

**“The Internet in China: A Tool for Freedom or Suppression?”
Committee on International Relations, Subcommittee on Global Human
Rights, Africa and International Operations**

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Mr. Chairman, thank you for inviting Human Rights in China (HRIC) to testify at this important and timely hearing.

As an international Chinese human rights non-governmental organization (NGO), HRIC has been actively engaged in individual case advocacy, education, and research for almost seventeen years. Over the past three years, HRIC has also accumulated experience in successfully challenging China’s state-of-the-art censorship and surveillance system through our E-Activism pilot project. We welcome this opportunity to share our insights and recommendations.

NGOs, governments, and the business community share stated norms and values of transparency, openness, and fairness. In some ways, human rights NGOs and IT companies are in the same business, the information business, the business of generating, promoting, and disseminating information—because we share the belief that knowledge *is* power. The Chinese propaganda, social and police apparatus understands this very well.

The Internet and technology—human tools with dual use

In China the Internet and technology are tools that can empower Chinese activists, journalists, rights defenders, intellectuals, and grassroots groups; they are also powerful tools of censorship, surveillance, and social and political control wielded by an authoritarian regime. From June 1998 to June 2005, the number of Internet users in mainland China grew from 1.17 million to 103 million (China Internet Network Information Center, *16th Statistical Survey Report on the Internet Development in China*, July 2005, 50.) and according to the 17th CNNIC survey (<http://www.cnnic.net.cn/images/2006/download/2006011701.pdf>), now stands at around 110 million.

The rapid growth of online users also reflects a sharp digital divide: 91.69 million Internet users are in Chinese cities, accounting for 16.9 percent of the urban population. Only 19.31 million individuals, or 2.6 percent of the rural population, are online. Chinese officials recognize the problem posed by the digital divide for overall expansion: many villages in China only have one phone, personal computer prices are still too high for rural residents, and infrastructure development issues remain a high priority.

In light of this digital divide, the crackdown on Internet cafés in China also has a disproportionate impact on poor, migrant, or rural populations who log on in those cafés. In the summer of 2005, HRIC conducted a field survey of Internet cafes in over 9 provinces in China. HRIC field survey describes the availability and locations of cafés surveyed; software and hardware installed, including censorship and surveillance software and practices; and user demographics and ambiance inside the

cafés. See HRIC, *Logging on in China's Internet Cafés*, CHINA RIGHTS FORUM, No. 3, 2005, 102–109 (<http://ir2008.org/article.php?sid=58>).

What information would Chinese users access if they could?

Following the launch of HRIC's E-Activism Project, the Tiananmen Mothers' Fill the Square online petition registered a dramatic increase in the number of online signatures from inside China. This, coupled with feedback from readers of the *Huaxia Bao* e-newsletter and traffic analysis of HRIC's websites, reflects mainland Chinese Internet users' desire to reach beyond the firewall and China's system of information control.

Since September 2003, HRIC has been delivering proxy links to the uncensored Internet with its Chinese e-newsletter to over 300,000 Internet users in mainland China. An average of 76% of all e-mails are successfully delivered to the SMTP layer. The newsletter's content is generated directly from mainland Web sites and Internet users. Over the past 18 months, the monthly average unique IP users to the e-newsletter's Web site has increased nearly 6-fold, from 28,000 to over 160,000 unique IP users.

Our traffic analysis confirms that Chinese readers visit HRIC's Web sites to obtain sensitive information not available from other sources. Over time, assessments have identified a correlation between Chinese readers' efforts to obtain sensitive information and specific periods during which government censorship has prevented access to other electronic news sources.

Role of American IT companies operating in China

The presence of US-based IT companies operating in China presents new and complex human rights, business, and corporate social responsibility challenges, including those recently demonstrated by various companies' complicity in undermining freedom of expression, access to uncensored information, and the privacy rights of Chinese citizens. Today, even the Chinese government is citing the practices of these major companies as justification for their own censorship and information control. See Joseph Kahn, "China's top monitor defends Internet censorship," *The New York Times*, February 14, 2006.

