

SELLING SECURITY SYSTEMS TO CHINA: RISKY BUSINESS

By R. Scott Greathead

American companies working in China have a lot to gain—and a lot to lose. The CEO of World Monitors Inc., suggests that security and technology companies should consider the post-Olympic uses of the security equipment they sell, and whether it will be used to abuse human rights.

Globalization is the bane of Lou Dobbs and other advocates for American workers, who see it as a root cause of the declining U.S. economy: the jobs of American workers being exported to China and other low wage countries to manufacture the apparel, footwear, toys, and electronic products that other hardworking Americans buy at Wal-Mart.

But as every global business leader knows, there is another side of globalization that offers hope for the American economy: China's vast market for the products and services of U.S. companies. And no sector of U.S. business is rushing faster to enter this market than U.S. companies that design and install high-tech and public security systems. As the *New York Times* reported on December 28, 2007:

In preparation for the Beijing Olympics and a series of other international events, some American companies are helping the Chinese government design and install one of the most comprehensive high-tech public surveillance systems in the world.¹

This is potentially a very big business opportunity, one that has grown with the advent of the 2008 Olympic Games in Beijing, which will be a major test of China's security systems. According to the *Times*, Olympics-related security spending increased in the year following China's decision to establish a nationwide "safe cities" program, which would create surveillance camera networks in more than 600 cities. One U.S. company has

been hired by the city of Guangzhou to create a 2,000-camera network in a single neighborhood as a first step toward a citywide network of 250,000 cameras, and China's security ministry estimates that as many as 250,000 to 300,000 surveillance cameras will be needed in large cities like Beijing and Shanghai, and 1,000 to 5,000 cameras for small towns and rural counties.

Human rights organizations are critical of this business, and many assert it violates the intent of laws Congress enacted after the June 4, 1989, Tiananmen Square massacre barring the export to China of certain types of "crime control" equipment that could be used on Chinese dissidents. But the Commerce Department told the *Times* the sales did not violate the sanctions, and company representatives said "they have done everything necessary to comply with relevant laws."² Besides, industry defenders say, this is life in the modern world—New York City is installing surveillance cameras, and London has as many as 500,000 in place, with sophisticated computer monitoring systems, as any fan of Helen Mirren's "Prime Suspect" TV mystery series will tell you.

There is one problem with this rosy scenario: China is not Merrie England. For all of its economic progress and new wealth, China remains one of the world's most repressive states, as we were reminded in January by the detention of internet blogger Hu Jia, and the house arrest of his wife and three-month-old daughter. His crime? Blogging online about peasant protests and human rights cases. In London and New York, victims of an overzealous police have the protection of the rule of law, and independent judges and lawyers. In China, they do not.

Everyone knows this, and prudent companies will assess their risks. They know that there are lawyers

already thinking about ways to hold a company liable for supplying China with security technology it uses to violate the fundamental rights of Chinese citizens. How could such a claim be made? With imagination, and U.S. laws already on the books, just as the 200-year-old Alien Tort Claims Act has been used to bring actions in U.S. courts against U.S. companies allegedly complicit in violations of the law of nations that injure people in distant places like Indonesia or Nigeria or Burma.

It is not difficult to imagine an action brought on behalf of Chinese citizens under some state's product liability laws, which can make a manufacturer liable for negligence that causes injury to those who consume or use the product, or to third parties. Eighty years ago in the famous case of *Palsgraf v. The Long Island Railroad Company*, Judge Benjamin Cardozo wrote that negligence is actionable if "it involves the invasion of a legally protected interest, the violation of a right." The rights at issue here include the rights of free expression and association, and other rights set forth in the United Nations Covenant on Civil and Political Rights, which China has signed (but not yet ratified).

The twin pillars of a products liability case are proximate cause and foreseeability—did the use or misuse of the product proximately cause the damage, and would this have been foreseen by a reasonable person standing in the shoes of the manufacturer or supplier?

The fundamental question that a company selling sophisticated "crime-control" technology and equipment to the Chinese government must ask itself is,

"How will my products be used?" Is it foreseeable that the sophisticated eavesdropping equipment you just sold to the cities of Shenzhen or Zhuhai will be used to listen in on bloggers at the Internet cafes that are proliferating in those cities? Will your surveillance cameras and listening devices be spying on meetings of reformers or dissidents or other perceived critics of the government? Will your products and know-how be used to persecute and oppress people like Hu Jia, who are guilty of nothing more than communicating information that is critical of the government?

Export controls aside, companies should consider the potential legal risks of selling sophisticated "crime control" equipment and technology to a government like China's that they know could use their products to abuse people and wrongfully deprive them of their fundamental rights.

And if the lawyers don't come after you, trust me, Lou Dobbs will.

Notes

For additional information on technology and surveillance sales to China, see Human Rights in China, "Incorporating Responsibility 2008 Campaign: Security in Beijing 2008 and Beyond," *China Rights Forum 2* (2006), http://hrichina.org/public/PDFs/CRF.2.2006/CRF-2006-2_Security.pdf.

1. K. Bradsher, "China Finds American Allies for Security," *New York Times*, December 28, 2007.
2. *Ibid.*