

To: The Department of Infrastructure,
Transport, Regional Development,
Communications and the Arts,
GPO Box 594 Canberra ACT 2601

Date: 19th August 2023

Re: New ACMA powers to combat misinformation and disinformation (the
Communications
Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023)

Dear Sir/Madam

I am strongly against and oppose this bill which provide unchecked and
unchallenged

powers to the ACMA to:

i) create enforceable and compulsory rules, codes and standards that will
indirectly
control the information distributed on digital services platforms by relying on
coercion and threats of penalties, fines, infringement notices to individuals or
digital
services platforms.

ii) allow the ACMA to request "information, documents or evidence" from
individuals
or digital services platforms and force them "to appear before the ACMA at a
time
and place specified in the notice to give any such evidence, either orally or in
writing,
and produce any such documents" at the threat of penalties, fines, infringement
notices.

Freedom of speech is a fundamental and natural right for all Australian men and
women,
this bill introduces powers to the ACMA allowing them to enforce compulsory
codes and
regulation on digital services platforms including individuals with the power to
issue
infringement notices, fines and force digital platforms to provide evidence.

This is one of
many steps of authoritarian censorship which will hinder the right to free
speech. It will
block open discussions that is necessary in a democratic society such as open
debates and
opinions on the integrity of elections, the health choices of Australian men and
women,
environmental or economic issues in Australia which can be subjectively labelled
as "false"
or "harmful".

In the Exposure Draft PDF (page 6, line 7 to 18), the definition of "harm" as it
is will create an
environment on digital services platforms where it will be at risk of censorship
to question
corruption, integrity of elections, safety of medical interventions, climate
change agendas or
economic policies as they all can be labelled as "misinformation" or
"disinformation" and be
effectively censored by digital services platform due to threats of fines,
infringement via
compulsory codes or regulations created by the ACMA hence destroying the right

to freedom of speech. There are existing laws in Australia that protect Australian men and women from hate speech and disruption of public order or society which are already enforced by the current judicial processes and/or the digital services platforms' term of use policy. So this makes it redundant to have the ACMA enforce this with codes and regulations on digital services platforms with the threat of infringement and fines. This bill is an incremental step in the infringement of the rights to free speech of Australian men and

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women by applying coercive pressures on digital platforms, this bill should be abandoned, immediately withdrawn and not progress any further because it is not compatible with

International Covenant on Civil and Political Rights

<https://humanrights.gov.au/ourwork/commission-general/international-covenant-civil-and-political-rights-human-rightsyour>

(ICCPR) Article 1, 19, 21 and 22:

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 19

1. Everyone shall have the right to hold opinions without interference.

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.

3. The exercise of the rights provided for in paragraph 2 of this article 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"

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on

the exercise of this right other than those imposed in conformity with the law and

which are necessary in a democratic society in the interests of national security or

public safety, public order (ordre public), the protection of public health or

morals or
the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others,
including the
right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those
which

are prescribed by law and which are necessary in a democratic society in the
interests
of national security or public safety, public order (ordre public), the
protection of
public health or morals or the protection of the rights and freedoms of others.

This
article shall not prevent the imposition of lawful restrictions on members of
the
armed forces and of the police in their exercise of this right.

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3. Nothing in this article shall authorize States Parties to the International
Labour
Organisation Convention of 1948 concerning Freedom of Association and Protection
of the Right to Organize to take legislative measures which would prejudice, or
to
apply the law in such a manner as to prejudice, the guarantees provided for in
that
Convention.”

It is not “necessary” for the ACMA to gain the powers proposed by the draft bill
since there
are already existing laws in place to prevent or stop violent protests. It is
also not

“necessary” for the ACMA to gain the powers proposed by the draft bill because
there are
already existing processes to handle misinformation and disinformation by
digital services

platforms within their own term of service and including the adoption of the
voluntary
“Australian Code of Practice on Disinformation and Misinformation”. Hence this
draft bill is
not compatible with ICCPR.

Any form of codes and standards to regulate the quality of content on digital
should be

voluntary for each digital services platform to adopt for themselves and
integrate it with
their own terms of service policies where the users must adhere to. We already
have the

“Australian Code of Practice on Disinformation and Misinformation” developed by
the

Digital Industry Group <https://digi.org.au/disinformation-code/> which is good
for digital

services platforms to follow and adopt if they choose to. The code or standards
regarding

misinformation or disinformation should not be compulsory and should not incur
any

penalties or fines to individual or digital services platforms. The use of

financial penalties
may cause digital platforms to broadly censor content on their platform and
block the ability
for open debate on topics which are necessary for scientific progress and
improve society.
The compulsory codes and regulations with threats of penalties will also stifle
technological
innovation by the additional cost and overhead required during product
development and
maintenance to comply with compulsory codes and regulations. This will also
affect the user
base of the digital services platforms which will affect the success and
sustainability of
digital services platforms.
The bill should be abandoned as a whole. If not, we will be taking another step
towards
totalitarian control of free speech in Australia following the footsteps of
authoritarian states
such as those implemented in China. In Section 2 - "Censorship by Internet
Content
Providers: Delegated censorship to business" of the Human Rights Watch article,
"Race to
the Bottom - Corporate Complicity in Chinese Internet Censorship", it outlines a
similar
approach as those in the current draft bill to implement censorship. This
article describes
how Internet Content Providers (ICPs) or Digital Services Platforms will be held
liable for
content appearing on their platform.
<https://www.hrw.org/report/2006/08/10/racebottom/corporate-complicity-chinese-internet-censorship>
(Please refer to Appendix 1).
"The third step targets Internet Content Providers (ICPs): organizations or
individuals
(either for-profit or non-profit) who provide publicly available content on the
Web
(news, entertainment, or commercial websites), or who provide platforms on which
users can communicate and converse with one another (chatrooms and bulletin
board systems known commonly as BBS), or on which users can create and share
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text, photographs, audio and video (blogging services, photo- and video-sharing
sites,
podcasting and audio-sharing services, etc.).
All ICPs—commercial or non-commercial—are required to register for and display a
license in order to operate legally, and are held liable for all content
appearing on
their websites, whether created by the company's or organization's employees, or
by
any of the site's visitors or users of its content-creation and sharing
services.
If an ICP wants to obtain—and keep—its business license to operate in China, it
is
expected to prevent the appearance of politically objectionable content through
automated means, or to police content being uploaded by users for unacceptable

material, which is then taken down manually by company employees.”
 As explained above, this bill is unworkable by the definition of key terms, it will infringe on the rights of free speech for Australian men and women, and it is not compatible with rights and freedoms contained in the international human rights treaties. Any codes or standards must be voluntarily adopted by digital services providers terms of service to control the quality of content including handling of misinformation and disinformation on their platform to avoid any incremental steps in implementing totalitarian censorship in Australia. Finally, we must not follow the censorship methods or policies of any authoritarian regimes.

Sincerely,
 Leo L

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APPENDIX 1

August 2006

“Race to the Bottom”

Corporate Complicity in Chinese Internet Censorship

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I. Summary	
In recent years, China has made enormous strides in economic development and modernization, particularly in urban areas. It now attracts more foreign investment than any other country in the world as international companies are increasingly attracted to a huge potential market and a source of cheap labor. While some suggest that economic development will inexorably lead to improvements in human rights and the rule of law, in the past few years the rights situation has deteriorated. The rule of law continues to seriously lag behind economic expansion. The judiciary, a pillar of a rights-respecting society, remains poorly trained and under the political control of the Chinese Communist Party. Access to justice remains severely limited for citizens with grievances, particularly the poor. The Party retains its monopoly on political power and shows no signs of allowing political pluralism or challenges to its authority. Torture continues to be rampant, China continues to lead the world in the number of judicially authorized executions, and land grabs by the powerful from	

the poor have become a national problem. The list of critical human rights problems can go on and on. As a result, there is enormous social unrest, as evidenced by tens of thousands of street protests annually. Since President Hu Jintao came to power in 2003, the trend towards greater freedom of expression--a core right upon which the attainment of many other rights depends--has been reversed. Many critical (and popular) media outlets that have exposed corruption or criticized government policies have been closed. Large numbers of journalists have been jailed. One of the most distressing trends has been a steady crackdown on the Internet. While in the past decade the Internet has ushered in an era of unprecedented access to information and open discussion, debate, and dissent, since President Hu took office the authorities have taken a series of harsh steps to control and suppress political and religious speech on the Internet, including the jailing of Internet critics and bloggers for peaceful political expression. In fact, China's system of Internet censorship and surveillance is the most advanced in the world. While tens of thousands of people are employed by the Chinese government and security organs to implement a system of political censorship, this system is also aided by extensive corporate and private sector cooperation--including by some of the world's major international technology and Internet companies. In China, the active role

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of censor has been extended from government offices into private companies.

Some

companies not only respond to instructions and pressures from Chinese authorities to censor their materials, they actively engage in self-censorship by using their technology to predict and then censor the material they believe the Chinese government wants them to censor.

On February 15, 2006, four U.S.-based companies, Yahoo!, Microsoft, Google, and Cisco, were brought before a U.S. congressional hearing to explain their operations in

China. The following day, Representative Chris Smith introduced the Global Online

Freedom Act of 2006, which if passed would, among other things, make it illegal for any

United States business to locate "user-identifiable" data in China and other "internet

restricting countries,” and would require companies to be transparent about what political and religious material governments are requiring them to censor. In July the

European Parliament passed a resolution welcoming the Global Online Freedom Act and urging the European Union Council of Ministers to “agree a joint statement confirming their commitment to the protection of internet users’ rights and the promotion of free expression on the internet world-wide.”

Academics and nongovernmental organizations (NGOs) are also working with companies to draft a voluntary code of conduct for Internet and telecommunications

companies that would commit companies to business practices consistent with upholding and protecting the right to freedom of political and religious expression

consistent with international human rights law and norms.

In this report, we have documented the different ways in which companies such as Yahoo!, Microsoft, Google, and Skype are assisting and reinforcing the Chinese government’s system of arbitrary, opaque and unaccountable political censorship.¹ This

report documents the way in which these companies actively, openly, and deliberately

(by their own admission) collaborate with the Chinese government’s system of Internet censorship:

1

This report focuses exclusively on the Internet companies whose software, services, communications, and content hosting businesses have participated actively in censorship. This report does not address the hardware

companies such as Cisco, Nortel, Juniper, and others whose routers, while critical in the building of China’s

Internet infrastructure, and whose filtering technology, while essential for the protection of networks from viruses

and worms, are also used by the Chinese government to carry out censorship.

While Human Rights Watch is

extremely concerned about the latter, we believe the hardware and Internet content businesses involve different

issues---technically, legally, and in terms of corporate intent.

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Yahoo!: Yahoo! has handed over user information on four Chinese government critics

to the Chinese authorities, resulting in their trial and conviction. Yahoo!’s Chinese search

engine is heavily censored. Based on examination of Yahoo!’s services and of feedback

gathered from Chinese Internet users, Human Rights Watch has found that Yahoo! censors its Chinese-language search engine to a very similar degree as domestic Chinese

Internet companies (such as China’s largest domestic search engine, Baidu), and much

more heavily than MSN and Google. Perhaps responding to criticism about a lack of

transparency, in late July 2006 Yahoo! China added a notice at the bottom of its search

engine informing users that some results may not appear “in accordance with relevant laws and regulations”. (See Appendix VIII for letter sent by Human Rights Watch to Yahoo! and Yahoo!’s response regarding company practices in China.)

Microsoft: In June 2005—a month after MSN China rolled out its Chinese portal—Microsoft came under criticism from the press and bloggers around the world for censoring words such as “democracy” and “freedom” in the titles of its Chinese blogs, at the request of the Chinese government. Microsoft has made efforts in recent months to revise its practices and minimize censorship of Chinese bloggers, although the extent to which censorship has been lessened across the board remains unclear. MSN has a Chinese search engine, currently in “beta” test mode, which appears to de-list webpages and censor some Chinese keywords. MSN Chinese “beta” search in some cases informs users that censorship occurred, but not in others. MSN’s Chinese search engine, while still in development, does provide the user with more information on politically sensitive subjects than either Yahoo! or Baidu. (See Appendix IX for letter sent by Human Rights Watch to Microsoft and Microsoft’s response regarding company practices in China.)

Google: In January 2006 Google rolled out its censored search engine, Google.cn. Google.cn does provide notice to users when search results have been censored but provides no further details. The company announced that it would not provide email or blog-hosting services in China, at least for now, in order to avoid being pressured to cooperate with Chinese police in handing over user data as in the case of Yahoo!, and to avoid having to directly censor user-created content as in the case of MSN Spaces. Google justified its censored search engine by arguing that users could rely on Google.com for uncensored searches; however, Chinese Internet users have reported widespread blockage of Google.com by Chinese ISPs. Human Rights Watch testing shows that the censored Google.cn, while denying access to the full range of information available on the World Wide Web, still enables the Chinese user to access substantially more information on sensitive political and religious subjects than its Chinese competitors. (See Appendix X for letter sent by Human Rights Watch to Google regarding company practices in China.)

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Skype: Skype, which provides a way for Internet users around the world to communicate directly by voice, video and text chat, now has a Chinese-language version developed and marketed in China by the Chinese company TOM Online. Skype

executives have publicly acknowledged that the TOM-Skype software censors sensitive words in text chats, and have justified this as in keeping with local “best practices” and Chinese law. However Skype does not inform Chinese users of the specific details of its censorship policies, and does not inform them that their software contains censorship capabilities. (See Appendix XI for letter sent by Human Rights Watch to Skype and Skype’s response regarding company practices in China.) Yahoo!, Microsoft and Google have not publicized the list of sites or keywords being censored, and have not clarified which Chinese laws are being violated by the terms and web addresses censored by their Chinese search engines or services (and also bloghosting services in the case of Microsoft). Thus it is impossible to evaluate the veracity of the claim each company makes that it is simply following Chinese law. Skype has not clarified what laws TOM-Skype would be violating by not censoring users’ conversations. The above companies are complicit in the Chinese government’s censorship of political and religious information and/or the monitoring of peaceful speech in various ways—and, it is important to note, to widely varying degrees. They have all accepted at least some Chinese government demands without mounting any meaningful challenge to them. These are by no means the only multinational companies that currently facilitate Chinese government censorship and surveillance. But they are the most prominent examples, whose contribution to China’s censorship regime to date is most well documented and publicly visible. In response to criticism, these companies all insist that despite the constraints under which they operate they are still helping to increase the Chinese people’s access to the Internet, access to more information, and greater means for self-expression. Companies certainly can make a positive contribution to freedom of expression in China, and that is something Human Rights Watch supports and encourages. But we believe that companies are only doing so if they are improving or maintaining high ethical standards that, at the very least, are consistent with international law and norms. The burden of proof as to whether they are making a positive impact in comparison to their domestic competitors should be on the companies themselves, rather than leaving the public to guess or discover the companies’ ethical standards on their own—in some cases by

going to jail.

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These companies also argue that they have no choice but to comply with Chinese law and regulations in order to access the Chinese market. Human Rights Watch does not believe that the choice for companies is to either continue current practices or to leave China. Rather, we believe companies can and should make ethical choices about what specific products and services they will provide to the Chinese people--and the manner in which they are provided--without playing a pro-active role in censorship or collaborating in repression. While some companies have said that they have adopted more rigorous processes and procedures to determine when to censor or abide by government demands, none of the companies discussed in this report have said they will refuse such demands, or appear to have actively resisted them. For this reason, we believe that legislation backed up by a substantive voluntary corporate code of conduct would help companies to uphold meaningful standards of conduct and make it more difficult for the Chinese government to retaliate against individual companies, since all of these companies would be bound by the same rules. Any such regulation should be accompanied by meaningful efforts on the part of companies, business associations, government trade representatives, and international trade bodies to lobby against laws, regulations, and government pressures--in China and elsewhere--that force companies to act as censors. By forcing companies into this role, the Chinese government creates an opaque and uneven playing field in which companies compete not on business merits but on their level of cooperation with a censorship regime that trammels internationally protected rights. We believe that legislation accompanied by constructive lobbying for regulatory change is in the long-term commercial interest of the companies. By offering diminished services, companies are not actually competing on the overall superiority of their products; instead they are adopting the lowest common denominator set by the Chinese government. Unless companies agree to draw the ethical line or have it drawn for them, it will be very difficult for them to escape the current "race to the bottom," as companies cave in to Chinese government pressure to increase their censorship levels and compliance with government demands for user information, to match the level of

whichever company is censoring and compromising user data the most. Ultimately, none of the companies discussed in this report have a long-term technical advantage over their Chinese competitors. In the long run, user loyalty will depend on their level of trust. In researching Chinese user reaction to the different choices made by multinational Internet companies, we have found that trustworthiness and transparency are indeed important to Chinese users, as they are to users elsewhere. Furthermore, the way in which an Internet company treats its users in one country can impact that company's global image. Users can reasonably be expected to ask: if a company

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contributes to the jailing of government critics in China, isn't it also likely to do so elsewhere?

As the Chinese Internet and wireless communications sectors continue to grow, more and more international companies will continue to face pressure from the Chinese government to supply equipment used for censorship and surveillance, hand over user information, and actively censor user content. It is also important to note that many governments around the world are watching the way in which companies are adapting their business practices to Chinese government demands. If Google, Yahoo!, Microsoft and others actively collaborate with political censorship in China, it will be difficult for them to turn down similar requests made by other governments seeking to control their citizens. Human Rights Watch believes that Internet companies can and should draw a much clearer line between ethical and unethical business practices, and should revise their business practices in China and in all countries where unaccountable governments censor the Internet in an arbitrary, non-transparent, and unaccountable manner. If they cannot do so, concerned citizens around the world should use their power as consumers, investors, and voters to demand a commitment by Internet and technology companies to respect and uphold the fundamental, universal human rights of their customers and users.

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II. How Censorship Works in China: A Brief Overview

1. The "Great Firewall of China": Censorship at the Internet backbone and ISP level

Political censorship is built into all layers of China's Internet

infrastructure. Known widely in the media as the “Great Firewall of China,” this aspect of Chinese official censorship primarily targets the movement of information between the global Internet and the Chinese Internet. Internet censorship in the People’s Republic of China (PRC) is overseen technically by the Ministry of Information Industry (MII). Policy about what substantive content is to be censored is largely directed by the State Council Information Office and the Chinese Communist Party’s Propaganda Department, with input from other government and public security organs.² Physical access to the Internet is provided by nine state-licensed Internet Access Providers (IAP), each of which has at least one connection to a foreign Internet backbone, and it is through these connections that Chinese Internet users access Internet websites hosted outside of China.³ The individual Chinese Internet user buys Internet access from one of several thousand Internet Service Providers (ISPs), who are in effect retail sellers of Internet access that is in turn purchased wholesale from the nine IAPs. Internet routers, devices that deliver and direct packets of data back and forth between networks, are an essential part of Internet networks. Most of today’s routers also allow network administrators to censor or block—or, as the industry calls it, “filter”—the data going through them, programming the router to block certain kinds of data from passing in or out of a network. This filtering capability was initially intended so that Internet Service Providers could control viruses, worms, and spam. The same technology, however, can also be easily employed to block political, religious, or any other category of content that the person programming the router seeks to block.⁴

2

Eric Harwit and Duncan Clark, “Shaping the Internet in China: Evolution of Political Control Over Network Infrastructure and Content,” *Asian Survey*, 41:3, May-June 2001, pp. 337-408.

3

OpenNet Initiative, “Internet Filtering in China 2004-2005: A Country Study,” April 14, 2005 [online], <http://www.opennetinitiative.net/studies/china/> (retrieved July 11, 2006); China Internet Network Information Center, “17th Statistical Survey Report on The Internet Development in China,” January 2006 [online], <http://www.cnnic.net.cn/download/2006/17threport-en.pdf> (retrieved July 11, 2006).

4

Steven Cherry, "The Net Effect," IEEE Spectrum, June 2005 [online],
<http://www.spectrum.ieee.org/print/1219>
(retrieved July 11, 2006).

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The first layer of Chinese Internet censorship takes place at this router level. According to the 2005 technical analysis of Chinese Internet filtering conducted by the Open Net Initiative, IAP administrators have entered thousands of URLs (Internet website addresses) and keywords into the Internet routers that enable data to flow back and forth between ISPs in China and Internet servers around the world. Forbidden keywords and URLs are also plugged into Internet routers at the ISP level, thus controlling data flows between the user and the IAP. 5 This router-level censorship, configured into the hardware of the Chinese Internet, is reinforced by software programs deployed at the backbone and ISP level which conduct additional "filtering" of political content. (In many countries such censorship software deployed at the backbone and ISP level is a product called SmartFilter, developed by Secure Computing. China, however, has developed its own home-grown filtering software.)⁶ Such filtering programs are used globally by households, companies, and organizations for all kinds of purposes: they enable employers to block employees from surfing pornography or gambling online from the office, and enable schools to prevent young students from accessing age-inappropriate content. It is this type of censorship or blocking that causes an error message to appear in the Chinese Internet user's browser when he or she types, for example, <http://www.hrw.org> (the Human Rights Watch website) into the address field of his or her browser.

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6

OpenNet Initiative, "Internet Filtering in China."

Ibid; See also Nart Villeneuve, "The Filtering Matrix: Integrated mechanisms of information control and the demarcation of borders in cyberspace," First Monday, Vol. 11, Number 1, January 2006 [online], http://www.firstmonday.org/issues/issue11_1/villeneuve/index.html (retrieved July 11, 2006).

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Figure 1: Error page appearing when user attempts to access www.hrw.org on a Chinese ISP

It is important to note that while similar Internet censorship is conducted in many countries, some governments choose to inform their citizens that censorship is

taking

place, while other governments choose to leave users with an error message that could

be the result of any number of problems, including user error or technical failure of the

Internet connection. In Saudi Arabia, when a user attempts to access a webpage that

authorities have chosen to block, they are directed not to a 404 error page as depicted in

Figure 1 above, but to a page informing the user that the page he or she is attempting to

access has been blocked in accordance with national laws, with contact information in

the event that the user believes the page was censored in error.⁷

2. Censorship by Internet Content Providers: Delegating censorship to business

Building censorship into China's Internet infrastructure is the first way in which the

Chinese government seeks to block user access to politically sensitive information. The

second step is to prevent ISP's—many of them privately-held businesses, some with

foreign investment—from hosting politically objectionable content by holding them

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Villeneuve, "The Filtering Matrix"; OpenNet Initiative, "Internet Filtering in Saudi Arabia in 2004," [online],

<http://www.opennetinitiative.net/studies/saudi/> (retrieved July 11, 2006).

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liable for doing so.⁸ The third step targets Internet Content Providers (ICPs): organizations or individuals (either for-profit or non-profit) who provide publicly

available content on the Web (news, entertainment, or commercial websites), or who

provide platforms on which users can communicate and converse with one another (chatrooms and bulletin board systems known commonly as BBS), or on which users can create and share text, photographs, audio and video (blogging services, photo- and

video-sharing sites, podcasting and audio-sharing services, etc.).

All ICPs—commercial or non-commercial—are required to register for and display a license in order to operate legally, and are held liable for all content appearing on their

websites, whether created by the company's or organization's employees, or by any of

the site's visitors or users of its content-creation and sharing services.

If an ICP wants to obtain—and keep—its business license to operate in China, it is

expected to prevent the appearance of politically objectionable content through automated means, or to police content being uploaded by users for unacceptable material, which is then taken down manually by company employees.⁹ The

obligation to

do so is manifested in a "voluntary pledge" signed by hundreds of organizations including Chinese companies, universities, and government offices. This "Public

Pledge

on Self-discipline for the Chinese Internet Industry,” initiated by the Internet Society of

China (ISOC), commits signatories to “energetic efforts to carry forward the rich

cultural tradition of the Chinese nation and the ethical norms of the socialist cultural

civilization” by observing all state industry regulations. In particular, signatories vow to

refrain “from producing, posting, or disseminating pernicious information that may

jeopardize state security and disrupt social stability.”¹⁰ The Internet Society of China is

the major professional association for the Chinese Internet industry. While the ISOC is

called a “nongovernmental organization,” its “governing body” is the Ministry of Information Industry, the government ministry in charge of China’s national Internet

infrastructure.¹¹ To date, Yahoo! is the only Western company known to have signed the

pledge (as will be discussed further in Section IV, Part 1).¹²

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9

Harwit and Clark, “Shaping the Internet in China,” Asian Survey.

OpenNet Initiative, “Analysis of China’s Non-Commercial Web Site Registration Regulation,” February 22,

2006 [online], <http://www.opennetinitiative.net/bulletins/011> (retrieved July 11, 2006).

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Internet Society of China, “Public Pledge of Self-Regulation and Professional Ethics for China Internet

Industry,” July 19, 2002 [online], <http://www.isc.org.cn/20020417/ca102762.htm> (retrieved July 11, 2006).

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The Internet Society of China’s homepage is at <http://www.isc.org.cn/English/> (retrieved July 11, 2006).

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Jim Hu, “Yahoo yields to Chinese web laws,” CNet News.com, August 13, 2002 [online],

<http://news.com.com/2100-1023-949643.html> (retrieved July 11, 2006).

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The display of politically objectionable content can result in reprimands to company

management and employees from the MII, the State Council Information Office, the Communist Party’s Propaganda Department, and/or various state security organs, accompanied by warnings that insufficient controls will result in revocation of the

company’s license. In order to minimize reprimands and keep their licenses in good

standing, BBS and blog hosting services maintain lists of words and phrases that either

cannot be posted or which cause monitoring software to “flag” the content for manual

removal by employees.¹³

Search engines likewise maintain lists of thousands of words, phrases and web addresses

to be filtered out of search results so that links to politically objectionable websites do

not even appear on the search engine's results pages, even when those websites may be

blocked at the backbone or ISP level. Thus, the user is prevented from knowing that the

forbidden content exists at all. This is a deliberate choice made by the operator of the

search engine.¹⁴

In 2004, Xiao Qiang, Director of the China Internet Project at the University of California at Berkeley, published one such list that had been leaked from a Chinese

instant messaging service (see Appendix I).¹⁵ Another similar list was obtained by the

Washington Post from an unnamed Chinese weblog hosting company in early 2006 (see

Appendix II).¹⁶

Such lists are not given directly to Internet companies by the Chinese government;

rather, the government leaves the exact specifics and methods of censorship up to

companies themselves. Companies generate their "block-lists" based on educated guesswork plus trial-and-error: what they know to be politically sensitive, what they are

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Human Rights Watch interviews with Chinese and Western Internet company managers who requested

anonymity.

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Rebecca MacKinnon, "Flatter World and Thicker Walls? Blogs, Censorship and Civic Discourse in China" in

Daniel Drezner and Henry Farrell, eds., *The Political Promise of Blogging* (Ann Arbor: University of Michigan

Press, publication pending), draft version under the title "Chinese Blogs: Censorship and Civic Discourse" at

http://rconversation.blogs.com/rconversation/files/mackinnon_chinese_blogs_chapter.pdf (retrieved July 14,

2006).

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Xiao Qiang, "The words you never see in Chinese cyberspace," *China Digital Times*, August 30, 2004

[online], http://chinadigitaltimes.net/2004/08/the_words_you_n.php (retrieved July 11, 2006).

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"Keywords Used to Filter Web Content," in series "The Great Firewall of China," *Washington Post*, February

18, 2006 [online],

<http://www.washingtonpost.com/wp-dyn/content/article/2006/02/18/AR2006021800554.html>

(retrieved July 11, 2006).

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told in meetings with Chinese officials, and complaints they may receive from Chinese

authorities in response to the appearance of politically objectionable search results.¹⁷

But the complicity of companies is even more direct: they actually run diagnostic tests to

see which words, phrases, and web addresses are blocked by the Chinese authorities at

the router level, and then add them to their lists, without waiting to be asked by the

authorities to add them. And because they seek to stay out of trouble and avoid complaints from the authorities, many businesspeople who run ICPs in China confess

that they are inclined to err on the side of caution and over-block content which does

not clearly violate any specific law or regulation, but which their instincts tell them will

displease the authorities who control their license.¹⁸ In all these ways, companies are

doing the government's work for it and stifling access to information. Instead of being

censored, they have taken on the role of censor. Yahoo!, Microsoft's MSN, and Google

all act as ICP's in China.

3. Surveillance and censorship in email and web chat

As in most countries, email services hosted on servers inside the PRC are expected to

respond to requests by law enforcement authorities for user information and copies of

email communications. Yahoo!, the only non-Chinese Internet company providing email

services with user data hosted inside the PRC, has responded to information requests in

criminal cases, as have all domestic Chinese businesses that provide email services.

Because Chinese law enforcement bodies and courts include a range of internationally

protected political speech in their interpretation of what constitute criminal acts under

Chinese domestic law, Yahoo!'s compliance with Chinese law has assisted in the conviction of at least four Chinese government critics (see below, Section IV, part 1).

Mobile and Internet chat services licensed to sell services to Chinese users inside the

PRC are also required to filter politically sensitive content. As mentioned in the previous

section, in 2004 Xiao Qiang obtained a block sensitive word list used by the popular QQ

instant messaging service, owned by the Chinese company Tencent.¹⁹ Human Rights Watch has received reports from users of other Internet chat services that some messages containing political content were sent but not received by the intended

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Ibid. See also Phillip Pan, "What do cat abuse, mascot and cashfiesta have in

common?” Washington Post,
February 19, 2006 [online],
<http://www.washingtonpost.com/wp-dyn/content/article/2006/02/18/AR2006021801388.html> (retrieved July 11,
2006); Xiao Qiang, “The words you never see in Chinese cyberspace,” China
Digital Times.

