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16 *Attorneys for Plaintiff Mr. Ning Xianhua*

17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**  
19 **SAN JOSE DIVISION**

20 NING XIANHUA, an individual  
21  
22 Plaintiff,  
23 v.  
24 OATH HOLDINGS, INC., f/k/a YAHOO!  
25 INC. and as successor in interest to  
26 YAHOO! INC.; ALTABA INC., f/k/a  
27 YAHOO! INC. and as successor in  
28 interest to YAHOO! INC; TERRY  
SEMEL, an individual; and JERRY  
YANG, an individual, and DOES 1-10  
Defendants.

Case No.: 5:20-cv-06185-LHK

**FIRST AMENDED COMPLAINT**

**JURY TRIAL DEMANDED**

- (1) ALIEN TORT STATUTE
- (2) TORTURE VICTIM PROTECTION ACT
- (3) UNFAIR COMPETITION (UCL)

1 Plaintiff NING XIANHUA (**Mr. Ning**), by and through his undersigned  
2 attorneys, complains and alleges the following:

3 **INTRODUCTION**

4 1. In May of 1989, hundreds of thousands of Chinese students and workers  
5 gathered at Beijing’s Tiananmen Square to protest peacefully in favor of democracy  
6 and improved conditions for China’s working class. On June 4, 1989, China’s  
7 communist regime ordered the Chinese military to remove the protesters from  
8 Tiananmen Square and to execute or arrest those who refused. The military violently  
9 removed the protesters, killing thousands of them in the process by firing on them with  
10 assault rifles and running over them with armored vehicles.

11 2. Since the Tiananmen Square massacre, the Chinese communist regime  
12 has imposed tight censorship policies throughout the country. China’s communist  
13 regime has virtually erased the massacre from China’s history along with the pro-  
14 democracy sentiment expressed by those brave protesters in 1989. However, Plaintiff  
15 Ning Xianhua and other Chinese nationals would not idly stand by. Risking their lives,  
16 they continued to serve as voices of the oppressed and mistreated. They resisted  
17 China’s totalitarian communist regime. They fought for democracy and working-class  
18 rights. And they honored those who were murdered at Tiananmen Square by the  
19 Chinese communist regime.

20 3. With the entry of Yahoo!’s internet search engine and electronic mail  
21 service into China, pro-democracy “dissidents” like Mr. Ning believed they would have  
22 improved access to information and to an email service that provided for discrete,  
23 confidential communications. They believed the “gateway to the internet” provided by  
24 Yahoo! would stimulate the call for democracy and fairness, preserve the memory of  
25 those who died on June 4, 1989, and allow all of this to be done while protecting their  
26 identities from Chinese communist authorities.

27 4. But Mr. Ning and other pro-democracy activists did not know that Yahoo!  
28 Inc., its founder, Jerry Yang, and its CEO, Terry Semel, had secretly agreed to serve as

1 an extension of China’s communist regime by helping identify and imprison political  
2 dissidents like Mr. Ning. In exchange for access to the wealth they would gain from  
3 providing internet products to 110 million Chinese internet users, Yahoo! Inc., Yang,  
4 and Semel agreed to share confidential information and communications of Yahoo!  
5 customers with Chinese communist officials in a joint effort to silence pro-democracy  
6 dissidents through arbitrary arrest, imprisonment, torture, and in some cases death.  
7 Pursuant to this agreement, the totalitarian communist regime received direct assistance  
8 from Defendants in their Sunnyvale, California headquarters to silence pro-democracy  
9 messages by punishing those who dared to utter them. The internet “gateway” touted  
10 by the Yahoo! Defendants became a snare, wielded by the Yahoo! Defendants to  
11 further the Chinese regime’s repression of pro-democracy advocates.<sup>1</sup>

12         5. Mr. Ning used his Yahoo! email account to privately spread pro-  
13 democracy messages and publications, coordinating with other activists through  
14 communications he believed to be secure. But pursuant to the agreement among  
15 Yahoo! Inc., Yang, Semel, and the Chinese communist regime, Yahoo! employees and  
16 agents turned over Mr. Ning’s private information to the Chinese authorities. Based on  
17 that information, Mr. Ning was arrested and convicted for promoting democracy, and  
18 he suffered brutal beatings and torture for years.

19         6. Mr. Ning finally escaped China’s oppressive communist regime by  
20 seeking asylum in the United States. He subsequently learned that Yahoo! Inc., Terry  
21 Semel, Jerry Yang, and others presently unknown at Yahoo! are responsible for his  
22 arrest, torture, and resulting injuries. Mr. Ning is informed and believes, and thereupon  
23 alleges, that at all times relevant hereto Does 1 to 10, in addition to the named  
24

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25  
26 <sup>1</sup> In this Complaint, the corporate defendants are referred to as “Yahoo!,” and all  
27 defendants are referred to collectively as the “Yahoo! Defendants.” The Doe  
28 defendants (Does 1-10), whose identities are presently unknown are entities, officials  
or individuals within or affiliated with the Yahoo! Defendants and are in some way  
responsible for the violations and injuries to Mr. Ning alleged herein. Plaintiff will  
identify and serve such Doe Defendants as soon as their identities and the facts relevant  
to their responsibility are known.

1 Defendants, are responsible in some manner for the conduct, damages, and injuries  
2 alleged herein. He seeks justice for the Yahoo! Defendants' complicity in the human  
3 rights violations he suffered at the hands of the Chinese regime because of their  
4 reprehensible conduct.

5 **PARTIES**

6 7. Plaintiff Ning Xianhua is a Chinese national who resides in New York.  
7 On August 31, 2016, Mr. Ning fled to the United States as a result of the conduct  
8 alleged in this Complaint and fear of further reprisals from the Chinese communist  
9 regime.

10 8. Defendant Oath Holdings, Inc. is a Verizon company. Oath Holdings, Inc.,  
11 formerly known as Yahoo! Inc. and Yahoo! Holdings, Inc.—and successor in interest  
12 to the same—is a Delaware corporation that maintains its headquarters in Sunnyvale,  
13 California. Yahoo! Inc. sold its operating business, including those operations and  
14 liabilities at issue here, to Yahoo! Holdings, Inc. on June 13, 2017. Yahoo! Holdings  
15 Inc. then changed its name to Oath Holdings, Inc. on January 1, 2018. Pursuant to these  
16 transactions, and under applicable law, Defendant Oath Holdings, Inc. is liable for the  
17 damages alleged herein.

18 9. Defendant Altaba, Inc., formerly known as Yahoo! Inc. and successor in  
19 interest to the same, is a Delaware corporation that maintains its primary offices in San  
20 Francisco, California, and New York, New York. After the transfer of Yahoo! Inc.'s  
21 operating business to Oath Holdings, Inc., Yahoo! Inc. changed its name to Altaba, Inc.  
22 On information and belief, Yahoo! Inc.—now Defendant Altaba, Inc.—retained  
23 liability for the damages alleged herein in its transactions with Oath Holdings, Inc.  
24 Pursuant to these transactions, and under applicable law, Defendant Altaba Inc. is also  
25 liable for the damages alleged herein.

26 10. Defendant Jerry Yang founded Yahoo! Inc. and, during the relevant time  
27 period, controlled Yahoo! Inc. and its subsidiaries as owner, CEO, and in his self-  
28 described role of “Chief Yahoo.” Yang resides in Los Altos Hills, Santa Clara County,

1 California. Defendant Yang sought to secure the legacy and wealth that would result  
2 from Yahoo! Inc.'s—and its wholly-owned subsidiaries'—entry into the fledgling  
3 Chinese internet market. Prior to his guiding Yahoo!'s business into the Chinese  
4 market, Defendant Yang knew the Chinese government utilized a campaign of arbitrary  
5 arrest and torture to silence political dissenters. Defendant Yang knew that he could  
6 obtain personal wealth from his companies' activities in the Chinese market only if he  
7 committed the Yahoo! companies to helping the Chinese government silence political  
8 dissenters who used Yahoo! internet products to receive and disseminate pro-  
9 democracy, anti-communism messages. Thus, Defendant Yang's desire to profit from  
10 the Chinese market and the People's Republic of China's (**PRC**) desire to silence pro-  
11 democracy political speech led to a marriage of ongoing repression fueled by the  
12 Yahoo! Defendants' secret ongoing cooperation with the Chinese regime. This  
13 agreement went above and beyond ordinary business dealings and committed the  
14 Yahoo! companies to knowingly assist in violating the human rights of Chinese  
15 freedom advocates for Defendant Yang's personal profit. Without Defendant Yang's  
16 commitment to helping PRC officials in their campaign of suppression and violence  
17 against political dissenters, Defendant Yang and his Yahoo! companies would be  
18 excluded from the Chinese market and lose access to the wealth produced from that  
19 market. Because Defendant Yang could not profit from the Chinese market without  
20 helping the PRC arrest and torture dissidents, Defendant Yang agreed to help the PRC's  
21 communist regime commit those grave harms. Defendant Yang made this Faustian  
22 bargain knowing his profits would be earned at the expense of unsuspecting freedom  
23 advocates like Mr. Ning.

24         11. During much of the relevant time period, Defendant Terry Semel served  
25 as Yahoo! Inc.'s CEO and chairman of Yahoo! Inc.'s board of directors. Semel resides  
26 in Woodland Hills, Los Angeles County, California. Like Defendant Yang, Defendant  
27 Semel sought to secure the legacy and wealth that would result from Yahoo! Inc.'s—  
28 and its wholly-owned subsidiaries'—entry into the Chinese internet market. Defendant

1 Semel knew prior to entering the market that the Chinese government utilized arbitrary  
2 arrest and torture to silence political dissenters, and that he could obtain personal wealth  
3 from the Chinese market only if he committed the Yahoo! companies to helping the  
4 Chinese government in its campaign of censorship and torture. Thus, Defendant  
5 Semel's desire to profit from the Chinese market and the PRC's desire to silence pro-  
6 democracy political speech joined as unified intentions. This agreement went above  
7 and beyond ordinary business dealings and committed the Yahoo! companies to assist  
8 in violating human rights for Defendant Semel's personal profit. Without Defendant  
9 Semel's commitment to helping PRC officials commit violence against political  
10 dissenters, Defendant Semel and his Yahoo! companies would be excluded from the  
11 Chinese market and lose access to the wealth produced from that market. Defendant  
12 Semel made the same Faustian bargain with the repressive Chinese regime knowing  
13 that his profits would be earned at the expense of freedom advocates like Mr. Ning.

14       12. Under the various agreements, bylaws, and norms governing Yahoo!  
15 Inc.'s corporate governance and structure—and relevant law—Defendants Yang and  
16 Semel possessed broad authority over Yahoo! Inc. and its wholly-owned subsidiaries  
17 in Hong Kong and China from their positions in California. Under the various  
18 agreements, bylaws, and norms governing Yahoo! Inc.'s relationships with its wholly-  
19 owned subsidiaries in Hong Kong and China, Yahoo! Inc. retained and exercised  
20 vertical control of the day-to-day operations of those subsidiaries and those  
21 subsidiaries' agents and employees from Yahoo! Inc.'s position in Sunnyvale,  
22 California. In other words, to any extent Yahoo! Inc.'s subsidiaries carried out any  
23 misconduct supporting Mr. Ning's claims, those subsidiaries acted pursuant to direct  
24 instructions from Yahoo! Inc., Yang, and Semel. Defendants Yang and Semel  
25 exercised complete control over the sensitive relationship between the Yahoo!  
26 Defendants and the Chinese regime. This control extended to the secret provision of  
27 confidential information about Chinese freedom advocates from Yahoo!'s files and  
28 records to the Chinese regime.



1           13. Mr. Ning anticipates that, in an effort to avoid personal liability, the  
2 Yahoo! Defendants will argue that employees and agents of Yahoo! Inc. and its wholly-  
3 owned subsidiaries actually disclosed Mr. Ning's private information to the PRC  
4 communist regime. Notwithstanding any such allegations or evidence supporting those  
5 allegations, the Yahoo! Defendants remain liable under applicable agency and  
6 ratification principles.

7           14. The authority possessed by the Yahoo! Defendants through the corporate  
8 governance agreements in place within Yahoo! included without limitation authority  
9 to order the disclosure to PRC officials Yahoo! customers' private email  
10 communications, names, addresses, user IDs, and data showing their whereabouts  
11 when they accessed their Yahoo! accounts (**Protected Information**). Defendants Yang  
12 and Semel, individually and as the chief decision-makers for Yahoo! Inc., instructed  
13 Yahoo! Inc. employees and agents, Yahoo! Inc.'s subsidiaries in Hong Kong and  
14 China, and the agents and employees of Yahoo! Inc.'s subsidiaries in Hong Kong and  
15 China (collectively **Agents**) to comply with any request for information from PRC  
16 authorities regarding a Chinese national in China. Alternatively, because Defendants  
17 Yang and Semel, individually and as the chief decision-makers for Yahoo! Inc.,  
18 allowed their Agents to disclose Protected Information without objection—and  
19 encouraged such disclosures—those Agents reasonably believed they had authority to  
20 do so on behalf of Yahoo! Inc. and its subsidiaries.

21           15. The Yahoo! Defendants thus instructed their Agents to disclose the  
22 Protected Information of Chinese political dissidents—including Mr. Ning—to PRC  
23 authorities upon request. The Yahoo! Defendants instructed their Agents to effect such  
24 disclosure without warning Mr. Ning or other Chinese Yahoo! customers that they  
25 would do so or had done so. Indeed, the Yahoo! Defendants instructed their Agents to  
26 conceal all information relating to such disclosures from Chinese Yahoo! customers,  
27 including Mr. Ning. The Agents carried out these instructions with respect to Mr.  
28 Ning's Protected Information as well the Protected Information of other political

1 dissidents in China. The Yahoo! Defendants knew about their Agents' actions and  
2 approved them.

3         16. Based on the Yahoo! Defendants' actual authority to issue these  
4 instructions, and according to those specific instructions, (1) Mr. Ning's Protected  
5 Information was disclosed to the PRC communist regime in approximately the spring  
6 or summer of 2003; (2) Mr. Ning was purposefully kept unaware that the Yahoo!  
7 Defendants or their Agents would disclose or had disclosed his Protected Information;  
8 and (3) Mr. Ning could not have detected the Yahoo! Defendants' role in his arrest,  
9 imprisonment, and torture until recently.

10         17. Even if such individual disclosures were not expressly authorized by the  
11 Yahoo! Defendants, the Yahoo! Defendants ratified the policy which encouraged those  
12 disclosures, and the relevant Yahoo! Agents in China and Hong Kong reported directly  
13 to their counterparts in Yahoo! Inc.'s California headquarters. The Yahoo! Defendants  
14 faced public scrutiny regarding the disclosure of political dissidents' Protected  
15 Information to PRC officers because the PRC communist regime silenced those  
16 dissidents with torture, murder, and lengthy prison sentences. And each time the  
17 Yahoo! Defendants fielded criticism regarding these disclosures, they defended their  
18 own actions as well as the actions of Yahoo! subsidiaries, Agents, and employees in  
19 California and China who may have acted in connection with these disclosures. In  
20 essence, the Yahoo! Defendants defended the acts of their Agents by stating, "They  
21 were just doing their jobs." Thus, not only did the Yahoo! Defendants fail to discourage  
22 such disclosures by their Agents, they openly justified them while fully understanding  
23 the extent and consequences of those disclosures.

## 24 25 **JURISDICTION AND VENUE**

26         18. This Court has subject matter jurisdiction because this is a civil action  
27 arising under the laws of the United States. *See* 28 U.S.C. § 1331. Specifically, the  
28 Court may exercise federal question jurisdiction over Plaintiff's claims under the Alien



1 Tort Statute (**ATS**), 28 U.S.C. § 1350 and Torture Victim Protection Act (**TVPA**), 28  
2 U.S.C. § 1350 note.

3 19. This Court has subject matter jurisdiction because this is a civil action by  
4 an alien for a tort committed in violation of the law of nations or a treaty of the United  
5 States. *See* 28 U.S.C. § 1350.

6 20. This Court has subject matter jurisdiction because this is a civil action in  
7 which the matter in controversy exceeds the sum or value of \$75,000, exclusive of  
8 interest and costs, and is between citizens and legal residents of different states. 28  
9 U.S.C. § 1332.

10 21. This Court has supplemental subject matter jurisdiction over Mr. Ning's  
11 state law claims under 28 U.S.C. § 1367. The Court has federal-question jurisdiction,  
12 and Plaintiff's state law claims are so related to Plaintiff's federal law claims that they  
13 form part of the same case or controversy.

14 22. This Court may exercise personal jurisdiction over the Yahoo! Defendants  
15 under California's long-arm statute, which is coextensive with federal constitutional  
16 due process limits. *See* Cal. Civ. Proc. Code § 410.10. Defendants Yang and Semel  
17 reside in California, and Defendants Oath Holdings, LLC and Altaba Inc. maintain a  
18 headquarters or primary office in California. Moreover, as set forth herein, this action  
19 arises from and is related to all Defendants' actions within the state of California.

20 23. Venue is proper in this district because Defendant Yang resides here and  
21 because Defendants Oath Holdings, LLC and Altaba Inc. maintain a headquarters or  
22 primary office within the district. *See* 28 U.S.C. § 1391(b)(1), (c)(2), and (d).

23 24. Further, venue is proper in the Northern District of California because a  
24 substantial part of the events or omissions giving rise to the claim occurred in the  
25 Northern District of California. From Sunnyvale, California, the Yahoo! Defendants  
26 formed an agreement and alliance with the Chinese communist regime, pursuant to  
27 which Yahoo! Inc. and its subsidiaries and Agents would help the Chinese communist  
28 regime identify pro-democracy dissidents who resided in China and used Yahoo! email



1 market, the Yahoo! Defendants entered a joint venture with the PRC, pursuant to which  
2 the Yahoo! Defendants agreed to help identify Chinese nationals who expressed pro-  
3 democracy, anti-CCP ideas over the internet. This agreement went beyond the ordinary  
4 business dealings needed for a company like Yahoo! Inc. to establish a foreign presence  
5 given, among other things, other internet companies entered the Chinese market  
6 without entering and honoring a similar agreement. With the benefit of effective, active  
7 assistance from the Yahoo! Defendants in California, the PRC arbitrarily arrested,  
8 imprisoned, and tortured numerous pro-democracy dissidents.

9         29. Mr. Ning was a pro-democracy dissident targeted by the PRC and the  
10 Yahoo! Defendants. Mr. Ning was and remains a vocal pro-democracy advocate who  
11 privately and discretely disseminated pro-democracy, anti-communism messages and  
12 writings using his Yahoo! email account. The Yahoo! Defendants and PRC worked  
13 together to silence and punish Mr. Ning. Pursuant to their agreement and partnership  
14 with the PRC, the Yahoo! Defendants provided the PRC with Mr. Ning's (and others')  
15 private email records, copies of email messages, email addresses, user ID numbers, and  
16 other identifying information about Mr. Ning and his pro-democracy writings and  
17 communications. By this conduct, the Yahoo! Defendants knowingly and intentionally  
18 assisted the PRC in its arbitrary arrest, conviction, imprisonment, and torture of Mr.  
19 Ning. As a result of the Yahoo! Defendants' misconduct—and consistent with the  
20 Yahoo! Defendants' intent and goals of their partnership with the Chinese communist  
21 regime—Mr. Ning's pro-democracy messages were silenced, and Mr. Ning suffered  
22 permanent and irreversible physical, psychological, and economic injuries.

23 **I. MR. NING BRAVELY ADVOCATED FOR DEMOCRACY AND WORKERS' RIGHTS**  
24 **IN CHINA.**

25         30. Mr. Ning's resistance against China's communist regime grew from his  
26 and his family's personal suffering. Mr. Ning and his four siblings grew up in  
27 Shenyang, and their family barely survived on his father's wages. Because his family  
28 lacked elevated status in China's communist regime, Mr. Ning's family—despite the

1 hard work of his father—barely scraped by financially and lived in squalor. Most other  
2 working-class families in Shenyang suffered through similar circumstances for the  
3 same reason.

4         31. As a seven-year-old boy, Mr. Ning first personally witnessed the darkness  
5 of communism. A PRC communist officer came to Mr. Ning’s family home and  
6 ordered Mr. Ning’s sister to provide manual labor on farms outside of Shenyang. For  
7 three years, she labored on local farms—not allowed to visit home. Six years later, a  
8 PRC official similarly ripped Mr. Ning’s brother from the family home, forcing him to  
9 provide three years of unpaid labor on local farms. At the time, communist propaganda  
10 often repeated the mantra, “If just one member of the family is sent to the countryside  
11 for labor, the whole family gets the glory.” Referring to that mantra, a thirteen-year-  
12 old Mr. Ning told the officer taking his brother: “No, when one member of the family  
13 goes to the countryside—like my sister and now my brother—everyone has *worry*, not  
14 glory.” Two years following that encounter, authorities ordered a third sibling, Mr.  
15 Ning’s second sister, to provide three years of unpaid manual labor.

16         32. Witnessing the communist regime commit his siblings to slave labor and  
17 observing his father’s struggle to survive in a system that allowed only the communist  
18 elite to thrive, Mr. Ning—as a child—developed disdain for communism. As an adult,  
19 he pushed back. Mr. Ning devoted his life to reporting on the injustice perpetuated by  
20 the communist regime and advocating for democracy in China.

21         33. Mr. Ning began advocating for democracy and workers’ rights as a young  
22 man in his hometown of Shenyang. He organized a Shenyang City Citizens Support  
23 Group consisting of local friends and neighbors who shared a disdain for the  
24 communist regime and sought to curb its abuses. Because Mr. Ning’s friends and  
25 neighbors trusted and respected him, they elected him chairman of their newly-  
26 established Shenyang Patriotic Citizens Autonomous Union (**PCAU**). The PCAU  
27 provided people of Shenyang a platform from which to challenge the CCP’s oppressive  
28 labor policies.

1           34. In May 1989, Mr. Ning and his friends traveled from Shenyang to Beijing  
2 to join the historic pro-democracy, pro-human rights protests at Tiananmen Square.  
3 Leaders of other anti-communism unions from communities across China joined Mr.  
4 Ning at Tiananmen Square. Those leaders formed the Beijing Autonomous Workers'  
5 Federation, a pro-democracy organization that courageously communicated their views  
6 to the CCP.

7           35. Hundreds of thousands of protestors participated in the Tiananmen Square  
8 demonstrations. Even members of the military and law enforcement joined the protest  
9 against totalitarian control and in support of democracy. But the PRC communist  
10 regime, led by the CCP, eventually imposed martial law to quell the protests and  
11 remove the protesters. The military evacuated the protesters by firing on them and  
12 driving through and over them with armored vehicles. What began as a peaceful protest  
13 at Tiananmen Square ended in the murder of thousands of protesters by the communist  
14 regime.

15           36. Up until this point, Mr. Ning had been open and vocal about his disdain  
16 for the policies of the PRC's communist regime. But after the PRC's violent response  
17 to and mass arrest of Tiananmen Square protesters, Mr. Ning began promoting  
18 democracy and working-class rights in a manner that could not be detected by the  
19 communist regime.

20           37. Mr. Ning took every step he could to prevent the Chinese government  
21 from obtaining his confidential correspondence. In order to confidentially express his  
22 political opinions and avoid detection by the PRC, Mr. Ning sent and received pro-  
23 democracy communications using his Yahoo! email account from 2000 to 2002. Mr.  
24 Ning kept his Yahoo! account secure with a password. He also encrypted the materials  
25 he sent from his Yahoo! account. Mr. Ning knew that the communist regime's  
26 discovery of his communications could result in arbitrary detention, arrest,  
27 imprisonment, and illegal torture by PRC officials. He thought that through Yahoo!'s  
28 services, he could fight for democracy while protecting his identity from PRC officials.

1 Mr. Ning did not know that Defendants had agreed to provide and did provide the  
2 communist Chinese regime with his confidential communications and other Protected  
3 Information.

4 **II. PURSUANT TO THEIR AGREEMENT WITH THE PRC—AND IN ORDER TO**  
5 **MAXIMIZE PROFITS—THE YAHOO! DEFENDANTS HELPED CHINA’S**  
6 **COMMUNIST REGIME IDENTIFY AND CAPTURE MR. NING.**

7 38. It has long been widely known that freedom advocates in China are  
8 subject to some of the most inhumane interrogation techniques and human rights  
9 abuses, including torture. It is well known that PRC officials punish political dissidents  
10 for expressing pro-democracy ideas through arbitrary arrest, brutal beatings, starvation,  
11 hard labor, and use of torture devices such as the “Tiger Chair” or “Iron Chair.” PRC  
12 officials often identify political dissidents through surveillance or hacking measures.  
13 The Yahoo! Defendants’ ongoing secret cooperation and agreement with the Chinese  
14 communist regime greatly facilitated the regime’s identification, detention, and  
15 repression of Chinese pro-democracy freedom advocates.

16 39. The Yahoo! Defendants knew of the PRC’s human rights abuses before  
17 entering the Chinese market. They nevertheless agreed to help the PRC communist  
18 regime capture and torture political dissidents. Indeed, each of the Yahoo! Defendants  
19 received letters and had access to publications—long before Mr. Ning’s arrest—  
20 warning them that assisting the PRC communist regime would result in the arbitrary  
21 arrest, imprisonment, and torture of innocent Chinese people merely for exercising  
22 their right to free speech and assembly under Chinese and international law. Those  
23 letters and publications came from non-governmental organizations including Human  
24 Rights Watch and Amnesty International. The Yahoo! Defendants were well aware of  
25 the cost that came with entering the Chinese market, but still chose to actively commit  
26 Yahoo! resources to supporting the regime’s suppression campaign.

27 40. Yahoo! Inc. was the first major American internet company to enter the  
28 Chinese market. The Yahoo! Defendants stood to gain billions of dollars in assets and



1 business opportunities by virtue of their Chinese operations. Prior to entering the  
2 Chinese market in approximately 1999, the Yahoo! Defendants knew that PRC  
3 communist officials falsely imprisoned and illegally tortured political dissidents. Other  
4 American internet platforms either previously declined to enter the Chinese market or  
5 withdrew from it due to its precarious human rights and cybersecurity environment. If  
6 Yahoo! Inc., Terry Semel, and Jerry Yang did not agree to help the PRC locate and  
7 imprison political dissidents using Yahoo! internet products, the PRC would block the  
8 Yahoo! Defendants' access to the Chinese market. The Yahoo! Defendants chose to  
9 take advantage of the scruples of their competitors to gain a business advantage in the  
10 Chinese market by secretly agreeing to help the PRC identify political dissidents active  
11 on Yahoo! internet platforms. The Yahoo! Defendants chose profits over principle and  
12 morality in agreeing to facilitate the regime's campaign of repression.

13         41. Defendants' decisions to provide the Chinese government confidential  
14 communications by pro-democracy activists like Mr. Ning were made and their  
15 implementation closely controlled and directed by Defendants Yang and Semel and the  
16 Yahoo managers they directed from Yahoo!'s California headquarters. The Yahoo!  
17 Defendants maintained vertical control over their Chinese subsidiaries throughout the  
18 relevant time period, such that responding to a request for information like the one in  
19 Mr. Ning's case would have been reviewed by the Yahoo! Defendants or their Agents.

