Gatekeeping practice in the Chinese internet regulatory order and the legitimacy challenges

Lulu Wei, PhD Candidate, Tilburg University

the Aberystwyth Internet Jurisdiction Symposium

10 September 2014

Introduction

- From information intermediary to gatekeeper

- social media

- *Network gatekeeping* is the process of information control in the social networks by placing conditions directly on *the user generated information* itself or on *the end users' participation in the inter-network activities*.

TILBURG ◆ UNIVERSITY

Research question and argument

- The gatekeeper regime exists in the Chinese law as an indirect regulatory strategy. This paper aims to reflect on whether and in which ways developments in gatekeeping practices in China are affecting the regulatory order in Chinese internet, and the possible legitimacy implications.

- Through discussing two cases, this paper suggests that, to some extent, gatekeeping actually leads internet governance into a more hybrid model which competes with and contests the governmental hierarchical order, raises the substantive legitimacy challenges. At the same time, private gatekeeping is starting to give some room for the formation of private ordering, which may lead the Chinese social media to a self-regulated space and help to improve regulatory transparency.

TILBURG UNIVERSITY

Background: the Chinese internet

- China takes internet development as a significant opportunity to boost its reform and open-up policies and modernization.

- Therefore, boosting IT applications across the country and integrating the popularization of internet with China's industrialization has been a long term policy priority for the Chinese government since the 1990s.

- By the end of December 2013, the Chinese netizens have reached 618 million, the internet penetration rate was 45.8% . Nowadays, half of the Chinese netizens are social media users. *(CNNIC,"the 33th Chinese internet development report")*

the Chinese social media: who are the gatekeepers?

- Although the internet infrastructure is mainly operated by the state-owned ISPs, there are domestic private ICT companies who dominate the Chinese social media market.

- *"Weibo"* ("微博" or *Micro-blog* in English) platforms are the most popular Chinese Twitter-like social media platforms nowadays, since Twitter and Facebook are blocked in China. There are multiple Weibo service providers in China, and the most influential ones are *Sina Weibo , Tencent Weibo, Sohu Weibo and Netease Weibo*.

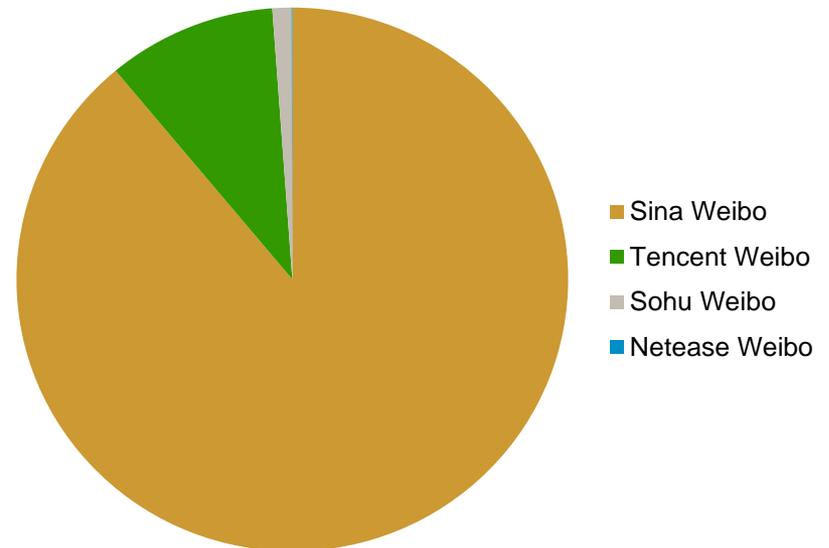**TILBURG ✦ UNIVERSITY**

the Chinese *Weibo* market

User Distribution

- Sina Weibo
- Tencent Weibo
- Sohu Weibo
- Netease Weibo
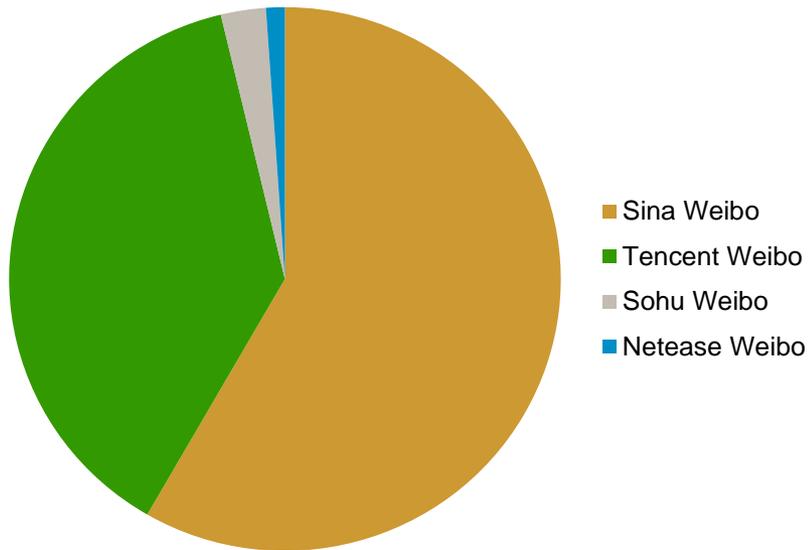
Visiting Time Distribution

