



International Network for Economic, Social & Cultural Rights
Red Internacional para los Derechos Económicos, Sociales y Culturales
Réseau international pour les droits économiques, sociaux et culturels

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*ESCR-Net is a project of
the Tides Center*

Jerry Yang and David Filo
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13 March 2006

Dear Jerry Yang and David Filo,

We are very concerned about allegations that Yahoo! has been complicit in human rights violations. In September 2005, Yahoo! allegedly assisted the government of the People's Republic of China by providing user information that identified and led to the 10-year imprisonment of the journalist Shi Tao. Secondly, Yahoo! has allegedly accepted the requirements of the Chinese government to censor information by blocking access via its search engine to websites with unapproved political content. While we understand that Yahoo! will seek access to new markets and profit, Yahoo! has a responsibility to respect human rights and to avoid complicity with violations of human rights as it does so.

Since 2003, the International Network for Economic, Social and Cultural Rights (ESCR-Net) has utilized Yahoo! Groups as a primary means of communication and information exchange between its members and participants. We currently facilitate 14 groups hosted by Yahoo! Groups, with participation on different listservs ranging from 15 to over 1,450 participants. Although we have considered various options for our discussion lists in the past, we have chosen to continue utilizing Yahoo! Groups due to their accessibility and functionality. We feel that our use of the services offered by Yahoo! requires us to raise these concerns in integrity with our commitment to promoting and ensuring human rights for all persons, a commitment which we hope you also share. In examining Yahoo's 'Core Values,' we were encouraged by the following statement:

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.

Ultimately, we hope that you will take immediate steps to remedy past actions that may have undermined human rights and to avoid any future complicity in human rights violations. In particular, we support the demands of Amnesty International, calling upon Yahoo! to:

- Use its influence to secure Shi Tao's release
- Stop any actions that could undermine human rights in any country in which you operate
- Take immediate steps to ensure that all your units – the parent corporation and subsidiaries – uphold human rights responsibilities for companies, as outlined by the UN Norms for Business
- Develop an explicit human rights policy, ensuring that it complies with the UN Norms for Business.

Similarly, we are concerned by more recent allegations that Yahoo! also provided information that contributed to the imprisonment of Li Zhi, and we call upon Yahoo! to also use its influence to secure his release. We eagerly await your positive response, in hopes that we can continue to utilize the services of Yahoo! in good conscience.

Responsibility for Human Rights

Companies have a responsibility to protect and promote human rights within their sphere of influence, particularly when national laws undermine basic human rights recognized in international law or when governments are unwilling or unable to protect human rights. The *UN Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights (UN Norms)*, drawn primarily from existing human rights standards like the *Universal Declaration of Human Rights (UDHR; 1948)*, provide a comprehensive, common standard of the human rights responsibilities of business. The UDHR which calls on ‘every organ of society’ to respect human rights, was codified in the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights (ICCPR)*. China has signed the ICCPR, expressing its intent to uphold Article 19, guaranteeing ‘the right to freedom of expression,’ including ‘freedom to seek, receive, and impart information and ideas;’ and Article 17, guaranteeing the right to privacy. China has ‘the primary responsibility to promote, secure the fulfillment of, respect, ensure respect of and protect human rights’ within the country. However, reflecting growing public expectations, consistent with the UDHR, and as stated in Article 1 of the UN Norms, “Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups.” We are very concerned that Yahoo! has failed to fully consider its human rights responsibilities, potentially becoming complicit in human rights violations. In this respect, we encourage you to review the recent letter (2 February 2006) and ongoing campaign of the International Federation for Human Rights (FIDH), a Member of ESCR-Net; their campaign calls on Yahoo! and other businesses investing in China to “Keep Your Eyes Open/Support the UN Norms.” Based on media reports over the past year (as archived by the Business and Human Rights Resource Centre) and on research undertaken by Amnesty International and Reporters Without Borders, our specific concerns are outlined below.

Specific Human Rights Concerns

We understand, based on now widely publicized accounts of this situation, that Shi Tao received a ten-year prison term, on 27 April 2005, for sending information about an internal government directive—which allegedly provided guidelines to Chinese journalists for reporting during the 15th anniversary of the Tiananmen Square crackdown—through his Yahoo! email account to a website based in the United States. According to the court transcript of the Changsha Intermediate People’s Court of Hunan Province obtained by Amnesty International, evidence from Yahoo’s local subsidiary (Yahoo! China) provided account-holder information that identified Shi Tao. We affirm the position of Amnesty International and other organizations that Shi Tao is a prisoner of conscience, imprisoned for peacefully exercising his right to freedom of expression and opinion. Echoing the comments of ESCR-Net Members, Nick Howen of the International Commission of Jurists and Mary Robinson of the Ethical Globalization Initiative, we are therefore deeply troubled by the response of Yahoo! spokesperson Mary Osako on 13 September 2005, stating: “Just like any other global company, Yahoo! must ensure that its local country sites must operate within the laws, regulations and customs of the country in which they are based.” (This statement was given to the Business and Human Rights Resource Centre in response to several articles alleging that the company had provided information to Chinese authorities that assisted in identifying and convicting journalist Shi Tao.) In response, Nick Howen succinctly stated: “It is clear that national laws that violate international human rights standards are not acceptable under international law....Just like any other global company, if Yahoo! claims to be socially responsible and adhering to the most basic human rights, the company should ensure that its actions respect international law and standards.” Furthermore, the Constitution of the People’s Republic of China actually guarantees freedom of speech and press (Article 35) and some level of privacy of correspondence (Article 40), yet there has been no indication that Yahoo! used its position to question Chinese government policy/officials or to utilize the Chinese courts. Unfortunately, our concern recently deepened regarding Yahoo’s alleged cooperation with Chinese government officials in actions that violated human rights. According to a press release from Reporters Without Borders on 9 February 2006, Yahoo! also allegedly provided electronic records that led to the imprisonment of Li Zhi in 2003, for ‘inciting subversion’ by criticizing the corruption of local officials in online discussion groups and articles.

