



SOFTWARE COMPANIES & FREEDOM OF EXPRESSION IN CHINA. A TEST FOR CORPORATE SOCIAL RESPONSIBILITY?

The Vigeo Group assesses the degree to which companies and public corporations take into account environmental, social, societal and corporate governance objectives, which constitute risk factors for them in the definition and implementation of their strategy and policies.

Case description : Google willing to cease censoring in China

Google's recent problems in China after a cyber attack have a long history. A short overview:

On September 2002, 'The Register' announced that Google had a problem that left users in China unable to access its search engine. It appeared that Chinese authorities had blocked access in a bid to crackdown on access to material – such as politics - judged as subversive by the Chinese authorities.¹ On September 2002, blocking by Chinese authorities of the Internet search engine Google was suddenly lifted. Another new censorship technology remained in place. Users have begun complaining of an increase in selective blocking -- being able to visit Web sites but not being able to see specific articles or other content of a politically sensitive nature. An example of China's so-called Great Fire Wall.²

On April 2003, Sina.com, one of the mainland China most popular Websites, joined about 200 Internet portals in a government-backed search engine alliance which challenges global giants search engines such as Google. The alliance denied it was part of a government move to replace Google. A spokesman said the timing of Google's access problems and the launch of the research alliance "was a coincidence".³

On January 2006, Google has claimed that some censorship is necessary in order to keep the Chinese government from blocking Google entirely, as occurred in 2002. Google agreed to censor material about human rights, Tibet and other sensitive topics. The company claimed it did not plan to give the government information about users who search for blocked content, and would inform users that content has been restricted if they attempt to search for it. As of 2009, Google was the only major China-based search engine to explicitly inform the user when search results are blocked or hidden.⁴

On January, 2010, Google declared to have been targeted by attackers willing to access illegally Google's servers in an attempt to access information about Chinese dissidents. Google claimed to have evidence to suggest that a primary goal of the attackers was accessing the Gmail (Google mail service) accounts of Chinese human rights activists. As part of Google's investigation but independent of this last attack on Google, the company has discovered that the accounts of dozens of U.S.-, China- and

¹ http://www.theregister.co.uk/2002/09/04/google_china_work_to_unblock/

² <http://www.foxnews.com/story/0,2933,62859,00.html>

³ <http://www.zdnetasia.com/news/hardware/0,39042972,39126941,00.htm>

⁴ <http://www.msnbc.msn.com/id/11012756/>

Europe-based Gmail users who are advocates of human rights in China appear to have been routinely accessed by third parties.⁵

In response to these events, Google announced their intention to cease censoring results on google.cn. The company declared to stay in China, but acknowledged that discontinuing the censorship agreed in 2006 on the terms desired by the Chinese government might cause the closure of google.cn and subsequently its China offices.⁶

Despite early reports suggesting Google had lifted filters on certain search results, the company insists it has made zero changes to its Chinese search engine and that it remains in dialogue with Beijing.

China and the limits on freedom of expression

Freedom of expression is recognized as a fundamental right under Article 19 of the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights (ICCPR). Although the People's Republic of China (PRC) signed this covenant in 1998 (but not has ratified it yet), freedom of expression is still a very sensitive issue. In that context, if the authorities see the Internet as a vital tool of economic modernization and maintenance of their competitiveness on the international stage, they also considered it as a potential threat to the stability of the regime⁷.

In fact, the state-party does not tolerate any opposition and tries to lock the information relating to sensitive topics such as riots in Tibet or Xinjiang, the Falun Gong, political opponents who signed the Charter in 2008 or even simple criticisms regarding the management of social and economical issues. Foreign sites such as Facebook, YouTube and Twitter, blocked by censors in the run-up to the 60th anniversary of Communist Party rule on October 1st 2009, remain inaccessible to most Chinese users. Several prominent critics of the State who used the Internet to spread their message have been detained or imprisoned.

Thus, in a country with 384 million Internet users and 160 million bloggers⁸, the development and use of the Internet are subject to a strict regulatory and legal framework, which sets retaliation and fairly heavy penalties against offenders. China also requires methods to control and censor the Internet, undermining freedom of expression and information, by imposing technical filtering and blocking of websites, bulletin boards and search engines. For instance, in September 2009, Chinese authorities forced all network providers to install the "Blue Dam" web filtering software⁹ two months after they backed down on the Green Dam¹⁰, another monitoring software that was supposed to prevent children from viewing pornography and other harmful content. Media report that, since June 2009, more than 700 sites¹¹ have been closed, and many portals that harboured blogs and allowed to share photos, videos and other content, have lost their license.

If Internet brings new challenges to China's national security and social stability, it also brings strong challenges to freedom of expression for the information and software industry.

