



UNDERMINING FREEDOM OF EXPRESSION IN CHINA

The role of Yahoo!, Microsoft and Google



'And of course, the information society's very life blood is freedom. It is freedom that enables citizens everywhere to benefit from knowledge, journalists to do their essential work, and citizens to hold government accountable. Without openness, without the right to seek, receive and impart information and ideas through any media and regardless of frontiers, the information revolution will stall, and the information society we hope to build will be stillborn.'

Kofi Annan, UN Secretary General

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EXECUTIVE SUMMARY

Amnesty International has produced many reports documenting the Chinese government's violations of human rights.¹ The expansion of investment in China by foreign companies in the field of information and communications technology puts them at risk of contributing to certain types of violation, particularly those relating to freedom of expression and the suppression of dissent. Our reason for focusing on Internet companies in this report is that we believe that they are part of the problem, and because we would like them to act as a 'force for the good' in becoming part of the solution towards improving the human rights situation in China.

They have, through their actions, directly and admittedly contradicted their values and stated policies

This briefing provides an overview of the use of the Internet as a tool to deny freedom of expression in China, focusing on both the Chinese government's suppression of dissent and on the role of Yahoo!, Microsoft and Google in collaborating with the authorities. The actions of these Internet companies are contrasted with their proclaimed values. The conclusion drawn is that they have, through their actions, directly and admittedly contradicted their values and stated policies. Amnesty International questions the principles that guide their decisions, and challenges the defences they use to justify their behaviour. In our view, these do not stand up to scrutiny. A series of recommendations are proposed to enable them to act in accordance with international human rights norms.

The Internet and freedom of expression – a new frontier for human rights?

The Internet is one of the most powerful inventions of the digital age. It has the potential to empower and educate, to cross cultural boundaries and create global communities. It offers the means for any individual with access to a computer and a gateway to the Internet to participate in a free flow of information and ideas with others across the world.

Yet that very potential to transcend national borders and impart information regardless of frontiers means that the Internet is also the subject of concerted efforts by governments to restrict freedoms and violate basic human rights such as the rights to privacy, freedom of expression and freedom of information.²

In some countries where dissent is suppressed, the struggle for freedom of expression is now taking place online as governments devote increasing resources and attention to controlling access to information on the Internet and to surveillance of users. Their objective is often to prevent dissemination of information that is critical of them, as well as to track and monitor dissidents, some of whom may subsequently be imprisoned for exercising their right to freedom of expression.³

The Internet itself can become a tool of repression where the monitoring of communications, the censoring and filtering of information and the amassing of immense databanks of information enhance the ability of repressive governments to restrict the freedoms and basic human rights of their citizens. Such national restrictions can affect not just those living in that country but all who seek to impart or receive information about it.

There are some legitimate cases in which restricting access to certain information is an important step in protecting human rights, for example

preventing access to child pornography. However, international human rights standards establish strict conditions under which such restrictions are permissible. Unwarranted censorship of the kind outlined in this briefing is contrary to many local laws and established international norms and values.

The role of companies in Internet repression

Governments require the assistance of companies that are providers of information and communications technology to fulfil these repressive functions effectively. This raises questions about the collaboration of these companies in human rights violations that are being committed by states. In such circumstances, a company runs the risk of being complicit in a violation through its provision of equipment, technology or services to a repressive government.

While the use of information and communications technology to suppress dissent has been documented in many countries, it is the example of China that has generated the most public and political concern internationally.⁴ In part this is because the apparatus of Internet repression is considered to be more advanced in China than in any other country, and in part because of the willingness of Internet hardware and software companies to cooperate with the Chinese government in their quest to develop a large and lucrative market.⁵

The control the Chinese authorities maintain over their citizens' right to freedom of expression and information is continuing and pervasive. This has put the spotlight on the contribution of Internet companies such as Yahoo!, Microsoft and Google to China's efforts to maintain such control and restrict fundamental freedoms. In assisting the Chinese administration by complying with its censorship demands, these companies are seen to be facilitating or sanctioning the government's efforts to control the free flow of information. They thereby contravene established international norms and values, and compromise their own stated principles.

International concern regarding the role of US companies in China's Internet censorship policy has led the US House of Representatives Committee on International Relations to hold a joint hearing of the Subcommittee on Africa, Global Human Rights and International Operations and the Subcommittee on Asia and the Pacific.⁶ Among the parties that provided testimony, views were expressed that US Internet companies, including Yahoo!, Microsoft and Google, have colluded with the Chinese authorities, undermining their self-proclaimed corporate values, as well as the human right to freedom of expression and information.

Although there are other Internet companies worthy of investigation for involvement and assistance in the Chinese government's Internet censorship, as well as the suppression of dissent, the focus of this report is limited to Yahoo!, Microsoft and Google.⁷

All three companies have, in one way or another, facilitated or colluded in the practice of censorship in China. Yahoo! has provided the Chinese authorities with private and confidential information about its users. This included personal data that has been used to convict at least two journalists, considered by Amnesty International to be prisoners of conscience. Microsoft has admitted to shutting down a blog on the basis of a government request. Google has launched a censored version of its international search engine in China. All three companies have demonstrated a disregard for their own internally driven and proclaimed

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Google has come closest to acknowledging publicly that its practices are at odds with its principles

policies. They have made promises to themselves, their employees, their customers and their investors which they failed to uphold in the face of business opportunities and pressure from the Chinese government. This raises doubts about which statements made by these organisations can be trusted and which ones are public relations gestures.

Of the three companies, Google has come closest to acknowledging publicly that its practices are at odds with its principles, and to making a commitment to increase transparency by informing users in China when a web search has been filtered. Although there are many other transparency options that the company should consider, these are welcome first steps.

While each of Yahoo!, Microsoft and Google may be considered to be complicit in the Chinese government's denial of freedom of information, Yahoo!'s actions have, in particular, assisted the suppression of dissent with severe consequences for those affected. The company allowed its Chinese partner to pass evidence to the authorities that was subsequently used to convict individuals, at least two of whom received long prison sentences for peacefully exercising their legitimate right to freedom of expression. Thus Yahoo! appears to have failed to honour its responsibility to ensure that its own operations and those of its partners are not complicit in human rights abuses. This is in breach of widely recognised international human rights principles for companies.⁸

In defending their actions in China, Yahoo!, Microsoft and Google maintain they are under an obligation to comply with local law. They argue that although it is not an ideal situation, their presence in China is a force for good. They assert that without their input, censorship would still take place and that censored information is better than no information at all.

The reality is that the Internet has had an established presence in China for over a decade, which means that the world's major Internet companies can no longer be considered to be helping bring the Internet to China. Instead, they are attempting to gain an increasing share of a rapidly growing market in the knowledge that it will expand, with or without their presence. In effect their activities are facilitating and sanctioning government censorship rather than challenging it. Companies appear to have been all too ready to accept the limitations imposed rather than exerting pressure for legislative and policy change.

The need to comply with local law should not obscure the fact that these companies operate in a global economy regulated at different levels. Multinational corporations must consider local law, laws of the country in which the company is incorporated, the vast array of international law, best practice and internal policies and procedures. The implications of this wider set of responsibilities are referred to in Section 2 of this briefing.