20         42. Thus, prior to entering the Chinese market, the Yahoo! Defendants—from  
21 Sunnyvale, California—agreed to help the PRC apprehend and torture Chinese pro-  
22 democracy dissidents in exchange for access to the Chinese internet market. And once  
23 Yahoo! entered the Chinese market, the Yahoo! Defendants fully performed their  
24 duties under that agreement. Through this agreement with the Yahoo! Defendants, the  
25 PRC's violent communist regime effectively had censorship enforcers operating in  
26 Sunnyvale, California. From their California headquarters, the Yahoo! Defendants  
27 ordered and oversaw the disclosure of Yahoo! customers' personal information to the  
28 PRC. That information included without limitation pro-democracy email exchanges

1 between Mr. Ning and a resident of San Francisco, California, using a Yahoo! account.  
2 The Yahoo! Defendants did this as part of a joint effort to eliminate pro-democracy  
3 messages within China, leaving China, and entering China.

4 43. The Yahoo! Defendants actively concealed their complicity with the PRC  
5 communist regime in their actions and omissions taken or directed from Yahoo!’s  
6 California headquarters, including concealing their activities from investors and the  
7 U.S. government. Although the Yahoo! Defendants have since publicly confessed to  
8 helping imprison some Chinese political dissidents, they have continued to conceal  
9 their assistance to the Chinese communist regime in imprisoning and torturing Mr.  
10 Ning.

11 44. With respect to Mr. Ning, in early 2003 Yahoo! employees and Agents  
12 received a request from PRC authorities asking for private information relating to Mr.  
13 Ning’s Yahoo! email account, including Protected Information such as Mr. Ning’s  
14 identity, telephone number, physical address, private emails, and the dates, times, and  
15 IP addresses from which Mr. Ning accessed his Yahoo! email account. The Yahoo!  
16 Defendants learned of the request at their California headquarters. Defendants knew  
17 that the Chinese communist regime was seeking Mr. Ning’s confidential  
18 communications in order to detain, imprison, torture, and potentially execute him.  
19 Defendants knew that Mr. Ning could be subject to the death penalty for the peaceful  
20 expression of dissenting views and, yet, Defendants were willing to let Mr. Ning suffer  
21 these violations in order to maintain their profits. Charges such as “subversion of state  
22 power” levied at Mr. Ning were transparent attempts to mask the PRC’s suppression  
23 of pro-democracy rhetoric by subjecting him to arbitrary arrest and imprisonment, cruel  
24 and unusual punishment, outright torture, interrogation techniques outlawed by  
25 international treaties, and forced labor.

26 45. Knowing full well the abuse Mr. Ning and other political dissidents would  
27 endure if the PRC possessed their private Yahoo! messages and information, the  
28 Yahoo! Defendants—from Yahoo! Inc.’s California headquarters—ordered or

1 approved the release of Mr. Ning’s and other dissidents’ private and highly sensitive  
2 pro-democracy communications and other Protected Information to PRC authorities.  
3 Mr. Ning’s Protected Information, electronically stored on his secure Yahoo! account,  
4 was provided to the PRC communist regime pursuant to the secret agreement between  
5 the Yahoo! Defendants and the PRC formed at Yahoo!’s California headquarters.

6 46. The Yahoo! Defendants knew the PRC authorities would arbitrarily arrest  
7 and torture Mr. Ning once they released his Protected Information to the government.  
8 They knew this because the Yahoo! Defendants had turned over private emails of other  
9 pro-democracy dissidents in the past to the PRC, and they knew that those dissidents  
10 had been arbitrarily arrested, convicted without even knowing the evidence upon which  
11 their convictions relied, and tortured just as Mr. Ning would be. The Yahoo!  
12 Defendants knew how valuable political dissidents’ private information was, as PRC  
13 officials would often use communications like Mr. Ning’s to locate, arrest and imprison  
14 dissidents. They knew that turning over this valuable information was their gateway  
15 into the Chinese market. Thus, pursuant to their partnership and agreement with the  
16 PRC, and in an effort to preserve their financial interest in the Chinese internet market,  
17 the Yahoo! Defendants continued to assist the PRC in its efforts to punish pro-  
18 democracy dissidents.

19 47. Enabled by the Yahoo! Defendants’ illegal, unethical, and unscrupulous  
20 business practices, the Chinese communist regime used Mr. Ning’s Protected  
21 Information—including his pro-democracy communications stored on his private  
22 Yahoo! email account—to arrest and torture him.

### 23 **III. MR. NING’S UNLAWFUL ARREST AND PRETRIAL TORTURE**

24 48. On December 12, 2003, after PRC communist authorities obtained Mr.  
25 Ning’s private communications from the Yahoo! Defendants earlier that year, twelve  
26 armed PRC officers surrounded Mr. Ning at a restaurant in Chengdu. PRC officers  
27 blindfolded and handcuffed Mr. Ning, and they shackled his legs. They warned: “If  
28 you don’t obey, we can kill you. We will shoot you to death if you attempt to run.” Mr.

1 Ning's worst fears had come true, despite the abundance of precautions he had taken  
2 to protect his identity. Mr. Ning was formally detained four days later, December 16,  
3 2003. Mr. Ning would remain in prison until December 15, 2010

4 49. On December 31, 2003, PRC officers transferred Mr. Ning to a state  
5 security building in his hometown of Shenyang. During the fifty-hour drive to  
6 Shenyang, PRC communist officers deprived Mr. Ning of sleep, physically beat him  
7 about his face and limbs with batons and fists, and repeatedly threatened to kill him.  
8 At no time during this trip was Mr. Ning anything other than docile and compliant.

9 50. After reaching Shenyang, Mr. Ning was placed in solitary confinement  
10 and put under twenty-four-hour surveillance. The cell was round and padded to prevent  
11 suicide. Mr. Ning would soon understand why political prisoners would want to die.

12 51. Although PRC officers never disclosed the source of the information, they  
13 interrogated Mr. Ning regarding the content of his Yahoo! email messages.  
14 Interrogations were regularly conducted by teams of five to six individuals, all wearing  
15 a uniform bearing "1123." Mr. Ning suspected that these numbers identified members  
16 of a notorious investigation team established specifically to investigate and torture pro-  
17 democracy dissidents. Mr. Ning estimated that seventy members of the 1123  
18 investigation team participated in his interrogation. Each interrogation generally lasted  
19 between four and six hours.

20 52. Mr. Ning suffered through countless interrogations, during which he  
21 endured barbaric, abusive interrogation techniques constituting torture. By way of  
22 example only, on one representative occasion, PRC interrogators woke Mr. Ning in the  
23 middle of the night. They walked Mr. Ning outside—when the temperature was less  
24 than negative 13° Fahrenheit—while Mr. Ning wore only underwear, a thin shirt, and  
25 plastic slippers. These officers repeatedly punched Mr. Ning in the head. Blindfolded,  
26 Mr. Ning could not see who was hitting him or where the strikes originated. Mr. Ning  
27 cried out, "I am in a blindfold! I am shackled and handcuffed in this cold weather, I am  
28

1 shivering, and you still beat me up! This is immoral.” The officers continued to threaten  
2 and punch Mr. Ning.

3 53. The officers finally escorted Mr. Ning back inside to the interrogation  
4 room. As they usually did before interrogating Mr. Ning, the team shackled Mr. Ning  
5 to the Tiger Chair, a high-backed, spiked chair created for the sole purpose of torture-  
6 based interrogation that causes increasingly greater discomfort to the back and buttocks  
7 as handcuffs and shackles are intermittently tightened. Thus began one of many  
8 interrogation sessions based on the content of Mr. Ning’s Yahoo! email  
9 communications.

10 54. While the Tiger Chair painfully contorted Mr. Ning’s body, the main  
11 interrogator asked, “Ning Xianhua, will you cooperate with this investigation?” Mr.  
12 Ning feared that if he confessed, he may suffer more severe punishment. Mr. Ning  
13 therefore denied that he could cooperate. In response, the chief interrogator shouted,  
14 “then hang him up!” Mr. Ning’s handcuffs were then loosened and reattached to the  
15 top of the Tiger Chair. The back of the Tiger Chair is about one-and-a-half meters high,  
16 so the tips of Mr. Ning’s feet could barely touch the ground once handcuffed to the  
17 chair in this new position, thereby focusing extreme pressure on his wrists and hands.  
18 The PRC investigator tightened the handcuffs as far as he could, so the handcuffs  
19 deeply cut into the flesh of Mr. Ning’s arm. Mr. Ning dripped with sweat and blood.  
20 As a result of this interrogation session, Mr. Ning permanently lost function in his arms  
21 and hands and cannot even maintain a grip on a cup of water.

22 55. The questions in this interrogation, like many others, centered on Mr.  
23 Ning’s interactions and communications with overseas, pro-democracy activists  
24 through his Yahoo! email account. Investigators directly referenced the contents of  
25 emails exchanged between Mr. Ning and a pro-democracy activist who lived in San  
26 Francisco. The investigators informed Mr. Ning that they already had sufficient  
27 evidence to convict him based on the content of his email communications. The  
28 investigators nevertheless violently demanded that Mr. Ning confess that he had

1 conspired to subvert the reign of the CCP and had communicated with overseas  
2 dissidents in so doing.

3 56. Mr. Ning's description of this portion of the interrogation reveals the level  
4 of pain and suffering that he endured:

5 There were only two options for me at this point. One is begging for mercy. If I  
6 beg for mercy, they may loosen my chains and take me down from hanging.  
7 Another option is I could choose to commit suicide. I took notice that the  
8 interrogation table was about three meters away, so I was attempting to swing  
9 on the chains to reach my head to the interrogation table, so I could knock my  
10 head and die. I was full of pain, agony, anger, and wrath. But three meters was  
11 just too far, so I was deliberately trying to move the Tiger Chair closer to the  
12 interrogation table. The interrogators soon found my intention, so two officers  
13 came in and used metal stakes to stabilize the chair, which would prevent me  
14 from committing suicide. The officers said, "you want to die? We can kill you  
15 like an ant on the ground. The only option is you obey and confess." So I told  
16 them, "in the past I could not understand clearly why so many righteous people  
17 choose to commit suicide in detainment, and today I finally realize and  
18 understand." When someone is tortured like this, their dignity is trampled in such  
19 a way the only way he can defend his dignity is to choose to die. That day was  
20 the most unforgettable day of my whole life because it was that day that I chose  
21 to die rather than continue to experience extreme torture.

22 57. Interrogations like the one described above occurred before Mr. Ning had  
23 even been formally arrested or put on trial at the People's Court of Shenyang. These  
24 pre-arrest, pre-conviction torture sessions marked only the beginning of Mr. Ning's  
25 suffering caused by the Yahoo! Defendants' disclosure of his private information.

26 **IV. MR. NING SUFFERS YEARS IN PRISON AFTER A SHAM CRIMINAL TRIAL.**

27 58. On January 18, 2004, PRC officials submitted a memorandum to the  
28 Shenyang prosecutorial officials advocating for Mr. Ning's prosecution based on



1 evidence purportedly supporting Mr. Ning’s conviction. That memorandum, which Mr.  
2 Ning finally obtained in approximately April 2018, revealed that Mr. Ning’s  
3 prosecution and conviction relied on information that the Yahoo! Defendants provided  
4 the PRC. Mr. Ning had used his Yahoo! email account to communicate with pro-  
5 democracy activists overseas—including in the U.S.—and to express his anti-  
6 communism, pro-democracy beliefs. The memorandum referenced pro-democracy  
7 writings Mr. Ning circulated using his Yahoo! email account. One such writing  
8 obtained by the PRC from Yahoo! Defendants and relied upon as a basis for Mr. Ning’s  
9 prosecution was an essay titled *The Envisions on Establishing Unions in Northeast*  
10 *China*. That essay proposed, among other things, reinforcing the pro-worker  
11 movements in Liaoyang and Daqing, employing the active forces to form a “fist”  
12 against the communist regime, expanding the pro-democracy movement from  
13 Northeast China to all of China, and disseminating the concept of democracy among  
14 Chinese workers. The prosecutorial memorandum also accused Mr. Ning of submitting  
15 and receiving numerous other pro-democracy communications over the internet using  
16 his Yahoo! email account. However, because the memorandum was confidential and  
17 not accessible by Mr. Ning or his defense counsel until approximately April 2018—  
18 and in light of the Yahoo! Defendants’ concealment of their involvement in Mr. Ning’s  
19 arrest and prosecution—Mr. Ning had no idea until recently that this document existed  
20 or that the Yahoo! Defendants had helped to bring about his arrest, conviction, and  
21 torture.

22         59. Nor was Mr. Ning afforded the right to confront his accusers or PRC  
23 witnesses. Mr. Ning and his attorney knew that PRC authorities had relied on the  
24 substance of pro-democracy messages related to communications he made with his  
25 Yahoo! email account, but he did not know and could not have known that it was the  
26 Yahoo! Defendants who actually provided the evidence supporting his conviction. Mr.  
27 Ning’s understanding was that his Yahoo! communications were secure, so he had no  
28

1 reason to suspect they had been deliberately provided to the PRC. Indeed, PRC officials  
2 did not allow Mr. Ning to view the evidence against him.

3         60. While awaiting a verdict in his criminal case, Mr. Ning endured over a  
4 month of sleep deprivation, physical abuse, and starvation amounting to torture.  
5 Interrogation sessions like the one described above continued while prosecutors  
6 weighed the evidence against him. Mr. Ning never confessed to committing any crime,  
7 despite being interrogated with the Tiger Chair and enduring physical beatings,  
8 starvation, sleep deprivation, and death threats by PRC officials.

9         61. Once convicted and sentenced on July 5, 2004, Mr. Ning was transferred  
10 to the Number One Detention Center in Shenyang, where he stayed for two years and  
11 four months. Each prisoner had a space approximately twelve inches wide for sleeping.  
12 Mr. Ning received a minimal amount of food—the bare minimum necessary to keep  
13 him alive. In the Number One Detention Center, Mr. Ning continued to experience  
14 abuse in the form of physical beatings and pain inflicted by handcuffs and shackles.

15         62. This was one of the most psychologically challenging periods for Mr.  
16 Ning. Over one hundred death row prisoners were housed at the Number One Shenyang  
17 Detention Center while Mr. Ning was jailed there. Mr. Ning observed many of these  
18 prisoners being escorted to the “execution field” never to return to their cells. One of  
19 those prisoners was a purported “co-conspirator” of Mr. Ning’s who was sentenced to  
20 death for his political speech. As he was escorted to the execution field, Mr. Ning could  
21 hear him shout, “Long live democracy!”

22         63. Following his imprisonment at Number One Detention Center, in April  
23 2006, Mr. Ning was transferred to the Dabei Prison in Shenyang. There, Chinese  
24 authorities forced Mr. Ning to provide unpaid manual labor for approximately ten hours  
25 per day. Mr. Ning produced Christmas decorations that were exported to North  
26 America and Europe. On days when Mr. Ning could not meet his assigned quota, the  
27 guards punished him with longer hours, physical beatings, or both. Mr. Ning lost count  
28 of how many times he was physically beaten as a result of missing his assigned quota.

1 This cycle of forced labor and physical beatings persisted for at least two months. Mr.  
2 Ning was then transferred to Nanshan Prison in Jinzhou City, Liaoning Province, on  
3 June 1, 2006, where he remained until his release on December 15, 2010.

4 64. Importantly, Yahoo! Inc., Defendant Semel, and Defendant Yang knew  
5 that the PRC would subject Mr. Ning to these abuses if they turned over his private  
6 emails and other Protected Information to the communist regime. But they did it  
7 anyway to secure access to the lucrative Chinese market. Operating from Yahoo!’s  
8 California headquarters, the Yahoo! Defendants made a conscious decision to help the  
9 PRC arbitrarily arrest, unfairly imprison, and brutally torture Mr. Ning—and others—  
10 to preserve their business interests in China. Yahoo! Inc., Semel, and Yang stood to  
11 gain a significant amount of wealth from their operations in China. When the  
12 communist regime sought their help, the Yahoo! Defendants knowingly and willingly  
13 released Protected Information and messages of pro-democracy dissidents—including  
14 Mr. Ning—to preserve their profits and personal wealth. The money the Yahoo!  
15 Defendants made from their Chinese operations depended on the human rights  
16 violations Yahoo! Defendants facilitated.

17 **V. THE YAHOO! DEFENDANTS’ MISCONDUCT HAUNTED MR. NING AFTER HIS**  
18 **RELEASE FROM PRISON.**

19 65. After Mr. Ning completed his sentence and was released from prison on  
20 December 15, 2010, he was arrested and detained again on or about May 18, 2014.  
21 Once more, Mr. Ning would suffer due to the Yahoo! Defendants’ actions. Because of  
22 Mr. Ning’s prior conviction, PRC officials placed Mr. Ning on a heightened tier of  
23 interrogation called the “Tiger Tier.” The Tiger Tier involved enhanced physical abuse  
24 that incorporated the Tiger Chair. Thus, PRC officers increased the intensity of the  
25 interrogation given Mr. Ning’s prior arrest and conviction based on his Yahoo!  
26 communications. During these violent interrogations, which were similar to the session  
27 detailed above, authorities futilely demanded the names of any co-conspirators who  
28 had attempted to subvert the reign of the CCP using online, pro-democracy

1 communications. Although once again subjected to the Tiger Chair and the abuse that  
2 came with it, Mr. Ning warded off any thoughts of suicide, relying on the mettle he  
3 developed during his previous torture.

4         66. On top of inflicting severe physical abuse in an attempt to extract further  
5 confessions from Mr. Ning, the PRC authorities, in late May 2014, destroyed Mr.  
6 Ning's ancestral home in Shenyang and everything in it—the same house in which he  
7 first experienced the evils of communism. They also destroyed his father's home on or  
8 about May 30, 2014, out of retaliation. The destruction of Mr. Ning's family home  
9 resulted from Mr. Ning's pro-democracy advocacy, occurred without warning, and left  
10 his mother and father homeless. Mr. Ning lost his position as an executive vice  
11 president and partner at a legal services company and was unable to find different  
12 employment after his release. PRC authorities also failed to provide Mr. Ning with  
13 even the most basic health care. Mr. Ning is diabetic, and at no point in his detention  
14 or prison sentence did he receive medication or accommodations for his condition.

15         67. Left homeless, practically penniless, and in failing health, Mr. Ning was  
16 released on bail in June 2014 and awaited trial. He lived in a state of fear—fear that  
17 was reasonable given that PRC officials surveilled and stalked him.

18 **VI. MR. NING ESCAPED TO THE UNITED STATES AND FINALLY LEARNED OF THE**  
19 **YAHOO! DEFENDANTS' INVOLVEMENT IN HIS ARREST, IMPRISONMENT, AND**  
20 **TORTURE.**

21         68. Though Mr. Ning sought redress for his torture and imprisonment, he  
22 knew it would be futile to attempt to seek justice in the fundamentally corrupt Chinese  
23 legal system. Had he sought such redress or made any complaint, the communist  
24 regime would have imprisoned and tortured Mr. Ning for subversion. Therefore, with  
25 the assistance of the U.S. Consulate General in Shenyang, Mr. Ning fled to Thailand  
26 on August 27, 2016, before the PRC could imprison him again. The U.S. Embassy in  
27 Thailand assisted Mr. Ning in processing an asylum claim in the United States.

28

1           69. Once Mr. Ning arrived in the United States on August 31, 2016, he was  
2 homeless and in failing health because of the years of torture and abuse Defendants  
3 facilitated. He had lost his home, most of his material possessions, and the financial  
4 security that came with his previous executive position at a legal services company.  
5 Mr. Ning's failing health, combined with the fact that he does not speak English,  
6 rendered Mr. Ning wholly dependent on others once he arrived in the United States.  
7 The Yahoo! Defendants have always concealed and never disclosed that they provided  
8 PRC officials with information that led to Mr. Ning's arbitrary arrest and conviction,  
9 inhumane torture, and resulting permanent injuries. When the U.S. House of  
10 Representatives Foreign Affairs Committee demanded that the Yahoo! Defendants  
11 supplement their previous statements regarding the pro-democracy dissidents that they  
12 effectively turned over to the PRC, these Defendants continued to conceal their actions  
13 with respect to Mr. Ning. The Yahoo! Defendants never supplemented their testimony  
14 before U.S. House of Representatives Foreign Affairs Committee by identifying Mr.  
15 Ning as a victim of their misconduct, and the Yahoo! Defendants have never publicly  
16 disclosed that they secretly turned over Mr. Ning's Protected Information to PRC  
17 authorities as alleged in this Complaint.

18           70. As Mr. Ning slowly healed in the United States, he finally learned that the  
19 Yahoo! Defendants were involved with his arrest, imprisonment, and torture. Even if  
20 Mr. Ning had learned of the Yahoo! Defendants' misconduct while he remained in  
21 China, any efforts to obtain justice would have been futile and dangerous for Mr. Ning  
22 and his family. In the years leading up to his departure from China, Mr. Ning was either  
23 in prison or under constant surveillance and scrutiny by PRC authorities. The Chinese  
24 communist regime would have imprisoned him immediately had he sought civil relief  
25 in China. The PRC communist regime systematically imprisons those who dare  
26 publicize or criticize the regime's practice of censoring speech and imprisoning  
27 political dissidents in blatant violation of international law. To challenge the PRC's  
28 restrictions of free speech in China would have endangered Mr. Ning's family and

1 himself. The PRC communist regime systematically silenced political dissidents by  
2 any means necessary, including torture and cruel treatment, prolonged arbitrary  
3 detention, imprisoning and punishing dissidents' family members, destruction of their  
4 property, and the imposition of the death penalty for peaceful protest.

5 71. Mr. Ning hopes that, through this lawsuit, the Yahoo! Defendants are  
6 finally made to answer for the torture and injuries befalling Mr. Ning as a result of their  
7 misconduct. He also hopes that the Yahoo! Defendants reveal the identity of other  
8 political dissidents that they helped imprison pursuant to their agreement with the PRC  
9 communist regime. So long as the victims of Yahoo! Defendants' misconduct remain  
10 unknown, they are not likely to receive the help they need.

11  
12 **CLAIMS FOR RELIEF**

13 **I. VIOLATIONS OF THE LAW OF NATIONS, 28 U.S.C. § 1350.**

14 72. Mr. Ning incorporates all other paragraphs in this Complaint here as if  
15 fully restated.

16 73. Because of the Yahoo! Defendants' actions alleged herein, Mr. Ning  
17 suffered torture and other forms of cruel, inhuman, and degrading treatment or  
18 punishment, crimes against humanity, and prolonged arbitrary arrest and detention  
19 (**Violations**). Each of the Yahoo! Defendants aided and abetted these Violations and  
20 conspired with the PRC communist regime to commit those Violations. These  
21 Violations were part of a widespread and systematic persecution of pro-democracy  
22 freedom advocates and any other Chinese citizen engaged in any criticism of the  
23 regime's policies or actions.

24 74. Defendants Yang, Semel, and Yahoo! Inc. entered into an agreement with  
25 the PRC communist regime pursuant to which Yahoo! employees and Agents would  
26 provide Yahoo! customers' Protected Information and communications upon request  
27 by PRC officials without providing notice to those Yahoo! customers. Pursuant to  
28 Defendants' agreement with the PRC and their specific instructions issued from



1 California, Yahoo! employees and Agents turned over Mr. Ning's private email  
2 communications and other Protected Information stored on his Yahoo! account to PRC  
3 authorities with the knowledge and intent that the PRC would silence Mr. Ning by  
4 committing the Violations defined above.

5 75. The Yahoo! Defendants entered the partnership and agreement with the  
6 PRC communist regime in Sunnyvale, California. This agreement with the PRC  
7 exceeded Yahoo! Defendants' ordinary business activities, forming a secret pact with  
8 a notoriously abusive foreign government which Defendants knew would lead  
9 inescapably to exactly the kinds of human rights violations suffered by Mr. Ning.  
10 Through that agreement, the PRC communist regime extended its reach to Sunnyvale,  
11 California, from which the Yahoo! Defendants aided and abetted the silencing of pro-  
12 democracy messages within China, leaving China, and entering China. Pursuant to this  
13 agreement and active partnership—and pursuant to specific orders and directives by  
14 the Yahoo! Defendants issued from California—Yahoo! and its Agents turned over the  
15 Protected Information of Yahoo! customers like Mr. Ning to the PRC communist  
16 regime. The information produced by the Yahoo! Defendants to PRC officials—and  
17 leading to Mr. Ning's imprisonment and torture—included without limitation pro-  
18 democracy email exchanges between Mr. Ning in China and pro-democracy activists  
19 in San Francisco, California. The Yahoo! Defendants controlled the information  
20 belonging to their customers from California, and they specifically elected to turn it  
21 over to the PRC communist regime to further their personal financial interests.

22 **II. TORTURE VICTIMS PROTECTION ACT, 28 U.S.C. § 1350 NOTE.**

23 76. Mr. Ning incorporates all other paragraphs in this Complaint here as if  
24 fully restated.

25 77. PRC authorities intentionally inflicted physical and mental pain on Mr.  
26 Ning with the specific purposes of extracting a confession from him, obtaining  
27 information regarding other pro-democracy political dissidents, intimidating Mr. Ning,  
28 and punishing Mr. Ning for his pro-democracy communications and beliefs. PRC

1 authorities starved Mr. Ning for days. They deprived him of sleep for days at a time.  
2 They beat him continuously for hours and subjected him to the Tiger Chair for multiple  
3 hours on numerous occasions. PRC officials regularly threatened to kill Mr. Ning and  
4 expressed a ready willingness to snuff out his life, a threat made more real by Mr.  
5 Ning's witnessing of other pro-democracy dissidents being led to the execution field.  
6 The initial request for Mr. Ning's information and all of the horrific acts that followed  
7 were carried out under the color of the PRC's legal authority.

8         78. Defendants Yang and Semel knowingly aided and abetted the PRC's  
9 torture of Mr. Ning through their control over the disclosure of Mr. Ning's confidential  
10 information and their knowing disclosure of this information to the Chinese regime for  
11 the purposes of repressing pro-democracy freedom advocates. Prior to their guiding  
12 Yahoo!'s business into the Chinese market, Defendants Yang and Semel knew that the  
13 Chinese government employed torture to silence and punish political dissenters and to  
14 extract information from them. Defendants Yang and Semel nonetheless specifically  
15 instructed their companies' employees and Agents to provide Yahoo! customers'  
16 private records and communications upon request by PRC officials, despite knowing  
17 that providing this information would directly lead to state torture and execution of  
18 customers like Mr. Ning. This premeditated collaboration with PRC officials  
19 constituted more than general supervision of company affairs by Defendants Yang and  
20 Semel. Rather, pursuant to Defendants Yang's and Semel's agreement with the PRC  
21 and their specific instructions issued from California through the company's vertical  
22 structure, Yahoo! employees and Agents turned over Mr. Ning's private email  
23 communications and other Protected Information stored on his Yahoo! account to PRC  
24 authorities with the knowledge and intent that the PRC would torture Mr. Ning as  
25 alleged in this Complaint. In doing so, Defendants acted under the color of foreign  
26 authority pursuant to their secret agreement to facilitate the Chinese communist  
27 regime's systematic repression of pro-democracy freedom advocates.

28

1 **III. UNFAIR & UNLAWFUL BUSINESS ACTS AND PRACTICES, CALIFORNIA**  
2 **BUSINESS & PROFESSIONS CODE §§ 17200, *et seq.***

3 79. Mr. Ning incorporates all other paragraphs in this Complaint here as if  
4 fully restated.

