

Senator Richard J. Durbin
“Global Internet Freedom: Corporate Responsibility and the Rule of Law”
Senate Judiciary Committee
Subcommittee on Human Rights and the Law
Questions for the Record for Michael Samway, Yahoo!

1. **Does Yahoo! support H.R. 275, the Global Online Freedom Act of 2007? Please explain.**

Yahoo! supports the objectives of GOFA and, in particular, the formalization of the Office of Global Internet Freedom. GOFA properly recognizes the leadership role the U.S. government must play in persuading foreign governments to respect more fully the online free expression and privacy rights of their own citizens. Yahoo! supports strengthening the U.S. government’s ability to combat online censorship and the establishment of the Office of Global Internet Freedom to coordinate inter-agency efforts to promote Internet freedom – making permanent the Global Internet Freedom Taskforce with which Yahoo! has worked closely since it was created in 2006.

We have worked with key GOFA stakeholders in Congress to find a path to achieve the goals of GOFA without instituting provisions that would have the practical effect of precluding engagement and preventing companies from bringing the transformative technologies of the Internet to people in certain areas of the world. Yahoo! does not believe that legislation should – in effect – bar companies from doing business in countries like China. While perhaps unintentionally, the minimum standards in the bill that prohibit U.S. businesses from complying with locally binding lawful orders would put companies and their local operations in the untenable position of having to choose to violate local law or violate U.S. law. This would likely mean that companies would have no choice but to cease doing business in countries like China. As a result, we have urged Congress to modify the current language to make it clear that companies would not be put in this unsustainable position.

2. **At the hearing, you testified, “We support backstop legislation, something that protects U.S. companies, but not legislation that puts us in the untenable position of having to choose to violate a local law or choose to violate U.S. law.”**
- a. **Please elaborate on the nature of legislation that Yahoo! would support.**
- b. **Would such legislation ensure that American internet companies operating in internet- restricting countries protect user privacy and freedom of expression?**

As indicated above, Yahoo! supports strengthening the U.S. government’s ability to combat online censorship and the establishment of the Office of Global Internet Freedom to coordinate inter-agency efforts to promote Internet freedom – making permanent the Global Internet Freedom Taskforce with which Yahoo! has worked closely since it was created in 2006.

Yahoo! does not believe that legislation should – in effect – bar companies from doing business in countries like China by, for example, prohibiting U.S. businesses from complying with locally binding lawful orders and putting companies in the untenable position of violating local law or violating U.S. law. This would likely mean that companies would have no choice but to cease doing business in countries like China.

Yahoo! has been working closely for the past two years with industry partners, academics, human rights organizations, socially responsible investors, and others to develop a global code of conduct that will guide technology companies operating in challenging markets. As we noted in our letter to your office on August 1, 2008, we have reached agreement in principle on the core components of this code, and we expect to formally launch the code this fall. Given the speed of change in technology and companies' ability to reach users around the globe, Yahoo! believes that a voluntary code can be nimble and ultimately most effective in protecting individual rights. At the same time, while the code will be global in nature and has participants from around the world, we also believe Congress can play an important role in promoting support for and adherence to the code of conduct.

3. Cisco's Mark Chandler testified, "We support restrictions on the ability of companies to locate within an internet-restricting country electronic communications that include personally-identifiable information." Does [Yahoo!] support such restrictions?

Yahoo! believes global engagement serves the interests of access to information and freedom of expression. Yahoo! also recognizes its responsibility to anticipate and mitigate human rights risks in making business decisions. Accordingly, Yahoo! has developed a human rights impact assessment process by which Yahoo! assesses the human rights conditions in challenging countries as well as the legal requirements and restrictions for operating in such countries. This in-depth review allows Yahoo! to plan and structure its service offerings — as well as its legal and operational structure — to limit the potential risks to human rights, while providing services that can advance the exchange of information and communication and have a positive effect on the lives of citizens in those countries.