Amnesty International believes that there are steps that Yahoo!, Microsoft, Google and other Internet companies can and should take to enable them to act in accordance with international human rights norms. While the following recommendations are framed in the specific context of China, the same policy principles should be applied by these companies across their global operations.

Recommendations for action

Amnesty International calls on Yahoo!, Microsoft, Google and other Internet companies operating in China to:

1. **Publicly commit to honouring the freedom of expression provision** in the Chinese constitution and lobby for the release of all cyber-dissidents and journalists imprisoned solely for the peaceful and legitimate exercise of their freedom of expression.
2. **Be transparent about the filtering process** used by the company in China and around the world and make public what words and phrases are filtered and how these words are selected.
3. **Make publicly available all agreements** between the company and the Chinese government with implications for censorship of information and suppression of dissent.
4. **Exhaust all judicial remedies and appeals in China and internationally before complying with state directives** where these have human rights implications. Make known to the government the company's principled opposition to implementing any requests or directives which breach international human rights norms whenever such pressures are applied.
5. **Develop an explicit human rights policy** that states the company's support for the Universal Declaration of Human Rights and complies with the UN Norms for Business and the UN Global Compact's principle on avoiding complicity in human rights violations.
6. **Clarify to what extent human rights considerations are taken into account** in the processes and procedures that the company undertakes in deciding whether and how the company's values and reputation will be compromised if it assists governments to censor access to the Internet.
7. **Exercise leadership in promoting human rights in China** through lobbying the government for legislative and social reform in line with international human rights standards, through seeking clarification of the existing legal framework and through adopting business practices that encourage China to comply with its human rights obligations.
8. **Participate in and support the outcomes of a multi-stakeholder process** to develop a set of guidelines relating to the Internet and human rights issues, as well as mechanisms for their implementation and verification, as part of broader efforts to promote recognition of the body of human rights principles applicable to companies.

1. FREEDOM OF EXPRESSION

1.1 Freedom of expression – a fundamental human right

Freedom of expression is a fundamental human right which is a prerequisite to the enjoyment of all human rights. Where it is suppressed other human rights violations follow. Freedom of expression has been variously described as crucial for the freedom to develop and discuss ideas in the search for truth and understanding (sometimes evoked as the ‘marketplace of ideas’), autonomy and self-fulfilment of the individual, and effective participation in the political life of a democratic society.

Article 19 of the Universal Declaration of Human Rights proclaims: ‘Everyone has the right to freedom of opinion and expression; 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’.

Amnesty International upholds the right of everyone to freedom of thought, conscience, religion, opinion and expression as set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other international human rights treaties.

Freedom of expression is not an absolute right. Under international law, governments may, in defined circumstances, restrict certain forms of expression or information on narrow grounds such as national security, the protection of public morals or to protect the rights and reputations of others, but only to the extent strictly necessary. Amnesty International, for example, would always argue that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (often known as ‘hate speech’) should be prohibited. However, international human rights law does not permit, still less require, freedom of expression to be restricted or prohibited simply on the grounds that others may find it offensive or that the authorities say that it poses a risk to public order. International and regional human rights treaties apply strict criteria that any such restriction must be set down in law, have a legitimate aim and be a proportionate response.⁹ The onus of demonstrating the validity of the restriction rests with the government.

1.2 Internet governance and human rights

The impacts of Internet companies on human rights should be viewed in the context of how the Internet is governed and regulated nationally and internationally. This is a controversial topic provoking strong opinions among many stakeholders (representing governments, business and civil society) across the world. The UN promoted a World Summit on the Information Society (WSIS) involving 175 countries in two phases (Geneva 2003 and Tunis 2005) to try to develop a framework for global Internet governance.¹⁰ In the end, the Tunis meeting, unable to agree on how to govern the Internet, decided to leave much of the control where it currently resides – concentrated in the hands of the US-based Internet Corporation for Assigned Names and Numbers (ICANN). The failure to reach a binding agreement on the future of Internet governance, or even what the term should encompass,¹¹ ended with a compromise agreement to set up a consultative Internet Governance Forum which will meet for the first time in Athens in November 2006.

The impacts of Internet companies on human rights should be viewed in the context of how the Internet is governed and regulated nationally and internationally

Ensuring respect for human rights, including freedom of expression, is a vital component in creating the Information Society. As UN Secretary General Kofi Annan stated in his address to the Tunis WSIS meeting:

And of course, the information society's very life blood is freedom. It is freedom that enables citizens everywhere to benefit from knowledge, journalists to do their essential work, and citizens to hold government accountable. Without openness, without the right to seek, receive and impart information and ideas through any media and regardless of frontiers, the information revolution will stall, and the information society we hope to build will be stillborn.¹²

Similarly, the Declaration of Principles agreed by the WSIS in Geneva and reaffirmed in Tunis emphasises the importance of respecting human rights in developing the Information Society. This is reflected in the following clauses:¹³

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

We further reaffirm our commitment to the provisions of Article 29 of the Universal Declaration of Human Rights, that everyone has duties to the community in which alone the free and full development of their personality is possible, and that, in the exercise of their rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations. In this way, we shall promote an Information Society where human dignity is respected.

To make these pledges a reality, in preparing for the inaugural Internet Governance Forum, the WSIS Civil Society Human Rights caucus, a coalition of 65 organisations, has highlighted concerns over the implications of Internet policies for freedom of expression and the protection of privacy.¹⁴ It seeks to ensure that all Internet policies have human rights protection as their baseline. It also seeks to establish an Independent Commission on the Information Society and Human Rights composed of experts in relevant fields, with a broad geographical representation, to monitor and assess relevant legislation and policies to ensure that these are compliant with international human rights standards.

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2. THE HUMAN RIGHTS RESPONSIBILITIES OF COMPANIES

Understanding of the scope of the human rights responsibilities of business is evolving and developing, as can be seen in the 2005 recommendations of the UN High Commissioner for Human Rights to the UN Human Rights Commission.¹⁵ While the primary responsibility for respecting and protecting human rights, such as freedom of expression, rests with governments, companies also have human rights responsibilities within their spheres of activity and influence. These responsibilities can be drawn from the Universal Declaration of Human Rights, as well as from international treaties and national legislation.¹⁶ They are reflected increasingly in codes of conduct for business developed by inter-governmental bodies, as well as by business associations and individual companies.

The concept of complicity is a complex one but also very relevant to considering the role of Internet companies operating in China

International law and standards already extend human rights obligations beyond states to individuals, armed groups, international organisations and other private actors. The UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (UN Norms), and their Commentary, adopted by the UN Sub-Commission for the Protection and Promotion of Human Rights in 2003, are the most comprehensive attempt at articulating business responsibilities for human rights.¹⁷ Although the UN Norms themselves are not legally binding, they constitute a benchmark by which governments and corporations can assess the compatibility of corporate activities with relevant human rights standards.