⁵ <http://googleblog.blogspot.com/2010/01/new-approach-to-china.html>

<http://googleblog.blogspot.com/2006/01/google-in-china.html>

⁶ <http://www.google.com/hostednews/afp/article/ALeqM5jg-C15f8zBR5VL9NReLeITHLOICQ>

⁷ Cf Candice Tran Dai, « L'Internet en République Populaire de Chine : l'idée d'un dilemme contrôle politique versus modernisation économique est-elle pertinente », *Note de la Fondation pour la Recherche stratégique*, 12 octobre 2006

⁸ Arnaud de la Grange, « Comment la Chine contrôle Internet », *Le Figaro*, 21 Janvier 2010

⁹ <http://www.theepochtimes.com/n2/content/view/22592/>

¹⁰ <http://www.cnn.com/2009/TECH/07/01/china.filtering.software/index.html>

¹¹ Arnaud de la Grange, « Comment la Chine contrôle Internet », *Le Figaro*, 21 Janvier 2010

The Software & IT Services sector and freedom of expression

The global Software & IT Services sector consists of a few very big multinational companies (mostly American) and a large number of small/medium-sized companies with individualistic employment behaviours. In recent years, North America stood for around 50% of the world wide market, Europe for 30% and Asia – a rapidly emerging market – for 20%.

The prevention of violations of Human Rights, and in particular the freedom of expression, is an important issue for Software & IT Services companies that export « dual-use » technology, which might be used by repressive regimes for internet censorship and digital surveillance. In recent years companies such as Yahoo, Google and Microsoft have all faced controversies related to their operations in China.¹² Amnesty International has pointed out the constitution of a new class of prisoners, « Internet prisoners », who have been convicted for promoting for example democracy on the internet.

In October 2008, a coalition of internet companies, including Microsoft, Google and Yahoo, NGOs, academics and investors, launched the Global Network Initiative.¹³ The initiative includes a number of principles on freedom of expression and privacy, supported by specific implementation commitments and a framework for accountability and learning. While most humanitarian organisations and NGOs welcomed the initiative as a first step towards ICT companies' recognition of the importance of freedom of expression while operating in Internet-restricting countries, some of them (Amnesty International, Reporters without borders...) have chosen not to endorse the initiative. These organisations state that the principles do not go far enough to provide a sufficient protection to freedom of expression on the Internet.¹⁴



What can we expect from companies doing business in China?

There is a real dilemma for companies that have to respect fundamental rights in a country that not effectively guarantees these rights. Foreign companies in China face a difficult political context. In addition to a pervasive economic nationalism and attacks from hackers (industrial espionage), foreign

¹² For example: "Google does not censor: take action to defend freedom of information", Amnesty International, July 20, 2006,:

<http://www.amnesty.org/library/asset/POL30/030/2006/en/e72ec4c9-d410-11dd-8743-d305bea2b2c7/pol300302006en.pdf>

¹³ www.globalnetworkinitiative.org/

¹⁴ "Amnesty criticises Global Network Initiative for online freedom of speech", The Guardian, October 30 2008:

<http://www.guardian.co.uk/technology/2008/oct/30/amnesty-global-network-initiative> ; <http://www.rsf.org/Why-Reporters-Without-Borders-is.html>

companies are facing many legal and regulatory constraints, as well as web filtering software, by a country that wants to control any information that could constitute a potential threat.

Following Chinese authorities order to install Green Dam software on computers, with the support of U.S. trade officials, computer-makers including Dell and Hewlett-Packard threatened to bring the matter to the World Trade Organization¹⁵. Other computer manufactures, including Sony and Acer, say they are bound to comply with the Chinese policy¹⁶.

However, despite legal constraints and the pressure companies face in China, users are entitled to expect from software and telecommunication companies a responsible attitude on the Chinese market. In Vigeo's opinion, before their entrance on the market, companies have to make an assessment of the risks related to violations of social rights and civil rights, more especially fundamental rights recognized by the international community and the United Nations, such as freedom of expression. They must be aware of laws and regulations in process before deciding to enter this market and avoid complicity in human rights violations.

According to John Ruggie, the UN Special Representative of Secretary General on the issue of human rights and transnational corporations and other business enterprises, a sustainable progress could be achieved by the respect of what he calls "the protect, respect, remedy" framework. This framework is based on three core principles¹⁷: 1/ the State duty to protect against human rights abuses by third parties, including business; 2/ the corporate responsibility to respect human rights; and 3/ the need for a more effective access to remedies. The main idea is that companies have to not to infringe or do harm to the rights of others. John Ruggie adds that "*the corporate responsibility to respect exists independently of States' duties*" and that "*doing no harm*" is not merely a passive responsibility for firms but may entail positive steps" in the implementation of their policies. Therefore, the companies' social responsibility to respect human rights includes avoiding complicity. Complicity refers to indirect involvement by companies in human rights abuses – where the actual harm (in this case the Chinese state censorship and violation of freedom of expression) is committed by another party – including governments.