5 80. The Yahoo! Defendants' disclosure of Mr. Ning's private emails and other  
6 Protected Information stored on his Yahoo! account violates California's Unfair  
7 Competition Law (UCL). Cal. Bus. & Prof. Code § 17200, which broadly proscribes  
8 any business practice or act that is unlawful, unfair, or fraudulent.

9 81. In order to enter the Chinese market and maintain their financial  
10 advantage, the Yahoo! Defendants agreed to help the PRC apprehend Chinese pro-  
11 democracy dissidents by turning over the Protected Information of their consumers.  
12 This misconduct occurred in Sunnyvale, California, where Yahoo! Defendants ordered  
13 and oversaw the disclosure of Yahoo! customers' Protected Information to the PRC.

14 82. Business & Professions Code § 17204 provides that an action for violation  
15 of California's unfair competition law may be brought by persons who have suffered  
16 injury in fact and have lost money or property as a result of such unfair competition,  
17 and Business & Professions Code § 17203 provides that a court may grant injunctive  
18 and equitable relief to such persons.

19 83. Mr. Ning has suffered an injury in fact and has lost money and property  
20 as a result of Yahoo! Defendants' practices, including the loss of his ancestral home,  
21 job, and most of his possessions.

22 **Unlawful Practices**

23 84. Yahoo! Defendants' business practices were unlawful insofar as they are  
24 actionable under the Alien Tort Statute, 28 U.S.C § 1350; the Torture Victims  
25 Protection Act, 28 U.S.C § 1350; and other statutory and common law.

26 85. Yahoo! Defendants' conduct violated the spirit and letter of these laws,  
27 which protect property, economic and privacy interests and prohibit unauthorized  
28 disclosure and collection of private communications and personal information. By

1 knowingly and intentionally accessing Mr. Ning's Protected Information, disclosing it  
2 to Chinese authorities without Mr. Ning's consent, and aiding and abetting the PRC's  
3 torture of Mr. Ning, Yahoo! Defendants integrated a multitude of illegal acts into their  
4 business practices.

5 86. Plaintiff reserves the right to allege other violations of law that constitute  
6 unlawful business acts or practices based upon the above-described conduct.

7 87. Plaintiff has suffered injury in fact and has lost money and property as a  
8 result of Defendant's unfair competition and is therefore entitled to injunctive relief  
9 including restitution under Business & Professions Code §§ 17200, *et seq.*

### 10 **Unfair Practices**

11 88. Yahoo! Defendants' business practices were unfair because they gave the  
12 Yahoo! Defendants an illegal advantage in the Chinese market. Other internet  
13 platforms have been blocked from the Chinese market due to their refusal to censor or  
14 compromise their users' privacy and security, which left consumers in China with  
15 limited ways to communicate electronically. Yahoo! Defendants took advantage of  
16 other companies' reluctance to violate human rights and privacy laws in order to enter  
17 the Chinese market and preserve their financial advantage. They saw the value of  
18 dissidents' personal information and profited from it by turning over emails and other  
19 Protected Information to PRC officials. This was an unethical and oppressive business  
20 practice that resulted in substantial injury to Mr. Ning through the loss of his ancestral  
21 home, job, and most of his possessions, along with serious and lasting physical harm.

22 89. Any justification for Yahoo! Defendants' conduct is outweighed by the  
23 gravity of the consequences to Plaintiff as alleged above. There were reasonable  
24 available alternatives for the Yahoo! Defendants to further their business interests such  
25 as refusing to disclose their users' Protected Information to the Chinese authorities  
26 and/or making their users aware of these unethical practices. Indeed, the burden and  
27 expense of not disclosing Plaintiff's information to the Chinese authorities and/or  
28 informing their users of their intentions would be minimal while the negative impact

1 to Plaintiff was significant. Such actions taken by the Yahoo! Defendants is also  
2 contrary to public policy, immoral, unethical, oppressive, unscrupulous, and  
3 substantially injurious.

4 90. Further, Yahoo! Defendants' conduct constitutes "unfair" business acts  
5 and practices because Yahoo! Defendants' practices were "likely to cause substantial  
6 injury" to Mr. Ning—and did in fact cause Mr. Ning substantial injuries. These injuries  
7 were not "reasonably avoidable" by Plaintiff, and the injuries are "not outweighed" by  
8 the practice's benefits to Mr. Ning.

9 91. As a result of the Yahoo! Defendants' misconduct, Mr. Ning has suffered  
10 injury in fact and lost money and property and is therefore entitled to injunctive relief  
11 including restitution under Business and Professions Code §§ 17200, *et seq.*

12  
13 **THE APPLICABLE LIMITATIONS PERIODS WERE TOLLED**

14 92. Plaintiff incorporates all other paragraphs here as if fully restated.

15 **I. MR. NING COULD NOT INVESTIGATE OR PROSECUTE HIS CLAIMS WHILE HE**  
16 **LIVED IN CHINA.**

17 93. As alleged above, Defendants' misconduct caused Mr. Ning's arrest in  
18 December 2003, his arbitrary conviction in July 2004, and his torture and imprisonment  
19 between December 2003 and December 15, 2010. As a prisoner, Mr. Ning had neither  
20 the right nor the ability to investigate or prosecute civil claims. He was tortured,  
21 starved, and subjected to forced labor. He lacked access to friends, internet, and the  
22 proper medical care.

23 94. Mr. Ning's sentence from his July 2004 conviction also required him to  
24 relinquish his political rights for two additional years following his December 15, 2010  
25 release, during which Mr. Ning could not leave his home without law enforcement  
26 present and could not engage in political speech. Moreover, during this time, the PRC  
27 communist regime constantly surveilled Mr. Ning, and he was forced to meet with law  
28 enforcement once a month to provide details on his activities and state of mind.

1           95. Even when Mr. Ning’s two-year deprivation of political rights ended, PRC  
2 communist authorities constantly monitored and harassed Mr. Ning, reminding him of  
3 the continuous, imminent risk of imprisonment and torture that he faced. For example,  
4 Mr. Ning planned to attend the May 16, 2013 funeral of street vendor Xia Junfeng,  
5 whom the PRC communist regime executed for allegedly stabbing two communist  
6 party officials. Numerous human rights lawyers and groups openly opposed Xia  
7 Junfeng’s execution, arguing that Mr. Xia had acted in self-defense.<sup>2</sup> On the day of  
8 Mr. Xia’s funeral, communist officers barricaded exits of Mr. Ning’s home and  
9 prevented him from attending Mr. Xia’s funeral service. Another example is Mr.  
10 Ning’s June 1, 2013 arrest for participating in gatherings attended by human rights  
11 advocates. And on December 14, 2013, the PRC communist police arrested Mr. Ning  
12 merely for registering for an event hosted at the U.S. Consulate General. There was  
13 simply no way for Mr. Ning to investigate or prosecute his potential claims against  
14 Defendants in this environment of constant intimidation, nonstop scrutiny and  
15 surveillance, and never-ending risk of reprisals. And he had no knowledge—nor access  
16 to information—that would reveal Yahoo!’s or other Defendants’ role in handing over  
17 his Protected Information to communist authorities.

18           96. On April 25, 2014, the Shenyang Public Security Bureau began  
19 investigating Mr. Ning in connection with an article criticizing governmental  
20 concealment of information relating to a recent flood. In connection with this  
21 investigation, the communist regime secretly detained Mr. Ning on May 16, 2014.  
22 Citing Mr. Ning’s July 2004 conviction, the police placed Mr. Ning on the “Tiger tier”  
23 level of interrogation. After weeks of continual torture, including being stripped,  
24 blindfolded, hanged from the ceiling, and beaten, Mr. Ning was finally released on June  
25 23, 2014, but he still faced charges for “disrupting social order.” Following his release,

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27 <sup>2</sup> See CBS News. *China executes street vendor Xia Junfeng for murder, sparking cries*  
28 *of double-standards in justice.* (Sept. 25, 2013), available at  
<https://www.cbsnews.com/news/china-executes-street-vendor-xia-junfeng-for-murder-sparking-cries-of-double-standards-in-justice/>.



1 Mr. Ning was unable to find employment and stayed home out of fear of reprisals and  
2 intimidation from communist officials.

3 97. Despite the serious risk involved, Mr. Ning, with the assistance of a  
4 Chinese human rights lawyer, bravely sought assistance. In the summer or fall of 2014,  
5 while still residing in China, Mr. Ning learned of the Laogai Foundation in the United  
6 States. Mr. Ning understood that the foundation was formed to assist Chinese political  
7 dissidents, and he contacted the foundation in 2014. Mr. Ning never received  
8 assistance, and he lost the assistance of counsel in summer of 2015 because his lawyer  
9 was arrested and detained in a widespread effort by the communist party to punish  
10 human rights attorneys.<sup>3</sup> Mr. Ning finally learned in 2017 that the foundation denied  
11 his request for assistance because he supported China’s Democracy Party.

12 98. Even if Mr. Ning could have known of Defendants’ misconduct—which  
13 he denies—he could not have sought relief while he remained in China. First, there was  
14 simply no mechanism by which Mr. Ning could have pursued legal relief in China.  
15 There was no Chinese law or court that would permit Mr. Ning to seek relief against  
16 Defendants—especially given that his claims would have implicated conduct by the  
17 PRC communist regime. Second, regardless of whether Mr. Ning pursued relief in  
18 Chinese courts, American courts, or courts in other countries, the PRC communist  
19 regime would certainly have retaliated against Mr. Ning so long as he lived in China.  
20 Had he attempted to prosecute these claims before he left China in August 2016, the  
21 communist regime would certainly have imprisoned and tortured Mr. Ning again and  
22 possibly would have killed him. Indeed, the communist regime had imprisoned and  
23 tortured Mr. Ning for much less. Moreover, as set forth above, the PRC and its  
24 communist regime had a very public and storied tradition of torturing, murdering, and  
25 intimidating political “dissidents” such as Mr. Ning. Mr. Ning had been repeatedly  
26

---

27 <sup>3</sup> See Press Statement, U.S. Department of State. “U.S. Condemns Detention of Human  
28 Rights Defenders in China” (July 12, 2015) *available at* <<https://2009-2017.state.gov/r/pa/prs/ps/2015/07/244820.htm>>

1 victimized by the PRC's intimidation tactics, and he had witnessed the communist  
2 party's ruthlessness at the Tiananmen Square Massacre. Mr. Ning's fear of reprisals  
3 was well-founded. At the time Mr. Ning fled China, the PRC communist regime  
4 remained in power and continued to arrest, arbitrarily imprison, torture, and even  
5 execute pro-democracy advocates. Had he sued Defendants while still residing in  
6 China, the PRC communist regime would have viewed this as an attack on their own  
7 misconduct and would have detained him, tortured him, and possibly killed him.

8 **II. EVEN AFTER ARRIVING IN THE UNITED STATES, ANY ATTEMPTS TO**  
9 **INVESTIGATE OR PROSECUTE MR. NING'S CLAIMS WERE PRECLUDED BY HIS**  
10 **POOR HEALTH AND LACK OF RESOURCES, AND BY DEFENDANTS' CONTINUED**  
11 **CONCEALMENT OF THEIR WRONGDOING.**

12 99. With no end in sight to the endless cycle of intimidation, reprisals,  
13 detention, and torture by the PRC communist police, Mr. Ning fled China. He arrived  
14 in the U.S. on August 31, 2016. But Mr. Ning suffered from debilitating injuries he  
15 sustained during his previous torture. He had no money, could not speak English, and  
16 suffered from diabetes and other medical conditions that had gone untreated for years  
17 given his imprisonment, house arrest, and inability to work and pay for healthcare. Mr.  
18 Ning was entirely reliant on others to complete daily tasks. He lacked the financial  
19 resources, physical strength, and communication skills necessary to seek or identify  
20 evidence of Defendants' wrongdoing. Mr. Ning continued to fear reprisals by the  
21 Chinese communist party even though he resided in the United States. Mr. Ning  
22 believed there was no place completely safe for him.

23 100. Mr. Ning began to recover. In approximately January of 2017, he was  
24 finally able to resume his efforts to seek financial and legal assistance. Those efforts  
25 led to his receipt of the memorandum that first led him to believe that his emails may  
26 have been voluntarily provided to the PRC communist police by Yahoo!. In early 2018,  
27 a human rights lawyer discovered the prosecutorial memorandum prepared by the PRC  
28 in connection with Mr. Ning's 2003 arrest and 2004 conviction. The lawyer provided

1 Mr. Ning a copy of the memorandum in approximately April 2018. The lawyer secretly  
2 discovered the memorandum in records at the Shenyang City Intermediate People's  
3 Court. Given the constant threat of detention and physical harm to human rights  
4 lawyers at the hands of the PRC communist regime, the lawyer had to maintain  
5 secrecy.<sup>4</sup> These records were not publicly accessible even in 2018. Although Mr. Ning  
6 and his lawyers had requested information supporting his conviction during his 2004  
7 criminal defense and subsequent appeal, the PRC authorities withheld this  
8 memorandum, along with all other evidence that presumably would have implicated  
9 Defendants. Unlike applicable rules and protections in the United States, there was  
10 simply no mechanism by which Mr. Ning or his lawyer could have compelled  
11 production of this memorandum. The memorandum revealed to Mr. Ning for the first  
12 time that the PRC communist regime did not merely know the substance of some of  
13 his emails—they actually possessed his emails and had quoted them in the  
14 memorandum. It was at this time that Mr. Ning came to realize that Yahoo! may have  
15 betrayed him by turning over his emails and account information to the PRC  
16 communist regime in 2003. The lawyer who provided Mr. Ning this information  
17 remains fearful of reprisals from the communist regime in retaliation for his submission  
18 of this memorandum to Mr. Ning.

19 101. Receipt of this memorandum in approximately April of 2018 marks the  
20 first time Mr. Ning had any reason to suspect Defendants played a role in his  
21

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22  
23 <sup>4</sup> The lawyer was especially concerned because (i) human rights lawyers in China must  
24 follow strict protocols of confidentiality to avoid reprisals from the CCP, which include  
25 frequently changing phone numbers and concealing contact information of their  
26 clients; and (ii) the phone used to transmit the memorandum to Mr. Ning from China  
27 to the United States was manufactured by the Chinese telecommunications company  
28 Huawei, which maintains a CCP Party Committee within the company (*Cf.* U.S. House  
of Representatives (2012), *Investigative Report on the U.S. National Security Issues  
Posed by Chinese Telecommunications Companies Huawei and ZTE*, available at  
<[https://republicansintelligence.house.gov/sites/intelligence.house.gov/files/documen  
ts/huawei-zte%20investigative%20report%20\(final\).pdf](https://republicansintelligence.house.gov/sites/intelligence.house.gov/files/documents/huawei-zte%20investigative%20report%20(final).pdf)>). For these reasons, the  
lawyer requested that there be no record of his communication with an individual in  
the United States that includes his name.

1 imprisonment and torture. Until April 2018, Mr. Ning neither knew nor could have  
2 known that the PRC communist police possessed access to his Yahoo! account and  
3 emails because of Defendants' misconduct—access that served as the primary basis for  
4 his arrest, imprisonment, and torture. While PRC officers interrogated Mr. Ning  
5 regarding the substance of his email messages, they never revealed they actually  
6 possessed his emails. They also interrogated him about a number of other issues as  
7 well. Further, the source of the information prompting the interrogators' email-related  
8 questions was not disclosed to Mr. Ning; nor could Mr. Ning identify Defendants as  
9 the source based on what interrogators told him. From Mr. Ning's perspective, the  
10 questions could have been based on speculation, based on interrogations of others, or  
11 even based on information the PRC obtained from hacking his account, confidential  
12 informants, intimidation of downstream recipients of Mr. Ning's emails, or undercover  
13 agents who had infiltrated pro-democracy groups. The interrogators never mentioned  
14 obtaining Mr. Ning's Protected Information from Yahoo!, its subsidiaries, or  
15 Defendants; nor did they otherwise hint at the source of the evidence supporting their  
16 questions. Nor did anyone else. Through no fault of his own, until approximately April  
17 2018, Mr. Ning had no reason to believe that Defendants provided his Protected  
18 Information to the PRC communist police. In approximately April 2018, Mr. Ning  
19 finally gained access to the prosecutorial memorandum which revealed that PRC  
20 communist authorities possibly had direct access to his Protected Information.

21       102. As noted above, Mr. Ning had no control over or access to information  
22 that would have revealed Defendants' roles in his arrest, imprisonment, and torture.  
23 Unlike the criminal justice system in the U.S., the PRC does not permit suspected  
24 "criminals"—including Mr. Ning—to view the evidence against them. The PRC did  
25 not provide Mr. Ning with documents pertaining to Defendants' production of Mr.  
26 Ning's Protected Information to communist authorities; nor did Mr. Ning or his lawyer  
27 have any access to such documents or evidence until approximately April 2018. Mr.  
28 Ning was not allowed to face his accusers, and he certainly was not allowed to question

1 PRC authorities or any other witnesses in his defense. There was simply no procedure  
2 by which Mr. Ning could have learned that Defendants were the source of the  
3 information used to imprison him.

4 103. Additionally, Defendants all actively concealed the fact that their  
5 misconduct caused Mr. Ning’s arrest, arbitrary conviction, and torture. As noted above,  
6 Defendants entered an agreement with the PRC communist regime—long before Mr.  
7 Ning’s 2003 arrest—under which Defendants would help the PRC communist regime  
8 identify and prosecute pro-democracy activists like Mr. Ning. When Defendants or  
9 their Agents received law enforcement’s request for information regarding Mr. Ning in  
10 2003, they knew exactly what the request meant when it stated that the information was  
11 relevant to charges against Mr. Ning relating to “state secrets” or “subversion.”  
12 Defendants and their Agents knew that those “crimes” were mere pretexts designed to  
13 punish political opponents of the communist regime, and they knew their disclosure of  
14 Protected Information would serve that goal. Ex. 1, 2007 House Comm. on Foreign  
15 Affairs Hearing at 2, 7-8, 19, 45. But Defendants actively concealed their agreement  
16 and their misconduct as it related to Mr. Ning and other freedom fighters who were  
17 arrested, tortured, and even killed because Defendants and their Agents provided their  
18 Protected Information to communist censorship enforcers. Defendants maintained this  
19 secret because they knew that revealing this misconduct would result in legal troubles,  
20 negative publicity, and unwanted governmental scrutiny.

21 104. Defendants also understood that, despite their past concealment of their  
22 role in imprisoning pro-democracy activists in China, the U.S. government demanded  
23 Defendants’ transparency regarding pro-democracy activists imprisoned with  
24 Defendants’ assistance. Ex. 1 at 8, 10, 13, 23-24, 29-30, 36, 40, 56-57. Nevertheless,  
25 Defendants actively concealed their misconduct from Ning, other Yahoo! customers,  
26 Yahoo! investors, and the U.S. government. Due in large part to Yahoo!’s misconduct,  
27 Ning neither knew nor could have known until April 2018 that Defendants’ misconduct  
28 caused his injuries.

1           105. No later than after initiation of a lawsuit in 2007 by victims of similar  
2 misconduct by Defendants—a lawsuit that was wholly unrelated to Mr. Ning—and  
3 following the House Committee on Foreign Affairs investigation and hearings in 2006  
4 and 2007, Defendants were aware that Mr. Ning was a victim of their misconduct.  
5 Defendants agreed to “do the best [they] can” to provide written information to the  
6 House Committee on Foreign Affairs showing “how often and to what extent . . .  
7 Chinese authorities demand information on individual users.” Defendant Yang publicly  
8 confessed that “we understand we were involved in Mr. Wang and Mr. Shi Tao’s cases”  
9 and that “there might be more.” Defendant Yang also stated that Defendants were  
10 “most interested in making sure we can secure somehow the freedom of the dissidents  
11 that we were involved in.” Defendants knew about Mr. Ning’s case and their  
12 involvement in his arrest, imprisonment, and torture. And despite avoiding further  
13 inquiry by the House Committee on Foreign Affairs by ensuring the committee that  
14 they would report the extent of their misconduct and actively assist those “dissidents”  
15 imprisoned by virtue of Defendants’ betrayal, they did quite the opposite. Defendants  
16 actively concealed information relating to Mr. Ning (and others) in an effort to protect  
17 their bottom line and avoid future liability. Defendants’ strategy was (i) to weather the  
18 storm associated with public awareness of the democracy advocates that Yahoo! helped  
19 the PRC communist regime imprison and (ii) to avoid any additional bad press by  
20 concealing their misconduct associated with others like Mr. Ning. Yahoo! sought to  
21 feign remorse and sympathy with respect to those pro-democracy activists the world  
22 already knew about while preventing the world—and Defendants’ victims—from  
23 discovering the full extent of Defendants’ assistance of the PRC communist regime in  
24 identifying, prosecuting, imprisoning, torturing, and killing political targets.

25           106. Before April 2018, Mr. Ning had no reason to suspect that Defendants  
26 played a vital role in his imprisonment and torture. Until then, he reasonably believed  
27 that his Yahoo! messages had been securely protected by his password and encryption  
28 and that Defendants valued his privacy and secured his Protected Information.



1 Moreover, Defendants had over a decade after the 2007 House committee hearing and  
2 the filing of the 2007 Shi Tao lawsuit to come clean about their involvement with Mr.  
3 Ning's imprisonment and torture, but they have to this day concealed their  
4 involvement. Defendants successfully concealed their role in Ning's imprisonment and  
5 torture. By extension Defendants successfully prevented Mr. Ning from prosecuting  
6 his claims against them until recently.

7 **PRAYER FOR RELIEF**

8 107. Plaintiff respectfully asks that the Court grant the relief requested below  
9 and all other relief to which Plaintiff is entitled, whether by law or equity.

10 108. Mr. Ning seeks recovery of actual damages for the following:

- 11 A. Permanent loss of bodily function he sustained during the  
12 imprisonment and torture alleged herein;
- 13 B. Permanent disfigurement he sustained during the imprisonment and  
14 torture alleged herein;
- 15 C. Past and future medical expenses associated with treating Mr. Ning for  
16 injuries he sustained during the imprisonment and torture alleged  
17 herein;
- 18 D. Damages for lost income due to Mr. Ning's loss of employment and  
19 his decreased capacity to earn a living given his current state;
- 20 E. Reimbursement for the destruction of his home; and
- 21 F. Mental anguish and physical suffering Mr. Ning sustained during the  
22 imprisonment and torture alleged herein.

23 109. Mr. Ning also seeks punitive damages because he sustained injuries as a  
24 result of misconduct by the Yahoo! Defendants that was knowing, intentional,  
25 malicious, reckless, or some combination thereof.

26 110. Mr. Ning also seeks restitution and an order enjoining Defendants'  
27 unlawful and unfair practices, pursuant to California Business and Professions Code  
28 §17203.

1 111. Mr. Ning seeks reasonable attorney's fees and costs he has incurred and  
2 will incur in prosecution of his claims against the Yahoo! Defendants.

3  
4 **JURY TRIAL DEMANDED**

5 Plaintiff hereby demands a trial by jury on all issues as provided by Rule 38(b)  
6 of the Federal Rules of Civil Procedure.

7  
8 DATED: June 1, 2021

*/s/ Helen I. Zeldes*

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# EXHIBIT

1

# YAHOO! INC.'S PROVISION OF FALSE INFORMATION TO CONGRESS

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## HEARING BEFORE THE COMMITTEE ON FOREIGN AFFAIRS HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

NOVEMBER 6, 2007

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## YAHOO! INC.'S PROVISION OF FALSE INFORMATION TO CONGRESS

TUESDAY, NOVEMBER 6, 2007

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON FOREIGN AFFAIRS,  
*Washington, DC.*

The committee met, pursuant to notice, at 10 o'clock a.m. in room 2172, Rayburn House Office Building, Hon. Tom Lantos (chairman of the committee) presiding.

Chairman LANTOS. The committee will come to order.

When the news broke in August that this committee was investigating officials at Yahoo! Incorporated in connection with repression in China, CNN International carried the story, but nobody in China saw it. As soon as the anchors started discussing this case, the screen faded to black. And that is typical. State control over media in China, from the printing press to the airwaves to the Internet, is practically absolute.

Those who manage occasionally to pierce the veil of secrecy pay a heavy price. Such is the case with the young journalist named Shi Tao who is languishing in a Chinese dungeon on a 10-year sentence because he pierced the veil and the huge United States-based multinational company practically led the police to his door.

On the eve of the 15th anniversary of the Tiananmen Square massacre 3 years ago, the Chinese Government issued the directive forbidding journalists from covering anything related to this anniversary.

In a brief second that would have a momentous impact on the rest of his life, Shi Tao hit the Forward button on his the Yahoo! e-mail account and sent the government's message to an NGO overseas advocating for democratic change in China.

When the Chinese Government set out to unlock the mystery of who had publicly disclosed this document, they went to the offices of Yahoo! China to provide the key.

The flagship American company, represented by our two witnesses today, Chief Executive Officer Jerry Yang and General Counsel Michael Callahan, complied with the request from the Chinese political suppression apparatus and provided the necessary identifying information to track down Shi Tao.

If you think our witnesses today are uncomfortable sitting in this climate-controlled room and accounting for their company's spineless and irresponsible actions, imagine how life is for Shi Tao spending 10 long years in a Chinese dungeon for exchanging information publicly, exactly what Yahoo! claims to support in places like China.

In February 2006 under the then-Republican majority, this committee convened the hearing on, and I quote, “The Internet in China: A Tool For Freedom or Suppression.” The hearing was chaired by my good friend and distinguished colleague, Representative Chris of New Jersey. Witnesses included representatives from the State Department, Yahoo! and Microsoft, Google, Cisco Systems, and several NGOs.

Yahoo! had been invited to testify specifically to address the facts of the Shi Tao case. They did so under oath, swearing to tell the truth, the whole truth, and nothing but the truth. Michael Callahan, the general counsel of Yahoo!, gave sworn testimony about the case and Yahoo!’s operations in China.

Mr. Callahan has not been accused of perjury. That would be the willful violation of an oath either by swearing to what is untrue or by deliberately admitting information that is material. But as general counsel for Yahoo!, he did provide false information to this committee in this critically important hearing 18 months ago.

In an effort to convince this committee that Yahoo! was not a knowing agent of the Chinese Government repression, Mr. Callahan testified that Yahoo! had no knowledge of the facts surrounding the Shi Tao case at the time the company provided information to the Chinese authorities.

Let me quote from what Mr. Callahan said:

“When Yahoo! China in Beijing was prepared to provide information about the user who we later learned was Shi Tao, we had no information about the nature of the investigation. Indeed, we were unaware of the particular facts surrounding the case until the news story emerged.”

Based upon a thorough investigation by the staff of this committee, we now know that while Mr. Callahan may not have known the relevant facts personally, other Yahoo! employees, in fact, did know the nature of the Chinese investigation against Shi Tao prior to our committee hearing.

Specifically, the document provided to Yahoo! China on April 24, 2004 by the Beijing State Security Bureau stated, and I quote:

“Your office is in possession of the following items relating to a case of suspected illegal provision of state secrets to foreign entities, and so on.”

Now let me deal with the—what the issue of what this means in a Communist police state.

The term “state secrets” is commonly used in China when a phony criminal case is concocted against political activists. A reasonable person who receives such an order would immediately note that the case in question involves either a political or a religious dissident.

