

TESTIMONY OF MICHAEL CALLAHAN
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BEFORE THE SUBCOMMITTEES ON AFRICA, GLOBAL HUMAN RIGHTS AND
INTERNATIONAL OPERATIONS,
AND ASIA AND THE PACIFIC

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Chairmen Smith and Leach, Ranking Members Payne and Faleomavaega, and Members of the subcommittees, I am Michael Callahan, Senior Vice President, General Counsel and Secretary of Yahoo! Inc. Thank you very much for the opportunity to testify before you today.

I would like to make three fundamental points here today:

First, our principles. Since our founding in 1995, Yahoo! has been guided by beliefs deeply held by our founders and sustained by our employees. We believe the Internet can positively transform lives, societies, and economies. We believe the Internet is built on openness. We are committed to providing individuals with easy access to information. These beliefs apply in the United States. These beliefs also apply in China, where the Internet has grown exponentially over the past few years and has expanded opportunities for access to communications, commerce, and independent sources of information for more than 110 million Chinese citizens.

Second, the Shi Tao case. I will discuss this in more detail later in my testimony. The facts of the Shi Tao case are distressing to our company, our employees, and our leadership. Let me state our view clearly and without equivocation: 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.

Third, this hearing. We commend you, Mr. Chairmen, for holding this hearing. It allows these issues to be raised in a public forum and provides an opportunity for companies such as those appearing here today to ask for the assistance of the U.S. government to help us address these critical issues. While we absolutely believe companies have a responsibility to identify appropriate practices in each market in which they do business, we also think there is a vital role for government-to-government discussion of the larger issues involved.

These issues are larger than any one company, or any one industry. We all face the same struggle between American values and the laws we must obey. Yahoo! intends to be a leader in the discussion between U.S. companies and the U.S. government. We appeal to the U.S. government to do all it can to help us provide beneficial services to Chinese citizens lawfully and in a way consistent with our shared values.

The Impact of the Internet In China

Before discussing these issues in detail, allow me to clarify Yahoo!'s current role in China. In October 2005, Yahoo! formed a long-term strategic partnership in China with Alibaba.com, a Chinese company. Under the agreements, Yahoo! merged our Yahoo! China business with Alibaba.com.

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. The Alibaba.com management team runs the business; however, as a large equity investor, we have made clear our desire that Alibaba.com continue to apply rigorous standards in response to government demands for information about its users. I have personally discussed our views with senior management of Alibaba.com, as have other senior executives of Yahoo!.

Mr. Chairmen, we believe information is power. We also believe the Internet is a positive force in China. It has revolutionized information access, helps create more open societies, and helps accelerate the gradual evolution toward a more outward-looking Chinese society.

The Internet has grown exponentially in China in ways that have increased China's openness to the outside world. More than 110 million people in China use the Internet. A growing Chinese middle class is benefiting from improved communication, technology, and independent sources of information. Online search, a core Yahoo! China service, is used by 87% of the online population in China, with more than 400 million search queries taking place every day. This represents an increase of almost 1600% over just the last three years. Unlike virtually any medium that has preceded it, the Internet allows users to access the information they want when they want it.

The number of people communicating with each other over the Internet has also increased dramatically. The number of active mailboxes has grown by 88% to 166 million, and those using instant messaging has risen to 87 million, doubling in just three years.

Let me give you a couple of examples of the power of the Internet in China. In November 2002, a new respiratory illness developed in southern China. This illness spread to other areas of China and in Asia. Initially, state media did not report widely on the outbreak, limiting access to information on SARS in China. However, word spread quickly through channels on the Internet, alerting people in China and around the world of the severity of the epidemic. The Internet forced the Chinese government to be more transparent and to vigorously attack the problem.