In 2005, the UN Commission on Human Rights requested the UN Secretary-General to appoint a Special Representative on the issue of human rights and business. The mandate includes ‘to identify and clarify standards of corporate responsibility and accountability’ and ‘to clarify the implications for transnational corporations and other business enterprises of concepts such as “complicity” and “sphere of influence”’.¹⁸

The concept of complicity is a complex one but also very relevant to considering the role of Internet companies operating in China. The second principle of the UN Global Compact, which over 2,500 companies have signed up to, requires business entities to ‘make sure they are not complicit in human rights abuses’. Corporations often act in joint ventures with national and local governments or other private sector partners, and this could lead to allegations of complicity if the partner itself has abused human rights.¹⁹ One definition of ‘complicity’ states that a company is complicit in human rights abuses if it authorises, tolerates, or knowingly ignores human rights abuses committed by an entity associated with it, or if the company knowingly ‘provides practical assistance or encouragement that has a substantial effect on the perpetration of human rights abuse’.²⁰

Four situations illustrate where an allegation of complicity might arise against a company. First, when the company actively assists, directly or indirectly, in human rights violations committed by others; second, when the company is in a partnership with a government and could reasonably foresee, or subsequently obtains knowledge, that the government is likely to commit abuses in carrying out the agreement; third, when the company benefits from human rights violations even if it does not positively assist

or cause them; and fourth, when the company is silent or inactive in the face of violations.²¹

As with the responsibility to ‘support’ human rights, the duty on business to act or not to act in each of these situations might not always be clear. Questions arise as to how much the business entity knew or should have known about the human rights abuse and the extent to which it assisted through its acts or omissions in the abuse. Although understanding and codification of the concept of corporate complicity is still evolving,²² the risk of complicity is particularly high where a company knowingly facilitates human rights violations by the state through its actions or omissions, and fails to take action within its power to remedy the situation. This is a risk that Internet companies are exposed to.

2.1 Responsibilities of Internet hardware and software companies

Many companies have been subject to critical scrutiny for their apparent links to repression of freedom of expression in China. These include Sun Microsystems, Cisco Systems, Nortel Networks and Motorola.²³ This briefing focuses on the role of Yahoo!, Microsoft and Google, in part because their size and market penetration globally mean that their sphere of influence over human rights is likely to be greater than that of other Internet companies. However, the main reason for focusing on these three companies is that recent events have highlighted the serious human rights consequences of their actions for individual users. This has exposed the contradictions between, on the one hand, the image and values that these companies are trying to project, and on the other hand, the nature of their activities in China and their dealings with the Chinese government.

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The general responsibilities outlined above carry implications for companies that sell the technology, equipment or services to monitor private e-mails or censor Internet access, in contravention of articles 12 and 19 of the Universal Declaration of Human Rights. These articles protect individuals’ right to privacy, freedom of expression and freedom to receive and impart information. A company that sells equipment, technology or services knowing that they can be used for repressive purposes is in effect a partner in repression.

While companies are under continuous pressure from shareholders to maximise their profits and can be expected to have a presence in lucrative markets, this does not absolve them from their human rights responsibilities. This view is reflected in a joint statement by a number of investing institutions on the subject of freedom of expression and the Internet. The investment funds that are signatories to this statement have committed themselves to monitor the activities of Internet companies in repressive countries.²⁴

Joint investor statement on freedom of expression and the Internet

As investors and research analysts, we recognise 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 realisation 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.

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;
- Recognise 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;
- Recognise 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 favourable 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).

3. THE HUMAN RIGHTS SITUATION IN CHINA: AN OVERVIEW

If you don't dare to let people speak... you will sow the seeds of disaster. It is bound to trigger collective resistance and set off turbulence.... History shows that only in totalitarian systems do you need media controls. This is in the mistaken belief that you can forever keep the public in the dark.

The words above are not those of a prominent Chinese activist, but of a group of veteran Chinese Communist Party cadres, including the former top propaganda official and Mao Zedong's personal secretary. They come from a joint statement sent in February 2006 to President Hu Jintao and Premier Wen Jiabao, China's new leaders since 2003.

These strong words were sent in reaction to the closure by the authorities of a popular publication, *Bing Dian* (Freezing Point), and the wave of dismissals, arrests, and imprisonment of journalists, editors, and private Internet users who pushed the boundaries of tight censorship. They reflect the sharp turn for the worse in the protection of freedom of expression and association in China today.

The statement from Chinese Communist Party veterans makes the absence, or weakness, of critiques of human rights violations in China from other governments all the more dismaying.

Amnesty International has documented a deterioration in human rights in recent years. The space for public critique has narrowed over the last year. Lawyers, journalists and human rights defenders are being detained, imprisoned, harassed and intimidated. There are numerous reports of government authorities relying on force to stifle legitimate demands for redress of grievances, including land seizures without due process or adequate compensation. China is the world leader in executions with thousands of people executed and sentenced to death each year. The death penalty appears to be used to address underlying social and economic problems. The Uighur minority in the Xinjiang Uighur Autonomous Region face intensified repression under the guise of China's 'war on terror'.²⁵ Freedom of expression and religion continue to be severely restricted in Tibet. Christians not belonging to the officially recognised church must practice their religion underground – making themselves and their property highly vulnerable to police raids and arrests. Members of banned spiritual groups, including the Falun Gong, face harsh persecution.

3.1 The crackdown on human rights defenders

The heightened intolerance on the part of the current Chinese leadership of public criticism has resulted in the detention, disappearance, imprisonment, beatings, intimidation and harassment of human rights defenders and others seeking justice. On 8 February, 2006 Gao Zhisheng, a prominent human rights lawyer, initiated a hunger strike to protest against the harsh treatment of lawyers, petitioners, and other human rights defenders. Numerous individuals were detained, formally arrested, or remain missing as a result of the hunger strike. Hu Jia, a prominent HIV/AIDS activist,

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went missing on 16 February and was detained without charge for more than two months. During this time, public authorities refused to provide any information and refused to admit he was being held. Qi Zhiyong, an activist for the rights of people with disabilities, also went missing on 15 or 16 February 2006 and was detained without charge or trial until 28 March. Qi received gunshot injuries during the crackdown on the 1989 pro-democracy demonstration, which left him disabled. Wang Lizhuang, a 48-year-old media professor, who had drafted an open letter on behalf of people evicted from their homes in Shanghai, was taken away from his workplace by police on 21 February 2006. Other human rights defenders targeted by the authorities include Ouyang Xiaorong, Chen Xiaoming, Wang Lizhuang, Mao Hengfeng, Ma Yalian, Yan Zhengxue, Yu Zhijian, to name only some of those known to Amnesty International.

Despite sophisticated technological filters, the effectiveness of censorship in China still rests on self-censorship

3.2 Curtailment of freedom of expression

While the focus of this briefing is on the Internet companies, Amnesty International's primary concerns with regard to freedom of expression relate to the role of the Chinese authorities in continuing to add layers of regulations and controls to an already sophisticated system of censorship. Controls operate at every level – from service providers, Internet cafés, blog managers, to individual users. Foreign corporations have given in to government censorship demands. However, despite sophisticated technological filters, the effectiveness of censorship in China still rests on self-censorship, as companies, institutions, and individuals seek to avoid punishments associated with crossing the line. Broadly and vaguely defined 'state secrets' offences continue to be used to prosecute journalists, editors, and Internet users circulating or expressing opinions critical of the government, or information that exposes the government to criticism. Journalist Shi Tao was sentenced to 10 years in prison in April 2005 for leaking 'state secrets'.²⁶ He had posted on the Internet a summary of a government order instructing the media on how to handle the upcoming anniversary of the crackdown on the 1989 pro-democracy movement.