One important factor in a human rights risk assessment is considering the implications of data location and data access as well as the impact on the rights of both users and local employees. We focus closely on these critical questions in designing risk mitigation strategies for our products and operations in challenging markets. And while we believe it is essential to limit risks of compelled data disclosure, data access, and data seizure, we also know foreign governments have many sources of leverage over companies doing business in their countries. Those sources of leverage include assertion of jurisdiction, revocation of licenses, blocking of services, threats of civil or criminal sanctions against local employees, physical seizure of data, or physical access to data.

We have also learned that it will not necessarily always be clear what will constitute personally identifiable information in this complex and dynamic industry. Declaring unequivocal support for a categorical restriction in this technical area may be overbroad and fail to account fully for the technical realities of personal data. As a result, such a

categorical restriction may prevent companies from bringing the transformative technologies of the Internet to people in certain areas of the world and could also inadvertently limit the risk mitigation strategies companies could adopt in any effort to limit human rights risks.

4. **Google's Nicole Wong testified that Google "would support an external audit" of their operations.**
- a. **Would Yahoo! support an external audit? If so, please describe the nature of the audit to which you would agree.**
 - b. **Would you support an audit which is conducted by a monitor who is independently selected?**
 - c. **Would such a monitor be permitted to assess whether Google has policies designed to protect freedom of expression and user privacy, how those policies are implemented, and whether the policies actually protect user privacy and freedom of expression?**
 - d. **Would such a monitor have access to all relevant information, not just information Yahoo! chose to provide to him or her?**

As we noted in our letter to your office on August 1, 2008, as part of our participation in the multi-stakeholder process to create an industry code of conduct, Yahoo! does support independent external assessment of participating companies to review and evaluate their implementation of, and compliance with, the principles the group has set-out on free expression and privacy. External assessors would meet established competency and independence criteria. Companies would prepare reports for the independent assessors to review, and the assessors would have access to other relevant company data. Access would be subject to reasonable limitations such as attorney-client privilege, trade secrets or other disclosures restricted by law, and each company would identify with practicable specificity the reasons requiring the limitation. As we noted in the above-referenced letter, we believe a key component of the upcoming industry code of conduct must be a governance, accountability and learning framework founded on the notion that an organizational and multi-stakeholder governance structure is required to support the principles of free expression and privacy and that participating companies should be accountable for their role in the implementation of these principles through a system of independent assessment.

5. **What policies or practices does Yahoo! have in place to protect user privacy and freedom of expression in foreign countries?**

With respect to the freedom of expression and privacy of users of local services offered by Yahoo! subsidiaries, as explained more fully in response to questions 7 and 8 below, Yahoo! Inc.'s policy is that Yahoo! companies and operations around the world comply with lawful demands from governments — whether demands for content filtering, content removal or law enforcement demands for user data — from the countries in which they operate, consistent with local legal requirements, and do not comply with

requests believed to be outside the bounds of applicable law. Yahoo! Inc.'s policy is for its family of companies to challenge requests believed to be beyond the scope of what is required under local law, and Yahoo! Inc.'s policy is that each of the Yahoo! family of companies will comply with demands only where a government abides by the legal processes required by that country's laws. When a lawful demand is issued consistent with local legal requirements, and it is clear that compliance is compulsory under the local law, a Yahoo! company may be compelled to comply. This is what is expected in the United States from companies doing business here, and it is what foreign governments require of companies operating in their jurisdictions. This basic policy — that local operations or subsidiaries comply with legal demands from local jurisdictions and refuse to comply with requests outside the authority of the requesting entity — is consistent throughout the Yahoo! family of companies worldwide.

6. Please provide a list of all the localized services that Yahoo! offers.

Yahoo! Inc. provides services in the United States. Insofar as Yahoo! Inc. services are generally available on the Internet, services offered by Yahoo! Inc. may be accessed anywhere in the world the Internet is available.

