

**"GLOBAL INTERNET FREEDOM AND THE RULE OF LAW, PART II"**

WHAT U.S. COMPANIES SHOULD BE DOING TO INSURE THAT THEY ARE NOT COMPLICIT IN HUMAN RIGHTS VIOLATIONS RELATING TO INTERNET FREEDOM.

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Each year, Reporters Without Borders publishes an "Internet enemies" list, naming about twenty countries where Internet censorship is an obstacle to individual freedoms, either by surveilling the network, harassing the bloggers and filtering websites. Ten days from now, the new list will be published. Out of the 12 Internet Enemies the organization listed last year, at least one U.S Internet company was involved in the Internet industry in many of them. The challenge for these firms is to keep their human rights standards while doing business in these repressive countries. They have to fight the local law, which asks them to display the datas of their clients, if the government requests it, no matter how (a phone call could be enough). This is exactly what happened back in 2004 with the sadly famous Shi Tao case, involving Yahoo ! in the Chinese censorship.

In April 2004, the Chinese journalist **Shi Tao** used his Yahoo! email account to send a message to a U.S.-based pro-democracy website. In his email, he summarized a government order directing media organizations in China to downplay the upcoming 15th anniversary of the 1989 crackdown on pro-democracy activists. Police arrested him in November 2004, charging him with "illegally providing state secrets to foreign entities." Authorities used email account holder information supplied by Yahoo! to convict Shi Tao in April

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2005 and sentence him to 10 years in prison. It is believed that four other dissidents have been convicted because of Yahoo's involvement in China.

### **U.S Internet firms and their implication is Internet censorship**

Google, Yahoo ! and Microsoft are the three Internet Giants worldwide. And they are American. Google is still censoring its search engine in China although it is reconsidering its position there. It will also be submitted to restrictions in Sri Lanka, as the government stated at the beginning of this year. Blogspot, its blog platform, is submitted to restricted rules in Vietnam. A government notice, Circular n°7, came into force on 20 January 2009, which is designed to control blogs and their content. It is now illegal for a blogger to post articles under another identity. Blogs can only carry strictly personal information (Article 1) and it is banned to "put out press articles, literary works or other publications banned by the press law" (Article 2). Moreover, every six months, at the request of the authorities, hosts must make a report on the activities of their customers including the number of blogs they run and their statistics as well as details of blogs that violate rules established by the host (Article 6). Microsoft is harshly censoring the results of its search engine Bing in China too. According to *The New York Times*, "Microsoft apparently doesn't want to pursue the Google solution of having separate sites - one that produces generally legitimate results (google.com) and another within China that blatantly censors (google.cn). Instead, Bing figured it would have one site and just censor all the results in simplified Chinese characters."

In order to fight the local law forcing the U.S firms to censor online free speech, two initiatives were born in 2006: The Global Online Freedom Act (GOFA) and the Global Network Initiative (GNI).

**Why Reporters Without Borders thinks the GOFA is the best way for U.S firms to insure Internet Freedom**

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Reporters Without Borders believe that, as of today, the best option to prevent IT companies from being forced to collaborate with the Web-censors in repressive countries remains to provide a legal framework for companies willing to resist governments' requests that violate the international free speech standards, as the Global Online Freedom Act, introduced by Representative Chris Smith does for American IT firms. Reporters Without Borders has supported the Global Online Freedom Act (GOFA) since its birth. Introduced by Representative Chris Smith (R-NJ) in February 2006, it would protect American IT companies from being forced to collaborate with repressive regimes. The Act would prevent repressive governments - those that punish dissidents and human rights activists who exercise their right to online free expression - from accessing personal data through US companies.

The bill would ban companies from locating the servers containing this data and from providing information that identifies users, except in cases in which the law is being legitimately applied, to be decided by the US justice department. The US companies would also have to act transparently and transmit information about the type of censorship they apply to an interagency-staffed Office of Global Internet Freedom, which would have the job of defining US government policy for the promotion of the free flow of online information and monitoring violations. A feasibility study of technologies and equipment's export control would also be made. The bill also promotes the idea of a voluntary code of conduct to be established for companies working in countries with repressive regimes.

The GOFA is a draft law being studied in the United States and in a different version within the EU. It was proposed in the House of Representatives by Republican Deputy Christopher Smith in a new version on 6 May. Inspired by the Foreign Corrupt Practices Act, it aims to prevent US companies from "cooperating with repressive governments in transforming the Internet into a tool of censorship and surveillance." It also aims to ensure that the US government fulfils its responsibility "to promote freedom of expression on the Internet" and "restore public confidence in the integrity of US businesses."

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The European version of GOFA was put before the European Parliament on 17 July 2008 by Dutch member, Jules Maaten of the Alliance of Liberals and Democrats for Europe (ALDE), and was inspired by the US model. It urges European companies to assume their "responsibility to uphold the principles of the Universal Declaration of Human Rights" and requires them to locate their servers outside repressive countries.

The Global Network Initiative is a coalition that includes ICT companies, civil society organizations (including human rights and press freedom groups), socially responsible investors and academics. Three US firms are so far involved : Google Inc, Yahoo ! Inc and Microsoft Corp. The goal is for the membership to be global and to be from across the internet and telecommunications industries. The foundational documents reflect over two years of extensive engagement and negotiation by the participants and were collaboratively drafted by the multi-stakeholder group over an 18-month period, from January 2007 through June 2008. The work of key academic institutions, consultations with other stakeholders, and the experiences of other voluntary human rights initiatives influenced the drafting. Reporters Without Borders took part in the negotiation but did not sign the Global Principles on Freedom of Expression and Privacy. However, the organization recognizes it as a first step towards ICT companies' recognition of the importance of free expression while operating in Internet-restricting countries.

Under these principles, another **Shi Tao** case is still possible.

## **Recommendations**

### Reporters Without Borders

- urges the House of representative to pass the Global Online Freedom Act and take a clear stance on it
- encourages the US Internet Firms to follow Google's lead and reconsider their involvement in China.
- Asks the US government to ensure that the sponsorship for online circumvention tools is effective.

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- Asks the Congress to launch an Internet Freedom Caucus as soon as possible

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