Amnesty International has urged governments internationally to take the following steps to promote respect for freedom of expression in China:

- Urge the Chinese government to revise the State Secrets Law to rectify the vague, broad, and retroactive definition of 'state secrets' and the 'national interest'.
- Urge the Chinese government to remove the requirement that Internet cafés verify the identities of their patrons before allowing them Internet access.
- Press the Chinese authorities to eliminate the requirement for media organisations to have a government sponsor to obtain a licence.
- Raise the issue of corporate complicity in government censorship in China with home-based information and communications technology companies operating in China.

Journalist Shi Tao imprisoned for 10 years for sending an email



Shi Tao, a Chinese journalist, is serving a 10-year prison sentence in China for sending an email on 20 April 2004 summarising the content of a Chinese Central Propaganda Department communiqué orally transmitted to editorial staff at the newspaper where Shi worked. He sent the email using his Yahoo account to the editor of a Chinese pro-democracy website based in the US.

On the basis of this email, the Chinese authorities accused Shi Tao of 'illegally providing state secrets to foreign entities'. He was detained on 24 November 2004 and officially arrested on 14 December 2004. He was sentenced to 10 years' imprisonment on 27 April 2005.

The vaguely-worded legal definition of what constitutes a 'state secret' gives the Chinese authorities broad discretion to detain those engaged in the peaceful exercise of their right to free expression.

According to the transcript of the Changsha Intermediate People's Court of Hunan Province, Yahoo! Holdings (Hong Kong), the US-based Internet company, provided account holder information that was used as evidence in the case against Shi Tao, which resulted in his 10-year prison sentence.

A representative of Shi Tao's family has filed a privacy complaint with Hong Kong's Office for the Privacy Commissioner for Personal Data against Yahoo!'s Hong Kong subsidiary for its role in the case.

Currently imprisoned in Chishan prison, Shi Tao is reportedly being forced to work under harsh conditions. His family has been harassed by the authorities. His wife underwent daily questioning by public security bureau officials and was persistently pressured by her work unit to divorce him, which she eventually did. Shi Tao's uncle and brother have also been under surveillance and harassed both at work and at home, and his mother is also reportedly being closely monitored and harassed as she petitions for his release.

Amnesty International considers Shi Tao a prisoner of conscience, imprisoned for peacefully exercising his right to freedom of expression, a right entrenched in international law and the Chinese Constitution.

3.3 Internet censorship in China

Ever since the introduction of the Internet in China in 1994 and particularly since its commercialisation in 1995, the Chinese government has sought to control its content and to censor information it deemed detrimental or sensitive. With over 111 million Internet users,²⁷ experts consider that China operates the most extensive, technologically sophisticated and broad-reaching system of Internet filtering in the world.²⁸ The implications of this distorted on-line information environment for China's users are profound and disturbing. Despite China's rapidly expanding economy the political climate still favours repression of dissent and restrictions over fundamental freedoms. Amnesty International is greatly concerned by the actions taken by the Chinese authorities to limit the dissemination of information and repress those individuals and groups who choose to peacefully exercise their legitimate right to express dissent.

The sophisticated technology that allows the government to block and filter Internet content is primarily designed by foreign companies

The sophisticated technology that allows the government to block and filter Internet content is primarily designed by foreign companies. Words and phrases that have been targeted include 'human rights', 'democracy' and 'freedom'. This pervasive system of filtering 'undesirable' information is so effective partly because the process lacks transparency. There is no means by which Chinese citizens may appeal to have a site unblocked and it is not clear what words or phrases are banned and how the decision is made to prohibit certain topics. In September 2005, the government enacted the 'Rules on the Administration of Internet News Information Services', which required all individuals and organisations that publish news to be officially sanctioned. The only guidance offered by the government regarding the reasons behind this decision was that it was in the interests of 'serving socialism', 'upholding the interest of the State' and 'correctly guiding public opinion'.

There are reportedly thousands of Internet police monitoring cyberspace in China.²⁹ Amnesty International expressed its concerns before the US Congressional Human Rights Caucus in February 2006.³⁰ Those concerns included the fact that individuals have been imprisoned for expressing opinions and publishing information that the government deems 'subversive' under laws that also provide for the death penalty. China currently has the largest recorded number of imprisoned journalists and cyber-dissidents in the world. Amnesty International has documented at least 54 Chinese Internet users it believes are presently imprisoned for such acts as signing petitions, calling for an end to corruption, disseminating information about SARS and planning to establish pro-democracy groups.³¹

4. THE ROLE OF YAHOO!, MICROSOFT AND GOOGLE

4.1 Mismatch between values and actions

Values are those beliefs that influence choices and actions. Many companies today espouse a set of values and principles by which they claim to do business. Companies use these principles as a tool to secure investment, recruit talent and attract customers. All types of stakeholders, including customers, investors and analysts, are interested in how a company makes decisions and what its prevailing principles are. These provide an indication of how a company will respond to certain circumstances and they give guidance to employees on how to behave when acting on behalf of the company. The principles a company adopts reflect the nature and extent of the business risk the company is willing to take. This provides important signals to its stakeholders of what to expect from the company.

Yahoo!, Microsoft and Google claim to be ethically responsible companies. They publicly articulate the principles according to which they conduct their business, so that customers and investors can understand their beliefs and thus make informed decisions about the company. These representations on which stakeholders rely may be found in the companies' annual reports, speeches, press releases and on their websites. A company's values may also be determined by its codes of conduct and by the statements of organisations to which it is affiliated. For example, Microsoft and Google are members of the Internet Society, a non-profit organisation with the mission of promoting 'the open development, evolution, and use of the Internet for the benefit of all people throughout the world'.³² The Code of Conduct for its members includes the requirement that in all professional dealings these organisations will 'respect the rights of all Internet users to privacy of, and freedom of access to information and communication...'.³³ By virtue of their relationship with this organisation these companies present themselves as supporters and adherents of this Code of Conduct.

Yahoo! values

Yahoo says of itself:

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 Yahoo!s, the principles that direct how we service our customers, the ideals that drive what we do and how we do it. Many of our values were put into practice by two guys in a trailer some time ago; others reflect ambitions as our company grows. All of them are what we strive to achieve every day.³⁴

These values are categorised into Excellence, Innovation, Customer Fixation, Teamwork, Community and Fun, and include 'an infectious sense of mission to make an impact on society and empower consumers in ways never before possible' and 'winning with integrity'.

Yahoo! claims that since its foundation in 1995,

Yahoo! has been guided by beliefs closely held by our founders and sustained by our employees: we believe the Internet

'Integrity without knowledge is weak and useless, and knowledge without integrity is dangerous and dreadful.'