US companies are engaged in censorship of online content, Internet search results, and disclosure of user information:

Online content: In accordance with the "Public Pledge of Self-Regulation and Professional Ethics for China's Internet Industry," companies, including Yahoo!, agree to remove any information considered harmful, or which may disrupt social stability from Websites that they host. These sites include blogs, such as that of Beijing investigative blogger Anti, which was shut down without warning by Microsoft on December 31, 2005. While Anti has reopened his blog on a US-hosted system, domestic readers will no longer be able to access it. See HRIC's Web resource providing an unofficial translation of Anti's response to proposed Congressional legislation on the obligations of U.S. companies operating overseas. (<http://ir2008.org/article.php?sid=138>).

Individuals who subscribe to Yahoo! e-mail accounts in China are given a terms of service agreement that differs substantially from the Yahoo! US and HK user

agreements. The China user agreement holds users accountable for domestic laws proscribing content considered to endanger national security, including vague state secrets laws.

Internet search results: IT companies such as Yahoo!, Google and others filter the results of searches conducted in China, in compliance with Chinese government regulations. As a result, Internet users conducting searches on issues such as democracy, religion or human rights, will only be able to access pages with government-approved content. Several groups, including HRIC, have done comparative searches between Google.com and Google.cn, Google's new mainland China search engine. The results demonstrate the skewed results obtained by using search engines based in mainland China. See HRIC's Web resource, *Google.cn: Not too late for corporate leadership* (<http://ir2008.org/article.php?sid=135>).

Disclosure of information: The Yahoo! example is illustrative of the marginalization of relevant domestic Chinese law that protects privacy rights and freedom of expression. Article 40 of the PRC Constitution protects privacy of communications. However, as demonstrated by the case of jailed journalist Shi Tao, e-mail providers, including Yahoo!, have been complicit in convictions by disclosing personal account details during criminal investigations. See *HRIC Case Highlight on Shi Tao*, (<http://hrichina.org/public/highlight/index.html>).

The issue is not *whether* US companies do business in China, but *how* they operate and what are the relevant guidelines. No one sector has the silver bullet, but the first step is to acknowledge the trade-offs honestly rather than offer self-serving justifications. Engagement and presence in the market alone will not inevitably lead to any particular result except for market access for the companies. Corporate engagement and presence in China will contribute to greater reform and openness only if it is responsible and coherent.

Vague, abstract, inaccurate reference to "Chinese law" and compliance with domestic law is an indefensible justification for undermining human rights. The obligations of companies need to be viewed in light of a coherent framework of the legal and ethical obligations of IT companies that includes the laws of the home country, the host foreign country, and the larger framework of international human rights responsibilities of transnational companies.

The partnership efforts of business and government throughout the long process of negotiations around China's World Trade Organization (WTO) accession, are a useful example and precedent of what can be done. Instead of passive complicity with existing law, no company or government was willing to enter the Chinese market as it existed, under the existing law. Instead major demands were lobbied and negotiated for *changes* to Chinese law, to facilitate the interests of business and foreign governments. Following China's entry into the WTO, industry, business, and governments were and are active in promoting the necessary legislative changes, and closely monitor and assess China's compliance with its WTO obligations.

Beyond not being complicit in contributing to and legitimating Chinese government censorship, the business community and the industry has the same opportunity to exercise leadership in promoting greater openness, and human rights protections in China through their business practices, their lobbying, and support for legislative reforms.

