

Testimony of
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Chairman Lantos, Ranking Member Ros-Lehtinen, former Chairman Smith, and Members of the Committee, I am Michael J. Callahan, Executive Vice President, General Counsel and Secretary of Yahoo! Inc. Mr. Yang has described for you the opportunities and challenges that Yahoo! faced when entering the China market and Yahoo!'s approach to human rights issues going forward. I welcome the opportunity to address directly the allegations that have been lodged against Yahoo! concerning my testimony in February 2006.

I understand that my testimony in 2006 has caused confusion about what Yahoo! knew and didn't know about the contents of a demand for information that Yahoo! China received from the Chinese government in the Shi Tao case. This confusion, and my statements at the 2006 hearing, stem from a lack of information on my part, which I sincerely regret. At the time of my testimony in 2006, it was my understanding that the Shi Tao demand contained no information regarding the specific details of the investigation, including no details regarding the name, profession, activities, or even charges under investigation, and that is how I testified. I now know that the demand did contain additional information — that the investigation related to disclosure of state secrets. If I had had this additional information, I would have made it clear that we were aware of the general law in question though not the specific nature of the case and not the political nature of the case. And I apologize to you today, as I have apologized to your staff a few weeks ago, for not coming back to the Committee once I realized in October 2006 that the demand contained this additional information.

There remains a disagreement over whether the reference to "state secrets" was significant enough to tell Yahoo! anything material about the case. I believe that while my testimony could have been more precise, the fundamental point of my testimony remains unchanged — we did not know that the case related to a journalist, dissident activity, or that it was a political case when Yahoo! China was required to provide the demanded information.

But again, it is clear that this prior testimony has caused a great deal of concern among some members of the Committee and its staff, and I sincerely regret that I did not have full information to make the facts completely clear in my prior testimony.

Beyond this concern over my prior testimony, the underlying issue here from our perspective is whether it is better for U.S. companies to engage in China or to disengage. I recognize that some may disagree, but our view is that engagement in China is the better course, and that is why Yahoo! opened local operations in China. A byproduct of opening local operations, however, is that local operations are subject to local law. I cannot ask our local employees to resist lawful demands and put their own freedom at risk, even if, in my personal view, the local laws are overbroad. And while I am no expert in Chinese law, it is my understanding from consulting with lawyers who are experts in this area, that Chinese law regarding disclosure of state secrets is just that — overbroad. As I understand it, the law is vague and broad, and it covers areas such as military information, the economy, and science and technology.

Over the past three months, Yahoo! and I have cooperated fully with your staff regarding its inquiry into my testimony before this Committee in February 2006 and explained why I testified as I did. In a series of meetings, we actively engaged with your staff to explain the details surrounding the demand Yahoo! China received from the Chinese government for certain information regarding a Yahoo! China user in China who we later learned was the journalist Shi Tao. I came to Washington to meet with the Committee's staff in early October, and I presented my understanding of what happened and answered your questions. Additionally, at the staff's request, a Yahoo! regional counsel working in Hong Kong made a special trip to Washington for an additional meeting with the Committee's staff. Following those meetings, I understand that the Committee's lead investigator stated privately to our attorneys and consultants that he was satisfied that I did not intend to mislead the Committee and that I testified truthfully in February 2006 as to the information I had at the time.

I welcome the opportunity to present to the Committee the information that I shared privately with your staff — namely, my full understanding of the facts surrounding the Shi Tao order and my February 2006 testimony.

A. Events Leading to the February 2006 Hearing

I first learned of Yahoo! China's role in the Shi Tao case after the press reports in September 2005. The press reported that Shi Tao had been convicted of divulging state secrets abroad, and that the verdict stated that Yahoo! Hong Kong had provided the Chinese authorities with information in the case. Prior to those press reports, I was not aware of the Chinese government's demand for information in the Shi Tao case, and I was not directly involved in — or informed of — Yahoo! China's response to this law enforcement order.

After the press reports of the Shi Tao conviction, Yahoo! Inc. employees contacted employees at Yahoo! China, to determine what had happened in the case. Yahoo! China confirmed that it had responded to a lawful demand for information concerning the Yahoo! China subscriber with the user ID that was listed in the Shi Tao verdict. As far as I know, this response was handled entirely by Yahoo! China's Beijing office upon determining that the demand met applicable legal requirements. From that

point forward, Yahoo! Inc. publicly acknowledged Yahoo! China had responded to a lawful order for information concerning the user ID that was listed in the Shi Tao verdict.