Yahoo! has a local presence (meaning employees or representatives and a locally targeted Yahoo! website) in the following countries through a subsidiary, joint venture, investment, partnership, or other interest:

Argentina	Germany	Mexico
Australia	Hong Kong	New Zealand
Brazil	India	Singapore
Canada	Ireland	Spain
China	Italy	Taiwan
France	Japan	United Kingdom
	Republic of Korea	

For the following countries, Yahoo! operates a locally targeted website principally operated or hosted from another jurisdiction:

Austria	Malaysia	Sweden
Chile	Netherlands	Switzerland*
Colombia	Norway	Thailand
Denmark	Peru	Turkey
Finland	Philippines	Venezuela
Greece	Poland	Vietnam
Indonesia	Russia	

* The Yahoo! Swiss website is currently hosted from Germany and linked to the Yahoo! Germany website. It is important to note, however, that Yahoo! recently opened corporate offices in Switzerland and the situation there may change over time.

7.

- a. **What process does Yahoo! follow when you receive a request for personally-identifiable user information from a foreign government?**
- b. **Do you make an independent assessment of whether such a request complies with the law of the foreign country making the request?**
- c. **In what circumstances would you decline or challenge in court such a request?**
- d. **Have you ever declined or challenged such a request? Please explain.**
- e. **Who at Yahoo! is ultimately responsible for authorizing the disclosure of personally-identifiable user information?**

As part of Yahoo!'s commitment to protecting users' privacy and maintaining their trust, while at the same time fulfilling our public responsibility and legal obligations to respond to demands from authorized government entities in their efforts to enforce laws and protect public safety, Yahoo! has adopted principles to guide our practices in each jurisdiction where Yahoo! responds to government demands for user data.

Our key principles begin with Yahoo!'s commitment to ensuring that government demands for user data receive serious and careful attention. Additionally, Yahoo! Inc.'s policy is for its local services to disclose user data to governments only if disclosure is pursuant to valid legal process and consistent with applicable law. Yahoo! may also disclose information in certain exceptional circumstances, such as to prevent death or serious physical injury or reporting incidents where Yahoo! or its users have been victims of fraud or other crimes. Under Yahoo! Inc.'s policy, the local Yahoo! service should comply with a government demand only if the demand comes from an authorized government official or entity with the necessary jurisdictional authority over users of that service. Yahoo! Inc.'s policy is for its local service to carefully review each demand for user data and endeavor to narrowly interpret demands to limit the data disclosed to only that which is required to comply with the demand. Yahoo! Inc.'s policy contemplates the consideration of appropriate options when faced with a government demand for user data that raises privacy or human rights concerns, including the escalation of the demand, to the extent permitted by applicable law, for a legal review and, as appropriate, a human rights review. The options for responding to what appears to be an improper demand include partial compliance in a manner consistent with law, refusal to comply unless defects to the demand can be remedied, or challenges to such demands before an appropriate court.

8.

- a. **For which localized services do you censor political or religious content?**
- b. **For each of these localized services, how do you determine what to censor?**

- c. **What process does Yahoo! follow when you receive a request from a foreign government to censor political or religious content?**
- d. **Do you make an independent assessment of whether such a request complies with the law of the foreign country making the request?**
- e. **In what circumstances would you decline or challenge in court such a request?**
- f. **Have you ever declined or challenged such a request? Please explain.**
- g. **Who at Yahoo! is ultimately responsible for authorizing the censorship of political or religious content?**

Yahoo! and its industry peers face limitations on content in many markets, ranging from prohibitions on certain forms of speech in France and Germany and hate speech regulations in many jurisdictions including the United States to search filtering requirements regarding political content applicable to Yahoo!'s former subsidiary in China. As with law enforcement demands for user data, Yahoo!'s policy is that its local service complies with the local law applicable to the local service's operations. Under this policy, Yahoo!'s local subsidiary or local operating entity should review any demand for content limitation or demand to remove content and assess that demand under applicable local law. Yahoo! Inc.'s policy is to construe such requests as narrowly as possible consistent with local law and challenge requests it believes are beyond the scope of what is required under local law. Also, Yahoo! Inc.'s policy is that each of the Yahoo! family of companies can and does require that a country abide by its own legal processes.