Samuel Johnson

is built on openness, from information access to creative expression. We are committed to providing individuals with easy access to information and opportunities to openly communicate and exchange views and opinions.³⁵



Yahoo! also claims to ‘respect the privacy of our customers and understand that the data they provide us should be maintained securely.’³⁶

Yahoo! actions

Yahoo! was one of the first foreign Internet companies to enter the Chinese market in 1999. In 2005 it invested \$1 billion in local Chinese Internet firm Alibaba and transferred ownership of Yahoo! China to that company. Yahoo! is now a 40 per cent minority shareholder in Alibaba. As a result of this move, Yahoo! now claims that decisions about cooperating with Chinese officials are in the hands of Alibaba and not Yahoo!. It claims that Yahoo! is not involved in the day-to-day management of the company and that it holds only one seat on the board of directors. In its testimony to the US House of Representatives in February 2006, Yahoo! made further attempts to distance itself from responsibility for its role in China by urging ‘the US government to take a leadership role on a government-to-government basis... ultimately the greatest leverage lies with the US government.’³⁷

In 2002 Yahoo! voluntarily signed the ‘Public Pledge on Self-discipline for the Chinese Internet Industry’.³⁸ Among other things, the Pledge requires Yahoo! to ‘refrain from producing, posting or disseminating harmful information that may jeopardise state security and disrupt social stability, contravene laws and regulations and spread superstition and obscenity’. Yahoo! was under no legal obligation to sign this pledge. By taking this step, the company has aligned itself with the Chinese government’s approach to suppressing dissent, damaging its own credibility in the process.

Yahoo!’s claim that the pledge does not impose a greater obligation than already exists in local law is a contentious one. By signing this pledge Yahoo! is agreeing with and expressing its support for some of the requirements of the Chinese government that are inconsistent with international human rights and freedom of expression.

Since signing the pledge, Yahoo! has continued to censor search results via the Chinese version of its search engine.

Even more disturbing, Yahoo! has also admitted to providing the Chinese authorities with information that led to the eventual arrest and imprisonment of at least two journalists, Li Zhi and Shi Tao, considered by Amnesty International to be prisoners of conscience. Both men received substantial prison sentences for activity which included disseminating information relating to the government response to the Tiananmen Square massacre. The case of Shi Tao, jailed for 10 years in April 2005 for peacefully exercising his right to freedom of expression – a right entrenched in international law and the Chinese Constitution – has provoked widespread international condemnation. The incarceration of Li Zhi in 2003 was highlighted in the 2004 Amnesty International report, *Controls tighten as Internet activism grows*, but Yahoo!’s role has only recently come to light.³⁹

Yahoo! accepts that the Shi Tao case ‘raises profound and troubling questions about basic human rights’, but the company distances itself from responsibility.⁴⁰

***By signing this pledge
Yahoo! is agreeing with and
expressing its support for
some of the requirements
of the Chinese government
that are inconsistent with
international human rights***

Microsoft values

Microsoft's most recent advertising campaign is about helping users reach their potential:

We see history's great minds dropping in wherever they're needed. Exposure to great teachers, great books, and great thinking, is the most essential requirement for learning, no matter where the student or the classroom. When the world of learning opens to them, children can grow in any direction. It inspires us to create software that helps them reach their potential.
Your Potential. Our Passion.TM

Through its mission Microsoft claims to value integrity and honesty, openness and respectfulness. The company maintains that it has 'worked hard to make Microsoft a values-driven company that maintains the highest standards of professional conduct, meets or exceeds the ethical and legal expectations of countries where we do business and seeks to enable people throughout the world to realise their full potential'. It claims: 'As a corporate leader in the global community we see it as our responsibility to engage in national and regional dialogues on the issues of the day. Over the course of the past several years we have been increasing the size of our government relations team to meet this need.' It goes on: 'Microsoft works to help countries around the world put information and communications technology and software to use in ways that improve the social and economic well-being of local populations.'⁴³

Microsoft's Chief Executive Officer Bill Gates has been actively involved in the censorship debate. When speaking about a new US law restricting access to information on the Internet in the interest of curbing children's exposure to pornography on the Internet, he said:

Microsoft and others in industry and non-profit organisations were deeply involved in trying to block language that would put chilling restrictions on the use of the Internet for the free publication of information. The language, ostensibly aimed at keeping pornography out of the hands of children, goes much too far in restricting freedom of expression.... Let's not undermine the world wide trend toward free expression by setting a bad example when it comes to free speech on a computer network.⁴⁴

This statement implies that Microsoft believes in a consistent set of principles that apply globally. This is reinforced by Gates' suggestion that '...if you have access to a PC and the Internet, you can tap into almost all the information that is publicly available worldwide.'⁴⁵ While this might come close to being true in some countries, it is not the case that people in China can access almost all the information available worldwide. Gates' vision presupposes freedom of information and the absence of political censorship.

Microsoft actions

Microsoft has admitted that it responds to directions from the Chinese government by restricting users of MSN Spaces from using certain terms in their account name, space name, space sub-title or in photo captions:

Pursuant to the direction of the Chinese government, Spaces users may not use certain terms in their account name, space

'At Microsoft, we understand that our reputation is a direct reflection of how we demonstrate our corporate values through our actions every day.'⁴¹

'Responsible corporate citizenship is defined by good behaviour, not good intentions.'⁴²

Microsoft

name, or space sub-title – or in photo captions. We employ a ‘restricted term’ list for this purpose and we make every effort to keep the list to a minimum number of terms.⁴⁶

At the same time the company asserts that MSN Spaces does not filter blog content in any way.⁴⁷ Amnesty International considers this claim to be at odds with the facts.

When Microsoft launched MSN Spaces in China in June 2005, attempts to create blogs with words including ‘democracy’, ‘human rights’ and ‘freedom of expression’ in the title were blocked, producing an error message in Chinese which translates to ‘You must enter a title for your space. The title must not contain prohibited language, such as profanity. Please type a different title.’ Subsequent tests showed that MSN also blocked use of certain terms such as ‘Tibet Independence’ and ‘Falun Gong’ in the title of blogs. Tests carried out by Amnesty International in June 2006 demonstrated the continuing blocking of certain terms, including ‘Tiananmen incident’ in the title of blogs.

‘...when your business is understood to be a global arbiter of human knowledge and commerce, sticking to such a principled stand can become extremely ... tricky.’⁴⁸

John Battelle

Microsoft in its statements has tried to blur the distinction between ‘blocking’ users from carrying out searches and ‘filtering’ the results of searches. This obscures the fact that Microsoft’s China-based search engine (MSN China) filters the results of searches for politically sensitive terms. What this means, for example, is that of the total potential sites that could be retrieved in doing a search on, say, ‘Tiananmen Square’, a certain number of these will be removed by the search engine itself. In conducting a search for a politically sensitive term using ‘beta.search.msn.com.cn’, a page comes up that states in Chinese: ‘Certain content was removed from the results of this search’. Searches undertaken in June 2006 produced this message for terms including ‘Falun Gong’, ‘Tibet independence’ and ‘June 4’ (date of Tiananmen Square massacre). Of the results that are given for such terms, there is a predominance of official sites and others sanctioned by the government. This amounts to censorship.