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anonymity.

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Xiao Qiang, “The words you never see in Chinese cyberspace,” China Digital
Times.

Human Rights Watch interviews with Chinese and Western Internet company managers
who requested

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recipient. In at least some cases, however, users suspected that the blocking
had taken

place at the ISP or backbone level, rather than at the level of the chat client
itself.²⁰

However, at least one international company, Skype, has admitted to building
censorship

functions into its Chinese-language chat client developed jointly with the
Chinese

company Tom Online (see Section IV, Part 4).²¹

4. Breaching the Great Chinese Firewall

Censorship at the gateway and ISP level can be circumvented by the tech-savvy
user

through the use of proxy servers and other circumvention technologies. A proxy
server

is an intermediary web server that the Internet user can use to access other
websites

indirectly, so that the ISP only sees that you are visiting the intermediary
site but not the

final destination site. If an Internet user configures her web browser to access
the

Internet via a proxy server located outside China, her web-surfing experience
will be

similar (although necessarily slower) to that of users in the country where that
particular

proxy server is hosted. Lists of proxy servers can be found on the Internet, but
the

Internet Protocol (IP) addresses of these proxies are quickly blocked by
administrators

somewhere at the Chinese backbone or ISP level, making them impossible to use.
Users

from inside China report having to search for a new, unblocked proxy every
thirty

minutes to two hours. Software tools such as Anonymizer, Tor, and others such as
Dynapass (created by affiliates of Falungong) have been devised to help users
get around

this problem either by providing updates of new proxies or by setting up the
software to

automatically discover new unblocked proxies. ²² Roger Dingledine, creator of
Tor,

reports that “some tens of thousands” of people appear to be using Tor from China on a weekly basis.²³ (Why the Chinese government has, as of this writing, chosen not to block the proxy nodes used by Tor is unknown.) According to a 2000 Chinese Academy of Social Sciences (CASS) survey of Internet use in five Chinese cities, 10 percent of users surveyed admitted to regularly using, and 25 percent to occasionally using, proxy servers to circumvent censorship.²⁴ A 2005 CASS Internet user survey, asking the same question, received the following response: “never”: 71.2 percent; “seldom”: 19.7 percent; “sometimes”: 5.9 percent; “often”: 2.5 percent;

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Human Rights Watch interviews with Chinese internet users who requested anonymity. A “chat client” is software, including Instant Messaging software that enables users of the same chat service to conduct 1-on-1 or multi-person online “chat sessions.”

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Tom Spring, “Outsmarting the Online Privacy Snoops,” PC World, February 28, 2006 [online], <http://www.pcworld.com/news/article/0,aid,124891,00.asp> (retrieved July 11, 2006).

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HRW interview with Roger Dingledine. For more about Tor, see: <http://tor.eff.org> (retrieved July 16, 2006). Guo Liang and Bu Wei, Survey report of Internet use and its influence: Beijing, Shanghai, Guangzhou, Chengdu and Changsha 2000 (Beijing: Chinese Academy of Social Sciences, 2001).

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“frequently”: 0.6 percent.²⁵ As the number of new Internet users increases rapidly, exactly how many people in China today really do use proxy servers on a regular basis—compared to those willing to admit doing so to pollsters—is the subject of anecdotal speculation and debate. However anecdotal evidence does support the CASS finding that while many people—especially university students—may be aware of proxy servers and know how to use them, the percentage of people who regularly use proxy servers to access blocked sites is small. In 2005 the global citizens’ media weblog Global Voices Online posted some questions to Chinese bloggers about proxy server use in China, including: “Of the people in China who use the internet regularly, what percentage do you think know how to use proxies? Of the people you know, what percentage know

how to use proxies?" Here is what the student blogger "Undersound" wrote in response:

1. The first question I would prefer a percentage of 5 percent. Most of my classmates and friends just don't need to resort to proxy. They just view the major websites in China, which would comply with government and have no risk of shut down.
2. It is difficult to view blocked site as for the low speed and inconvenience. So rarely would we use those proxy unless the information is important.
3. Blocked sites are usually consisting of those types: blogs, Taiwan [sic] media, oversea community criticizing Chinese policy. Chinese Internet users tend to focus on some entertainment like online game and chat, rather than some serious subject. So generally those blocked sites had a limited impact. But for someone who are seeking those information it is very annoying.²⁶

This is just one example of many conversations with Chinese Internet users illustrating

why Chinese users are not currently using available technologies to circumvent the

Internet. Thus, the Great Firewall, while not infallible, is successful enough to keep

Chinese public opinion in line. And without a doubt, multinational companies are

25 Chinese Academy of Social Sciences, "Surveying Internet Usage and Impact in Five Chinese Cities,"

November 2005, published on the Markle Foundation website,

http://www.markle.org/downloadable_assets/china_final_11_2005.pdf (retrieved July 11, 2006). The survey was

conducted via door-to-door household interviews in five Chinese cities: Beijing, Shanghai, Guangzhou,

Chengdu, and Changsha. The final sample size was 2,376, including 1,169 Internet users and 1,207 Internet

non-users.

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Comment posted by Rebecca MacKinnon on July 1, 2005, to the blog post "Questions for Chinese Bloggers"

on GlobalVoicesOnline.org,

<http://www.globalvoicesonline.org/2005/06/30/question-for-chinese-bloggers/> (retrieved July 11, 2006).

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playing a significant part in preventing Chinese Internet users from stumbling across

information that the Chinese government would prefer they did not know existed. This collaboration with political censorship also appears to run contrary to the wishes of

the Chinese people. According to the 2005 CASS Internet survey, the majority of Chinese Internet users surveyed believed that it was necessary for the government to

control violent and pornographic content on the Internet. However the study found that

most users do not agree that political content should be controlled, and only 12 percent

felt that controlling political content is a good idea.²⁷

5. Chinese and International Law

China's Internet regulations may be among the most extensive and restrictive in the world. At least twelve different government bureaus have some authority over the Internet, including the powerful State Council Information Office, the Ministry of Public Security, and the Ministry of Information Industry, which is in charge of the licensing and registration of all Internet content providers.²⁸ In 2001, Human Rights Watch estimated that the Chinese government had issued more than sixty sets of government Internet regulations;²⁹ many new regulations have been issued since then, all of them increasing government control. The extensive national-level framework is only part of the picture: the national-level regulations coexist with an unknown number of provincial- and local-level implementing regulations, guidelines, policy documents, and other instruments that have legal impact. Regulations in recent years have focused on, among other things, expanding government censorship and control, both to new technology, such as cellphones,³⁰ and to new mediums of expression, like blogs.³¹ Although not all regulations are enforced against every possible individual or entity arguably in violation of the rules--to do so would be almost impossible, given the breadth and vagueness of certain provisions--nonetheless the legal framework does have a significant and immediate impact on the amount of information available online,

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Chinese Academy of Social Sciences, "Surveying Internet Usage and Impact in Five Chinese Cities."

OpenNet Initiative, "China Tightens Controls on Internet News Content Through Additional Regulations,"

Bulletin 012, July 6, 2006 [online], <http://www.opennet.net/bulletins/012/> (retrieved July 13, 2006).

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Human Rights Watch, "Freedom of Expression and the Internet in China," A Human Rights Watch

Backgrounder, undated, [online],

<http://www.hrw.org/backgrounder/asia/china-bck-0701.htm> (retrieved July 13, 2006).

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which regulates the distribution of cultural products, not just over the Internet, but also to such "user terminals" as "fixed-line telephones, mobile telephones, radios, television sets, and games machines for browsing, reading, appreciation, use or downloading by internet users..."

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Benjamin Joffe-Walt, "China's leaders launch smokeless war against internet and

media dissent,” The Guardian, September 26, 2005 [online], <http://www.guardian.co.uk/international/story/0,3604,1578133,00.html> (retrieved July 13, 2006).

See, for example, Provisional Regulations for the Administration of Online Culture, May 10, 2003, Article 3(2),

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and the extent to which the Internet can be used as a vehicle for free expression by individual Chinese.

One of the most recent sets of regulations to be issued by the government is the Provisions on the Administration of Internet News Information Services

(Provisions on News Information Services), issued jointly by the State Council Information Office

(SCIO) and the Ministry of Information Industry in September 2005. The Provisions

cover the creation and management of news websites, and are the first new regulations

on news websites since the issuance of the Interim Provision on the Administration of

Internet Web Sites Engaged in News Posting Operations in 2000.³² Because the Provisions make use of a variety of control methods, including registration requirements,

external government supervision, broad-based content restrictions, and administrative

penalties for violation of any part of the Provisions, they are fairly representative. The

Provisions also make repeated reference to restrictions found in other relevant regulations, thus fully integrating China’s Internet law and assuring that virtually all

restrictions apply to all situations.

In the first section, the Provisions on News Information Services make clear that the

purpose of news websites is not to inform the public of the facts, but instead to “serve

socialism” and to “safeguard the nation’s interests and the public interest.”³³ News with

content that does not “serve socialism” is banned.³⁴ News websites are “encouraged” to

disseminate news that is “healthy” and “civilized,” and that will “rais(e) the quality of the nation.”³⁵

The key content restriction provision is Article 19, which forbids the following content:

(1) violating the basic principles as they are confirmed in the Constitution;

(2) jeopardizing the security of the nation, divulging state secrets, subverting of the national regime or jeopardizing the integrity of the nation’s unity;

(3) harming the honor or the interests of the nation;

(4) inciting hatred against peoples, racism against peoples, or disrupting the solidarity of peoples;

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OpenNet Initiative, "China Tightens Controls on Internet News Content." Provisions on News Information Services, Article 3, Clause 1. Translation courtesy of CECC.

Ibid., Article 20.

Ibid., Article 3, Clause 2.

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(5) disrupting national policies on religion, propagating evil cults and feudal superstitions;

(6) spreading rumors, disturbing social order, or disrupting social stability;

(7) spreading obscenity, pornography, gambling, violence, terror, or abetting the commission of a crime;

(8) insulting or defaming third parties, infringing on the legal rights and interests of third parties;

(9) inciting illegal assemblies, associations, marches, demonstrations, or gatherings that disturb social order;

(10) conducting activities in the name of an illegal civil organization; and

(11) any other content prohibited by law or rules.

Prior Chinese government censorship practices suggest the effect of Article 19 extends

well beyond the narrow band of information that might truly incite hatred or disturb

social order. Instead, such provisions are implemented in a way to prohibit all reporting

that reflects a line different from the official government position, or contains

information that the government deems too embarrassing, or is too candid in its discussion of particularly entrenched social problems.³⁶

Equally important are the registration requirements created by the Provisions.

In general,

news information websites must be part of the official media system, and must register

with the government in order to begin operation. The Provisions envision a system in

which most news websites are extensions of currently-existing news units, although the

provisions do allow for a situation in which a non-News Work Unit can establish a new

site. Such websites are not permitted to do their own reporting, and are instead limited

to reprinting news stories generated by other media outlets.³⁷

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For more on restrictions on reporting in China, see He Qinglian, "Media Control in China," China Rights

Forum, No. 4, 2004, reproduced by Human Rights in China at

<http://www.hrichina.org/public/highlight/PDFs/CRF-4.2004-WT-Media.pdf>. Complete report (retrieved July 13,

2006). For a more recent analysis of media censorship focusing on the Central Propaganda Bureau, see Jiao

Guobiao, "A Declaration of the Campaign against the Central Propaganda Department." Roland Soong trans., EastSouthWestNorth, May 5, 2004 [online], http://www.zonaeuropa.com/20040505_2.htm (retrieved July 16, 2006 (original Chinese web posting no longer accessible, was at: <http://www.guancha.org/Big5/da.asp?ID=29953&ad=4/9/2004>)).

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Provisions on News Information Services, Article 5(1).

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Permission to create a news information website is granted by the SCIO, or, in some cases, the information office at the provincial level.³⁸ The requirements for setting up a news website are significant: the applicant must be a legal person, must meet certain staffing and equipment requirements, and must have a clean slate in terms of prior violations of relevant Internet rules.³⁹ Cash-poor startups are also not allowed: all applicant organizations must have registered capital of no less than RMB10,000,000 (roughly U.S.\$1.25 million).⁴⁰ The Provisions also create clear legal authority to engage in extensive supervision of news websites. Under Article 4 of the Provisions, supervisory authority is shared by the SCIO and the provincial government information offices. Both the SCIO and the relevant provincial government information office are empowered to carry out "on-site inspections" of the entities set up under the provisions,⁴¹ and can carry out an "examination" of the entity if it is deemed necessary to do so.⁴² Finally, the penalties laid out in the Provisions are significant. Websites that carry news they are not authorized to carry--news stories produced by their own staff, for example--can be fined anywhere from RMB10,000 to RMB30,000 (U.S.\$1,250-3,750); if the circumstances of the infraction are "severe," then the website can be shut down.⁴³ Article 27 applies same fines to acts of posting material that contains content prohibited by Article 19. There are no provisions on reduced liability for content that has already been published in another official media source, which means that news websites have to make an independent judgment as to whether news material is within the broad confines of Article 19; the fact that the story has already been published elsewhere, and therefore presumably approved by the authorities, provides no legal cover. The broad content restrictions found in Chinese Internet law and reiterated by the Provisions are impossible to reconcile with the free speech protections found in international law. Article 19 of the International Covenant on Civil and Political Rights

(ICCPR) states that:

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Ibid., Article 5(2) and 5(3).

Ibid., Article 8(2).

Ibid. In keeping with the government's practice of limiting foreign investment in the news media, certain investment vehicles involving foreign companies are banned from participating in the creation of Internet News Information Service Work Units. See Article 9, Provisions.

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Ibid., Article 23.

Ibid., Article 24.

Ibid., Articles 26 and 28.

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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.⁴⁴

Although the Internet is a new medium, the fact that online speech is covered by the

ICCPR and other relevant human rights instruments is reflected in the January 1999

comments of then-UN special rapporteur on the protection and promotion of freedom

of opinion and expression Abid Hussein:

As regards the impact of new information technology on the right to freedom of opinion and expression, the Special Rapporteur considers it of pre-eminent importance that they be considered in light of the same international standards as other means of communication and that no measures be taken which would unduly restrict freedom of expression and information; in case of doubt, the decision should be in favour of free expression and flow of information. With regard to the Internet, the Special Rapporteur wishes to reiterate that on-line expression should be guided by international standards and be guaranteed the same protection as is awarded to other forms of expression.⁴⁵

Under international law, governments are allowed to restrict the free flow of information

to protect certain narrowly determined interests such as national security or public

morals. But any decision to limit or restrict access to information should comport with

international standards for protecting the right to information. Prior censorship in

particular is severely disfavored in international law, and not permitted in many

constitutional systems. A decision to block access to online material should be subject to

the highest level of scrutiny, with a burden on the government to demonstrate that

censorship would effectively avert a threat of irreparable, imminent, and weighty harm, and that less extreme measures are unavailable as alternatives to protect the state interest at issue. At present, it seems apparent that China engages in no such scrutiny, and instead censors an immense amount of material that poses no threat to security whatsoever. The decision to censor certain material is often unreviewable, just as the decision to punish certain online speakers merely for exercising their right to speak freely online is arbitrary and unpredictable.

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ICCPR, Article 19. China has signed the ICCPR but has yet to ratify it. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the U.N. Commission on Human Rights, January 29, 1999, E/CN.4/1999/64.

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In addition to provisions that limit content and provisions that place severe restrictions

on who can and cannot gather and report news, other Internet regulations go beyond

granting broad oversight powers and actually compel certain entities to enable themselves to spy on all Internet users at all times. The Rules on Internet Security

Protection Technology Measures, issued by the Ministry of Public Security in December

2005, obligate Internet Service Providers and work units that use certain technologies to

develop the capacity to track and record the movements of individuals using their

service to go online. Article 9(2) of the Rules, for example, creates a legal obligation for

ISPs to maintain the technological capability to “record and retain information content

and time of dissemination for providers of news, publishing, and electronic bulletin

services.” ISPs are required to keep records on websurfers for up to sixty days.⁴⁶

Regulations like these undercut the right to privacy of Chinese web users.

Freedom from

arbitrary and unlawful interference with one’s privacy and correspondence is protected

both under the Universal Declaration of Human Rights and the International Covenant

on Civil and Political Rights,⁴⁷ and applies to electronic communications, including email

and newsgroup postings, as well as electronic forms of personal data retained about

individuals. Interference that is capricious, unjust or disproportionate would be

“arbitrary,” as would interference for a purpose inimical to the protection of human rights more generally, such as inhibiting peaceful dissent. States may not randomly or freely intercept or monitor email or Internet usage.⁴⁸

The United Nations Human Rights Committee, the treaty body that is an authoritative interpreter of state duties under the ICCPR, in a General Comment on the right to privacy, has said:

As all persons live in society, the protection of privacy is necessarily relative. However, the competent public authorities should only be able to call for such information relating to an individual’s private life the knowledge of which is essential in the interests of society as understood under the Covenant. [...] Even with regard to interferences that conform to the Covenant, relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted. A decision to make use of such authorized interference must be made only

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Rules on Internet Security Protection Technology Measures, Article 13.
Translation courtesy of CECC.

ICCPR, Article 12.

See Manfred Nowak, UN Covenant on Civil and Political Rights, CCPR Commentary, 1993, pp. 291-294.

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by the authority designated under the law, and on a case-by-case basis.

[...]

By requiring ISPs to maintain the capability to read the communications of individuals

communicating online, and even to be able to keep records of which websites individual

netizens choose to visit, the Chinese government is seriously infringing on the privacy

rights of its own people. As with violations of freedom of expression discussed above,

no particularized determination is made; rather all users are subject to scrutiny.

In addition to the Internet regulations themselves, there are many broader structural

problems with China’s legal system that prevent the emergence of a more liberal Internet

law regime. One key stumbling block to improved Internet regulation in China is the

absence of any enforceable norms against which Internet regulations can be measured.

Although the Chinese constitution explicitly protects the right to free expression, the

right to privacy, and the right to engage in academic research,⁴⁹ the constitution itself is

not directly enforceable, and therefore regulations that clearly violate these rights escape

any form of judicial scrutiny.

The overall institutional weakness and lack of independence of Chinese courts also plays

a key role. Because most courts in China receive the majority of their funding from the

local government,⁵⁰ they are often unable or unwilling to deliver a verdict contrary to the

local expectations, especially in politically sensitive cases. Courts are also subject to both

government and Communist Party authority, and must please both masters.⁵¹ This lack

of independence stifles any legal creativity on the part of judges that might otherwise

limit the scope or effect of Internet regulations.

Finally, once an individual has been arrested and charged with a criminal offense in

relation to his or her use of the Internet, the serious shortcomings of the criminal justice

system in China come into play. Mechanisms for protecting key basic rights, including

the right to a fair trial, the right to legal counsel, and the right to presumption of

innocence, have yet to be fully integrated into the Chinese legal system,⁵² which means

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See Constitution of the People's Republic of China, Articles 35, 40, and 47.

Also relevant is Article 37, which

protects against unlawful searches, and Article 33, which states that the state "respects and preserves human

rights."

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Randall Peerenboom, *China's Long March Toward Rule of Law* (Cambridge: Cambridge University Press,

2002), p. 311.

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For a detailed discussion of judicial independence in China, see *Ibid.*, pp. 280-282, 298-316.

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See generally Human Rights in China, "Empty Promises: Human Rights Protections and China's Criminal

Procedure Law in Practice," March 2001,

http://hrichina.org/fs/downloadables/pdf/downloadableresources/Empty_Promises_Text.pdf?revision_id=14191

(accessed July 13, 2006).

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that an individual arrested for violating any laws relating to the Internet that carry

criminal penalties will find it difficult to obtain a fair trial.

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III. Comparative Analysis of Search Engine Censorship

Yahoo!, Google, and Microsoft all argue that Chinese Internet users benefit from their

presence, despite these companies' compromise with Chinese government censorship demands. However, this argument would require, among other things, that the services provided by these companies to Chinese users enable greater access to information than they would be able to receive from their domestic Chinese competitors. A comparison by Human Rights Watch of the three companies' search engines with Baidu, China's most popular domestic search engine, indicates that while Google.cn and Microsoft's new "beta" Chinese search engine provide significantly better access to information than Baidu, our experience with Yahoo!'s Chinese search results indicates no better access to information than Baidu.⁵³ We conducted tests on various dates between May and August 2006; results varied, at times even on the same day.

1. Censorship through website de-listing

To illustrate the situation, Human Rights Watch color-coded and tabulated the search results for twenty-five URLs (web addresses) across Google.cn, Yahoo! China at cn.yahoo.com, MSN Chinese "beta" (test) search at search.msn.com.cn, and Baidu, China's leading domestic search engine (see the chart in Appendix XII). Selection of twenty-five URLs for the URL search comparison chart in Appendix XII focused primarily on politically sensitive websites (such as savetibet.org, Taiwan government, or Falungong), activist sites (Human Rights in China), international news sites (BBC and Time.com), or sites that enable people to share user-generated content or citizens' media (GlobalVoicesOnline, Technorati, etc.). Websites for a few organizations that the Chinese government views favorably or neutrally were also included (Harvard.edu, Unicef.org, Greenpeace.org) to demonstrate that uncensored results are possible across all services. Here is how the four services break down, ranked according to the number of successful site searches:

- Google.cn: Seventeen of the twenty-five websites searched yielded the website entered into the search box. Eight of the tested sites were de-listed (showing that the site not only does not appear in a direct search but also will not be drawn upon for any search results in that service). In all eight de-listed cases, a user notice appears in Chinese that says: "According to local laws, regulations, and

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The The tests below were conducted from the United States on a U.S. Internet Service Provider (ISP), as well as from China on a Chinese ISP, in order to isolate with a high degree of certainty that the censorship discovered as a result of these tests was carried out by the companies themselves, not by the Chinese government or Internet Service Providers at the router level.

policies, a portion of the search results do not appear.” Such sites included Radio Free Asia at rfa.org, the International Campaign for Tibet at savetibet.org, BBC News at news.bbc.co.uk, and Human Rights Watch at hrw.org. (See Section IV, Fig. 16.)

- MSN’s Chinese search engine (beta.search.msn.com.cn): Fifteen of the twenty-five websites searched yielded the actual website entered into the search box. Five were de-listed with MSN’s standard notification to the user: “Some search results have been removed. [click here to] Find out why.” Another five search results did not display the top-level domain originally entered into the search, but did display inner pages from the same website, and in addition provided the same user notification message as in the fully de-listed results. Delisted

webpages included such sites as Falungong’s Epochtimes.org and Time.com (the website of TIME magazine, published in the U.S.). (See Section IV, Fig. 11.)

- Yahoo! China (cn.yahoo.com): Eight of the twenty-five websites tested yielded the actual website entered into the search box. Two yielded sub-domains but not the main domain. One was de-listed (producing no results for the website) with the message “extra results have been filtered.” Fourteen were de-listed with a “no results found.” (Interestingly, the same search using those fourteen keywords conducted on Yahoo! China from a non-Chinese ISP triggers a browser error. Technically, the reason why this happens is unclear.) On August 8, 2006, a spokesperson for Alibaba confirmed to Human Rights Watch that, since July 27, 2006, at the very bottom of every search results page--regardless of the search subject--Yahoo! China now includes a small line of Chinese text saying: “In accordance with relevant laws and regulations, a portion of search results may not appear.” (Also see Section IV, Fig. 5 for an example.)

- Baidu: Searches conducted on August 9, 2006 inside China produced the same result for every URL or web address search. The browser displays a message saying “you can directly visit [url].” For example, a search for voanews.com will

result in the message: “you can directly visit voanews.com.” When the user inside China clicks on the link, the user will find that the page is blocked. However it is interesting that in this case, Baidu is letting the Chinese ISP do the blocking, and is not censoring these web pages directly--as the foreign search engines are doing. (Attempts to reproduce this result from outside China consistently trigger browser error. Again, the reason for this is unknown.)

As one can see from examining the URL search comparison chart in Appendix XII, Google.cn and MSN Chinese search yielded substantially more successful results than

their Chinese competitor Baidu or Yahoo! China, which appear to provide very similar levels of access. Furthermore, while both Google.cn and MSN Chinese do indeed censor websites, they are transparent with the user in each case that censorship has occurred, even though they fail to inform the user as to why a given URL has been de-listed and

under whose authority.

2. Keyword censorship

Human Rights Watch chose twenty-five keywords—twenty politically sensitive terms or

names, plus the names of two Chinese celebrities, one company name and two city names—to demonstrate that completely uncensored results are possible across all services. These keywords were then plugged into Google.cn, Google.com, Yahoo!

China

(cn.yahoo.com), Yahoo.com, MSN Chinese “beta” search (search.msn.com.cn), MSN Search (U.S.), and Baidu. The results on Google.com, Yahoo.com, and MSN Search (U.S.) are uncensored for Chinese political terms (though they are censored for copyright violations and child pornography as discussed in Section IV). The four Chinabased

search engines featured two different kinds of censored results: 1) User notification of censorship (user is notified censorship has taken place); 2)

Nontransparent

censorship (the user is not notified that censorship has taken place).

Google, MSN, and Yahoo! China (as of July 27, 2006) all notify users in different ways

that censorship is taking place, although no information is specified as to how many

results were blocked, what exactly was blocked, or how they were blocked. The only way

to infer answers is to make comparisons with these search engines’ U.S.-based counterparts. While Google and MSN give notifications of censorship on results that do

indeed include censored results (although in a few cases MSN appears to omit this

notification), Yahoo! China’s notification is a blanket notice on all pages that censorship

is possible in any set of results. Baidu, their Chinese competitor, gave no indication of

whether any search results were censored, making it impossible to conclude with confidence that even the most innocuous search hasn’t been censored. A more detailed

analysis is as follows:

- Google.cn: Of the twenty-five keywords searched, only three (Microsoft, Dalian, and Paris) did not include the standard censorship notification message at the bottom of the page: “According to local laws, regulations, and policies, a

portion of the search results do not appear.” (See Section IV, Fig. 15.) For some

of the long-standing politically sensitive terms such as “Tiananmen Massacre,” “Li Hongzhi” (Falungong leader) and “Tibet independence,” the majority of

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results appearing on the first two pages tend to be from PRC sources such as the

People’s Daily website, Xinhuanet, Sina.com, and other sites containing articles outlining the Chinese government’s point of view on these issues or people.

However, some sites containing perspectives not flattering to the Chinese government or which express support for Li, Tibet independence, or which condemn the Tiananmen massacre do also appear—particularly on blogs or other sites. In other cases, results turned up a great deal of content

unfavorable

to the Chinese government's position on the first two pages, despite the fact that

the results were still censored, as content appearing at the top of a Google.com search from various well-known human rights and dissident websites does not appear in a Google.cn search. In the case of "Wu Hao," the name of a jailed (and recently released) filmmaker and blogger, the first result is the blog

written by his sister about his case. Thus, despite results being censored, one can still

find a great deal of information via Google.cn search which brings direct exposure to information and ideas that present a different picture of reality than

that painted by official Chinese sources.

- MSN Chinese search (search.msn.com.cn): Thirteen of the twenty-five searches yielded censored search results in which the user is notified that censorship has taken place (see Section IV, Fig. 10). Eight results appeared to be

uncensored. In one case (for "Tiananmen massacre,") there were no results and no message notifying the user of censorship, just a message saying no results could be found. (See Section IV, Fig. 9.) In three other instances (also highlighted in blue on the keyword search comparison chart in Appendix XIII) it was unclear whether censorship had occurred because there was no notification, but the results appeared in their substance to be more consistent with censored or filtered results in other services. (Note that in the tester's experience some MSN Chinese search results appear to change dramatically depending on what day and time the search is conducted.)

- Yahoo! China (cn.yahoo.com): All of the twenty-five searches yielded some form of multiple results, and in some cases it is clear by comparing with Yahoo.com that those results are heavily censored. Some searches, particularly "Tiananmen Massacre," and the Chinese term for "Reverse the June 4th verdict" yielded dramatically fewer results than the unfiltered Yahoo.com. A search on "Dongzhou village," where protesting peasants were shot in the summer of 2005, yields only content pertaining to schools, factories and other locations with "dongzhou" in the name, with no content related to the protests and crackdown (see Section IV, Fig. 3). A search on "Wu Hao" (the jailed and recently released filmmaker and blogger) yielded results in the first two pages

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only about other people with the same name. All results, even on the most innocuous search terms, now carry the notification that censorship may have taken place. (See Section IV, Fig. 5.)

- Baidu: Of the twenty five search terms tested, Baidu returned zero results for one of those terms, although many others were heavily censored in comparison to other search engine results, without a notice that censorship had taken place.

From the analysis in the keyword search comparison chart in Appendix XIII, one might

conclude that, despite their participation in censorship and compromises with the

Chinese government, Chinese Internet users have access to significantly more information with Google.cn and the censored MSN operating in China. However, it appears that Yahoo! is censored at approximately the same level as Baidu, the domestic

search engine leader.

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IV. How Multinational Internet Companies assist Government
Censorship in China

1. Yahoo! Inc.

“Our mission is to be the most essential global Internet service for consumers and businesses. How we pursue that mission is influenced by a set of core values - the standards that guide interactions with fellow Yahoos, the principles that direct how we service our customers, the ideals that drive what we do and how we do it... We are committed to winning with integrity. We know leadership is hard won and should never be taken for granted... We respect our customers above all else and never forget that they come to us by choice. We share a personal responsibility to maintain our customers' loyalty and trust.”