Employees of the legal department of the relevant subsidiary or operating unit are responsible for implementing this policy and escalating non-typical cases to Yahoo! Inc. Yahoo! has launched a formal Business & Human Rights Program to guide company decision-making in the areas where Yahoo!'s products and operations come into contact with international issues of free expression and privacy.

In one well-known legal case, Yahoo! Inc., which operates the service at www.yahoo.com, was ordered by a French court to remove content that was protected political speech under U.S. law. The content in question was available to users in France due to the nature of the global Internet, but was deemed illegal by French authorities. In that case, Yahoo! Inc. noted in the ensuing lawsuit that its French subsidiary, Yahoo! France, was in compliance with French law and did not display such content, but that Yahoo! Inc. was a U.S. company in compliance with U.S. laws. Yahoo! Inc. filed for declaratory relief action in U.S. district court asking it to find the judgment unenforceable because of inconsistency with the First Amendment. (Ultimately the Ninth Circuit Court of Appeals, ruling only on the jurisdiction question, ruled Yahoo! Inc. would have to wait until enforcement was actually filed in the United States against Yahoo! Inc.).

- 9. **At the hearing, I asked about the Chinese government's attempts to suppress information about the SARS epidemic. In the event of another public health emergency in a country that suppresses such information, how would Yahoo!**

respond to a censorship or takedown request regarding information about that health threat?

Yahoo! seeks to afford all of its users access to unfiltered information regarding public health issues through Yahoo!'s websites, and Yahoo! Inc., whose service is found at www.yahoo.com and is available across the globe, would not filter such content unless required to do so under United States law. As noted above, Yahoo! Inc.'s policies regarding content filtering limits filtering to the narrowest possible extent required by local law for the respective local services.

Where Yahoo! Inc. has a local subsidiary or operations subject to local law, those services must comply with applicable local law. In the hypothetical case posed, where Yahoo! Inc. had operational control over the local subsidiary, Yahoo! Inc.'s policy would require the local operation to confirm the lawfulness of the demand, interpret the government demand as narrowly as possible, and consider escalating the issue or challenging the demand if it were believed to be invalid.

- 10. Human Rights Watch's Arvind Ganesan testified, "disclosing censorship is not enough, but actually actively trying to reduce it to where your minimum level is whatever the government says it is." Please describe what Yahoo! has done to reduce censorship to the minimum level.**

In February 2006, Yahoo! made the following four public commitments:

First, Collective Action. Yahoo! will continue to work with industry, government, academia and non-governmental organizations to explore policies to guide industry practices in countries where content is treated more restrictively than that in the United States and to promote the principles of freedom of speech and expression.

Second, Compliance Practices. Yahoo! continues to employ rigorous protections under applicable laws in response to government requests for information, maintaining its commitment to user privacy and compliance with the law.

Third, Information Restrictions. Where a government requests that Yahoo! restrict search results, Yahoo! does so if required by applicable law and only in a way that impacts the results as narrowly as possible. If Yahoo! is required to restrict search results, we strive to achieve maximum transparency to the user.

And fourth, Government Engagement. Yahoo! continues to engage actively in ongoing policy dialogue with governments around the world with respect to the nature of the Internet and the free flow of information.

Since 2006, we have acted on these commitments. Yahoo! has been working closely for the last two years with industry partners, academics, human rights organizations, socially responsible investors, and others to develop a global code of conduct that will guide technology companies operating in challenging markets. As we noted in our letter to your office on August 1, 2008, we expect to launch this initiative in the fall.