On Feb, 2010, US Democratic senator Dick Durbin asked 30 leading companies, including Amazon, Apple, Facebook, IBM, Nokia and Twitter, for information about their human rights practices in China after Google's decision towards the recent attack of its servers. Durbin, chairman of the Judiciary Subcommittee on Human Rights and the Law, also announced plans to hold a hearing on global Internet freedom. The US senator declared: "*I commend Google for coming to the conclusion that cooperating with the 'Great Firewall' of China is inconsistent with their human rights responsibilities, Google sets a strong example in standing up to the Chinese government's continued failure to respect the fundamental human rights of free expression and privacy.*" Durbin's letter asked each company for details of its business in China and to outline its "future plans for protecting human rights, including freedom of expression and privacy, in China." Companies were also asked to describe specific measures being taken to "ensure that your products/services do not facilitate human rights abuses by the Chinese government."¹⁸

According to Vigeo's rating framework, companies have to be transparent towards all their stakeholders (employees, end-users, customers...) and make visible their commitment for the respect of fundamental human rights (leadership). They must be able to assume their responsibility when settled in a country where human rights violations are a potential risk and explain how they will

¹⁵ <http://www.cnn.com/2009/TECH/07/01/china.filtering.software/index.html>

¹⁶ ibid

¹⁷ John Ruggie, "Promotion and Protection off all human rights, civil, political, economic, social and cultural rights, including the right to development", *Human Rights Council*, April 7, 2008

¹⁸ <http://chinadigitaltimes.net/2010/02/us-senator-asks-companies-about-china-rights-practices/>

manage these risks. Companies should implement due diligence processes, meaning that they “*not only ensure compliance with national laws but also manage the risk of human rights harm with a view to avoiding it*”¹⁹. They have to report on how they work to minimize potential abuses. Finally, regarding the right of expression on the Internet, companies should inform users in a clear and accessible way about laws and regulations in process. They should specify when they are not able to guarantee the confidentiality of users’ identity when making comments on various blogs and forums on the Internet. All these measures should be part of the company’s overall risk management processes.

Risks & Opportunities

To get a license to operate in China, Google in 2006 agreed to restrict access to information for users in China at great cost to the company’s local business and international reputation.²⁰ Google’s global business is based on open networks, free information flows, and the company’s perceived right to manage those flows. That right in turn is a function of Google’s credibility and trustworthiness. If Google loses its customers’ trust, it has no business – anywhere.

Outside China, Google’s move drew a positive response from audiences eager to see Google act in line with its ‘don’t be evil’ positioning. This pledge has faced considerable skepticism in recent months, thanks to the company’s actions on such issues as privacy, copyright and competition.

‘By and large it’s a positive for its reputation back home in the US,’ said one source at a Shanghai-based international PR agency. *‘For other foreign internet companies, it is pressure because it reawakens an issue most of them hoped would go away.’*

But according to other analysts, *‘Google made an original mistake in violating its core principles and acceding to censorship demands in China,’* while *‘Now it is making an additional mistake by publicly repudiating Chinese Government policy. It could have alternatively simply stopped or phased out self-censorship’*.²¹

Google’s reputation among these industry watchers and users could be hurt if the company is slow to follow through on its threat to leave China unless the government there relaxes censorship rules.²²

In Vigeo’s opinion, aside of its reputation (social acceptability and license to operate), Google – and by extension other software companies active in China – is also facing other risks. Its human capital might be at risk if its employees lose confidence in the company’s values or corporate culture, eventually resulting in problems for the company to retain its highly skilled employees and to attract new talents. If not handled in an appropriate way, this conflict could also lead to operational (withdrawal or removal from the Chinese market) and legal risks (legal proceedings, fines) for the company. The example of the corruption case of the 4 Rio Tinto employees detained in China shows also the risks in terms of political tension between the host country and China and the commercial impact this might have for all parties involved.

On the other hand, when Google achieves to deal with this case in a “responsible” (in line with its corporate culture and company values) and transparent way (e.g. by making clear its commitments to fundamental human rights and act accordingly), it can turn risks – if well managed - into opportunities.

¹⁹ Ibid p.17-19

²⁰ http://www.businessweek.com/globalbiz/content/jan2010/gb20100115_542426_page_2.htm

²¹ <http://www.prweek.com/uk/news/977936/Will-China-Googles-big-mistake/>

²² <http://news.idg.no/cw/art.cfm?id=76F93BDF-1A64-67EA-E42C288E9F30545B>

Conclusion

In recent years several companies in the Software & IT services sector (as well as in other sectors) have initiated a more strategic and proactive approach to their government affairs, public relations, and corporate social responsibility strategies in China. The Google case – and by extension the case of most companies doing business in countries where the exposure to human rights risks is high – is a good illustration of Corporate Social Responsibility as an art of finding a balance between commercial and business interests, stakeholder expectations, a company's corporate culture and values and different sustainability drivers.

Vigeo is convinced that social responsibility is essential in all company strategies, no matter if the company is large or small, and regardless of its activity and country (-ies) of operation.

Insofar as it serves objectives whose legitimacy is recognised and operates in a rational manner, social responsibility mitigates the risks faced by organisations, strengthens performance and enables positive differentiation. The Google case in China is a real challenge for all software & IT services companies and an opportunity for the company to show leadership in the implementation of corporate social responsibility principles.

24 February 2010

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