–Yahoo! mission statement, reflecting on “Our Core Values”⁵⁴

Yahoo! was the first major U.S. Internet content company to enter the China market,

rolling out a Chinese-language search engine and establishing a Beijing office in 1999.⁵⁵

“Self-discipline” signatory: In August 2002 Yahoo! became a signatory to the “Public

Pledge on Self-discipline for the Chinese Internet Industry,” the “voluntary pledge”

initiated by the Internet Society of China (see Section II, Part 2, above).⁵⁶

Protesting the

move at the time, Human Rights Watch Executive Director Kenneth Roth argued that by collaborating with state censorship in this fashion, Yahoo! would “switch from being

an information gateway to an information gatekeeper.”⁵⁷ Responding to the outcry from

human rights groups, who pointed out that Yahoo! was not required by Chinese law to

sign the pledge, Yahoo! associate senior counsel Greg Wrenn countered that “the restrictions on content contained in the pledge impose no greater obligation than already

exists in laws in China.”⁵⁸ In an August 1, 2006 letter to Human Rights Watch, Yahoo!

stated that, “The pledge involved all major Internet companies in China and was a

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“Yahoo! We Value...” Yahoo Mission Statement, 2004 [online],

<http://docs.yahoo.com/info/values/> (retrieved

July 27, 2006).

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“Yahoo! Introduces Yahoo! China,” Yahoo! corporate press release, September 24, 1999 [online],

<http://docs.yahoo.com/docs/pr/release389.html> (retrieved July 11, 2006).

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Jim Hu, “Yahoo yields to Chinese web laws,” CNet News.com.

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“Yahoo! Risks abusing human rights in China,” Human Rights Watch news release, August 9, 2002,

<http://www.hrw.org/press/2002/08/yahoo080902.htm>.

Jim Hu, "Yahoo yields to Chinese web laws," CNet News.com.

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reiteration of what was already the case - all Internet companies in China are subject to Chinese law, including with respect to filtering and information disclosure" (see Appendix xx for full text of letter). This is technically accurate as Microsoft and Google were not operating in China at the time. However, unlike Yahoo!, neither company has signed the pledge since beginning operations in China.

Search engine filtering: Like all other Chinese search engine services, Yahoo! China (<http://cn.yahoo.com>) maintains a list of thousands of words, phrases and web addresses to be filtered out of search results. (For information on how companies in general generate such lists, see Section II, Part 2.)

A concrete example of Yahoo!'s search engine filtering can be seen with the search term "Dongzhou" (东洲), the name of a village where police opened fire on demonstrators in the summer of 2005. An August 9, 2006 search on the unfiltered Yahoo.com returned 371,000 results, with most of the results on the first three pages being articles about the protests and shootings. A search on the same day of the same term in cn.yahoo.com (Yahoo! China) returned 106,000 results, with none of the results at least on the first three pages containing any links related to the protest and crackdown. Instead, the first few pages of results link to websites for businesses, schools, and other institutions with "dongzhou" in the name (see Figs. 2 & 3). Results on search engines normally order themselves based on the popularity of the webpage as calculated by mathematical algorithms, not by subjective decisions about the value and nature of the site's content.

One way in which the number of results is substantially reduced is by the de-listing of entire websites from the search engine, so that the de-listed sites are skipped over when the search engine trawls the web for results. Neither Yahoo! nor any other company has released a list of websites that have been de-listed for their political and religious content. In Yahoo!'s case, such sites evidently include Radio Free Asia, Human Rights Watch, and the New York Times (see Appendix XII and Figs. 4 and 5). In other instances, searches for some politically sensitive keywords cause Yahoo.com.cn to deliver no page

at all in response to the user's request; all the user sees as a result is an error message appearing in her browser. In some instances such searches on Yahoo.com.cn result in server timeout, which causes the entire search engine to be unusable for any search for several minutes after the sensitive search is conducted (see Fig. 5). Yahoo! user data employed by Chinese authorities to help convict critics: Yahoo! China provides a Chinese-language email service at Yahoo.com.cn. Independent tests have indicated, and Yahoo! executives have confirmed, that data for the Yahoo.com.cn

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email accounts is housed on servers inside the PRC.⁵⁹ As of this writing, court documents obtained by human rights groups have shown that user data handed over by

Yahoo! to Chinese law enforcement officials has assisted in the arrest and conviction of

at least four people who used email accounts from the Yahoo.com.cn service. The four

cases are as follows:

- Shi Tao: The Chinese journalist was sentenced in April 2005 to ten years in prison for "divulging state secrets abroad." According to court documents translated by the Dui Hua Foundation and released by Reporters Sans Frontières. Yahoo! complied with requests from the Chinese authorities for information regarding an IP address connected to a cn.mail.yahoo.com email account. The information provided by Yahoo! Holdings (Hong Kong) Holdings linked Shi Tao to materials posted on a U.S.-based dissident website. ⁶⁰ (See Appendix III for full case details.)

- Li Zhi: The Internet writer was sentenced in December 2003 to eight years in prison for "inciting subversion of the state authority." According to the court verdict originally posted on the Internet by the Chinese law firm that defended him, user account information provided by Yahoo! was used to build the prosecutors' case. ⁶¹ (See Appendix IV for full case details.)

- Jiang Lijun: The Internet writer and pro-democracy activist was sentenced in November 2003 to four years in prison for "subversion." According to the court verdict obtained and translated by the Dui Hua Foundation, Yahoo! helped confirm that an anonymous email account used to transmit politically sensitive emails was used by Jiang.⁶² (See Appendix V for full case details.)

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"Testimony of Michael Callahan, Senior Vice President and General Counsel, Yahoo! Inc., Before the Subcommittees on Africa, Global Human Rights and International Operations, and Asia and the Pacific," U.S.

House of Representatives Committee on International Relations, Joint Hearing:

"The Internet in China: A Tool

for Freedom or Suppression?" February 15, 2006 [online],

http://wwwc.house.gov/international_relations/109/cal021506.pdf, and Yahoo! corporate press release,

undated,

<http://yhoo.client.shareholder.com/press/ReleaseDetail.cfm?ReleaseID=187725>

(both retrieved July

11, 2006).

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For a partial English translation see

http://chinadigitaltimes.net/2006/02/yahoo_helped_sentence_another_cyber_dissident_to_8_year_1.php

(retrieved July 11, 2006); for the full Chinese court document see

<http://www.peacehall.com/news/gb/china/2006/02/200602051139.shtml>; for a full English translation by Hong

Kong blogger Roland Soong, see http://www.zonaeuropa.com/20060209_2.htm (retrieved July 11, 2006).

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The original Chinese court document and English translation are at

http://www.rsf.org/article.php3?id_article=17180 (retrieved July 11, 2006).

Reporters Sans Frontières, "Information supplied by Yahoo! helped journalist Shi Tao get 10 years in prison,"

September 6, 2005 [online], http://www.rsf.org/article.php3?id_article=14884 (retrieved July 11, 2006).

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• Wang Xiaoning: The Internet writer and dissident was sentenced in September 2003 to ten years in prison for "incitement to subvert state power," on the basis

of essays he distributed on the Internet via email and Yahoo! Groups. According to the court judgment obtained by Human Rights in China, Yahoo! provided information to investigators pertaining to the email address and Yahoo! group used by Wang.⁶³ (See Appendix VI for full case details.)

Figure 2: Yahoo.com unfiltered search on "Dongzhou" (results on first page are all

discussing the incident in which military police fired on protesting villagers)

In response to the public outcry after the case of Shi Tao came to light in early

September 2005, Yahoo! spokesperson Mary Osako said: "Just like any other global

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The original document and translation are at

<http://hrichina.org/public/contents/press?revision%5fid=27803&item%5fid=27801> (retrieved July 11, 2006).

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company, Yahoo! must ensure that its local country sites must operate within the laws,

regulations and customs of the country in which they are based."⁶⁴

Chinese court documents cite Yahoo! Holdings (Hong Kong) as the entity responsible

for handing over user data in these cases. However, Yahoo! executives insist that the

user data for email accounts under the Yahoo.com.cn service was housed on servers in

China, not Hong Kong. According to Michael Callahan, Yahoo!'s Senior Vice President

and General Counsel: "Yahoo! China and Yahoo! Hong Kong have always operated independently of one another. There was not then, nor is there today, any exchange of

user information between Yahoo! Hong Kong and Yahoo! China."⁶⁵

Figure 3: Yahoo.com.cn (Yahoo! China) filtered search on "Dongzhou" (results are

nonpolitical

and unrelated to the shooting incident or protests)

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“CHINA: Yahoo gave email account data used to imprison journalist,” Committee to Protect Journalists 2005

News Alert, September 7, 2005 [online],

<http://www.cpj.org/news/2005/China07sept05na.html> (retrieved July 11, 2006).

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Callahan testimony, U.S. House of Representatives Committee on International Relations, Joint Hearing:

“The Internet in China.”

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With data housed on servers in the PRC and managed by Yahoo! China employees, who

are largely Chinese nationals, Yahoo! claims that it had no choice but to hand over the

information: “When we receive a demand from law enforcement authorized under the law of the country in which we operate, we must comply,” said Yahoo!’s Michael Callahan.⁶⁶ Callahan and other Yahoo! executives have also argued that, as with criminal

cases in any country, Yahoo! employees generally have no information about the nature

of the case and would not be in a position to know whether the user data requested

relates to a political or ordinary criminal case.⁶⁷ “Law enforcement agencies in China, the

United States, and elsewhere typically do not explain to information technology companies or other businesses why they demand specific information regarding certain

individuals,” Callahan said. “In many cases, Yahoo! does not know the real identity of

Figure 4: Yahoo! China search showing nytimes.com de-list, error message: “We have

already helped you filter out excess web pages!”

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Ibid. See also: “Chinese man ‘jailed due to Yahoo,’” BBC News, February 9, 2006 [online],

<http://news.bbc.co.uk/2/hi/asia-pacific/4695718.stm> (retrieved July 11, 2006).

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“Yahoo Writer Jailed in China,” Red Herring, February 9, 2006 [online],

<http://www.redherring.com/Article.aspx?a=15659&hed=Yahoo+Writer+Jailed+in+China> (retrieved July 11,

2006).

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individuals for whom governments request information, as very often our users subscribe to our services without using their real names.” These points were reiterated in

the August 1, 2006 letter from Yahoo! to Human Rights Watch:

When we had operational control of Yahoo! China, we took steps to make clear our Beijing operation would comply with disclosure demands only if they came through authorized law enforcement officers, in

writing, on official law enforcement letterhead, with the official agency seal, and established the legal validity of the demand. Yahoo! China only provided information as legally required and construed demands as narrowly as possible. Information demands that did not comply with this process were refused. To our knowledge, there is no process for appealing a proper demand in China. Throughout Yahoo!'s operations globally, we employ rigorous procedural protections under applicable laws in response to government requests for information. For this reason, Human Rights Watch believes that it is likely impossible for an Internet

company to avoid intentionally, negligently, or unknowingly participating in political

Figure 5: Yahoo! China search showing hrw.org de-list: "no web page matching site:

hrw.org could be found," and the disclaimer message: "according to relevant laws and

regulations, a portion of results may not appear."

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repression when its user data is housed on computer servers physically located within the legal jurisdiction of the People's Republic of China. Thus the first step towards human

rights-compliant corporate conduct in China is to store user data outside of the PRC (or

for that matter, outside any country with a clear and well-documented track record of

prosecuting internationally protected speech as a criminal act).

Alibaba partnership: Unlike Microsoft and Google (cases detailed below), Yahoo! has

chosen to relinquish control over what is done in China under its brand name to a

Chinese partner. In August 2005, Yahoo! announced it would purchase a 40 percent stake in the Chinese e-commerce firm Alibaba.com. It was also announced that Yahoo!

would merge its China-based subsidiaries into Alibaba, including the Yahoo! Chinese

search engine (at: cn.yahoo.com) and Chinese email service (cn.mail.yahoo.com). On

February 15, 2006, when Yahoo! (along with three other U.S.-based companies, Cisco,

Microsoft, and Google), was brought before a U.S. House of Representatives committee

hearing to explain its collaboration with Chinese government censorship requirements,

Michael Callahan explained: "It is very important to note that Alibaba.com is the owner

of the Yahoo! China businesses, and that as a strategic partner and investor, Yahoo!,

which holds one of the four Alibaba.com board seats, does not have day-to-day operational control over the Yahoo! China division of Alibaba.com."68 According to

spokeswoman Mary Osako, Alibaba has had full control over Yahoo! China's operational and compliance policies since October 2005.69

Statements by Alibaba's CEO Jack Ma make it clear that his company has no intention of changing Yahoo! China's approach to handing over user information. In November

2005, when the Financial Times asked him what he would have done in the Shi Tao case,

he replied: "I would do the same thing... I tell my customers and my colleagues, that's

the right way to do business."⁷⁰ In a May 7, 2006 interview with the San Francisco Chronicle

he elaborated further:

We set up a process today—I think a few months ago—if anyone comes looking for information from my company, not only Yahoo but also Taobao (Alibaba's consumer auction site) and Alibaba (the auction site for businesses). If it's national security or a terrorist, if it's criminals, or people cheating on the Internet, that's when we cooperate. The

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Callahan testimony, U.S. House of Representatives Committee on International Relations, Joint Hearing:

"The Internet in China."

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"Yahoo Writer Jailed in China," Red Herring.

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Mure Dickie, "Yahoo backed on helping China trace writer," FT.com. November 10, 2005 [online],

<http://news.ft.com/cms/s/7ed7a41e-515f-11da-ac3b-0000779e2340.html> (retrieved July 11, 2006).

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authorities must have a license or a document. Otherwise, the answer is no.⁷¹

Regarding censorship of Yahoo!'s search engine, Ma recently told the New York Times:

"Anything that is illegal in China – it's not going to be on our search engine. Something

that is really no good, like Falun Gong?" He shook his head in disgust. "No! We are a

business! Shareholders want to make money. Shareholders want us to make the customer happy. Meanwhile, we do not have any responsibilities saying we should do

this or that political thing. Forget about it!"⁷²

In the August 1, 2006 letter to Human Rights Watch, Yahoo!'s Michael Samway insisted

that Yahoo! is not relinquishing all responsibility for Alibaba's actions:

As a large equity investor with one of four Alibaba.com board seats, we have made clear to Alibaba.com's senior management our desire that Alibaba.com continue to apply the same rigorous standards in response to government demands for information about its users. We will continue to use our influence in these areas given our global beliefs about the benefits of the Internet and our

understanding of requirements under local laws.

Response to criticism: Yahoo! executives respond consistently that search engine filtering is done in compliance with Chinese law, and that there is no alternative other

than not doing business in China at all.⁷³ In May 2006 Yahoo! CEO Terry Semel responded that providing the censored and politically compromised services still benefits

the Chinese people more than if Yahoo! were absent from China altogether.⁷⁴ On the eve of the congressional hearings, Yahoo! issued a press release titled "Our

Beliefs as a Global Internet Company," in which the company made the following commitments:

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"ALIBABA.COM On the Record: Jack Ma," San Francisco Chronicle, May 7, 2006 [online],

<http://www.sfgate.com/cgi-bin/article.cgi?f=/chronicle/archive/2006/05/07/BUGAQI J8221.DTL> (retrieved July 11, 2006).

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Clive Thompson, "Google's China Problem," New York Times Magazine, April 23, 2006 [online],

<http://www.nytimes.com/2006/04/23/magazine/23google.html?ex=1303444800en=9721027e105631bfe1=5088p>

artner=rssnytemc=rss&pagewanted=all (retrieved July 11, 2006).

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Nate Anderson, "Yahoo on China: We're doing some good," Ars Technica, May 12, 2006 [online],

<http://arstechnica.com/news.ars/post/20060512-6823.html> (retrieved July 11, 2006).

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Nate Anderson, "Yahoo on China," Ars Technica.

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As part of our ongoing commitment to preserving the open availability of the Internet around the world, we are undertaking the following:

- Collective Action: We will work with industry, government, academia and NGOs to explore policies to guide industry practices in countries where content is treated more restrictively than in the United States and to promote the principles of freedom of speech and expression.
- Compliance Practices: We will continue to employ rigorous procedural protections under applicable laws in response to government requests for information, maintaining our commitment to user privacy and compliance with the law.
- Information Restrictions: Where a government requests we restrict search results, we will do so if required by applicable law and only in a way that impacts the results as narrowly as possible. If we are required to restrict search results, we will strive to achieve maximum transparency to the user.
- Government Engagement: We will actively engage in ongoing policy dialogue with governments with respect to the nature of the Internet and the free flow of information.⁷⁵

Few concrete actions: Aside from repeated statements of regret about what happened

to the four Chinese government critics and pledges of continued commitment to the

above principles, Yahoo! executives have refused to do anything further to reverse the

wrongs perpetrated on at least four Chinese citizens with Yahoo!'s help. At Yahoo!'s 2006 annual shareholder meeting, Anthony Cruz, a shareholder representing Amnesty International, challenged Yahoo! executives, including Chief Executive Terry Semel and co-founder Jerry Yang, to publicly ask the Chinese government to release imprisoned Internet dissidents. Yahoo!'s top management declined Cruz's request. Yang said "We are going to do it in the way we think is most appropriate," and "we don't have a lot of choice once we are in the country and complying with the local laws."⁷⁶ Semel deflected responsibility back to the U.S. government: "I don't think any one group and I don't think any one company can change the course of governments...The way I believe major change comes about is when those groups work together and also put certain

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"Yahoo!: Our Beliefs as a Global Internet Company," Yahoo! corporate press release, undated [online], <http://yhoo.client.shareholder.com/press/ReleaseDetail.cfm?ReleaseID=187401> (retrieved July 11, 2006).

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Elinor Mills, "Yahoo Blog: Yahoo says no to Amnesty International on China," CNet News.com, May 25, 2006, http://news.com.com/2061-10811_3-6077174.html (retrieved July 11, 2006).

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pressure on our own government...Ultimately, governments do bring about change in

other governments, particularly if they are trading partners."⁷⁷
As Alibaba's Jack Ma indicates above, in early 2006 Yahoo! asked Alibaba to adhere to a strict policy about the conditions under which it is acceptable to release user data to Chinese authorities. It appears, based on conversations with industry executives, that this was in response to public criticism. In his recent San Francisco Chronicle interview, Ma rejected the idea of moving user data overseas, saying "That doesn't make any sense.

Even outside China, if it is a terrorist, or if it is national security, you still have to deal with it. Even if your main operation is outside China, you still have to comply."⁷⁸ Absent from this reasoning is the recognition that different governments define national security very differently, and that courts in many other countries are independent, while Chinese courts have a well documented track record of acting as an arm of the government and Chinese Communist Party (CCP) and treating peaceful challenges to the ruling party's

legitimacy as a threat to national security.⁷⁹

In keeping with recent statements by Yahoo! executives, in May 2006 Yahoo! CEO Terry Semel responded that providing the censored and politically compromised services

still benefits the Chinese people more than if Yahoo! were absent from China altogether.⁸⁰ On July 27, 2006, Yahoo! China began running a disclaimer notice at the

bottom of all search pages, which says in Chinese "According to relevant laws and

regulations, some search results may not appear." While this represents a step in the

right direction, Human Rights Watch does not believe that this notice in small print at

the very bottom of all search results pages (regardless of the search term) represents

"maximum transparency to the user" as stated by Yahoo! to be the company's goal in

congressional testimony. This is especially the case when it is clear from test results that

Yahoo! censors its results more heavily than its competitors but gives the user no

explanation as to why this is necessary. "Maximum transparency to the user" would

entail informing users of how many results have been censored and why, and giving clear

information about how the search engine's censorship decisions get made, so that the

user knows what he or she is missing and knows who is responsible for the content's

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Ibid.

"ALIBABA.COM On the Record: Jack Ma," San Francisco Chronicle.

See, among others, Human Rights Watch/Asia, "Whose Security? State Security in China's New Criminal

Code," A Human Rights Watch Report, vol. 9, no. 4(C) April 1997,

<http://www.hrw.org/reports/1997/china5/>;

"China: Fair Trial for New York Times Researcher," Human Rights Watch news release, June 2, 2006,

<http://hrw.org/english/docs/2006/06/02/china13498.htm>; and U.S. State

Department, Bureau of Democracy,

Human Rights, and Labor, "Country Reports on Human Rights Practices - 2005:

China," March 8, 2006

[online], <http://www.state.gov/g/drl/rls/hrrpt/2005/61605.htm> (retrieved July 11, 2006).

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Nate Anderson, "Yahoo on China," *Ars Technica*.

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absence. Without such steps, the search engine continues to play the role of nontransparent

editor.

Chinese critics: After the case of Shi Tao was exposed by Reporters Sans

Frontières

and the Dui Hua Foundation, the Beijing-based dissident intellectual Liu Xiaobo wrote a long letter to Jerry Yang, in which he condemned such justifications as specious:

In my view, what Yahoo! has done is exchange power for money, i.e. to win business profit by engaging in political cooperation with China's police. Regardless of the reason for this action, and regardless of what kinds of institutions are involved, once Yahoo! complies with the CCP to deprive human rights, what it does is no longer of a business nature, but of a political nature. It cannot be denied that China's Internet control itself is part of its politics, and a despotic politics as well. Therefore, the "power for money" exchange that takes place between western companies like Yahoo! and the CCP not only damages the interests of customers like Shi Tao, but also damages the principles of equality and transparency, the rules that all enterprises should abide by when engaging in free trade. And it follows that if Yahoo! gains a bigger stake in the Chinese market by betraying the interests of its customers, the money it makes is "immoral money", money made from the abuse of human rights. This is patently unfair to other foreign companies that do abide by business ethics.⁸¹ (The full text of Liu's letter can be found in Appendix VII.)

After being censored by Microsoft's MSN Spaces (details in following section on Microsoft), Chinese blogger Zhao Jing, a.k.a. Michael Anti, wrote that the Chinese people were probably still better off that Microsoft's MSN and Google were engaged in China despite their compliance with Chinese censorship.⁸² However he had no such feelings for Yahoo!: "A company such as Yahoo! which gives up information is unforgivable. It would be for the good of the Chinese netizens if such a company could be shut down or get out of China forever."⁸³ He was even more blunt in an interview

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Liu Xiaobo, "An Open Letter to Jerry Yang, Chairman of Yahoo! Inc. Regarding the Arrest of Shi Tao," China Information Center, October 14, 2005 [online], <http://www.cicus.org/news/newsdetail.php?id=5421> (retrieved July 11, 2006).

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Zhao Jing, "Guanyu Weiruan shijian he meiguo guohui keneng de lifa," January 14, 2006, <http://anti.blogcity.com/1603202.htm> (retrieved July 16, 2006).

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Zhao Jing, "The Freedom of Chinese Netizens Is Not Up To The Americans," blog, original Chinese at <http://anti.blog-city.com/1634657.htm>; English translation by Roland Soong at EastSouthWestNorth, http://www.zonaeuropa.com/20060217_1.htm (retrieved July 12, 2006).

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with the New York Times: "Yahoo is a sellout," he said. "Chinese people hate Yahoo."⁸⁴

Such opinions are examples of the way in which Yahoo!'s behavior in China is

viewed by

Chinese intellectuals and opinion-leaders concerned with free speech issues. While no comprehensive opinion survey of Chinese Internet user perceptions has been

conducted to date, there is evidence that publicity about Yahoo!'s conduct in China has

caused at least some Chinese Internet users to choose other email services. A question

was recently posed in Chinese on a blog: "which do you trust more, yahoo.cn email,

Gmail or Hotmail?" A number of respondents cited privacy concerns with Yahoo!, and

others expressed appreciation that Gmail enables the user to use browser-based encryption through the "https" protocol.⁸⁵

2. Microsoft Corp.

"As a successful global corporation, we have a responsibility to use our resources and influence to make a positive impact on the world and its people."

—"Global Citizenship at Microsoft"⁸⁶

"We remove a small number of URLs from the result pages in the MSN China Search site to omit inappropriate content as determined by local practice, law, or

regulation [emphasis added]. We provide a link to a notice if search results have

been filtered or may contain non-functional links but we do not block whole queries."

—Pamela S. Passman, Vice-President, Global Corporate Affairs, responding to letter from Human Rights Watch⁸⁷

While Microsoft has had a business and research presence in China since 1992, the

Chinese version of the Microsoft Network (MSN) online portal was launched only in

mid-2005, after the formation of a joint venture between MSN and Shanghai Alliance

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Clive Thompson, "Google's China Problem," New York Times Magazine.

http://spaces.msn.com/rconversation/blog/cns!A325F2EACCC417CF!110.entry?_c=BlogPart#permalink

Global Citizenship at Microsoft, [online],

<http://www.microsoft.com/about/corporatecitizenship/citizenship/default.aspx> (retrieved July 27, 2006)

Letter from Pamela S. Passman, Vice President, Global Corporate Affairs, Microsoft Corporation, to Human

Rights Watch, July 21, 2006.

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Investment Ltd. (SAIL) to create MSN China in May 2005.⁸⁸ (Funded by the Shanghai

City Government, SAIL is a venture fund led by Jiang Mianheng, son of former PRC president Jiang Zemin.)⁸⁹

Blog censorship: Within a month of MSN China's rolling out its Chinese portal,

Microsoft came under criticism from the press and bloggers (both Chinese and Western) for censoring words such as “democracy” and “freedom” in the titles of its Chinese blogs.⁹⁰ Meanwhile, testing of the service in December showed that censorship of MSN

Spaces Chinese blogs had been extended beyond titles of the full blogs to the titles of individual blog posts themselves. As shown in Fig. 6, testing also showed that while sensitive words such as “Tibet independence” and “Falungong” (the banned religious group) could be posted in the body of blog posts, use of such words would cause the entire blog to be shut down within days, by Microsoft staff on Microsoft servers.⁹¹

The extent of MSN Spaces censorship created an uproar after the popular blog of Zhao

Jing, writing under the pseudonym Michael Anti, was shut down on December 30, 2005.⁹² In 2005 Zhao had become one of China’s edgiest journalistic bloggers, often pushing at the boundaries of what is acceptable. He had started blogging on MSN Spaces in August 2005 after his original blog hosted by the Scotland-based company

Blog-City.com was blocked by Chinese Internet service providers. In December Zhao

used his blog to speak out when propaganda authorities cracked down on Beijing News, a

relatively new tabloid with a national reputation for exposing corruption and official

abuse. The editor and deputy editors were fired and more than one hundred members of

the newspaper’s staff walked out in protest. Zhao covered the crackdown extensively on

his MSN Spaces blog, discussing behind-the-scenes developments, supported the

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“Microsoft Prepares to Launch MSN China,” Microsoft news release, May 11, 2005, <http://www.microsoft.com/presspass/press/2005/may05/05-11MSNChinaLaunchPR.msp>x (accessed July 12, 2006).

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Ibid. See also Allen T. Cheng, “Shanghai’s ‘King of I.T.’,” Asiaweek.com, February 9, 2001 [online],

<http://www.pathfinder.com/asiaweek/technology/article/0,8707,97638,00.html> (retrieved July 12, 2006).

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“Screenshots of Censorship,” blog, Global Voices, June 16, 2005, <http://www.globalvoicesonline.org/?p=238>; and

<http://news.bbc.co.uk/1/hi/technology/4088702.stm> (retrieved July 12, 2006).

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Tests conducted by author between December 10 and 30, 2005, initially for the book chapter: Rebecca

MacKinnon, “Flatter World and Thicker Walls? Blogs, Censorship and Civic

Discourse in China” in Daniel Drezner and Henry Farrell, eds., *The Political Promise of Blogging* (Ann Arbor: University of Michigan Press, publication pending), draft version under the title “Chinese Blogs: Censorship and Civic Discourse” at http://rconversation.blogs.com/rconversation/files/mackinnon_chinese_blogs_chapter.pdf (retrieved July 14, 2006).

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Roland Soong, “The Anti Blog is Gone,” *EastSouthWestNorth*, December 31, 2005 [online],

<http://www.zonaeuropa.com/200512brief.htm#100> (retrieved July 12, 2006); and Rebecca MacKinnon,

“Microsoft Takes Down Chinese Blogger,” *RConversation.com*, January 3, 2006 [online],

http://rconversation.blogs.com/rconversation/2006/01/microsoft_takes.html (retrieved July 12, 2006).

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walkout and called for a reader boycott of the newspaper. Microsoft told the New York

Times that MSN Spaces staff deleted Zhao’s blog “after Chinese authorities made a

request through a Shanghai-based affiliate of the company.”⁹³

Microsoft’s response: Public outcry and criticism of Microsoft’s action was so strong

in the United States that by late January 2006 Microsoft decided to alter its Chinese blog

censorship policy.⁹⁴ Called to testify before the U.S. House of Representatives in

February to explain its collaboration with Chinese government censorship requirements,

Microsoft outlined the following efforts at transparency while still complying with

Chinese censorship requirements:

First, explicit standards for protecting content access: Microsoft will remove access to blog content only when it receives a legally binding notice from the government indicating that the material violates local laws, or if the content violates MSN’s terms of use.

Second, maintaining global access: Microsoft will remove access to content only in the country issuing the order. When blog content is blocked due to restrictions based on local laws, the rest of the world will

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David Barboza and Tom Zeller, Jr., “Microsoft Shuts Blog’s Site After Complaints by Beijing,” *New York*

Times, January 6, 2006 [online],

<http://www.nytimes.com/2006/01/06/technology/06blog.html?ex=1294203600&en=f785b99efa4cf025&ei=5090&>

[partner=rssuserland&emc=rss](http://www.nytimes.com/2006/01/06/technology/06blog.html?ex=1294203600&en=f785b99efa4cf025&ei=5090&partner=rssuserland&emc=rss) (retrieved July 12, 2006).