We have also worked with industry peers and policy groups, as well as with the State Department's Global Internet Freedom Taskforce, to explore further ways to promote internet freedom globally.

With respect to China, China Yahoo! now provides notice on its search pages indicating results may have been narrowed or omitted due to legal restrictions. Users registering for a China Yahoo! e-mail account are alerted that the service is provided subject to Chinese law.

- 11. Global Internet Freedom Consortium's Shiyu Zhou testified, "for companies like Google and Yahoo!, their self-censorship in China I would say is more damaging than other kinds of censorship, because for Chinese people in such a closed society, they take Google and Yahoo! as role models of freedom of information. When they look on the websites and they find the information, they believe it is factual and it is true." Do you agree?**

Yahoo! was founded on the principle that promoting access to information can fundamentally improve people's lives and enhance their relationship with the world around them. We believe that such access will ultimately help advance freedom of expression and, more broadly, individual rights worldwide. We believe the policies and practices of the companies in our industry should promote open access to the Internet while working on multiple fronts to prevent restrictions on this access. Yahoo! is also committed to user transparency. For that reason, we encouraged Alibaba to include a search notice, and China Yahoo! now includes a notice on its search pages indicating that results may have been narrowed or omitted due to legal restrictions.

- 12. Please provide a copy of any human rights guidelines, policies, and training that Yahoo! has in place.**

Yahoo! has the utmost commitment to user privacy and free expression, and has endeavored to incorporate that commitment into its policies and practices, as outlined above. Yahoo! has made reaching agreement on an industry code of conduct a priority in its intensive engagement with a diverse group of interested parties — which include, in addition to Yahoo!, representatives of human rights organizations, policy groups, other companies, socially responsible investors, and academics. Moreover, even as these negotiations were on-going, Yahoo! independently undertook a number of affirmative steps to ensure that it remains an industry leader on these issues, including undertaking a comprehensive review of its law enforcement compliance policies globally, initiating substantial changes in its decision-making process in order to more fully ensure that human rights concerns are incorporated into the business review process, and continuing to invest in research into human rights and technology issues through Yahoo! fellowships at Georgetown University and Stanford University.

On May 7, 2008, Yahoo! publicly launched its Business & Human Rights Program (<http://ycorpblog.com/2008/05/07/business-and-human-rights/>). Through this program, Yahoo! has created a dedicated team to guide company decision-making on human rights

issues, create escalation paths for issues, conduct human rights impact assessments, engage with internal and external stakeholders, and create an accountability framework.

Yahoo! also continues to work with noted Chinese dissident and human rights activist Harry Wu and his Laogai Research Foundation in connection with the Yahoo! Human Rights Fund, which was created to provide humanitarian and legal support to political dissidents imprisoned for expressing their views online, as well as providing support to their families.

Because Yahoo!'s internal policies and procedures relating to these issues contain confidential, proprietary, and privileged information, and given the sensitive nature of, and legal restrictions applicable to Yahoo!'s law enforcement compliance efforts, Yahoo! is not in a position to provide the requested materials. Yahoo! is committed to working with your office on these important issues, and we have engaged with your staff regarding many of the details of these policies. We would be pleased to meet privately with you or the Committee staff to discuss Yahoo!'s policies, procedures, or practices in a way that does not breach confidentiality or privilege, and does not reveal sensitive or restricted law enforcement compliance information improperly.