Secondly, Yahoo! has accepted the requirements of the Chinese government to censor information by blocking access via its search engine to websites with unapproved political content. As Tom

Malinowski of Human Rights Watch testified before the US Congressional Human Rights Caucus on 1 February 2006:

In mid-2002, Yahoo! voluntarily signed China's "Public Pledge on Self-discipline for the Chinese Internet Industry." Signing the vaguely worded pledge, sponsored by the government-affiliated Internet Society of China, required that Yahoo! "[r]efrain from producing, posting or disseminating harmful information that may jeopardize state security and disrupt social stability, contravene laws and regulations and spread superstition and obscenity," that it "monitor the information publicized by users on websites according to law and remove the harmful information promptly," and "[r]efrain from establishing links to Web sites that contain harmful information so as to ensure that the content of network information is lawful and healthy." Definitions of key terms were not provided.//Human Rights Watch warned at the time that Yahoo! was in danger of becoming an "information gatekeeper." We tried to persuade Yahoo! that it should bring industry leaders together to resist Chinese blandishments and to remain information gateways. Nothing came of the initiative. Rather, during the past three-and-a-half years, as competition among global Internet companies sharpened, China was able to capitalize on Yahoo's decision to sign on to censorship.

Due to recent media coverage, we have become aware of this earlier decision by Yahoo!, which has seemingly led the company to become complicit in violations of international human rights law. As stated above, we do not believe that adherence to Chinese national law justifies complicity in violating human rights, particularly Article 19 of the ICCPR and the UDHR. Similarly, Article 12 of the UN Norms states that corporations shall respect and contribute to the realization of human rights, including freedom of opinion and expression, and 'shall refrain from actions which obstruct or impede the realization of those rights.'

While we expect businesses to pursue new markets and opportunities for profit, we are deeply concerned that Yahoo! may have done so in disregard of its human rights responsibilities. We are troubled by the recent response of Michael Callahan, Senior Vice President and General Counsel of Yahoo!, to Amnesty International's letter on 27 January 2006. Mr. Callahan stated: "The choice in China or other countries is not whether to comply with law enforcement demands for information. Rather, the choice is whether or not to remain in a country." Once again, we would emphasize that Yahoo! has the ability to utilize courts and other measures to challenge demands that endanger human rights. If these challenges fail, leaving a country, rather than becoming complicit in ongoing human rights violations, may be the best choice. If Yahoo! united with other competitors, such as Google and Microsoft, in rejecting censorship and violations of freedom of expression and privacy, China or any other country might be forced to reconsider laws and policies that violate basic human rights.

On a final note, we acknowledge the press release 'Yahoo!: Our Beliefs as a Global Internet Company,' which coincided with Michael Callahan's testimony on behalf of Yahoo! before the US House Subcommittee on Africa, Global Human Rights and International Operations on 15 February 2006, following Yahoo's decision not to appear before the US Congressional Human Rights Caucus two weeks earlier. Unfortunately, neither the press release nor Yahoo's testimony indicates that the company has seriously considered its human rights responsibilities. While the press release speaks of a commitment to collectively 'explore policies to guide industry practices' and to 'ongoing policy dialogue with governments,' the press release also reiterates commitments to comply with government requests for information and to government requests to restrict search results, when these requests are made under applicable laws. Instead of considering the company's human rights responsibilities or those of the countries in which the company operates, Yahoo! states: "We recognize each country enacts its own laws in accordance with its own local norms and mores, and we must comply with applicable laws." However, obedience to unjust local laws—even if justified by those in power as local norms—does not absolve companies of responsibility for complicity with human rights violations.

Expected Steps to Respect Human Rights and Avoid Complicity in Ongoing Violations

As stated above, we support the demands of Amnesty International, calling upon Yahoo! to:

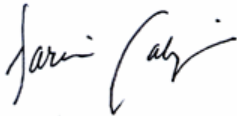
- Use its influence to secure Shi Tao's release
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- Develop an explicit human rights policy, ensuring that it complies with the UN Norms for Business.

Similarly, we are concerned by more recent allegations that Yahoo! also provided information that contributed to the imprisonment of Li Zhi, and we call upon Yahoo! to also use its influence to secure his release.

We hope that you will seriously consider and ultimately undertake these actions, demonstrating Yahoo's commitment to human rights. We look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daria Caliguire', written in a cursive style.

Daria Caliguire
Director of the ESCR-Net Secretariat
International Network for Economic, Social and Cultural Rights (ESCR-Net)