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Jeremy Kirk, “Microsoft revamps blogging policy,” *InfoWorld*, January 31, 2006 [online],

http://www.infoworld.com/article/06/01/31/74926_HNmicrosoftbloggingpolicy_1.html (retrieved July 12, 2006).

Figure 6: MSN Spaces – Error message when attempting to post blog entry with title

“Tibet Independence”

continue to have access. This is a new capability Microsoft is implementing in the MSN Spaces infrastructure.

Third, transparent user notification: When local laws require the company to block access to certain content, Microsoft will ensure that users know why that content was blocked, by notifying them that access has been limited due to a government restriction.⁹⁵

Nina Wu, the sister of detained filmmaker and blogger Wu Hao, had been using an MSN

Spaces blog from March 2006 until his release that July to describe her quest to secure

Testimony of Jack Krumholtz Associate General Counsel and Managing Director, Federal Government Affairs

Microsoft Corporation, House of Representatives Committee on International Relations Joint Hearing of the

Subcommittee on Africa, Global Human Rights and International Operations and the Subcommittee on Asia and

the Pacific: “The Internet in China: A Tool for Freedom or Suppression?”

February 15, 2006 [online],

http://wwc.house.gov/international_relations/109/kru021506.pdf (retrieved July 12, 2006).

Figure 7: Error message appearing on December 30 after blog of Michael Anti (Zhao

Jing) was taken down (<http://spaces.msn.com/mranti/>)

her brother’s release and her personal shock that his legal and constitutional rights

appeared to have been ignored by Chinese authorities. (Wu Hao, who was working on a

documentary film about Christians in China at the time of his disappearance on February 22, 2006, was held by Chinese State Security without formal arrest, charge, trial,

or access to a lawyer until his release on July 11, 2006.) Throughout this time her blog

was not taken down or blocked to Chinese users. Likewise, the wife of dissident AIDS

activist Hu Jia has also been able to maintain a blog on MSN Spaces describing her

husband’s ordeal, as well as similar ordeals experienced by the families of other activists.

Both blogs have remained uncensored and visible, despite the fact that their subject

matter is arguably as politically sensitive, if not more so, than the content on Michael

Anti’s blog.⁹⁶ On April 10 Nina Wu reflected on her own experiences with censorship:

After Haozi disappeared, browsing the Internet and searching for related information became a mandatory daily class. I have googled a great deal

For the blog of Nina Wu, sister of Wu Hao, see <http://spaces.msn.com/wuhaofamily/> ; for the blog of Hu Jia's wife, Zeng Jinyan, see: <http://spaces.msn.com/zengjinyan/> (both retrieved July 16, 2006).

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of information on "Hao Wu," but I can't visit many of the search results, especially addresses with .org suffixes. Eight or nine out of ten will return "Impossible to display this webpage." I don't know what kind of sensitive information these websites contain. Before, I did not believe in "Internet censorship." This was because I used to visit mostly finance and investment websites, which rarely have problems. Only when I faced a serious predicament did I discover that this was a real problem.

Today someone asked me about the effect of Haozi's incident on me and other family members. I think the most direct effect is that I began to be concerned about my own "rights" and the social problems that Haozi was concerned about.⁹⁷

However, some other Chinese bloggers have reported takedowns of their MSN Spaces blogs in recent months.⁹⁸ It is not known whether Chinese authorities have made requests for those blogs to be taken down, but if the blogs of Nina Wu and Zeng Jinyan

remain visible due to Microsoft's revised policies, this is a step in the right direction, and

an example of the way in which companies can successfully resist pressure to proactively

remove politically sensitive content.

By the end of 2005, MSN Spaces hosted more Chinese blogs than any other Chinese language

blog-hosting service, surpassing its homegrown PRC competitors.⁹⁹ It remains to be seen at this writing how or whether Microsoft's efforts to institute greater

accountability and transparency will impact competition with MSN Spaces' domestic

Chinese competition.

Chinese bloggers react: While the blog of Zhao Jing, a.k.a. Michael Anti, was censored

by MSN Spaces, Zhao has said on his blog and in media interviews that while he would

have preferred not to have been censored, it is on balance better that MSN has found a

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Original Chinese entry at

http://wuhaofamily.spaces.msn.com/blog/cns!4004C8EDDE5C40F3!184.entry?_c=BlogPart;

English translation at <http://ethanzuckerman.com/haowu/?p=5228> (both retrieved July 12, 2006).

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Blogger Nancy Yinwang recently posted a comment on Nina Wu's blog (at http://spaces.msn.com/wuhaofamily/blog/cns!4004C8EDDE5C40F3!346.entry?_c11_blogpart_blogpart=blogvie

[w&_c=blogpart#permalink](http://spaces.msn.com/wuhaofamily/blog/cns!4004C8EDDE5C40F3!346.entry?_c11_blogpart_blogpart=blogvie&_c=blogpart#permalink)) to announce that her blog

(<http://spaces.msn.com/nancy-yingwang>) had been

deleted. Translation at

<http://www.globalvoicesonline.org/2006/05/11/china-msn-censors-another-blog/>
(retrieved July 14, 2006).

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“MSN Spaces rated the leading blog service provider in China,” People’s Daily Online, December 20, 2005

[online], http://english.people.com.cn/200512/20/eng20051220_229546.html
(retrieved July 12, 2006).

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way to compromise, yet still provide a platform on which ordinary Chinese can speak

much more freely than before—albeit not completely freely. 100 Upon reading news that

there would be congressional hearings he wrote:

Furthermore, at a time when globalization and politics are mixed up, I do not think that we can treat everything in black-and-white terms as being for or against the improvement of freedom and rights for the people of China. On one hand, Microsoft shut down a blog to interfere with the freedom of speech in China. On the other hand, MSN Spaces has truly improved the ability and will of the Chinese people to use blogs to speak out and MSN Messenger also affected the communication method over the Internet. This is two sides of the practical consequences when capital pursues the market. How the Americans judge this problem and mete out punishment is a problem for the Americans. If they totally prevent any compromised company from entering the Chinese market, then the Chinese netizens will not be freer at least in the short term. Besides, we must distinguish between the sellout by Yahoo! and the compromise by Microsoft, because they are completely different matters.¹⁰¹

In the days after Zhao’s blog was censored, many other Chinese bloggers (many of them

on MSN Spaces) carried out lengthy discussions of his case, republishing his final posts,

and generally expressing sympathy. They were not censored by MSN, even though Zhao

himself had been. An interesting essay by a blogger named Chiu Yung began to circulate

in the Chinese blogosphere, arguing that MSN did the right thing by “sacrificing” Anti.

If it hadn’t, the reasoning went, the entire MSN Spaces service would become unavailable to all Chinese bloggers, and that would be a greater loss. The essayist wrote

that Chinese people should thank MSN for the same reason they should thank the U.S.

for not implementing sanctions. He also argued that Chinese people themselves are

ultimately responsible for allowing their fellow countrymen to be censored, and that the

ultimate solution is going to have to be initiated by the Chinese themselves.¹⁰²

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Clive Thompson, “Google’s China Problem,” New York Times Magazine.

Michael Anti, “Wode taidu: Guanyu weiruan shijian he meiguo guohui keneng de lifa,” Anti Guanyu xinwen

he zhengzhi de meiri sikao (Anti’s blog on Blog-city.com), January 14, 2006,

<http://anti.blogcity.com/1603202.htm>;
translation by Roland Soong at EastSouthWestNorth, January 15, 2006 [online],
http://www.zonaeuropa.com/20060115_2.htm (both retrieved July 21, 2006).

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Chiu Yung, "Bushi MSN kechi, shi women diren yi deng," Chiu Yung's Web, January 4, 2006 [online],

<http://www.cantonline.com/index.php?op=ViewArticle&articleId=253&blogId=1>
(retrieved July 12, 2006).

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Figure 8: MSN Search on "Tiananmen Massacre"

Search engine: In October, Microsoft launched a search technology center in China

and on January 3, 2006, MSN launched its own "beta" (test-version) Chinese search

engine, at <http://beta.search.msn.com.cn>, which was integrated into the MSN China

portal as <http://search.msn.com.cn>.¹⁰³ Initial testing of the "beta" version in January by

editors at CNet News.com showed the MSN search tool linking to a number of sites

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About the research center see "Microsoft launches Search Technology Center in China," CNET News.com,

October 28, 2005,

http://news.com.com/Microsoft+launches+Search+Technology+Center+in+China/21007345_3-5919207.html

(accessed July 12, 2006). About the beta search launch see Ericwan, "MSN

Launches

Chinese Search Beta," Pacific Epoch, January 6, 2006 [online],

http://www.pacificepoch.com/newsstories/50283_0_5_0_M/ (retrieved July 12, 2006); and "Beta Version of

Chinese MSN Search Available," China Net Investor reproducing Shanghai Times, January 15, 2006 [online],

<http://china-netinvestor.blogspot.com/2006/01/beta-version-of-chinese-msn-search.html> (retrieved July 12,

2006).

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Figure 9: MSN Beta Chinese search on "Tiananmen Massacre"

that are blocked by Yahoo! and Google search, including Human Rights Watch's hrw.org, although there were some other sites not blocked by Google and Yahoo!

(such

as time.com) that were blocked by MSN search.¹⁰⁴ (See Section III for Human Rights

Watch's detailed analysis comparing MSN's Chinese search results to those of

Google, Yahoo!, and Baidu.) Meanwhile, on searches that have been censored to exclude politically sensitive search results, the MSN Chinese search engine often (but

not always)

includes a notification to users at the bottom of the page which says: "The search results

have omitted some content. [click here to] Find out why." The hyperlinked text then

takes the user to an explanatory page containing explanations of a list of

features and potential questions related to MSN search results. Near the bottom of the page is the heading “When there are no search results or filtered search results,” under which is the

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Declan McCullagh, “No booze or jokes for Googlers in China,” CNET News.com, January 26, 2006 [online], http://news.com.com/What+Google+censors+in+China/2100-1030_3-6031727.html?tag=nefd.lede (retrieved July 12, 2006).

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Figure 10: Search on MSN Chinese “Beta” for “Gao Zhisheng” (human rights lawyer)

following text: “When there are no or very few search results, please try a similar word

or a phrase that describes the word’s meaning. Sometimes, according to the local unwritten rules, laws, and regulations, inappropriate content cannot be displayed.”¹⁰⁵

MSN also de-lists websites from its search engine, as discussed in Section III and

depicted in Fig. 11 of this section. Human Rights Watch has found that while MSN’s

Chinese search engine turns up more diverse information on political and religious

subjects than Yahoo! and Baidu, it censors content more heavily than Google.cn (see

Section III for details).

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The explanatory page is on MSN’s Chinese search website at

http://beta.search.msn.com.cn/docs/help.aspx?t=SEARCH_CONC_AboutSearchResults.htm&FORM=HRRE#4;

For an example of a search result containing censorship notification see <http://beta.search.msn.com.cn/results.aspx?q=????&FORM=QBHP>. For an example of a clearly censored

search result without any block notification message see

<http://beta.search.msn.com.cn/results.aspx?q=????&FORM=QBHP> (all retrieved July 12, 2006).

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Figure 11: MSN de-listing of time.com

Hotmail stays offshore: For the time being, Microsoft executives have admitted that

Microsoft has held off providing Chinese-language Hotmail services hosted on servers

inside the PRC due to concerns that Microsoft would find itself in the same position as

Yahoo!, that is, subjecting its local employees to official requests for email user data,

with which they would feel compelled to comply. Microsoft has been successful in refusing Chinese government requests for Hotmail user data in the past, on the grounds

that the data is not under PRC legal jurisdiction.

3. Google, Inc.

"Ten Things that Google has found to be true ...

6. You can make money without doing evil."

—Google, "Our Principles"¹⁰⁶

"The prize is a world in which every human being starts life with the same access to information, the same opportunities to learn and the same power to communicate. I believe that is worth fighting for."

¹⁰⁶

Google Corporate Information, "Our Philosophy, No. 6: You can make money without doing evil," [online],

<http://www.google.com/intl/en/corporate/tenthings.html> (retrieved July 27, 2006).

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—Eric Schmidt, chief executive of Google¹⁰⁷

"I think it's arrogant for us to walk into a country where we are just beginning to operate and tell that country how to operate."

—Eric Schmidt, chief executive of Google¹⁰⁸

While Google has had a Chinese language search engine since September 2000, the company did not set up a physical presence inside the People's Republic of China until

the launch of its Beijing research and development center in July 2005.¹⁰⁹

Early problems: In September 2002, the Chinese government temporarily blocked Google.com on Chinese Internet service providers, making it completely impossible for

Internet users inside China to access Google's search engine without use of a proxy

server or other circumvention tools. Instead, people typing Google.com into their search

engines would be automatically re-directed to Chinese search engines. Soon after this

happened, Google issued a statement that the company was working with Chinese authorities to restore access. The block was lifted after two weeks.¹¹⁰ In an interview not

long after Google was unblocked, co-founder Sergey Brin stated that Google did not

negotiate with Chinese authorities to have the search engine unblocked, and that instead

"popular demand" had made it impossible to keep it blocked.¹¹¹ It is not clear in what

way popular demand was measured or how it changed from 2002 to 2006, when Google decided to launch the censored Google.cn site.

However, testing conducted by the OpenNet Initiative (ONI) in 2004 concluded that

"while Google is accessible to Chinese users, not all of its functions are available;

because of China's content filtering technologies, users of Google within China experience a much different Google than those outside." China was (and still is) blocking--at the service router level--all access to Google's "cache" (the link provided

along with each search that enables you to access an earlier "snapshot" of the webpage

¹⁰⁷

¹⁰⁸

Eric Schmidt, "Let more of the world access the internet," The Financial Times, May 21, 2006.

"Google defends cooperation with China: Unveil Chinese language brand name: 'Gu Ge' or 'Valley Song',"

Associated Press, April 12, 2006.

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"Google to Open Research and Development Center in China," Google corporate news release, July 19,

2006 [online], http://www.google.com/press/pressrel/rd_china.html (retrieved July 12, 2006). "Google Launches

New Japanese, Chinese, and Korean Search Services," Google corporate news release, September 12, 2000

[online], <http://www.google.com/press/pressrel/pressrelease34.html> (retrieved July 12, 2006).

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OpenNet Initiative, "Google Search & Cache Filtering Behind China's Great Firewall," Bulletin 006, August

30, 2004 [online], <http://www.opennetinitiative.net/bulletins/006/> (retrieved July 12, 2006).

Jason Dean, "As Google Pushes into China, It Faces Clash With Censors," Wall Street Journal, December

16, 2005 [online], <http://online.wsj.com/article/SB113468633674723824.html> (retrieved July 16, 2006).

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you are looking for, in case the real version has been taken down or rendered inaccessible for whatever reason.¹¹²

Additionally, as with all search results, the ONI test found that the Chinese censorship

system was blocking thousands of Google search results that would manifest in one of

two ways: 1) When a search on a particular word or phrase yielded links to banned sites

being filtered by the Chinese "firewall," the user encounters an error page upon clicking

on one of the censored links. There is no warning that this will happen and no explanation after it happened that the failure to connect to the page is not the result of

user error or technical failure but deliberate blockage. 2) When the user types certain

keywords into a Google search, their connection to Google is terminated and they receive no search results. Again there is no explanation for why this happens.

As the

ONI points out, "Neither China's keyword filtering nor the mechanism used to filter the

Google cache is specific to Google."¹¹³ In other words, the actual censorship being done

in this case is by employees of the Internet Service Providers and by Chinese government employees, not by Google employees.

Passive censorship in Chinese-language Google News: In September 2004 the launch of a Chinese-language edition of Google News also marked Google's first step in

the direction of compromise with Chinese censorship practices. When the user

typed in words or phrases that yielded blocked results, Chinese Google News did not display those results (see Figs 12 & 13 for a comparison of a search for “Tiananmen massacre” conducted on regular Google News and Chinese Google News in October 2005). The filtering was being done by the Chinese government and Chinese ISPs, not directly by Google. But Google opted not to display links on Chinese Google News that would lead to error pages or termination of the session.

In response to criticism by human rights and free speech groups, Google responded on its official blog:

For Internet users in China, we had to consider the fact that some sources are entirely blocked. Leaving aside the politics, that presents us with a serious user experience problem. Google News does not show

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For further explanation of the Google cache see <http://www.google.com/help/features.html#cached>. For an example of the Google cache for a Human Rights Watch webpage on China see: <http://64.233.187.104/search?q=cache:eVMzMuvpOMJ:www.hrw.org/asia/china.php+human+rights+watch+china&hl=en&ct=clnk&cd=1>

(both retrieved July 12, 2006).

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OpenNet Initiative, “Google Search & Cache Filtering Behind China’s Great Firewall.”

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news stories, but rather links to news stories. So links to stories published by blocked news sources would not work for users inside the PRC -- if they clicked on a headline from a blocked source, they would get an error page. It is possible that there would be some small user value to just seeing the headlines. However, simply showing these headlines would likely result in Google News being blocked altogether in China.¹¹⁴

Active censorship with Google.cn: In December 2005 Google received its license as a

Chinese Internet service. Then on January 26, 2006, Google launched a censored version

of its search engine for the Chinese market in which Google became the censor, not

merely the victim of state and ISP censorship. Tests of the site showed that Google.cn

censors thousands of keywords and web addresses.¹¹⁵ The “block list” was not given to

Google by the Chinese government, but rather--as with the other search engines operating in China--was created internally by Google staff based on their own testing of

what terms and web addresses were being blocked by Chinese Internet service providers.¹¹⁶

Google’s CEO Eric Schmidt explained that Google’s decision to launch a censored service was the result of a great deal of internal wrangling within the company,

but that ultimately Google executives concluded that censorship was necessary for Google to provide more and better service to Chinese Internet users. "We concluded that although we weren't wild about the restrictions, it was even worse to not try to serve those users at all," he said. "We actually did an evil scale and decided not to serve at all was worse evil."¹¹⁷

On Google's official blog, senior policy counsel Andrew McLaughlin explained that the

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"China, Google News and source inclusion," Google Blog, September 27, 2004, <http://googleblog.blogspot.com/2004/09/china-google-news-and-source-inclusion.html> (retrieved July 12, 2006).

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OpenNet Initiative, "Google.cn Filtering: How It Works," blog, January 25, 2006, <http://www.opennetinitiative.net/blog/?p=87> (retrieved July 12, 2006).

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Clive Thompson, "Google's China Problem," New York Times Magazine.

Danny Sullivan, "Google Created EvilRank Scale To Decide On Chinese Censorship," Search Engine

Watch, January 30, 2006 [online],

<http://blog.searchenginewatch.com/blog/060130-154414> (retrieved July 12, 2006).

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Figure 12: Search on regular Google News: "Tiananmen Massacre"

company's top management had decided that being in China with a censored service would serve Chinese users better than if Google refused to censor. McLaughlin argued

that while Google.com remained accessible to Chinese Internet users, "Google.com appears to be down around 10 percent of the time. Even when users can reach it, the

website is slow, and sometimes produces results that when clicked on, stall out the user's

browser."¹¹⁸ He defended Google's decision against critics who slammed the company

for compromising its signature corporate motto: "don't be evil."¹¹⁹

McLaughlin continued:

Launching a Google domain that restricts information in any way isn't a step we took lightly. For several years, we've debated whether entering

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Andrew McLaughlin, "Google In China," Google Blog, January 27, 2006,

<http://googleblog.blogspot.com/2006/01/google-in-china.html> (retrieved July 12, 2006).

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For an explanation of Google's code of conduct see Google's official investor website at

<http://investor.google.com/conduct.html> (retrieved July 12, 2006).

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Figure 13: Filtered search on Chinese Google News: “Tiananmen Massacre”
the Chinese market at this point in history could be consistent with our mission and values.

Filtering our search results clearly compromises our mission. Failing to offer Google search at all to a fifth of the world’s population, however, does so far more severely. Whether our critics agree with our decision or not, due to the severe quality problems faced by users trying to access Google.com from within China, this is precisely the choice we believe we faced. By launching Google.cn and making a major ongoing investment in people and infrastructure within China, we intend to change that. 120

Clearly, Google felt that it was losing market share to its number-one competitor in the Chinese search engine market, Baidu, as a result of problems Chinese users were having accessing Google.com. Users regularly experienced Internet connection failures resulting

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McLaughlin, “Google In China,” Google Blog.

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from clicking on links appearing in Google.com search results that happened to be

censored by Chinese Internet service providers.

It is difficult to assess the extent to which inaccessibility was truly affecting Google’s

market position without access to Google’s full data from the results of its accessibility

testing, which Google has not released.121

Google de-lists politically sensitive websites from the Google.cn search engine, but does

not publicize a list of which sites are de-listed and does not notify the site’s owners. In

an effort to increase transparency with users, Google.cn included one feature that is also

being used to some degree by MSN Chinese “beta” search. In all cases in which search

results are censored, Google.cn displays a message at the bottom of the screen: “These

search results are not complete, in accordance with Chinese laws and regulations.”

Google claimed in a statement that adding this level of transparency to censorship

justified its decision to become an active censor. According to Google’s McLaughlin,

“Chinese regulations will require us to remove some sensitive information from our

search results. When we do so, we’ll disclose this to users, just as we already do in those

rare instances where we alter results in order to comply with local laws in France,

Germany and the U.S.”122 (See Figs. 14, 15 & 16.)

It is not true, however, that Google provides the same amount of disclosure about its

Chinese censorship practices as it does when responding to court take-down orders in France, Germany, and the United States. On Google.com, results are often removed due to “cease and desist” requests over copyright violation. Search pages in which results have been removed include the following notice at the bottom of the page: “In response to a complaint we received under the US Digital Millennium Copyright Act, we have removed 1 result(s) from this page. If you wish, you may read the DMCA complaint that caused the removal(s) at ChillingEffects.org.”¹²³ A link then enables the user to read the full legal request that resulted in removal.¹²⁴ In France and Germany, when results are removed from a Google search, a notice at the bottom of the page notifies the user of exactly how many results were removed. It reads: “In response to a legal request

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Hundreds of tests by one of this report’s authors in Beijing and Shanghai in November 2005 over a ten-day period from a variety of locales did not reflect the same level of difficulty accessing Google.com on Chinese ISPs. Numerous Chinese working in the IT industry expressed skepticism at Google’s claim based on their own experiences.

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McLaughlin, “Google in China,” Google Blog.

See for example

<http://www.google.com/search?q=seven+wonders+of+india&btnG=Search&hl=en&lr=&c2coff=1> (retrieved July 12, 2006).

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Ibid. The link is to

<http://www.chillingeffects.org/dmca512/show.cgi?NoticeID=805> (retrieved July 12, 2006).

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Figure 14: Google.com search on “Tiananmen Massacre”

submitted to Google, we have removed [x number of] result(s) from this page. If you wish, you may read more about the request at ChillingEffects.org.”¹²⁵ A link then directs the user to a specific page on ChillingEffects.org with information about the legal circumstances under which the result was removed.¹²⁶

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For an example in English see

<http://www.google.de/search?hl=en&q=www.jewwatch.com&btnG=Google+Search; and for an example in>

French see <http://www.google.fr/search?hl=fr&lr=&sa=G&q=%22www.jewwatch.com%22> (both retrieved July

12, 2006). ChillingEffects.org is a U.S. non-profit organization that has become the national online clearing house for documenting search engine take-down requests.

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For a recent German example see

<http://www.chillingeffects.org/international/notice.cgi?NoticeID=3917>

(retrieved July 12, 2006).

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15: Google.cn search on "Tiananmen massacre"

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Figure 16: Google.cn de-listing of hrw.org

The level of transparency Google currently provides to the French, Chinese, and U.S.

user is in itself criticized as inadequate by many technology analysts and free speech

activists.¹²⁷ While Chinese legal and political circumstances surrounding censorship are

very different from these countries, and government practices are several degrees less

accountable and transparent, Google nonetheless owes the Chinese user the maximum

extent of information possible about what has been removed and why. While Google has made a gesture in that direction by generating a generic notice when some search

results have been removed, Human Rights Watch believes that it is possible and necessary for Google to provide even the Chinese user with more specific information

about the number of results removed and why.

In his February 15, 2006 congressional testimony, Google Vice President Eliot Schrage

pointed out that in addition to a disclosure policy of informing Chinese users whenever

search results have been removed, Google's new site will provide a link to the uncensored Google.com, ensuring that it remains available to Chinese users. His testimony also indicated that Google has observed and learned from the experiences of

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For more on this issue see Bill Thompson, "The billblog: Google censoring web content," BBC News,

October 25, 2002 [online], <http://news.bbc.co.uk/1/hi/technology/2360351.stm>;

Jonathan Zittrain and Benjamin

Edelman, Berkman Center for Internet and Society, "Localized Google search result exclusions," October 26,

2002 [online], <http://cyber.law.harvard.edu/filtering/google/>; Seth Finkelstein,

"Google Censorship - How It

Works," Sethf.com, March 10, 2003,

<http://sethf.com/anticensorware/general/google-censorship.php>; and

Philipp Lenssen, "Sites Google Censors," Google Blogscoped, January 25, 2005,

<http://blog.outercourt.com/archive/2005-01-15-n50.html>

(all retrieved July 12, 2006).

Yahoo! and Microsoft: "Google.cn today includes basic Google search services, together with a local business information and map service. Other products--such as Gmail and Blogger, our blog service--that involve personal and confidential information will be introduced only when we are comfortable that we can provide them in a way that protects the privacy and security of users' information."¹²⁸ Schrage also said that Google supports industry cooperation to minimize censorship:

Google supports the idea of Internet industry action to define common principles to guide the practices of technology firms in countries that restrict access to information. Together with colleagues at other leading Internet companies, we are actively exploring the potential for guidelines that would apply for all countries in which Internet content is subjected to governmental restrictions. Such guidelines might encompass, for example, disclosure to users, protections for user data, and periodic reporting about governmental restrictions and the measures taken in response to them.¹²⁹

Google also argues that these voluntary actions would be much more effective with help

from the U.S. government's executive branch:

The United States government has a role to play in contributing to the global expansion of free expression. For example, the U.S. Departments of State and Commerce and the office of the U.S. Trade Representative should continue to make censorship a central element of our bilateral and multilateral agendas.

Moreover, the U.S. government should seek to bolster the global reach and impact of our Internet information industry by placing obstacles to its growth at the top of our trade agenda. At the risk of

¹²⁸

"Testimony of Google Inc. before the Subcommittee on Asia and the Pacific, and the Subcommittee on

Africa, Global Human Rights, and International Operations" given by Eliot Schrage, vice president, Global

Communications and Public Affairs, Google Inc., U.S. House of Representatives Committee on International

Relations, Joint Hearing: "The Internet in China: A Tool for Freedom or Suppression?" February 15, 2006

[online], http://wwwa.house.gov/international_relations/109/sch021506.pdf, and <http://googleblog.blogspot.com/2006/02/testimony-internet-in-china.html> (both retrieved July 12, 2006).

¹²⁹

Ibid.

oversimplification, the U.S. should treat censorship as a barrier to trade, and raise that issue in appropriate fora.¹³⁰

Chinese netizen reactions: Opinions differ in China--even among people who chafe against official restrictions on their freedom of speech--as to whether Google's compromise was acceptable. When Google.cn was first rolled out, a number of Chinese

bloggers concerned with free speech issues were quick to condemn the move. One labeled the new service the “Castrated Google.”¹³¹ Others, such as Michael Anti, were

more philosophical, pointing out that while Google had made a compromise, it had done so after considerable weighing of the human consequences, and made a conscious

decision not to provide services that would put itself in the position of having its local

employees--with no choice but to comply--into conflict with the Chinese government

demands to censor content or, even worse, to hand individuals over to the police.¹³²

Some Chinese bloggers have also expressed concern that the existence of the censored

Google.cn will make it easier for Chinese ISP's to block Google.com without excessive

public outcry, because some form of Google search remains available.¹³³ Indeed, in late

May and the first days of June--the most politically sensitive time of the year due to the

anniversary of the June 4, 1989 Tiananmen Square massacre--several Chinese Internet

users in Beijing, Shanghai and Guangzhou reported that Google.com was consistently

inaccessible while the censored Google.cn remained accessible as normal. ¹³⁴ Users also

reported problems accessing Gmail and other Google-hosted services.¹³⁵ Google spokespersons neither confirmed nor denied what was happening, but acknowledged user reports and said that the company was investigating.¹³⁶ By June 9 the block was off,

prompting speculation by Reporters Sans Frontieres that the easing was thanks to user

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Ibid.

Xiao Qiang, “Google taijian ban jinri fabu,” Zhengweekly blog, January 25, 2006, <http://zhengweekly.blogbus.com/logs/2006/01/1860720.html>, published in

English-translation as “Chinese

bloggers: GOOGLE Eunuch Version published today,” China Digital Times, January 25, 2006 [online],

http://chinadigitaltimes.net/2006/01/chinese_bloggers_google_eunuch_version_published_today.php (both

retrieved July 12, 2006).

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Clive Thompson, “Google’s China Problem,” New York Times Magazine.

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Xiao Quiag, “Google taijian ban jinri fabu” (“Google Eunuch Version published today”), Zhengweekly

blog/China Digital Times.

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Human Rights Watch interviews with Internet users in China who requested anonymity.