- 13. You testified that Yahoo! “currently conduct[s] - and I think we may be the only company to publicly announce and commit to this - a human rights impact assessment before entering any market.” Please provide more information about these impact assessments, including for what new markets you have conducted such assessments, how you conduct such assessments, and how the results of such assessments have affected whether to enter a new market.**

Yahoo! Inc.'s experience in China has resulted in significant change within the Yahoo! family of companies, and the recent experience with preparing to expand service offerings in Vietnam is a good example. For Vietnam, in addition to the usual business review of the market, Yahoo! Inc. developed a human rights impact assessment, in which Yahoo! Inc. assessed the human rights conditions in Vietnam (including reports of the leading human rights organizations, academics, and the U.S. government). The company also consulted human rights experts and worked with the State Department and the U.S. Embassy and Consulate in Vietnam. The company dispatched a team to meet with U.S. officials in Vietnam regarding the challenges and opportunities, and it assessed the regulatory requirements and restrictions for operating in the country. This in-depth review has allowed Yahoo! to plan and structure our service offerings — including the legal and operational structure — in a way that attempts to limit the potential risks to human rights, while providing services that can advance the exchange of information and communication and have a positive effect on the lives of citizens there. The human rights review process associated with this business decision and the steps taken to limit potential human rights risks reflects Yahoo!'s renewed commitment to remaining a responsible actor in this area. Yahoo! has formalized the human rights impact assessment process and any such assessments will be conducted on an going-forward basis for new products or new markets that raise substantial human rights challenges.

14. **At the 2006 HIRC hearing, Yahoo!’s Michael Callahan testified, “We do not have day-to-day control over Yahoo! China, but as a large equity investor, we have made clear our desire that Alibaba continue to apply rigorous standards in response to government demands for information about its users. I have personally discussed our views with senior management of Alibaba, as have other senior executives of Yahoo!” You testified, “With respect to Alibaba, we also have exerted our influence with respect to the free flow of information in China.” Please explain how Yahoo! has exerted its influence with Alibaba and provide specific examples of how that has changed Alibaba’s policies and practices regarding user privacy and freedom of expression.**

As one of four directors on Alibaba’s board of directors, our Chief Executive Officer Jerry Yang has had discussions with senior management of Alibaba to impress upon them the importance of these issues to Yahoo! Inc. Other Yahoo! Inc. employees, including Mr. Callahan and other members of the Yahoo! legal team, have also had discussions with Alibaba and Yahoo! China regarding these issues. Subsequent to these discussions, Alibaba’s China Yahoo! service has taken specific steps to institute more transparent disclosure notices as part of its operations. First, China Yahoo! now provides notice on its search pages indicating that results may have been narrowed or omitted due to legal restrictions. Second, users registering for a China Yahoo! e-mail account are alerted that the service is provided subject to Chinese law.

Representatives of Yahoo! Inc. have also spoken both with officials at the State Department and directly with Chinese officials regarding the company’s concerns about these matters, and particularly the Shi Tao case. Mr. Yang has met with State Department officials and has personally asked Secretary Rice to raise this issue with the Chinese government, which Yahoo! understand she did earlier this year in Beijing. Yahoo! Inc. encourages continued government-to-government efforts by the U.S. Congress and Executive Branch to effect changes in China’s law enforcement practices.

15. **Google’s Nicole Wong testified, “We support the development of tools that are intended to get around censorship on the Internet. We do that in a couple of ways, both directly supporting developers in that area, and also providing a code base for building on top of that.”**

- h. Does Yahoo! support developers of anti-censorship technology? Please provide examples.**
- i. You testified that “we are going to explore Dr. Zhou’s organization and the technology offered.” Have you followed up on this commitment? Please explain.**

As a technology company, Yahoo! recognizes that technology can be part of the solution in combating censorship and promoting Internet freedom. Our team has met with Dr. Zhou in person to learn more about his organization and the role of technology in combating restrictions on the free flow of information online. We also agreed with Dr. Zhou to have further discussions between his technical teams and our own. While

technology is an important component of the solution, we also believe this issue should be addressed at a human level through the various tools of diplomacy and continued efforts of the U.S. government, including at the State Department. We believe the U.S. government has the most leverage to modify the practices of repressive regimes. Recognizing the responsibility of corporations, Yahoo! has also sought to build our internal capacity to make responsible corporate decisions on human rights issues.