Even an unsophisticated person operating in the context of the Chinese police state would know full well that “state secrets” is a trick phrase used to fabricate a phony but devastating legal case against an innocent person who shares our values in an open and free society.

A key member of the Yahoo! briefing team that prepared Michael Callahan for his appearance before our committee had a copy of the Beijing authority's document.

Yahoo! China lawyers also had a copy of the document.

Yet, somehow, incredibly, Mr. Callahan apparently was not informed of these critical facts and the fundamental nature of Yahoo!'s complicity with the persecution of Shi Tao.

Yahoo! claims that this is just one big misunderstanding, that Yahoo!'s false testimony was really just a matter of an internal miscommunication.

Let me be clear: This was no misunderstanding. This was inexcusably negligent behavior at best and deliberately deceptive behavior at worst. I wish to repeat this: This was inexcusably negligent behavior at best and deliberately deceptive behavior at worst.

In preparing for testimony before this committee, Yahoo! did not seek fit to hire a translator to make sure the document upon which it relied for its entire defense was translated properly. Mr. Callahan never asked to see the document and the Yahoo! lawyer who had it, by Yahoo!'s own explanation, failed to consider the document significant even after Congress ordered Yahoo! to appear to answer directly on this outrage which landed an innocent Chinese journalist in prison for a decade.

Yahoo!'s own lawyers in Beijing also had the document and pulled out its meaning. Either Yahoo! has little regard for providing complete and full information to a duly constituted committee of the Congress, or it has little regard for the issue of perfecting human rights.

Based upon the committee's bipartisan investigation of the Yahoo! testimony, we have reached the following conclusion: Yahoo! provided false information to Congress. Despite the sworn testimony before the committee that Yahoo! did not know the nature of the investigation into the Shi Tao case, Yahoo! employees did know that the Chinese Government wanted the information related to Shi Tao because of a so-called state-secrets investigation in order to imprison him.

When Mr. Callahan later discovered that he had provided false information, he did not make the slightest attempt, not the slightest attempt, to correct the information he had given to Congress under oath.

Six months after his testimony, Mr. Callahan became aware that some officials of Yahoo! did know the nature of the investigation against Shi Tao at the time it complied with the Chinese request for information. Despite Mr. Callahan's explicit recognition that his previous testimony was inconsistent with the facts, neither Mr. Callahan nor anybody at Yahoo! contacted the committee orally or in writing to advise us that Yahoo! had provided false information to the committee.

Inexcusably, there was no effort whatsoever by Yahoo! to set the record straight after providing false information to a duly constituted committee of Congress.

Mr. Callahan did, however, tell his public relations operatives to spin the Shi Tao story in a different direction.

After discovering that his general counsel had provided false information on this critical manner, Yahoo! did not conduct an internal investigation into the circumstances under which false information was provided to Congress. Yahoo! tried to sweep this grave transgression under the rug. No internal review of the matter took place. No change in company policy was instituted. Nobody at Yahoo! has been disciplined for providing false information to Congress.

Key employees related to the provision of false information to Congress remain at their posts.

Yahoo! had no means or possible intent to prevent Yahoo! China from being a willing participant in political witch hunts emanating from Beijing. Yahoo! incorporated no American lawyers in Beijing; there was no mechanism in place for Yahoo! headquarters to review Chinese efforts to ferret out individuals who wish to see a more open and a more democratic China.

A company of Yahoo!'s resources and sophistication operating in the Chinese milieu should have taken every conceivable step to prevent the automatic compliance with a request from the Chinese police apparatus, and to this day, Yahoo! has failed to change any of its practices in order to prevent such collaboration in the future.

Yahoo! Incorporated is now a minority shareholder in Yahoo! China. But one of our witnesses today, CEO Jerry Yang, sits on the board of Alibaba, the parent company of Yahoo! China. If Chinese police today request that information from Yahoo! China related to political dissidents, Yahoo! China would turn over the individual's e-mail records identity, who might be subsequently sent to prison perhaps for 10 long years.

My colleagues, I do not deliver these conclusions lightly. High-tech companies like Yahoo! are enormously important to the American economy as well as to the global economy, and they have transformed the way in which information is conveyed worldwide.

That said, I do not believe that America's best and brightest companies should be playing integral roles in China's notorious and brutal political repression apparatus.

I will ask our witnesses today, in light of these embarrassing, appalling facts, whether Yahoo! is now prepared to endorse legislation offered by Congressman Chris Smith and approved by this committee to ensure that American complicity with high-tech repression ends.

It should be self-evident that companies cannot get away with providing false information to Congress.

So today I will call on Yahoo!'s stock corporate executives to apologize to this committee, the Congress of the United States, and the American people.

But first and foremost, I urge our two witnesses to face the family of the Chinese journalist who, as a result of Yahoo!'s actions, has been thrust into a Chinese prison. When he first appeared before this committee, I asked Mr. Callahan whether he had reached out to Shi Tao's family to offer an apology and to provide assistance. The answer was a resounding no.

Fifteen months later, Yahoo! has yet to provide any aid to Shi Tao's family. Mr. Yang, Mr. Callahan, Shi Tao's mother is sitting in the first row behind you. I would urge you to beg the forgiveness

of the mother whose son is languishing behind bars due to Yahoo!'s actions.

It is now my pleasure to call on my friend and colleague Ileana Ros-Lehtinen for any opening comments she might wish to make.

Ms. ROS-LEHTINEN. Thank you as always, Mr. Chairman.

The greatest threat to repressive societies and repressive regimes is access by their subject populations to uncensored information, because independent information results in independent judgment which leads directly to independent action.

For that reason, these regimes can never feel truly secure without complete control over all aspects of their people's lives, none being more important than the flow of facts and the exchange of opinion.

Yet even with the increasingly strenuous efforts to choke off uncontrolled connections to the wider world, news sources appear, autonomous networks spring into being, and electronic walls erected with great effort begin to crumble. Light still manages to seep in through the darkest of barriers.

Among the most threatening of these new sources is the Internet and the ever easier access to the rapidly growing universe of unfiltered data and unconstrained world views that it makes possible. The Internet's potential to undermine the control of these regimes over information is why blocking of the Internet has become a vital task for the maintenance of repression from Cuba to China, from Syria to North Korea.

Regimented societies, such as Cuba's and North Korea's, have largely succeeded in their efforts to quarantine this deadly intrusion by the simple means of denying any and all unsupervised access by their populations.

In my native homeland of Cuba, a 5-year prison sentence awaits those who somehow manage the nearly impossible task of connecting to the Internet. If they go so far as to actually post information, the sentence increases to 20 years imprisonment.

Yesterday, President Bush bestowed the Medal of Freedom in absentia to Dr. Oscada Leos Biscet, a Cuban political prisoner languishing in a filthy dark dungeon.

When not in solitary confinement, many of Dr. Biscet's cellmates in Cuba may very well have been there for crimes regarding dissemination of freedom information.

In the year 2000, an opposition activist, Jose Orlando Gonzelez Bridon, Secretary General of the illegal Cuban Democratic Workers Confederation, was sent to prison merely for publishing unauthorized information on the Internet. Many others have since followed.

In Syria, Ali Said al-Shahadi, an English language-speaking teacher, was arrested in August of last year for the crime of posting articles on an unauthorized Web site. He was released after 5 months, but a steady stream of Syrians have already been imprisoned for similar online activities that the authorities deemed subversive.

In rapidly developing countries such as China, some experts believe that extreme isolation of citizenry is not possible. Along with the economic development, the context between individuals and groups both within the country and with the outside world, they

are expanding exponentially, so it can happen. However, the Chinese regime has proven that to be wrong.

Its array of tools include an army of Orwell's "thought police" who monitor users and block offending sites, backed up by the arrest and imprisonment of those who successfully evade the system of control.

Among the most harshly targeted are democracy activists of all types, as well as individuals in Tibet and other areas who are seeking greater freedom from control by Beijing. Even those who have defied the government's efforts to prevent news of severe threats to public health from being circulated, such as the deadly outbreak of the SARS epidemic in 2003, have been imprisoned for publishing "state secrets."

As the effectiveness of these regimes' censorship declines, the prospects for freedom for their peoples will increase. For this reason, the U.S. Government must actively engage in overcoming Internet censorship by these regimes and ensure that their populations have access to unfiltered information beyond the strait-jacket of propaganda.

But our efforts are still in their infancy. For many years, I have introduced and supported legislation to strengthen the ability of the U.S. to overcome efforts by repressive regimes to censor the Internet and other media. I am confident that the Global Online Freedom Act of 2007, sponsored by my good friend, Chris Smith of New Jersey, that was recently approved by this committee, will be an important enhancement of that effort.

But the U.S. Government cannot accomplish this task alone. Only with the assistance of the private sector can these regimes' efforts to censor and control the Internet be overcome. However, private companies operate within significant constraints and must walk a fine line between cooperating with the authorities in these countries and respecting the fundamental rights of individuals there and elsewhere.

This is made more difficult by the arbitrary rules and actions of the various regimes and by the absence of clear international standards to use as guidance.

Thus, one of the most welcome advances is the development by the leading Internet-related companies such as Yahoo! of a code of conduct for operating in repressive countries, such as China, a code that is being created with consultation of human rights and other organizations.

Congress has an important role to play in ensuring that U.S. companies maintain these standards by making clear what the law will and will not allow these companies to do in their operations overseas.

The power represented by the often quoted words that "the truth shall set you free" was dramatically demonstrated by the collapse of the Soviet Empire when the grip of the regimes on their societies' connections to the outside world was finally pried loose.

The United States was an indispensable element in that liberation, patiently working through the decades to ensure that light continued to pierce those walls.

We must continue that dedication of purpose for all those who remain imprisoned, and provide them the tools by which they can lib-



erate themselves. And the most powerful truth, the most powerful of these tools, Mr. Chairman, is the truth. Let us hear some of that today in our hearing.

Thank you, Mr. Chairman.

Chairman LANTOS. Thank you very much.

It is my pleasure now to call on my friend and colleague from New Jersey who chaired the original hearing on this subject, Mr. Smith.

Mr. SMITH OF NEW JERSEY. Thank you very much, Mr. Chairman.

First of all, let me begin by thanking you for your genuine, authentic, ongoing and persistent commitment to truth and the integrity of this committee in calling this hearing today, and for speaking just a moment ago, as you so often do, so eloquently and so boldly on behalf of victims. And that is what this hearing is all about, the victims.

I have taken a great personal interest in not just this hearing but this entire issue. It was in large measure response to Yahoo!'s cooperation with the Chinese infamous secret police hunt for democracy, as it did against Shi Tao, that I called the hearing in February 2006 that you have referred to earlier, as well as the distinguished ranking member, Ileana Ros-Lehtinen.

The committee is honored and privileged, as you also welcome them to have in our presence today Gao Qinsheng, mother of Shi Tao, and Yu Ling, wife of Wang Xiaoning, and both of these individuals have suffered enormously. In the case of Wang, he got 10 years, just like Shi Tao. Yahoo! also participated or was complicit in providing information in his arrest and incarceration. And based on the best available information, he is being tortured. Obviously, torture is endemic in the Chinese system, in the laogai and with their secret police. That is how they get confessions.

These individuals are joined by Harry Wu. Harry Wu some years ago stood right where Mr. Callahan and Mr. Yang sit, and brought with him five other survivors of the laogai. Mr. Wu spent in excess of 20 years in the laogai system.

I will never forget when Palden Gyatso, a Tibetan Monk, brought in the implements that are used to torture. He couldn't get through security downstairs because he was carrying cattle prods and the kind of implements that are used routinely, systematically, and with great malice and with great cruelty against political and religious prisoners in China.

Harry told us about Catherine Ho and a whole group of survivors of the laogai and just what kind of horrific treatment, mistreatment, was endured by somebody once they go to the Chinese prison systems. They are concentration camps; we should make no mistake about it.

Yahoo! provided, as we all know, China's police information leading to Shi Tao's arrest, and the words that were used were "inciting state subversion." That is, he was promoting democratic reform on the Internet.

For the benefit of those who weren't at the February 2006 hearing, and we will be providing copies to members of the press so they can see exactly who said what and when at that hearing, we swore in Mr. Callahan and asked him to proceed as he would like.

In his opening statement, before I or anyone else had asked any questions, he brought up Shi Tao and said that Yahoo! had “no information”—let me read it so it is right from the hearing record—“had no information about the identity of the user or the nature of the investigation. Indeed, we were unaware,” he went on, “of the particular facts surrounding this case until the news story emerged.”

This was not a casual remark. The written statement Mr. Callahan submitted to the committee said the exact same thing.

Recently, as the chairman has pointed out, we have learned from Reporters Without Borders that when the Chinese police came to Yahoo! looking for Shi Tao, their request for information had specified that they were investigating someone who had “violated state secrets.”

Unless one is incredibly naive or willfully ignorant, everyone involved with China knows that when democracy and human rights activists, religious believers, and members of the religious or persecuted nationalities, including Uighurs and the Tibetans are arrested, it is often for “violating state secrets.”

Just like in the Soviet Union, it is a nebulous, completely elastic term. It is a modus operandi of dictatorship. In effect, this charge means nothing more than they told the truth about some misdeed of the Chinese Government.

And if the Chinese Government would prefer that people not know something about life in China, then they make that something a state secret. The so-called state secret the Chinese Government accused Shi Tao of violating was to pass on a directive calling for censorship of news on the 15th anniversary of the Tiananmen Square massacre.

I look over at the press sitting to our left. If any of you passed on that information and you were in China, you would be in prison for 10 or more years.

Mr. Callahan, what you write today would certainly fetch you 15 to 20 years. Mr. Callahan now claims that when he testified in 2006, he did not have personal knowledge of the contents of the Chinese police request and that he and the company he works for made a good-faith effort to inform themselves of the matter about which he was called to testify.

Mr. Chairman, Yahoo! lawyers have told our staffs that almost a dozen people prepared Mr. Callahan for his testimony. How could a dozen lawyers prepare another very smart and very savvy lawyer to testify before Congress without anyone thinking to look at the document that had caused my hearing to be called in the first place? This is astonishing.

It is even more incredible that Yahoo! claims that after his testimony before the committee, Mr. Callahan later found out that Yahoo! knew that the police request had to do with state secrets. He forgot to inform the committee. It is one thing not to know something. It is another thing altogether to choose not to know.

I would like to find out at this hearing whether the corporate culture of Yahoo!, in whole or in pertinent part, was and is shaped by a fundamental decision not to look too closely into what their employees are doing in China.

Mr. Chairman, 2 weeks ago, this committee—and I thank you, you know—the take on this Congress is that we are not bipartisan. You have really shown that that is not the case. You marked up our bill, the Global Online Freedom Act, H.R. 275. This legislation was authored and put together precisely to prohibit exactly what Yahoo! did to Shi Tao.

The Global Online Freedom Act would prohibit United States companies like Yahoo! from disclosing personally identifying information to officials of countries like China unless the Department of Justice determines it is for a legitimate law enforcement purpose.

The act would require other United States companies working in countries like China to disclose Internet contents that they remove or block. We know what Google has done in becoming part of the state propaganda efforts.

Dictatorships need two things to survive and prosper: A secret police that routinely rounds up and cruelly mistreats especially the dissidents, and they need to control the message, the propaganda message.

The act would also create an amended Act of Freedom at the State Department and develop a global strategy to combat attempts from countries like China, North Korea, Syria, Vietnam and Cuba to transform the Internet into a tool of surveillance and repression.

I would like to remind my colleagues and everyone here today that Yahoo!'s failure to provide this committee with accurate information about its sad betrayal of Shi Tao is powerful evidence that we cannot entrust the human rights of vulnerable people living under repressive regimes like China to the industry code of conduct that is being formulated by the IT companies. A Yahoo! code of conduct would be cold comfort to people like Gao Qingsheng, Shi Tao's mother. The fact that we are here today is evidence that we need the Global Online Freedom Act. And, again, I think we need it now.

I thank you again, Mr. Chairman, for calling this important, and, I would say, historic hearing.

Chairman LANTOS. Thank you, Mr. Smith.

It is the intention of the chair to allow every member of the committee to make a brief statement if she or he desires to do so.

Mr. Sherman.

Mr. SHERMAN. Yes, Mr. Chairman. Thank you for holding this hearing.

I look forward to finding out what Yahoo! is doing not only for the one journalist in question, but for all dissidents in China. It seems to me that if Yahoo! is going to atone for the misinformation they gave to this committee, it should be more than bowing to the journalist's wife, but rather strong support for the legislation Mr. Smith has put forward, and a large fund available to help with the humanitarian needs of dissidents in China.

I think anything else is an insincere vow.

I yield back.

Chairman LANTOS. Mr. Rohrabacher.

Mr. ROHRBACHER. I was just walking through Congress to the Capitol there on the way over here, and I couldn't help but notice the statue of Raoul Wallenberg in the Capitol.

I know there are heroes in this world like Raul Wallenberg, and America needs to be on their side. Those people who are not on the side of the Raul Wallenbergs, but who would facilitate the imprisoning of people like this, are not Americans. I mean, they may be profit-seeking people who reside here, but America has to be more than just searching for money and markets. There are some more fundamental values to being an American than that.

It is repugnant, if not surprising, to learn that American business people in China are assisting the Chinese Communist Party in its brutal repression of Chinese citizens and their desire for democracy. It would be funny, if it wasn't so sickening, that Internet companies which supposedly pride themselves on facilitating the free exchange of ideas are helping to throw in jail the very people who they claim to be their most loyal clients.

And now, Mr. Chairman, we hear over and over every time we have these hearings about China, from the business community, that they believe that by being more engaged in China that they will in some way liberalize that country, and it will become freer because of their association. And now we hear that American corporations are doing just the opposite in order to gain a bit of momentary profit.

Well, we also hear these same companies saying well, don't control us. You know, we shouldn't—you know, we shouldn't have—we should not be the ones to control ourselves, but Congress has to set limitations. And then they lobby Congress in order not to set limitations, the very same people who are saying, well, we are free to do what we want; you have to set the fundamental policies. And then they lobby against, for example, the legislation.

Chairman LANTOS. The gentleman's time has expired.

Mr. ROHRBACHER. Thank you very much.

The very final thing. I have never been prouder to serve with you than I was today during your opening statement.

Thank you very much, Mr. Chairman.

Chairman LANTOS. The gentleman from Florida, Mr. Wexler.

Mr. WEXLER. Thank you, Mr. Chairman.

I would echo the comments of the previous speakers with respect to the obligation to tell the truth. Yahoo! has an obligation to tell the truth. They need to tell it today, and everyone needs to be accountable.

There are broader issues, however, and I think this is also an opportunity to respectfully suggest possibly the need for some self-reflection in the context of the United States Congress.

We are talking about complicity with human rights abuses. Well, today there are enormous human rights abuses going on in Pakistan and we, the United States Government, send hundreds of billions of dollars to Pakistan. We are about to consider an enormous arms package to Saudi Arabia and other Gulf States that don't do one bit of respect for human rights. And with respect to China itself, the policy of this Government is that we granted China "Most Favored Nation" trading status and we welcomed—the United States Government welcomed—China into the WTO.

Now I may agree or disagree with those statements, but there is a level of complicity, yes, with Yahoo!, but also with this government, that ultimately is the responsibility of this Congress.

So I would respectfully suggest if we are going to delve into these issues, that it is terrific that we do. Let us not just talk about one company. Let us talk about the role of the United States Government and whether or not we legitimately do or do not inhibit freedom or democracy and the role that the Internet plays.

Chairman LANTOS. The gentleman's time has expired.

The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you very much, Mr. Chairman.

I want to thank you for holding this hearing, and I want to commend you on your remarks as well as the gentlelady from Florida for her remarks.

She brought attention to Dr. Biscet in Cuba. And I would highly commend people to read an article, I believe in it is in the *Wall Street Journal*, I think it was yesterday, talking about another prisoner of conscience in Cuba who rots in the jail—if you want to call it a jail—in the most inhumane conditions under Castro.

And one of my most frustrating things in this Congress that I have had is when you realize how many people rot in jails, who basically have done nothing except to try to express human rights, basic dignity for people around the globe. And you see it in China today, you see it in Cuba, you see it in Iran, North Korea, and Syria and many other countries.

And the world needs to act. The freedom-loving nations of this world have to find some way to deal with this problem and do something about these people that rot in jails all over the world for literally trying to help others in their nations to be free. We have not done much about that. This committee has tried. We need to do much more.

Thank you.

Chairman LANTOS. Thank you.

The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Chairman. And let me indicate that I agree with everything that has been said by my colleagues on the dais.

I have heard references to a code of conduct. I would suggest that the issue before this committee is whether a code of conduct, to be policed by Corporate America, is sufficient.

And as my ranking member on the Subcommittee on Oversight knows, we are reviewing corporate behavior in the country of Colombia where American corporations, one specifically, was charged with and paid a \$25 million fine for providing or paying, making payments to paramilitary groups. I think my own sense is that we as a Congress need to define what public policy is or should be in terms of the relationship with Corporate America in doing business overseas. And with that I yield back.

Chairman LANTOS. The gentleman from Indiana, Mr. Pence.

Mr. PENCE. Thank you, Mr. Chairman.

I want to associate myself strongly with the bipartisan comments made today about your moral leadership on this committee, and especially so today in describing Yahoo!'s behavior as "inexcusably

negligent at best or deliberately deceptive at worst.” I think you summarized the sentiment of most of us on this committee.

The price of freedom, freedom of the press, freedom of the press, freedom of speech, is eternal vigilance. And that is vigilance by people who possess political power, but it is also vigilance by those who possess economic power.

And I can't help but think today, Mr. Chairman, of the words of Lenin, who used to describe capitalists as dupes who would “sell us the ropes with which to hang them.” And he would no doubt describe the high-tech rope that seems to be being used to strangle freedom in China today among his references.

I want to know what happened in this case. But more than that, Mr. Chairman, I am interested to know what Americans overseas, Americans who are operating in totalitarian companies, are prepared to do to hold up the ideas of freedom.

And I especially want to acknowledge the presence of Gao Qinsheng, the mother of Shi Tao, and one of freedom's heroes in the world, Harry Wu, who is with us in this room today. I thank you for your leadership and your sacrifice. You will be in my prayers, and with that I yield back.

Chairman LANTOS. The gentlewoman from California, Ambassador Watson.

Ms. WATSON. I want to thank you so much, Mr. Chairman, for your integrity, your honesty, and the example you set for all of us.

The specific issue we are here today to discuss, allegations of the provisions of false information by Yahoo!'s general counsel in a February 2000 hearing, are serious. And I really commend the two of you for being here for the committee today to tell the sides of the stories—of this story that you interpret.

The important issue of Internet freedom and the promotion of free flow of information through this most powerful medium still is in its infancy, and it is also at the heart of the matter that we are here to discuss this morning.

It raises an important issue of how U.S.-based and -owned companies conduct their affairs in countries that operate under a set of laws and institutions that are not only different, but in some cases an anathema of our way of doing business and our notions of rule of law, equity, and fairness.

So I will be very intently listening to the testimony that we get today so that we can raise the questions, Mr. Chairman. And based on the responses, we can set the policy that will lead our country forward.

Thank you very much for this opportunity.

Chairman LANTOS. Thank you.

The gentleman from South Carolina, Mr. Wilson.

Mr. WILSON. Thank you, Mr. Chairman.

And ladies and gentlemen, it is really extraordinary today that we would have leading our committee the chairman, Tom Lantos, who is in America because he and his family fled from Fascism and from Communism, leaving totalitarian Hungary. And indeed the ranking member, Ms. Ros-Lehtinen, is in America because her family fled totalitarianism in Cuba.

I know that I have been really hoping that advances in technology would promote democracy and freedom around the world.



Indeed, that has been achieved in Hungary. We all are very hopeful about a free Cuba. But I want to hear today what can be done not to reinforce totalitarianism, but to promote the very exchange of concepts and ideas which I think will promote democracy and freedom.

Thank you, Mr. Chairman.

Chairman LANTOS. The gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman, and I want to associate myself with all of our colleagues that talked about the issue of our chair and our ranking member. And the other committee I serve on, Mr. Chairman, is the Energy and Commerce Committee, and Telecommunications and the Internet Subcommittee. So I have a particular interest in our hearing today and what our telecom aspect in international relations is.

But the reason we are all here is why we received false testimony earlier.

Mr. Chairman, the Internet is an advanced technology. It should be a tool for good, and one that promotes our values around the world. American companies should, like the American Government, stand with those promoting freedom, rather than the police who seek to shut down dissidents in their best interest of democracy. This committee has held several hearings on the practice of American firms supporting censorship in China.

Yahoo! turned over to Chinese police a dissident's name, the contents of e-mails he sent to the United States, and other information associated with his e-mail account. The burden of sentencing him for leaking state secrets, citing information provided by Yahoo, is critical to this conviction.

What is so troubling is what we are here today to address is that we now have our witness, Mike Callahan, who was called before the committee to testify on the case. The witness provided false testimony. I believe it has been determined that he had not knowingly lied to the committee, but other officials at Yahoo! knew the details of the case in China, including those who had briefed Mr. Callahan prior to the hearing. As became apparent, Yahoo! was involved in providing this information, and the company took proactive steps to determine what happened or what it knew.

Although Mr. Callahan directed his staff to stop their denials that Yahoo! did not know the nature of the investigation, Yahoo! failed to correct this statement publicly or clarify its previous position.

I hope the witnesses can answer why Mr. Callahan is not giving us the information and why there is no attempt to correct these false statements when it became widely known.

Chairman LANTOS. The gentleman's time has expired.

Mr. GREEN. Thank you. I yield back my time.

Chairman LANTOS. The gentlelady from California, Ms. Woolsey.

Ms. WOOLSEY. Thank you, Mr. Chairman.

Gentlemen, global trade should be about exporting the high ideals of American entrepreneurship and about the advancement that we are seeing.

It should help to spread the growth of human capacity, in its very highest levels. Yahoo! stands for innovation and the power of creativity. The company and the founders are an absolute inspira-



tion to inventors here at home and throughout the world. That means Yahoo! has a huge responsibility. And that is why I, for one, and all of us up here are so very troubled about today's hearing.

How can Yahoo! live up to its commitments with the world community, not just to China or the United States, but to a world where we are no longer country to country, we are a globe, a world who is expecting the best of Yahoo!, a new generation of thinkers, and really make it happen?

So that is what I am hoping to learn from the mistakes that happened in the past testimony.

I yield back.

Chairman LANTOS. The gentleman from Oregon, Mr. Wu.

Mr. WU. Thank you, Mr. Chairman.

As Congress debated granting "Most Favored Nation" trading status to China in 1999 and 2000, proponents argued that business engagement would open China and other closed societies, and the proponents of that argument won the day. And time will tell whether that argument was true or whether it was public relations fluff.

This hearing is not about engagement or not engagement. That issue was decided by votes in this Congress in 1999 and 2000. This hearing, in a broader sense, is not about Yahoo! because there are other companies and other incidents which have also occurred.

In the broadest sense, this hearing is about standards of conduct to guide some of our best companies operating in very difficult environments and what to do in the future. Does doing business in China open an authoritarian society? Does it infect China with the democracy bug? Or does doing business in China change the conduct of American businesses for the worse and infect some of our best companies with an authoritarian tick?

I hope we can work hard together to appeal to the better angels of our collective nature, to determine what went wrong in this case and fix it, and to develop a collective approach, especially among high-tech companies, to do better in the future, not if, but when similar cases occur, wherever they occur, in China, in the United States, or elsewhere in the world.