- Sina Weibo
- Tencent Weibo
- Sohu Weibo
- Netease Weibo

TILBURG ◆ UNIVERSITY

Information control in the Chinese social media

- Information monopoly and information control

- Social media provide an unprecedented opportunity for end users to participate in the production and dissemination of information. Meanwhile, China was one of the first countries to realize it couldn't do without the Internet and so it had to be brought under control.

- Failure of direct regulation

- Indirect regulation

gatekeeper regime

- License and check system

- Liability and responsibility

- Mandatory self-regulation

Case one: the implementation of *Weibo* real name policy

- Different from the real name policies of *Facebook* and *Google+* as private and commercial strategies, the *Weibo* real name policy is enacted by government for the regulatory purpose of information control.

- The high level of identification squeezes the space of online anonymity and expose users' real identity to third parties so as to make individual behavior more easily regulated.

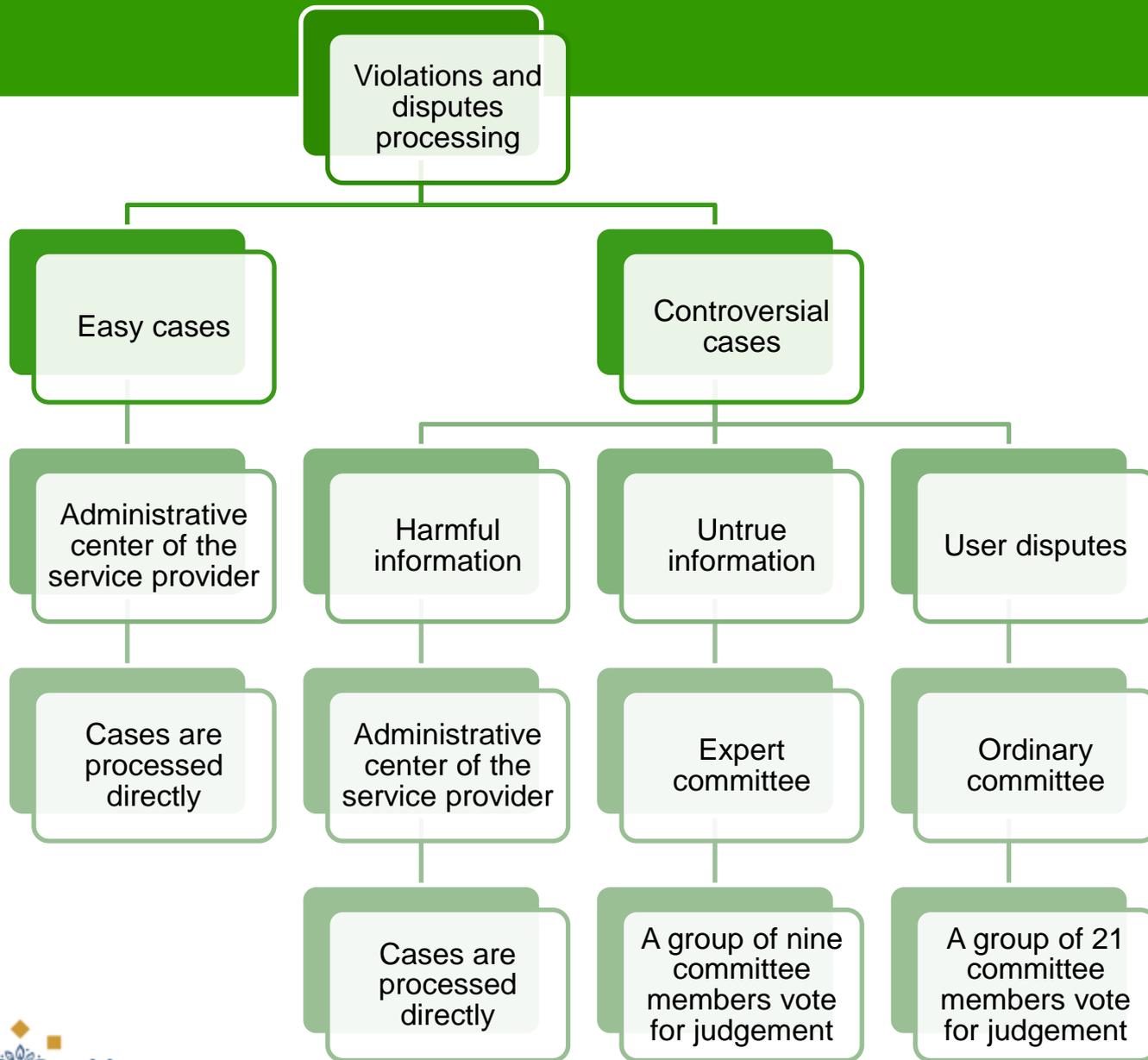| Actors	Government authorities (Beijing, Guangdong, MIIT)	*Weibo* service providers (Sina, Sohu, Netease, Tencent)
Real name rules	Beijing: "*Any organization or individual that registers a Weibo account, produces, reproduces, posts, and disseminates information on Weibo platforms, shall use real identity information.*" ("*Several Provisions on the Development Management of Weibo in Beijing",* December 16, 2011.*)* Guangdong: requires Tencent and other Weibo service providers who operate in Shenzhen and Guangzhou to do the user real name registration, (December 22, 2011) MIIT: requires telecommunications operators to apply user real identity registration when providing network access services ("*the Regulations on Phone Users' Real Identity Information Registration", June* 2013)	In all the four Weibo platforms, users can use their e-mail addresses or cell phone numbers to register accounts. *Tencent Weibo* allows users to use their *Tencent QQ* accounts directly for *Weibo* account registration. Real identity verification is a voluntary procedure, and introduced particularly as a market promoting strategy mainly aiming at "celebrities" and active registered users.

