WHY YAHOO IS THE ENEMY OF FREEDOM

BY WANG YI

Why should western companies operating in China feel entitled to abandon the ethical standards to which they are held at home?

We are more than consumers

IBM was once an enemy of the Jewish people. During World War II, IBM provided products and technologies to aid the Nazis in identifying Jews through census records, registrations and ancestral tracing programs. Although the binary system did not exist at the time, advanced technology such as IBM's Hollerith punch card system was employed in the so-called Final Solution. IBM engineers had designed a perfect digital management system for the Nazis: for instance, the particular placement of the digit 1 in a numerical sequence stood for Auschwitz, while the digit 4 indicated that someone was to be shot, and 6 stood for "special handling," i.e., being sent to the gas chamber. Other numerical arrangements identified a person as a homosexual or a Communist. IBM designed and tested these systems and even printed cards for them.[1]

Companies in western countries appreciate the value of freedom and democracy and understand that their commercial interests are blessed by a social system that holds individual freedom sacred. In such a society, companies acknowledge and readily uphold the values from which they benefit. By the same token, the very foundation of western values is strengthened by the growth of countless private businesses. Ironically, though, when these same companies do business in a despotic society, they often end up betraying not only the spirit of the free market and western values, but also their contractual obligations to their individual customers in that country.

This is because corporate interests are protected in a free world, and their desire for gain is untrammeled in a despotic society. Many repressive governments employ all available means to persuade foreign companies to establish enterprises within their borders with no ethical strings attached, promising them that as long as they concentrate only on making money, the government will take care of the rest. When a repressive government deals with businesses from the free world, it behaves like a pimp trying to lure a visitor into a brothel.

When foreign companies come to China to do business, they can easily ignore the business rules that they normally have to observe. When Cisco Systems provided the Chinese government with technology for filtering politically sensitive words, when Yahoo signed the "China Internet Industry Self-Discipline Conventions" and provided the account information of one of its users, Shi Tao, to the China Security apparatus, and when McAfee and Norton provided hundreds of computer viruses and hacker tools to the same security agency, they effectively deprived the Chinese people of the universal human rights enjoyed elsewhere in the world.

In the United States, American companies defy the government when faced with a situation in conflict with the interests of their clients or customers. But these same companies will readily betray their Chinese customers out of fear of entering into a confrontation with the Chinese government. Nowadays, governments and businesses all over the world with their eyes on the Chinese market end up being lured and manipulated by the Chinese government.

In this era of globalization, Chinese consumers have been reduced to a horde of pigs awaiting their swill: the swill providers can safely ignore the pigs' complaints, because their main concern is the pig breeders. By failing to protect the interests and contractual rights of its customers in the China market, Yahoo has treated people like Shi Tao no better than such pigs.

Yahoo's legal responsibility

The head of Yahoo Holdings (Hong Kong) Ltd. argued that his company didn't know why the police needed Mr. Shi Tao's information. But how can a company hand over its customers' information without requesting an explanation? There are two indisputable facts: first, the Chinese police ignored due process by failing to provide either an explanation or a search warrant—and according to Hong Kong law, the Chinese Public Security Bureau has no jurisdiction over companies (such as Yahoo) registered in Hong Kong; second, Yahoo made no effort to protect Shi Tao's privacy and offered no resistance to the police demands.

Many people are so afraid of the authorities that they will not demand due process. All it takes is a telephone call from the Propaganda Department for a publisher to terminate its contractual obligations to a client. A policeman need only flash his badge and a bank or Web site will hand over client infor-

Bejing Internet café in February 2006. Who helps Big Brother? Photo: Associated Press

mation. Personal compromise may seem to bear little relation to public interest, and as such may merit sympathy; an individual's only bargaining chips are his profession, his job, his pay, his personal freedom or his life. But a service provider is different—its bargaining chips are the personal interests of others, and its inappropriate actions cannot be excused by fear. No matter how great one's fear, one has no right to bargain away the life of another. No matter how great the pressure Yahoo might have faced, it should not have broken its contract with Shi Tao, because honoring a contract is one of the most important legal obligations binding any private company.

When Yahoo casually abandons its customers in this way, it betrays the contractual spirit upon which the survival of the western free market depends. This contractual spirit may be summed up as follows: In a situation where there is a conflict of interest between contracting parties, they will stand firm on their obligations to each other, even when doing so involves some cost to their own interests. Shi Tao enjoyed no such solidarity and loyalty in his contract with Yahoo, and as a result ended up in prison.

Lack of compliance with the provisions of a contract can be resolved through the payment of compensation. But it is unacceptable to sell out a contractual partner to a third party. There is only one condition under which Yahoo could have justifiably handed Shi Tao's account information to the Chinese authorities, and that is if they were required to do so by law. A demand from the police is not the same as a requirement under law, and Yahoo, as a company established in the free world, knows this very well. Yahoo had the right and obligation to deny the police request on procedural grounds, and the police could only have defeated this contractual obligation by obtaining a warrant. In places with a western-style legal system such as the Hong Kong Special Administrative Region, such a warrant could only be obtained through the local court. In mainland China, the police can obtain a search warrant through the procuratorate, but the procuratorate has no jurisdiction in Hong Kong.

