

A HISTORY OF THE “YAHOO! INCIDENT”

By Hu Kunming

The Yahoo! incident is a warning to American companies doing business in China: they can no longer just point to commercial interests as an excuse for their actions, even if their actions are ordered by Chinese authorities.

American Internet giant Yahoo! Inc. officially announced on November 13, 2007, that it had settled out of court with the family members of Chinese Internet dissidents Shi Tao and Wang Xiaoning. The media and various experts have pointed out that in choosing to settle, Yahoo!’s position has undergone dramatic change. Since Shi Tao’s arrest in 2004, Yahoo!, despite pressure from the international and mainland Chinese public as well as from international human rights organizations, has continuously stressed that it had no alternative but to comply with legal requirements set by the Chinese authorities.

On the eve of the 2004 anniversary of June Fourth, Shi Tao, a reporter formerly with the Hunan-based *Contemporary Business News*, emailed a document to the foreign publication *Democracy Forum*. The contents of the document were Chinese government plans to prevent democracy activists from returning to China to engage in commemorative activities during the June Fourth period. It also included orders to the Chinese media to avoid any mention of the 15th anniversary of June Fourth. Not long afterwards, Shi Tao was arrested by the authorities, and in 2005, he was sentenced to ten years in prison for the crime of “leaking state secrets.” Prior to the Shi Tao case, Beijing Internet writer Wang Xiaoning had been arrested in 2002 and sentenced in 2003 to ten years in prison for “inciting subversion.” In both cases, email addresses and electronic records provided by Yahoo! served as important evidence leading to their convictions.

Since providing the Chinese government with user information that led to the imprisonment of Shi Tao and Wang Xiaoning, Yahoo! has faced moral condem-

nation from all sides, as well as tremendous pressure from the media. However, the company has consistently maintained that doing business in China means abiding by Chinese laws, and therefore, that it had no choice but to provide information from its database to China’s national security departments and police. Right up to February 2006, Michael Callahan, general counsel for Yahoo! Inc., maintained in testimony before the United States Congress that when Yahoo! provided the Chinese authorities with Shi Tao’s personal data, the intention of the Chinese side in obtaining this data was not clear to the company. He claimed that Yahoo! provided the information because its operations in China must comply with Chinese law.

In April 2007, the families of Shi Tao and Wang Xiaoning, represented by lawyers in the U.S., filed suit against Yahoo! Inc. for human rights violations. Initially, Yahoo!’s approach was to maintain denial of any wrongdoing. It was only after the Dui Hua Foundation, a human rights organization based in San Francisco, published a document from the Chinese authorities that Yahoo! began to soften its stance. The document said that the authorities were seeking information on a Yahoo! user, claiming that this user was suspected of “illegally providing state secrets overseas,” a common allegation leveled against dissidents by the Chinese authorities.

On November 6, 2007, the United States House Committee on Foreign Affairs held another hearing on the Shi Tao case. Members of the United States Congress had sharply criticized Yahoo!, accusing it of cooperating with a government that infringes on its citizens’ freedom of speech. Tom Lantos, then-chairman of the committee, said angrily: “[W]hile technologically and financially you are giants, morally you are pygmies.”¹ He appealed to Yahoo!’s executives to apologize to the United States Congress and the American people. Subsequently, Yahoo!’s CEO Jerry Yang and general counsel



Members of Amnesty International protest in front of China's embassy in Berlin on August 24, 2007. AI handed over more than 15,000 signatures demanding the release of jailed Chinese journalist Shi Tao. Photo credits: REUTERS/Tobias Schwarz (GERMANY)

Michael Callahan made personal apologies to Shi Tao's mother, Gao Qinsheng, and to Wang Xiaoning's wife, Yu Ling, both of whom were present at the hearing. After the hearing, Jerry Yang also met with other members of Shi Tao's family and expressed willingness to reach a settlement on the case.

On November 13, 2007, lawyers for both the plaintiff and the defense submitted an out of court settlement agreement to the San Francisco court. In a written statement released the same day, Jerry Yang stated, "After meeting with the families, it was clear to me what we had to do to make this right for them, for Yahoo!, and for the future."² Yang also indicated that Yahoo! would establish a "human rights fund" to provide humanitarian assistance and legal aid to dissidents who are imprisoned for expressing their views on the Internet.

Gao Qinsheng and Yu Ling's lawyer, Morton Sklar, said that Yahoo!'s determination to fight the lawsuits had diminished following strong condemnation from the United States Congress and accusations that officers of the company were responsible for misleading people. Sklar also warned that if U.S. companies do not change their business practices in China as soon as possible, "They will have to recognize they have to do more than just follow the law. They can negotiate with the host countries and not be complicit in torture."³

Finally, it should be mentioned that in the November 6 hearing, U.S. Congressman Christopher Smith stated that Yahoo! is not the only company responsible; Microsoft and others share in this responsibility as well. Smith warned that when the Olympic Games open in Beijing, if "Shi Tao is still in prison, this will be our shame. We need to redouble our efforts in order to see real change take place." Chairman of the California-based Conscience Foundation, Chen Shizhong, added that the Yahoo! incident was a warning to American companies doing business in China—a warning that they could no longer point to commercial interests

as an excuse for their actions, even if their actions were ordered by Chinese authorities.

Translated by J. Latourelle

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Notes

1. Transcripts of the hearing are available online at: U.S. House Committee for Foreign Affairs, "Yahoo! Inc.'s Provision of False Information to Congress," November 6, 2007, <http://foreignaffairs.house.gov/110/38820.pdf>. A webcast of the hearing is available at: http://international.edgeboss.net/real/international/fc_11-6-07.smi.
2. "Yahoo settles lawsuit by families of Chinese journalists," Associated Press, November 14, 2007, <http://www.ihf.com/articles/2007/11/14/business/yahoo.php>.
3. Paul Elias, "Yahoo settles lawsuit over jailed Chinese journalists," Associated Press, November 13, 2007, <http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2007/11/13/financial/f090908S00.DTL>.