TILBURG ✦ UNIVERSITY

	Ministry of Industry and Information Techology (MIIT)	*Weibo* service providers
Real identity information	According to "*the Regulations on Phone Users' Real Identity Information Registration*" of MIIT, individual identity information can be provided by several types of valid ID documents, including ID cards, temporal ID cards, *Hukou* booklets, military ID cards, Armed Police ID cards, Mainland residents travel permits for Hong Kong and Macao, travel permits for Taiwan or other valid travel documents, foreign passports, and other valid identity documents.	Instead of requiring valid ID documents, the real identity verification in Weibo platforms which requires users' profession and job information for identification, such as by submitting official proofs of service, valid professional certifications, and works and award certifications to finish the verification.

TILBURG · UNIVERSITY

observation

- The governmental real name policy has been tailored and twisted.

- "The real name policy may adversely affect the development of Weibo service industry. So far, more than 40% of the new registered users have not authenticated their accounts, and many old users did not respond to our reminder messages for authentication." (*Cao Guowei, CEO of Sina*)

- Among the over five hundred million registered users of *Sina Weibo*, only three hundred thousand are real identity verified users.

- So far, the *Weibo* industry has survived the governmental real name policy.

case two: the self-regulation system in *Sina Weibo* platform

- Processing of disputable information
- Institutions: The administrative center of the service provider, and the community committee (embracing ordinary committee and expert committee)
- Initiation: detections by the service provider or the wistle-blowings from end users
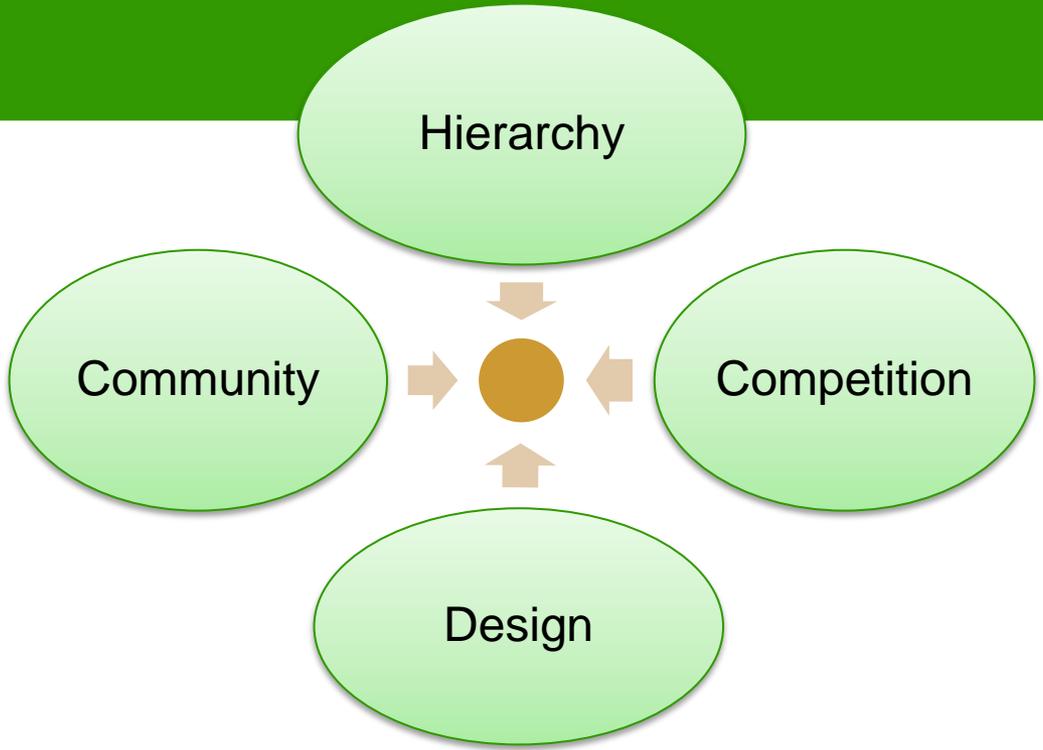- Results: content processing and account processing