In the absence of full disclosure of the terms that Microsoft restricts, and information on whether Chinese language terms are more likely to be censored than other terms, it is difficult to ascertain the extent of the filtering that Microsoft undertakes.

Chinese journalist and blogger Zhao Jing (also known as Michael Anti) used MSN Spaces online to run his own blog. Zhao, who is an active critic of censorship in China, eventually had his blog shut down by Microsoft on 30 December 2005 following a request from Chinese authorities. The blog, which is hosted on servers located in the United States, was removed and was therefore censored not only in China but globally. As a result of immediate criticism, Microsoft claims to have developed a set of standards that it would adhere to in the future. Microsoft claims that it will only remove blogs when it receives formal legal notice from the Chinese government and that access would be denied to users only in China.

Google values

On 19 July 2001 a group of Google employees met to discuss the founders’ vision and to develop a motto to guide the company. It was in this meeting that the phrase ‘Don’t be evil’ came into being. This motto has been the cornerstone of the company’s values. ‘Don’t be evil’ is a definitive statement which provides little room for ambiguity. The founders clearly hold themselves to be morally aware. Many have questioned whether Google could in fact adhere to such a high standard.

Google however has maintained that the founders' principles are paramount in the way Google runs its business. In March 2006, Google CEO, Eric Schmidt, stated: 'We are running the company under the philosophy and principles that are written in that initial founders' letter. We're going to continue running the company under those principles.'⁴⁹

The founders' letter asserts:

Throughout Google's evolution as a privately held company, we have managed Google differently. We have also emphasised an atmosphere of creativity and challenge, which has helped us provide unbiased, accurate and free access to information for those who rely on us around the world...⁵⁰

Google's CEO has emphasised the empowering role of the Internet:

The democratisation of information has empowered us all as individuals. We no longer have to take what business, the media or indeed politicians say at face value. Where once people waited to be told what the news was, they can now decide what news matters to them.⁵¹

The view that people should be able to decide what news matters to them assumes that they have free access to information. Similarly, the assumption that the Internet enables people to be more critical of the words of politicians presupposes the right to disseminate such views. If a government is able to censor material that it wants to hide from people, then it becomes more difficult for the Internet to play this role.

The assumption that the Internet enables people to be more critical of the words of politicians presupposes the right to disseminate such views

Eric Schmidt also emphasises the role of the Internet as an equaliser of opportunity across the world:

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.⁵²

This vision of Google's CEO is a powerful one, dependent for its realisation on the existence of freedom of expression.

Google actions

Despite the 'Don't be evil' motto and assertions that Google is a company that holds strongly to steadfast and unwavering principles, the company announced in January 2006 the launch of Google.cn – a self-censoring Chinese search engine. This is an alternative to Google's existing search engine based outside China (Google.com). The non-censored one continues to be available to all Chinese Internet users, but searches need to pass through China's 'firewall', which censors a great deal and slows down the search process.

Google has stated that it is not happy with the decision to introduce a censored version of its international search engine. According to Google representative Elliot Schrage 'The requirements of doing business in China include self-censorship – something that runs counter to Google's most basic values and commitments as a company.'⁵³ Andrew McLaughlin, Senior Policy Counsel for Google, also states 'Filtering our search results clearly compromises our mission.'⁵⁴

‘Citizens of China are willing to risk jail for freedom of expression when certain American companies are unwilling to risk profits for the same principles.’⁵⁹

James A Leach, US Congressman

In mitigation, the company emphasises that it has made some concessions to protect the Chinese people. It has, for example, offered to inform users when information is being censored and has decided not to launch gmail or other services that hold personal and confidential information until the company feels confident that it can protect users’ expectations in terms of privacy and security of confidential information.⁵⁵ Google states that it would only add these new services ‘if circumstances permit’ and it ‘will carefully monitor conditions in China, including new laws and other restrictions...’.⁵⁶

While it is a positive step for Google to indicate to users that a search has been censored, there are further steps that should be taken, such as making public the list of censored words and phrases.⁵⁷ This is something that the Internet companies could achieve by collaborating with each other to exert pressure on the Chinese government to make the list public.

It appears that the company has foregone its founding vision and restated its beliefs, as illustrated by the following example. On 26 January 2006 the Google Help Centre offered the following response to the question ‘Does Google censor search results?’

Google does not censor results for any search term. The order and content of our results are completely automated, we do not manipulate our search results by hand. We believe strongly in allowing the democracy of the web to determine the inclusion and ranking of sites in our search results...

Several months later, the same question generated a different answer:

It is Google policy not to censor search results. However, in response to local laws, regulations or policies we may do so. When we remove search results for these reasons we display a notice on our search results page...⁵⁸

Google has made concessions to its critics by attempting to rationalise and mitigate its behaviour, including the offer to withdraw from China should the situation require. However, by conceding to the Chinese government’s censorship policy, Google undermines the principles it asserts are paramount to its business.

Betrayal of trust

All three companies have in different ways facilitated or participated in the practice of government censorship in China. Yahoo! has provided the Chinese authorities with private and confidential information about its users that included personal data that has been used to convict at least two individuals considered by Amnesty International to be prisoners of conscience.⁶⁰ Microsoft has been accused of shutting down a blog on the basis of an informal government request. Google has launched a censored version of its international search engine in China. All three companies have demonstrated a disregard for their own proclaimed policies. They made promises to themselves, their employees, their customers and their investors which they failed to uphold in the face of business opportunities and pressure from the Chinese government. This raises doubts about which statements made by these organisations can be trusted and which ones are public relations gestures.

The willingness of Yahoo!, Microsoft and Google to override their principles amounts to a betrayal of trust in the face of the lucrative

opportunities that the Chinese market offers them. The country's estimated 111 million Internet users represent only about 9 per cent of China's total population of 1.3 billion. With a burgeoning economy, this proportion is set to rise.

4.2 Contravening the principle that users come first

One principle that Yahoo!, Microsoft and Google hold in common is the belief that the user comes first.

Companies such as Google, Yahoo! and Microsoft present themselves as responsible, customer-focused organisations. They claim a commitment to meeting or exceeding user expectations. Google even claims to have temporarily withheld certain products from the Chinese market because they could not ensure that user expectations would be met. According to these companies, 'user expectations' drive decision making. It would therefore be logical to assume that should these companies become aware that users are interested in their right to freedom of expression and communication, then they would act to respect these rights.

The growing number of individuals who have developed ways to circumvent the filtering process indicates that users in China are not satisfied with filtered information. Individual users are developing code words to express their ideas without triggering the filtering mechanism. Another example is the 'Adopt a Blog' campaign, which was developed as a result of China's restrictions on blogging services. This programme links bloggers in China with those in other countries which will allow the content to be stored in servers outside China's jurisdiction. Anonymizer, an identity protection company, has also developed anti-censorship software that will enable Chinese users to access the Internet censorship-free without the fear of repression or persecution. These examples provide some indication about the 'expectations' of China's 111 million Internet users that they can exercise their right to freedom of expression and information without fear or hindrance.