In short, without Yahoo's supine cooperation, China's secret police would have had no legal means of obtaining Shi Tao's account information. By relinquishing its right to demand due process from the police, Yahoo betrayed not only its contractual obligation to Shi Tao, but also the interests of the people of Hong Kong, who have for years been battling against the imposition of mainland subversion laws in the Special Administrative Region.

Yahoo's moral obligation to universal values

International PEN, Reporters without Borders and many other international organizations have condemned Yahoo's betrayal of its social responsibilities. Critics cited in particular Article 19 of the Universal Declaration of Human Rights: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

Companies are considered legal persons, and universal human rights values apply especially to those that have benefited from those values. The Universal Declaration's preamble "[p]roclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all

nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms." The Nuremberg trials, in which German companies were convicted for assisting the Nazis during the Second World War, established a precedent for judicial review of a company's moral obligations.

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It is particularly worth noting that China was one of the initiators and signatories of the Universal Declaration of Human Rights. China earned its position as a defender of universal human rights through the tremendous efforts and sacrifices of the Chinese people in the war against fascism. Every descendant of those who sacrificed their lives has reason to demand that every country and corporation in the world regard the Chinese people as equally entitled to the basic rights enjoyed by the rest of the world, rather than treating them as pigs to be fed or as the bonded servants of the Communist regime.

In this incident, it is not only Yahoo's managers who should be blamed, but also Yahoo as "legal person." Traditionally a company is regarded as a special "human being" in the eyes of the law; as a British writer put it, a so-called legal person "has neither a soul to be damned, and no body to be kicked." For that reason, we define a corporation as "an organization pursuing maximum profit." However, beginning in 1924 with the formulation of the concept of "corporate social responsibility," companies could no longer be considered purely profit-organizations subject only to private law.

Over the past 20 years, the movement toward corporate social responsibility has gained momentum in the United States and the United Kingdom. In 1989, American corporate law was amended to obligate corporations to take account of responsibilities besides their traditional civil liabilities. In 1997, a U.S. Non-Governmental Organization called Social Accountability International[2] instituted a certification process for corporate social accountability addressing issues of labor rights and welfare. In the last couple of years, the International Standards Organization (ISO)[3] has been promoting a similar but much more extensive certificate for social accountability, SA8000, which has been recognized and accepted by more than 400 multinational companies worldwide.

How should companies from the free world treat workers and customers in repressive countries where they do business? In 1999, the UN Secretary-General, Kofi Annan, proposed a Global Compact with "corporate citizens"[4] laying out nine basic principles to which companies should adhere in areas such as human rights, labor standards and working environment. Currently more than 100 countries, 1,000 high-profile companies and 100 international economic organizations have voluntarily signed on to the compact. Yahoo is not on the list, perhaps because it does not dare or does not qualify. The compact explicitly states the following principles:

- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights.
- Principle 2: Businesses should make sure they are not complicit in human rights abuses.
- Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining.

The corporate social responsibility movement is taking place in the world that Yahoo inhabits, but when colluding with China's secret police, Yahoo pretends to know nothing about it. That's one of the reasons why the Yahoo incident has raised such a storm of international attention. The fact is that even some Chinese companies have become aware of their social responsibilities and are refusing to cooperate with China's repressive government. In the past two years, SA8000 has been promoted among private organizations in China. Last year, a respected Chinese newspaper, *Southern Weekend*, joined with some companies in producing "China's Corporate Citizenship Manifesto," in which they declared: "We will actively promote the public interest, show concern for democratic progress and political reform and be accountable to our nation and our people." The CEO of Yunnan Hong Wine Co., Ltd., Wu Kegang, last year published an article entitled "China Cries Out for Industrial Civilization," in which he urged enterprises to oppose tyranny and mobocracy, become politically aware, "demonstrate the social value of capitalism" and become champions of industrial civilization. His article sent tremors through China's business and academic communities, and is considered the first political manifesto issued by a Chinese industrialist.

Yahoo, once a superstar of the internet era, has now degenerated into a "bad apple," the lowest and most shameless of corporate citizens, enjoying the rights guaranteed in the free world while conspiring with dictators in a despotic society. Yahoo's betrayal of the basic spirit of the Internet in the Shi Tao case marks a great loss to the free flow of information.

Don't let the almighty yuan destroy this world

The Yahoo incident has damaged more than Chinese people's freedoms. Today, a market economy hijacked by China's repressive government entices and challenges governments and companies around the world, bringing disgrace on the free market and contractual system cultivated and cherished by humanity for hundreds of years. I very much regret to see how in 20 short years, the Communist Party's economic reforms have successfully transformed commercial elites bred through hundreds of years of market economy into "western companies with Chinese characteristics," in other words, the "bad apples" of their respective industries.