Another example is currently highlighted on the Human Rights Watch website. Human Rights Watch, with which we have consulted on these issues, tells the compelling story of

how the Internet helped spread the word in China about the tragic death of a young college graduate named Sun Zhigang while in police custody. A storm of online protests led to the abolition of the law used to detain Mr. Sun. Human Rights Watch's website states, "[t]he Sun Zhigang case showed how Internet activists and journalists could mobilize an online uprising that produced real change."¹

Experts in China and the United States agree on the liberalizing impact of the Internet in China. Please note the comments of a Chinese Academy of Social Sciences researcher in the *New York Times* last week. This expert stated, "At first, people might have thought it [the Internet] would be as easy to control as traditional media, but now they realize that's not the case."²

Finally, I would commend to you a 2002 report by the well-respected RAND Corporation that made an even bolder conclusion. It concluded that the Internet has allowed dissidents on the mainland to communicate with each other with greater ease and rapidity than ever before.³

But even with these extraordinary benefits, there are severe challenges for any company operating in China, and particularly for those in the Internet, media, or telecommunications industries. This Committee correctly highlights the fundamental conflict between the extraordinary powers of the Internet to expand opportunities for communication and access to information with the obligations of companies doing business in China to comply with laws that may have consequences inconsistent with our values. This brings us to the case of Shi Tao.

The Facts Surrounding the Shi Tao Case

The Shi Tao case raises profound and troubling questions about basic human rights. Nevertheless, it is important to lay out the facts. When Yahoo! China in Beijing was required to provide information about the user, who we later learned was Shi Tao, we had no information about the nature of the investigation. Indeed, we were unaware of the particular facts surrounding the case until the news story emerged. 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. In many cases, Yahoo! does not know the real identity of individuals for whom governments request information, as very often our users subscribe to our services without using their real names.

¹ Human Rights Watch, "Chinese Protest Online: The Case of Sun Zhigang," located at <http://www.hrw.org/campaigns/china/beijing08/voices.htm>.

² Howard W. French, "Despite Web Crackdown, Prevailing Winds Are Free," *New York Times*, Feb. 9, 2006.

³ Michael S. Chase and James C. Mulvenon, *You've Got Dissent! Chinese Dissident Use of the Internet and Beijing's Counter-Strategies*, RAND Corporation monograph, 2002, page 3.

At the time the demand was made for information in this case, Yahoo! China was legally obligated to comply with the requirements of Chinese law enforcement. When we had operational control of Yahoo! China, we took steps to make clear our Beijing operation would honor such instructions only if they came through authorized law enforcement officers and only if the demand for information met rigorous standards establishing the legal validity of the demand.

When we receive a demand from law enforcement authorized under the law of the country in which we operate, we must comply. This is a real example of why this issue is bigger than any one company and any one industry. All companies must respond in the same way. When a foreign telecommunications company operating in the United States receives an order from U.S. law enforcement, it must comply. Failure to comply in China could have subjected Yahoo! China and its employees to criminal charges, including imprisonment. Ultimately, U.S. companies in China face a choice: comply with Chinese law, or leave.

Let me take this opportunity to correct inaccurate reports that Yahoo! Hong Kong gave information to the Chinese government. This is absolutely untrue. Yahoo! Hong Kong was not involved in any disclosure of information about Mr. Shi to the Chinese government. In this case, the Chinese government ordered Yahoo! China to provide user information, and Yahoo! China complied with Chinese law. To be clear -- 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.

Next Steps

Yahoo! continues to believe the continued presence and growth of the Internet in China empowers its citizens and will help advance Chinese society. The alternative would be for these services to leave China -- a move we believe would impede Chinese citizens' ability to communicate and access independent sources of information. But we recognize this cannot be a time for business as usual.

As part of our ongoing commitment to preserving the open availability of the Internet around the world, we are committing to 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 that 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.

Let me make one final comment about the role of the U.S. government. We urge the U.S. government to take a leadership role on a government-to-government basis. The Internet industry in the United States, including the companies appearing before you today, have changed the way the world communicates, searches for, discovers, and shares information. No other medium in history has the potential to effect such great change so rapidly. We operate businesses that transcend boundaries, in a world of countries and borders. The strength of this industry and the power of our user base is formidable to be sure. But, we cannot do it alone. We will do everything we can to advance these principles. Ultimately, the greatest leverage lies with the U.S. government.

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Chairmen Smith and Leach, Ranking Members Payne and Faleomavaega, and Members of the subcommittees, thank you for giving me the opportunity to appear before you. We welcome this chance to have a frank and open dialogue about this important issue. We are grateful for your willingness to understand the difficult challenges we face, and to help us as we work together to protect the ability of the citizens of the world to access communication, commerce, and independent sources of information. I would be happy to answer your questions.