Andrew Lih, “Google access update,” andrew lih blog, June 4, 2006,

<http://www.andrewlih.com/blog/2006/06/04/google-access-update/> (retrieved July 16, 2006)

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Mure Dickie, "Beijing's censors accused of disrupting Google.com," *Financial Times*, June 8, 2006 [online], <http://news.ft.com/cms/s/bbc6dabe-f69d-11da-b09f-0000779e2340.html> (retrieved July 12, 2006).

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outcry, although what happened remained difficult to assess, given that neither Google

nor the Chinese government have elaborated publicly on the facts of the situation.¹³⁷

Chinese Internet users responded with anger, directed primarily at whoever was responsible for creating the blockage. Many bloggers protested by publishing on their

blogs the picture of a voodoo doll labeled as "the person who makes it impossible to

access Google," with needles stuck in its heart, and the caption: "one click on this site

equals one pin prick."¹³⁸ (See Fig. 17.)

Figure 17: Anti-censorship voodoo doll displayed by Chinese blogger "keso" (screen grab

on June 15, 2006)

Some Chinese bloggers, however, also blamed Google for not being upfront and honest

with China's frustrated netizens about what was going on. "Chinese bloggers are discontented with Google China's official blog, since it did not have any explanation on

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Reporters Sans Frontières, "Google.com accessible again inside China," June 9, 2006 [online],

http://www.rsf.org/article.php3?id_article=17936 (retrieved July 12, 2006).

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See "Tietu bu shuohua," keepwalking blog, June 2, 2006,

<http://blog.donews.com/keepwalking/archive/2006/06/01/898146.aspx> for what is believed to be the original. For

an English-language blog post about the phenomenon see Rebecca MacKinnon, "Chinese bloggers fight

Google censorship with voodoo...," *RConversation.com*, June 7, 2006,

http://rconversation.blogs.com/rconversation/2006/06/chinese_blogger.html (both retrieved July 12, 2006).

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the issues," wrote the Chinese blogger "Tangos" at *China Web 2.0 Review*.¹³⁹ In fact,

Google's Chinese blog made no mention of the entire situation, despite the fact that the

Google.com blockage was the primary concern of Google users during that period.¹⁴⁰

Chinese blogger "Herock" writes: "I can't believe Google China isn't aware that nobody

can get on Google these days. In my view, reacting to these kinds of big events is part of

the mission of a corporate blog. But the method of 'Hei Ban Bao' [the Google China blog - literally translated as 'blackboard news'] is to pretend that this never happened and not say a word. This makes me feel that 'Hei Ban Bao' is totally useless."¹⁴¹ Useless or not, the situation certainly demonstrates that Google's China management are not being honest with their users, and that their users not only notice, but at least many of the influential and vocal ones seem to care a great deal. A few days later Google co-founder Sergey Brin told reporters in Washington, D.C., that most Google users in China use the uncensored Google.com, not the censored Google.cn. He said that while Google had acquiesced to Chinese government censorship demands, they were "a set of rules that we weren't comfortable with." He then continued: "We felt that perhaps we could compromise our principles but provide ultimately more information for the Chinese and be a more effective service and perhaps make more of a difference." He added that "perhaps now the principled approach makes more sense." He then said: "It's perfectly reasonable to do something different, to say: 'Look, we're going to stand by the principle against censorship, and we won't actually operate there.' That's an alternate path....It's not where we chose to go right now, but I can sort of see how people came to different conclusions about doing the right thing."¹⁴²

Asked by reporters for comment soon thereafter, Chinese Foreign Ministry Spokesman

Liu Jianchao responded at a press conference as follows:

China holds a positive attitude toward cooperation with Google in the information area. Any economic and trade cooperation should be

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"Chinese Search News Roundup," China Web 2.0 Review, June 7, 2006 [online], <http://www.cwrblog.net/203/chinese-search-news-roundup.html> (retrieved July 12, 2006).

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See the Google China blog at <http://www.googlechinablog.com/> (retrieved July 12, 2006).

"Wo wei shenme juede google de heiban bao meijin toule," Herock Post, June 5, 2006 [online],

<http://herock.net/archives/000183.html> (accessed July 12, 2006).

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"Google 'compromised principles' over China," Associated Press reproduced in Guardian Unlimited, June 7,

2006 [online], <http://www.guardian.co.uk/china/story/0,,1792383,00.html> (retrieved July 12, 2006).

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conducted within the framework of law. We hope that corporations

operating in China can abide by Chinese law.¹⁴³

Chinese blogger Keso had this reaction:

Liu Jianchao's statement actually equals an admission that the blocking of Google was done by us because Google didn't respect Chinese law.

But China's spokesman will never clearly tell the foreigners what article of the law Google violated, and that the blocking is being done by which law. Foreigners usually want to be able to conduct commercial activities according to clear laws which they can follow. But in China, a lot of things are like Zen and can't be explained. Without some breakthrough in thinking, if you want to comprehend the Chinese way, unfortunately you also have to invest a lot of time. ¹⁴⁴

The comments thread following Keso's post is long and lively. Some sympathized with

Google's situation or commented that competitor Baidu must be celebrating. Some expressed frustration with the system. Some wrote satirical poems and ditties, while

others posted widely-used shorthand acronyms for obscenities in reference to Baidu and

the Chinese government. Others remarked that Google is naive to think it can do anything other than adapt to the Chinese political situation. Some invoked patriotism

and national pride in homegrown products and the need for foreigners to respect Chinese law. Others discussed the detailed business and advertising reasons for Google.cn's lack of success so far, or argued about the quality of Baidu versus Google.¹⁴⁵

These comments are among the many examples of the extent to which Chinese Internet

users themselves disagree over how multinational companies should respond to Chinese

government demands.

It is worth noting that there is a perception among Chinese Internet users that Baidu

gains competitively from Google's problems. This is one further example of the way in

which lack of transparent laws and procedures creates an unfair playing field for

international businesses seeking to compete in the Chinese market. In light of this

situation, Google should be justified in challenging Chinese ISP's blockage of ¹⁴³

Ministry of Foreign Affairs of the PRC, "Foreign Ministry Spokesman Liu Jianchao's Regular Press

Conference on 8 June 2006," June 9, 2006 [online],

<http://www.fmprc.gov.cn/eng/xwfw/s2510/t257246.htm>

(retrieved July 12, 2006).

¹⁴⁴

Ibid.

Keso, "Google de zhongguo nanti," blog, Playin' with IT, June 9, 2006,

<http://blog.donews.com/keso/archive/2006/06/09/909077.aspx> (retrieved July 12, 2006).

¹⁴⁵

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Google.com—when done without clear legal reason, procedure or process for

appeal-

as an unfair and extralegal barrier to trade, calling upon the U.S. Trade Representative and the World Trade Organization for support.

4. Skype

In November 2004 Skype (which was acquired by eBay in September 2005) launched a simplified Chinese-language version of Skype, the online voice and chat client, jointly

developed with TOM Online Inc., a Chinese wireless Internet company. In September

2005 Skype and TOM formed a joint venture company to “develop, customize and distribute a simplified Chinese version of the Skype software and premium services to

Internet users and service providers in China.”¹⁴⁶ The Chinese client distributed by

TOM Online employs a filtering mechanism that prevents users from sending text messages with banned phrases such as “Falungong” and “Dalai Lama.”¹⁴⁷

In an April 2006 interview with the Financial Times, Skype’s chief executive Niklas

Zennström responded to a question about Skype’s Chinese-language censorship, explaining that Skype was simply complying as necessary with local law. “Tom had implemented a text filter, which is what everyone else in that market is doing,” the

Financial Times quoted Mr Zennström as saying. “Those are the regulations.”¹⁴⁸ Neither

Zennström nor any other Skype executive, however, has clarified exactly which regulations are being complied with or which keywords are involved. Nor has Skype

made public a full list of the keywords being blocked by the TOM-Skype client. Skype’s

Jaanus Kase followed up with a post on the official Skype blog with some further clarification. He said:

TOM operates a text filter in TOM-Skype. The filter operates solely on text chats. The filter has a list of words which will not be displayed in Skype chats. The text filter operates on the chat message content before it is encrypted for transmission, or after it has been decrypted on the receiver side. If the message is found unsuitable for displaying, it is simply discarded and not displayed or transmitted anywhere.

¹⁴⁶

“TOM Online, Skype announce joint venture in China,” Skype blog, September 5, 2005,

http://www.skype.com/company/news/2005/skype_jointventure.html (retrieved July 12, 2006); see also John

Blau, “Skype, Tom Online to launch Chinese joint venture,” InfoWorld, September 6, 2005 [online],

http://www.infoworld.com/article/05/09/06/HNskypechinaventure_1.html (retrieved July 12, 2006).

¹⁴⁷

Alison Mashland, “Skype says texts are censored by China,” Financial Times, April 18, 2006 [online],

<http://news.ft.com/cms/s/875630d4-cef9-11da-925d-0000779e2340.html> (retrieved July 12, 2006).

¹⁴⁸

Ibid.

It is important to underline:

- The text filter does not affect in any way the security and encryption mechanisms of Skype.
- Full end-to-end security is preserved and there is no compromise of people's privacy.
- Calls, chats and all other forms of communication on Skype continue to be encrypted and secure.
- There is absolutely no filtering on voice communications.¹⁴⁹

Chinese bloggers and Internet entrepreneurs responded in the blog's comments section,

challenging the necessity of Skype's action. Examples of the comments include: Skype don't need necessarily need [sic] Tom to operate business in China. Skype itself can do the job well since users help Skype spreading anywhere. I don't know or even can't image any government enforces a software to do text filtering unless they do self-policing first. Skype is misled by Tom, the useless partner. Basically Skype is different from Google or Yahoo online service, it's standalone software.

Geeks in China ever regard Skype as the hero to play important role to conduct secure communication. They are very disappointed now to see Skype join the evil business list. Sigh!

The cooperation is definitely reducing the reputation of Skype in this country. It will also pushing [sic] users away. Please re-consider the decision (cooperating with ToM and anti-freedom). I suppose Skype the company is becoming a responsible business, why not rethink it?¹⁵⁰

After blogger criticism that he was ignoring users' censorship concerns, Kase eventually

responded with a comment at the RConversation.com blog: "Skype has taken a decision

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Isaac Mao, comment posted on April 21, 2006, in response to Jaanus Kase, "Comments about Skype chat

text filtering in China," Skype blog, April 19 2006.

http://share.skype.com/sites/en/2006/04/comments_about_skype_chat_text.html#comment-7946 (retrieved July

12, 2006).

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Ibid.

to have TOM Online actively manage its business in China, thus you should be addressing these questions to TOM."¹⁵¹

Interestingly, when Human Rights Watch downloaded and tested the TOM-Skype client,

entering lists of banned words from the "block lists" of other services (such as those

listed in Appendices I and II), none of the words were found to be blocked.

Other

Internet users in China have reported similar results. Nart Villeneuve of the OpenNet

Initiative downloaded and analyzed the TOM-Skype client and found that, after running

long lists of commonly banned words (including "Falungong" and "Dalai Lama"), he

only succeeded in triggering the blockage of one common English-language obscenity. He did discover, however, that when installing TOM-Skype onto his computer, the censoring program ContentFilter.exe was also automatically installed without any user notification. Upon logging in, the program downloaded an encrypted file called "keyfile" onto his computer. (The file remained on his computer after he uninstalled TOM-Skype later.) He was unable to decrypt the file, but he writes in his blog that it appeared to be "a keyword list file of some sort." Villeneuve observes that the keyword blocking takes place on the side of the message recipient and that any message containing the blocked keyword (sent by any Skype user to any user of the TOM-Skype client) fails to appear on the recipient's screen.¹⁵² Human Rights Watch has downloaded the TOM-Skype client and had an identical experience. The censorware was downloaded onto a Human Rights Watch researcher's hard drive without notification, and we received identical results to Villeneuve's when testing lists of keywords frequently banned in China. Thus, while TOM-Skype currently does not censor many words, the TOM-Skype client is ready upon installation to receive updates from TOM-Skype at any time, adding new censored words without the user's knowledge. Skype has not acknowledged and is not known to be censoring its text chat in any other country besides China. The justification given by Skype executives for censorship is, in essence, the peer pressure defense: "Everybody does it." To Skype's credit, as of this writing very few words are being censored and no political or religious words have been discovered to be among them. It is not clear whether this is the result of recent public scrutiny or whether the TOM-Skype client had not yet added words to the block list.

The key question now is whether Skype will resist adding new words to the block list without a legally binding written court order from the Chinese authorities to do so, or

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Comment posted by Jaanus Kase on May 22, 2006 in response to Rebecca MacKinnon, "Skype ignores users concerned about China censorship," RConversation.com, May 21, 2006, at: http://rconversation.blogs.com/rconversation/2006/05/skype_ignores_u.html#comment-17558410 (retrieved July 12, 2006).

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Nart Villeneuve, "Tom-Skype Filtering in China," blog, Internet Censorship

Explorer (ICE), June 15, 2006

[online], <http://ice.citizenlab.org/?p=219> (retrieved July 12, 2006).

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whether TOM-Skype will take an initiative proactively to censor. However, TOM-Skype does not inform users that censorware will be installed on their computer at the same time that the TOM-Skype software is installed. Skype executives have said that their local partner is carrying out “best practice” in the Chinese market. The installation of censorware without informing the user is actually considered to be “worst practice” in the Internet industry.

In order to set the standard for “best practices” in dealing with the Chinese government’s pressure to censor its users, Human Rights Watch recommends that Skype

should prevail upon its business partner to: 1) resist adding any further keywords to the TOM-Skype censorship list without a court order forcing them to do so; and 2) inform

users clearly and prominently on the download page that censorware will be installed

along with the TOM-Skype client. It is not too late for Skype to resist the “race to the

bottom” taking place in China, in which more and more multinational companies are

participating and thus legitimizing China’s system of censorship without questioning a)

whether the standard practices have any grounding even in Chinese legal procedure; b)

whether they are truly necessary in order to function in China; or c) whether market

advantage might be gained by making greater efforts than the domestic competition to

maximize user interests and rights.

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Figure 18: Detail from Nart Villeneuve blog post about TOM-Skype censorware

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Figure 19: Detail from Nart Villeneuve’s blog post depicting censored chat on TOM-Skype

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V. Company, Government, Investor and Other Responses

1. Efforts toward a voluntary Industry Code of Conduct

Since the February 2006 congressional hearing, an academic working group from the

Berkeley China Internet Project of the Graduate School of Journalism of the University

of California at Berkeley (BCIP); the Berkman Center for Internet & Society at Harvard

Law School; and the Oxford Internet Institute at Oxford University have been working to draft a globally applicable corporate code of conduct, plus policy recommendations to facilitate the fullest possible support for such standards by governments, international organizations, and trade bodies. The Center for Democracy and Technology is also facilitating discussions about a code of conduct between academics, activists, thinktanks, and representatives of some of the companies named in this report. Details of these codes are still under development and have yet to be announced publicly.¹⁵³

The reason to establish such a code, or standards and practices, is to seek collective ways to find the ability to resist demands for information or technology that violate fundamental human rights. These standards and practices should transcend the relationship of individual companies to any given market, therefore giving the entire industry collective strength--and preventing the kind of "race to the bottom" recently witnessed in China.

These standards and practices should serve not only as a catalyst and compass for corporate responsibility, but also as a buffer for companies operating in a political environment where freedom of expression is restricted. Such defense mechanisms should include all possible means, from transparency to non-collaboration and even resistance, to help these companies avoid aiding or colluding with human rights abusers.

While many of the principles in a meaningful code of conduct are the same as those raised in currently proposed legislation (discussed below), it is important to have these same principles in each, since each reinforces the other, one may be established or signed into law before the other, and it also remains to be seen whether the final version of legislation will fully include the following points, all of which we believe to be an essential minimum:

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"Statement by Xiao Qiang, Director, China Internet Project, The Graduate School of Journalism, University of California at Berkeley, to the House International Relations Committee, Subcommittee on Africa, Global Human Rights and International Operations," U.S., House of Representatives Committee on International Relations, Joint Hearing: "The Internet in China: A Tool for Freedom or Suppression?" February 15, 2006 [online], http://wwwc.house.gov/international_relations/109/qia021506.pdf (retrieved July 12, 2006).

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a. Maximize user data protection:

- Do not host personally-identifying user data in jurisdictions of the People's Republic of China, where political speech is routinely treated as a crime by the legal system.
- Retain as little user data as possible for the shortest amount of time possible.
- Substantially improve user education about the company's data retention practices.
- Greatly improve disclosure to users regarding the ways in which their data will be shared with third parties. Companies should include text on all user log-in pages, written in clear language and displayed in a prominent place on the page, informing the user of how and where their data is retained and under what conditions it may be shared with governments (making clear which ones if the company is bound to share the data with more than one government in order to be legally compliant) as well as other third parties. Obscure clauses in user agreements and terms of service are not sufficient or ethically adequate.
- Build maximum encryption and privacy protection functions into the tools offered to Chinese users and educate users about their existence and uses. Companies should make their websites and email available to users to allow for secure communication via secure protocols such as https (an encrypted version of the Hypertext Transfer Protocol "http," the primary method used to convey and transfer information on the World Wide Web), IMAPS (a secure version of the Internet Message Access Protocol that allows a local client to access email on a remote server), and POPS (encrypted version of the Post Office Protocol commonly used by email services so that users can retrieve email from a remote server).

b. Respect and uphold a rights-based rule of law:

- Do not initiate censorship that has not been specifically ordered in writing by the Chinese government via a legally binding process. Businesses should not be forced to shoulder the moral burden and financial cost of political censorship. That burden, and the moral responsibility that goes along with it, should be shifted back to the Chinese government, where it belongs.
- Do not comply with oral, undocumented requests for censorship. This includes manual deletion of content in addition to the filtering of it. Challenge in court every order to censor political speech. Do not comply without a court order.

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- The Chinese Foreign Ministry spokesman has declared that foreign Internet companies must follow Chinese law.¹⁵⁴ It follows that Internet companies have the right to request clear and transparent legal procedures before agreeing to removal or censoring of any content so that they can be clear about what laws they are being asked to follow. Such a formal legal process would include: 1) Asking each Chinese government agency with jurisdiction over content to designate a formal point of contact on content censorship issues; and 2) Insisting on a piece of paper to document content-related requests before a company is obligated to take down or filter any content.
- Work with the U.S. Trade Representative, the European Union trade office, the World Trade Organization, the Organisation for Economic Co-operation and Development (OECD), and other national and international trade bodies to push for regulatory change in China, the goal being a fair business playing field that promotes honesty to the user and respect for the user's rights. None of these goals are inconsistent with goals and aspirations recently

expressed by

Chinese government officials.

c. Maximize service integrity and Chinese user trust:

- Clearly and visibly inform users that they have complied with legally binding government requests to filter or otherwise censor content that the user is trying

to access. Thus, if a user cannot view a webpage due to the company's compliance with a government request, the user must be informed that this is the case. In other words, companies must pledge honesty to the user, and not engage in such dishonest practices as triggering a browser error page that implies

technical problems or user error, when in fact the real reason is censorship.

- To the maximum extent legally possible, inform the user about who is responsible (which corporate entity and department, which government ministry and department) for the filtering or censorship of each piece of content the user is attempting to access or post to the web.

- Provide an "appeals process" by which a user can report the filtering or censorship of what she believes to be lawful speech. This process should provide the user with the ability to appeal anonymously and securely if she so wishes.

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Ministry of Foreign Affairs of the PRC, "Foreign Ministry Spokesman Liu Jianchao's Regular Press

Conference on 8 June 2006," June 9, 2006 [online], <http://www.fmprc.gov.cn/eng/xwfw/s2510/t257246.htm> (retrieved July 12, 2006).

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d. Record-keeping for greater accountability and user trust:

- Keep written documentation of exactly what terms and web addresses they are asked to censor by the Chinese government. This documentation should include a precise explanation of exactly what local law is being violated by the use of each word or phrase or URL, as well as precise information about which government office or authority ordered the filtering of each word, phrase, or URL. This documentation should be made publicly available. If such detailed documentation is truly impossible due to lack of government cooperation, companies should agree that they will strive to provide the maximum amount of information possible about why each search result is filtered, why each specific phrase is blocked from posting online, etc.

e. Annual reporting:

- All signatories should commit to produce an annual report detailing exactly what they have done to live up to the above pledge. These reports would be submitted to a nongovernmental organization that would compile and publish each signatory's report on one website and in one printed volume for public consumption.

2. Legislation

Even if a code of conduct is adopted by key companies, Human Rights Watch believes

that it is unlikely to be effective without accompanying legislation. First, some companies

may sign up to a code and then ignore it. The key "sanction" of a voluntary code is

disclosure of non-compliance and public opprobrium. Yet despite public criticism, being

hauled before the U.S. Congress, and the threat of legislation, thus far companies have failed to change their practices. It is, therefore, not clear how a voluntary code would have the teeth to actually change behavior without accompanying legislation to impose real consequences for non-compliance.

The Global Online Freedom Act of 2006 was introduced in the U.S. House of Representatives on February 16, 2006, by New Jersey Republican Christopher Smith, cosponsored by California Democrat Tom Lantos. It was amended and sent to the full International Relations Committee on June 22, 2006.¹⁵⁵ The proposed legislation includes the following measures:

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For text of the latest amended version of the Bill, plus an account of all action related to this legislation, see <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:h.r.04780> (retrieved July 12, 2006).

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- A U.S. Office of Global Internet Freedom would be established under the State Department.
- U.S. companies (defined as any company listed on a U.S. stock exchange) would be required by law to document and report all political and religious censorship conducted in designated "Internet-restricting countries" (as designated by the President).
- U.S. companies would be prohibited from storing personally-identifiable user information on servers inside China and other "Internet-restricting countries."
- U.S. companies would only be able to hand over such user data to "Internet-restricting" governments in cases determined to be acceptable by the U.S. Department of Justice.
- Transparency of Internet censorship would be achieved by requiring companies to report to the U.S. Office of Global Internet Freedom with a list of all data and content blocked or removed from their service at the host government's request.
- Victims and family members of people who are jailed or otherwise harmed due to U.S. company violation of the Act would have the right to sue the transgressing company in a U.S. court of law.
- A feasibility study would examine the tightening of export controls to "Internet-restricting countries."

Human Rights Watch believes that barring a dramatic change of behavior by Internet companies doing business in China, legislation will be necessary. In urging the adoption of legislation, we are mindful that companies doing business in China did not set out to become censors or facilitate the arrest and imprisonment of Internet users. We understand that companies feel caught in a conflict between the demands of a repressive government in China and the rights of Internet users. Yet the principled path is clear, and it lies in taking all steps possible to protect basic rights to freedom of

expression,
information, and liberty. Thus far, companies have signally failed to do so. Yet
at the
same time some, such as Microsoft's Bill Gates--who is famously opposed to
regulation--have even urged Congress to regulate to create a level playing field
among
companies so they can resist caving in individually to whatever demands the
Chinese
authorities make¹⁵⁶
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In February 2006 Gates told the Financial Times: "I think something like the
Foreign Corrupt Practices Act
has been a resounding success in terms of very clearly outlining what companies
can't do and other rich
countries largely went along with that. That's a great thing. I think - [it] may
be that idea [will] come along."
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The goal of legislation should not be to prevent U.S. or other international
companies
from operating in China. Rather, the goal should be for companies in the
business of the
dissemination of information and ideas to adhere to these goals in China, not to
participate or facilitate censorship or the arrest of individuals involved in
peaceful
expression, and to set a strong example of ethical corporate behavior. Human
Rights
Watch has worked with and consulted a variety of experts about what provisions
should
be in legislation of this kind. Many of these are in the Global Online Freedom
Act, but
others are not, and some provisions of the bill would be stronger with some
changes.

Human Rights Watch urges the following principles as relevant to legislating on
corporate responsibility to uphold human rights:

1. UNIVERSALITY: Legislation should be universal in nature, limited not
specifically to the Chinese government or listed governments with exceptionally
poor records, but rather targeted at all acts of political censorship.
2. NO USER DATA IN REPRESSIVE JURISDICTIONS: Companies should
not be allowed to host personally-identifying user data in jurisdictions of the
People's Republic of China, so that they avoid having to comply with legally
binding orders to turn over such information in order to prosecute, threaten, or
harass individuals engaged in internationally protected speech. More
universally,
companies should be forbidden by law from hosting personally-identifying user
data in jurisdictions where the courts have a well-documented track record of
convicting people for peaceful expression of political or religious views.
3. CLEAR WARNINGS TO USERS OF RISKS: Companies must include text on
all user log-in pages, written in clear language and displayed in a prominent
place
on the page, informing the user of how and where their data is retained and
under what conditions it may be shared with governments (making clear which
ones if the company is bound to share the data with more than one government
in order to be legally compliant) as well as other third parties.

4. COMPANIES NOT TO ACT AS VOLUNTARY CENSORS OF

PROTECTED SPEECH: Companies have no business making decisions about what political or religious content should or should not be censored. Companies should be prohibited from taking actions on their own to censor political or religious speech. Richard Waters, "Transcript of Interview with Bill Gates," Financial Times (FT.Com), February 15, 2006 (retrieved July 27, 2006).

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religious speech. Such proactive censorship is usually done in anticipation of government demands or preferences, without a legally binding order to remove specific material having been received. Censorship carried out proactively as the

result of testing to identify what material the government is censoring and then taking action on this information in absence of any specific, legally binding court

order, should be prohibited. Companies should also be prohibited from complying with oral, undocumented requests from the Chinese authorities for censorship of political and religious speech. This includes manual deletion of content in addition to the filtering of it. Companies should be required to challenge every order to censor non-violent political and religious speech in the

Chinese courts. Companies should be prohibited from complying with an order unless the order is made by a court. Acting in this way will help with China's often stated goal of building the rule of law.

5. USER NOTIFICATION WHEN GOVERNMENT HAS FORCED A COMPANY TO CENSOR PEACEFUL POLITICAL AND RELIGIOUS

SPEECH: Companies should be required to clearly and visibly inform users that they have complied with legally binding government orders to censor content that the user is trying to access. Thus, if a user cannot view a webpage due to the

company's compliance with a government request, the user must be informed that this is the case. To the maximum extent legally possible, companies must inform the user about who is responsible (which corporate entity and department, which government ministry and department) for the censorship of each piece of content he or she is attempting to access or post to the web. Companies must also provide an "appeals process" by which a user can report the filtering or censorship of what the user believes to be lawful speech. This process must provide the user with the ability to appeal anonymously and securely if she so wishes.

6. FULL DOCUMENTATION: Companies must be required to keep written documentation of which terms and web addresses they are asked to censor by the Chinese government. This documentation should include which requests were complied with and rejected, and in accordance with what laws or regulations. It should contain explanation of exactly what local law is being violated by the use of each word or phrase or URL, as well as precise information about which government office or authority made the legally binding order to block or remove each word, phrase, or URL. This documentation should be made publicly available. If such detailed documentation is truly impossible due to lack of government cooperation, companies must provide the maximum amount of information possible about

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why each search result is filtered, why each specific phrase is blocked from

posting online, etc.

7. ANNUAL REPORTING: Companies should be required to produce an annual report detailing exactly what they have done to comply with the legislation. These reports would be submitted to the governing jurisdiction of the legislation

and posted on government and company websites.

8. FINES AND VICTIMS' RIGHT TO COMPENSATION: Where companies violate laws regulating how Internet companies do business with governments that abuse human rights, Companies should also be subject to significant fines by the relevant jurisdiction. Victims and family members of people who are jailed or otherwise harmed due to company violation of the law should also have the right to sue the company in a country to which jurisdiction it is subject.

9. GLOBAL: Legislation should not just be adopted by the United States. The European Union and its members, Japan, and other democracies with companies doing business in this field in China (and in other countries with a poor record on human rights) should also adopt legislation. Political censorship of the Internet is a global problem and should be treated as such.

3. U.S. Executive Branch actions

On February 14, 2006, the U.S. State Department established a Global Internet Freedom

Task Force. In his congressional testimony the following day, Ambassador David Gross

pointed out that the Chinese government's suppression of political and religious speech

on the Internet runs contrary to its own international commitments. The task force has

since had two meetings, with no discernible results or plans.

At the United Nations World Summit on the Information Society in Tunis in November

2005, China was a signatory to the Tunis Commitment, which reaffirmed the 2003 Geneva Declaration "that everyone has the right to freedom of opinion and expression;

that this right includes freedom to hold opinions without interference and to seek,

receive and impart information and ideas through any media and regardless of frontiers."

The Tunis Commitment further stated that "freedom of expression and the free flow of

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information, ideas and knowledge are essential for the Information Society and beneficial to development."¹⁵⁷ Regarding U.S. companies, Ambassador Gross observed:

We applaud recent statements that they recognize the importance of acting responsibly in this very difficult environment and see the value of cooperating with each other to improve the situation of the Chinese people. We have encouraged such cooperation, and we challenge our companies to leverage their global leadership by developing and implementing a set of meaningful best practices. We want to work with our companies, but the State Department can advocate more effectively for Internet freedoms when U.S. companies conduct themselves in a clear and consistent manner.¹⁵⁸

In an effort to determine and facilitate next steps, the Global Internet Freedom Task

Force has convened separate meetings with representatives from business, human rights organizations, and academia. No further actions have yet been made public.