4.3 Uncovering their defences

In defending their actions in China, Yahoo!, Microsoft and Google maintain they are under an obligation to comply with local law. They argue that although it is not an ideal situation, their presence in China is a force for good. They assert that without their input censorship would still take place and that censored information is better than no information at all.

First line of defence: We must comply with local law

US Internet companies such as Yahoo!, Microsoft and Google claim that they do not morally agree with the restrictions on freedom of expression in China but they are forced to co-operate with the policy based on the premise that local Chinese law demands it. In fact, this argument assumes a greater degree of clarity than currently exists on the substance of Chinese law, as the complex range of relevant rules, laws and regulations are vaguely worded and often contradictory. Those laws that do require monitoring and filtering of content are vague in their language and offer little guidance on how and what information is to be censored. Significantly, none of the companies has been willing or able to specify precisely which laws and legal processes it has been obliged to follow.

Companies are in effect operating in a zone of ambiguity where they have to make a judgment as to where the boundaries of the law lie. This lack

'Serving our end users is at the heart of what we do and remains our number one priority.'⁶¹

Google

'Your most unhappy customers are your greatest source of learning.'⁶²

Bill Gates, Microsoft

'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. We listen and respond to our customers and seek to exceed their expectations.'⁶³

Yahoo!

'Yahoo! China was legally obligated to comply with the requirements of Chinese law enforcement.... Ultimately US companies in China face a choice: comply with Chinese law, or leave.'⁶⁴

Michael Callahan, senior vice president and general counsel, Yahoo!

'We think that blogging and similar tools are powerful vehicles for economic development and for creativity and free expression.....We believe that its better to make these tools available than not.....Therefore, based on grounds of human rights and freedom of expression alone, Microsoft believes that we should continue to provide our Internet-enabled services in China.'⁶⁹

Jack Krumholtz, associate general counsel and managing director, federal government affairs, Microsoft

of certainty has created a situation where Internet companies are under pressure to undertake 'self-censorship'. There is no definitive list of banned words or phrases. Companies, in an effort to retain their licence to operate, are required to 'feel their way' and follow the filtering habits of competitors. This threatens to lead to a race to the bottom.

China's filtering efforts lack transparency: the state does not generally admit to censoring Internet content, and concomitantly there is no list of banned sites and no ability for citizens to request reconsideration of blocking, as some other states that filter provide. The topics defined as sensitive, or prohibited, by China's legal code are broad and non-specific, and enforcement of laws such as the ban on spreading state secrets discourages citizens from testing the boundaries of these areas.⁶⁵

In addition, Chinese censorship laws and practices contradict the foundations of the Chinese legal system – the Constitution. The Chinese Constitution, under article 35, provides for freedom of speech, of the press, of assembly, of association, of procession and of demonstration for all citizens. Moreover, State Council Order No. 292, promulgated in September 2000 and giving guidance on content restriction for Internet Content Providers, stipulates under article 15 that information cannot be disseminated which is against the principles prescribed in the Constitution. The vague provisions of laws governing access to the Internet should therefore be interpreted in the light of the guiding principles of the Constitution, which takes precedence over those laws and which should be applied with reference to international human rights standards.

The need to comply with local law should not obscure the fact that these companies operate in a global economy regulated at different levels. Multinational corporations must consider local law, the laws of the country in which the company is incorporated, the vast array of international law, best practice and internal policies and procedures. The implications of this wider set of responsibilities are referred to in Section 2 of this briefing. The defence that it is enough merely to comply with local law is simplistic. Microsoft expressed this most accurately in its 2004 Citizenship Report:

For us, compliance means more than complying with laws and regulations that impact our day-to-day business activities. Compliance also means living our values and being accountable to Microsoft's Code of Conduct, which govern our business practice around the world.... As part of our commitment, we've taken practical steps to meet or exceed all of our legal obligations...⁶⁶

These companies should also recognise that their actions are in breach of Article 19 of the Universal Declaration of Human Rights, which provides for freedom of expression for everyone,⁶⁷ and that China is a signatory to the International Covenant on Civil and Political Rights (ICCPR), which contains more specific obligations on Freedom of Expression and Freedom of Information.⁶⁸

Amnesty International believes that companies should resist being bound by domestic laws that contravene international human rights standards, at the very least by questioning and seeking to clarify the implications of such laws.

One way in which the Internet companies should contribute towards greater transparency and clarity is to state explicitly which laws they are complying with and what their legal interpretation of these laws is in the context of their own operations. This would make it clearer when a company is obeying local law, as opposed to responding to political pressure voluntarily, for example by signing the Chinese government's 'Public Pledge on self-discipline for the Chinese Internet Industry'. A further way is by exhausting all judicial remedies and appeals in China when asked to comply with a state directive that would render them complicit in a human rights violation.

Second line of defence: Access to censored information is better than no information at all. Our presence in the country will aid economic development which will lead to political change

The argument that the mere presence of the world's leading Internet companies in China will aid economic liberalisation which will automatically lead to political freedom, is spurious. Sound economic development requires full exercise of freedom of information and expression. Censorship denies the ability to question the model of economic development being pursued and the policies which have fuelled deepening inequality. As Sharon Hom of Human Rights in China points out, 'engagement and presence in the market alone will not inevitably lead to any particular result except for market access for the companies. Corporate engagement and presence in China will contribute to greater reform and openness only if it is responsible and coherent.'⁷²

The reality is that the Internet has had an established presence in China for over a decade, which means that the world's major Internet companies can no longer be considered to be helping bring the Internet to China. Instead, they are attempting to gain an increasing share of a rapidly growing market in the knowledge that it will expand with or without their presence. In effect, their activities are facilitating and sanctioning government censorship rather than challenging it. Companies appear to have been all too ready to accept the limitations imposed rather than exerting pressure for legislative and policy change.

While Yahoo!, Microsoft and Google argue that their mere presence in China will expedite political reform, the authorities have kept pace in the race between freedom of expression and suppression of dissent. China's system of Internet filtering has become more effective. According to a 2005 study by the OpenNet Initiative '... the research we have conducted over several years... demonstrates increasing sophistication of China's filtering regime. Its filtering system has become at once more refined and comprehensive over time, building a matrix of controls that stifles access to information deemed illegitimate by authorities.' The study adds: '... China's legal controls over the Internet have expanded greatly since 2000, indicating increased attention to this medium of communication. Moreover the number of regulatory bodies with a role in Internet control has increased.'⁷³ The claim that the presence of Internet companies in China has brought reform is untenable.

The question these companies should be asking is, how can they collaborate with each other most effectively to influence the way the Internet is used in China so as to bring about positive outcomes for human rights.

'It is illogical for companies to say they are expanding the boundaries of freedom in China if they strip their product of the very qualities that make it a force for greater freedom.'⁷⁰

Tom Malinowski, Human Rights Watch

'Even though we weren't doing any self-censorship, our results were being filtered anyway...'⁷¹

Elliot Schrage, vice president, global communications and public affairs, Google

Third line of defence: The Internet in China would be censored regardless of our input

To assess the impacts of information technology hardware and software companies, it is helpful to understand the evolution of Internet censorship in China.