Thank you, Mr. Chairman.

Chairman LANTOS. The gentleman from Texas, Mr. Poe.

Mr. POE. Thank you, Mr. Chairman. Free speech is one of the most fundamental of all human rights, no matter where a person lives in this planet.

The story of democracy in our own country began with disagreement over whether a person had the right to say something or not, one of the basic reasons we are now an independent country and not a part of the United Kingdom.

Our Founding Fathers lived under a tyranny that controlled information and controlled the freedom to exercise one's belief politically. And the framers of this country intended free speech to include criticism of the government and the advocacy of unpopular ideas. I think the right to criticize the government is a human right, no matter where that person lives in the planet.

We value this right because it allows individuals to express themselves without interference or restraint from this Government and burst into and nurtured a country that not only values but pro-

protects independent thought and protects free speech of individuals. I hope that Yahoo! does the right thing and takes these rights, the rights of men and women all around the world, very seriously.

I look forward to the testimony.

Thank you Mr. Chairman.

Chairman LANTOS. Thank you.

The gentleman from Washington, Mr. Smith.

Mr. SMITH OF WASHINGTON. Thank you, Mr. Chairman.

I do think it is a very important topic for a hearing. There are two big questions we are trying to get at, and certainly the gentleman from Yahoo!, when we give you the chance to speak, we will be interested to hear your perspectives on that.

One, how do we change the behavior of repressive regimes? It is not an easy thing to do. It is something we could all agree that we all want to do. But I think Cuba was mentioned earlier, and certainly we have taken a very, very tough tack with them for well over 40 years, and they are no less repressive today than they were over 40 years ago.

And in other countries I think it is probably true. We have engaged too much without too much success. But it is not as simple as a black-and-white decision that we simply stand up to it, we will make it better. It is a more complex question.

And the second is what laws can companies choose to not obey in China or the United States or wherever. If it is a law on the books in a country where they are doing business, when can they say we are not going to follow it? Because it is not just in China where these questions come up; they come up in the United States, they come up in Europe, where free speech is not protected in many instances. There are many examples of that.

Those are two good questions. I hope we get to that, and I hope we get to a chance to discuss how to make progress in those two areas, and I thank the chairman for having this hearing.

Chairman LANTOS. And the gentleman from Florida, Mr. Kline.

Mr. KLINE. I would like to express appreciation for many companies, Yahoo! being one of them, for great innovation and creativity and science and technology. At the same time, I think we also understand technology has allowed us to expand the free expression of information and ideas. It could be used in a very positive way to better people's lives; it could be used in a very negative way in the case of a government using a free expression or expression of information to oppress or suppress or do things, as certainly has been represented here in China.

But the bottom line is what are the standards of ethics and responsibilities and obligations that businesses, that American businesses have overseas and other countries. That is the discussion that we are very interested in hearing what your thoughts are. I think many people around the country have some specific ideas. As was expressed today, this is going to be a very big issue as we go forward.

Information and technology don't have founders. But we as Americans do believe in certain standards of ethics and conduct, and I think that we will be very interested to make sure our American businesses uphold very high standards.

Thank you, Mr. Chairman.

Chairman LANTOS. Thank you very much.

My understanding is the gentleman from Illinois doesn't wish to make an opening statement.

We have two witnesses today, both of whom are senior executives at Yahoo!, a Fortune 500 company that describes itself as the world's largest global online network of integrated services.

Michael J. Callahan who first joined Yahoo! in 1999 has served the company since 2003 as senior vice president, general counsel, and secretary of the corporation. This year Mr. Callahan became executive vice president. Mr. Callahan is responsible at Yahoo! for worldwide legal affairs and public policy. He also advises Yahoo! management on strategic and corporate governance issues. Mr. Callahan is on the register at Georgetown University and holds a law degree from the University of Connecticut.

Mr. Jerry Yang in 1994 co-created the Yahoo! Internet Navigational Guide, and a year later co-founded the company. In June of this year, he became chief executive officer. Mr. Yang displayed a key role in building Yahoo! over the years. He has developed Yahoo!'s corporate strategy, technology vision, strategic business partnerships and international joint ventures. Mr. Yang holds a B.S. and M.S. degree in electrical engineering from Stanford. Currently he is on a leave of absence from the Ph.D. program.

At this time, I ask Mr. Yang and Mr. Callahan to please stand and raise your right hand to take the oath.

[Witnesses sworn.]

Chairman LANTOS. Let the record show that each of the witnesses answered in the affirmative.

We will first hear from you, Mr. Yang.

**STATEMENT OF MR. JERRY YANG, CHIEF EXECUTIVE OFFICER, YAHOO! INC.**

Mr. YANG. Chairman Lantos—you would think I would know how to operate a mike.

Chairman Lantos, Ranking Member Ros-Lehtinen, members of the committee, I am Jerry Yang, co-founder and board member of Yahoo! Inc. since its inception in 1995, and since last June, this June, 4 months ago, as chief executive officer.

I appreciate the opportunity to come before you today to address our role as a global business in the complex human rights and other issues at stake, and our commitment to free expression and privacy.

Before I begin what I hope will be an ongoing and constructive dialogue about the roles and responsibilities of companies and the U.S. Government on these issues, I would like to make two points clear at the outset: First, Yahoo! has been open and forthcoming with the committee at every step of this investigative process. We have answered every question, provided every requested piece of information, and worked with you in good faith. Mike will talk more about the facts in a minute.

I, in turn, look forward to a productive and working relationship with all of you as we collectively tackle this very difficult set of broader issues.

Second, Yahoo! is a company committed to doing the right thing to protect human rights globally. We are a company founded on

openness and an exchange of information and trust. And we deeply believe—believe deeply in freedom of expression and privacy.

On a personal level, this very serious human issue at stake caused me great concern. I have invested my professional life in this company, and I believe in the Internet and its present power. I also know that governments around the world have imprisoned people for simply speaking their mind online. That runs counter to all of my personal and professional beliefs.

I want to take a moment to recognize the families of the dissidents who sit behind me, and I want to say that we are committed to do what we can to secure their freedom. And I want to personally apologize to them for what they and their families are going through.

Since this is my first opportunity to meet with many of you, I would like to share a bit about myself and our company. As with all of us, our life experiences change our perspectives, our beliefs, and our vision for the future.

Like many who came to America with the hope of a better life and opportunity, my mother brought my family here from Taiwan when I was 10. We settled in California, and I grew up like many other American boys, playing sports, studying hard and devoting my time to my family. I also did this with a keen appreciation at an early age that this is the land of opportunity and freedom and the many opportunities America offered. I believe then, as I believe now, that this country is a beacon of freedom for the rest of the world.

I dedicated long hours to studies, and I was fortunate to attend Stanford University, where I focused on electrical engineering, and while there the World Wide Web and Internet began to take off. And my fellow graduate student David Filo and I, while messing around on the Internet, became fascinated with its incredible power and the opportunity it presented to people everywhere.

We also recognized and realized the vastness of information on the Internet would be overwhelming without a sensible system to organize it. That is essentially how Yahoo! was born. What started out as a simple list of interesting Web sites has evolved into one of the world's most popular Internet destinations.

When we founded Yahoo! in 1995, we wanted to create a business and expand access to information to improve people's lives. Today with nearly 14,000 employees operating in over 20 countries, we have more than 500 million people around the world use Yahoo! per month, roughly half of all the Internet users globally.

Yahoo!'s communication tools, like Yahoo! Messenger and Yahoo! Mail, which is the most popular Web-based mail service in the world, helped friends, families, workers, colleagues and people to share interest, communicate and stay connected in unprecedented ways. Our many services also help people to find, keep up with, comment on, even create content around the latest in news, finance, politics, education, sports, lifestyle and many other developments around the world.

Our company is centered around empowering our customers. We never lose sight of the fact that our success as a business is built upon the trust we maintain with our community of global users, in-

cluding citizens from around the world, our advertisers, publishers and business partners.

I would like to take a minute and give you some context about our global business and our entry into foreign markets, including China. As our young company grew quickly in the late 1990s, the United States Government, including Congress, made the decision to normalize trade relations with China. Since then, across Democratic and Republican administrations, the U.S. Government has encouraged American businesses, including technology companies like ours, to engage with China in an enormous market and one focused on modernization. With this backdrop, Yahoo! made the choice, like many other companies across many other industries, to engage in the Chinese market by establishing local operations providing services to Chinese citizens.

To provide historical perspective, at the time we entered the market in China, China was just emerging from decades of closure to the outside world. Even as recently as the mid-'90s, very few Chinese people had telephones in their homes. All media, as it was mentioned, was controlled by the state, and there was no platform for public discussion or news or social issues.

Today despite broad limitation on discussion of sensitive political subjects, Chinese citizens know more than ever before about local public health issues, environmental causes, politics, corruption, consumer choice, job opportunities and even foreign affairs. Much of this change is due to the Internet. There are now over 150 million Internet users in China, second in number only to the United States, and with double-digit growth rates over the last 3 years. An estimated 16 million bloggers are active in China today. There are approximately 500 million mobile phone subscribers in the country.

Let me take you back a little bit into the Internet industry in late 1999 and the early years of the 2000, 2001. You have an Internet industry that was very dynamic going through the boom and the bust of the Internet cycle, as well as, in China, a country that was going through its growth rate.

We operated in China for about 6 years, and we decided to focus our strategic direction on leveraging the best local Chinese management and expertise and entrepreneurship. Therefore, in the summer of 2005, we announced the sale of Yahoo! China to a Chinese company called Alibaba in exchange for 40 percent stake in Alibaba. While I hold one of the four board seats on the parent company, we are now a minority shareholder and do not control Alibaba or Yahoo! China's day-to-day operations. Alibaba is a leader in e-commerce and electronic payments in China and runs the Yahoo! China business.

In addition to the clear business opportunities in China and other emerging markets, we know the presence of technology companies in markets abroad can have a transformative effect on people's lives and local and national economies. Access to information has and will continue to change what people know about the world around them. For a company founded on the principle of increased access to information, these markets hold enormous promise. These markets also present companies like ours with challenges in areas of free expression and privacy.



As I said earlier, we take these issues very seriously as a company. Let me describe to you some of the concrete steps we have taken independently as a company and also in working with our industry peers and human rights groups. To begin, I should note that I personally met with senior State Department officials, Members of Congress and others to discuss these issues of freedom, expression and privacy.

In the last year Yahoo! has established a cross-functional team internally of senior employees worldwide to coordinate our efforts to address privacy and freedom of expression issues. This team consists of employees from a variety of disciplines and departments, including our legal, public, government relations, privacy, community affairs, law enforcement, compliance, security, emerging markets and operational and engineering.

Members of this team also consult with the U.S. Government agencies and outside professionals and authorities including experts at academic institutions. This team, learning from our experience in China, also conducted a formal human rights assessment of the impact of new products and market entry plans, designing strategies that limit risks around challenges of freedom of expression and privacy in new markets.

We've also supported independent research on these tough human rights issues involving technology and the Internet. Last year Yahoo! funded a Knight Fellowship at Stanford University to bring in journalists from countries where freedom of press is limited. The first journalist was from Pakistan, and this year's Yahoo! Fellow is from Zimbabwe. We also funded a Yahoo! International Fellowship on Global Values and Technology at Georgetown University School of Foreign Service.

For the past year and a half, we have been actively engaged in a formal human rights dialogue, co-facilitated by two nonprofits, Business for Social Responsibility in San Francisco and Center for Democracy and Technology here in DC. This is a formal process to design an industry code of conduct with other leading global Internet technology and communication companies. We're working closely with a number of the most prominent human rights groups.

Also included in the formal groups are academics and socially responsible investors. We're all focused on protecting and promoting free expression and privacy in the on-line world. These diverse groups of NGOs, companies and others made a public commitment to create a set of global principles and operating procedures on freedom of expression and privacy to guide company behavior when faced with laws, regulations and policy that interfere with human rights.

The group's goal also includes creating an implementation, accountability, and governance framework, as well as a forum for sharing ideas. The companies are driving to complete this human rights code of conduct in early 2008.

We also believe governments ultimately have the most leverage in this field. The State Department's engagement and support through their global initiative, including the Global Internet Freedom Task Force announced in February 2006, reinforces our belief that governments, through trade relationships, bilateral or multilateral forums, and other diplomatic means, should be a powerful

force of creating a global environment where Internet freedom is a priority and where people are not in prison for expressing their political views on line.

We have been and will continue to be actively engaged for the long term. As a company entering its teenage years now, with hundreds of millions of users, and human stakes more challenging than ever, we know that we must work collectively to find approaches that maintain engagement in markets like China and also put companies in the position to act responsibly.

Mr. Chairman, I hope my testimony helps to illustrate some of the global challenges and even opportunities American companies face in the markets abroad. I also hope you understand our commitment to work in good faith with the committee and the deep belief among Yahoo! employees in free expression and privacy. I would like to express my own personal commitment to human rights. I understand, I respect and share the committee's intense interest in these issues and welcome your collective efforts to help address them.

Thank you. I look forward to answering questions you may have.  
[The prepared statement of Mr. Yang follows:]

PREPARED STATEMENT OF MR. JERRY YANG, CHIEF EXECUTIVE OFFICER, YAHOO! INC.

Chairman Lantos, Ranking Member Ros-Lehtinen and members of the Committee, I am Jerry Yang, co-founder and board member of Yahoo! Inc. since its inception in 1995, and since this past June, Chief Executive Officer. I appreciate the opportunity to come before you today to address our role as a global business, the complex human rights and other issues at stake, and our commitment to free expression and privacy.

Before I begin what I hope will be an ongoing and constructive dialogue about the roles and responsibilities of companies and the U.S. government on these issues, I would like to make two points clear at the outset.

First, Yahoo! has been open and forthcoming with this Committee at every step of this investigative process. We have answered every question, provided every requested piece of information and worked with you in good faith. I, in turn, look forward to a productive working relationship with all of you as we collectively tackle the difficult broader issues.

Second, Yahoo! is a company committed to doing the right thing and to protecting human rights globally. We are a company founded on openness, the exchange of information and user trust, and we believe deeply in free expression and privacy.

On a personal level, the very serious human issues at stake cause me great concern. I've invested my professional life in this company, and I believe in the Internet and its incredible power. I also know that governments around the world have imprisoned people for simply speaking their minds online. That runs counter to all my personal and professional beliefs.

Since this is my first opportunity to meet with many of you, I would like to share a bit about myself and our company. As with all of us, our life experiences shape our perspectives, our beliefs and our visions for the future.

Like many who came to America with the hope of a better life and opportunity, my mother brought me here from Taiwan as a child. We settled in California, and I grew up like any other American boy, playing sports, studying hard, and devoting time to my family. I also did all this with a keen appreciation at an early age of the freedoms and opportunities offered in America. I believed then, as I believe now, that this country is a beacon of freedom to the rest of the world.

I dedicated long hours to my studies and was fortunate to attend Stanford University, where I focused on electrical engineering. While there, the World Wide Web began to take off, and my fellow graduate student and friend David Filo and I became fascinated by the Internet's incredible power and the opportunity it presented to people everywhere. We also realized the vastness of the information on the Internet would be overwhelming without a sensible system to organize it. That is essentially how Yahoo! was born. What started as a simple list of interesting websites has evolved into one of the world's most popular Internet destinations



When David and I founded Yahoo! in 1995, we wanted to create a business and expand access to information to improve people's lives. Today, more than 500 million people around the world use the Yahoo! network per month—roughly half of all Internet users globally.

Yahoo!'s communication tools, like Yahoo! Messenger and Yahoo! Mail—the most popular e-mail service in the world—help friends, families, work colleagues and people who share interests, communicate and stay connected in unprecedented ways. Our many services also help people find, keep-up with, comment on, and even create content around, the latest in news, finance, politics, education, sports, lifestyle, and other developments from around the world.

Our company is centered on empowering our customers. We never lose sight of the fact that our success as a business is built upon the trust we maintain with our community of global users, including citizens around the world, advertisers, publishers, and business partners.

I'd like to give you context on our global business and our entry into foreign markets, including China. As our young company grew quickly in the late 1990s, the U.S. government, including Congress, made the decision to normalize trade relations with China. Since then, and across Democratic and Republican administrations, the U.S. government has encouraged American businesses—including technology companies—to engage with China, an enormous market and one focused on modernization. With this backdrop, Yahoo! made the choice like many other companies across many other industries to engage in the Chinese market by establishing local operations and providing services to Chinese citizens.

I should note for the Committee that Yahoo! Inc. no longer operates a local subsidiary in China. In 2005, Yahoo! Inc. sold its Yahoo! China operations and in exchange became a shareholder in a Chinese company called Alibaba. We own approximately 40 percent of Alibaba. Alibaba now has management control over the Yahoo! China business. While I hold one of four seats on the board of the parent company, we are a minority shareholder and we do not control Alibaba or Yahoo! China's day-to-day operations.

In addition to the clear business opportunities various American companies recognize in China and other emerging markets, we know the presence of technology companies like Yahoo! in markets abroad can have a transformative effect on people's lives and on local and national economies. Access to information has and will continue to change what people know about the world around them. For a company founded on the principle of increased access to information, these markets hold enormous promise.

These markets also present companies with challenges in the areas of free expression and privacy. In response to these challenges, let me describe to you some of the concrete steps we've taken independently as a company and then also in working with our industry peers and also with human rights groups and others.

I have personally met with senior State Department officials, Members of Congress and others to ask for help with this challenge.

In the last year, we established a cross-functional team of senior Yahoo! employees worldwide to coordinate our efforts to address privacy and freedom of expression issues. This team consists of Yahoo! employees from a variety of disciplines and departments, including our legal department, public and government relations, privacy, community affairs, global law enforcement and compliance, security, emerging markets and our international operations.

Members of the team also consult with U.S. government agencies, like the State Department, and outside professionals in the field, including experts at academic institutions. This team, learning from our experiences in China, also conducted a formal human rights assessment of the impact of new products and market-entry plans, designing strategies that limit risks around challenges to freedom of expression and privacy in new markets.

We've also supported independent research on these tough human rights issues involving technology and the Internet. Last year Yahoo! funded a Knight fellowship at Stanford University to bring in journalists from countries where press freedoms are limited. The first journalist was from Pakistan, and this year's Yahoo! Fellow is from Zimbabwe. We also funded a Yahoo! international fellowship on global values and technology at Georgetown University's School of Foreign Service, and the first Yahoo! Fellow recently began her academic work.

For the past year and a half, we have been actively engaged in a formal human rights dialogue co-facilitated by two non-profits—Business for Social Responsibility in San Francisco and the Center for Democracy & Technology in Washington, D.C. This is a formal process to design an industry code of conduct with other leading global Internet, technology and communications companies. We're working closely with various NGOs, including the most prominent human rights groups. Also in-

cluded in this formal group are academics and socially responsible investors. We're all focused on protecting and promoting free expression and privacy in the online world.

This diverse group has made a public commitment to creating a set of global principles and operating procedures on freedom of expression and privacy to guide company behavior when faced with laws, regulations, and policies that interfere with human rights. The group's goals also include creating an implementation, accountability and governance framework—real teeth—as well as a forum for sharing ideas. The companies are driving to complete this human rights code of conduct in early 2008.

We believe governments, because of their enormous leverage, have a vital role to play independently, teaming with other governments and international institutions, and working with companies. The State Department's engagement and support through their global initiatives, including a Global Internet Freedom Taskforce or GIFT announced in February 2006, reinforces our belief that governments—through trade relationships, bilateral and multi-lateral forums, and other diplomatic means—should be a powerful force for creating a global environment where Internet freedom is a priority and where people are not imprisoned for expressing their political views online.

We continue to believe in engagement in markets like China. Why? Today, despite broad limitations on sensitive political subjects, Chinese citizens know more than ever before about local public health issues, environmental causes, politics, corruption, consumer choice, job opportunities, and even some foreign affairs. According to a 2007 Pew Internet study, there are 137 million Internet users in China—second in number only to the United States—with double digit growth rates over the last three years. An estimated 16 million bloggers are active in China today. The Internet drives innovation across sectors, including in science, medicine, business, and journalism just to name a few.

Information is empowering in both ordinary and extraordinary ways. It can be disruptive or even revolutionary. It's the single greatest reason certain governments fear open use of the Internet and the free flow of information. We also know we must work collectively to find approaches that maintain this engagement in markets like China and also put companies in the position to act responsibly.

Mr. Chairman, I hope my testimony helps illustrate some of the global challenges, and even opportunities, American companies face in markets abroad. I also hope you understand our commitment to continue to work in good faith with the Committee and the deep belief among Yahoo! employees in free expression and privacy. I would like to express my own personal commitment to human rights. I understand, respect, and share this Committee's intense interest in these issues, and welcome your constructive efforts to address them.

We have been and will continue to be actively engaged for the long-term. As a company entering its teenage years now, with hundreds of millions of users, and with the human stakes more challenging than ever, we remain fully committed to protecting human rights in the business world's most challenging markets.

Thank you. I look forward to answering any questions you have today.

Chairman LANTOS. Mr. Callahan.

**STATEMENT OF MICHAEL J. CALLAHAN, ESQ., GENERAL COUNSEL, YAHOO! INC.**

Mr. CALLAHAN. Thank you, Mr. Chairman.

Chairman Lantos, Ranking Member Ros-Lehtinen, and Congressman Smith and members of the committee, I'm Mike Callahan, executive vice president, general counsel and secretary of Yahoo!. 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. Obviously following my first opportunity to testify to Congress in February 2006, to have the result be to come back to this committee to explain my prior testimony is not how I would have liked things to come out. I am not proud of that fact, and I do welcome the opportunity to discuss with you today.

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 did not contain specific details of the investigation, including no details regarding the name, profession, activities or charges under investigation, and that is how I testified. I now know that the demand did contain additional information; that the investigation related to "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.

I apologize to you today, Mr. Chairman, as I have previously apologized to you and to the staff, and I apologize now to the full committee for not coming back to the committee once I realized in October 2006 that the demand did contain this additional information.

There are major disagreements over whether the reference to state secrets was significant enough to tell Yahoo! anything material about the case. I believe that while my testimony should have been more precise, the fundamental point remains unchanged, that we did not know the case related to a journalist, we didn't know it was dissident activity, and we did not know this 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 expressed obviously by you, Mr. Chairman, and by other members, and by the staff, and I sincerely regret that I didn't have the 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 it better for United States 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. That is why Yahoo! opened local operations in China.

A by-product of opening local operation, however, is that local companies 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 the Chinese law regarding disclosure of state secrets is just that, overbroad. And as I understand it, the law is vague and broad, and it covers such areas as military information, economic information, and science and technology, as well as being used to prosecute political dissidents.

Over the past 3 months, Yahoo! and I personally have cooperated fully with your staff regarding its inquiry into my testimony before this committee in February 2006, and I explained why I testified as I did. In a series of meetings we actively engaged with your staff to explain the detail surrounding the demand Yahoo! China re-

ceived from the Chinese Government for certain information regarding the user we had later learned was the journalist Shi Tao.

I came to Washington to meet with the committee staff in early October, and I presented my understanding of what happened and answered your questions. Additionally at the staff's request, a regional counsel from Hong Kong made a special trip to Washington for an additional meeting with the committee staff.

Following these meetings I understand that the committee's lead investigator has expressed privately to our attorneys that he was satisfied I did not intend to mislead the committee, and I had testified truthfully in February 2006 as to the information I had at the time. Because of your concern, I would like to take this chance to go into the details of what happened.

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 Yahoo! Hong Kong had provided the Chinese authorities with the information in this case. Prior to those press reports, I was not aware of the Chinese Government demand for information in this case, and I was not directly involved in or informed of Yahoo! China's response to the law enforcement order.

After the press reports, Yahoo! employees contacted employees at Yahoo! China to determine what 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 verdict. As far as I know, this response was handled directly by Yahoo! China's Beijing office upon determining that it met the applicable legal requirements. From that point forward, Yahoo! publicly acknowledged that Yahoo! China had responded to a lawful order for information concerning the user ID that was listed in the verdict.

In February 2006, I testified before two subcommittees of the committee along with several other Internet companies in the hearing entitled, The Internet in China: A Tool for Freedom or Suppression, called by Congressman Smith. 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 concerns 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, it did not know the identity of the user and did not know that the person targeted was a reporter or that it involved political activism. That was my point in making the statements in my prior testimony. The point is unchanged by that additional information I now know. And I also emphasized my understanding that failure by the Yahoo! China operation in Beijing to comply with these lawful orders from

government authorities may have subjected local employees of that company to civil and criminal penalties, including imprisonment.

Chairman LANTOS. Why do you insist on repeating the phrase “lawful orders”? These were demands by a police state to make of an American company a co-conspirator in having a freedom-loving Chinese journalist put in prison. By what judgment do you call these orders lawful? These are the orders of a police state demanding cooperation of an American company.

Mr. CALLAHAN. Yes, Mr. Chairman. And we sincerely regret the consequences, as you point out, of the Yahoo! China operation having complied with those orders.

Chairman LANTOS. So will you continue to use the phrase “lawful orders,” or will you just be satisfied saying “orders” or “requests”?

Mr. CALLAHAN. I can refer to it that way if you like, Mr. Chairman.

Chairman LANTOS. No. I’m asking you whether you consider it lawful to have the Chinese Communist police demand that Yahoo! become a co-conspirator in sending a Chinese journalist to prison.

Mr. CALLAHAN. I’m sorry, I didn’t understand what you were saying before. It is my understanding that under Chinese law these are lawful. I understand that they do not meet the norm certainly of what the United States would consider to be lawful, but my understanding is that they were lawful orders in China, recognizing the distinction between that and your point, sir.

Chairman LANTOS. Please proceed.

Mr. CALLAHAN. Thank you.

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, 8 months after appearing before your subcommittees. And though the reference to state secrets is not information I had at the time at the February 2006 hearing, in my view this additional information does not support that Yahoo! provided false information to Congress.

Please let me describe to the full committee, as I did to some of the committee 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’s Office had opened an investigation into whether Yahoo! Hong Kong had disclosed the information demanded in this 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 state secrets. When I inquired about the language, a regional lawyer in Hong Kong indeed confirmed that the order said state secrets.

Mr. Chairman, I was surprised to hear this additional information, as I have expressed to your staff, because it was different than my understanding from February 2006. Although I did not understand the reference to state secrets to reveal the investigation was for pro-democracy activities, nonetheless I recognized in October 2006 that this was additional information about this case.

Once I became aware of the additional information, Yahoo! made no effort to conceal it. Indeed, shortly thereafter, over 1 year ago, Yahoo! filed a sworn statement with the Hong Kong Privacy Com-



missioner under my signature that included a direct reference to the fact that this order contained the state secrets language appearing in the demand. Furthermore, the Commissioner's subsequent report publicly issued in March 2007 references the state secrets language appearing in the order as well, as well as the language from my submission in October 2006. I believe this report has been publicly available on line and in English since March 2007. And in addition, Yahoo! stated publicly after October 2006 that the case involved the state secrets investigation.

It is clear from the company's continuing action that there was never an intent or plan to conceal this information, Mr. Chairman. And this includes my prior testimony.

Please let me once again express my regret that in October 2006, when I realized the state secrets language was included in the order, that it did not occur to me to contact the committee about this information. Given what I now know about the misunderstanding and the concern created, I deeply regret that I did not think to contact you. I have apologized for that oversight to you, Mr. Chairman, through the committee staff and directly, and I have reiterated it publicly here today.