4. European Union actions

On July 7, 2006, the European Parliament adopted a resolution condemning government-imposed restrictions on Internet content “which conflict with freedom of

expression,” stressing “that freedom of expression is a key value shared by all EU

countries and that concrete steps must be taken to defend it.”¹⁵⁹ According to a press

release issued by the European Parliament:

MEPs [Members of the European Parliament] welcome the introduction by US legislators in February 2006 of a draft law, the Global On-line

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“Testimony of Ambassador David A. Gross, U.S. Coordinator for International Communications and

Information Policy Bureau of Economic and Business Affairs, U.S. Department of State,” U.S. House of

Representatives Committee on International Relations, Joint Hearing: “The Internet in China: A Tool for

Freedom or Suppression?” February 15, 2006 [online],

http://wwwa.house.gov/international_relations/109/gro021506.pdf (retrieved July 12, 2006); “Tunis

Commitment” WSIS-05/TUNIS/DOC/7-E, November 18, 2005 [online],

<http://www.itu.int/wsis/docs2/tunis/off/7.html> (retrieved July 16, 2006); “The Geneva Declaration of Principles

and Plan of Action,” December 12, 2003 [online],

http://www.itu.int/wsis/documents/doc_multi-en1161/1160.asp

(retrieved July 16, 2006).

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Ibid.

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“Democracy and human rights: Somalia, Mauritania and the internet,” European Parliament press release,

June 7, 2006 [online],

http://www.futureofeuropa.parliament.gv.at/news/expert/infopress_page/015-9503-18707-27-902-20060629IPR09390-06-07-2006-2006-false/default_en.htm

(retrieved July 12, 2006).

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Freedom Act, aimed at regulating the activities of internet businesses when they operate in repressive countries.

They believe the EU too should stand up for the rights of internet users.

They therefore call on the Council and Member States to agree a joint statement confirming their commitment to the protection of internet

users’ rights and the promotion of free expression on the internet worldwide.

The

Commission and Council are also asked to take the following steps:

- to press the authorities of countries that have imprisoned journalists and others for expressing views on the internet to release them immediately;

- to draft a voluntary code of conduct limiting the activities of companies in repressive countries;

• to take into account, when considering EU assistance programs with third countries, the need for unhindered internet access by the citizens of those countries.¹⁶⁰

Human Rights Watch applauds this step toward creating and enforcing truly global corporate standards of behavior. We call on the European Commission and Council to implement the Parliament's recommendations—whose goal is to protect the universally recognized right to freedom of speech for all the world's people.

5. Investor pledge

In November 2005 twenty-five U.S., Canadian, Australian, and European investment funds managing around U.S.\$21 billion in assets signed a pledge stating that “respect for

freedom of expression is a factor we consider in assessing a company's social performance,” and committing to “monitor the activities of Internet sector companies in

repressive countries to evaluate their impact on access to news and information.” The

companies also pledged to support shareholder resolutions at company annual meetings

“favorable to freedom of expression,” to call on Internet businesses to make public

ethical codes aimed at upholding freedom of speech worldwide, and to “[c]all on Internet businesses to make information public that will allow investors to assess how

each firm is acting to ensure that its products and services are not being used to commit

¹⁶⁰

Ibid.

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human rights violations.”¹⁶¹ (See page 79 for full statement.) According to Reporters

Sans Frontières, “the statement is above all targeted at companies such as Yahoo!, Cisco

Systems and Microsoft that help the Chinese authorities censor the Internet or operate

online surveillance systems.”¹⁶² This was a powerful message to companies that socially responsible

investors were very concerned about the issue and expected companies to change their practices. It showed that scrutiny and criticism of the companies was

growing since socially-responsible investors had added their voice to criticisms of

NGOs, the press, the public, and the U.S. Congress.

Joint Investor Statement on Freedom of Expression and the Internet

As investors and research analysts, we recognize that our investment decisions have an

impact on human rights around the world. We are therefore committed to using the tools at

our disposal to uphold human rights world wide as outlined in the United Nations Universal

Declaration of Human Rights (UDHR), including freedom of opinion and expression, freedom of assembly and association, and security of persons.

The growth of the Internet offers considerable opportunities for global broad-based wealth creation. Companies involved in providing Internet services and technology are playing a leading role in building global communities and sharing knowledge. We believe that government action to censor, monitor, isolate and jail Internet users for exercising basic human rights outlined in the UDHR threatens the ultimate realization of these benefits. We believe these actions also present significant barriers to growth for Internet sector businesses, which depend on a broadly connected, free Internet.

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Reporters Sans Frontieres, "Investment funds and analysts to monitor what Internet firms do in repressive countries," November 7, 2005 [online], http://www.rsf.org/article.php?id_article=1553 (retrieved July 12, 2006).

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See http://www.rsf.org/article.php?id_article=15530 (retrieved July 12, 2006).

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To help advance freedom of expression, the undersigned:
Reaffirm that freedom of expression is a universal human right that companies have an obligation to respect throughout their worldwide operations, and, in particular, in countries with a history of serious and widespread human rights violations;
Reaffirm that Internet sector businesses have a particular responsibility in this domain for a number of reasons, including the following:
Their long-term success depends on a broadly connected Internet that is free of censorship; and
Millions of people depend on their products and services for reliable access to news and information;
Recognize that, according to numerous and credible sources, a number of countries throughout the world do not tolerate public dissent and monitor and control citizens' access to the Internet as a means of suppressing freedom of expression;
Recognize that some businesses help authorities in repressive countries to censor and mount surveillance of the Internet, and others turn a blind eye to the use made of their equipment;
State that respect for freedom of expression is a factor we consider in assessing a company's social performance;
Announce that we will monitor the operations of Internet businesses in repressive regime countries to evaluate their impact on access to news and information;
Commit ourselves to supporting, at annual general meetings of publicly listed companies, shareholder resolutions that we believe are favorable to freedom of expression or otherwise

promote the principles of this declaration;

Call on Internet businesses to adopt and make public ethical codes stressing their

commitment to freedom of expression and defining their obligations to uphold these

freedoms; and

Call on Internet businesses to make information public that will allow investors to assess

how each firm is acting to ensure that its products and services are not being used to commit

human rights violations (including, products and services that enable Internet censorship,

surveillance and identification of dissidents).

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VI. Recommendations

To Internet companies working in China

- Lobby and attempt to convince the Chinese government and its officials to end political censorship of the Internet.

- Develop and adhere to a code of conduct that prohibits participation in or facilitation of infringements of the right to free expression, information, privacy,

- association, or other internationally recognized human rights (see Section V, Part

2).

- Never turn over personal user information if it could lead to prosecution for protected expression. In order to minimize conflicts with Chinese law, companies should not store such data in China.

- Never censor any material unless required by legally binding and written government request. The practice of proactively seeking and censoring search terms, words or phrases in blogs, chatrooms, online bulletin boards, and websites, as well as entire website addresses, crosses the line from being censored to becoming the censor, and must end immediately. There is an ethical difference between being censored and being the censor.

- Use all legal means to resist demands for censorship of searches, blogs, web addresses, etc. Companies should only comply with such demands if they are made via legally binding, documentable procedures and the company has exhausted all reasonable legal means to resist them.

- Document all cases in which content has been censored in compliance with legally binding government demands and make this information publicly available.

- Make websites and email available to users to allow for secure communication via secure protocols such as https (an encrypted version of the Hypertext Transfer Protocol "http," the primary method used to convey and transfer information on the world wide web), IMAPS (a secure version of the Internet Message Access Protocol that allows a local client to access email on a remote server), and POPS (encrypted version of the Post Office Protocol commonly used by email services so that users can retrieve email from a remote server).

To investors in Internet companies

- Press for ethical company practices and respect for users' human rights on a global scale.

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- Insist on code of conduct and support legislation—and compliance with it—if

companies fail to adopt and truly follow a code.

To International organizations including the WTO, OECD, and UN

- Make a full study of the ways in which non-transparent censorship practices in countries such as China contribute to the lack of a level business playing field,

and the extent to which censorship can be considered a barrier to trade.

To activists, human rights groups, nongovernmental organizations, charitable foundations, and other groups concerned with promoting global freedom of speech online

- Work in concert with socially responsible businesses to develop technologies that will maximize privacy, ensure anonymity, and enable Internet users around the globe to circumvent Internet censorship, filtering, and blocking.

- Conduct independent research and documentation of the ways in which companies are or are not complying with legislation and/or codes of conduct.

- Provide clearing houses of information through which users can better inform themselves about the ways in which the products and services they use may be limiting their universally recognized right to free speech and privacy.

To users of the services and products of Internet companies

- Make it known that the way users are treated in China and elsewhere is an indicator of companies' respect for users' rights globally.

- Take companies' human rights standards into account when deciding which products and services to purchase or use.

To the United States, European Union, Japan, and other countries with Internet-related companies operating in China

- Support legislation of company behavior as described in Section V, Part 3 above,

to regulate the conduct of such companies and prohibit their participation in or facilitation of infringements of the right to free expression, information, privacy,

association, or other internationally recognized human rights.

- Press companies to adopt a principled and effective code of conduct.

- Press China to end all political censorship of the Internet and to stop pressuring

companies to act as censors.

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- Press China to end the use of the criminal law against individuals on the basis of

speech that would otherwise be protected under international law, and to release all such Internet prisoners.

To the Chinese Government

- End all censorship of internationally protected expression on the Internet.

- Cease putting pressure on or ordering companies to engage in censorship.

- End all criminal actions against individuals using the Internet for peaceful political and religious expression.

- Create formal, well-documented and legally transparent processes by which content censorship requests are made to companies, formal written procedures by which companies can challenge or respond to censorship requests, and formal, transparent legal procedures by which members of the Chinese public can safely and fairly challenge the legality of any act of censorship without fear

of reprisal.

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Appendix

Appendix I: "The words you never see in Chinese cyberspace"

China Digital Times

The words you never see in Chinese cyberspace¹⁶³

By Xiao Qiang :: 2004-08-30, 10:37 PM :: Politics

http://chinadigitaltimes.net/2004/08/the_words_you_n.php

It is an open secret that all Chinese Internet hosting services, including wireless and

instant messenger services, filter user communication through key word blocking mechanisms. But overly vague and broad Chinese internet laws and the internet police

force never made the forbidden words explicit -- Not until some Chinese hackers located a document within the installation package of QQ instant messaging software.

The file contains over one thousand words, most of them in Chinese, which will be

blocked by the service. Owned by Tencent, QQ is China's most popular Instant Messenger service. On a regular basis, tens of millions of users use their service. On one

day, March 13, there were more than six million users online using QQ at the same time.

Because of its high traffic volume, it is technically much harder to build in the key word

filtering mechanism on the server's end. Instead, Tencent sneaked in a filtering program

file in their installation package at the client end. When a client installs the QQ²⁰⁰³

software on their own computer desktop, a program file, called COMToolKit.dll, is

automatically included. This file contains all the forbidden keywords, which will be

automatically blocked when the client runs QQ. The full list is below.

Recently, some Chinese hackers located this file and released it on the

Internet. The censored key words list is commonly used not just for QQ, but also for all websites, BBS and text messaging services. One Internet user did a rough breakdown of the list: About 15 percent of the words are sex related, the rest are all related to politics. About 20 percent of the words are Falungong related, including “师父” (master) and “弟子” (disciple); about 15 percent are names of current officials and their relatives; about 10 percent are words used in the liberal political discourse such as “democracy”, “freedom”, and “dictatorship”; and about 5 percent are related to certain nationalistic issues, such as

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The list at the end of this article is a partial one and appears at http://chinadigitaltimes.net/2004/08/the_words_you_n.php.

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”保钓” (defend Diaoyu Island), “俄国边界” (Sino-Russian Border) , “卖国” (selling out the country) etc. About 15 percent of the forbidden words are related to anti-corruption, such as “走私” (smuggling), “公款” (public funds); etc. Other censored words include names of dissidents, writers, and intellectuals, and names of certain foreign publications.

Please find the entire list attached here:

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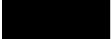
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{SEP}妹疼|疼{SEP}妹痛|痛_{SEP}弟疼|疼_{SEP}弟痛|痛_{SEP}姐疼|疼_{SEP}姐痛|痛_{SEP}哥疼|疼_{SEP}哥痛|痛

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荡妇 | 荡 | 阴囊 | 阴 | 睾丸 | 辜 | 捅 | 捅 | 捅我 | 捅 | 插我 | 插 | 插 | 插 | 插
插他 | 插 | 干 | 干 | 干 | 干他 | 干 | 妓女 | 妓 | 射精 | 射 | 口交 | 交 | 手淫 | 淫
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避孕套 | 套 | 妈逼 | 逼 | 大鸡巴 | 鸡 | 性高潮 | 性 | 性虐待 | 性 | 性高潮 | 性
大法 | 法 | 弟子 | 弟 | 大纪元 | 元 | 真善忍 | 忍 | 明慧 | 慧 | 大法 | 法 | 洪志 | 志
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江泽民 | 泽 | 朱容基 | 基 | 朱镕基 | 朱 | 李长春 | 春 | 李瑞环 | 瑞 | 胡锦涛 | 锦
魏京生 | 魏 | 台湾独立 | 湾 | 藏独 | 藏 | 西藏独立 | 藏 | 疆独 | 疆 | 新疆独立 | 疆
警察 | 察 | 民警 | 警 | 公安 | 公 | 邓小平 | 邓 | 嫖 | 嫖 | 大盖帽 | 帽 | 革命 | 命
武警 | 警 | 黑社会 | 社 | 交警 | 警 | 消防队 | 消 | 刑警 | 刑 | 夜总会 | 夜 | 妈个 | 个
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天安门 | 门 | 自焚 | 焚 | 骗局 | 骗 | 猫肉 | 猫 | 吸储 | 储 | 张五常 | 张 | 张丕林 | 丕

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贾庆林 | 庆 | 专制 | 制 | 卖淫 | 淫 | 三个代表 | 表 | 一党 | 党 | 多党 | 党 | 民主 | 民
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私处 | 私 | 爽死 | 爽 | 变态 | 态 | 妹疼 | 疼 | 妹痛 | 痛 | 弟疼 | 疼 | 弟痛 | 痛 | 姐疼 | 疼
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操死 | 操 | 乳房 | 乳 | 阴莖 | 阴 | 陽具 | 陽 | 開苞 | 苞 | 肛門 | 肛 | 陰道 | 陰 | 陰蒂 | 陰
肉棍 | 肉 | 肉棒 | 肉 | 肉洞 | 肉 | 蕩婦 | 蕩 | 陰 | 陰 | 辜丸 | 辜 | 捅 | 捅 | 捅我 | 捅
插我 | 插 | 插 | 插 | 插 | 插他 | 插 | 幹 | 幹 | 幹 | 幹 | 幹他 | 幹 | 妓女 | 妓
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民運 | 運 | 六四 | 四 | 台獨 | 獨 | 王丹 | 丹 | 柴玲 | 柴 | 李鵬 | 鵬 | 天安門 | 安
江澤民 | 澤 | 朱容基 | 基 | 朱鎔基 | 朱 | 李長春 | 春 | 李瑞環 | 瑞 | 胡錦 | 濤 | 錦
魏京生 | 魏 | 臺灣獨立 | 灣 | 藏獨 | 藏 | 西藏獨立 | 藏 | 疆獨 | 疆 | 新疆獨立 | 疆
警察 | 察 | 民警 | 警 | 公安 | 公 | 鄧小平 | 鄧 | 嫖 | 嫖 | 大蓋帽 | 帽 | 革命 | 命
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青天白日旗|青_{SEP}轻舟快讯|轻_{SEP}情妇|情_{SEP}庆红|庆_{SEP}全国会|全_{SEP}热比娅|热
热站政论网|热_{SEP}人民报|人_{SEP}人民内情真相|人_{SEP}人民真实|人
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苏晓康|苏_{SEP}台独|台_{SEP}台盟|台_{SEP}台湾独立|台_{SEP}台湾狗|台
台湾建国 动组织|台_{SEP}台湾青年独立联盟|台_{SEP}台湾政论区|台
台湾自由联盟|台_{SEP}太子党|太_{SEP}汤光中|汤_{SEP}唐柏桥|唐_{SEP}唐捷|唐_{SEP}滕文生|滕
天安门录影带|天_{SEP}天安门事件|天_{SEP}天安门屠杀|天_{SEP}天安门一代|天_{SEP}天怒|天
天葬|天_{SEP}童屹|童_{SEP}统独|统_{SEP}统独论坛|统_{SEP}统战|统_{SEP}屠杀|屠_{SEP}外交论坛|外
外交与方略|外_{SEP}万润南|万_{SEP}万维读者论坛|万_{SEP}万晓东|万_{SEP}汪岷|汪
王宝森|王_{SEP}王炳章|王_{SEP}王策|王_{SEP}王超华|王_{SEP}王丹|王_{SEP}王辅臣|王_{SEP}王刚|王
王涵万|王_{SEP}王沪宁|王_{SEP}王军涛|王_{SEP}王力雄|王_{SEP}王瑞林|王_{SEP}王润生|王
王若望|王_{SEP}王希哲|王_{SEP}王秀丽|王_{SEP}王治坪|王_{SEP}网特|网_{SEP}尉健行|尉
魏京生|魏_{SEP}魏新生|魏_{SEP}温家宝|温_{SEP}温元凯|温_{SEP}文革|文_{SEP}无界浏览器|无
百益|邦国|方城|官正|弘|宏|
仁华|学灿|学|吾_{SEP}尔开希|吾_{SEP}五不|五_{SEP}伍凡|伍

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西藏|西_{SEP}西藏独立|西_{SEP}洗脑|洗_{SEP}下体|下_{SEP}项怀诚|项_{SEP}项小吉|项
小参考|小_{SEP}肖强|肖_{SEP}邪恶|邪_{SEP}谢长廷|谢_{SEP}谢选骏|谢_{SEP}谢中之|谢
辛灏年|辛_{SEP}新观察论坛|新_{SEP}新华举报|新_{SEP}新华内情|新_{SEP}新华通论坛|新
新疆独立|新_{SEP}新生网|新_{SEP}新闻封锁|新_{SEP}新语丝|新_{SEP}信用危机|信 铮|
熊炎|熊_{SEP}熊|熊_{SEP}修炼|修_{SEP}徐邦秦|徐_{SEP}徐才厚|徐_{SEP}徐匡迪|徐_{SEP}徐水良|徐
许家屯|许_{SEP}薛伟|薛_{SEP}学潮|学_{SEP}学联|学_{SEP}学习班|学_{SEP}学|学_{SEP}学自联|学
雪山狮子|雪_{SEP}严家其|严_{SEP}严家祺|严_{SEP}阎明复|阎_{SEP}颜射|颜_{SEP}央视内部晚会|央
杨怀安|杨_{SEP}杨建利|杨_{SEP}杨巍|杨_{SEP}杨月清|杨_{SEP}杨周|杨_{SEP}姚月谦|姚
夜话紫禁城|夜_{SEP}一中一台|一_{SEP}义解|义_{SEP}亦凡|亦 见人士|议人士|
易丹轩|易_{SEP}易志熹|易_{SEP}淫穴|淫_{SEP}尹庆民|尹_{SEP}由喜贵|由_{SEP}游行|游_{SEP}幼齿|幼
幼女|幼_{SEP}于大海|于_{SEP}于造成|于_{SEP}余英时|余_{SEP}舆论|舆_{SEP}舆论反制|舆
宇明网|宇_{SEP}圆满|圆_{SEP}远志明|远_{SEP}岳武|岳_{SEP}在十月|在_{SEP}则民|则_{SEP}择民|择
泽民|泽_{SEP}贼民|贼_{SEP}曾培炎|曾_{SEP}曾庆红|曾_{SEP}张伯笠|张_{SEP}张钢|张_{SEP}张宏堡|张
张健|张_{SEP}张林|张_{SEP}张万年|张_{SEP}张伟国|张_{SEP}张昭富|张_{SEP}张志清|张
赵海青|赵_{SEP}越南|赵_{SEP}赵品|赵_{SEP}赵晓微|赵_{SEP}赵紫|赵_{SEP}哲民|哲
真善忍|真_{SEP}真相|真_{SEP}真象|真_{SEP}镇压|镇_{SEP}争鸣论坛|争_{SEP}正见网|正
正义党论坛|正_{SEP}郑义|&

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Appendix II: "The Great Firewall of China: Keywords used to filter web content"

The Washington Post

The Great Firewall of China

Keywords Used to Filter Web Content

Saturday, February 18, 2006; 11:11 AM

<http://www.washingtonpost.com/wpdyn/content/article/2006/02/18/AR2006021800554.h>

tml

The

Washington Post obtained a list of keywords used by a Chinese blog service provider to flag offensive material. Of 236 items on the list, 18 were obscenities. The rest were related to politics or current affairs.

Most words on this list can be posted on Chinese Web sites, but their presence quietly alerts editors to examine the messages that contain them and possibly take action. In tests, postings that included long sections of the list were allowed to remain on several sites, but quickly removed from others. One site also blocked the computer used to conduct the tests from posting anything else. In addition, on most sites, at least some of the sensitive phrases cannot be posted at all.

Depending on the site, filters replace the offending words with asterisks or block the

entire message. Below is the list. Obscenities have been withheld.

Names of People [Chinese characters added by Human Rights Watch]

Bao Tong 鲍

Chen Yonglin 陈用林

Cui Yingjie 崔英杰

Ding Jiaban 丁家班

Du Zhaoyong 杜兆勇

Gao Jingyun 高景云

Gao Zhisheng 高智晟

He Jiadong 何家栋

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He Weifang 贺为方

Hu Xingdou 胡星斗

Hu Yuehua 胡跃华

Hua Guofeng 华国锋

Huang Jingao 黄金高

Jiang Mianheng 江绵恒

Jiang Yanyong 蒋彦永

Jiang Zemin 江泽民

Jiao Guobiao 焦国标

Jin Zhong 金

Li Zhiying 李智英

Liang Yuncai 梁云才

Liu Jianfeng 柳剑锋

Liu Junning 军

Liu Xiabobo 晓波

Nie Shubin 聂树斌

Nie Shubin (repeated)

Sun Dawu 孙大午

Wang Binyu 王斌余

Wang Lixiong 王力雄

Xu Zhiyong 许志永

Yang Bin 杨斌

Yang Dongping 杨东平

Yu Jie 俞杰

Zhang Weiyong 张惟英

Zhang Xingshui 张星水

Zhang Zuhua 张祖桦

Zhao Yan 赵岩

Zhou Qing 周勍

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Zhu Chenghu 朱成虎
 Zhu Wenhui 朱文虎
 Zi Yang (in English)
 Ziyang (in Chinese) 紫
 Ziyang (in English)
 zzy (in English, abbreviation for Zhao Ziyang)
 Chinese Politics
 17th party congress 十七大
 Babaoshan 八宝山
 Beat [overthrow] the Central Propaganda Department 打倒中宣部
 Blast the Central Propaganda Department 炮打中宣部
 Block the road and demand back pay
 Chief of the Finance Bureau 金融司司长
 Children of high officials 高干子弟
 China liberal (in English)
 Chinese Communist high officials 中共高干
 Denounce the Central Propaganda Department 讨伐中宣部
 Down with the Central Propaganda Department 痛打中宣部
 Impeach 罢免
 Lin Zhao Memorial Award 林昭纪念奖
 Patriots Alliance 爱国者同盟
 Patriots Alliance (abbreviated) 爱盟
 Patriots Alliance Web 爱国者同盟网
 Police chase after and kill police 警察追杀警察
 Pollution lawsuit 污染诉讼
 Procedures for dismissing an official 罢官规则
 Red Terror 红色恐怖
 Set fires to force people to relocate 动 纵火
 Sons of high officials 高干子弟
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 The Central Propaganda Department is the AIDS of Chinese society
 中宣部是中国社会的艾滋病
 Villagers fight with weapons 村民械斗
 Wang Anshi's reform and the fall of the Northern Song dynasty
 王安石变法与北宋的灭亡
 Specific Issues and Events
 Buy corpses 买尸体
 Cadres transferred from the military 军转干部
 Cashfiesta (English)
 Cat abuse 虐猫
 Changxin Coal Mountain 长兴煤山
 China Youth Daily staff evaluation system 中青报考评
 Chinese orphanage 中国孤儿院
 Chinese Yangshen Yizhi Gong 中华养生益智功
 Demobilized soldiers transferred to other industries 复转军人
 Dongyang 东
 Dongzhou 东洲
 Fetus soup 婴儿汤
 Foot and mouth disease 口蹄疫
 Fuzhou pig case 福州猪案
 Gaoxin Hospital 高新医院
 High-speed train petition 高铁大签名

Hire a killer to murder one's wife 雇凶杀妻
Honghai Bay 红海湾
Horseracing 马术比赛
Jinxin Pharmaceutical 京新药业
Kelemayi 克拉玛依
Linyi family planning 临沂计划生育
Market access system 准入制
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Mascot 吉祥物
Military wages 军人工资
No Friendlies 无福娃
Prosecutor committed suicide 检察长自杀
Pubu Ravine 瀑布
Shanwei government 汕尾政府
Suicide of deputy mayor 副市长自杀
Suicide of Kuerle mayor 库尔勒市市长自杀
Swiss University of Finance 瑞士金融大学
Taishi village 太石村
Top ten worst cities 十大最差城市
Wanzhou 万州
Weitan [Village] 韦滩村
Zhang Chunxian welcomes supervision against corruption 张春贤欢迎廉政监督
Falun Gong
Terms related to the banned Falun Gong spiritual movement, including phrases from its
"Nine Commentaries" manifesto against the Communist Party:
Chinese Communist Party brutally kills people 共产党残暴杀人
dajiyuan (in English)
Defy the heavens, earth and nature. Mao Zedong 藐视天地自然。毛泽东
Epoch Times 大纪元
Epoch Times (written with a different character) 大纪
Epoch Times news Web site 大纪元新闻网
Evaluate the Chinese Communist Party 评中国共产党
Evaluate the Chinese Communist Party (abbreviated) 评共产党
falundafa (in English)
flg (in English)
Fozhan Qianshou Fa 佛展千手法
Guantong Liangji Fa 贯通法
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In the Chinese Communist Party, common standards of humanity don't exist
共产党那里, 没有普遍的人性标准
Li Hongzhi 李洪志
lihongzhi (in English)
Master Li 李大师
minghui (in English)
Mother and daughter accused each other, and students and teachers became enemies
母女告发和师生反目
New Tang dynasty TV Station 新唐人电视台
Nine Commentaries 九评
No. 1 evil cult in the world 人世间的头号大邪教
Obedient citizens under its brutal rule 它暴虐统治下的顺民
People become brutal in violence, Chinese Communist Party

暴力之中人变得暴虐, 共产党

People developed a concept of the Chinese Communist Party, but

人们对共产党又产生了幻想。但是,

People who could escape have escaped, and had people to seek refuge with

逃的逃, 有人投靠

Quit the party 退党

Run the opposite direction of the so-called ideals of Communism

与所谓共产主义的理想背道而驰

Shenzhou Jiachifa 神通加持法

Spring Festival Gala of the World's Chinese 全球华人春节联欢晚会

Steal people's painstaking work 盗用人民辛勤劳动

Truth, Compassion, Tolerance [Falungong slogan] 真善忍

Zhenshanren (in English) [same slogan in English]

Overseas Web Sites, Publications and Dissident Groups

Century China Foundation 世纪中国基金会

China Issues Forum 中国问题论坛

China Renaissance Forum 中国复兴论坛

China Society Forum 中国社会论坛

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China Spring 中国之春

Chinese Current Affairs 中华时事

Chinese World Forum 华语世界论坛

EastSouthWestNorth Forum 东南西北论坛

EastWestSouthNorth Forum 东西南北论坛

Forum of Wind, Rain and the Divine Land 风雨神州论坛

Freedom and Democracy Forum 自由民主论坛

Freedom to Write Award 自由写作奖

Great China Forum 大中华论坛

Han Style 汉风

Huatong Current Affairs Forum 华通时事论坛

Huaxia Digest 华夏文摘

Huayue Current Affairs Forum 华岳时事论坛

Independent Chinese PEN Center 独立中文会

Jimaoxin Collection 鸡毛信文汇

Justice Party Forum 正义党论坛

New Birth Web 新生网

New Observer Forum 新观察论坛

North American Freedom Forum 北美自由论坛

reminbao (in English)

remingbao (in English)

Small Reference 小参考

Spring and Summer Forum 春夏自由论坛

Voice of the People Forum 人民之声论坛

Worldwide Reader Forum 万维读者论坛

You Say I Say Forum 说我说论坛

Zhengming Forum 争鸣论坛

Zhidian Jiangshan Forum 指点江山论坛

Zhongshan Wind and Rain Forum 钟山风雨论坛

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Taiwan

Establish Taiwan Country Movement Organization 台湾建国 动组织

Great President Chen Shui-bian 陈水扁大总统

Independent League of Taiwan Youth 台湾青年独立联盟
Independent Taiwan Association 独立台湾会
New Party 新党
Taiwan Freedom League 台湾自由联盟
Taiwan Political Discussion Zone 台湾政论区
Ethnic Minorities
East Turkestan 东土耳其斯坦
East Turkestan (abbreviated) 东突
Han-Hui conflicts [ethnic conflicts] 回汉冲突
Henan Zhongmu 河南中牟
Hui [muslim ethnic minority] rebellion 回民暴动
Hui village 回民村
Langcheng Gang 狼城岗
Nancheng Gang 南城岗
Nanren Village 南仁村
Tibet independence 疆独
Xinjiang independence 疆独
Zhongmu County 中牟县
Tiananmen Square
Memoirs of June 4 participants 六四参加者回忆录
Redress June 4 六四平反
Tiananmen videotape 天安门录影带
Tiananmen incident 天安门事件
Tiananmen massacre 天安门屠杀
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Tiananmen generation 天安门一代
World Economic Herald 世界经济导报
Censorship
Cleaning and rectifying Web sites 网站清理整顿
China's true content 中国真实内容
Internet commentator 网络评论员
News blockade 新闻封锁
International
Indonesia 印尼
North Korea falls out with China 朝鲜对中国翻脸
Paris riots 巴黎骚乱
Tsunami 海啸
Other
Armageddon 世界末日
Bomb 炸弹
Bug 窃听器
Handmade pistol 自制手枪
Nuclear bomb 原子弹
Wiretap 监听器
Chinese People Tell the Truth 中华人民实话实说
Chinese People Justice and Evil 中华人民正邪
China Social Progressive Party 中国社会进步党
Chinese Truth Report 中华真实报道
Dazhong Zhenren Zhenshi 大 真人真事
Jingdongriji (English)
Night talk of the Forbidden City 夜话紫禁城
People's Inside Information and Truth 人民内情真
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Appendix III: Details of Shi Tao's case

Shi Tao (师涛) was taken from his home in Taiyuan, Shanxi, by security police on November 24, 2004, and transported back to Changsha, Hunan, where he had served as

a reporter and editor for the newspaper Contemporary Business News. Shi was subsequently formally arrested on state secrets charges stemming from the release of

details from a top-secret memorandum issued by central Party and government departments entitled "A Notice Regarding Current Stabilizing Work."