On February 15, 2006, I testified before two subcommittees of this Committee, along with several other Internet companies, at the hearing titled “The Internet in China: A Tool for Freedom or Suppression.” In my testimony, I stated: “When Yahoo! China in Beijing was required to provide information about a user, who we later learned was Shi Tao, we had no information about the identity of the user or the nature of the investigation. Indeed, we were unaware of the particular facts surrounding this case until the news story emerged.”

It may help to take a step back and explain my perspective of the purpose of my February 2006 testimony. At the time of the hearing, there were press reports and public concern suggesting that Yahoo! China was cooperating knowingly and voluntarily with the Chinese government to target dissidents. These were very serious — and very inaccurate — allegations. In my testimony, I tried to make clear that, when Yahoo! China responded to the lawful demand for information concerning the user we later learned from the press reports to be Shi Tao, it did not know the identity of the user, that the person targeted was a reporter, or that the case involved political activism. This was my point in making the statements in my prior testimony, and the point is unchanged by the additional information I now know. I also emphasized my understanding that failure by the Yahoo! China operation in Beijing to comply with lawful orders from government authorities may have subjected the Chinese employees of that company to civil and criminal penalties, including imprisonment.

B. Events After the February 2006 Hearing

At the time of my testimony, I did not know that the order referenced a “state secrets” investigation. I realized that only in October 2006, eight months after appearing before your subcommittees. Although the reference to state secrets is not information that I had at the time of the February 2006 hearing, in my view this additional information does not support the contention that Yahoo! provided false information to Congress.

Please let me first describe to the full Committee, as I did to the Committee’s staff several weeks ago and to some members of the Committee previously, how I became aware of this new information. In response to a complaint, the Hong Kong Privacy Commissioner opened an investigation of whether Yahoo! Hong Kong had disclosed the information demanded in the Shi Tao order in violation of certain privacy regulations in Hong Kong. In October 2006, I reviewed draft materials prepared for response by Yahoo! to this investigation, and I noted a statement that the order referenced a “state secrets” investigation. When I inquired about this language, our regional lawyer in Hong Kong confirmed that the order said “state secrets.”

Mr. Chairman, I was surprised to hear this because that was different from my understanding at the time of my February 2006 testimony.

Although I did not understand the reference to “state secrets” revealed that the investigation was for pro-democracy activities, nonetheless, I recognized in October 2006 that it was additional information about the Shi Tao case. Once I became aware of this additional information about the Shi Tao case, Yahoo! made no effort to conceal it. Indeed, shortly thereafter — over one year ago — Yahoo! Inc. filed a sworn statement with the Hong Kong Privacy Commissioner under my signature that included a direct reference to the fact that this “state secrets” language appeared in the demand made upon Yahoo! China by the government. Furthermore, the Commissioner’s subsequent report publicly issued in March 2007 clearly references this “state secrets” language appearing in the order, as well as the language from our submission. I believe this report has been publicly available online and in English since March 2007. In addition, Yahoo! stated publicly after October 2006 that the case involved a “state secrets” investigation. It is clear from the company’s continuing actions that there was never an intent or plan to conceal this information in any way, and this includes my prior testimony.

Please let me once again express my regret that in October 2006, when I realized that this “state secrets” language was included in the order, it did not occur to me to contact the Committee about this additional information. Given what I now know about the misunderstanding and concern created, I deeply regret that I did not think to contact you, and I have apologized for that oversight to you, Mr. Chairman through the Committee’s staff, and I have reiterated it publicly here today. But, in my view, this is not, Mr. Chairman, the provision of false information to Congress. I understood the fundamental point of my February 2006 testimony remains the same today: The order did not reveal the name of the individual, that the case targeted a reporter, or that the investigation was related to political activities.

Engagement in China raises difficult and complex issues — issues upon which reasonable minds can differ, and issues worthy of serious debate. As a company founded on openness and user trust, we are committed to free expression and privacy globally. We continue to believe that engagement with China is the better course, and that disengagement would not further the goal of a more open and informed society in China. I hope that this hearing provides an opportunity to address these important issues.

I would be happy to answer your questions.