Engagement in China raises difficult and complex issues and issues upon which there should be serious debate. As a company founded on openness and user trust, we are committed to free expression and privacy. We continue to believe that engagement in 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, sir.

[The prepared statement of Mr. Callahan follows:]

PREPARED STATEMENT OF MICHAEL J. CALLAHAN, ESQ., GENERAL COUNSEL, YAHOO! INC.

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 polit-



ical 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.

Chairman LANTOS. I want to thank both of our witnesses for their testimony, and I would like to begin with you, Mr. Yang.

I described in some detail, and I trust with some clarity, what in our view Yahoo! did wrong. Yahoo! collaborated with the Chinese police apparatus in the imprisonment of a freedom-loving Chinese journalist. Did you agree with that?

Mr. YANG. Mr. Chairman, I—I—I understand where you’re coming from. We—

Chairman LANTOS. No, I'm not asking you to understand where I'm coming from. I am asking you: Do you agree with my characterization of what Yahoo! did?

Mr. YANG. I think Mr. Callahan was clear in that—

Chairman LANTOS. No, I'm asking you, not Mr. Callahan.

Mr. YANG. I—what I—I—what Mr. Callahan said was clear, was that we believe that, based on the information we have at the time of the order and subsequently, we did not have sufficient information to determine that this was a political case. And you have to just allow us to describe to you that.

Chairman LANTOS. Could you put the microphone closer to you?

Mr. YANG. Yes, sorry.

As Mr. Callahan detailed both at the time of the order as well as subsequently, until very recently, we feel until the case came out in the news, we did not have sufficient information to know that this was a political case. We have a local operation. We have chosen to engage—that is an issue fundamental to all of this—that we've chosen to engage. We have employees on the ground that will comply with what looks like, subject to ideological debate, what are legal orders from the government. And we did not know at the time and until it was surfaced in the post prosecution documents that this was a political case.

Chairman LANTOS. In my opening statement, Mr. Yang, I said the following, this—namely Yahoo!'s behavior was inexcusably negligent behavior at best or deliberately deceptive behavior at worse. Do you agree with that characterization?

Mr. YANG. I think we made some errors in preparing and obviously gathering the facts for the February '06 testimony. I think that we could have done that better, and we are not proud of that. We have apologized for providing information at the time that we—and we didn't know we had full information. And I feel that we're having a dialogue now about how to move forward and understand the impact of government-to-company as well as multiparty discussions with our industry peers. And my interest, Mr. Chairman, I do believe it is very important that we figure out how to move forward here as a country and as well as an industry.

Chairman LANTOS. What is your view, Mr. Yang, of the fact that once Mr. Callahan discovered that he provided a duly constituted congressional committee with wrong information, inaccurate information, he failed or anyone else at Yahoo! failed to advise the congressional committee that the original testimony given under oath was inaccurate?

Mr. YANG. Mr. Chairman, I think we've recognized that inaccuracy in our testimony, and we have apologized for not providing that update to the committee. I would say we made no effort to conceal it. We filed it in the Hong Kong Privacy Commission, a filing in October of '06.

Chairman LANTOS. It is not the Hong Kong Privacy Commission that held the hearing, it is the Foreign Affairs Committee of the United States Congress that held the hearing, and it was the Foreign Affairs Committee of the United States Congress which was misled by your chief counsel. Once your chief counsel discovered that he misled this committee, was it his responsibility, was it

Yahoo!'s responsibility to set the record straight with this committee?

Mr. YANG. We should have come back to the committee with the facts. All I'm saying is that we made no effort to conceal it, and that as we—

Chairman LANTOS. You made no effort to reveal that fact.

Mr. YANG. As we studied the order and really asked ourselves the questions of whether we considered state secrets to be political or not, we were certainly made aware that the state secrets is a very broad and vague set of things. And I—as I say, we—we—we clearly should have come back to the staff and to the committee and updated the committee.

Mr. CALLAHAN. Mr. Chairman, if I may.

Chairman LANTOS. Please.

Mr. CALLAHAN. I take responsibility for the fact that we did not come back to talk to the committee.

Chairman LANTOS. Has it occurred to you at the time that you should do that? Has that been a subject of discussion within the Yahoo! community, or it never occurred to anybody to say, "Hey, we misled the committee; now we know that we misled the committee, so we better advise them that the original testimony given under oath was totally misleading."?

Mr. CALLAHAN. There was not a discussion about—

Chairman LANTOS. At no time was there a discussion?

Mr. CALLAHAN. No, sir. And I should have realized that would cause a significant amount of concern and to come back to the committee. And I regret that I did not do that, but I did not come to a decision of whether we should come back, should we not come back. It didn't occur to me to do so, and I sincerely regret that, and I wish that I had.

Chairman LANTOS. I understand.

Was there any Yahoo! employee with whom you were discussing this matter once you discovered that you gave misleading and false information under oath? How many people were involved in these discussions with you, Mr. Callahan?

Mr. CALLAHAN. I recall there were two others on the legal staff that were involved in the Hong Kong Privacy Commissioner submission, and that's who I asked my questions of when I noticed the state secrets language.

Chairman LANTOS. So there were just three of you who were involved in this?

Mr. CALLAHAN. As it relates to the—

Chairman LANTOS. In discussing this whole matter. I mean, your testimony before this committee initially was a matter of some interest within Yahoo!.

Mr. CALLAHAN. I'm sorry, sir, I misunderstood that question.

Chairman LANTOS. Now, when it became apparent to you and to others at Yahoo! that you gave misleading information, false information, did any of the people who were participating in these discussions raise the point that you should have come back to this committee to correct the misleading information?

Mr. CALLAHAN. We did not have a discussion about coming back to the committee, sir.

Chairman LANTOS. At no time?

Mr. CALLAHAN. I wish that we had, and I wish that I had come back to the committee.

Mr. Yang, why is it that after craven cooperation with the Chinese state security apparatus, the provision of false information to Congress, the failure to correct the record with this committee after all this, the only person punished is an innocent journalist who has been sentenced to jail for a decade? No one else has been punished in this case except the innocent. Explain to me.

Mr. YANG. Mr. Chairman, as I have said in my statement, I—I deeply regret the consequences of what the Chinese Government has done to our dissidents. My heart goes out to the families.

I also looked at this matter, and, again, I was not involved in the original testimony, and I obviously was aware of what happened last year, but I really don't believe that our employees acted in a way that was meaning to conceal or mislead or there was an intent to deceive, and those were the bases in which we look at our employees. It is not to say that we haven't tightened up our process, it is not to say that we need to do a whole lot better in the future. You have shown reliance upon something that we need to do a whole lot better and improve in the future. So I understand and take your comments very, very seriously. But at the end of the day, I feel everybody was doing the best they can given the situation, which I just have to highlight it is a difficult situation in an environment that is very fluid. And I don't feel anybody was trying to do anything wrong, they were doing the best they can.

Chairman LANTOS. This committee approved legislation unanimously that will prohibit American high-tech companies from providing personal information to politically oppressive governments such as the Government of China. Isn't this just the type of leverage that Yahoo! needs to fight against future Chinese Government requests for information about political dissidents? Do you welcome the ability, should this legislation become law, to tell the Chinese that American law prohibits you from complying with such requests from Chinese authorities, Mr. Yang?

Mr. YANG. I think we welcome, as I said in my statement, any government to government.

Chairman LANTOS. That is not my question.

Mr. YANG. I think that the Congress, the executive branch, can do a lot to—

Chairman LANTOS. That is not my question, Mr. Yang. Let me rephrase it so you will answer the question I'm asking.

What I'm asking is as follows: This committee unanimously approved legislation that will prohibit American high-tech companies from providing personal information to politically repressive governments such as that of China. Isn't this the type of leverage Yahoo! and others need to fight against similar Chinese Government requests for information against political or religious dissidents? Wouldn't you welcome the ability in future, once this legislation becomes a law, to tell the Chinese that American law prohibits you from complying with their requests? This is my question.

Mr. YANG. I welcome—as you know, I support the goals of the bill. I do think—don't think I understand the details of how to operationalize a bill for companies like ours. But I think it is the thesis and the theme of the committee around human rights and

around repressive regimes is something that I understand and support, but I don't know the details.

Chairman LANTOS. Mr. Callahan, would you like to expand on that?

Mr. CALLAHAN. Yes, certainly, Mr. Chairman. And thank you, Mr. Smith. I had reviewed the bill following the last committee hearing when it was introduced, and it has been some time since I looked at the new, and I have not reviewed in detail the new version that has come out, but I know members of our team are doing so. And to reiterate the point that Mr. Yang made, the engagement with United States Congress around a bill that looks to the important issues of censorship and to day of disclosure, these are the two challenges going forward that are part and core of that human rights dialogue that we mentioned, but also engagement with the State Department. And we very much would look forward to engaging with the committee on that bill. Again, I don't know enough about the details as I sit here today, but our staff is in the process of reviewing it and indeed encouraged.

Chairman LANTOS. Now, as I recall, during the course of the first hearing, which is almost 2 years ago now, a year and a half plus, I asked you whether Yahoo! has reached out to the family of this courageous freedom-loving journalist. What have you done to help them since he is in prison? And as I recall, you said, "Nothing," that Yahoo! had done nothing to assist the family. Have you done anything since?

Mr. CALLAHAN. We have not reached out directly to the family.

Chairman LANTOS. Mr. Yang, would you explain to me why after all this time has expired, and as a Member of Congress, as your representative, in a public hearing almost 2 years ago, what have you done to help this family whose breadwinner is in prison? You still have done nothing to attempt to help them.

Mr. YANG. Mr. Chairman, I feel that we—um—that Yahoo! are most interested in making sure we can secure somehow the freedom of the dissidents that we were involved in.

Chairman LANTOS. I'm sorry, I didn't hear you.

Mr. YANG. We are very focused on understanding how we can be helpful in securing the freedom of the dissidents that we were involved in.

Chairman LANTOS. That is not the question. The question I am asking, Mr. Yang—

Mr. YANG. I want to be—

Chairman LANTOS. Almost 2 years ago I asked your chief counsel what has Yahoo! done to reach out to the family and to help the family whose breadwinner your behavior put in a Chinese prison. Now, in February 2006, Mr. Callahan said, "Nothing." Another 18 months have passed by, and the answer is you have still done nothing. Can you explain why?

Mr. YANG. What I was trying to say, Mr. Chairman, was that while we have not directly met the family, and it is my honor to meet them today, we have been doing work more broadly.

And I understand your point is well taken, but, as I said, let me be precise, I'm interested in making sure that we are trying to do our best to help secure the freedom of these prisoners, and that involves many different means. And I've been in many different dia-



logues, but I welcome the opportunity going forward and to meet with the family, to reopen as I have understood this case. Since I've become CEO in June, it is one of my priorities to understand how I can be open to help.

And I want to thank you, Chairman Lantos, for having them here today, and I do hope this does bring a level of dialogue that we haven't had. It is not because we don't want to help them; it is obviously a very complicated issue. But I thank you.

Chairman LANTOS. Why is it such a complicated issue to help a family whose breadwinner has been imprisoned because of Yahoo!'s cooperation with the Chinese police? What is so complicated about that?

Mr. YANG. Mr. Chairman, as I said to you, I think that Yahoo! should do more. I personally should do more.

Chairman LANTOS. You couldn't do less, you couldn't do less.

Mr. YANG. I take your point, and we will do more as we go forward in helping and understanding what is our role in this.

Mr. CALLAHAN. If I may, sir.

Chairman LANTOS. Yes.

Mr. CALLAHAN. In addition to the efforts that Mr. Yang described, we have advocated with human rights groups and with the State Department specifically for the release of the dissidents in question.

Chairman LANTOS. That is not help to the family. You are not viewed as the champion human rights advocates in the world in view of this episode, so your chiming in with people who are devoting their lives to human rights is not that impressive.

My question was a very specific question: Why hasn't this gigantic corporation of enormous wealth reached out to the family to help the family? And I have no answer. I just get equivocation.

Mr. CALLAHAN. We have pursued advocacy through other channels, but not directly through the family, sir, you are right.

Chairman LANTOS. Ms. Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you so very much, Mr. Chairman.

You use the words "police state," and that certainly applies to China, Cuba, North Korea, Syria, Myanmar, and you discussed—our witnesses discussed—censorship and data collection as being two of the biggest obstacles in relation to the freedom of information and the right of privacy.

When you decide to engage with repressive regimes like the ones the chairman noted and I have mentioned, what conditions do these regimes place on your company? How much freedom do companies such as Yahoo! have regarding the demand for information by authoritarian governments in light of the Chinese case? Also what will you do or not do in the future should other repressive regimes make similar demands?

For example, I understand you're negotiating with the Vietnamese Government for entry into that country. What specific requests are you making of the Vietnamese regime to prevent a repetition of the Shi Tao incident? In what other countries that we normally refer to as authoritarian regimes or totalitarian governments are you engaged in or will you be engaged in? And what conditions are you placing on those governments or those governments are placing on you to ensure that information is not given to those

regimes which will cause imprisonment, harassment, or great hardship for the families? And how often and to what extent do Chinese authorities demand information on individual users? How isolated is this case?

The phrase “state secrets,” as I said, is too slippery. In Cuba everything is a “state secret,” and people are jailed for giving information on “state secrets.” A “state secret” is whatever the regime deems it to be, anything and everything. Castro’s health is a “state secret.”

Is there information that Yahoo! will not provide to the Chinese authorities? Has this case caused you to change your practices in China and elsewhere? How has it changed? What will we expect from companies such as yours as you, in your phrase, choose to engage with these repressive regimes and possibly cause great harm to religious activists, human rights dissidents, opposition leaders, student groups, anyone who has a thought that runs contrary to these authoritarian regimes? So it is a host of questions that I have that I would appreciate your answering.

Mr. CALLAHAN. Certainly. Thank you for the questions.

When our company established operations in China, my understanding of the regime from a legal perspective at the time was that in order to get the license to operate in that country, the company had to agree to comply with Chinese laws, which included censorship, which was a subject of Mr. Smith’s hearing, and other companies were involved, and it also included compliance with law enforcement demands. Whether that regulation was specific as to what kinds of law enforcement demands, I’m not aware of that. I think it was general compliance with Chinese law.

And looking ahead, what you mentioned and what I described in an earlier remark, the two key challenges—and I think it is part of Representative Smith’s bill, and it is also part of the human rights dialogue—is just what you identified, Congresswoman. It is date of disclosure and it is censorship. And as I understand, the way Yahoo! is looking forward at this issue, and not just Yahoo!, because there are other leading companies that are a part of this dialogue, it is how can we structure operations in other markets that are known to be restrictive of free expression or personal privacy in order to be able to operate in those markets, because we do believe there are benefits, and obviously there is a business opportunity, too, but to either segment data through its access to the data or through operational or legal frameworks that would place it out of the reach of those law enforcement authorities.

For obvious reasons, about negotiations or plans that may be looking at other markets, and you mentioned Vietnam, it is better if I talk in broad strokes about how that might occur, and just what you’ve identified is that, which is as companies think about the future, we’ve learned lessons from the past.

And Jerry mentioned the internal group of executives who focus on this issue at Yahoo, and I expect that probably the other leading companies that are involved in this as well, and perhaps the telecommunications companies also are thinking just about this issue, which is as new markets open up, how can we address that? And I think the committee’s bill is one step; the GIFT at the State Department is another step. But, frankly, I think it was another



member in their opening statement asked, what is the company's responsibility in this?

I made this point in the February 2006 hearing, and I would like to make it again today, which is we haven't come here to throw out this problem and say, "Someone else has to deal with it." We recognize that as some of the industry's leaders, we have an obligation and opportunity to try to effect change here. Has the past been perfect? Obviously not, given the situation that we've talked about. But I would like to think that there is a real opportunity with the collaboration that's ongoing between the human rights groups and the leading companies in partnership with the Congress on the new bill, in partnership with the State Department to try to make real progress on these issues.

Ms. ROS-LEHTINEN. Although you say you prefer to answer it in broad terms, what about the case of Vietnam? What restrictions are being placed on you? What information are you going to have to comply to that regime? How similar are these repressive regimes and the conditions that they place?

Mr. CALLAHAN. My understanding is—we're in the process of evaluating that. I'm not aware of what the specific restrictions would be; however, I am aware of certainly press reports. And I think, if I'm not mistaken, a subcommittee of this subcommittee is having a hearing on Vietnam this afternoon. So I'm not exactly aware of what specific restrictions, but obviously have seen the press reports about similar concerns.

Ms. ROS-LEHTINEN. And you would think that based on the committee's interest with the case in China that we would like to have that not repeated elsewhere, so it would be helpful if you could let us know what you will be doing with these repressive regimes. And certainly Mr. Smith's bill gives you the opportunity to say to these governments, we can't give you that information. We will be in—not in compliance with U.S. laws. And I would think that you would welcome such a restriction because it would get you out of legal problems in the U.S., and at the same time you would sleep better at night because you would know that you would not be giving an authoritarian regime information that they will then use to harass, imprison, prosecute, persecute people who are just speaking out for freedom and democracy.

In what other countries do you operate that you sign such agreements about complying with not divulging—not giving information on—or having to give information on who the users are that the regime could then use to harass those dissidents?

Mr. CALLAHAN. As for China, I think, as the chairman mentioned, that we had merged our operations, so Yahoo! China is not controlled by Yahoo! Inc. anymore, but that is obviously one significant market where the legislation as proposed would have an impact on our industry.

Ms. ROS-LEHTINEN. So you have China and you have Vietnam. Are you operating in Vietnam already, or are you in negotiations?

Mr. CALLAHAN. I believe it is a current—a work in progress, I don't think firmly established yet.

Ms. ROS-LEHTINEN. This is a good opportunity for you to put your beliefs in writing and make sure that you don't find yourself in this situation again.

What other regimes?

Mr. CALLAHAN. I'm not aware of other markets that we are operating in that have similar restrictions, but I think one of the enlightening parts of the entire episode around Yahoo! and China and dissident activity is that there are many markets around the world where the information industry like Yahoo!, and Google, and Microsoft and other companies are not yet operating, but may someday in the future.

Ms. ROS-LEHTINEN. One more question. Saudi Arabia is a very repressive regime.

Mr. CALLAHAN. Yes.

Ms. ROS-LEHTINEN. I'm trying to get a sense of what other countries do, and it is so difficult for you to tell me what other regimes are you dealing with and what information must you provide to those governments.

Mr. CALLAHAN. We are not currently operating—

Ms. ROS-LEHTINEN. Not in any of the Middle East countries?

Mr. CALLAHAN. No, we don't have operations there. Certainly as we look ahead as an industry and as a company, as part of the framework that we've talked about with the other companies and also legislative and State Department efforts, I agree with what you said. This is a very good opportunity for our company and others to learn from the lessons of the past.

Ms. ROS-LEHTINEN. We look forward to getting more details about your agreement with Vietnam, and we hold you to your word, and we will follow through with that agreement on Vietnam.

Mr. CALLAHAN. Thank you.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman.

Chairman LANTOS. Mr. Sherman.

Mr. SHERMAN. Thank you.

Mr. Chairman, when the issue is taxation, the companies are here to tell us that the Internet should be a bastion of freedom. When we consider the Global Online Freedom Act, we are told by the companies, not that kind of freedom.

I've got a couple of quick yes/no questions. Mr. Callahan, you discovered that, as to your testimony on Shi Tao, that there were some inaccuracies in your testimony in February 2006. Are you currently aware of any other material inaccuracies in the testimony that you gave this committee February '06?

Mr. CALLAHAN. No. We are obviously concerned about the prior testimony and the concern that was created, and to the extent we do have other issues, I absolutely would bring it to the committee, sir, yes.

Mr. SHERMAN. And you have brought nothing else. So as of now, after careful review of your testimony, you are not aware of any other material inaccuracies?

Mr. CALLAHAN. That's correct, and we are looking at other areas.

Mr. SHERMAN. Let me ask both witnesses, if either of you become aware that your testimony here today is materially inaccurate, will you bring that information to the attention of this committee in writing?

Mr. Yang, it is a yes/no question.

Mr. YANG. Yes. I think—

Mr. SHERMAN. Yes.

Mr. Callahan?

Mr. CALLAHAN. Yes.

Mr. SHERMAN. Mr. Chairman, I think you showed considerable generosity in accepting Mr. Callahan's explanation of what a harsher chairman would have said was a reason to pursue a perjury investigation. Unfortunately I didn't hear any generosity from our witnesses when it came to those who had been imprisoned in China. We had heard the witnesses say they regret the effects of their action, and we're told—I think I saw Mr. Yang bow to the victims of his company's actions. But we're not just concerned with Shi Tao, we also have three others who are in jail now because, in part, of the actions of Yahoo!, Mr. Wang, Mr. Cheng and Mr. Li.

Let me ask Mr. Yang—well, let me preface this. One of the most hypocritical things you can do is refuse to do what you are able to do and say—and distract us by talking about what's not in your power. You do not have within your power the ability to free Shi Tao, Mr. Wang, Mr. Cheng or Mr. Li, but you do have it within your power right now to tell this committee that Yahoo! will meet their humanitarian needs. Sir, are you willing to see Yahoo! meet the humanitarian needs of any one of these four prisoners?

Mr. YANG. Congressman Sherman, I appreciate your comments, and I understand your point of view. I feel we have—we understand we were involved in Mr. Wang and Mr. Shi Tao's cases. Quite frankly, we don't know what we don't know, so there might be more. I just said to—

Mr. SHERMAN. Sir, I asked you a very simple question. Are you going to meet their humanitarian needs? Or are you going to come before this committee and say, "Don't hold us accountable for meeting their humanitarian needs because we will continue to pontificate ineffectually," advocating your freedom, where the chairman indicates that your pontification is of only slight interest?

Mr. YANG. I just said to the chairman of the committee I am very open to understanding how we can be helpful.

Mr. SHERMAN. I told you how you can be helpful. You can meet their humanitarian needs. Give me a yes or no, are you going to do it, or are you not going to do it?

Mr. YANG. I'm willing to consider it, Mr. Congressman.

Mr. SHERMAN. You're willing to consider it. That's a "no" by any other standard. You are going to go home tonight and go to sleep knowing that these four individuals are in prison, knowing that you could do something to meet their humanitarian needs, and try to distract the committee by saying, well, you will come here and advocate their release. Well, I will, too, but I don't think that's going to lead to their release.

Do you have any further comment, Mr. Yang?

Mr. YANG. Congressman Sherman, I would just say that we certainly understand that we are involved in two. You named four, and I don't mean to agree or disagree with that. I don't want to answer the question with regards to necessarily all four because I'm not sure of our involvement in all four. What I am saying is I am very open—

Mr. SHERMAN. Will you—now you're shifting off and saying you don't want the other three. Well, you certainly know about the one

that brought you here. Are you going to meet his family's humanitarian needs—

Mr. YANG. We're going to do our best.

Mr. SHERMAN [continuing]. Or have you not studied that case enough?

Mr. YANG. We know we are involved in two and believe we are going to do the best we can to understand what that means and have offered to meet with the families—

Mr. SHERMAN. You offered to meet with the families? Why would they want to meet with you, sir? You have led the imprisonment of their relatives, and you have come before a committee and said you will not help. Why would they give you that dignity?

Mr. YANG. We have been clear and respectfully told the committee that we believe our role was not knowing and not intentional. We understand that we have responsibilities as a global company when these things happen. We regret what's happened.

Mr. SHERMAN. You have a responsibility, but not to do anything substantive. You have a responsibility to come here before this committee, but not to do anything that you're capable of doing.

Mr. YANG. Congressman Sherman, I did not say we won't do anything. I am very deliberate in making sure that you understand that we will—

Mr. SHERMAN. Well, you haven't done anything yet, you're not willing to commit to doing anything now, and you're going to leave this room, and I'm supposed to think you're going to decide to do something next week?

Mr. YANG. Congressman, maybe we'll disagree on what we have done and what we haven't done.

Mr. SHERMAN. No, no, no, we are in full agreement on what you have done and what you haven't done. You have taken action that has led to the imprisonment of you say two, I say four individuals. You have advocated their freedom after taking action that has led to their imprisonment, and you have come before this committee to say, "I will provide not 1 penny to meet their humanitarian needs." As of now you are committed to not 1 penny. So we've got clear agreement on the facts. Are there any facts that I stated that you disagree with?

Mr. YANG. Mr. Sherman, I would just say that we are understanding and we want to make sure that our involvement in helping with the dissidents is something that we can really have an impact. And we believe—

Mr. SHERMAN. Sir, you are one of the richest companies in the country, and you don't know whether you can provide for the humanitarian needs of a couple of families? Do you have a report to make to shareholders that you are near bankruptcy and can't take on the smallest additional cash flow problem?

Mr. YANG. I understand what you are asking, and we will absolutely study it, and make sure that we understand how to help them. It is my commitment to you and the committee that we will do that.

Chairman LANTOS. The gentleman's time has expired.

Mr. Smith.

Mr. SMITH OF NEW JERSEY. Thank you very much, Mr. Chairman.

Let me just say one thing you can do right away, and I appreciate you saying you will look into it and you want to be helpful. As you know, there's a case in the Northern District Court in California. The plaintiffs are Shi Tao and Wang Xiaoning and others, and you can settle that in a very favorable way to the families. It is not like there is not a pending court case that is directed at Yahoo!. You can settle it; you can announce today that you will work with and not in an adversarial position vis-à-vis the families. I would implore you to do that, to provide some sense of providing for their well-being. So you have a case right now in court and, it is my understanding, Yahoo! is going to be contesting. So settle it and settle it, I would say, generously in their favor. That would be one way you could convey to the committee and I think to your shareholders, the American people, and especially to the victims that you want—you recognize that there are true victims because of this complicity. So perhaps you could answer that first.

Mr. CALLAHAN. Thank you, Congressman Smith.

We absolutely will consider that. I think it is obviously an ongoing piece of litigation, but we absolutely would be open to opportunities to do that. I think we have already met with the counsel for the plaintiffs, and our outside counsel has done that and will continue to do that and follow up on that.

Mr. SMITH OF NEW JERSEY. Again, I would say to you that this could never make it whole, but it would be a very important gesture on the behalf of Yahoo! to take this step forward. And I think it would provide leadership for others who are similarly offended.

One of the aspects of our bill is that it provides the right of an individual who has been offended, particularly when personal or identifying information has been disclosed, to sue, because it is important that a victim have recourse through our courts to get some kind of compensation to make it whole.

So, again, you have a case with very few people and others who are sitting in this committee room, the wife of and the mother of two victims who each got 10 years in a harsh, cruel prison in China. You can settle that tomorrow, if you would like. And I would tell you—and I am sure the committee would back this fully—that that would send a very clear and unambiguous message of true concern for their well-being. All of us can express concern verbally and orally, but it would seem to me that a settlement of that suit would express it tangibly.

Let me ask you, if I could, Mr. Callahan—and I do take you at your word, that you apparently did not know when you appeared before our committee that this was a political show trial, but there were red flags all over the place.

I have a copy of the actual verdict, and it makes it very clear that Yahoo! provided the information, rather than the original information emanated from *Contemporary Business News*, a newspaper in Hunan. I mean, there are red flags all over the request that was made that someone, clearly—and the state secrets, we all know what that is all about. That is about the public security police, which we all know are the enforcers of the political regime. They are the ones; they are the secret police. So any time they make any request, I think there ought to be a red flag as high as it can be hoisted that there is a problem with that request.