When China first opened its commercial doors to the Internet in 1995 it blocked access to three overseas websites, according to the *Washington Post*.⁷⁴ Although the extent and number of sites being filtered today cannot be measured, it has been estimated that thousands will never reach Chinese users.

As the Internet grows in popularity the government is investing more resources into keeping a solid grip on the flow of information. There are no signs that China is looking to reverse its stance on Internet monitoring and punishment of users who exercise their universal right to freedom of expression. As Internet technology expands in China, so do the authorities' efforts to control it. In addition to the large numbers of Internet police who are reportedly designated to patrol cyberspace in China, there is an array of new technology being developed which will improve the effectiveness of monitoring Internet users. Policenet, courtesy of Cisco, is an example of recent technology which forms part of the government's \$800 million investment in Project 'Golden Shield'.⁷⁵ Policenet, which operates in 22 of the 23 Chinese provinces, connects the records of the Public Security Bureau across the country, thus expanding the bureau's ability to monitor and track Chinese civilians.

As the Internet grows in popularity the government is investing more resources into keeping a solid grip on the flow of information

Information technology hardware and software companies have contributed to the increasing sophistication of the Chinese government's Internet filtering system. In addition, by co-operating with the government's censorship polices, these companies give greater legitimacy to them than if the companies were to challenge them. At the same time as they are collaborating with the Chinese government's actions, they are not only jeopardising their own principles, but also undermining Chinese users who are exercising their right to freedom of expression.

4.4 From denial to acknowledgement

Companies that are hit by a reputational crisis that they are unprepared for often go through a phase of denial and defensiveness.⁷⁶ This has been the case with many sectors including: a) footwear and apparel companies in relation to sweatshop conditions; b) the cocoa industry with regard to forced labour in certain parts of Africa; c) the pharmaceutical sector in relation to pricing and distribution of drugs in developing countries; d) the extractive sector on the issue of revenue transparency and on relationships with security forces in zones of conflict; e) bio-technology companies with regard to bio-diversity and genetically modified organisms; f) the food and beverages industry in relation to the impacts of its products on health; g) the diamond industry on the issue of armed conflict in diamond-mining areas of Africa.

Many of the companies that have found themselves exposed on these issues, and that have become a target of public pressure as a result, have subsequently begun to address the problem. Often this has meant co-operating with other companies in the same sector or across sectors, and sometimes also with governments and NGOs.⁷⁷

This briefing has illustrated that some Internet hardware and software companies are clearly in denial when it comes to addressing the human rights impacts of their operations in countries where there is a lack of freedom of expression and where dissent is suppressed. In Amnesty International's view, the arguments advanced by Yahoo!, Microsoft and Google to defend their position do not stand up to scrutiny.

Of the three companies, Google has come closest to acknowledging publicly that its practices are at odds with its principles, and to making a commitment to increased transparency by informing users in China when a web search has been filtered. Although there are many other transparency options that the company should also consider, these are welcome first steps.

While each of these companies may be considered to be complicit in the Chinese government's denial of freedom of information, Yahoo!'s actions, in particular, have assisted the suppression of dissent with severe consequences for those affected. Yahoo! allowed its Chinese partner to pass evidence to the authorities which was subsequently used to convict individuals, at least two of whom were sentenced to lengthy terms of imprisonment for peacefully exercising their legitimate right to freedom of expression. In doing so, Yahoo! appears to have failed to honour its responsibility to ensure that its own operations and those of its partners are not complicit in human rights abuses.

Yahoo!'s actions, in particular, have assisted the suppression of dissent with severe consequences for those affected

In different ways, all three companies have failed to live up to two fundamental human rights principles embodied in the UN Global Compact:

Principle 1

Businesses should support and respect the protection of internationally proclaimed human rights within their sphere of influence.

Principle 2

Businesses should ensure that their own operations are not complicit in human rights abuses.

The evidence presented in this briefing illustrates that Yahoo!, Microsoft and Google have disregarded to a large extent the effects of their operations on human rights, and in particular on Internet repression. They need to stop denying their culpability, acknowledge where their responsibilities lie, and begin to focus on solutions. The following recommendations indicate the concrete steps that these and other Internet companies can take to address the lack of freedom of expression in China and to avoid contributing to any further human rights abuses.

5. RECOMMENDATIONS FOR ACTION

Amnesty International calls on Yahoo!, Microsoft, Google and other Internet companies operating in China to:

1. **Publicly commit to honouring the freedom of expression provision** in the Chinese constitution and lobby for the release of all cyber-dissidents and journalists imprisoned solely for the peaceful and legitimate exercise of their freedom of expression.
2. **Be transparent about the filtering process** used by the company in China and around the world and make public what words and phrases are filtered and how these words are selected.
3. **Make publicly available all agreements** between the company and the Chinese government with implications for censorship of information and suppression of dissent.
4. **Exhaust all judicial remedies and appeals in China and internationally before complying with state directives** where these have human rights implications. Make known to the government the company's principled opposition to implementing any requests or directives which breach international human rights norms whenever such pressures are applied.
5. **Develop an explicit human rights policy** that states the company's support for the Universal Declaration of Human Rights and complies with the UN Norms for Business and the UN Global Compact's principle on avoiding complicity in human rights violations.
6. **Clarify to what extent human rights considerations are taken into account** in the processes and procedures that the company undertakes in deciding whether and how the company's values and reputation will be compromised if it assists governments to censor access to the Internet.
7. **Exercise leadership in promoting human rights in China** through lobbying the government for legislative and social reform in line with international human rights standards, through seeking clarification of the existing legal framework and through adopting business practices that encourage China to comply with its human rights obligations.
8. **Participate in and support the outcomes of a multi-stakeholder process** to develop a set of guidelines relating to the Internet and human rights issues, as well as mechanisms for their implementation and verification, as part of broader efforts to promote recognition of the body of human rights principles applicable to companies.

FOOTNOTES

- ¹ Amnesty International, *People's Republic of China: Human Rights Defenders at Risk*, ASA 17/002/2005; *People's Republic of China: The Olympic countdown – three years of human rights reform?*, ASA 17/021/2005; *People's Republic of China: Briefing on EU concerns regarding human rights in China*, ASA 17/027/2005. <http://web.amnesty.org/library/eng-chn/index>
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- ⁸ Avoiding complicity is one of 10 human rights principles set down in the UN Global Compact, an initiative of the UN Secretary General involving some 2000 companies and institutions. <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>
- ⁹ Article 19 of the International Covenant on Civil and Political Rights sets out the limits of permissible restrictions. http://www.unhchr.ch/html/menu3/b/a_ccpr.htm
- ¹⁰ World Summit on the Information Society. <http://www.itu.int/wsis/>
- ¹¹ The June 2005 report of the Working Group on Internet Governance offers as a working definition: Internet governance is the development and application by Governments, the private sector, civil society, in their respective roles, of shared principles, norms, rules, decision making procedures, and programmes that shape the evolution and use of the Internet.
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