In its case against Shi Tao, the prosecution charged that he improperly took notes on the

memorandum as it was being discussed at an editorial meeting at the newspaper and

then hours later sent an outline of its contents by email to be published in an overseas

web forum under a pseudonym. Evidence presented during the trial included account

verification information provided by Yahoo! Holdings (Hong Kong) Ltd., which linked

the IP address used to send the email from Shi Tao's personal Yahoo! email account to a

computer located in the Contemporary Business News office.

The memorandum in question, which was in fact published in the "Democracy Forum" Internet newsletter in the name of "198964" on April 20, 2004, warned of activities by

democracy activists around the fifteenth anniversary of the crackdown on the June 4

demonstrations, as well as the perennial threats posed by Falun Gong, the increasing

number of mass incidents, and danger of harmful content on the Internet. Those in the

media were particularly warned against voicing any opinions not in step with central

government policies, and to report any suspected contacts between democracy activists

and journalists.

During his trial, Shi did not deny sending details of the memorandum for publication

overseas, and his defense attorney argued that he should not receive severe punishment

because his actions resulted in no serious damage to the security or interests of the

nation. However, the Changsha Intermediate People's Court, citing China's regulations

on state secrets, rejected this argument and convicted Shi of the crime of "divulging state

secrets abroad," sentencing him on April 27, 2005, to 10 years in prison, with subsequent deprivation of political rights for two years.

Shi appealed the verdict to the Hunan Higher People's Court, arguing in part that he had

not been aware that the memorandum was classified and charging police with failing to adhere to legal procedures during his arrest. The Hunan court rejected Shi's arguments

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and upheld the original sentence on June 2, 2005. Shi is currently serving his sentence in

Hunan province's Chishan Prison, and he is due for release on November 24, 2014. Sources

Verdict:

http://lawprofessors.typepad.com/china_law_prof_blog/files/ShiTao_verdict.pdf

Appeal Petition:

<http://peacehall.com/news/gb/china/2005/05/200505201033.shtml>

Democracy Forum post reprint (original appears unavailable):

<http://cdjp.org/archives/gb/529.html>

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Appendix IV: Details of Li Zhi's case

Li Zhi (李智), a government employee from Da county in Sichuan province, was taken

into custody by domestic security police on August 11, 2003, on subversion charges. On

December 10 of that same year, Li was convicted by the Dazhou Intermediate People's

Court and sentenced to eight years in prison, with subsequent deprivation of political

rights for four years.

Li is alleged to have used free email accounts through SINA.com and Yahoo! China to

make contact with an overseas representative of the outlawed China Democracy Party

(CDP) beginning in 2001. Having expressed his agreement with the CDP platform, Li

received a membership certificate, which he saved on his computer, and was given responsibility for local organizing activity. Among Li's alleged recruits was a

middleschool student surnamed Ying, to whom he sent CDP documents and instructions for how to join the party.

Li was also charged with using a personal webpage and an anonymous chat room identity to post and repost political articles in which he advocated the election of CDP

members to the people's congresses and other government posts as a means of bringing

about a "peaceful evolution" that would lead to seizure of power from the Chinese

Communist Party.

Among the items of evidence submitted by the prosecution in Li Zhi's trial were documents from Beijing SINA Information Technology Co. Ltd. and Yahoo! Holdings (Hong Kong) Ltd. that confirmed Li to be the registered owner of the email accounts

used in the case. (According to Li's lawyer, Yahoo!'s report to police included emails in

addition to registration information, although this part of the document was not

presented at trial.)

Li appealed the decision of the Dazhou court, claiming that he had only been allowed to meet with his defense attorney shortly before his trial was set to open, making it impossible to develop an adequate defense. In Li's second trial, acclaimed defense lawyer Zhang Sizhi pointed to evidence from the case file to suggest that Li's email accounts may have been used by a suspected police informant whom Li befriended after meeting online. Although Li's attorneys made a vigorous defense in which they raised a number of questions about the prosecution's use of its electronic evidence, the Sichuan Higher

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People's Court decision on February 26, 2004, rejected the defense submission with hardly any comment and upheld the original eight-year verdict. Li Zhi is currently serving his sentence in Sichuan province's Chuandong Prison, from which he is due to be released on August 10, 2011.

Sources

Defense statement: http://www.wlzy.cn/News/news_detail.asp?id=61

Verdict: http://www.rsf.org/IMG/doc/060223verdict_Li_Zhi.doc

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Appendix V: Details of Jiang Lijun's case

Jiang Lijun (姜立军), a heating company employee from Tieling city in Liaoning province, was convicted of subversion by the Beijing No. 2 Intermediate People's Court

and sentenced on November 28, 2003, to four years' imprisonment with one year additional deprivation of political rights. Twice detained by police in 1988 and 1995 for

posting and sending reactionary writings, Jiang became a frequent poster of articles on

political subjects to Internet BBS sites. Through Internet chat rooms, Jiang came to

know three young people from Beijing: college student Liu Di (whose satirical writings

on political subjects Jiang admired), her friend Wu Yiran, and Li Yibing, a mutual

acquaintance.

According to the prosecution's allegations against Jiang, these four shared similar

political views in favor of "so-called Western-style democracy" and a multiparty system

of government. In meetings with the others, Jiang allegedly raised the idea of organizing

a political party known as the "Freedom and Democracy Party" and making a bomb threat against a meeting of the National People's Congress in Beijing. He

directed the

others to compose a party program and a political declaration (the latter being

authored
by Liu and Li), copies of which were recovered from computers and floppy disks owned
by Liu and Wu. Also in evidence for the prosecution was user information provided by
Yahoo! Holdings (Hong Kong) Ltd. for an email account that had reportedly been used
jointly by Jiang and Li. In the draft mail folder of this account was discovered a copy of
the same political declaration authored by Liu and Li.
In part because of international pressure following their arrests, Liu, Wu, and Li were all
released rather than being prosecuted alongside Jiang. Because of unaccounted-for
photographs of the group that were submitted as evidence in Jiang's trial, and Li Yibing's
mysterious disappearance after being released, at least one member of the group has
speculated that Li may have been acting as a police informant or provocateur. This could
also help to explain how police were able to access information in the Yahoo! email
account.
After being convicted by the Beijing court, Jiang Lijun was transferred back to Liaoning
province to serve his sentence. He is due to be released from Jinzhou Prison on November 5, 2006.

Sources

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http://www.rsf.org/IMG/pdf/060419lijun_verdict.pdf,

Washington Post, December 18, 2004,

<http://www.penchinese.com/wipc/01wipl0/027j1j.htm>

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Appendix VI: Details of Wang Xiaoning's case

Beijing resident Wang Xiaoning (王小) was taken into custody by state security police on September 1, 2002, on suspicion of "inciting subversion." Wang was charged

with editing an online journal entitled "Free Forum for Political Reform" and using it to

attack the leadership of the Chinese Communist Party and advocate a multiparty political

system, separation of powers, and general elections. He is also alleged to have used a

false name to register Yahoo! email accounts and a Yahoo! Groups account, which he

used to disseminate his political writings to hundreds of email addresses. Wang also used

email to communicate with the leader of an overseas dissident political party, with whom

he discussed the establishment of a new political party named the "Chinese Third Way Party."

Among the evidence presented by the prosecution at Wang's trial were account verification statements provided in the name of Yahoo! (Hong Kong) Holdings Ltd. This is the first known case in which information about a defendant in a political case was provided to Chinese authorities by a Yahoo! subsidiary. State security police also collected numerous instances of Wang's writings that had been posted on websites both in China and overseas. Wang and his defense attorneys did not dispute the facts as charged by the prosecution, but they did maintain that Wang's actions did not constitute the crime of inciting subversion. On September 12, 2003, Wang was sentenced by the Beijing No. 1 Intermediate People's Court to 10 years in prison with subsequent deprivation of political rights for two years. He is due to be released from prison on August 31, 2012.

Source

<http://www.hrichina.org/public/PDFs/PressReleases/Wang-Xiaoning27Apr06.Judgment.pdf>

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Appendix VII: Liu Xiaobo's letter to Yahoo!
October 7, 2005

An Open Letter to Jerry Yang, Chairman of Yahoo! Inc.
Regarding the Arrest of Shi Tao

Mr. Yang,

My name is Liu Xiaobo. I was born in Changchun, China, in 1955, and am now a freelance writer in Beijing.

I can't address you as the "respectful Mr. Yang", because I write this letter for the sake

of my friend Shi Tao, who is now in a Chinese prison.

In preparation for writing this letter, I read your resume for the first time and learned

that you co-created the Yahoo! Internet navigational guide in April 1994, along with

David Filo, and co-founded Yahoo! Inc. in April 1995, which has now developed into a

world famous Internet enterprise. In terms of social status you are the rising star of the

cyber economy, and in terms of wealth you rank as one of the top magnates of the world.

In China, where wealth has become more important than anything else, you are better

known even than in the United States. Though you are an American rather than a Chinese, you have been listed among the entries of highly esteemed Chinese figures

(<http://www.1619.com.cn/guiren/>) and your biography can be found on every major Internet portal in China. The websites that post your photo, some with a sunshiny smile,

some of deep meditation and others with a look of overwhelming power, have become

top destinations for members of the young generation who are mesmerized by your

success, your wealth and your legendary adventures. Recently, the combination of Yahoo! China with China's second-largest Internet auctioneer, Alibaba, has become one of the hottest headlines in the Chinese media, and the audience has been amazed to hear that you spent a billion dollars to purchase a 40 percent stake in that company.

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But I am not writing this letter to discuss matters of the cyber economy, wealth, investment or the development of China's market. I write this letter for the sole purpose of protesting against the disreputable deeds of your company. As you know, Shi Tao, an outstanding Chinese journalist, was sentenced to ten years' imprisonment, and his arrest and sentence were essentially based on the evidence supplied by your company. I, Yahoo! is an accomplice in the persecution of Shi Tao. If it were not for the case of Shi Tao, I may have extended my congratulations to you on your successful deal with Alibaba. But now I can only say that this deal is nothing more than a prize given to your company by the CCP for your complicity with their tyrannical deeds.

I believe you know that on September 7, the media rights group Reporters Without Borders reported that your company's Hong Kong branch complied with China's State Security police by tracing Shi Tao's Internet activity and providing his email account, IP address, and other personal information to them. This information became one of the most important pieces of evidence in the conviction of Mr. Shi... "We already knew that Yahoo! collaborates enthusiastically with the Chinese regime in questions of censorship, and now - for the first time we found the evidence that Yahoo! reveals the customers' personal information to the Chinese police, as is clearly written in Shi Tao's verdict," the press freedom organization told the media. Here, I want to express my heartfelt thanks to the investigation of Reporters Without Borders, which offers insight to the whole world, especially the free countries of the West, into two types of ugliness: the ugliness of the CCP, which trades China's business profits for the cooperation of foreign enterprises in China in order to maintain its Internet control and to intimidate political dissidents, and the ugliness of Western enterprises, which bow before the communist dictatorship and trade human rights and business ethics for China's business opportunities. It is a fact that such

famous companies as MSN and Google are complicit with the CCP's Internet suppression, but it is hard to say whether these companies have ever gone so far as to betray their customers, as your company has. With the combination of these two types of ugliness, the extensive foreign investment in China has failed to advance China's freedom of speech, and has instead strengthened the CCP's hand in terms of control over the Internet and the media.

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II. The unconvincing self-defense

I learned from the BBC that you attended an Internet conference in Hangzhou, China, on September 10. When you were asked about the issue of Shi Tao, you replied, "We don't know what they want that information for, we're not told what they look for. If they give us the proper documentation in a court order, we give them things that satisfy local laws."

It is a pity that when you heard the sad story of Shi Tao, your only response was "I do not like the outcome of what happens with these things." Then you went on to say, "But we have to follow the law."

Your attitude, I should say, is unacceptable. What's more unbearable is that you only occupy yourself with the consideration of your business development and supposedly the safety of your own personnel. "We came to China because there are many opportunities - opportunities of business and of society," you are reported to have said.

"We must study the interests of the customers, without whom we could never make our business grow." You also said, "I shall not put my staff at risk. We have a clear set of rules in dealing with the data of our clients."

To me, what you said is sheer chicanery- chicanery that can convince no one. You are considering your company's business interests more than the safety of your staff.

It is Yahoo! Holdings (Hong Kong) that revealed Shi Tao's personal information to the police. But since that company is located in Hong Kong, it has no responsibility to abide by the law of China. Though Hong Kong has been handed over to China, under the principle of "one country, two systems", Hong Kong has its own laws, which were handed down from Great Britain. The law of Hong Kong is different from that of China, the former being a measure to safeguard individuals' freedom of speech and privacy, while the latter is an embodiment of the will of the Communist Party, a measure

to legalize the government's abuse of human rights despite internationally recognized standards. Companies in Hong Kong can entirely ignore the requests of Chinese police

by sticking to the laws of Hong Kong.

However, your Hong Kong company betrayed its client and helped throw him into prison. This evil deed cannot be explained in any way but to say it was pandering to the communist dictatorship.

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Of course, as a foreign enterprise in China, Yahoo! may consider the restrictions of China's specific situation for the sake of its own business. But even so, it cannot give up

business ethics and universal moral standards for business profit. The principles of the

freedom of speech and personal privacy are written in the UN Charter and the Universal

Declaration of Human Rights, and via the UN's International Covenant on Civil and

Political Rights, these principles have obtained the status of international law. Your

country, the United States, was the impetus that led the UN to draw up a series of

documents concerning universal human rights.

It is known that the stability of the CCP's political power depends on economic increase,

which in turn depends a great deal on foreign investment. So it is impossible for a wellknown

company like Yahoo! to be punished by China if it refuses to comply with the police. Would Yahoo! lose all of its business profits in China if it were to decline the

request of the police? I think the fact is that Yahoo! has the ability and influence to have

its share in China's market even if it refuses to cooperate with the police, so it is totally

untenable that it should actively comply with the police and even betray its own customers.

In my view, what Yahoo! has done is exchange power for money, i.e. to win business

profit by engaging in political cooperation with China's police. Regardless of the reason

for this action, and regardless of what kinds of institutions are involved, once Yahoo!

complies with the CCP to deprive human rights, what it does is no longer of a business

nature, but of a political nature. It cannot be denied that China's Internet control itself is

part of its politics, and a despotic politics as well. Therefore, the "power for money"

exchange that takes place between western companies like Yahoo! and the CCP not only

damages the interests of customers like Shi Tao, but also damages the principles

of

equality and transparency, the rules that all enterprises should abide by when engaging in free trade. And it follows that if Yahoo! gains a bigger stake in the Chinese market by betraying the interests of its customers, the money it makes is “immoral money”, money made from the abuse of human rights. This is patently unfair to other foreign companies that do abide by business ethics.

III. Paradise and hell for two men of the same age

I saw in your resume that you are the same age as Shi Tao, thirty-seven. But there are no

other similarities between you.

Born in Taipei in 1968, you moved to the United States at the age of 10 and then entered Stanford University to study electrical engineering. Your business intuition and

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talents are admirable. While preparing your doctoral thesis, you designed software for

Internet searching, and then, in 1995, you co-created the Yahoo! Internet navigational

guide with David Filo and co-founded Yahoo! Inc. Your company brings convenience to billions of netizens around the world, including about 100 million Chinese netizens.

Shi Tao, aged 37, is a native of Ningxia Hui Autonomous Region. He was a famous campus poet and took an active part in the pro-democracy movement in 1989 when he

was a student at East China Normal University. The Tiananmen Massacre changed many

people, including Shi Tao, and rendered him into a journalist who writes under the

guidance of his conscience, a poet who pays attention to the tortured and oppressed and

a fighter against the dictatorship.

You are luckier than Shi Tao. You were born into an authoritarian society in Taiwan, but

you left for a country of freedom, where you received a first-class education and became

the tycoon of the cyber economy. You can live with dignity without worrying about the

terror of politics; you can cultivate your talents without being controlled by officials, and

you can obtain information and learn facts without worrying about your personal safety.

But Shi Tao has been tortured by the memory of blood. He must face the terror of politics, must fight against the abuse of personal freedom and dignity and must hold to

his conscience as a man. In China, where everything is settled behind closed doors, Mr.

Shi has no way of identifying what is a “state secret” and what is not, and moreover, he

lacked knowledge about your company’s latent business principles.

In this sense, you are living in a paradise of freedom, while Mr. Shi is living in the hell of a dictatorship. But you played an infamous role in helping the CCP throw him in that hell. What you have said to defend yourself indicated that your success and wealth cannot hide your poverty in terms of the integrity of your personality. In comparison with Mr. Shi, your glorious social status is a poor cover for your barren morality, and your swelling wallet is an indicator of your diminished status as a man.

IV. The serious consequences of conspiring with an evil force

Your company's conspiracy with the CCP has led to serious results:

First, you are helping an evil regime to control the free spread of information and the freedom of speech. Ever since the era of Mao, the CCP has tried various means to build

"a prison of the soul" for the Chinese people. After the Tiananmen Massacre, this prison

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came to the brink of collapse. With the advent of the Internet, the days of this prison's

doom are numbered. Aware of this, the CCP spends a great deal of money on building

its "Golden Shield" to enforce its "prison of soul". A profitable market has draw many

Western companies to China, many of whom, I am sorry to say, have forgotten their

business ethics and now bow before the dictator in order to obtain their own share.

There are several American companies that have joined the CCP's team to mend the shabby "prison of soul". But because of the case of Shi Tao, I have no choice

but to

consider Yahoo! as the vanguard among the prison menders.

Second, life and human rights are invaluable, beyond the measure of power, money and

fame. Over the course of 10 years, from 1995 to 2005, you and your company worked

wonders. But Mr. Shi will stay in prison for the same length of time.

You may not know or may never care to know that since 1949, the CCP has ruined millions of lives of excellent talents and innocent ordinary people. Even today, ten years

in prison is a serious punishment—it wastes the most fruitful time of one's prime years,

and may even ruin one's whole life!

V. My indignation at and contempt for Yahoo!

Maybe you never thought that to betray Mr. Shi would lead to such serious consequences, but I must tell you that my indignation at and contempt for you and your

company are not a bit less than my indignation at and contempt for the communist regime and authorities in Hunan Province.

Generally speaking, dictatorship makes man dark in mind and freedom gives man a broad and bright mind. Therefore, you should have known more than I do about the

principles that a citizen's right of speech and right of privacy cannot be violated, that the principles of a "state secret" and "personal privacy" cannot be confused, and that in business, the profit of customers and that of the company should be well measured and balanced. However, a man brought up in a country of freedom and a successful man in business like you is so meek before the dark forces and terror, so inclined to choose a darker way of life and so willing to give up morality for money that your company actively abandoned the universal standards of human rights and gratified all requests from the dictators. In this sense, the words you used to defend yourself "Their request is lawful and it is equally lawful for us to give them information they asked for" comprise a double negation of your conscience and intellect.

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Profit makes you dull in morality. Did it ever occur to you that it is a shame for you to be considered a traitor to your customer Shi Tao? Profit makes you foolish. Do you really think that to give away information about your customers to the Chinese police is legal according to the law of Hong Kong? Can you specify which article or which item in the current law of Hong Kong has such requirements? When your conscience is eroded by profit-seeking, your intellect will correspondingly deteriorate. Your company not only brought harm [to] Shi Tao, but also to your own business. Now that this incident has been made a global concern, the whole world will know the infamous deeds of your company, and unfortunately such deeds will also bring harm to the reputation of your country. On September 18, the New York Times published an article written by the great American writer Tina Rosenberg entitled "Building the Great Firewall of China, With Foreign Help", which strongly criticized the Western enterprises which have helped China's communist regime deprive the people of their human rights. "According to the verdict," said the article, "the Yahoo subsidiary that turned in Mr. Shi is in Hong Kong. It has no more obligation to obey China's security laws than does Yahoo in Sunnyvale, California." On the same day, the Washington Post carried an editorial entitled "Obeying Orders", which stated "Yahoo's behavior in China could have real consequences for U.S.

foreign

policy- if, in fact, American companies are helping China become more authoritarian, more hostile and more of an obstacle to U.S. goals of democracy promotion around the

world -- then it is time to rethink the rules under which they operate.”

On September 20, the International Herald Tribune carried an article by commentator

Philip Bowring, entitled “Yahoo’s Mess of Pottage”, in which the author stated “Yahoo’s message is that it cares only about money” instead of the respect of America as

a leading world power. “‘Just following orders’ is no excuse for unethical behavior,” the

article goes on to say. “It might be a mitigating circumstance, but no more. This is

unethical by the standards of Western journalism.” Bowring further states that “the

spreading of this virus of unprincipled greed into the heart of the Internet is deeply

disturbing.”

These are the type of reports that have flooded the world’s major media publications.

Aren’t you afraid, Mr. Yang, that your company will be sued by your victims and ultimately deserted by your customers? Once Yahoo! is sued in Hong Kong or the United States, its reputation will be increasingly endangered.

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I used to be a customer of your company. But after learning about the case of Shi Tao, I

no longer use the two e-mail accounts I have with Yahoo!. I also will never use other

Internet products provided by your company, and I will call on all netizens with a good

conscience to reject your services until you break off your cooperation with the CCP’s

net police.

The case of Shi Tao is a warning: those who put profit before all else may not have the

luck of gaining a profit. Most likely they will lose both profit and credibility.

The case of Shi Tao is also an opportunity: an opportunity for the Western enterprises in

China to make a choice whether to help the CCP mend its collapsing “prison of soul” or

to help the Chinese people dig a grave for the totalitarian regime.

Liu Xiaobo

Beijing

(translated by Andrew Yang)

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Appendix VIII: Letter from Human Rights Watch to Yahoo! and Yahoo!’s response

July 5, 2006

Terry Semel, CEO

Yahoo! Inc.
701 First Avenue
Sunnyvale, CA 94089
USA
Fax: +1 408 349 3301
Email: semel@yahoo-inc.com
Re: China

Dear Mr. Semel,

I am writing to request your help with research that Human Rights Watch is conducting on the role of international companies in the Internet in China. This report will include a discussion of the role of Yahoo! in China. It is our goal to present a thorough and objective report. To that end, we are soliciting information and views from your company.

We would appreciate any comments you may have about Yahoo's role in China. Specifically, we would appreciate responses to the following questions. This will greatly

assist our understanding of Yahoo! and the environment in which it works.

1. Can Yahoo! elaborate on its human rights policies and procedures? In what way have these been adapted to China?

2. Does the company raise objections to censorship directly with Chinese or other government authorities?

3. Has the Chinese government specifically requested that certain words or phrases

be censored? If so, can you cite examples and how the company responded?

4. How do Yahoo! and/or Alibaba decide what words, terms or URL's to censor and restrict from cn.yahoo.com? Can the company contest Chinese government HUMAN RIGHTS WATCH VOL. 18, NO. 8 (C)

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requests to censor specific terms or URL's through the legal or judicial process

in China? If so, how does the company do this and has it ever challenged a request?

5. Please provide your full and current list of blocked words, phrases, and URL's from cn.yahoo.com.

6. Does Yahoo! make public words, terms, or URL's that are blocked or filtered on

cn.yahoo.com? If not, would you be willing to do so, including by placing them in a prominent position on your websites?

7. What is the process that Yahoo has to respond to requests from the Chinese government or Party officials when it asks for user information? Is there any possibility to challenge those requests and has the company ever done so?

8. Can you explain how you responded to requests for information about Shi Tao, Li Zhi, Jiang Lijun, and Wang Xiaoning?

9. What discussions has the company had about Shi Tao, Li Zhi, Jiang Lijun and Wang Xiaoning with Chinese government officials?

10. Has the company met with family members or lawyers of Shi Tao, Li Zhi, Jiang Lijun and Wang Xiaoning?

11. Under what circumstances did Yahoo! sign onto the pledge for self-discipline?

Was this a voluntary decision? Did pressure on the part of Chinese authorities play a role in arriving at this decision, and if so, could you describe?

12. What measures is Yahoo! taking in conjunction with its partner Alibaba to ensure that Alibaba, acting on behalf of a service that carries Yahoo!'s brand name, does not provide private information that facilitates the authorities in jailing people who use Yahoo!'s Chinese e-mail service to exercise their universally recognized right to peaceful political speech?

13. What measures is Yahoo! taking in conjunction with Alibaba to improve users' understanding that they could go to jail if they use their Yahoo!-branded e-mail service to transmit political information and opinions that are disapproved by Chinese authorities?

14. Does Yahoo support the development of a corporate code of conduct to resist unreasonable censorship demands by the Chinese government, and what do you think that code should contain?

15. What is the company's position on U.S. or other government anti-censorship regulation generally, and the Smith bill in particular?

Because we are under deadline, we would appreciate a response by July 14. If we do not receive a reply by then, I am afraid we may be unable to include information you provide in the published report.

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Thank you very much for your consideration of our request and I look forward to remaining in contact with you.

Sincerely,

Brad Adams

Executive Director

Asia Division

Cc: Michael Samway, Vice-President and Vice-Counsel (via email to samway@yahooinc.com)

August

1, 2006

Mr. Brad Adams

Executive Director - Asia Division

Human Rights Watch

2-12 Pentonville Road, 2nd Floor

London N1 9HF

United Kingdom

E-mail: adamsb@hrw.org

Re: China and Global Principles

Dear Mr. Adams,

Thank you for your letter and for the opportunity to address some of the challenges our

industry faces in countries like China. Our leadership and employees at Yahoo! take

these issues with utmost seriousness, and we are pleased to be participating in a dialogue

with groups like Human Rights Watch, including at our recent meetings with you at

Oxford and in Washington, D.C. In this letter, we will try to give broader context to

some of the issues at hand and in doing so answer questions set out in your letter dated

July 5, 2006. As we discussed, I look forward to meeting with you further in the coming

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weeks to discuss more regarding your specific inquiries and to provide a solid foundation

for a constructive ongoing dialogue.

Since our founding in 1995, Yahoo! has been guided by the beliefs deeply held by our

founders and sustained by our employees. We are committed to open access to information and communication on a global basis. We believe information empowers people. We believe the Internet positively transforms lives, societies, and economies, and

we are committed to providing individuals with easy access to information. We also

believe the Internet is a positive force that will accelerate the gradual evolution toward a

more outward-looking Chinese society, where Internet use has grown exponentially,

expanding opportunities for access to communications, commerce, and independent sources of information for more than 110 million Chinese citizens.

Recently, a dilemma with profound human consequences surfaced, confounding not only Yahoo! but many American companies doing business in China. At the core of this

dilemma is the question of whether participating as an information technology company

in the gradual opening and advancement of a previously closed society can be reconciled

with abiding by laws that may have consequences inconsistent with American values.

The 2002 self-regulation pledge you mention in your letter is an example. The pledge

involved all major Internet companies in China and was a reiteration of what was already

the case - all Internet companies in China are subject to Chinese law, including with

respect to filtering and information disclosure.

All in our industry see great opportunity in China, yet we all face complex challenges

doing business there, including lack of regulatory transparency as well as government

censorship. The same laws compelling companies to provide information for bona fide

government criminal investigations of murders or kidnappings are also used to seek

information on those accused of political crimes, such as Shi Tao, without distinction.

As a company built on openness and free expression, Yahoo! is deeply distressed by this

situation. We condemn punishment of any activity internationally recognized as free

expression, whether that punishment takes place in China or anywhere else in the world.

We have made our views clearly known to the Chinese government.

When Yahoo! China in Beijing was required to provide information about the user whom we later learned was Shi Tao, we had no information about the nature of the investigation, and we were unaware of the facts surrounding the case until the news story emerged. Law enforcement agencies in China, in the United States, and elsewhere rarely explain to technology, communications, financial or other businesses why they demand specific information regarding certain individuals. When a foreign telecommunications

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company operating in the United States receives an order from U.S. law enforcement, it too must comply. In many cases, Yahoo! and our industry counterparts do not know the real identity of individuals about whom governments request information, as very often

our users subscribe to our services without using their real name.