So my first question, in addition to the other, if you wanted to elaborate on it, who were the ones at Yahoo! who knew about this request—you were improperly briefed, it would appear, but there were people who did know. Were they reprimanded? Did they get promoted at Yahoo!?

If you did know at the time what you know now regarding these individuals, like Shi Tao, would you deny their request in China today if the police made that request? And are there any similar requests being made as we meet? Are we going to discover 6 months from now somebody else has been thrown into the prison or about other individuals under circumstances that approximate what happened to Shi Tao?

You talked, Mr. Yang, about tightening up the process. If you could elaborate, does that mean disclosure of information is denied to the security agents when they make that request? Are there any examples of that?

You might recall, Mr. Callahan, when I asked you during the hearing in February 2006 how many times and how many people have been investigated, prosecuted and incarcerated because of information provided by Yahoo! to Chinese officials. If you could provide that to us today. You said, at the time, that information would violate Chinese law.

Well, that begs too much, and that certainly begs the question, it seems to me, that you can't even tell us how many times Yahoo! has cooperated with the officials to put people in prison, whether it is wittingly or unwittingly. We all know the consequences. They go to jail; they are tortured. You can take that to the bank. Once they are in jail, they will be so cruelly treated. And Harry Wu knows that so well, having lived through it.

I do have some additional questions, but maybe you could start on those.

Mr. CALLAHAN. As to whether or not there are current law enforcement demands at Yahoo! China, because of the operational situation I mentioned, we wouldn't be aware of that at this time. But—

Mr. SMITH OF NEW JERSEY. Could I just interrupt?

In Hong Kong's debut of Alibaba, the AP is reporting that the stock is sizzling. It has gone up three times its asking price, or something of that order. Great amounts of money are being made.

As you said, Mr. Yang, 40 percent of ownership is still vested in Yahoo!, if I heard you correctly, 39 to 40 percent, whatever it might be—a major, although minority, major shareholder.

I said at the time, 2 years ago, almost 2 years ago, that it does give you a plausible deniability to say, "Oh, our affiliate is doing it, but not us." You still are major shareholders. But it, again, says too much.

And I put it out, Mr. Chairman, during the horrific Holocaust, IBM Germany, with some help from IBM United States, were providing the whereabouts of the Jews throughout all of Europe, especially in Germany, in Poland and elsewhere. They just honored a lawful request that was being made of them and said, "Oh, who do you want to know about now?", and they gave them lists of Jews who then went to the concentration camps.



There certainly is a parallel here, and I don't think it is in any way hyperbole to suggest that people are being tortured and mistreated today because of that complicity and that cooperation.

So, Alibaba is not a dodge. It has plausible deniability; it has surface appeal. But it seems to me that there is still—if you really care about the victims, really care, if it was your wife or your husband or your child, would the model then fit? “Oh, it is Alibaba,” or “We are just complying with a lawful request.”

Chairman LANTOS. The gentleman's time has expired.

Ms. ROS-LEHTINEN. Mr. Chairman, is it possible, just because it is Mr. Smith's bill, the Global Online Freedom—

Chairman LANTOS. I will be happy to return to Mr. Smith, but I want my other colleagues to have a chance.

Ms. ROS-LEHTINEN. Thank you.

Chairman LANTOS. Ms. Woolsey?

Ms. WOOLSEY. Thank you, Mr. Chairman.

I am sitting here listening to all of this, because I knew everybody ahead of me would ask a lot of the wonderful major questions that have to be asked.

But I have a human resources hat on. I grew up through telecom in a start-up company as the human resources manager. So I am looking at the culture of Yahoo!, and it is absolutely clear—I mean, my company that I was a part of was successful but not anything like what you are doing. It is hard to hold on to your culture as an organization when you grow as fast as you are growing.

And so, as part of that culture, I mean, are you paying attention to the difference between making money and doing the right thing? I mean, you can let go—that can just go out the window so quickly.

So one of the ways, for me, of judging the sincerity of your statements today—and Mr. Smith asked this, so I will follow up, because I really want the answer. Who has been held accountable in your organization for not—not who by name—but have individuals been held accountable for not giving you the information you needed when you came here before us?

Mr. CALLAHAN. Yes, Congresswoman. The individuals involved have apologized. They obviously feel terrible that that had happened, that Mr. Yang and I are here today to explain my prior testimony.

I have been very open with the fact that preparation should have been done better. As the responsible executive for the preparation in February 2006, I take responsibility for that, but I don't try to share with this committee that I am proud of what the outcome was. I wouldn't—I am not pleased to be back here to talk about my prior testimony.

Ms. WOOLSEY. So, now, do they get to prepare you for this one? I mean, there is something about a start-up culture that doesn't see the value of the House of Representatives. Is that part of it?

Mr. CALLAHAN. No, not at all, Congresswoman. We took our preparation very, very seriously. We had retained very strong outside counsel at Covington & Burling. We worked with both inside and outside advisors to Yahoo!. I can only say that I wish it had been done better and that I wish I had all of the facts.

Ms. WOOLSEY. I know you have told us that, but wishing and doing are—when you have a company culture, it starts from the

top and it goes down. So you guys have set a pretty poor example, not just for your employees but for the rest of the industry that is successful and wants to be, as you are.

When you talk about disengagement with China not furthering the goal of a more open and informed society in China, I find that very contradictory with the fact that we can't ensure that the Internet industry can provide them with freedom of expression and privacy. I mean, what good are we doing them if we are just making money off of the people in China but they still don't have freedom? What does that solve, Mr. Callahan?

Mr. CALLAHAN. I do think that, notwithstanding the issues around my prior testimony, that it is my firm belief that the industry as a whole, and Yahoo! in particular, has done good in markets where free expression—even a censored Internet and opportunities for communication, in my opinion, do provide benefits.

But as I mentioned earlier, I share your concern about the prior preparation.

Ms. WOOLSEY. Well, as part of your company culture, it better be really clear to people that they can express themselves but they could get in trouble. They have to know that.

And one of my other thoughts—and, Mr. Yang, maybe you could help with this one. When we are trading partners—and Yahoo! is a huge trading partner with China—doesn't China benefit as well? The Chinese businesses and the Government, aren't they benefiting financially from your partnership? Or are they just letting you in for the good of their heart?

Mr. YANG. Congresswoman, I would comment by saying that I think there is a drive in China to become a more market-based economy. And I think if you look at the Internet industry, China—most of the leading companies in the industry are Chinese companies. And what I will say is our participation in that market, both while we were there as an operating company and now as an investor, perhaps, ironically, is the reason we are here discussing this. I would say that if it weren't for American companies there and engaging and participating and going through the challenges—we admit and have been very open about our challenges there. These are the discussions that I think are, to date, are being held.

Ms. WOOLSEY. Then what I would like to say—because I am going to get cut off; my time is running out—if we are important to them, I would suggest that we withhold what we are doing until they do the right thing with these dissident folks that they have put in prison—prisoners. That you have you have the power; use it.

Chairman LANTOS. The gentlewoman's time has expired.

Mr. Rohrabacher?

Mr. ROHRABACHER. Thank you very much, Mr. Chairman.

Again, I would like to—I say this so often, how much I admire your leadership of this committee. And, again, I have never been more proud to be with you than today.

You mentioned, Mr. Callahan, you kept talking about how sorry you were about the inaccuracies in your testimony. And you just stated that the people who work for you, who briefed you, who, obviously, if we are taking everything at face value, did such a miserable job, about how they apologized.

Were any of those people who set up this scenario for you and put you through all of this, were any of them fired?

Mr. CALLAHAN. No, sir, they were not.

Mr. ROHRABACHER. Okay. And given corporate culture what it is, you think that that sends the right kind of message to your employees or other corporate leaders if someone who made a mistake of this magnitude would not lose their job?

I don't think you can take people's apologies, even this apology you are giving us today, seriously if your corporation has not even fired those who were responsible for this "mistake."

Again, Mr. Smith mentioned if the Chinese were to make a similar demand today, or the Vietnamese or another totalitarian government, would your corporation say no to that?

And I know you have set up this legal way of saying, "Well, somebody else has the responsibility, because now it is Yahoo! China. We are only going to make a profit from that, but we are not going to take any responsibility for that."

Is it your corporate position that you will say no to requests of authoritarian governments when they ask for such help in the future?

Mr. CALLAHAN. Compliance with local law in markets like China or Vietnam or others that may restrict free expression is complicated for a couple of reasons. First and foremost, if I was—

Mr. ROHRABACHER. So the answer is, you will comply.

Mr. CALLAHAN. No, sir.

Mr. ROHRABACHER. I mean, that is a yes or no question. Are you going to comply with requests from authoritarian governments like China in the future if they have similar requests for cooperation in order to suppress a dissident?

Mr. CALLAHAN. I am sorry. I was trying to explain some of the complexity around the issue, which is—

Mr. ROHRABACHER. I know about the complexity. I want to know what your position your company has.

Mr. CALLAHAN. The position is that, as we look forward into other markets—and you mentioned Vietnam, and there may be others in the future—we are looking at ways to operationally and legally structure the entity so they would not be placed in a position to do that.

Mr. ROHRABACHER. So the answer is yes, you would cooperate by setting up a Yahoo! Vietnam who will then cooperate with the tyrant, a Yahoo! China, but you will profit from those corporations nonetheless. But you have shielded yourself from this type of moral responsibility that you are being held accountable for today.

Mr. CALLAHAN. I—sir—

Mr. ROHRABACHER. Let me go on.

Mr. Yang, you use the word "we" a lot. When you were asked direct questions about you, you kept using the word "we." Was that the corporate "we," or are you talking about your family or other people?

Mr. YANG. If you can refer to—

Mr. ROHRABACHER. You have used the word "we" when answering specific questions about yourself.

For example, let me just ask you this. You obviously are a person of great wealth. I don't know if it is proper for me to ask, but you

are probably a billionaire several times over. But yet today you have been unable to answer, rather, whether you, as a person, will help people who were hurt during your acquisition of billions of dollars for your own family.

Now, are you personally—do you believe that you are personally responsible in some way for the actions of those corporations, especially Yahoo!, if they have committed crimes that have hurt other individuals? Are you personally responsible at all?

Mr. YANG. Thank you, Congressman. Let me try to do this as precise as I can.

Mr. ROHRABACHER. You have to hurry.

Mr. YANG. I understand.

Mr. ROHRABACHER. You could give me a yes or no on this, as well.

Mr. YANG. I do wear two hats. And I, as a person—and I just I have to remind people that I was very involved in the company but I was not the CEO at the time. But as a person, I feel that, terribly—I forget the way you asked the question—I feel I have some responsibility. I personally would like to help.

Mr. ROHRABACHER. How you feel is irrelevant. How you feel is irrelevant.

Mr. YANG. You asked me if it was “we” or “I.” It is “I” personally, rather than the company. I want to make sure that is clear. The company clearly needs to do what I think we ought to do now that I am CEO.

Mr. ROHRABACHER. What about you personally? Should you do that?

One last question. Have you personally met with President Hu or some of the top leaders of China?

Mr. YANG. I believe I have shaken President Hu’s hand once.

Mr. ROHRABACHER. Have you been in meetings with President Hu or some of the top leaders of China?

Mr. YANG. No.

Mr. ROHRABACHER. So you have never been in a meeting?

Mr. YANG. We were in a greeting line, sir.

Mr. ROHRABACHER. Okay.

Has your company, then—have you personally or has your company ever brought up the issue of human rights with the top leaders in official meetings between your company and the leader of China?

Mr. CALLAHAN. If I can jump in, Congressman. Prior to the February 2006 hearing, representatives of Yahoo! did meet with high-ranking Chinese officials to express our concern about this issue and to ask for release.

Mr. ROHRABACHER. We are not talking about this issue. We are talking about human rights.

Mr. CALLAHAN. The human rights issue and the dissident activity.

Mr. ROHRABACHER. One last note, and I respect that I only have a little bit of time.

Today we have heard testimony that you believe things are actually getting better in China. And let me just note that I don’t know if you two are religious people or not, if you have any religious convictions or not, but there are people who believe in God who are

being thrown into prison and tortured because of that in China. The Falun Gong are being arrested by the thousands and tortured in China. And there is a lot of evidence to suggest that China is not going in the right direction.

And it must demoralize the people who want to take China in the right direction to see Americans, American corporations, making billions of dollars off of China trade and not bringing up and not standing clearly for the side of the freedom-lovers rather than the oppressors.

Chairman LANTOS. The gentleman's time has expired.

The gentleman from Oregon, Mr. Wu.

Mr. WU. Something didn't feel right when I first heard about this hearing—and, Mr. Callahan, you contacted me, and it was the first I paid attention to this, although I had heard about the prior hearings. The former dean of my law school said when something doesn't feel right in your gut, keep on digging until—keep on digging.

And about 11 o'clock p.m. last night, I found a *New York Times* story that really set the bells ringing in my head. The entity that contacted Yahoo! China was the Beijing State Security Bureau. It was the Beijing State Security Bureau. And that set of words makes me think that Yahoo!'s entire defense in this case just doesn't hang together.

You all are saying the law was unclear, and we have to obey local laws, and we didn't know. I mean, that is the core of your defense. But, as you know, there are several different state security apparatuses in China. One is the Public Security Bureau, and that is, like, you know, the cop on the street. But the Beijing State Security Bureau, the Guoanbu—as opposed to the Gong'anbu—the Guoanbu is the equivalent of the KGB. And, fortunately, we don't have something like that here in the United States. And this was not just any office of the Guoanbu. This was the Beijing office of the Guoanbu.

The closest that I can analogize this as to an American situation is if one of my constituents got a call from the IRS and said, "We would like you to come in and bring some documents with you," and the reaction was that is business as usual and it doesn't set off a whole bunch of alarm bells and red flags. From a corporate perspective, it would be as if you received an inquiry from the SEC or the Department of Justice, and you didn't bring that to the attention of the board of directors and set off a whole bunch of bells.

So I have a whole set of questions about corporate procedure which I will line out orally, and then ask the staff to present it with more precision in writing. And I would like to have your answers in writing.

What are the standards of due diligence for answering questions to this committee and the Congress? What due diligence did you all perform in this case, and what will you do in the future? Did you form a separate unit to investigate what the corporation did? Did you inform the board of directors of either Yahoo! China or Yahoo! USA? Did the board look into forming an independent panel to look into this matter? And if not, why not?

And I think that I am very, very concerned about what your internal procedures are, because the whole defense here seems to

hang on “the law is vague, and we didn’t know,” but the fact of the matter is that there are 1.3 billion people in China. And if there is anything that I learned in my trips to China from 1978 to 1989, and then once again when I was in Congress, is that just about any child who is over the age of 5 will hit the red button, will poop in their pants if they get an inquiry from the Guoanbu, the State Security Bureau. And a corporate entity would react very, very strongly and perform very strong due diligence to find out what went on and to respond appropriately.

And then I guess the last follow-up question I have for you is, there are allegations that Yahoo! has a liaison officer with the State Security Bureau, and I would like to know if that is true or not.

The question I would like Mr. Yang to answer is: What have you all learned from this episode? And if the same thing happened again tomorrow, what, if anything, would you do differently?

Mr. CALLAHAN. Thank you, Congressman Wu, for the questions.

Taking your second question first, I am not aware of any liaison officer that Yahoo! has ever had to the SSB.

In terms of the preparation process for the February 2006 hearing, we retained outside counsel, as well as we worked with a team of inside lawyers and others who were advising and preparing for the hearing. I was prepared with draft testimony, and we obviously worked through possible questions and issues to make sure we could understand those. And it was my understanding at the time that the team had, in fact, done all of the due diligence and gotten all of the documents.

Mr. WU. But, Mr. Callahan, I think that I would like to know with precision exactly who was asked what all through the chain, not just at the corporate high level, 35,000-foot level, but also going back all the way to where the document came over the transom into the company.

Chairman LANTOS. You will have to submit those answers in writing, because we have to move on.

Mr. WU. Would it be all right if Mr. Yang were permitted to answer?

Chairman LANTOS. Yes.

Mr. YANG. Thank you, Congressman Wu.

We clearly learned we need to do a better job in congressional testimony. We clearly understand the seriousness and the gravity of these concerns and these issues.

As I have said, we believe that our China experience has taught us that, as we think about markets and different market entries, we need to conduct both business and operational but also more human rights and other types of assessments. We, as Mr. Callahan has talked about, are more rigorous around that. And I would say that we need to make sure that we can and should have better a process to understand the nature of law enforcement, to the extent we can.

And I would just say that not everything is knowable. Sometimes, in retrospect, we certainly can find out what has happened, so we now understand what kinds of things we can put in place so that we don’t find out after the fact necessarily.



So we have learned a lot, and I really do think that this kind of discussion helps us be a better company, and I appreciate that.

Chairman LANTOS. The gentleman from South Carolina, Mr. Wilson.

Mr. WILSON. Thank you, Mr. Chairman.

And thank you for being here today.

I actually have a very positive hope for the people of China. My dad served in the Flying Tigers during World War II. He served in Kunming and Seyoung. And I have been very grateful to have the opportunity to visit China several times, and what an extraordinary country. But it could be even better, indeed, if they had a fully free political system. And I hope somehow that the evolution continues. And, certainly, you are in a position to help promote an evolution toward a fully free country where people would feel free to communicate with each other.

As we discuss this issue—and I was called away to another meeting—but I want to know how often and to what extent do Chinese authorities demand information on individual users?

Mr. CALLAHAN. I don't know the specifics on that, sir, but we obviously are aware of the case that we have been discussing here.

Mr. WILSON. And—

Chairman LANTOS. You will submit the answer in writing once you find out from your colleagues in the committee.

Mr. CALLAHAN. Yes. We will look into that.

Chairman LANTOS. No. You are directed to answer that question in writing once you consult with your colleagues who know the answer.

Mr. CALLAHAN. Thank you, Mr. Chairman.

There is, if I may point out, there is a challenge to answering that question, because we no longer control Yahoo! China. And the legal complexity of the fact that those documents themselves, as I understand it, are considered to be confidential and state secrets of themselves, it may be difficult to get those. But I obviously will do the best I can.

Mr. SMITH OF NEW JERSEY. Will the gentleman yield?

Mr. WILSON. Yes.

Mr. SMITH OF NEW JERSEY. That is precisely the answer, or certainly you said, "It is my understanding, sir"—you were speaking—"that those records are prohibited from being disclosed under Chinese law because they are demands from Chinese law enforcement."

What have you done to change that? I mean, you said that almost 2 years ago. And we still, as the chairman has pointed out, we want that information: How many times, how often, who is going to jail in whole or in part because of Yahoo! or Alibaba's complicity?

Mr. CALLAHAN. Recognizing that there is the complexity that you note, Congressman Smith and Congressman Wilson, I have asked our outside counsel to conduct that kind of investigation, and we will do the best we can. And to be sure, Mr. Chairman, to your directive.

Mr. WILSON. Thank you.

And, Mr. Yang, you are certainly an international model of a person who has been very creative, phenomenally successful, and you, indeed, embody the American dream.

Is there a technology which can be developed which would promote privacy that can be established in closed societies, whether it is Cuba, Syria, China? Is there such technology that can be developed where privacy can be promoted?

Mr. YANG. Congressman Wilson, I think you are asking a question that is at the heart of the spread of the Internet and our debate here, about whether we are doing more to open societies versus than closing them. The irony is the same tools that help open up societies and same tools that enable a blogger and the same tools that access to billions of documents online can be produced, whether it is by us or by governments within the countries and the industries themselves, to do both. And I think we certainly advocate and want to do more to promote the freedom, and our deep belief is that. But, certainly, technology has and can be used in both ways.

Mr. WILSON. Well, with your extraordinary abilities and with the research capabilities that your so-well-respected company has, I just, again, hope the best for using technology to promote freedom and democracy as opposed to oppression.

And I, again, appreciate so much the efforts of our chairman and ranking member at this committee today. Thank you very much.

I yield the balance of my time.

Chairman LANTOS. The gentleman from Florida, Mr. Wexler.

Mr. WEXLER. Thank you, Mr. Chairman.

I think the more this hearing goes on, to me it suggests just how important the issues that are being talked about are and the dilemma that both the committee and companies face.

As to what precipitated this hearing, it seems to me none of us are perfect. We all make mistakes. You made mistakes. Glaring ones. You have come here; you have acknowledged them; you have apologized for them. I think that should be acknowledged by us. And you have said that you are in the process of learning lessons of the past and, I presume, applying them.

Respectfully, however, the question that the chairman asked, in terms of what has been done with respect to the family that has been victimized, and then the response, which is "nothing," is a bit chilling. It is a bit chilling to me because, given the sensitivity of these circumstances, it would seem to me that there would have been an overreaction of sorts to try to respond in any appropriate way.

I am not the CEO of a company, and I don't pretend to know how to run a company. And, Mr. Yang, I have nothing but enormous respect for what you have accomplished.

It would seem to me that, as you consider lessons learned, that one of the things you might consider is the fact that Yahoo! is not an insignificant company, that there are equities involved in terms of what benefit you bring to China, and how much Yahoo!, as a company, stands to gain by engagement in China. And there are also, of course, equities that the Chinese will judge in terms of what value Yahoo! being in China presents to the Chinese.

And it would seem to me entirely appropriate that the CEO of Yahoo! can engage in a very high-level, significant discussion with Chinese authorities and lay out what Yahoo! is comfortable doing and not doing, in terms of the lessons of this experience.

And I would think it would be greatly beneficial to this committee if, rather than taking a somewhat backseat approach, that if Yahoo! engaged directly with the Chinese Government on these very issues. I don't think it is Yahoo!'s responsibility—and I think I may certainly be in the minority here—I don't think it is Yahoo!'s responsibility as an individual company to determine the answers to all of these questions.

But given the facts of these circumstances and the position that you have found yourselves, it would seem to me reasonable that this type of engagement occur directly and use your own marketability to effect positive change.

And unless I missed it here, we have not heard that directly today. And it would give me some positive feedback if I heard that the company, after self-reflecting on what lessons have been learned, was engaging in this type of activity.

I would like to repeat, if I could, Mr. Wu's question, because I think it goes to the heart of where we stand today. And that is, if I may, if the same set of circumstances were presented to the company in China today that precipitated this whole affair, what would the response be today? Understanding that you are not the majority shareholder, but what would the company's response be today?

Mr. CALLAHAN. As to Yahoo! China, obviously the company that controls that would make that decision, as to China. But let me say that, as to future markets and as we look ahead, I would hope that we would have a structure in place and, as an industry, a framework in place or perhaps legislation in place that would accomplish just what you have noted, Congressman, that we would be able to resist these demands or have the data not be accessible.

But to your direct question, China is a different situation for us. But looking ahead, we certainly have learned from this and are working hard with industry peers and others to try to address these issues going forward.

Mr. WEXLER. Just for the record, Mr. Chairman, the state secret statute in question, if I understand it, is, in fact, a very broad statute that, in fact—if my understanding is correct—that the State Security Bureau in China, in effect, designates whatever it wishes to designate as a state secret. So if that bureau designates the color of my eyes as a state secret and then someone asks what is the color of Wexler's eyes and then somebody talks about it, then that person could be in violation of the state secret statute.

Now, that doesn't give anyone here any cover, in my mind, but in fairness, I think it needs to be brought out that companies like Yahoo!, as well as the Congress, in engaging in China on their homeland turf, are engaging in a totally unfamiliar venue. And these companies are going to have to chart their course.

And I would hope—and I will stop at this, Mr. Chairman—that the lesson learned from this process is that simply nonengagement is not good enough and that companies like Yahoo! need to be far more proactive than they apparently have been in trying to antici-

pate the horrific consequences that, at times, will occur from what otherwise would have been normal business behavior.

Chairman LANTOS. Thank you very much.

Much of the testimony sort of reveals that, while technologically and financially you are giants, morally you are pygmies.

This testimony this whole morning has been an appallingly disappointing performance. I simply cannot begin to tell you how disappointing Mr. Yang's and your testimony was. The attempt to obfuscate, divert, to describe this as a dialogue—this is a congressional testimony, under oath, precipitated by the outrageous behavior of the company. And apparently not much has been learned in the process.

The gentleman from Florida, Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman.

And I would like for both to answer this. I have two questions, quick questions.

Is your reluctance to commit any type of assistance to the family of the jailed dissident linked to the possibility of a negative reaction from the Communist Party?

And the second question is Federal records show that Yahoo!, Inc., has spent millions of dollars in recent years to lobby Congress on a host of issues.

What role did Yahoo, Inc., and its affiliates play in lobbying the Congress regarding the Global Online Freedom Act and other pieces of legislation dealing with online freedom and privacy? And if you don't know the specifics, what role would you have had Yahoo! play in this effort?

Mr. YANG. Congressman, I appreciate the question.

I have said today and in the past that we are concerned about the release of these dissidents. And I understand the moral call for myself personally, as well as the company, to do more, and we will try to do more.

But to your point, I do think the safe release of the dissidents is of key concern for us.

Mike, do you want to talk about the—

Mr. CALLAHAN. Certainly.

Sorry. I was just asking for some assistance to answer your question, sir.

As far as I am aware, Yahoo! has not lobbied directly regarding the Global Online Freedom Act. There may be trade associations that we are members of that have expressed an opinion on it. I am not aware of what their opinion was. We are a member of CCIA. We are not actively lobbying on this piece of legislation.

But as I mentioned to Congressman Smith, we absolutely would look forward to the opportunity to address it.

Mr. BILIRAKIS. The first question, the dissidents, the first question, can you answer that as well?

Mr. CALLAHAN. Do you mind repeating the question, sir?

Mr. BILIRAKIS. Okay. Is your reluctance to commit any type of assistance to the family of the jailed dissident linked to the possibility of a negative reaction of the Communist Party?

Mr. CALLAHAN. I think as Mr. Yang had expressed previously, there are some complications to direct action either—

Chairman LANTOS. Would you share with us those complications?

Mr. CALLAHAN. Sir, I am not an expert on this topic, but I do believe that—for example, I understand that when there was recognition of one of the journalists for receiving a journalism reward, my understanding is that the location of incarceration was changed to be substantially worse, related to where the person's family lives. So there is some concern and reluctance, I think, based on that point, not in terms of complications of doing direct action.

In terms of the Communist Party, I wouldn't be able to comment on that, sir. But I think there are complications related to the individuals, I think.

Chairman LANTOS. The gentleman from New York, Mr. Crowley.

Mr. CROWLEY. Thank you, Mr. Chairman.

It has been a very enlightening hearing, quite frankly. And I remember, I guess it was some—almost 19 or 20 months ago, 21 months ago, we had the initial hearing on this.

Mr. Callahan, I will start with you. I wasn't here for your testimony, but I found, in terms of your response to some questions about your past testimony—and I think, as far as I am sitting here listening to you, you come across as forthright and as earnest and contrite, in terms of your own shortcomings and those of the employees below you. And I wanted to state that for the record.

I am not as familiar with Mr. Yang, and this is the first time I have heard his testimony.

A question that—I have been sitting here talking to my friend, Mr. Wu, and it is kind of formulating as it is going along. If the Chinese Government were to come to—and this is not necessarily for Mr. Callahan, maybe for Mr. Yang.

If the Chinese Government were to come to you, or the State Security Bureau, and say, "You will lose your license to conduct business in China unless you provide information to us about activities taking place on your service in the United States," what would your reaction be? "You can't do business in China unless you tell us about activities taking place in the United States." What would your reaction be?

