Publication”.

Periodical publishing unit that permit or acquiesce in advertisement operators to be engaged in the publishing activities including covering and editing shall be punished in accordance with the preceding section.

#### Article 60

A periodical publishing unit that commits one of the following acts shall be punished in accordance with Article 61 of “the Regulations on Administration of Publication”.

(I) fail to follow these regulation to go through the formalities of examination and approval of changes at its name, sponsor, competent administration, registration area, number of issues, scope of business and size number of issues,;

(II) a periodical publishing unit fails to follow these regulations to go through the formalities of examination and approval of change of its name, merger or separation, change of its capital structure, publishing new periodicals;

(III) a periodical unit fails to bring the important topics relating national safety, society stability into the record;

(IV) a periodical unit fails to follow these regulations to send the samples.

#### Article 61

Where a periodical unit violates Article 4, Section 2 of these regulations, it would be punished in accordance with Article 48 of Rules on Management of Publication Market.

#### Article 62

Where any periodical publishing unit commits one of the following acts, the General Administration of Press and Publication or the press and publication administrations of the province, autonomous region and municipality directly under the Central Government shall give a warning and impose a fine of less than RMB 30,000 yuan:

(I) failing to follow Article 19 of these regulations to report for record the changes of the size of the periodical, legal representative or major responsible person, or change of address in the same registration area;

(II) failing to follow Article 20 of these regulations to report for record the suspension of publishing;

(III) covering false or inaccurate reports harming public interests and refusing to implement the rectifying order of the press and publication administration;

(IV) the periodical published openly reprint or select and edit the content of the confidential periodicals;

(V) covering or abstracting the content in the internet against Article 28, Section 2 of these regulations;

(VI) failing to carry editorial record of the periodical according to Article 31 of these regulations;

(VII) violating Article 32 of these regulations about mark of front cover;

(VIII) publishing several editions of periodicals with a single number against Article 33 of these regulations;

(IX) violating Article 34, Section 3 of these regulations to publish supplement;

(X) violating the provision of Article 35 of these regulations to publish one –volume edition;

(XI) covering payable news or violating other provisions of Article 38 of these regulations;

(XII) conducting business activities through illicit competition or imposing distribution with power against Article 41 of these regulations.

Article 63

Any news gathering persons of a periodical publishing unit that violates related provisions on Press Card shall be punished in accordance with the “Measures on Administration of Press Cards” formulated by the General Administration of Press and Publication.

Article 64

Any periodical publishing unit that violates related provisions on press stations shall be punished in accordance with the provisions of the “Measures on Administration of Press Stations of Newspaper Office”;

Article 65

Any administrative punishment on a periodical publishing unit shall be noticed to its sponsor and competent administration and can be announced to the public through media.

Where administrative punishment is imposed on a periodical publishing unit, the press and publication administration shall recommend its sponsor or competent administration to give administrative sanction to the direct and major responsible persons or dismiss them.

**Chapter VI Supplementary Provisions**

Article 66

Temporary Rules on Management of Periodical and Implementation Measures on Administrative Punishment of Temporary Rules on Management of Periodical formulated by General Administration of Press and Publication shall be repealed simultaneously when these regulations come into effective. Other prior provisions on the administration of periodical publication activities stipulated by the press and publication administration that may have conflict with these regulations shall subject to these regulations.

Article 67

These Regulations shall be effective on December 1, 2005.