The Yahoo incident has made me aware of a deep wound that affects not only China, but also the rest of the world. Recently, an American writer, Ethan Gutmann published a book, *Losing the New China: A Story of American Commerce, Desire and*

Betrayal, in which he presents astonishing evidence of how countless American companies have become corrupted after entering the China market. He describes how China's market economy has become the graveyard for the western free market and the spirit of contracts. The greater the enticement the China market presents to the world, the closer the world comes to that graveyard. The author observes that if a western company fails to betray its traditions and freedoms and effectively enslave itself to the communist authorities, it has virtually no chance of making money in China.

Gutmann describes three ways in which a western business can establish friendly relations with the Communist government:

First, it must pledge its loyalty and dedication to the Party's goals. And this cannot be mere lip-service. Although Communist officials are still beginners when it comes to public relations, they have become deft judges of the sincerity of a westerner's words.

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Secondly, the company must conform to the practice prevalent throughout Asia—bribery (in the form of investment, political advantages, technological assistance and even sex). If a businessman can bring investment into China, and is willing to express his confidence in China's situation even when other foreign companies are pulling out, he will quickly gain an appointment with a senior official. If he tries to gain the same access through a public relations organization, it is likely to take years.

The third method, which applies to scholars and journalists, is to engage in fulsome flattery of Chinese culture. When adeptly employed, this way of winning the affection of the government will be regarded as a sincere and heartfelt desire for friendship with China. For instance, if a journalist publishes an article in a foreign newspaper that takes the same editorial line as *People's Daily*, or criticizes Falun Gong as an evil cult, he becomes an "old friend of the Chinese people."

Gutmann writes: "Each successful foreign company in China has employed one or more of the methods mentioned above." The essence of the Chinese model is to encourage people to make money in ways that compel one to disregard ethical business standards and human rights, and to encourage the world's companies to place the interests of the Chinese government over those of their business associates. In an autocratic system, this is tantamount to requiring that all companies doing business in China be prepared to betray their own customers. It is this very despotic system that has made the Chinese Communist regime, rather than the Chinese people, into the client that the whole world can least risk offending.

In an era of globalization, the China model is Satan's test of the free world. When the biggest dictator in the world holds the world's largest loaf of bread in his hand, will the values and traditions that are the pride of the western world, such as the great traditions of the market and contracts, prevail over this temptation and keep western entrepreneurs bound to the principle that "there is no disgrace in riches that are honorably gained"? We must not let the Renminbi lay waste to our world in the way that the dictators were able to use Yahoo to destroy Shi Tao's life.

Yahoo has set a very bad example. Shi Tao may be the first victim of western companies' degeneration in China, but ultimately the greatest victim will be the western world itself. In stark contrast to the Chinese government's insistence that trade and human rights are unrelated, E.U. Petersmann, who once served as legal counselor in the drafting of the General Agreement On Tariffs and Trade, believes that a capacity for constitutional law and an advancement in human rights form the core of international trade law. In the globalization era, if western countries lack international trade procedures to protect "international public property," no single domestic constitution can serve the purpose of protecting human rights and freedom. Petersmann believes that the "international public property" requiring the protection of international economic law is "the openness of the market, respect for the human rights, democracy, peace and sustainable development."

However, the premise of the China model is a "peaceful evolution" or "color revolution" where this international public property is to be imposed by a dictatorship unwilling to loose its grasp on power. Companies such as Yahoo have not only betrayed their western traditions, but have become willing accomplices plucking the chestnuts from the flames of this peaceful evolution.

On September 20, 2005, for the sake of Shi Tao and myself, I stopped using Yahoo email and uninstalled all Yahoo software on my computer. As long as Yahoo fails to offer an explanation to Shi Tao and his family, and indeed all of its customers, I will continue to consider it an enemy not only of Shi Tao, but also of myself and of freedom. I invite all my friends and readers to likewise vote with your feet by refusing to use any service provided by Yahoo, and to take every opportunity to oppose Yahoo's commercial interests.

Because Yahoo is the disgrace of the Internet age.

Translated by a friend of HRIC

The original Chinese article was posted on HRIC's *Ren Yu Renquan* Web site: http://www.renyurenquan.org/ryrq_article.adp?article_id=340.

NOTES

1. The relationship between IBM and the Nazi regime was explored in Edwin Black, *IBM and the Holocaust*, Little Brown, 2001, and in the 2003 documentary film *The Corporation* (see the Web site associated with the Black book, http://www.ibmandtheholocaust.com/). IBM has since stated that the Nazis seized control of IBM's German subsidiary, Dehomag, before World War II, and that the corporation's New York headquarters was unaware of the use being made of its technology.
2. Http://www.sa-intl.org/.
3. Http://www.iso.org/iso/en/ISOOnline.frontpage.
4. Http://www.un.org/depts/ptd/global.htm.