When the demand was made for information in this case, Yahoo! China was legally obligated to comply with the requirements of Chinese law enforcement. Failure to comply in China could have subjected Yahoo! China and its employees to criminal charges, including imprisonment. We are not aware of the circumstances surrounding

law enforcement demands regarding the other cases you refer to in your letter.

When we

had operational control of Yahoo! China, we took steps to make clear our Beijing operation would comply with disclosure demands only if they came through authorized

law enforcement officers, in writing, on official law enforcement letterhead, with the

official agency seal, and established the legal validity of the demand. Yahoo! China only

provided information as legally required and construed demands as narrowly as possible.

Information demands that did not comply with this process were refused. To our knowledge, there is no process for appealing a proper demand in China.

Throughout

Yahoo!'s operations globally, we employ rigorous procedural protections under applicable laws in response to government requests for information.

By way of background, in October 2005, Yahoo! formed a long-term strategic partnership with Alibaba.com, merging our Yahoo! China business with Alibaba.com.

Today, Alibaba.com has day-to-day operational control over Yahoo! China. As a large

equity investor with one of four Alibaba.com board seats, we have made clear to Alibaba.com's senior management our desire that Alibaba.com continue to apply the

same rigorous standards in response to government demands for information about its

users. We will continue to use our influence in these areas given our global beliefs about

the benefits of the Internet and our understanding of requirements under local laws.

We believe companies have a moral responsibility to identify appropriate business practices globally. The strength of the information, communications, and technology industry and the power of our user base are formidable. We also believe these business and human challenges are larger than any one company or industry. We believe government-to-government discussion of the larger political and human rights issues involved is not only a moral imperative but also the most effective and primary tool to affect change in places like China.

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As part of our ongoing commitment to preserving the open availability of the Internet around the world, we have committed to the following as we explained to the U.S. Congress in February 2006:

- **Collective Action:** We will work with industry, government, academia and NGOs to explore policies to guide industry practices in countries where content is treated more restrictively than in the United States and to promote the principles of freedom of speech and expression.
- **Compliance Practices:** We will continue to employ rigorous procedural protections under applicable laws in response to government requests for information, maintaining our commitment to user privacy and compliance with the law.
- **Information Restrictions:** Where a government requests we restrict search results, we will do so if required by applicable law and only in a way that impacts the results as narrowly as possible. If we are required to restrict search results, we will strive to achieve maximum transparency to the user.
- **Government Engagement:** We will actively engage in ongoing policy dialogue with governments with respect to the nature of the Internet and the free flow of information.

As you know, we have been actively engaged in a global principles dialogue, working

closely with our industry counterparts, academia, non-governmental organizations, such

as Human Rights Watch, and government policy-makers. The process has gained significant momentum through recent meetings and the preparation of a draft set of

global principles regarding free expression and privacy. We are hopeful the inclusive

nature of the dialogue and the profound human issues at stake will continue to drive the process forward.

We value your opinion and insights on these complex questions and look forward to

reviewing your report.

With kind regards,

Michael Samway

V.P. & Deputy General Counsel - International
Yahoo! Inc.

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Appendix IX: Letter from Human Rights Watch to Microsoft and
Microsoft's response

July 5, 2006

Steve Ballmer, CEO

Microsoft Corporation

One Microsoft Way

Redmond, WA 98052-6399

USA

Fax: +1 425 936 7329

Re: China

Dear Mr. Ballmer,

I am writing to request your help with research that Human Rights Watch is
conducting

on the role of international companies in the Internet in China. This report
will include a

discussion of the role of Microsoft in China. It is our goal to present a
thorough and

objective report. To that end, we are soliciting information and views from your
company.

We would appreciate any comments you may have about Microsoft's role in China.

Specifically, we would appreciate responses to the following questions. This
will greatly

assist our understanding of Microsoft and the environment in which it works.

1. Can Microsoft elaborate on its human rights policies and procedures? In what
way have these been adapted to China?

2. Does the company raise objections to censorship directly with Chinese or
other

government authorities?

3. How does the company decide what words or terms to block and restrict from

and beta.search.msn.com.cn? Can the company contest such requests through

the legal or judicial process in China? If so, how does the company do this and
has it ever challenged a request?

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4. What is the process that the company uses to determine whether to shut down
blogs on MSN Spaces? Has the company received any requests from the

Chinese government since January when Microsoft adopted its new censorship
policy on MSN Spaces? If so, what were they and how has Microsoft

responded?

5. Specifically, has Microsoft or its Chinese affiliate received requests from
any

Chinese entities to take down the blogs of Wu Na, the sister of jailed filmmaker
and and blogger Wu Hao (<http://wuhaofamily.spaces.msn.com/>) or the blog of

Zeng Jinyan, wife of AIDS activist Hu Jia, who wrote about his imprisonment
(<http://zengjinyan.spaces.msn.com/>)?

6. Please provide your full and current list of blocked words, phrases, and
URL's

on beta.search.msn.com.cn.

7. Please provide your full and current list of words and phrases which users of MSN Spaces are blocked from posting in the title of their blog posts.

8. Does Microsoft make public the Chinese and English-language words or terms that are prohibited on the MSN Spaces blogging platform? And likewise for beta.search.msn.com.cn? If not, would you be willing to do so, including by placing them in a prominent position on your websites?

9. We appreciate that Microsoft is not hosting Hotmail in China. Under what conditions, if any, would the company do so?

10. Has Microsoft been asked by any entity of the Chinese government to hand over

Hotmail or MSN Spaces user information? If so, what has been Microsoft's response?

11. Has the company been asked to sign on to the pledge for self-discipline?

12. Does Microsoft support the idea of a corporate code of conduct in order to resist unreasonable censorship demands by the Chinese government?

13. What is the company's position on U.S. or other government anti-censorship regulation generally, and the Smith bill in particular?

Because we are under deadline, we would appreciate a response by July 14. If we do not

receive a reply by then, I am afraid we may be unable to include information you provide

in the published report.

Thank you very much for your consideration of our request and I look forward to remaining in contact with you.

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Sincerely,

Brad Adams

Executive Director

Asia Division

Cc: Brad Smith, General Counsel

Ira Rubenstein, Associate General Counsel (via email to irar@microsoft.com)

Jack Krumholtz, Associate General Counsel

Fred Tipson, Senior Policy Counsel (via email to ftipson@microsoft.com)

21 July 2006

Mr. Brad Adams

Executive Director

Asia Division

Human Rights Watch

2nd Floor, 2-12 Pentonville Road

London N1 9HF UK

Tel: +44 (0)20 7713 1995

Fax: +44 (0)20 7713 1800

hrwuk@hrw.org

Dear Brad:

Thank you very much for your letter of 5 July concerning Microsoft in China. We very

much appreciate the opportunity to help Human Rights Watch better understand Microsoft and the environment in which it works.

In particular, we welcome your interest in documenting, in an objective way, the role of

international companies in China. We hope that this report will help generate specific

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ideas and proposals for how Internet companies should conduct business in countries where local laws may require some restrictions on the use of our services. We agree with Human Rights Watch that Internet freedom is an issue of global concern, and it demands a candid, factual, and thoughtful debate amongst concerned stakeholders. At Microsoft, we care deeply about this issue and have given it considerable thought. We continually review the overall value of our services in any particular country and the conditions created by local government policies and practice.

We've set out below some response to your questions, grouped by subject matter. As I

am sure you appreciate, these are sensitive topics. We are not in a position to offer

specific written responses to every question. But we would welcome an opportunity to continue discussing these topics in person at a convenient time.

As a global corporation, our internet policies apply company-wide in every market where

we do business. So, for example, our policy with respect to government requests to

remove blog content pertains to MSN Spaces generally, not simply Spaces in China.¹⁶⁴

Additionally, fair employment practices¹⁶⁵

are part of our company-wide commitment to

responsible business practices and human rights, and we extend this commitment to our

supply chain through a Vendor Code of Conduct.¹⁶⁶

We also consider issues of privacy and security on a global basis. While we comply with

the law in each country where we do business, it is worth noting that we do not believe

compliance with local law is a matter of deferring reflexively to local authorities or

endorsing any specific policy or ideology. Where the safety and security of individuals is

at stake, we believe it is incumbent on both governments and private companies to

assure that requests for customer information in particular are subject to the highest

available standards of legal process.

When that information is not maintained in the country concerned, such requests necessarily invoke international agreements that require established government-to-government

procedures. When personal customer data is maintained in the United

¹⁶⁴

¹⁶⁵

x

¹⁶⁶

<http://download.microsoft.com/download/5/e/d/5ed9edad-7ed3-48cf-91bbd526e54e547b/Microsoft%20Vendor%20Code%20of%20Conduct%20091404.pdf>

<http://www.microsoft.com/presspass/press/2006/jan06/01-31 BloggingPR.msp>

<http://www.microsoft.com/about/corporatecitizenship/citizenship/businesspractices/responsibleemployer.msp>

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States, private operators clearly must comply with applicable U.S. laws protecting on-line privacy, such as the Electronic Communications Privacy Act (ECPA). Worldwide, Microsoft seeks to provide appropriate notice and transparency to our customers about the standards that will be applied to their communications and the risks

they may run if those standards are violated.

Microsoft in China

Microsoft is not a signatory to the "Public Pledge of Self Regulation" for the Chinese

Internet industry, which is a voluntary pledge. We do, of course comply with local law

in China – as we do in every jurisdiction in which we do business.

Our MSN search engine in China (currently in beta), does not block searches for particular key words, including "democracy," "freedom," "human rights," and the like.

Users of our beta MSN Search engine do receive search results when these keywords are

entered, although users who click on these results may find that certain pages are

inaccessible due to ISP or gateway-level blocking. MSN Search has no role in such

gateway-level blocking.

We remove a small number of URLs from the result pages in the MSN China Search site

to omit inappropriate content as determined by local practice, law or regulation. We

provide a link to a notice if search results have been filtered or may contain nonfunctional

links but we do not block whole queries.

Users of MSN Spaces in China are not prohibited from using the words "democracy,"

"freedom," or "human rights" in blog titles or blog content. Indeed, MSN Spaces does

not filter blog content in any way.

Blog titles – a static identifier for a given Space, as distinguished from the evolving

content that Spaces users post to their blogs – are subject to some restrictions. In

compliance with Chinese Internet regulations, Spaces users may not use certain terms in

their account name, space name, or space sub-title – or in photo captions.

We do employ a "restricted term" list for this purpose and we make every effort to keep

the list to a minimum number of terms. The terms "democracy," "freedom" and "human rights" are not among the terms on the current list.

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We do not make public make public the Chinese and English-language words or

terms

that are prohibited or restricted in MSN Spaces, or the list of URLs that we have removed from beta.search.msn.com.cn. One reason for not doing so is that this could result in some fully compliant providers nonetheless being asked to alter their practices in a way that does not advance free expression.

We believe that despite the circumstances, we should continue to offer Spaces, Search, Hotmail, and other services in China. As a number of commentators have observed, the Internet has already transformed the economic, cultural and political landscape of China.

For example, as Freedom House noted:

“While the state has expended considerable effort to limit Chinese access to web pages deemed politically subversive, many users find ways to access blocked Internet sites by using proxies or anti-blocking software. The Internet has increased the speed and convenience of accessing information and decreased the financial costs of interpersonal communication...”¹⁶⁷

Just in the past few years, there have been repeated examples in China of the ways in

which official responses to domestic events have been affected by the availability of

information and opinions communicated over the Internet. Most prominent have been

reports and commentary about the handling of health issues, such as SARS, Avian flu,

HIV/AIDS and water contamination. These examples demonstrate why, based on grounds of human rights and freedom of expression alone, we feel we should continue

providing services in China.

For additional materials describing our views on this matter, please see our written

testimony to the House International Relations Committee’s Joint Hearing, posted at:

<http://www.microsoft.com/presspass/exec/krumholtz/02-15WrittenTestimony.msp>
Corporate Conduct Principles

We support development of principles that would guide corporate conduct in this area,

that would be developed by a broad range of stakeholders, including companies, advocacy groups, and government, and which could apply on a global basis.

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Ashley Esarey, “Speak No Evil: Mass Media Control in Contemporary China,” A Freedom House Special Report, February 2006, at page 11.

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Our perspective is that we will be served best not only as a company but as an industry and a worldwide community if we can be guided by principles that address human rights

and free expression not only in the case of blogging, search, email and other technologies and services that exist today, but also the variety of technologies that almost certainly will be offered in the years and the decades ahead. These are principles that no company can formulate by itself. These are principles that no country should formulate by itself. They are principles that need to emerge from a broad dialogue, and we have already started to roll up our sleeves and engage in precisely those kinds of conversations. We've already started to talk with some, including commercial service providers, academics, advocacy groups and others.. We are interested in talking with still others, and in working in a collaborative way with all of the stakeholders that have an important interest in this issue. In addition to industry, non-governmental organizations, and individual citizens, there is an important role in this debate for governments, and we have encouraged the United States government to initiate discussions with other governments—both bilateral and multilateral--to address restrictions on Internet content. We believe that contributing to the development of industry guidelines - and addressing the issues on a bi-lateral and multi-lateral manner - is likely to be a better use of government resources than legislation. Legislation could have the unfortunate consequence of polarizing the debate and/or reducing the ability of industry to act collectively in responding to human rights and free expression concerns. We appreciate the opportunity to provide you with this information and thank you again for taking the time to develop this report, and for your work on behalf of human rights worldwide.

Sincerely,
Pamela S. Passman
Vice President, Global Corporate Affairs
Microsoft Corporation

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Appendix X: Letter from Human Rights Watch to Google

(While Human Rights Watch and Google have had private discussions, Google did not reply formally to this letter)

July 5, 2006

Eric Schmidt, CEO

Google Inc.

1600 Amphitheatre Parkway

Mountain View, CA 94043

USA

Fax: +1 650 253 0001

Re: China

Dear Mr. Schmidt,

I am writing to request your help with research that Human Rights Watch is conducting on the role of international companies in the Internet in China. This report will include a discussion of the role of Google in China. It is our goal to present a thorough and objective report. To that end, we are soliciting information and views from your company.

We would appreciate any comments you may have about Google's role in China. Specifically, we would appreciate responses to the following questions. This will greatly

assist our understanding of Google and the environment in which it works.

1.

2.

3.

4.

Can Google elaborate on its human rights policies and procedures? In what way have these been adapted to China?

Does the company raise objections to censorship directly with Chinese or other government authorities?

How does the company decide what words or terms to censor and restrict from Google.com and Google.cn? Can the company contest such requests through the legal or judicial process in China? If so, how does the company do this and has it ever challenged a request?

Please provide your full and current list of blocked words, phrases, and URL's from both Google.com and Google.cn.

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5.

6.

7.

8.

9.

Does Google make public words or terms that are prohibited on Google.cn?

If not, would you be willing to do so, including by placing them in a prominent position on your websites?

Would Google be willing to provide links to a third-party site such as Chilling Effects to provide more information to the user about why search results were removed?

We appreciate that Google is not hosting Gmail and Blogger.com in China. Under what conditions, if any, would the company do so?

Has the company been asked to sign on to the pledge for self-discipline?

Has your company been pressured by Chinese authorities to block or remove additional content on Google.cn beyond what Google.cn already blocks or removes from search results? Has it been subjected to pressure or direct requests since that date? If so, what has been your company's response?

10. There have been reports by Chinese bloggers that Google is moving the hosting of Google.cn onto servers inside China. Can you confirm whether this is the case, and if so what measures is Google taking to protect user privacy in the event that the Chinese government requests data such as user search results?

11. Does Google support an industry code of conduct, and if so, can you

elaborate on what principles you think it should contain?

12. What is the company's position on U.S. or other government anti-censorship regulation generally, and the Smith bill in particular?

Because we are under deadline, we would appreciate a response by July 14. If we do not receive a reply by then, I am afraid we may be unable to include information you provide in the published report.

Thank you very much for your consideration of our request and I look forward to remaining in contact with you.

Sincerely,

Brad Adams

Executive Director

Asia Division

Cc: Elliot Schrage, Vice President, Global Communications and Public Affairs

Andrew McLaughlin, Senior Policy Counsel (via email to mclaughlin@google.com)

Sergey Brin & Larry Page, co-founders

Rishi Jaitly, Policy Analyst (via email to rishi@google.com)

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Appendix XI: Letter from Human Rights Watch to Skype and Skype's response

July 5, 2006

Niklas Zennström, CEO and Co-Founder

Skype Invest OÜ

Maakri 19/21 10145

Tallinn

Estonia

Email: niklas.zennstrom@skype.com

Re: China

Dear Mr. Zennström,

I am writing to request your help with research that Human Rights Watch is conducting

on the role of international companies in the Internet in China. This report will include a

discussion of the role of Skype and TOM Online in China. It is our goal to present a

thorough and objective report. To that end, we are soliciting information and views

from your company.

We would appreciate any comments you may have about Skype's role in China.

Specifically, we would appreciate responses to the following questions. This will greatly

assist our understanding of Skype and the environment in which it works.

1.

2.

3.

4.

Can you describe any human rights policies and procedures that the company has that would apply to censorship/filtering and protecting user privacy?

Does Skype's China-specific TOM-Skype client block words in text chats?

Can you please provide a list of words that are being blocked under the Skype brand name in China?

Has Skype been pressured to block content by the Chinese government, or

did Skype, or its local partner TOM Online, take the initiative itself?
It is our understanding that the TOM-Skype client has been found to automatically install a program, ContentFilter.exe, onto the user's computer, without informing the user of its existence. The program in turn downloads a keyword file onto the user's computer which remains on the computer after
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the client is uninstalled. Can you confirm this and tell us whether this is a feature that Skype headquarters has approved?

- 5.
- 6.
- 7.
- 8.

Do you have any plans to instruct TOM Online, which distributes TOMSkype to Chinese users, to inform users that censorship of their conversations is taking place?

Do you believe it is ethically acceptable to censor users' conversations without informing them that censorship is taking place?

Does Skype support an industry code of conduct, and if so, can you elaborate on what principles you think it should contain?

What is the company's position on U.S. or other government anti-censorship regulation generally, and the Global Online Freedom Act in particular?

Because we are under deadline, we would appreciate a response by July 14. If we do not

receive a reply by then, I am afraid we may be unable to include information you provide in the published report.

Thank you very much for your consideration of our request and I look forward to remaining in contact with you.

Sincerely,

Brad Adams

Executive Director

Asia Division

Cc: Christopher Libertelli (via email to christopher.libertelli@skype.net)

Erik Andersson (via email to erik.andersson@skype.net)

Manrique Brenes (via email to manrique.brenes@skype.net)

Ellyse Brause (via email to ellyse.brause@skype.net)

David Johnson (via email to david.johnson@skype.net)

Henry Gomez (via email to henry.gomez@skype.net)

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July 11, 2006

Subject: Human Rights Watch research - your request for information from Skype

Dear Mr Adams,

Thank you for your email to Niklas with respect to the report you are writing. In

relation to your questions, I can provide you with the following information: Skype works hard to comply with all applicable local laws and regulations in countries

where we do business. China is no exception. In China, we have a joint venture with

TOM Online in which TOM is the majority shareholder. The JV offers a co-branded version of the Skype software called TOM-Skype. To comply with the government regulation, TOM Online is obliged to use a text filter in TOM-Skype. If a

message is
found to be unsuitable for delivery because of specific text, the message is
simply not
transmitted between the users. This is an automated process and operates solely
on text

chats. Voice communications is not a part of this process.'

Please let me know if I can be of any further assistance,

Many thanks

Imogen

Imogen Bailey - Skype

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URL de-listing on Google.cn, Yahoo! China, MSN Chinese, and Baidu

Google.cn

URL

ok

time.com

Time Magazine

savetibet.org

Tibet independence

rsf.org (Reporters

Without Borders)

news.bbc.co.uk

BBC news

hrw.org

Human Rights Watch

gio.gov.tw

Taiwan government

faluncanada.net

Falungong site

harvard.edu

Harvard University

epochtimes.com

Falungong affiliated news

bignews.org

Chinese dissident news

rfa.org

Radio Free Asia

nytimes.com

New York Times

hrichina.org

Human Rights In China

opennet.net

net censorship monitoring

irrepressible.info (Amnesty Intl.)

anti-net censorship site

amnesty.org.hk

Amnesty Intl. U.K. site

amnesty.org

Amnesty Intl. global site

globalvoicesonline.org

citizens' media

fillthesquare.org

Tiananmen Mothers' site

greenpeace.org
environmental
technorati.com
blog tracking service
del.icio.us
online bookmarking
unicef.org
UNICEF

Yahoo! China

* see note on website searches below (searches conducted August 9, 2006)

voanews.com
Voice of America

delisted (2)

ok

delisted (1)

ok

delisted (1)

delisted (1)

ok

delisted (1)

ok

delisted (1)

delisted (1)

delisted (1)

ok

delisted (1)

ok

ok

ok

ok

ok

ok

ok

ok

ok

ok

ok

ok

delisted (2)

delisted (2)

delisted (2)

delisted (2)

ok

delisted(2)

ok

delisted (2)

delisted (2)

delisted (2)

delisted w/ "results filtered"

delisted (2)

delisted(2)

delisted (2)

delisted (2)

delisted (2)

ok

ok
ok
ok

flickr.com
online photo sharing

LEGEND:

light green

yellow

light blue

orange

pink

ok

ok

completely uncensored, with certainty.

censored with transparency (notification to user that censorship has taken place)

ambiguous result: some censorship has taken place but other politically sensitive content has gotten through

clear censorship without admission of censorship, but otherwise no explanation

censorship made to look like user error or technical failure

(1) Google.cn removal message: 据当地法律法规和政策, 部分搜索结果未予显示

"According to local laws, regulations, and policies, a portion of the search results do not appear."

(2) Yahoo.cn and Baidu "no results found" message: 没有找到与您查询的

"site:gio.gov.tw" 相符的网页 "Web pages similar to site: gio.gov.tw could not be found."

(3) MSN Chinese beta search removal message: * 搜索结果中排除了某些内容。了解原因。

"Some search results have been removed. [click here to] Find out why."

(4) Yahoo China no results message: 没有找到和您查询的 '[keyword]' 相符的新闻 "No news resembling '[keyword]' could be found."

* MSN Chinese and Baidu do not recognize the "site:" function, thus searches for site listings were conducted with the URL only.

ok

ok

Comparative keyword searches

Search Term Google.cn Yahoo! China MSN China Baidu

高智晟 Gao Zhisheng

human rights lawyer

东洲 Dongzhou

police shot

protestors

太石村 Taishi Village

political unrest

吴皓 Wu Hao

Detained filmmaker

评共产党

(Evaluate CCP)

丁子霖 Ding Zilin

son killed in 1989

藏独 Tibet

Independence

天安门屠杀

Tiananmen Massacre

六四平反

Reverse 6/4 Verdict
六四 June 4th
1989 crackdown
李洪志 Li Hong zhi
Falun Gong leader
江泽民 Jiang Zemin
Fmr. Chinese
President
江绵恒 Jiang
Mianheng
Jiang Zemin's son
16,000 (1)
political content
575,000 (1)
political content
28,600 (1)
p1 political content
223,000 (1)
p1 polit content
1,690,000 (1)
p1 polit. content
869 (1)
p1 polit. content
75,200 (1)
p1mainly pro-gov
109,000 (1)
76,000(1)
p1mainly pro-gov
36,600 (1)
p1mainly pro-gov
211,000 (1)
338,000 (1)
25,700 (1)
5,580 (5)
political content
106,000 (5)
p1 no polit. content
7,440 (5)
p1 PRC sources
35,100 (5)
all p1 different
person
383,216 (5)
1,120 (5)
political content
38,900 (5)
pro-PRC sources
24,800 (5)
10,505 (5)
256,000 (5)
160,000 (5)
310,000 (5)
41,600 (5)
19,123 (3)

political content
16,878; no msg
no polit. content
417,081 no msg
p1 polit content
1,437 (3)
p1 polit. content
266,796 (3)
political results
6,405 (3)
political results
3,267; no msg.
political results
0 no notice
no results
70,212 (3)
620,116 (3)
mainly irrelevant
22,102 (3)
237,281 (3)
12,180
224
no message
193,000 no msg
no polit content
26,900 no msg
p1 polit. Content
28,100
p1 different person
11
pro-PRC results
0
"no results"
9,270
pro-PRC results
29,600 (many
unrelated)
32
12,000
117,000
2,820,000
3,350
Yahoo.com MSN Search Google.com
(NOTE: SEARCHES CONDUCTED August 9, 2006. Content analyzed is from 1st 3 pages
of search results in all cases unless otherwise indicated)
285,000
highly political
371,000
highly political
198,000
highly political
40,700
highly political
137,000

highly political
88,800
highly political
132,000
highly political
1,660
highly political
22,100
highly political
2,050,000
highly political
635,000
7,200,000
80,900
22,159
18,344
little polit content
68
2,062
highly political
6, includes
highly political
7,529
highly political
4,519
(mainly blogs)
77
(mainly blogs)
3
highly political
62,782
highly political
26,779
506,171
13,047
812,000
highly political
592,000
highly political
397,000
highly political
221,000
highly political
2,140,000
highly political
304,000
highly political
269,000
highly political
729,000
highly political
2,500,000
highly political
17,700,000

highly political
916,000
6,760,000
330,000
 刘晓波 Liu Xiaobo
Dissident writer
高官子女 children
of high officials
胡锦涛 Hu Jintao
China's President
陈水扁 Chen Shuibian
Taiwanese President
49,700 (1)
298,000 (1)
2,490,000 (1)
2,780,000 (1)
人权 (human rights) 7,410,000 (1)
民主 (democracy)
酷刑 (torture)
崔建 Cui Jian
rockstar
巩俐 Gong Li
world famous actress
微软 - Microsoft
大连 Dalian (city)
巴黎 Paris
1,480,000 (1)
1,590,000 (1)
74,800 (1)
1,490,000 (1)
23,700,000
20,000,000
11,000,000
25,300 (5)
3,530 (5)
461,000 (5)
7,170,000 (5)
3,210,000 (5)
13,400,000 (5)
993,000 (5)
19,900 (5)
3,920,000 (5)
27,900,000 (5)
27,900,000 (5)
13,900,000 (5)
16,196 (3)
151,815
111,219 (1)
132,602
497,2121 (3)
236,146 (3)
207,089 (3)
8,089
130,710

141,342

419,877

357,039

(1) Google.cn removal message: 据当地法律法规和政策, 部分搜索结果未予显示
"According to local laws, regulations, and policies, a portion of the search results do not appear."

(2) Yahoo.cn "no results found" message: 没有找到与您查询的 "site:gio.gov.tw" 相符的网页 "Web pages similar to site: gio.gov.tw could not be found."

(3) MSN Chinese beta search removal message: * 搜索结果中排除了某些内容。了解原因。
"Some search results have been removed. [click here to] Find out why."

(4) Yahoo! China & Baidu no results message: 没有找到和您查询的 '[keyword]' 相符的新闻 "No news resembling '[keyword]' could be found."

(5) Yahoo! China universal disclaimer: "According to relevant laws and regulations, some search results may not appear."

LEGEND:

green

yellow

it is believable that these results were not censored based on the service's overall disclosure patterns

notification to user that censorship has taken place

light blue

orange

Unclear result, OR result is likely due to technical failings in reading

Chinese, but it is impossible to be 100% certain

non-transparent censorship, or results impossible to evaluate based on general

lack of disclosure or large discrepancy with the international sister site.

32,800

152,000

317,000

10,700,000

6,200,000

4,720,000

19,700,000

1,640,000

57,900

3,570,000

21,900,000

21,900,000

24,200,000

8,330

18,900,000

10,900,000

6,110,000

31,400,000

2,780,000

37,300

5,250,000

47,000,000

45,400,000

24,500,000

19,267

2

930,415

146,139

463

2,439,220

269,720

11,514

165,800

1,802,161

1,854,392

2,208,373

512,000

885,000

42,400,000

5,320,000

12,900,000

18,400,000

1,590,000

74,800

1,490,000

23,700,000

20,000,000

11,000,000

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th

New York, NY 10118-3299

www.hrw.org

“Race to the Bottom”

Corporate Complicity in Chinese Internet Censorship

The Internet is touted by Internet companies as a liberating and democratizing force. Indeed, the development

of the Internet has created unprecedented access to information and a platform for the expression of critical

views around the world. In China, the Internet has had a profound impact on society in a short time. However,

in an effort to control and suppress political speech, the Chinese government has taken draconian steps to regulate and censor the Internet.

China’s system of Internet censorship and surveillance—the “Great Firewall”—is the most advanced in the

world. Its effectiveness is enhanced by extensive corporate and private sector cooperation—including by

some of the world’s major Internet companies. Race to the Bottom documents how companies not only

respond to pressures from Chinese authorities to censor their materials, but actively engage in self-censorship

by predicting and then censoring the material they believe the Chinese government wants them to block.

Microsoft has censored searches and blog titles to avoid sensitive political topics. Google’s slogan “Don’t Be

Evil” has come into question after it launched a censored search engine in response to Chinese government

pressure. Skype software has censored sensitive words in text chats, which the company has justified as

consistent with local best practices and Chinese law. And Yahoo! has released private user identification that

has assisted in the imprisonment of four Chinese government critics.

Race to the Bottom recommends a series of steps, including legislation and an industry code of conduct, to prohibit political censorship, and to end these practices. For the Internet to reach its potential it must remain a safe, open, and accessible medium for peaceful political expression. Internet companies can be part of the problem—or part of the solution.

Floor

H U M A N

R I G H T S

W A T C H

A man stands next to a poster advertising US internet search engine Yahoo in a Beijing subway station 15 February 2006.

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