Recommendations:

1. Compliance with Chinese law and promoting a rule of law in China:

- The challenges of developing a rule of law in China and a functioning legal system are widely recognized. These include: lack of an independent judiciary; the role of the Party and the politicization of decisions in sensitive cases; and widespread corruption. The U.S. government is active in promoting a rule of law in China through capacity building and exchange programs and through its political and human rights dialogues at various levels of formality. The issues of Internet freedom, censorship, and surveillance, including the cases of individuals detained for exercising their freedom of expression, should be included on the agendas of these initiatives. See HRIC's work on individual cases. (Shi Tao: <http://ir2008.org/article.php?sid=71>, Zhang Lin: http://hrichina.org/fs/view/downloadables/pdf/crf/CRF-2005-4_PrisonerProfile.pdf, Yang Zili: <http://hrichina.org/public/contents/press>).
- Chinese domestic law must also conform to international law, specifically to China's international obligations, including its human rights obligations. In fact Chinese domestic law includes provisions for protections of freedom of expression, press, privacy, and right to criticize the government. The PRC Constitution even includes a much publicized human rights amendment. Article 33 of the PRC Constitution states that the state respects and promotes human rights, while Article 35 guarantees citizens freedom of speech, the press, association and assembly. When assessing compliance with Chinese Law, corporate counsel should undertake a more nuanced and comprehensive legal analysis that identifies specific laws, provisions, tensions or conflicts between different laws, and how to address these conflicts or tensions.

2. Developing Industry-wide standards that are specific and also draw upon international norms:

- IT Industry groups should adopt industry wide standards for doing business in countries with repressive regimes. However, unlike the general aspirational Code of Ethics promulgated by individual companies, industry wide standards are only effective if they are specific, include effective monitoring and reporting provisions, and are operationalized throughout the company. HRIC has also outlined a beginning framework best practices for IT companies doing business in China. See HRIC, *Human Rights and Spam: A China Case Study*, in SPAM 2005: TECHNOLOGY, LAW AND POLICY, Center for Democracy & Technology (<http://ir2008.org/article.php?sid=57>).
- With respect to disclosures of information, adopt an industry standard where companies only censor specific sites or other information, in compliance with relevant Chinese laws and regulations, or hand over the personal information of their users, only when specifically required to do so by a legally binding notice from the government, such as criminal subpoenas, including the Criminal Procedure Law (CPL). The CPL affords individuals the right to legal counsel and public trial, among other procedural protections.
- Under *The UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, TNCs have a special responsibility with respect to rights that fall within their respective spheres of influence. IT companies engaged in providing hardware, software, services, or connectivity, have different challenges and opportunities to avoid being complicit in human rights violations and to promote human rights.

3. Looking ahead: Beyond isolated technologies and towards 2008

- Preparations for the 2008 Olympics have attracted the participation of foreign companies across diverse sectors, including construction, advertising, architecture, legal services, surveillance and communications. The beneficiaries of the Olympic Games, and as such of the contracts agreed to between foreign companies and Beijing as the host city, have always been presented as the people of Beijing, and more broadly, of China. This is documented not only in China's numerous promises to the International Olympics Committee before being granted the right to host the Games, and also in its 2002 Olympic Action Plan. During the Olympics, security equipment and infrastructure will be operated by the government. How will the hardware and technical know-how be used after the Olympics? The post-Olympics use of this equipment and these technologies must be transparent and monitored. Given China's human rights record, what are the impacts on privacy rights if these technologies are exported to other countries?
- Any industry-wide code of conduct or specific legislation should move beyond the narrow conception that technologies are used in isolation of one another. The lines between online technologies and offline actions have been blurred. Technologies such as Internet Web browsing, VoIP, e-mail, instant messaging, SMS, podcasting, and more, work in interrelated spheres, impacting journalists, students, activists, organizations, and individuals in their access to and dissemination of knowledge.
- Any recommendations and guidelines should not ignore the challenges and opportunities that lie ahead in the expansion into the collateral uses of surveillance or the restrictive uses of a particular technology. For example, SMS messages will not only be increasingly filtered, but could also be integrated into database systems used to store and track required pre-paid cell phone user information, with serious implications for users who may send and receive politically-sensitive messages.

Coming at the end of a very long day, thank you for your time and attention to our testimony. We look forward to moving forward in a constructive way and an ongoing opportunity to exchange views and suggestions.