Mr. YANG. That we can't do business in China unless we what?

Mr. CROWLEY. Unless you provide the Chinese Government information about activities taking place in the United States about certain individuals or information they would require. What would the position of your company have been then, understanding now that there are certain firewalls that have been created?

Mr. YANG. I would say if it is information about U.S. matters, I believe that we wouldn't have to provide that information.

Mr. CROWLEY. If they said to you, "Your failure to provide to information would result in the revoking of your license," what would you say then, to do business in China?

Mr. YANG. Again, I am not sure if I understand it. I think that if it is not within—if they're making up a new law to say that, or what is—

Mr. CROWLEY. State secret police or whoever says, you know, I can't tell you, it's a secret.

Mr. YANG. I think that we, if we know it's a specific issue and that has certain specificity to it that clearly involves the U.S. or matters that we understand are interpreted to be under the scope—and, again, this is on-the-ground interpretation—we would

clearly make sure that we understand the nature of it before either complying or not complying.

Mr. CROWLEY. I think the complexity of your answer is probably demonstrative of the complexity of the world we are living in today—something that can be declared a secret, the color of my eyes, the color of the suit that I am wearing, the conversation you can or can't have, whether or not you can communicate with your government in fear of losing your opportunity to do business somewhere. I think, really, it's almost like a new form of espionage that is taking place, cyber espionage, that the secret police are engaged in.

I don't envy the position that you are in. I think that part of the side here is, if you are not doing it, someone else will step in your shoes and do that for them.

Let me just switch just for a moment and ask Mr. Callahan, if you could, what steps have you all taken in terms of meeting with human rights groups, listening to their concerns? And what further steps are you taking in terms of communicating with the Chinese Government about your concerns as a corporation as well?

Mr. CALLAHAN. Certainly, with respect to the meetings with human rights groups, as part of the industry group, which includes several other leading companies including others that testified at the hearing in February 2006, which Mr. Yang mentioned was facilitated by the Center for Democracy and Technology in the Berkman Center at Harvard, there are several human rights groups—I believe Amnesty International and Human Rights in China are associated with that effort. And representatives of my team—our head of International Legal—are a part of that core group. They have regular meetings, I believe weekly conference calls. And there is a lot of activity around that effort, and that's a participatory—

Mr. CROWLEY. Has that increased since your testimony over a year ago?

Mr. CALLAHAN. Yes. And I would say that in—Congressman Smith, in the prior hearing, deserves the credit for getting the industry to move on this issue; that the entire human rights dialogue around the new framework started after the February 2006 testimony, and, as Mr. Yang mentioned, is expected to roll out after the first of the year.

And I recognize comments of others in the industry were maybe just as good as that. But I do think it has been a lot of progress.

In addition to the dialogue with the human rights groups, there has been an ongoing dialogue with the State Department and the Global Internet Freedom Task Force that was established there. Mr. Yang has met with senior members of the State Department, as well.

And then, previous to that, there were meetings between a high-ranking Chinese Government official and a member of my team to express concerns about this issue, as well.

Chairman LANTOS. The gentleman's time has expired.

Mr. CROWLEY. Mr. Chairman, if I could make one point, and that is Mr. Yang is of Chinese descent, and I would hope that he would have some unique insight in terms of the history that has tran-



spired of his own people in terms of yearning for the freedom of those within Communist China.

But I would also like to point out, as it pertains to Mr. Smith's legislation, it is my understanding that it would require Yahoo! or any other company doing business in China to report to our State Department when they have an inquiry from the secret police. Is that correct?

Mr. SMITH OF NEW JERSEY. That is correct.

Mr. CROWLEY. I think that is a very well part, portion of this bill. And I yield back. Thank you.

Chairman LANTOS. The gentleman from Illinois, Mr. Manzullo.

Mr. MANZULLO. Thank you very much.

This is all very interesting. Sometimes you have to scratch your head, because at one time knowledge was discovered and now it's invented; to try to keep up with the technology is astounding.

Mr. CALLAHAN, what if the Department of Justice here in the United States asked you to reveal the screen name and information about somebody here in the United States? What would be your response to that?

Mr. CALLAHAN. Sir, we, on a global basis, we obviously respond to law enforcement demands in compliance with law but also in compliance with our privacy policy and our terms of service. So any interaction with the Department of Justice would be on that basis.

Mr. MANZULLO. So would that mean you would turn over the information?

Mr. CALLAHAN. If the information was backed up with proper legal process and similar to the way the company works in other markets.

Mr. MANZULLO. So it would be in the form of a search warrant?

Mr. CALLAHAN. There is a significant amount of complexity to law enforcement compliance globally. And we absolutely—our firm policy is to work with law enforcement consistent with the law, in compliance with the law and our privacy policy. We don't get into all of the specifics. And then, as not being the expert in it, I would be loath to sort of discuss all specifics. But, in general, that is our policy.

Mr. MANZULLO. But you have a policy, you have a procedure for when that subpoena comes; is that correct?

Mr. CALLAHAN. Yes, sir, that's correct.

Mr. MANZULLO. From what I can tell here, in listening to this testimony, is that the correct information did not come to you from China before you testified. Is that correct?

Mr. CALLAHAN. That's correct.

Mr. MANZULLO. What happened? Can you elaborate on that?

Mr. CALLAHAN. My understanding of the situation—and, obviously, we spent some time looking into it—is that a member of the briefing team had information in question, made a good-faith judgment that they did not consider it to be material or significantly new information or different than in terms of providing circumstances or details of the case.

And I understand, in hindsight, given the concern that has been caused by the fact that I testified that we had no information about the nature of the investigation, that that judgment is, while made in good faith, was the wrong—

Mr. MANZULLO. I guess my question is: Did you actually see the communication that came from the Chinese Government with your own eyes?

Mr. CALLAHAN. No, sir. I don't recall asking for or reviewing those documents.

Mr. MANZULLO. Then who did? Was it your lawyers here, or was it the lawyers in China?

Mr. CALLAHAN. My understanding was that—obviously, the document was at the China office and that a member of the briefing team, which is a part of our legal team, regional counsel in Hong Kong, also had that information.

Mr. MANZULLO. So they never sent you a word-for-word translation of what would be the equivalent of our search warrant. Is that correct?

Mr. CALLAHAN. My team sent—no, sir. What I was told, in preparations, was that I did not—we did not have the specific details or nature of the investigation. And, obviously, we have subsequently found out that the order did, in fact, say state secrets. And—

Mr. MANZULLO. So that person with your company in China knew the information, but, either through negligence or intentionally or whatever word would be used under the circumstances, you were unaware that this was coming from this particular Chinese agency. Is that correct?

Mr. CALLAHAN. I was not aware of the specific details, and my understanding was that the order didn't share any information about the case. And my understanding, again, is that the person who had the information made that good-faith judgment.

Mr. MANZULLO. Why would that person make a good-faith judgment when it was their job simply to report to you what the communiqué was? Was this a lawyer back in China that was doing that?

Mr. CALLAHAN. I believe that the legal team at Yahoo! China had the document because they had responded to the demand from the Government. And then, as part of the preparation, other information was gathered by members of the team, but it did not make its way up the chain.

Mr. MANZULLO. So it was sloppy investigation by your part?

Mr. CALLAHAN. I absolutely agree, sir, that my preparation could have been done better.

Mr. MANZULLO. Mr. Callahan, if you had the equivalent of a search warrant that came from the Beijing State Security Office in your hand when you testified on February 15, 2006, would you have said more than what you did at that time?

Mr. CALLAHAN. Absolutely, sir.

Mr. MANZULLO. What would you have said?

Mr. CALLAHAN. If I had had that information, I would have wanted to share it with the committee, that, in fact, we did know what the order had said. I would have absolutely done that. And I wish that I had had that information to be clear in my prior testimony.

Mr. MANZULLO. There is a further problem that is coming down the line, it is that when you no longer have a controlling interest in that new company, Alibaba. So, if a similar request came today, you wouldn't even know about it. Is that correct?

Mr. CALLAHAN. That is correct.

Mr. MANZULLO. Is there something that you can do with regards to your relationship with Alibaba? Because you still own all of the software, don't you?

Mr. CALLAHAN. The business is operated by Alibaba, and I have personally impressed upon their management team that we wanted them to follow the sort of law enforcement procedures that would, you know, only respond to demands that they have to.

But to your point, sir, we wouldn't be notified if, in fact, the Yahoo! China operation, as it currently exists, received those documents.

Mr. MANZULLO. Does that come up for renewal, your licensing agreement with Yahoo! and Alibaba? Or is that a lifetime—

Mr. CALLAHAN. I am not familiar directly with the terms in the agreement.

Mr. MANZULLO. If that came up for renewal, the licensing agreement, would you consider what happened here today, and make sure that the software was so configured or that the terms of your contract with Alibaba were so stated that you would be made aware of future requests, and that the request would not be honored?

Mr. CALLAHAN. I think, as we have the opportunity to look at our relationship with that company, being informed by all of these proceedings and the knowledge that we have learned about this kind of activity in China, that would be absolutely something that we would want to address.

Mr. MANZULLO. Thank you.

Chairman LANTOS. Would you submit all of that to the committee so we can ascertain whether, in fact, Yahoo! has any continuing control capability?

Mr. CALLAHAN. Certainly, I would be willing to look into those agreements, sir.

Chairman LANTOS. That is not my question, that you are willing to look into those. Will you submit those to the committee?

Mr. CALLAHAN. Certainly. I will look at the agreements and submit them to your requests, sir.

Chairman LANTOS. The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Chairman. Thank you for calling this hearing. I think this is very significant and very important.

You know, Mr. Callahan indicates that he would consider—I would suggest to the chair that the committee submit legislation that takes it out of the decision-making process of Mr. Callahan.

And I understand that there is a conflict, an inherent conflict. He has a responsibility to shareholders. We have a responsibility to the American people.

The transfer of the software, as described by Mr. Manzullo, in terms of Alibaba and Yahoo!, there ought to be conditionality, so that if it is a transfer without the kind of safeguards to protect dissidents and others, then there ought to be some sanction or some penalty on the transferor. That would be my recommendation.

I found it interesting that Mr. Callahan, in response to the question posed by the chair about complications, was suggesting that it was concern about the victim in this case.

Mr. Callahan, is that what the complications are about, concern for the victim? Or is it concern about liability and establishing a precedent in other cases?

Mr. CALLAHAN. What I was referring to, sir, in the question to the chair was about individuals, sir, yes.

Mr. DELAHUNT. I want to be really clear about this. The chair posed to you a question about direct action, about contact with the victims in this case, relative to a possible settlement, and your response is that it's out of your concern for the victim and the victim's family that you are not taking that step. Am I portraying that accurately?

Mr. CALLAHAN. With all due respect, sir, no. I was responding to a question from Congressman Bilirakis about, was the concern of complications of reaching out to the families related to activity or concern about the Communist Party. And then the chair respectfully asked if I would explain the complications, and it was sort of a response to both.

Mr. DELAHUNT. Well, explain; let's go down that road again. Explain what the complications are.

Mr. CALLAHAN. As I mentioned to Chairman Lantos, as I understand it, when one of the dissidents that we were talking about today, Mr. Shi Tao, was recognized with the journalism award some time this past year, an assignment of his incarceration was changed to be materially farther from—

Mr. DELAHUNT. Is that the complication, or are there other complications?

Mr. CALLAHAN. I was merely referencing that, sir, as an example of why I understand—

Mr. DELAHUNT. What are the other complications then, Mr. Callahan?

Mr. CALLAHAN. I was referring to that as an example, sir. I am not aware of any other complications, and we certainly, I think, as Mr. Yang has mentioned, that we will consider that and look at opportunities to try to do as the chairman as asked.

Mr. DELAHUNT. Well, I mean, you have members of the family sitting here behind you. You are to consider it right now, and I don't think there's any reason for any delay. Clearly they have the best interest of their family member, and I would dare say that it would go a long way to assuage the hurt, and pain, and anguish that all of them have experienced if you and Mr. Yang turned around, had a conversation with them in private, and allowed them to express their views.

With that I yield back.

Mr. CALLAHAN. Yes, sir.

Chairman LANTOS. Mr. Smith.

Mr. SMITH OF NEW JERSEY. Thank you very much, Mr. Chairman.

Let me just begin on the victims who really have been harmed, maybe irreparably. Again, I want to suggest and ask you, Mr. Callahan, because obviously your office plays the lead role in the court case of Wang Xiaoning, Shi Tao, Yu Ling, and as yet unnamed plaintiffs v. Yahoo! Inc. and Yahoo! Hong Kong. Obviously, some of the remedies would be the best efforts to get the detainees out of jail, stop the disclosure policy, and identify all others detained af-

fectured by Yahoo!'s disclosure policy. I've asked you a number of times; we need that information, at least the number. That can't be a state secret for which Yahoo or Alibaba could be punished. And then to provide certain monetary award for legal needs as well as humanitarian needs of the families, that could be settled today, certainly by week's end, and I would again ask you to do so.

Secondly, Mr. Yang, if you could tell us exactly what you've done on the Alibaba award to protect people like Shi Tao so we don't have more cases like that in the future.

Let me ask you again to support our Global Online Freedom Act. It has been my experience with human rights legislation that very often that at the time of the hearing, and I say this with respect, there is an earnestness to try to find some consensus, but after the fact the lobbying arm, especially in association, goes into overdrive to kill the bill.

I've had so many of my human rights bills killed in the Senate with holds over the years, including the Ethiopian Human Rights Act, the Vietnam Human Rights Act, and legislation dealing with child labor. Many have gone on to become law, but it was not without Herculean efforts. It is always a group of corporate Americans who step up and say, That can't happen, and they kill it.

I would say that our minimum corporate standards, Title II in the bill, which is the essence of the bill, actually protects you, actually will give you, like the Foreign Corrupt Practices Act, the ability to say, Okay, we don't have to provide bribes to government officials to do business because it is against U.S. law. It is a Great Wall to protect corporate America from being complicit. I know you don't want to be involved with this, I can see the anguish you feel for Shi Tao and others. This would give you a legal safeguard so that complicity becomes very, very remote in terms of its probabilities.

I would also ask you again as you go into Vietnam, a couple of years ago I meet with Vu Thu Ha, the wife of Dr. Pham Hong Son in Hanoi. I offered a resolution on Dr. Son's behalf. At first he got 13 years, then 5 years; now he's under house arrest.

When I met with his wife, the secret police were one table away taking her picture. She, on her way to meet Ambassador Marine in Hanoi, was actually hit by a car. They were sending a message that they didn't like his or her democracy promotion. But what was his crime? He took from the United States Embassy, Hanoi, our Embassy in Hanoi, an essay called What Is Democracy?; translated it in Vietnamese, posted it on the Net, sent it to friends, but also sent it to Communist Party officials. That's how open and transparent the guy is. But the clenched fist of the Vietnamese Government comes pounding down on his head, 13 years. We made a big deal as did other human rights activists. It was reduced to 5, and now thankfully—not thankfully, he should be free—he is under house arrest.

We don't want any kind of complicity in that. That's what this is all about. Again, I've told you before, I have a Yahoo! account. I think the Internet is a great, great potential, but if it is used by a repressive regime, obviously it becomes a tool in their tool box to hurt the dissidents and the best and bravest and brightest of a country.

We will not see a matriculation to democracy like we saw in Eastern Europe. If the Internet is used to find and capture and incarcerate all of the dissidents, they are the ones who bring freedom and hope, which means you will do more business, not less, going forward. So if you could answer those questions, I would deeply appreciate it.

Mr. YANG. Congressman Smith, I'll—first by saying that I thank you and welcome the efforts that you are doing on the Global Online Freedom Act. I feel that to hear it firsthand today is extremely important for our understanding, and obviously we understand the process of trying to understand all sides of a bill, but as a CEO of Yahoo!, I want to let you know that I think it's definitely one of the things that Congress can do to help facilitate, if not help clarify, what our roles are for companies. So I welcome that, and I look forward to some good debate about the implementation and the ability to compete.

I would just say that I think we're in a—not only sequencing of events has led us here, but also in an industry at a time in our world that I think is very interesting and, in fact, sometimes challenging. My own personal view, if you allow it, is that I think when companies operate, and when we have the government basically really creating an economic environment for us to—to—to go into places, and whether it's Vietnam or China, and China has more history for us than Vietnam coming up, I've learned now—and thank you for the opportunity to speak in front of you today—to really be more thoughtful and understand all the issues better.

I, frankly, will tell you that in 1999 when we went into China, it was a young company going into a young market, and the consequences are big if we don't really think through it. So I think to many of your members' points today, we learned we need to be a lot more deliberate and will take more responsibility both morally and ethically.

At the same time I think that the challenges are not—I understand that as a group and as a group of companies and individuals and as a group of Americans, we can do more, and I truly do believe the power of doing things together.

So thank you for opening the bill up, and I think that is something that we really do look forward to understanding more and help understand how we can do more business.

Mr. SMITH OF NEW JERSEY. And if you did endorse it, that would be very helpful.

Chairman LANTOS. Mr. Wu.

Mr. WU. Thank you, Mr. Chairman.

Mr. Callahan, we spent about 1 hour and 15 minutes, 1 hour and a half talking, and that's an unusual amount of time in this institution for personal meetings. And I, quite frankly, came away with a very positive impression of you, and I have nothing but admiration for a very successful company. And it is in that vein that I'm going to offer you the opportunity to answer again one of the questions that I asked earlier. And I want to say first that you are currently under oath, and the other person whose testimony I'm about to mention, that testimony is covered by the False Statements Act, 18 U.S.C. 1001, where material misrepresentation to a congressional investigator is a crime.



In answer to a committee investigator's question, Mr. Eugene Lao, I believe the counsel for Asia or general counsel for Asia, counsel in Hong Kong, said to committee staff that Yahoo!—that Yahoo! has two liaison officers or designated points of contact, one with the State Security Bureau, Guoanbu, and another liaison officer or designated point of contact; the other with the Gongganbu or the Public Security Bureau. You said in your earlier answer that there are no liaison officers with the State Security Bureau, the Guoanbu. Would you care to answer that question again? The two statements seem to be diametrically opposed, and I would hate to be in a situation where a few months from now we are holding this hearing again about contradictions from different parts of the organization.

Mr. CALLAHAN. Yes, sir. When I answered your question before, I obviously had no knowledge of the testimony or the meeting that Mr. Lao had had, and to my knowledge until you just said that today, that's the first that I've heard of that, sir, of liaison officers, to answer your question. I was not aware of that, and certainly not aware that Mr. Lao had said that in that meeting, which I was not a part of, as you know, and there are others here who were.

Mr. WU. So is there someone in the room who can inform you now whether Yahoo! has a designated point of contact or liaison officer, one with the Gongganbu, the Public Security Bureau, and one with the Guoanbu, the State Security Bureau.

Mr. CALLAHAN. I'm not aware of anyone here in the room that does, but I will absolutely find out the answer to that question, Congressman, and get back to you on that.

Mr. WU. Are you retracting your earlier answer?

Mr. CALLAHAN. Well, I was not aware of the fact that—I have no knowledge that this officer or liaison office does exist and so—but I absolutely will check on it.

Mr. WU. Mr. Callahan, if you have no knowledge, then why did you answer that none existed?

Mr. CALLAHAN. My belief is that none did exist, sir. I'm sorry to create a misimpression.

Mr. WU. Well, don't—it seems to me that for any answer, as general counsel of the corporation, there should be a factual basis for your answer to a congressional committee.

Mr. CALLAHAN. Yes, sir.

Mr. WU. So are you saying that you answered that question without a factual basis for that answer?

Mr. CALLAHAN. I'm sorry. Congressman, having not participated in the meeting with Mr. Lao, I wasn't aware that he had indicated that there is an office as you described, and as I mentioned, that was the first I heard of it. And I am more than willing to work and understand what the facts are and come back with an answer, direct answer, to your question.

Mr. WU. As described to me by the committee staff, I think they actually intentionally interviewed you and Mr. Lao separately.

Mr. CALLAHAN. Yes.

Mr. WU. And—but that returns us to your prior answer.

Mr. CALLAHAN. I—

Mr. WU. And the reason for offering an answer for which may be incorrect—

Mr. CALLAHAN. Yes, sir.

Mr. WU [continuing]. But at least for which you now assert you have no factual basis, which is what got us here to this point in the first place.

Mr. CALLAHAN. Sir, I apologize if I say this badly. I would like to correct the prior answer that I gave that there is no liaison office. I wasn't aware—I'm sorry.

My counsel is indicating—

Mr. WU. Take as much time as you want.

Mr. CALLAHAN. Apparently my prior answer was that I was not aware of such an office, and I am not aware of such an office.

Mr. WU. You have got a good counsel there.

Mr. CALLAHAN. Obviously I will find out the right answer to this question and be happy to get back to you on all the facts, Congressman Wu.

Mr. WU. I look forward to the answer to the questions I just asked and the questions that I asked previously.

Mr. CALLAHAN. Yes, sir.

Mr. WU. I yield back to the chairman.

Chairman LANTOS. Before closing this meeting, I want to do two things. I want to express my deep appreciation to the extraordinary staff work lead by Peter Yeo and the rest of the bipartisan staff which prepared this hearing.

I want to express respectful solidarity with members of the family. We will be there with you and for you irrespective of what Yahoo! will do. And before I close, I would like to turn to my friend and colleague from Florida.

Ms. ROS-LEHTINEN. Thank you for your kindness, Mr. Lantos.

I know that Mr. Callahan was about to answer Mr. Smith's question regarding the lawsuit settlement, and I wanted to give you the opportunity to answer.

Mr. CALLAHAN. Thank you.

Congressman Smith, as I expressed earlier, and I think as Mr. Yang has expressed, we absolutely will look at the opportunity as you suggest. I understand the importance to the committee and understand the importance to the issue, and I will commit to consult with our counsel about it.

Chairman LANTOS. It is mainly important to the committee, gentleman, but it ought to be a great deal more important to your own conscience. Don't accommodate the committee. Look into your own soul and see the damage you have done to an innocent human being and to his family. That is what you should respond to. Don't propitiate the committee. It will make no difference to the committee what you do, but it will make you better human beings if you recognize your own responsibility for the enormous damage your policies have created. That should be your guide.

This hearing is adjourned.

[Whereupon, at 1:29 p.m., the committee was adjourned.]

## APPENDIX

### MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF TEXAS

Thank you, Mr. Chairman, for convening today's important hearing. We all share a concern for the state of human rights and democracy in China, and we rely upon the expert witnesses who come before our committee to provide us, in good faith, with accurate and reliable information. If they knowingly fail to do so, this committee will take steps to follow up. I would like to thank Mr. Jerry Yang, Chief Executive Officer, and Michael J. Callahan, Esq., General Counsel, both of Yahoo! Inc., for appearing before our committee today.

Throughout its history, the People's Republic of China (PRC) has made a concerted effort to manipulate and limit the free flow of information, stifling the dissemination of dissident viewpoints. Though the advent of Internet technology initially presented a challenge to government control, and it has broadened access to news and facilitated mass communications, China has one of the most sophisticated content-filtering Internet regimes in the world, and continues to stifle online expression.

Though many in the United States have argued that, together with increasing economic openness, the growth of the Internet in China can play an important role in facilitating political liberalization in China, some private U.S. companies have been charged with aiding or complying with Chinese Internet censorship. On February 15, 2006, this Committee, then known as the International Relations Committee, held a hearing on this issue, listening to testimony from witnesses representing the State Department, Yahoo!, Microsoft, Google, and Cisco Systems, as well as several NGOs.

Mr. Callahan, you testified at this hearing, entitled "The Internet in China: A Tool for Freedom or Suppression." As Chief Counsel for Yahoo! Inc., your testimony centered on Yahoo's policies in China, as well as on the particular case of Shi Tao, a Chinese journalist and writer who was arrested for disclosure of state secrets and sentenced to 10 years in prison.

Shi Tao was arrested and imprisoned after Yahoo! China provided key information to the Chinese government. Shi, an editor at *Contemporary Business News* in Hunan province, had attended an editorial meeting where government officials read an internal document outlining media restrictions that would be in place before the 15th anniversary of the 1989 Tiananmen Square crackdown, to occur in June 2004. After the meeting, Shi sent copies of his notes via his personal Yahoo email account to a pro-democracy group in the United States.

Subsequently, the Chinese government used a subpoena-like document to request information from Yahoo that enabled state security authorities to identify Shi, and then to arrest him in 2004 and convict him in 2005. Shi Tao is now serving a 10 year prison sentence.

Jerry Yang, co-founder and senior executive of Yahoo, has confirmed that his company gave information to the Chinese authorities. Mr. Yang has characterized his company's actions as part of the legal burden of doing business in China.

When Mr. Callahan testified before this committee last year on this case and other issues of Internet freedom in China, he stated, "When Yahoo! China in Beijing was required to provide information about the user, who we later learned was Shi Tao, we had no information about the nature of the investigation. Indeed, we were unaware of the particular facts surrounding the case until the news story emerged."

This Committee now knows that, while Mr. Callahan may not have *personally* known the nature of the Chinese investigation into Shi Tao, Yahoo! Inc. employees did know. A key member of the Yahoo briefing team that prepared Michael Cal-

lahan for his testimony before the committee had a copy of the subpoena-like document, which read “Your office is in possession of the following items relating to a case of suspected illegal provision of state secrets to foreign entities . . .,” during the hearing preparations. In addition, Yahoo! China lawyers had a copy of the document. A “state secrets” investigation is the term commonly used by the PRC against political dissidents.

Because Mr. Callahan was testifying as an officer of Yahoo! Inc., Yahoo! itself provided false information to the United States Congress and must be held accountable for its actions. Because the terms employed by the Chinese government, when they asked for information on Shi Tao, are commonly recognized as those used against political dissidents, Yahoo! Inc. should have used some discretion in their provision of information that cost Shi Tao a 10 year jail sentence, which he is currently serving.

If Mr. Callahan truly did not know the nature of the government’s inquest at the time he made his statement before this committee, it would have been his responsibility to contact the Committee and inform them that the company had provided false information upon learning the truth. However, the Committee has not been contacted by any member of Yahoo! Inc., either orally or in writing, to inform the Committee that Yahoo had provided false information to the Congress. Yahoo! Inc. has failed to take responsibility, before this Congress and the American people, for its mistakes.

In addition, even after discovering its error, the company has not conducted an internal investigation into the circumstances that led to the provision of false information to the U.S. Congress, nor has it disciplined anyone within the company for their part in the provision of false information. Perhaps the most irresponsible action, or in this case inaction, on the part of Yahoo! Inc is that to date Yahoo! China has still not changed its policies to avoid the repetition of this issue. Should the Chinese government today ask for information regarding an investigation on “state secrets,” Yahoo! China would again comply.

Mr. Chairman, the facts clearly illustrate that Yahoo! Inc. provided false information to Congress in sworn testimony. Even if the witness testifying before the Committee, Mr. Callahan, did not know the nature of the Chinese government’s requests, it is clear that his company did. Yahoo! Inc. had full knowledge that the investigation by the Chinese government was likely done to suppress opposition, and the company still cooperated with the government. Yahoo! Inc must take responsibility for its actions, for the 10 year sentence Shi Tao is now serving as well as the provision of false information to the Congress of the United States of America.

Thank you, Mr. Chairman. I yield back the balance of my time.