Conclusion

- New dynamics

(Lessig:1999)

TILBURG ◆ UNIVERSITY

Hierarchy

Community

Competition

Design
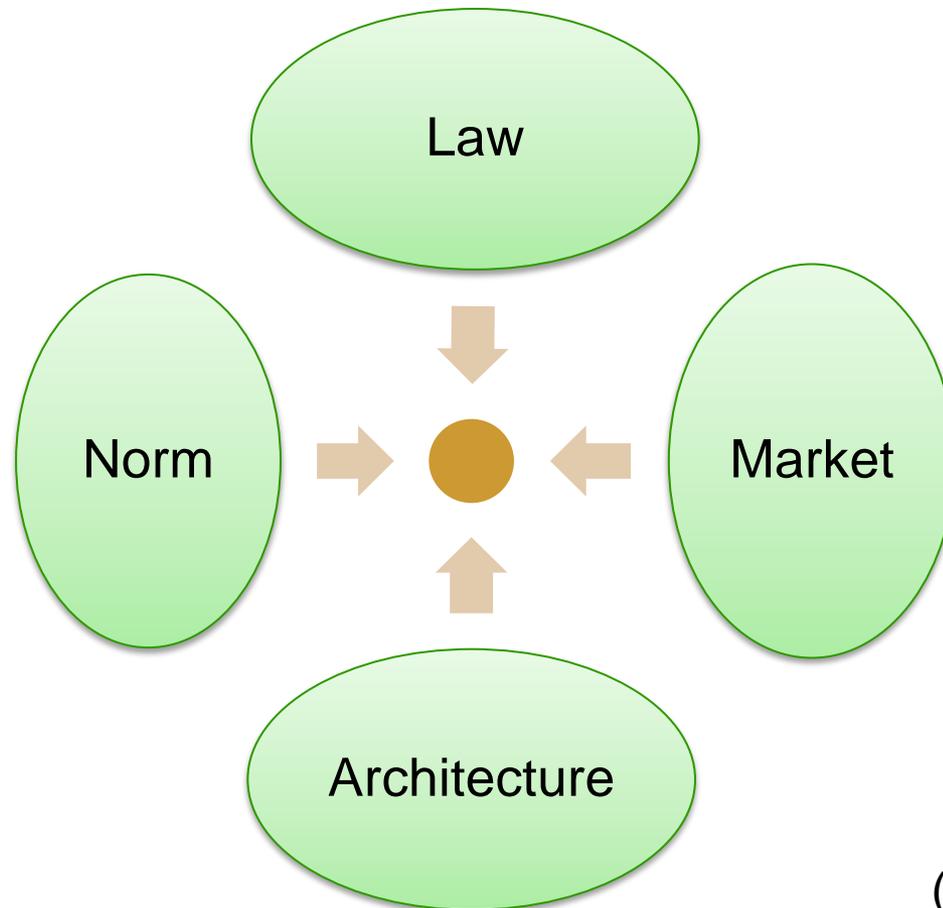
(Murray and Scott:2002)

Government

Gatekeepers

Users

TILBURG ✦ UNIVERSITY

Legitimacy

- The limits of the governmental power in internet and social media

- Resistance and contestations from the civil society stakeholders raise challenges both for regulatory effectiveness and legitimacy

  -- the rising concern of individual rights: privacy, free expression

  -- Chinese traditional values: righteousness ,harmony, stability

- The role of user community

  self-regulation and procedural legitimacy